

ACCESS

Victims' rights before the International Criminal Court

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Kenyan victims request that the scope of the charges be extended

In September-October 2011, the Pre-Trial Chamber II conducted confirmation of charges hearings in the cases *Prosecutor v. Ruto et al.* and *Prosecutor v. Muthaura et al.*, for crimes committed during the 2007-2008 post-election violence in Kenya. Prior to the confirmation of charges hearings, the Pre-Trial Chamber ruled on victims' applications to participate in the proceedings. A total of 327 victims were accepted to participate as victims in the *Ruto case*¹ and 233 victims were accepted to participate in the *Muthaura case*.² Common legal representatives were appointed to represent participating victims in each of the cases. Mindful of victims' need to participate in a meaningful manner and for counsel to



Post-election violence in Nairobi's Mathare slum. © Julius Mwelu/IRIN

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Hundreds of victims participate in three confirmation of charges hearings, Marion Colin

The International Criminal Court (ICC) has seen an unprecedented number of proceedings over the last few months. With three trials underway and one still to start, the Court held confirmation of charges hearings in three additional cases in the Democratic Republic of the Congo and Kenya situations. Confirmation of charges hearings are public hearings during which it is determined whether there is sufficient evidence to establish substantial grounds to believe that the suspects committed each of the crimes being charged. Judges can confirm all or some of the charges and send the case to trial; reject the charges, or request the Prosecutor to provide additional information.

In the Mbarushimana case (DRC situation), 130 victims participated through their legal representatives in the

confirmation of charges hearing, which took place between 16 and 21 September 2011. Mr Mbarushimana is accused of crimes against humanity and war crimes allegedly committed in the Kivu Provinces of the DRC in 2009. During their opening statements, victims demanded, through their legal representatives, that the international community provide them with justice. Stressing that only the ICC can provide punishment, reparation and truth for their clients, they stated that victims see the trial as the beginning of a process of restoring peace.

Turning to the Situation in Kenya, in the *Ruto, Kosgey and Sang case* the confirmation of charges hearing took place between 1 and 8 September 2011 and in the *Mut-*

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maintain contact with their clients, the Registry has set up legal teams, including field assistants, to support the legal representatives.

During the confirmation of charges hearings and in the final written conclusions filed following the hearing, victims' legal representatives have observed that the charges, as presented by the Prosecution, do not represent the full extent of criminal conduct experienced by victims after the post election violence.³ Victims in both cases (perceived supporters of either the Party of National Unity - PNU - or the Orange Democratic Movement - ODM) suffered looting, burning, destruction of property and sexual violence. Direct perpetrators went from house to house looting, burning and destroying property, leaving victims no other option but to flee their homes. Some pro PNU Kikuyu victims also suffered injuries and there have been allegations of rape.

The Prosecution has brought charges of murder, deportation or forcible transfer of population and persecution as crimes against humanity in both cases.⁴ In both cases, looting, burning and destruction of property have not been included in the persecutory conduct. The victims have requested that this type of conduct also be specifically included within the crime of persecution or, in the *Ruto* case, as a separate crime of other inhumane acts or serious injury to body or to mental or physical health. Kenyan victims claim that the charges as framed do not reflect the true nature of the criminality and this will impact their right to reparation. The victims are concerned that if the criminal conduct is not charged, this will lead to them not receiving reparations for such criminal conduct.

Victims' voices are crucial in defining the scope of the case against the suspects. Should charges be confirmed, the relevant decision will go a long way in establishing the truth and to bring justice for what happened to them dur-

ing the post-election violence. Furthermore as already stated, the scope of the case and the criminality it encompasses will determine the extent of the reparations for the victims, should the suspects be convicted. These are very serious matters and go to the heart of meaningful victim participation.

In a separate filing made in the *Ruto* case, victims have requested to make further submissions on their views and concerns.⁵ They claim that the Prosecution's investigations have been insufficient and that more evidence could be available from them and others within their communities, who suffered the brunt of the violence. They also raise questions as to why Raila Odinga, presidential candidate and the most senior person in the ODM Party has not been indicted.

