

# Access

## Victims' rights before the International Criminal Court

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## First ICC Reparations: the Wait for Victims is Not Over

Gaëlle Carayon

On 7 August 2012, the International Criminal Court (ICC) rendered its first ever decision on reparations. The landmark decision, which came more than 6 years after Thomas Lubanga was transferred to The Hague, marks the end of a long and arduous process for victims and affected communities in Ituri and, at the same time, the beginning of a new waiting period.

Trial Chamber I adopted a gender and ethnic inclusive approach in its decision. It also applied a "proximate cause" standard to assess how the damage and harm allegedly suffered by would-be beneficiaries of reparations relates to the crimes for which Lubanga has been convicted. The standard could possibly open the door for a wider group of victims, in this case, allowing many who felt excluded from the limited charges brought in the *Lubanga case*, to benefit from reparations. It is no surprise that this is one of the Defence's grounds of appeal.



A lot of uncertainty remains as to what form reparation will take...© Guy Oliver/IRIN

This decision sets out a series of principles to be applied to reparations, including the recognition that reparation is a "well established and basic human right", or that "reparation should take into account the sexual and gender based violence that victims may have suffered." It also leaves a lot undecided. The Chamber did not specifically set out what forms of reparation victims would receive. It only stated the principle that reparation could be both individual and/or collective -

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## Post Conflict Uganda and the Continuing Amnesty Debate

Joseph A. Manoba

Uganda is transitioning from conflict and country wide efforts are being undertaken, geared at promoting justice for victims. Formal as well as traditional justice mechanisms are being discussed, and truth telling is also considered as a possible alternative mechanism. The need for policies and legislation on protection and reparations, and for victims to participate in the mechanisms, can no longer be ignored. There must be deliberate efforts by the government and development partners to work together to achieve the needs and rights of victims of crimes for recognition and reparation.

In this context, the issue of amnesty has come back to the forefront of discussions. In May 2012, Part II of the Uganda Amnesty Act lapsed by declaration of the Minister, effectively suspending the granting of amnesty to Ugandans who may have been involved in the armed conflict against the Government of Uganda. At the same time, there have been renewed discussions among some actors for the reinstatement of the amnesty under an improved framework. The Uganda Victims Foundation, a coalition of victims' organisations covering the Northern districts of Uganda, published a position statement on

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## First ICC reparations: the Wait for Victims is Not Over... *continued from page 1*

-stating that reparation ordered through the Trust Fund would tend to be collective- and could take the form of restitution, compensation, rehabilitation or other, more symbolic forms. The Chamber did not spell out who the beneficiaries would be aside from stating that it would be inappropriate to limit reparation to the relatively small group of victims who had participated in the trial or applied for reparation. It left these tasks to the Trust Fund for Victims (TFV) who will now propose a “reparation plan” with the assistance of a team of experts and under the overall oversight of a new Chamber. The Fund has already indicated that it would adopt a community based approach and some intermediaries in Ituri have stressed that “involving victims and their communities in the choice of the type of reparation and adequately choosing those in charge of implementation will be key to ensure that victims truly benefit from the ICC’s reparation.”

While victims in Ituri rejoice at the news that reparation will happen, they deplore the length of time it took, and will still take, before reparation is actually implemented. They stress that “many [victims] are already dead, or sick, or have stopped to believe in such reparation.” A look at subsequent appeals against the “reparation decision” suggests that the process still has a way to go before definitive determinations are made.

Victims who participated in the trial are seeking to appeal the fact that individual reparation applications will not be assessed – the Chamber requested that they be transferred to the Fund for *possible* inclusion in the “reparation plan.” The decision not to order Lubanga himself to contribute to providing reparation, aside from the possibility of a voluntary apology to victims, is also a ground of appeal by some participating victims. The defence is also contesting the decision and in particular the overly flexible approach taken by

the Chamber in relation to causation and standard of proof. The Defence and victim-participants have called for the implementation of reparation to be suspended until the Appeals are resolved. Considering that the decision convicting Lubanga, and the sentencing decision, are also on appeal, it is unclear whether the implementation of reparations would have to wait until these appeals proceedings have concluded.

Far away from The Hague where legal arguments are being made, victims continue to wait. Organisations working with victims in Ituri are calling for additional information to be shared and for the process to be explained to victims. Some have indicated that “until now, [they] are in the dark. [They] do not understand what the Court wants to do, what the Trust Fund is doing.” Others have also stressed that “so far, those in charge of sharing such information had limited themselves to targeting organisations in town and had not reached the communities where victims live, either due to insufficient logistical means or simply for security reasons.”

