

A C C E S S

Victims' rights before the International Criminal Court

Victims' Rights Working Group Bulletin • Issue 10 • Winter 2007/8

ICC clarifies requirements for victims' application process

On 17 August 2007, the Pre-Trial Chamber handling the Situation in the Democratic Republic of Congo delivered a long decision detailing the requirements for a complete application. The Chamber also established that in the future the Registry should only transmit complete applications and their corresponding reports to the judges. The Registry should only transmit incomplete applications if it was still unable to obtain the missing information after a reasonable length of time.

For an application to be considered complete, the applicant must provide proof of his or her identity, a signature, the date and location of the crime as well

as a description of the harm suffered.

On an encouraging note, the Chamber recognised that collecting documentation to prove identity might be difficult for applicants in some circumstances. Thus, it would take a flexible approach. National ID cards, birth certificates, drivers' licences, voting cards, student cards as well as certificates confirming the loss of official documents, or documents issued by child-rehabilitation centres are amongst those listed as acceptable proofs of identity. However, in the absence of an official document, the Chamber said it would accept a statement asserting an applicant's identity if it was signed by two witnesses.

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Voices from the ground on Katanga's transfer

At ground level in Congo, surprise, uncertainty, satisfaction, and hope are amongst the reactions pronounced by local activists, particularly those working with victims in Ituri.

Surprise and uncertainty were felt initially because the announcement of the arrest and transfer of Germain Katanga, the alleged commander of the FRPI armed group (Force de Résistance Patriotique en Ituri) came two days after the end of the Disarmament, Demobilisation and Reintegration process (DDR). This process, that has gone on for years under the auspices of the CONADER (National Commission for Disarmament, Demobilisation and Reintegration), is supported by the UN's peacekeeping mission MONUC, and saw a number of Ituri-based heads of armed groups integrated into the national armed forces the same week as Katanga's transfer to the Hague.

Local actors such as Gilbert ANGWANDI, Coordinator of APRODIVI, the Association for the Promotion and Dignity of Victims of Ituri, asks: "why was this moment chosen and why was it Germain Katanga and not Floribert Ndjabu, head of the FNI (Front Nationalistes de l'Ituri), the main opposition group to Thomas Lubanga's UPC?"

In spite of these questions, a fragile feeling of rebalancing seems to have settled in Ituri. After years of asking why the International Criminal Court had only gone after Thomas Lubanga, victims in the region have finally seen another alleged "executioner" transferred to The Hague.

On 17 October 2007, Congolese authorities transferred Germain Katanga to the ICC. He is charged with six counts of

war crimes and three counts of crimes against humanity in the territory of Ituri. The crimes all relate to the attack on the village of Bogoro in February 2003, where allegedly over 200 civilians were massacred and survivors were imprisoned in a building filled with corpses. Women were abducted and sexually enslaved and the village ended up being pillaged by FRPI militia.

LIPADHO, the League for Peace and Human Rights, an Ituri-focused NGO, welcomed the arrest.



Germain Katanga © ICC

Compared to the charges leveled against Lubanga, that are very limited, the ones against Katanga are broader. He is accused of inhumane acts, sexual slavery, using children under the age of fifteen to participate actively in hostilities, intentionally attacking civilians, and pillaging. Eloi Urwodhi, from LIPADHO, expresses satisfaction: "the Court selected charges including blood crimes that in victims' eyes, demonstrate real elements of cruelty."

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Germain Katanga © ICC

The sense of rebalancing is due to the fact that Katanga is from a group allied to the main opposition group to Lubanga. This sends a message to victims that all militia groups can be targeted and shows victims from the Lubanga's Hema community that they haven't been forgotten. Indeed, following Lubanga's arrest people felt that the Court was one-sided and was only targeting the Hema.

On the other hand, according to APRODIVI, victims from Katanga's community are filled with consternation, indignation and humiliation. They criticize this arrest warrant as

unfair. Lubanga, who was the head of a much larger armed group, was only charged with recruiting and using children under the age of fifteen actively in hostilities, Katanga headed a smaller group but is charged with more crimes.

