Access

Victims' rights before the International Criminal Court

Victims' Rights Working Group Bulletin • Issue 24 • Spring 2014

In this bulletin

Katanga Judgment: which role for child soldiers? 1-2

Minova: Unsatisfactory Justice Attempts in the DRC 2

Victims' Legal Representation at the Extraordinary Chambers in the Courts of Cambodia 3

Interview with Ms Kristin Kalla, Senior Programme Officer , Trust Fund for Victims 4-5

Peace and Justice in Colombia: A Difficult Path 6

The Ugandan International Crimes Division: a Model for Kenya? 7

Syria: The Current State of Affairs Regarding the International Criminal Court 8

The Katanga Judgment: which role for child soldiers?

Gaia Pergolo, REDRESS

ICC Coalition Discusses Court's First Conviction in Lubanga Case. At the press conference, from left: Renzo Pomi, Amnesty International; Jelena Pia-Comella, CICC; Param-Preet Singh, Human Rights Watch; Alison Cole, Open Society Justice Initiative.© UN Photo by Paulo Filgueiras

On 7 March 2014, Trial Chamber II of the International Criminal Court rendered its Judgment in the case of the Prosecutor v. Germain Katanga. Germain Katanga, a Congolese national and former leader of the Patriotic Resistance Force in Ituri (FRPI), was convicted of four counts of war crimes and one count of crimes against humanity. He was acquitted of the charges of sexual slavery and rape, and of the charge of using children under the age of fifteen years in hostilities. The Trial Chamber modified the legal characterisation of the facts such that the armed conflict connected to the charges was not of an international character between August 2002 and May 2003. It also re-characterised Katanga's mode of liability from that of a direct co-perpetrator to that of a person who contributes to the commission of crimes by a group of persons. This re-characterisation applied to all charges with the exception of the war crime of using children under the age of fifteen years in hostilities.

On 23 May 2014, Germain Katanga was sentenced to twelve years of imprisonment. The Prosecution has indicated it will appeal the acquittal of Germain Katanga for the charges of rape and sexual slavery, and the Defence will appeal the whole of the Judgment, seeking reversal of each charge for which Katanga was convicted. The legal representatives of victims requested the Appeals Chamber to admit victims to participate in the appeal proceedings.

366 victims were authorised to participate in the trial through their legal representatives, 11 of which were former child-soldiers. Germain Katanga, however, was acquitted of the war crime of using children under the age of fifteen years in hostilities.

The Trial Chamber's conclusions with respect to this crime rest in the findings of the Pre-Trial Chamber. In its Decision on the confirmation of the charges, Pre-Trial Chamber I found sufficient evidence to establish that Germain Katanga and Mathieu Ngudjolo Chui, as co-perpetrators, consistently used children under the age of fifteen for multiple purposes, including as personal escorts and bodyguards, and to take part in hostilities before, during and after the attack on Bogoro village. The Pre-Trial Chamber established that Germain Katanga and Mathieu Ngudjolo Chui knew or should have known that these persons were under the age of fifteen years. As opposed to the other crimes, of which the Pre-Trial Chamber found that FNI/FRPI combatants were the "direct perpetrators,"[1] this crime was alleged to have been committed only by Germain Katanga himself, and not by militia members.

This finding had two main consequences for the Trial Chamber's approach to the crime of using children under fifteen years in hostilities. First, Trial Chamber II had to verify that the evidence on the record established beyond a reasonable doubt a direct link between the facts relating to the use of child soldiers and the conduct of the accused.

The Trial Chamber established that many children between seven and seventeen years of age were recruited between

...continued on p. 2

Katanga Judgment…..…..*continues from page 1*

2002 and 2004 in the different armed groups active in Ituri, were trained and sent to fight. The Trial Chamber found that children under the age of fifteen were integrated into armed groups within the Ngiti community of the Walendu-Bindi *collectivité* at the time of the events. The Judges could also establish that during the attack on Bogoro village on 24 February 2003, children under the age of fifteen were present among the combatants, participated in the hostilities and, on occasion, committed crimes.

The Trial Chamber could not conclude, however, that children under the age of fifteen years were used to transport ammunition under Katanga's authority or that they belonged to his personal guard; it was therefore unable to establish a direct link demonstrating that Germain Katanga directly used the children to participate in hostilities.

Second, the Trial Chamber could not modify Katanga's mode of liability with respect to the crime of using child soldiers. The Trial Chamber explained that, having considered Katanga's direct involvement in the commission of this crime, a re-characterisation of his conduct from that of a co-perpetrator to that of an accessory would have exceeded the facts and circumstances described in the charges.