This is a turning point in the Court’s history and its ability to deliver on its essential mandate will, for many, be the criteria on which the ICC is judged. Success will require robust information and consultation activities to ensure that victims are able to shape implementation and maintain ownership over the process. Sufficient funding for the Trust Fund will also be required. •

<sup>1</sup> Article 19 (2012) ‘Baseline Report: The right to information for internally displaced persons in Kenya’

## Post Conflict Uganda and the Continuing Amnesty Debate ...*continued from page 1*

30<sup>th</sup> August 2012. Through the avenue of the amnesty law, an estimated 26,000 former combatants renounced rebellion and were amnestied in Uganda. As such the Amnesty law usefully allowed abducted persons, including children, women and men, to return with assurances against prosecution. However, outstanding issues remain with the previous amnesties granted, as some people were amnestied when they were not combatants. Upon returning from the bush, abductees who did not fight were often treated as combatants and issued with amnesty certificates. This is seen to prejudice them in the public eye and could affect their ability to participate in public life.

In its August 2012 statement, UVF recalled that amnesties for international crimes and serious violations of human rights are not permissible under international law and stressed that, should amnesty be reinstated for non serious crime, it should be made conditional on elements such as commitment to give a true account of one’s participation in the outlawed activities, seeking pardon from the wronged person and committing to take part in reparative processes. UVF also highlighted that while amnesty in Uganda was designed to encourage reintegration of the former combatants to their communities through the provisions of packages, it unwittingly created a conflict situation in which victims have perceived packages to the ex-combatants as rewards for the victimisation they suffered. The situation is exacerbated by the fact that the government has never recognised the range of victims of the conflict let alone ensured a full and adequate reparation process, that could include a range of measures to recognise harm, rehabilitate, and guarantee non-repetition of such harm.

The full statement is available at [www.vrwg.org/uvf](http://www.vrwg.org/uvf). •

# Kenya: Justice Delayed is Justice Denied

Aimee Ongeso and Edigah Kavulavu, *Kituo Cha Sheria*



Five years after the violence, victims in Kenya are still waiting © Jerry Riley/IRIN

On 23 January 2012, the International Criminal Court confirmed cases against four of the six suspects wanted by the ICC Prosecutor in relation to the 2007-8 post-election violence in Kenya that saw widespread brutality and internal population displacement. The Chamber declined to confirm charges against Henry Kosgey and Mohamed Hussein Ali. The trial of *William Samoei Ruto* and *Joshua Arap Sang* (case 1), and *Francis Kirimi Muthaura* and *Uhuru Muigai Kenyatta* (case 2), is due to start in April 2013.

The January decision led to high levels of disappointment and feelings of hopelessness amongst the populace as the scope of the case was further reduced. In parallel, victims who appear to fall within the scope of the two cases have raised issues regarding their participation in the ICC process. Over 7 months after the charges were confirmed, they were yet to be given clarification from the newly formed Trial Chamber V on when and how they would be allowed to exercise their statutory rights. Against this backdrop, *Kituo Cha Sheria*, a Kenyan NGO, sought leave to submit *amicus curiae* observations, bringing to the attention of the ICC Judges the importance of participation for victims Kenya, and calling for clarity regarding the application process for victims. Victims of the post election violence have indeed expressed their desire to participate in the ICC process, but have been unwilling to fill in forms without clear direction from the Court. At the same time, victims have been concerned that failure to fill in the forms could negatively impact their ability to get participatory status in the cases. Despite the amicus request being rejected, the Chamber finally provided guidance on 3 October 2012, setting up a whole new application system.

At the national level, victims of the post election violence that rocked Kenya have not yet been able to access justice. With elections set to be held in March 2013, most victims are living in fear that a repeat of the violence could occur, or worse. In cases of gross human rights violations such as

the 2007-8 post election violence, high numbers of perpetrators are often implicated. The failure by the Kenyan Government to enforce the rule of law and try a significant number of the cases, combined with the inherent limitation of the ICC to only try those who hold the greatest responsibility has left a huge impunity gap where victims, survivors and perpetrators are forced to co-exist in fear and mistrust.