Friends of Congolese Law (Club des Amis du Droit) voices that "there is concern and impatience to see a 'big fish' arrested by the ICC". While Germain Katanga is the highest ranking FRPI commander and allegedly played an essential role in the attack against the Bogoro village, he is still considered "a small fish" and his transfer is therefore a bit of a surprise considering the level of crimes committed by the other groups such as the FNI.

The Coalition for the rights of women in conflict situations (Coalition pour les droits des femmes en situation de conflit) is disappointed that while the crime of sexual enslavement was included, rape, forced pregnancy and sexual violence amounting to torture were not. The Coalition stresses that it is difficult to dissociate sexual slavery from the other forms of sexual violence that took place on the eastern territory of the DRC. It recalls that "the Congolese women and girls helped and supported by civil society associations have been waiting and hoping, since the entry into force of the ICC Stat-

ute, for concrete moves for the recognition of sexual violence".

Local organizations praise the cooperation between the Congolese government and the ICC which enabled the transfer of Katanga. Victims welcome the message sent to other warlords that the time for accountability has come. But, as expressed by LIPADHO and APRODIVI, "it is important that the Court accelerates with other arrests, without rushing". There is "no peace without justice and no justice without a fair and efficient tribunal, whether national or international, ready to really prosecute all the protagonists, internal as well as external, without distinction".

For more info about APRODIVI and LIPADHO see: <http://www.vrwg.org/APRODIVI.html> and <http://www.vrwg.org/LIPADHO.html>



Map of Bunia © ICC

...continued from Page 1 'application process'

The witnesses would however have to provide accepted identification for themselves. The chamber would also accept similar witnessed statements certifying the relationship between the victim and the person acting on his or her behalf.

Victims had asked that their identity not be disclosed to the Defence Office, however, the Chamber confirmed that during the investigation phase, full versions of the forms would be passed on to the Office of the Prosecutor and the Office of Public Counsel for the Defence. The Chamber also rejected a request that the identity of intermediaries not be passed on in order to protect them. The Chamber made a distinction between the obligation to protect victims and witnesses in the proceedings and protecting NGO members who had chosen to act as intermediaries.

Nonetheless, the decision reminds all staff of the Court, which includes both the Prosecutor and Defence Offices, to respect the confidentiality of the disclosed identities, and only to refer to applicants by their number and not by their name. Failure to respect applicants' confidentiality could result in parties being suspended from proceedings or the imposition of a fine (Article 71 of the Statute or 171(1) of the Rules of Procedure and Evidence).

More Stringent Decision in Uganda Situation

In parallel, on 10 August 2007, the single judge of Pre-Trial Chamber II, issued a similar, though more stringent decision relating to the case and situation in Northern Uganda. Judge Steiner granted six applicants legal standing in the case against Joseph Kony et al. Two applicants were granted standing to participate in the situation proceedings.

The decision also addresses the conditions to be fulfilled in applying to participate, including the need to supply proof of identity and to demonstrate coherence overall. Here the judge laid down three criteria with respect to providing a valid identity: the document should be issued by a recognised public authority, it should include the name and birth date of the applicant and should include a photo.

Finally the importance of information provided by NGOs and other international organisations was highlighted. The judge indicated that in order to determine victim status during the investigation proceedings, the Court would have to receive sufficient external evidence from NGOs, UN reports or other sources that would corroborate the facts described in the applications, particularly if these were different to the facts referred to in arrest warrants.●

Sudan: 105 States Parties to the ICC need to support the Court they created

A new Court requires new forms of diplomatic and political clout to succeed

By Sara Darehshori, Human Rights Watch

The International Criminal Court (ICC) is facing its first major challenge in garnering states' cooperation in bringing those accused of war crimes to justice. The ICC has issued two arrest warrants in relation to serious crimes in Darfur. Although Sudan is not a party to the ICC, Security Council Resolution 1593 requires it to "cooperate fully with and provide any necessary assistance to the Court and the Prosecutor." The government, however, has not only refused to hand over the first two individuals subject to arrest warrants, it has engaged in outrageous actions that are an affront to the court and the victims of the crimes.