Decisions on confirmation of charges in both cases are expected to be rendered together by mid-January 2012. ●

¹ICC-01/09-01/11-249, *Prosecutor v. Ruto et al.*, Decision on Victim Participation at the Confirmation of Charges Hearing and in Related Proceedings, 5 August 2011

²ICC-01/09-02/11-267, *Prosecutor v. Muthaura et al.*, Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, 26 August 2011. On 31 October 2011, the Legal Representative informed the Chamber that the actual number of victims participating in this case is 229 (and not 233)

³ICC-01/09-02/11-344, *Prosecutor v. Ruto et al.*, Final written observations of the Victims' Representative in relation to the confirmation of charges hearing, 30 September 2011; ICC-01/09-02/11-360-Corr, *Prosecutor v. Muthaura et al.*, Corrigendum to Victims' Observations in relation to the Confirmation of Charges Hearing, 31 October 2011

⁴The Prosecution also brought charges of rape and inhumane acts in the *Muthaura* case

⁵ICC-01/09-01/11-367, *Prosecutor v. Ruto et al.*, Request by the Victims' Representative for authorisation to make a further written submission on the views and concerns of the victims, 9 November 2011

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haura, Kenyatta and Ali case between 21 September and 5 October 2011. Both cases deal with alleged crimes against humanity committed during the 2007-2008 post-election violence in the country. During these hearings, legal representatives for victims (327 in the *Ruto et al* case and 233 in the *Muthaura et. al* case) raised stressed victims' fear of retaliations as a result of their participation. The Chamber has since reiterated its appeal made at the close of the hearings to respect the life, security and property of victims and witnesses and to refrain from engaging in any activities that are likely to trigger or exacerbate tension and violence in the Republic of Kenya.

Following the request made by one of the victims' legal representatives, the Chamber also decided that decisions regarding the confirmation of charges in both cases would be issued on the same date. Decisions are expected within 60 days of the hearings' end. However, should the charges be confirmed, trials would not commence immediately. Looking at the practice in the three trials currently underway, one can expect about a year to elapse between the confirmation of charges and the commencement of the trial. ●



According to the UN 250,000 people have been displaced in Kenya and 600 killed as a result of the post election violence. © Julius Mwelu/IRIN

International Criminal Court urged to clarify its approach to reparation

Jonathan O'Donohue, Amnesty International

With potentially months to go before the International Criminal Court (ICC) conducts its first reparation process, concern is growing about the lack of clarity on how the ICC will implement its reparation mandate. Convictions in any of the first trials, which are approaching completion, could trigger the first process under Article 75 of the Rome Statute “to determine the scope and extent of any damage, loss and injury to, or in respect of, victims” based on which the ICC may make an order against a convicted person.

Despite the fact that the ICC has been receiving applications for reparation from victims for years, many of the details of the reparation process and what victims may expect from it have yet to be communicated to those applicants, other victims who may be eligible to apply and affected communities. The lack of information is causing confusion and frustration.

Providing the ICC with the ability to award reparation to victims has been lauded, along with the strong provisions for victim participation in the judicial process, as one of the great achievements of the Rome Statute. The drafters’ decision for the ICC to go beyond prosecuting suspects and to give effect to victims’ rights - which are so often overlooked - gives even more meaning to the international justice process. The victims mandate in the Rome Statute has been the basis for much of the widespread support the ICC enjoys.

However, the reparation system set out in the Rome Statute – which provides that the ICC may order reparation against convicted persons and not states - is unique and many legitimate questions exist as to how it will work and what it will offer to victims in practice.

Many had hoped that these questions would have been addressed largely through the development of principles on reparation, which the ICC is required to establish in accordance with Article 75 (1) of the Rome Statute. But recent reports indicate that the judges, having failed to agree principles in plenary, now intend to develop the principles

on a case by case basis. This approach has been criticized for further delaying the provision of information on the process to victims. Concerns have also been expressed that principles developed by different panels of judges could result in weak and inconsistent reparation orders.