Up until now, the government's effort to resettle those internally displaced as a result of the violence has not achieved its purpose. IDP's and various human rights organizations pointed to the sizeable number of IDPs population who still live in camps and the large number of intended beneficiaries of government programmes who did not receive the ex-gratia payments by the Government. Further, integrated IDPs claim that they have not benefited from financial assistance leading to perceptions of bias and discrimination. An internal audit carried out by government revealed a loss of Ksh. 48,126,782.10. This is indicative of the grand scale corruption and malpractice that is the main reason that many IDPs did not get assistance.

The Kenyan Office of the Director of Public Prosecutions has constituted a multi agency Task Force to look into cases arising from the post election violence. However much of the evidence has either been destroyed or lost. Calls for a special division to be established within the High Court have also been made. However, the challenge is that should such a division be established, it is the Police who would conduct investigations. One can wonder how objective such investigations would be considering that the Police themselves were heavily implicated in the 2007-8 violence.

The situation in Kenya is one which calls for urgent, yet delicate action. The ICC must ensure meaningful, effective and timely participation of victims in its proceedings, but most importantly, the Kenyan State must play its role in ensuring the rule of law and due process for victims who are already losing all hope of accessing justice. ●

<sup>1</sup>Article 19 (2012) 'Baseline Report: The right to information for internally displaced persons in Kenya'.

<sup>2</sup>Ibid



Five years after the violence, victims in Kenya are still waiting © IRIN Photos, 2008.



# Interview with Fatou Bensouda ICC Chief Prosecutor

*On 12 December 2011, Mrs. Fatou Bensouda of the Gambia was elected as ICC Prosecutor by the Assembly of States Parties. She previously served as Deputy Prosecutor from August 2004 to May 2012.*

*Prior to her work at the International Criminal Court, Mrs. Bensouda worked as a Legal Adviser and Trial Attorney at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, rising to the position of Senior Legal Advisor and Head of Prosecutions Legal Advisory Unit. Before joining ICTR, she was the General Manager of a leading commercial bank in The Gambia. Between 1987 and 2000, she was successively Senior State Counsel, Principal State Counsel, Deputy Director of Public Prosecutions, Solicitor General and Legal Secretary of the Republic, then Attorney General and Minister of Justice, in which capacity she served as Chief Legal Advisor to the President and Cabinet of The Republic of The Gambia.*

## 1. As the new ICC Prosecutor, could you tell us about your priorities over the next few years?

The list of pressing issues for me as Prosecutor is long, but one important priority I have set is to ensure that the Office delivers high quality and efficient investigations and prosecutions which are at the heart of what my Office does.

Next to focusing on investigations and prosecutions, I also want to reflect on how we can further improve them. We have defined our basic standards on how we do the investigations with the issuing of our operational manual but I now want to further improve those standards aiming at defining what could be commonly accepted standards for doing international investigations. For that purpose I am reaching out to the other international tribunals, to international organizations like Interpol and to the law enforcement community in general.

With the first trials coming to an end and the lessons learned exercises that the Court is embarking upon, my plan is to further consolidate our prosecutorial standards in the operational manual. Specifically, regarding our investigations, we have an obligation and a duty to focus our attention on sexual and gender violence. As it can be a challenge to gather evidence of these crimes in some contexts, we will continue to look for innovative methods for the collection of evidence to bring these crimes to Court in a way that will ensure their prosecution and will respect and protect their victims. Another priority therefore for my Office will be to continue to pursue the gender crimes and crimes against children defined in the Rome Statute and to do so systematically.

During my tenure, I also want to strengthen the Court's relationship with Africa. Mali is the fourth African State to refer a situation to the Office of the Prosecutor. ECOWAS also officially supported the Office's intervention in Mali. I am proud of this support as well as the commitment to this Court expressed by the African continent, including through my appointment as Prosecutor, but as I stated previously I am the Prosecutor of all States Parties. I will act in full independence and impartiality, following only the standards set by the Rome Statute and the facts presented by the evidence my Office collects. I will seek the support of all States Parties, including in Africa.

I also want to continue to clarify the process of the Office's (OTP) preliminary examinations, and ensure transparency in the decisions. For me preliminary examinations are key elements of OTP activities, as they can provide early opportunity, through contacts with relevant authorities as well as public information, to encourage national proceedings and prevent recurrence of violence. In the coming months the Office will, similar to last year, publish a report on all its preliminary examinations, as well as a comprehensive report on the preliminary examination in Colombia.