The two suspects are charged with 51 counts of war crimes and crimes against humanity for their role in brutal attacks on four villages in West Darfur. Evidence before the court provides reasonable grounds to believe that the two recruited, paid and armed Janjaweed militia who killed hundreds of civilians, raped numerous women repeatedly, destroyed villages displacing tens of thousands of people, and summarily executed dozens of men as part of a counter-insurgency campaign strategy.

One of the suspects, Ahmed Haroun, formerly state minister of the interior responsible for the Darfur Security desk, remains State Minister for Humanitarian Affairs for Darfur, and was recently appointed to a committee whose mandate includes the hearing of complaints of human rights abuses. The other, Ali Kosheib, a high ranking militia leader who was responsible for thousands of Janjaweed fighters during the events in 2003 and 2004, was in custody in Sudan in relation to other incidents in Darfur, but according to the Sudanese Ministry of Foreign Affairs was recently released. A stunning snub to the international community, and in direct contravention of the government of Sudan's obligation to cooperate with the court, it is also an outrageous insult to victims in Darfur holding out hope for accountability on a national level.

State cooperation is the Achilles heel of the ICC. The concept of "cooperation" encompasses both diplomatic and political support as well as practical assistance (such as assistance with investigations and relocation of witnesses). Unlike the ad hoc Tribunals for Rwanda and former Yugoslavia, which were established by the Security Council and benefited from "Chapter VII" enforcement powers, the ICC is a treaty based organization with no enforcement mechanism. Its ultimate success is directly related to the will of states to support the court actively.

Fortunately, experience has shown that concerted diplomatic efforts have been decisive in convincing reluctant governments to turn over suspected war criminals. Serbia's surrender of 20 indicted persons to the Tribunal for the former Yugoslavia (ICTY) in 2005 and its more recent surrender of remaining accused were directly related to Serbia's desire to move forward with negotiations about accession to the European Union. Similarly, pressure from the European Union on Croatia to cooperate fully with the ICTY as a precondition for negotiations about European Union entry resulted in the arrest of Croatian commander Ante Gotovina in the Canary Islands in December 2005.

More recently, consistent joint efforts by a number of countries eventually led to Nigeria's agreeing to the arrest of Charles Taylor and his surrender to the Special Court for Sierra Leone. Like the ICC, the Special Court for Sierra Leone does not have Security Council backing, and the Security Council was not involved in the ultimate apprehension of Charles Taylor. Nor was Nigeria seeking to join the European Union. Rather, it was the effective and active wielding of political, diplomatic and economic pressure that led to success in convincing states to cooperate with the courts.

Convincing Khartoum to cooperate will not be easy. The government of Sudan has shown itself to be particularly resistant to

international pressure. No doubt its possession of oil reserves and the resulting relationship it enjoys with China puts it in a stronger position than other fugitive-harboring countries. Nonetheless, the burden of surrendering the accused lies squarely and clearly on the government of Sudan's shoulders. Compliance will require a consistent and long-term commitment by States supporting the court and a willingness to take measures, including sanctions, to ensure Sudan lives up to its obligations to surrender the accused and assist with additional ICC investigations.

The ICC faces novel challenges and will need new approaches to obtain cooperation from obstructive states. What is certain, however, is that it will be essential for the 105 States Parties to the ICC to use their combined weight to compel cooperation when necessary. Without political will and the sustained backing of States Parties to enforce the court's orders, the efforts it took to create the court will be for naught. If States Parties are silent on the issue of enforcement, they will undermine the court and abandon the victims who are looking to the ICC as its only hope for a measure of justice. They will also be sending a message to Sudan and others about their commitment to the court, which may be damaging for enforcement of additional warrants we hope to see in relation to Darfur and in other situations to come. ●



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Strategy on the Role of Victims in Progress

Didier Preira, Head of the Victims & Counsel Division, tells us about the Court's initiative to develop a single vision on the role of victims

1. Mr Preira, you are the head of the division for Victims and Counsel, tell us a bit about what the Division does in relation to victims?