States parties are particularly critical of this approach and are seeking more clarity, particularly around the financial consequences of the reparation process. Their Study Group on Governance has even gone as far as drafting proposed amendments to the Rules of Procedure and Evidence that would require the ICC judges to establish principles during their plenary session within 60 days of the new Rule’s entry into force.

Although, this proposal to clarify the process for all stakeholders is understandable, such a solution would carry significant risks. In particular, the ICC’s failure to agree principles so far suggests that forcing the 18 judges to thrash out a binding compromise may result in a poor outcome for victims. At the time of writing, it was understood that the Study Group on Governance had abandoned the proposed amendments, though the frustration which led them to make the proposal in the first place, remains.

Recognizing the challenges in achieving a positive outcome for victims, Victim Rights Working Group members have been urging the ICC, if it is not able to define a comprehensive set of principles for victims to, at a minimum, seek to develop a public Court-wide vision for the implementation of its reparation mandate as soon as possible. Such a vision should clarify a number of outstanding procedural issues, including the role of victims in the process. It should also, drawing from existing international standards on the



Victims’ groups in DRC want to better understand the ICC reparation process, but lack of principles is preventing them from knowing what to expect.

right to reparation, set out at least the key principles that the ICC will seek to apply in all cases and indicate how it intends to further define its principles on a case by cases basis.

In pursuing such a vision, the ICC can draw from a number of initiatives by Victims Rights Working Group members to assist it in developing its reparation mandate. For example, in May, REDRESS organised a Conference inviting experts in the field to discuss issues and challenges relating to the ICC reparation process and a report has been submitted to the ICC. In September, the Victims’ Rights Working Group issued a paper entitled *Establishing effective reparation procedures and principles for the International Criminal Court*, setting out recommendations for key principles that should be applied by the ICC from its first reparation proceedings.

How the ICC responds to this situation will have a direct impact on the institution’s credibility as a tool of restorative justice. Victims, affected communities, civil society are all looking to the ICC to fulfill its reparation mandate in an effective manner that addresses the suffering of victims and that acts as a catalyst for justice, truth and reparation at the national level. Success requires not only a common vision of the judges but of all organs of the ICC and the Trust Fund who will be tasked with implementing it. ●

Interview with Alain Grellet, Chief of the Victims Participation Unit, Special Tribunal for Lebanon

Gaëlle Carayon

1. Can you explain what is the mandate of the Special Tribunal for Lebanon as well as the role of the Victims Participation Unit?

The Special Tribunal for Lebanon (STL) is an *ad hoc* tribunal that has jurisdiction to prosecute those responsible for the attack of 14 February 2005 during which the former Prime Minister Rafik Hariri, and 22 additional persons, died and over 230 persons were wounded. The tribunal also has jurisdiction over other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005 whenever a connection with the attack of 14 February 2005 can be established. The Tribunal opened on 1 March 2009.



Alain Grellet is in charge of the STL Victims Participation Unit.

The Victims Participation Unit was created one year ago as a part of the Registry of the Tribunal and its primary mandate is to assist and support victims who wish to participate in the proceedings. Its mission is to inform victims about their absolute right to request to participate in the proceedings; to make sure that once their application has been admitted, victims can benefit from quality legal representation (the unit draws up and maintains a list of qualified legal representatives specialised in victims' representation, provides professional training to legal representatives of victims as well as manages the administration of legal aid). We also ensure that victims receive documents filed by the Parties.

2. Who are the victims and how does the system of victims' participation before STL function?

A victim before the STL, according to Rule 2 of the Rules of Procedure and Evidence of the tribunal, is "a natural person who has suffered physical, material, or mental harm as a direct result of an attack within the Tribunal's jurisdiction". This represents an important number of victims. Indeed, besides wounded victims and those who claim to have suffered material harm, victim status can also be granted to deceased victims' immediate relatives. However, legal persons - such as institutions or organisations - are not recognised.