While the evidence before the Chamber was not sufficient to establish Katanga's responsibility for the use of child soldiers, victims played nonetheless a significant role in the establishment of the historical record of the case. As explained by the President of Trial Chamber II, victims "were able to find their rightful place during the trial and in their own way, by, at times, taking a different stance to the Prosecution, they made a meaningful contribution to establishing the truth in relation to certain aspects of the case."[2] This certainly constitutes an important recognition of the role played by victims in the proceedings. ·

[1] Decision on the confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, para. 245, http://www.icc-cpi.int/iccdocs/doc/doc571253.pdf

Minova: Unsatisfactory Justice Attempts in the DRC

More than 135 women and girls were raped by members of the Congolese army (FARDC), in the small village of Minova, Eastern DRC in a ten day spree of violence in November 2012. The rapes, killings and associated pillaging took place after the army suffered a humiliating defeat by the M23 rebel group in nearby Goma. According to reports, men were also victims of the rapes though none testified in the later trial.

Amidst immense international pressure, 39 soldiers were arrested and brought to trial before a Military Court in proceedings which began in November 2013. This 'mass' trial was hailed as a landmark opportunity for DRC's justice system to respond to the systematic practice of sexual violence plaguing the east of the country. It was also seen as one of the few examples of a domestic court seeking to apply the Rome Statute to prosecute rape as an international crime.

Seventy-six survivors testified before the military court proceedings despite all the challenges and personal consequences that reliving their experiences in the courtroom could bring. These brave women spoke of their traumatic experiences in the belief that justice would be done.

On Monday 5th May, a military court in Goma ruled on cases against 39 Congolese soldiers charged with rape and other grave crimes committed in Minova, in November 2012. However, the judgment was nearly universally condemned by victims, lawyers and other commentators. The United Nations Secretary-General's Special Representative on Sexual Violence in Conflict, Zainab Hawa Bangura, expressed her regret that "the verdict does not reflect the magnitude of the crimes of sexual violence that were committed and fails to do justice to all victims who had the courage to bring this case to court". The UN Human Rights Office in the DRC said that "the outcome of the trial confirms shortcomings in the administration of justice in the DRC."

Of the 39 defendants, only two were convicted of rape, the others for pillage and breaking rank. Fourteen were acquitted of all charges. One of the weaknesses of the trial was the failure to convict senior ranked officers. This failure is consistent with the findings of a recent UN report on the limited progress to end impunity for rape and sexual violence in DRC. The report indicated that **only three** of the 136 FARDC soldiers convicted during the period under review were senior officers. In addition, members of armed groups almost always escape justice; **only four** of the 187 people convicted for sexual violence by the military justice system were members of armed groups. Part of the reason for this relates to the difficulties to apply the principle of command responsibility in Congolese law. Apparently, some soldiers said they were 'ordered' by their superiors to rape women, however Prosecutors struggled to prove this and to show that senior officers had control over their troops at the relevant time. But, officers' failure to intervene to stop the rampage should have been enough to frame their culpability.

An earlier judgment was issued in relation to the Minova violence, in September 2013. A number of low-ranking soldiers were convicted and some victims of the sexual violence were awarded financial reparations for the harm suffered. However, in a further sign of the inefficiency and ineffectiveness of the justice system, some of the perpetrators who were sentenced to jail terms reportedly escaped and as far as is known, were never re-arrested. Furthermore, under Congolese law, reparations orders made for the benefit of victims can be issued against the convicted perpetrators and the State as jointly liable, as happened in both the September 2013 and the recent May 2014 rulings regarding the violence in Minova. However, enforcement is a significant challenge. Despite the Court's finding of the State's liability in the September 2013 ruling, the victims face huge costs and significant procedural hurdles when they try to enforce the reparation orders and all sorts of bureaucratic reasons are provided to deny victims with the remedies the courts have said they deserve. To date, none have been successfully enforced. We can only wait to see whether the May 2014 Minova ruling will lead to any concrete reparations for the many victims.

What next? Many have called on the DRC Government to adopt a draft law establishing specialized mixed chambers for trying war crimes, crimes against humanity and genocide cases, which would include rape and sexual violence cases taking place during the conflicts in the East. These specialized chambers would be embedded in the appeals courts of the Congolese national justice system. The goal would be to build capacity and concentrate expertise and resources on investigating and prosecuting these complex crimes. The Minova judgments are a telling indication that the specialized chambers' time has come. •

Victims' Legal Representation at the Extraordinary Chambers in the Courts of Cambodia

Beini Ye, REDRESS

The Extraordinary Chambers in the Courts of Cambodia (ECCC) is currently trying senior leaders and those who were most responsible for crimes committed under the rule of the Communist Party of Kampuchea (CPK), commonly known as Khmer Rouge, in the period from 17 April 1975 to 6 January 1979. Under the Khmer Rouge regime which purported to establish a revolutionary agrarian society, an estimated 1.5 Million people perished due to executions and other mass crimes, starvation, overwork or disease. Four cases against different individuals, all of which are at different stages of the proceedings, have been brought to the ECCC so far.