Our division finds itself at the same level as the Registrar, and its main role regarding victims, is to ensure that victims' rights are efficient. The division puts in place systems to ensure that victims and applicants can make their request for participation and reparations effectively. Without this, those rights stay theoretical. For example, we undertake outreach with other divisions of the Court to ensure that as many communities as possible, that are affected by the crimes falling in the jurisdiction of the Court, are aware of the facilities that the Court can offer them. Thus we facilitate this access to justice.

The other aspect of the division is to manage the legal aid program for victims. If victims cannot afford it, they can be assisted by a counsel, either from the list of counsels that we manage or from the Office of Public Counsel for Victims (OPCV), managed by my colleague Paolina Massidda.

2. Mr. Preira, have you had any personal contact with victims (of the ICC situation countries or otherwise) and how have such experiences inspired your work?

Yes, I have had contacts with victims; however, we avoid having direct contacts to minimize risks. Only one simple contact between the Court and some affected communities can put them in danger.

Nevertheless, despite this cautious approach, we have direct contacts with victims, namely victims in the generic way, not necessarily victims whose status has been recognized by the Court. In this ambit, I have met victims – those meetings have profoundly touched me. Those persons had suffered in their flesh. They mentioned several crimes in the jurisdiction of the Court. Some had been raped, other disfigured – some had had their lips or their limbs cut off. One had suffered all these crimes at once.

What impressed most is that for all those persons, the financial aspect was not the primary issue. For them, what mattered was recognition of what they had suffered and that they had an opportunity to tell their stories. The good faith and fragility of those persons shocked me. This is why following those meetings, we decided inside the Division to double our vigilance not only on a security point of view but also on the psychological one. The Court's work must not re-victimise those persons.

3. Member States have encouraged the Court to consider the position of victims with respect to its Strategic Plan. Why do you think this is important?

The role of victims is a question raising lots of expectations. The State Parties want to have precise ideas on how the Court will manage those expectations.

In no way will the strategy on the role of victims question the capacity of the judges to make decisions regarding victims, which are intrinsically their decisions.



Didier Preira © ICC

The Court's objectives are to ensure that all participants can benefit from the rights that have been granted to them. Moreover, regarding victims, the goal is also to ensure that victims' participation does not become unmanageable.

4. We understand that the Court is developing a "one court vision on victims". What are the aims of this initiative, and who is participating?

The goal of the strategy is to ensure that in all functional fields of the Court related to victims, we have well assessed the challenges and the strategies to manage those fields. Those fields are for example, outreach and information, participation, protection and support, legal representation and reparation.

We also establish what the different mandates and responsibilities of each entity inside the Court are towards victims – [to ensure that victims have a coherent experience of the Court].

The different entities which participate in the process are the Victim and Witnesses Unit (VWU), the Victims Participation and Reparation Unit (VPRS), the Public Information Section, the Office of Public Counsel for Victims (OPCV), the Office of Public Counsel for Defense (OPCD) and the Victims Trust Fund. The Presidency also intervenes as an observer.

There have been some internal meetings and exchanges. We have wanted to include OPCD as it is important that there are no judicial implications afterwards, which would potentially be raised by the Defense. As such, OPCD is already participating in the discussions.

We want to ensure external consultations with NGOs in the first quarter of 2008. Once we will have a draft of the project, we will share it with NGOs and will call for their views.

5. There has been talk about performance indicators for the court's victim-related work, what are your views on this?

Yes, indicators are very important to evaluate the quality of the strategy that we will have put in place. When we speak about a strategy, it is obviously important to know whether it addresses the identified objectives.