Once an application for participation has been received, the Pre-Trial Judge, who is a Single Judge, will evaluate it. The judge will check whether the "applicant's legitimate personal interests at stake in the trial are different from those of other victims participating in the proceedings"¹; whether the impact of the applicant's participation would jeopardize the integrity, equity, and swiftness of the proceedings and whether the proposed participation would otherwise be in the interests of justice.

Currently, four persons have been indicted concerning the attack of 14 February 2005, and the tribunal's jurisdiction has been established regarding three other proceedings. However, victims' have not yet started to participate and we are at the stage where they have been invited to submit their application for participation.

The exact modalities of their participation will depend on the way Chambers will apply the Rules. However, it is expected that, with the authorisation of the Pre-Trial judge or the competent Chamber, and through their legal representative, victims will be able to make statements at the beginning and the end of the trial, call witnesses, present evidence, examine parties' witnesses, request the judge to ask specific questions to the accused and submit filings and requests.

3. How is participation before the STL different from victims' participation before the ICC?

Before the STL, victims do not have the opportunity to participate during the investigation phase, before charges are confirmed. However, they have the right to appeal a decision rejecting their application for participation. Moreover, at the institutional level, before the STL, questions relating to victims' participation, logistical and legal support to victims and their legal representatives, legal representation and legal aid for victims are treated by a single unit instead of three before the ICC (Victims Participation and Reparation Section, Office of Public Counsel for Victims, Counsel Support Section). A second unit is in charge of issues relating to victims' and witnesses' physical and psychological protection.

Finally, victims cannot claim reparations before the STL. According to the Statute, in case of a final conviction before the STL, victims (even those who did not participate in the proceedings) will receive a certified copy of the judgment. This will allow them, should they wish to do so, to start an action before the relevant national jurisdictions in order to obtain reparation for the harm caused by the convicted persons.

4. What are victims expectations?

The STL offers to victims a fundamental right to access justice. This responds to a dire need as in the months following the attacks that took place in Lebanon, victims felt that justice was drifting away from them since the case was to be transferred to a distant tribunal. Participation allows them to have their voice, as victims, heard, to be recognised as such, and to participate in the treatment of their case.

The need for victims to be treated with respect and justice must also be highlighted. To this end, my section has recruited a liaison officer in Beirut, who was able to meet most of the victims wishing to participate, and to discuss with them in a professional and human manner.

We have received over 60 applications for participation, which represents an important figure considering the constraints faced by victims in the field, political pressure and feelings of terror, which are still strong in this country. This reflects a positive response from many victims to the rights being offered to them before the STL.

5. How did you get in touch with victims to inform them of their rights before the tribunal?

We undertook an important work to identify and sensitise victims. We made some contacts with the Lebanese legal community as we knew that some lawyers were already representing victims. We also contacted some NGOs to assess the situation with them and to know whether they had already approached those victims.

We also used the media and broadcasted a video on the main Lebanese television channels to inform victims and

invite them to approach our liaison officer. At the same time, we opened a local phone line allowing victims to easily contact us.² ●

¹ For the full list of criteria, see Rule 86 of the Rules of Procedure and Evidence

² The video is available at www.stl-tsl.org/en/about-the-stl/structure-of-the-stl/registry/victim-participation/video-victims-participation

Victims in the Lubanga case await the ICC's first verdict

Marion Colin

After two years and seven months of hearings, the first trial before the ICC ended on 26 August 2011. Thomas Lubanga Dyilo is accused of having committed war crimes of conscripting, enlisting and using children under the age of 15 years for armed purposes in the Ituri region between September 2002 and August 2003. Lubanga has been held in custody since 2006, and the denouement of his trial has been long awaited by victims, many of whom have grown from former child soldiers to young adults while waiting for justice to be done.

This trial has raised due process and fair trial issues such as disclosure of evidence, reliability of witnesses and the role of intermediaries. As the first completed trial, the case's complications and successes will likely serve as an example for future trials, especially regarding victims' participation and contribution to the implementation of victim's rights before the ICC, victims and witnesses protection and information-sharing.