## 2. What do you see as the main challenges the OTP currently faces?

The Office's independence as the cornerstone of the Rome Statute system should at all times be respected and protected, in particular by States Parties. The system established by the Rome Statute is based on the concept of independent judicial activity. Without its independence, the Court risks losing its value. This does not mean that the Office is an isolated organ. On the contrary. The efficiency of the Court and this Office relies on the cooperation it receives from the international community.

Especially in cases of ongoing conflicts, the OTP requires adamant cooperation from both host and neighbouring states to overcome practical problems. Execution of arrest warrants, for example, requires strong political willingness of domestic actors as well as coordination of efforts of neighbouring states in most cases. Similarly, as my Office and the Court as a whole have a duty to protect our witnesses, we need States cooperation in this area, including regarding relocation agreements. The identification and freezing of assets owned by alleged perpetrators of massive crimes is also important to prove criminal linkage, to provide funds for legal aid, as well as for victims' reparations; this objective can only be realized through the efficient judicial cooperation from States Parties, which supposes that the national judicial system has adopted the necessary measures to facilitate this cooperation and has



identified specific focal points within its national system. Another crucial area is the need for comprehensive political and diplomatic support provided to the work of the OTP by States Parties, in bilateral and multilateral fora.

### 3. You have indicated that gender will form part of your priorities. What steps will you be taking in that regard?

In the next years, building on the last nine, our plan is to pursue and prosecute the gender crimes defined by the Rome Statute. In order to stop these crimes we will give victims a voice – a voice of their own. And we have a very clear roadmap in order to achieve this goal.

We have appointed Brigid Inder as the new OTP Special Gender Adviser. With more than 25 years of experience working in the international justice, women's human rights and health fields as a strategic leader, policy advisor and advocate for women's human rights and gender equality, Ms. Inder will provide strategic advice to the Office on sexual and gender-based violence. Her appointment, together with the strong team we have within OTP, reflects the importance that the Office, and I as Prosecutor, place on this issue.

We will continue to periodically and consistently revisit our policies and practices regarding sexual and gender crimes, making sure they are effective and improving them if needed. As a part of the process of improving our prosecutions, the Office will also continue to provide gender related training to its staff, from investigators to prosecutors. One of my priorities for the coming months is the finalisation of the OTP's gender policy. A finalised draft will be open for comment from external actors, as is the practice of the Office regarding our policies. It will also contribute to providing clarity, transparency and predictability on our work and our strategy, and ensure greater synergies with our partners.

Gender crimes and crimes against children are very difficult to investigate. They involve extremely traumatized and vulnerable individuals. Thus, when we operate in these very sensitive conditions, we have to be very careful not to expose these victims and not to re-traumatize them in the process. Accordingly we will continue to develop investigative methods in the coming years, to ensure effective prosecutions of these crimes while respecting and protecting the victims and ensuring their wellbeing.

During my tenure, I will also work to strengthen the cooperation between the OTP and local gender groups in situation countries, which in some instances are the only sources of support available for victims of gender crimes, in order to support their efforts on the ground and enhance our efforts to reach out more to the victims.

### 4. What steps does your Office take to ensure that the rights of victims before the ICC, and in particular participation, are fully

Victim participation is one of the most fundamental aspects of the ICC system. In order to ensure the proper functioning of this mechanism, the OTP informs victims and affected communities about their rights and entitlements under the Rome Statute as early as the preliminary examination stage through media campaigns, town hall meetings, meeting with community leaders and victim groups. The OTP also participates in the ICC's outreach activities in order to provide information and encourage the participation of these groups in the proceedings.

Victims bring a unique and necessary perspective to the ICC activities and contribute to fair and efficient trials. The provisions of the Statute in relation to victims' participation embody a trend at the international level and in the practice of domestic jurisdictions from different legal systems of the world. This trend recognizes victims as actors and not only passive subjects of the law, and grants them specific rights. They are our first beneficiaries and our *raison d'être*.