Thus we must identify indicators to 1) measure the impact of the strategy vis a vis victims and communities and 2) measure the impact on the overall objectives of the Court.

We already use as inspiration, a few indicators established by the Public Information Section (PIDS), whose strategy is more advanced. We are very open – however the indicators must be reliable and realistic. We have already observed that on the quality of the outreach that we do on participation; we can measure this function in relation to the request received. The fact that we receive more complete requests for participation is a good way to appraise whether our strategies are working. However, we absolutely want to exchange with NGOs on this question as NGOs often have more experience in the modalities of the appraisal. ●

Uganda Victims' Rights Working Group Issues a Statement on Juba Accountability Agreement

The Uganda Victims' Rights Working Group (U-VRWG) is a loose coalition of NGOs in Uganda working with victims and on victims' rights issues. The objectives of the group are to advocate for victims rights, especially with respect to the conflict in northern Uganda. The group was formed in 2006 following a meeting of the VRWG in London and a second Uganda-specific meeting held in Kampala.

Some twenty members of the group joined together in a 3 day workshop in October 2007 in Lira to discuss the Juba Agreement on Accountability and Reconciliation, signed on 29 June 2007. What follows is an extract of the U-VRWG statement on the Agreement. The full statement was published in the Sunday Vision in Uganda on 13 November 2007. It can be found on <http://www.vrwg.org/UVRWG.html>.



Members of U-VRWG working on the declaration in Lira, Oct 2007

THE UGANDA VICTIMS' RIGHTS WORKING GROUP,

Appreciative of the efforts of both the Government of Uganda and the Lords Resistance Army / Movement (LRA/M) ... in signing of the cessation of hostilities agreement on 26th of August 2006, comprehensive solutions agreement on 2nd May 2007 and the agreement on accountability and reconciliation on 29th June 2007;

Appreciative of the recognition and mention of Victims' rights in the principles on accountability and reconciliation agreement particularly paragraphs 4, 8 and 9 on accountability, victims' rights and payment of reparations generally;

Associating itself with declarations and statements made by civil society organizations, religious groups and traditional leaders calling for accountability for any individual alleged to have committed serious crimes or human rights violations ...

Supporting specific efforts aimed at seeing justice done for serious crimes committed during the conflict, including national and international trials for serious crimes as referenced in the Accountability and Reconciliation Agreement;

Observing that victims or victim groups have not been fully and actively involved in the deliberations aimed at achieving peace through the Juba peace process;

Disappointed that the LRA/M have not committed themselves in the Agreement to:

- a) Asking for forgiveness and pledging non repetition of crimes committed during the over two decade conflict;
- b) Accounting for abducted persons including women and children in their custody and those that have since died;
- c) Releasing all abducted persons including women, children, persons with disabilities, persons infected with HIV/AIDS and other diseases.

RECOMMENDS THAT BOTH PARTIES, AND IN PARTICULAR THE GOVERNMENT OF UGANDA, SHOULD CONSIDER THE FOLLOWING WHEN SIGNING THE PROTOCOLS ON ACCOUNTABILITY AND RECONCILIATION:

ON VICTIMS' RIGHT TO ASSISTANCE:

- 1) Victims requiring urgent medical, psychological and other attention should be attended to as soon as possible notwithstanding the on-going peace process through establishing respective specialized units in hospitals and health centers.
- 2) Cultural and traditional leaders should take measures to identify, provide assistance and protection to children born in captivity and ensure that they have a sense of belonging and identity.

ON VICTIMS' RIGHT TO ACCESS JUSTICE:

- 3) Victims or victims' groups should be facilitated to participate actively in the peace process and in all mechanisms of account-

ability to ensure that their views, interests and concerns are considered, respected and implemented.

ON VICTIMS' RIGHT TO INFORMATION:

4) Accurate and adequate information on victims' rights should be provided to victims through a deliberate government programme in partnership with victims rights groups and civil society to enable them realize their rights.

5) The LRA/M should provide information on all abducted children and women; those dead and their burial places; as well as unconditionally release all children and women still in their ranks.