In many ways, the Lubanga trial is historic. It was the first trial opened by the ICC. Lubanga was also the first person charged as well as the Court's first detainee after he was surrendered and transferred to the Court on 17 March 2006. Over the course of 220 hearings, the Trial Chamber issued 931 oral or written decisions and the parties and participants exchanged more than 3,560 filings amounting to more than 53,000 pages.¹

The trial is also historic from the victims' perspectives. A total of 123 victims, represented by three teams of lawyers, were authorized to express their views and concerns before the Chamber, examine witnesses when personal interests were affected, access part of the case file, among other issues. This trial also defined the criteria for victims' participation and developed jurisprudence on victims' right to lead and challenge evidence relating to the guilt or innocence of the accused. For the first time victims were also granted the opportunity to testify in person and present evidence before the Court.

Victims' participation in international proceedings is part of the innovative mandate of the ICC. Through the submissions made on their behalf, victims' have been able to convey their expectations of the justice process. During the closing submissions of the victims' legal representatives, it was underlined that the ultimate goal of victims was the

search for the truth and their wish to have their voices heard. The proactive contribution of victims to the trial was also stressed, recalling among other things their failed attempt to include the crimes of sexual slavery and cruel and inhuman treatment in the charges. In that regard the Prosecution highlighted that sexual violence against female child soldiers was still relevant as a "gendered aspect" of the conscription of children. A victims' representative proposed to consider it as an aggravating circumstance.

The judgment is expected before the end of the year. Should Lubanga be convicted, the first reparation proceedings before the Court could start in 2012. The Victims Participation and Reparations Section of the Registry has indicated that 74 requests for reparations had already been received by the Court. Regardless of the outcome of the trial, an important work to inform victims will have to be carried out. ●

¹ "Trial Chamber I to deliberate on the case against Thomas Lubanga Dyilo," ICC Press Release, ICC-CPI-20110826-PR714, 26 August 2011.



Victims in Ituri, DRC, have been eagerly awaiting the end of the Lubanga trial before the ICC.

No ICC Indictee Arrests in Uganda. A lost cause?

Joseph A. Manoba, *Uganda Victims' Foundation Legal Advisor*



Victims in Uganda have been waiting for justice for many years © Caritas Counselling and Training Centre

Beyond being a situation country before the International Criminal Court (ICC) and with pending arrests against the notorious LRA top commanders wanted by the International ICC, Uganda has remained largely forgotten within the realm of international criminal justice and more specifically the ICC, in spite of being the first country to make a referral to the permanent institution. The Court itself has started downsizing staff in its Kampala field office in favour of the more "active" situations under investigation. These developments, perhaps, are necessary in light of the little progress in apprehending suspects and committing them for prosecution.

All is not lost however, as at the national level, interesting developments have been happening, with the potential to advance the principles of ending impunity for the most serious crimes perpetrated and to raise general awareness on accountability and concern for victims' rights. The International Crimes Division (ICD) recently heard its first case against suspect Thomas Kwoyelo, a former LRA commander arrested in the neighbouring Democratic Republic of Congo (DRC). Unfortunately, the case was stopped when the suspect successfully petitioned the country's Constitutional Court, challenging the refusal to grant him amnesty. He submitted that this refusal was discriminatory and did not provide for equal treatment with other amnestied persons.

Before the ICD referred the matter to the Constitutional Court, there had also been discussions and debates over the needs for a law on protection for victims and witnesses, considering the nature of the case/s that the division would be dealing with. No provisions for protection of victims and witnesses had been made but there is hope in that regard with the suspension of the proceedings and the fact that we thankfully now have a draft Bill in place, although it still awaits being tabled before the Legislature.

In the meantime, the Kwoyelo case has brought to light a number of issues that have been a subject of criticism from many a scholar and human rights activist. For example, the Attorney General criticised the Amnesty Law passed by the Government's other arm, the Legislature, in 2000, as being blanket and not sensitive to the serious crimes committed in Uganda, but he was overruled.