Whereas the jurisdiction over crimes against humanity, war crimes and genocide[1] compares to other international courts, the form of victim participation at the ECCC is a unique feature at this hybrid-international tribunal. Individuals who suffered physical, material or psychological injury as a direct consequence of at least one of the crimes prosecuted have the right to be admitted to the trial as Civil Party. As a party to the proceedings, this status grants victims a number of rights, such as the right to request investigative actions, the right to examine witnesses, the right to submit evidence, the right to seek reparations, and in particular the right to legal representation.

The Internal Rules (IR) governing the procedural regulations at the ECCC establish the framework for the legal representation of Civil Parties. Since the beginning of operations, the Court has developed and applied two different schemes.

The original legal representation scheme was established in the first version of IR adopted by the ECCC on 12 June 2007. Although amendments were made to the relevant stipulations, the scheme remained unchanged up until 9 February 2010. The period of applicability of this scheme coincides with the duration of hearings in the first case (Case 001) which started with the initial hearing in February 2009 and ended with the closing arguments in November 2009.

According to the original legal representation scheme, each victim admitted as Civil Party became an individual party to the proceedings in all stages of the trial, including pre-trial and trial stage. As a consequence, every single Civil Party had the right to be represented by a lawyer who would act on his/her behalf. Civil Parties could also choose to be represented by a common lawyer or such groupings could be ordered by the specific organs of the Court where the interest of justice so require. Every Civil Party or group of Civil Parties was entitled to take any actions granted to Civil Parties under the IR. Legal representation, however, was not mandatory and Civil Parties could act on their own without being represented by a counsel.

In Case 001, 90 victims filed Civil Party applications and exercised their rights throughout the trial via their legal counsel. They were represented by four teams of Cambodian and international lawyers which mostly took separate procedural actions, e.g. through separate closing arguments, but sometimes also made joint submissions, e.g. through a joint reparation claim.

In the run up to the second case out of the four prosecuted cases (Case 002), around 3800 Civil Party applications were filed. Concerns about managing such a vast number of additional parties to the proceedings led to the amendment of the IR on victim participation. Shortly after the closing arguments were delivered in Case 001, a new legal representation scheme without retroactive effect was introduced in the fifth revision of the IR on 9 February 2010. This is the currently applicable scheme for all three pending cases.

Young children at the "Killing Fields" memorial, located on the outskirts of Phnom Penh © UN Photo by John Isaac

According to the amendments, the previous legal representation scheme remained unchanged for the pre-trial stage, i.e. before the Trial Chamber is seized with the indictment. Civil Parties participate individually with the right to individual or common legal representation as described above.

At trial and appeal stage, however, all Civil Parties comprise a single, consolidated group whose interests are represented by one Cambodian and one international Civil Party Lead Co-Lawyer (LCL). The individual Civil Party Lawyers (CPL) selected at pre-trial stage retain their power of attorneys and continue to represent the interest of their individual clients or group of clients. The ultimate responsibility to the Court for any procedural actions taken lies with the LCL who have to seek the views of CPL and endeavour to reach consensus. CPL on the other hand shall endeavour to support the work of LCL. Internal rules on the correlation between LCL and CPL were adopted. As a consequence, only joint procedural actions carried out by the LCL are allowed, e.g. the submission of a single reparations claim, witness examination by LCL or a CPL designated by LCL. In contrast to the previous scheme, legal representation at trial stage has become mandatory. •

[1] The ECCC also exercises jurisdiction over a certain number of serious domestic crimes.

Interview with Ms Kristin Kalla

Senior Programme Officer, Trust Fund for Victims at the International Criminal Court (ICC)[1]

Rule 98(5) of the ICC Rules of Procedure and Evidence provides that "[o]ther resources of the Trust Fund may be used for the benefits of victims." Under this provision, the Trust Fund for Victims (TFV) has developed its assistance mandate, with the aim of providing victims and their families with physical rehabilitation, material support, and/or psychological rehabilitation. REDRESS has interviewed Ms Kristin Kalla, TFV Senior Programme Officer, to know more about the TFV's assistance mandate.

1. What is the difference between the Trust Fund for Victims' (TFV) assistance and reparations mandates and what are the challenges in coordinating the two?