ON THE NEED FOR VICTIM-SENSITIVE LAWS & MECHANISMS:

6) Government should enact laws and set up policies to protect abducted persons and children born in captivity from stigmatization, discrimination and denial of their rights (including inheritance rights) and ensure that they are properly reintegrated to their communities through educational, psychosocial support and other affirmative programmes.

7) Traditional justice mechanisms should be modified to ensure that they are victims' rights and gender sensitive ...

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8) Traditional justice mechanisms should take measures to ensure equal treatment, protection of the dignity, privacy and security of women and girls ...

9) Traditional and Cultural leaders should be trained/ sensitized in victims' rights specifically children and women's rights so that they are knowledgeable when administering the traditional justice practices.

ON VICTIMS' RIGHT TO REPARATION:

10) A special victims fund should be set up from which resources for reparations may be drawn and the government of Uganda should take the lead role in mobilizing resources for the fund.

11) Reparations by government for the benefit of victims in the conflict areas ... should be managed through a national reparation commission ...

12) There should be a deliberate government programme to de-mine the war affected areas of northern Uganda so as to facilitate the quick and safe return of IDPs from the camps to their homes.

13) Government should promote and implement adult literacy programs, vocational and quality universal primary and secondary education for victims and victim communities including the rehabilitation of essential infrastructure like roads, schools and hospitals.

14) Punishments for any individual convicted of serious crimes and human rights violations during the course of the conflict should reflect the gravity of the offence without distinction between state actors

and non state actors ...

15) The LRA/M should give full access to humanitarian aid agencies and ICRC to assist victims in captivity especially women and children.

16) In the process of resettlement, victims should be provided with standard basic start-up requirements including farm equipments and basic needs provided through transparent government programmes.●



Members of U-VRWG working on the declaration in Lira, Oct 2007

Campaign Against Rape as a Tactic of War receives Trust Fund support Caritas-France tells us about their tripartite project

1. Angela Minzoni- Deroche, you are involved with a project that has received support from the Victims' Trust Fund (VTF). Can you tell us about it?

This Project is an advocacy campaign against the use of rape as a tactic of war. The project was launched by Caritas France in June 2004 following input from field partners, notably in the Democratic Republic of Congo (DRC).

After analyzing reports from a variety of NGO and other sources, we made the following findings, which have guided the project, now supported by the Victims' Trust Fund (VTF):

- At local level there is confusion between domestic rape, and rape as a tactic of war. The difference lies in the motive of the act, the act itself as well as the context in which it is carried out. Significantly, victims are entire communities including men, women, and children, going further than the sum of individuals;

- Men are absent in rape testimonies, while they too are victims of rape and sexual violence as a tactic of war. Listening and supporting men is as important as the work which is done with women in order to rebuild themselves, their families and in their communities.

The project has both an international and a "micro" or local dimension. On the one hand it will enable victim communities to express the story of their difficult past and contemplate the future. On the other hand, it will engage the international community into listening with sensitivity to this collective statement, and to contributing to the rehabilitation of the communities concerned.

2. How did you first hear about the Trust Fund, and how did you find the experience of applying for support ?

Over the years I had read documents relating to the establishment of the Fund, and found it extraordinary to see a struc-

ture both linked to and independent from the Court, mandated to help victims to rebuild themselves even in situations that might not be brought before the Court.

It was a great pleasure to learn that the executive director was nominated at the end of 2006. Mr. Laperriere's sensible listening touched me from our first meeting shortly after his nomination. We have subsequently been able to share experiences, feelings and projects in a very liberal manner. The development of the project was an interactive endeavour between our partners in DRC (South Kivu), Caritas France and input from VTF.

We have put in place a fluid communication structure between the different parties, not only to present the project for funding, but in view of tripartite project management.

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3. The Trust Fund has emphasized the importance of empowering victims through their interim assistance programme. In the case of this first project, how will this work ?