The Attorney General has appealed the Constitutional Court's decision before the Supreme Court but has recently had to suffer another disappointment after the same Constitutional Court ordered that the suspect should be released from custody following its earlier ruling. Although Kwoyelo has not yet been released by the ICD as he still has not received his amnesty certificate, it is believed he will likely be released. Should this materialise, reactions are likely to be mixed, especially when considering the victims of his atrocities knowing as they do that justice may never be realised.

The ICD finds its roots in the Juba Peace Process, more particularly in the agenda on Accountability and Reconciliation, where provision was made among others for persons suspected of committing the most serious crimes to be subjected to a formal justice process (read ICD) and victims of those crimes to be entitled *inter alia* to participation and reparations. The suspension of the trial against Kwoyelo would thus impact negatively on these provisions and efforts to promote accountability and reconciliation in the society and on Uganda's international obligations, unless the Supreme Court overturns the lower court's findings.

Similarly, the debate on reparations for the numerous victims of atrocities in the greater north of Uganda continues to attract attention, as the statement published by the Uganda Victims Foundation and other groups calling for government to take interest in the matter demonstrates. The UN Office of the High Commissioner for Human Rights country office has also taken serious interest in the matter and commissioned research on the question of reparations (and protection) in concert with the Foundation and Feinstein Research Centre. Hopefully these will generate great yields in time to come for the benefit of victims. Finally, the draft National Reconciliation Bill remains pending before a Parliamentary committee.

These and other developments which the length of this article does not allow to develop, may in many ways be hailed as processes necessary to develop better policies and legislation to address issues of impunity and end crimes in the country. In doing so it would build a comprehensive and ICC complementary legal regime notwithstanding the stall with regards to ICC cases in Uganda. ●

VOICE ON THE GROUND
A PUBLICATION OF THE UGANDA VICTIMS FOUNDATION
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LANGO WAR CLAIMANT ASSOCIATION DRAGS GOVERNMENT OF UGANDA TO COURT FOR COMPENSATION
BY DAVID OKELLO

Uganda as a nation is renowned for many international issues, including the long armed conflict in the greater north of Uganda which has lasted for over 22 years. Although peace prevails, war is not over whether to say the conflict has ended because the LRA rebel outfit has not laid down its arms plus the top commanders indicted by the International Criminal Court (ICC) for allegedly perpetrating war crimes and crimes against humanity have not apprehended despite the warrants issued by the Court.

By 2008, the greater north of the country had started realizing relative peace as exhibited by the number of internally displaced persons (IDPs) who voluntarily returned to their home villages. This followed government's programmes aimed at helping IDPs return to their villages. The plan to effect return by the IDPs involved setting up satellite camps with basic services for those returning to live a "new" life, out of the crowded former IDP camps established in strategic places by the military. With additional support from Agencies, NGO's, both international and local, communities in Lango and Acholi were assisted to return to their homes. Nevertheless, there were remarkable movements to the satellite camps and in some cases homesteads was met with a lot of challenges including deterioration of land boundaries, loss of family properties in the rebels and wild fire, widespread theft, etc.

As most communities affected by the armed conflict try to recover and avoid the associated armed, threat and persecution of the LRA indictees at the ICC, those in Lango have decided to file a case against the government for the loss of property and lives from 1987 to 2005 when relative peace returned to Lango. Available information indicates that a 98000 Ughs. suit was filed at the High Court of Uganda in Lira by a private law firm on behalf of the association. The suit likely to be the first of its kind in the country. If successful, may establish a precedent for other ethnic groups to follow by filing their respective claims.

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C/O African Youth Initiative Network, P.O. Box 981 Lira, Plot 12, Orem Tom road, Junior Quarters supported by REDRESS, 87 Vauxhall Walk, London SE11 3JH.

UVF statement on reparations is reproduced in Voice on the Ground, available at www.vrwg.org/uvf

Interview with Elham Saudi, Director, Lawyers for Justice in Libya

Lawyers for Justice in Libya is a non-governmental organisation registered in the UK, one of whose main aim is to defend justice and the principles of human rights and fundamental freedoms in Libya. <http://libyanjustice.org/>. In this interview, Ms. Saudi reflects on issues and expectations regarding justice and accountability in Libya.