My Office interacts with victims and victims associations starting at the earliest stages of its work in order to take their views and interests into account. The Office consistently seeks to address the interests of a wider community of victims through its submissions on the gravity of the crimes, including in terms of their impact. At the same time, the Office also considers gravity in terms of factors that are relevant for the purpose of future sentencing. The Office appreciates that legal representatives of participating victims have consistently included in their presentations before the Court a personal and social perspective of the impact of the crimes on themselves and their communities. They add a distinct perspective to the analysis of the crimes. ●

# Finding Justice for Victims in Libya

*Alison Smith, No Peace Without Justice*

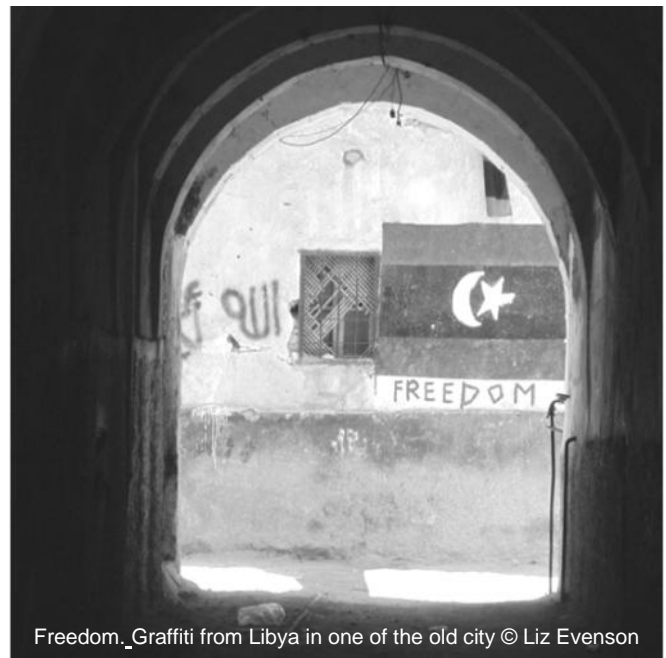
On an August night, the civil society organisation Lawyers for Justice in Libya held a graffiti competition in Tripoli to launch an awareness-raising campaign on Libya's upcoming constitution-making process. Elections for a national congress were held in early July 2012, ushering in preparations for the drafting of the country's first constitution. Blank sheets of paper invited participants to contribute one word that they most wanted to see addressed by the new constitution. Those blank sheets of paper are, in some ways, a suitable metaphor. At the verge of so much change, anything is possible for a new Libya.

Yet, of course, so much has come before that will shape Libya's future. The faces of the revolution's martyrs stare out from billboards across Tripoli and the country. In late June, families of those who died in the slaughter of 1200 prisoners at the notorious Abu Salim prison mourned the massacre's anniversary. Expectations for justice run high, as do frustrations that so far the government is perceived as moving too slowly. "Reconciliation" is shunned as an imposed "forgiving and forgetting," leading some civil society organisations to take pains to clarify that reconciliation can be rooted in justice.

Serious attention to devising a transitional justice process in Libya to address the past and look ahead to the future is overdue. Expectations of justice among victims will need to be put in the context of a hard look at the government's capacity to deliver results.

Although the interim authorities passed a transitional justice law, this was done with very limited consultation with civil society, including victim's associations. Yet the starting point for any successful transitional justice process, which to succeed must correspond to a society's real needs and expectations, is just such a consultation. To help fill this gap, No Peace Without Justice (NPWJ), an international human rights organisation, is supporting a network of Libyan civil society organisations working together on transitional justice-related issues. The network—through initial outreach activities across the country with victim's associations, women, youth and other constituencies—can contribute to building awareness on the goals and mechanisms of transitional justice, a necessary step for a meaningful national consultation. A national consultation process, in turn, can shape expectations for a comprehensive transitional justice process to be put in place by the government.

There are real missed opportunities for the International Criminal Court (ICC). The Libyan Government has petitioned the court to take back the ICC case against Saif al-Islam Gaddafi in order to try him in Libya and is expected to do the same in the case against Abdullah al-Senussi. Both Saif al-Islam and al-Senussi are in detention in Libya and a final decision on the matter rests with the ICC's judges. The ICC—squeezed for resources, but perhaps also uncertain how to proceed in these uncharted waters has not



Freedom. Graffiti from Libya in one of the old city © Liz Evenson

mounted an outreach campaign in Libya and so far there has been limited victim participation before the court. Visits of the former ICC Prosecutor have tended to leave mixed messages regarding the court's jurisdiction and intentions. Limited capacity within local and national media in Libya has placed real constraints on reporting ICC's activities.

Regardless of the outcome of the admissibility challenges, the ICC and its States Parties should be taking the long view in Libya.