To empower victims in this context entails the following:

- To facilitate victims' community-based self-expression (pre rehabilitation). The idea is to facilitate victims' self-expression on a large scale. This is an essential step in overcoming stigmatisation. This is also key to ensuring that victims experience rehabilitation initiatives undertaken by the international community are related to their status as victims.
- To put in place sustainable rehabilitation systems, so that victim communities can build their future themselves, step by step. Sustainable, bottom-up rehabilitation should last into the long term and may be less susceptible to theft or pillage from aggressors.

4. Are there security implications for victims receiving support from the Fund?

Of-course there are risks. The daily life of these communities has been all about risk for years. The idiom « batatimaliza » is used by victims to portray this. Rape, sexual violence and massacres are still part of the tactics of war in use in this area. The local civil society partners who are leading this project take risks all the time. Their courage and dedication is a true lesson for me, as I support them from a distance, undertaking field missions only from time to time. We hope that mutualisation of this risk taking will make us stronger even if vulnerability is still high.

There is no specific risk to receiving support from the Trust Fund to date – the project implementation is still in its early phases and this will be monitored.

5. Given your work with victims and your interactions with the

Court, how would you evaluate the Court's work in relation to victims at present?

My interaction with the Court and the various units that relate to victims has been less intensive than with the Victims' Trust Fund. However, my impression is that there is a divergence between the Court's perceptions about victims, victims' perceptions of themselves, and victims' perceptions of the Court. The ICC Statute speaks about widespread and systematic crimes but, when operating, the Court's approach is based on single victims. However, victims themselves know they are not isolated individuals but victims of mass violence.

Shouldn't the Court try to work with victims of mass crimes collectively, instead of focusing on a few individuals who will never be representative of the entirety of victims –either in their own eyes or in the eyes of their families and communities? Empowerment cannot be focused on a few individuals. It is the community and its structures that should be empowered if empowerment means something else than power concentrated in a few hands.

Another gap concerns the Court's decision-making process. It is incomprehensible to victims why some are recognized by the Court while others, in the same case, are not. In the same manner it is impossible for vic-

tims to understand why certain charges against the accused hold and others do not. It is also difficult to understand why the Court officials promote other kinds of justice, local, traditional or otherwise unless the context within which the Court operates is explained. These questions could be addressed, if only by bottom up listening rather than top down training. Furthermore, it is suggested that the Court should innovate its operational management processes in order to give victims a more unified vision of its operations and a less uncertain context for international justice.

The third gap is conceptual: notions like partner, stakeholder and client, are used in the Court's outreach materials. These terms are highly sophisticated and are not part of most of the victims' conceptual frameworks. If the Court is to communicate with local intermediaries or victims, it may need to ask its interlocutors how they see themselves in relation to the Court, without imposing "labels" or rigid "one size fits all" ideas about how they would like local actors to interact with the Court.

The advocacy campaign against rape as a weapon of war is encouraged by Caritas-France and supported by the members of the International Observatory of the use of rape as a weapon of war. www.viol-tactique-de-guerre.org.



An unrelated picture: Women await medical care in Goma © IRIN

Time to Address Victims' Participation at the ICC

Carla Ferstman

The ICC's victims' provisions are integral to the Court's mandate, and if successfully implemented will be pivotal to its broader aims of general deterrence and societal transformation.

Translating these provisions into rights that can be exercised practically is proving to be a challenge. Hundreds of thousands of victims may be victims before the Court, making difficult the logistics of meaningful participation, which are further hampered by security risks and poor communication infrastructures. Some consider these challenges to be a 'problem', and that the system of victim participation would work, but for the 'problem' that there are just too many victims.

But genocide, crimes against humanity and war crimes imply a large number of victims. This is not a 'problem' but inherent to the crimes. A large number of victims must therefore be the starting point from which one considers how the ICC may successfully fulfil its mandate.