1. On what people in Libya are expecting with regards to justice and accountability.

I think the Libyan people want justice – legal, economic and social. The previous regime had an appalling record of human rights violations, including enforced disappearances, the use of torture, arrests based on political affiliations and the complete suppression of the freedom of expression and genuine political participation. There is a general intention, determination and hope among Libyans not to see revenge and reprisals but to see accountability achieved through a just legal system and the true implementation of justice through the courts.

In addition to accountability for criminal offences, the people in Libya want, and deserve, an infrastructure that promotes equality, inclusivity, opportunity and works towards creating a meritocracy. This is where the work of the next government will be vital – to ensure that both the political and legal structures are built and exist for the promotion and protection of the fundamental rights and freedoms of the Libyan people. Legal justice without economic and social justice is not enough.

2. On the perception of the ICC in Libya.

The perception of the ICC is mixed. On one hand, it was regarded as a saviour of sorts at the start of events. The speed with which the referral to the ICC and the subsequent indictments took place appeared to be a strong recognition of the Libyan people and their right to a life free from fear and oppression.

However, on the other hand, the perceived halt in activity by the ICC following the indictments, highlighted by the lack of investigations on the ground and the weak dissemination of information, has increased the perception that the ICC is not as active an instrument in protecting the Libyan people as had been expected. This view is further enhanced by the ICC's perceived inaction with regards to members of the regime who are in countries party to the Rome Statute, such as Saadi Gaddafi in Niger and Baghdadi Mahmoudi in Tunisia, and who are regarded as key in the suppression of the protestors in since 15 February 2011. Together, these elements have weakened the appeal of the ICC as a feasible route for redress.

Further, since the liberation of Libya, with each passing day, the view of those in Libya is that the Libyan legal system will be restored and that those currently indicted and others responsible for violations since 15 February, and before, should be brought to justice before Libyan courts. There appears to be a genuine determination to hold those responsible for human rights violations accountable in a manner which gives those persons a fair trial, gives Libya as a whole the opportunity to get many questions answered and, most importantly, gives the victims of these horrible violations a voice.



People cheer in the streets of Benghazi © Kate Thomas/IRIN

3. On the main issues, concerns and interests among the legal community in Libya.

There are, understandably, many issues that are preoccupying the Libyan legal community. However the key aspects are the following:

Accountability: It is important to bring those responsible for violations of human rights to justice. Accountability is a theme that comes up regularly in conversations with lawyers and non-lawyers. The violations of the regime permeated every aspect of life and redress for those violations, in

many views expressed to us, starts with accountability. On the other hand, many have highlighted that working for the government is not in itself a crime and that in investigating members of the previous government it is important to distinguish between those doing a job and those taking advantage of that position in a manner that violates the human rights, dignity and liberties of the Libyan people. The Iraqi example is a constant 'warning' that is quoted to us.

Reconciliation: Libya is a big country with a dispersed population, and one that Gaddafi exerted much effort in separating. This revolution has gone a long way toward uniting Libyans and many Libyans, in the legal profession and otherwise, are determined to build on this to reconstruct the country. Reconciliation between the different regions that have been separated, and between those who have supported the regime in this revolution and those fighting to end its control, is recognised as a vital step in this process. This is seen both at a macro level, countrywide, and on a micro level – with a common theme being reconciliation of the judiciary system and the legal profession.

Reform: The Libyan legal system, although built on strong foundations, has been steadily weakened by the practices of the last regime. Legal reform is vital in the next phase – not necessarily in the sense of rewriting all the laws but more in reviewing and reinforcing them. A key facilitator in this is that Libya has ratified the majority of international human rights conventions. To that end, the advocacy of the legal community can focus on reviews of domestic laws to ensure that they reflect the international standards set out in these conventions. However, we should not forget that Libya has still not ratified some important international instruments, such as the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention on the Rights of Persons with Disabilities and the Rome Statute. The new elected government should make their ratification a priority.