Intense investment in objective public information and outreach regarding the role, mandate and procedures of the ICC could have contributed to jumpstarting real debate and attention to accountability in Libya. The court's outreach activities in other ICC situation countries have been a factor in just such domestic discussions. Instead, the court's role has been misunderstood, seen as irrelevant, or simply remained unknown. Given the complex issues at stake, it is too speculative to suggest that broader public awareness of the ICC in Libya would have avoided the detention of four of its staff members by the Zintan militia in June. However, it might have placed the court in a stronger position to assert itself on behalf of its staff. Again, outreach activities in other ICC situation countries have been a factor in creating more conducive conditions to the court's work by increasing understanding and acceptance of the court's role.

If properly implemented and supported through strong outreach and presence in situation countries, the ICC can have a significant and transformative role in domestic accountability processes and reap benefits to its own work in terms of increased support and understanding. The ICC, with the encouragement and support of its States Parties, should get itself back in the picture in Libya, as an important ally in what will be a long but much needed path toward a successful transitional justice process. ●



# Reparation for Survivors of the Rwanda Genocide - Difficulties and Perspectives for the Future

Albert GASAKE, legal advocacy Coordinator, Survivors-Fund (SURF)

More than eighteen years after the 1994 Genocide, the majority of the approximately 309,000 survivors continue to face legal, practical and political difficulties in trying to obtain adequate reparation. However, the closure of the *gacaca* courts (grass roots community courts) on 18 June 2012 and the completion of the mandate of the International Criminal Tribunal for Rwanda (ICTR) by 2014 opens up new possibilities for survivors and survivor organisations to advocate for a comprehensive right to reparation at national and international level.

Since their introduction in 2001, *gacaca* courts dealt with almost two million cases related to the 1994 genocide. Survivors' right to reparation before *gacaca* was limited to claiming compensation for material damages and restitution of property. While a significant number of survivors were awarded compensation and restitution, the majority of these awards could not be enforced as perpetrators were unwilling or unable to pay. Similar restrictions prevented survivors from benefiting from compensation by national courts.

Furthermore, legislation introduced in 2001 prevents survivors from claiming reparation directly from the Government. At the time, the Government argued that it did not need to pay compensation as it was going to introduce specific legislation on reparation and put in place a compensation fund, to which it would contribute a certain percentage of its annual budget. Ten years later, such steps have yet to be taken, and while hundreds of thousands of survivors participated in *gacaca* and court proceedings, many feel that they ended up with nothing tangible at the end of that process.



Avega meeting, Gisenyi. Widows mention problems with Gacaca: the audience often boos, putting pressure on outnumbered victims  
© Pierre-Yves GINET

Survivors are similarly disenchanted with the ICTR, which did not allow survivors to participate in their own right and claim reparation. For many, the ICTR represents nothing more than the bad conscience of the international community for the failure to stop the genocide, as it had relatively little impact on survivors' lives.

The failure to provide survivors with adequate reparation at

national and international level has a significant adverse impact upon survivors' lives, as well as on their perceptions of justice. Survivors interviewed by the Survivors' Fund (SURF) and REDRESS unanimously stated that justice has not been served, as it has not included compensation.

Survivors' organisations in Rwanda are urging the Government to live up to its promises and adopt legislation providing for reparation. In April 2012, IBUKA, the national umbrella association of survivor's organisations in Rwanda, submitted a response to the then draft Organic Law terminating *gacaca*, calling for the right to reparation to be incorporated in the law. In October 2012, a range of survivor organisations, in collaboration with SURF and REDRESS, submitted a discussion paper to the Government outlining a variety of options and recommendations for reparation for survivors. Their main recommendation focused on the establishment of a Task Force on Reparation for Rwanda (TFRR) which could assist in addressing some of the outstanding issues, particularly (1) identifying the number of past compensation and restitution awards of national courts and *gacaca* that have yet to be implemented; (2) identifying awards made where perpetrators were too poor to compensate; (3) exploring possibilities for reparation for victims whose perpetrators have not been identified; (4) consulting with survivors and survivor organisations to identify their needs and determine adequate measures of reparation; (5) establishing criteria for beneficiaries of reparation in regards to indirect victims; (6) recommending the establishment of a reparation programme that includes forms of reparation that are meaningful to survivors, feasible and adequately funded.

In discussing its legacy programme, the ICTR should consider how best to heed calls by former Presidents of the ICTR for the establishment of a compensation scheme for survivors. The ICTR or its successor, the Mechanism for International Criminal Tribunals, could for instance fund and otherwise support the TFRR in its work, in light of a similar reparation assessment being carried out for the ICTR's sister tribunal for the former Yugoslavia.