The issues can be approached in two ways: first, taking into account the immense challenges of justice, one would set the objectives of the ICC as modestly as possible. From this perspective, it is already extremely difficult to collect the evidence, prove crimes and secure convictions. So, the goal is to keep things as simple as possible to achieve a speedy and transparent result. This model recognises that the primary duty of the Court is prosecution; everything else is peripheral at best.

The second model is more ambitious. It envisages a process directed toward the broader context, and having a determined impact in the affected society. A commitment to that model, however, involves serious consequences that must be clearly stated, and pro-actively pursued as inherent to the Court's success.

If we consider where the ICC is today, it appears that the policies and procedures waver between these competing points of view. On the one hand, the Preamble of the ICC Statute, the provisions on participation and reparation in the Statute and Rules, and the complementarity regime all speak to this second model. However in practice, the Court's administration and

bureaucracies, the implementation of prosecutorial strategies and the Court's strategic plan, indicate that its goals are far more restrained.

The divergence between the Court's mandate and current implementation can be explained in various ways. Perhaps it is merely rationalisation. Faced with a difficult mandate, limited resources and the need to show quick successes, the Court has implicitly limited its goals to what is considered manageable and achievable, leaving the broader work of societal transformation to others arguably better suited.



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Alternatively, this divergence can be explained as a belief that somehow, the Court's quick successes will themselves be capable of having a transformative effect. A successful prosecution will be sufficient to give broader meaning to local communities, and show the international community's contempt for the crimes. Or yet still, that the Court is already doing what is necessary to achieve the societal transformation; that the systems and processes in place or envisioned, are sufficient to have a transformative impact on local communities.

At the ICC the 'conservative realists' are probably more aligned with the first frame of reference – 'let's do what we know and stop there before we fail'. The idealists think they are doing enough to achieve the desired broader transformations. The danger of this latter position is quite grave and can result in mixed messages to the victims and communities most affected by the crimes.

As the number of victim applications increases, the need for the Court to adopt a workable system to process applications and effective modes of participation be-

comes more pressing. The number of potential victim applicants and the scale of their losses should not be addressed as a 'problem' to be rationalized or neutralized. Dealing with the enormity of the crimes is the Court's *raison d'être*. Instead, the system of victim participation needs to be critically revisited, with a view to answering three key questions: who, why, and most importantly, how.

In practice the Court's handling of victim participation is at odds with realities on the ground. Security risks provide little incentive for victims to come forward when promises of long term protection are impossible to secure. Other problem areas include complex and cumbersome 17-page forms, with potential further forms to prove destitution (in countries where the average income is less than \$1 a day) as well as poor understanding by victims of what participation entails.

The result is a bewildering experience for victims, many of whom just want to experience justice in a tangible way. The presence of a lawyer in the Hague who invariably has too little funds to adequately take instructions and report back on what was said and done, does not translate into a veritable experience of justice. Greater creativity and flexibility with participation, including in situ hearings designed to encourage meaningful participation is necessary.

The current handling of victim applications is also preventing smooth functioning of the cases. The process is individualised, whereas in reality those who are ultimately granted the right to participate will have to do so collectively with little opportunity for individual voice. Currently the defence and prosecution are required to respond case by case to each application, which is proving to be time-consuming and inefficient.

To bring meaningful justice to victims, the ICC needs to contextualise itself within communities and think creatively of ways in which its operations can be integrated with local needs, norms and sensitivities. Justice cannot only be measured by judgments. It must be reached through a process that is fair and that upholds the rights and the dignity of those who come before it and those most affected by it. ●

Working Group affiliated organisations:

Amnesty International • Avocats Sans Frontières • Centre for Justice and Reconciliation • Coalition for the International Criminal Court • European Law Student Association • Fédération Internationale des Droits de l'Homme • Human Rights First • Human Rights Watch • International Centre for Transitional Justice • International Society for Traumatic Stress Studies • Justitia et Pax • Medical Foundation for the Care of Victims of Torture • Parliamentarians for Global Action • REDRESS • Women's Initiatives for Gender Justice

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We are grateful for the support of the John D. and Catherine T. MacArthur Foundation