Monitoring: That civil society will play a key part in Libya's future is a common view of those in the legal community. The role of civil society in monitoring the next phase, both in the upcoming elections as well as in the transitional period generally, is vital, but so is establishing a culture whereby public figures work on the foundations of accountability, transparency and public service. ●

Ivory Coast: Victims' mixed expectations towards the ICC

Ali Ouattara, President of the *Coalition Ivoirienne pour la Cour Pénale Internationale (CI-CPI)*

Ivory Coast just exited from a profound crisis, most evidenced by the post-electoral crisis. All Ivoirians, regardless of their political affiliation, have suffered from it, one-way or another. If not a direct victim, everyone has had a parent, a next of kin or a friend who was victimised.

However, it is unfortunate to see that only victims from one camp and period (the post-electoral crisis) will most probably be considered by the ongoing investigations. The recognition of the ICC's jurisdiction, which has recently been reconfirmed by the newly elected President, concerns solely the post-electoral period, which has seen Ouattara partisans' victory. All the victims from Gbagbo's side, who lost the elections, feel excluded. That feeling has been increased by the Prosecutor's request that investigations cover only the post-electoral period.

Ivory Coast has been experiencing a military-political crisis since 2002 that has led to grave violations of human rights perpetrated by both belligerents, namely the FDS (Forces de Défense et de Sécurité) derived from the former power, and the FAFN (Forces Armées des Forces Nouvelles) originating from the armed rebellion.

To put an end to impunity, ensure that perpetrators of the most serious crimes are sanctioned, and bring a durable peace through an independent and impartial justice, the Coalition Ivoirienne pour la Cour Pénale Internationale (CI-CPI) has been on the forefront of a campaign to get the Ivoirian State to ratify the Rome Statute which created the ICC. However, for reasons linked to the incompatibility of the Rome Statute with the Ivoirian Constitution, according to the Constitutional Council's analysis, the Statute has not been ratified yet, despite the recognition of the ICC's jurisdiction



Since the violence that ravaged Ivory Coast many victims are living in displaced camps. © UN Photo/Basile Zoma

from 19 October 2002 by the former Ivoirian authorities.

This recognition had raised victims' tremendous hope and comfort that in the near future they will obtain justice and reparation. Their disappointment was therefore great when the new Government reiterated the recognition of the Court's jurisdiction but only for the events that occurred during the post-electoral period, thus after 28 November 2010. This disappointment turned into desperation and frustration for victims when the Prosecutor requested the Pre-Trial Chamber to open an investigation referring solely to this period. Not only does the request's wording exclude thousands of victims, it also conveys the feeling of victors' justice and affects the credibility of the Court.

Today, a small glimmer of hope has come back following the 3 October 2011 decision of Pre Trial Chamber III, requesting the Prosecutor to provide supplementary information within a month regarding the events that took place between 2002 and 2010. It opens the door to the potential open-

ing of an investigation regarding crimes committed before 28 November 2010. We all hope that the information collected by the Prosecutor will result in a broadening of the investigations going back to 2002, finally providing justice to the thousands of victims who do not know what to believe in anymore.

Although the authorisation to open an investigation was favourably received by most victims, one must admit that apart from the CI-CPI's work with victims in the field, some victims are reticent vis-à-vis the Government's efforts. Indeed, the Department of Justice has put in place a cell tasked with making an inventory of victims, but some victims find that cell too close to the Government, which was a party in the conflict. For some victims the only redress is either remaining silent or the CI-CPI.

Finally, it is important to note that the ICC would gain from more visible and pro active actions, in order to enhance victims' confidence. The success of its mission depends on it. ●

Working Group affiliated organisations include:

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 ● UCICC ● UVF ●

REDRESS

Ending Torture. Seeking Justice for Survivors

87 VAUXHALL WALK, LONDON SE11 5HJ
TEL: +44 (0)207 793 1777 FAX: +44 (0)207 793 1719
www.vrwg.org / www.redress.org

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