The closure of *gacaca* and completion of the ICTR's mandate opens up a new space for discussion on reparation for survivors. While the previous focus of the Government of Rwanda, and the international community, was on accountability of perpetrators, the focus should now shift to the survivors. They not only have a right to reparation under international law, but they were also instrumental in ensuring that the various judicial procedures accomplished their objectives. •

<sup>1</sup> National Institute of Statistics of Rwanda. Genocide Survivors Census, 2007.

See: SURF and REDRESS, *No Justice without Reparation: Recommendations for Reparation for , October 2012:* [http://www.redress.org/downloads/publications/1207rwanda\\_discussion\\_paper.pdf](http://www.redress.org/downloads/publications/1207rwanda_discussion_paper.pdf)

# Guatemala: we broke the silence

*Lucrecia Molina Theissen*

*On 6 October 1981, 14 year old Marco Antonio Molina Theissen was taken by armed men from his house in Guatemala City, and was disappeared. His case was brought to the Inter-American Court of Human Rights. His family was able to participate, directly, in the proceedings. This is an account from Marco Antonio's sister, Lucrecia, about the importance their participation in international proceedings.*

In Guatemala, the transition to democracy did not bring justice for victims of massive and systematic violations of human rights. Perpetrators curtailed judicial independence and promoted amnesties. At the same time, they conducted several activities aimed at establishing a social "consensus" that would legitimise their crimes. Psychological warfare operations and propaganda against an alleged "internal enemy" rendered legitimate any repressive measures. It also favored a climate with no memory from which perpetrators still benefit to avoid punishment for their transgressions of human rights and humanitarian law.



School named after Marco Antonio in Villanueva Guatemala. It was one of the reparations ordered by the Inter-American Court.

Our case is the disappearance of my brother Marco Antonio Molina Theissen, then 14, perpetrated by military intelligence on 6 October 1981 in Guatemala. It happened after the flight of my sister Emma, then 21, from a military garrison, where she was under unacknowledged imprisonment and subjected to severe torture and repeated rape over nine days.

From the day Marco Antonio was disappeared by the army, my parents began a fruitless search through police and judicial institutions in Guatemala, which were completely ineffective in establishing his whereabouts. Such inefficiency persists to this day as our efforts before the local courts have not had any result. The Inter-American Court of Human Rights provided us with the only means to access justice and obtain recognition of the truth regarding what happened.

International justice is called to strengthen protection and to repair, as far as possible, the harm caused by human rights violations. To do this, those involved must understand that they are not dealing with names, lost in court records, but with human suffering. Therefore, we, the victims, who sadly are the embodiment of pain, have to have a place in it.

For victims, achieving justice and truth is paramount. But how they will achieve such justice and truth is just as important. In this regard, we must not forget that judicial processes pose a risk of re-victimisation that can be prevented most effectively with the presence of victims in all its phases. The rights of victims to participate and be heard by international judicial bodies give the process a human meaning and help in repairing the pain.

For me and my family, - my mother, Emma Theissen, and my sisters Emma and Maria Eugenia - to participate directly as witnesses before the Inter-American Court of Human Rights was the culmination of a process in which our will and determination to seek to justice was key. It was a healing experience to be able to publicly tell the truth of the facts on an equal footing. We were given back our entitlements as individuals, and were able to make respected representations against those of the State, that had stripped us of our rights and reduced us to a status of "enemy", that had chased us and caused us profound damage.

We broke the silence at the hearing before the Inter-American Court. It was our sole opportunity to tell the truth about what happened. We were heard by impartial judges. We were believed, and that gave us back the dignity that had been taken from us along with Marco Antonio. It was pleasing to read our words in the two judgments of the Court.

Being accompanied by our legal representatives also gave meaning to the proceedings before the Inter-American Court. It was a learning experience about how the system works, what to expect and what not to expect. But most of all, my sisters, my mother and I, the victims, are no longer objects and names on paper: we became persons with rights.

Nothing will repair the loss of my brother, but this has been part of the reconstruction of our lives. Our voices opened the way to justice and the recognition of truth. We are pleased that from our deep and unfathomable pain the Court issued a judgment that is part of the tools used to eradicate forced disappearances in Guatemala and the Latin American region. •

## 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 • FIDH • FOCDP • 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 • LIPADHO • SYCOVI



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