The assistance mandate of the TFV envisions the possibility for victims and their families to receive assistance separate from and prior to a conviction by the Court, using resources the TFV has raised through voluntary contributions from donors. While this support is distinct from awards for reparations, in that it is not linked to a conviction, it is key in helping repair the harm that victims have suffered because: 1) the TFV can provide assistance to victims in a timelier manner than may be allowed by the judicial process; and 2) assistance is targeted to victims of the broader situations before the ICC, regardless of whether the harm they suffered stems from particular crimes charged by the Prosecutor in a specific case.

Because of its direct experience in assisting victims in the situation through this mandate, the TFV is a valuable source of operational and programmatic expertise for the Court, especially vis-à-vis the design and implementation of reparation awards. The obvious difference between the assistance and reparations mandates is that reparations are linked to accountability, springing from individual criminal responsibility of a convicted person, and the assistance mandate is not.

2. Who can benefit from the TFV's assistance programmes? Which types of assistance projects are currently in place and in which countries?

In accordance with the Trust Fund's Regulations[2], the resources used for assistance benefit *"victims of crimes as defined in Rule 85 of the* Rules of Procedure and Evidence*, and where natural persons are concerned, their families, who have suffered physical, psychological and/or material harm as result of these crimes."* The Board of Directors of the Fund have the ability to consider and provide "physical or psychological rehabilitation or material support for the benefit of victims and their families", as well as the role of the relevant Chamber in determining whether or not the proposed activities "would predetermine any issue to be determined by the Court".[3]

Under the assistance mandate, the TFV may provide three forms of support: *physical rehabilitation, psychological rehabilitation and material support.* This victim's assistance is legally defined, and based on TFV programme experience.

Students at a school sponsored by the Trust Fund for Victims put on a song and dance performance for the ICC Registrar and delegates of the ASP © ICC-CPI

Before making any decision, the TFV carries out a thorough assessment of the injuries suffered by victims in a certain situation. We also look at the services already being provided by other parties, including government agencies and civil society organisations, so that we do not use our limited resources to duplicate existing programmes.

Based on this assessment, the TFV invites project proposals from locally based organisations for the delivery of services to victims in the area where they reside. Following a rigorous evaluation of the proposals, in accordance with the ICC's procurement rules, the TFV selects the most competent and qualified organisations to become its implementing partners.

3. How does the TFV and its partner organisations prioritise victim beneficiaries? Is the TFV planning on expanding its activities in countries where it already has projects, so as to reach eligible victims who have as yet not benefitted?

Since the TFV's assistance is not linked to a specific case, projects can target victims and their families beyond the scope of the charges. Depending on their needs and the harm suffered, the TFV will strive to assist victims both individually and at the community level. As such, the Fund is flexible and inclusive in three key ways:

- First, the TFV assistance targets victims both individually and at the community level. Depending on their needs and the harm suffered, the TFV has the flexibility to reach victims through the most appropriate means possible. For example, our international partner AVSI in northern Uganda, targets LRA victims mostly at the individual level through physical rehabilitation. Men and women who lost their limbs to landmines,

who were severely burned in their homes, whose faces were mutilated, all required specialized plastic surgery and continued follow-up care.

- Secondly, and where necessary, the TFV may target individual categories of harm: these might include victims of rape, or girls abducted into fighting forces that gave birth while in captivity. For example, village savings and loans can assist communities where people suffered many different kinds of violence and implementing partners can work together across ethnic groups to address the underlying causes of conflict, and foster healing and reconciliation.

- And finally, the TFV supports a category of victim beneficiaries that we call community peace-builders. Bringing communities toward social cohesion and reconciliation during conflict is challenging and must be included in victims' assistance programmes. Through these initiatives the TFV supports projects that aim to reduce the stigma and discrimination often faced by victims of grave human rights abuses.

Currently, the Trust Fund supports 28 projects that reach an estimated 110,000 victim survivors and their families in both northern Uganda and eastern DRC. Of these beneficiaries, over 5,000 survivors of sexual and gender-based violence including 200 girls abducted and/or conscripted and sexually enslaved by armed groups, and 780 children of women victimized by campaigns of mass rape and displacement are supported.

The TFV continues to implement assistance projects in northern Uganda and the Democratic Republic of the Congo (DRC) in accordance with the Pre-Trial Chamber approved projects for each situation. These projects and implementing partners continue to identify additional victims and communities that merit rehabilitative assistance and engagement from the TFV. In fact, this year the TFV is launching six additional rehabilitation projects in northern Uganda to increase the number of beneficiaries of medical treatment of their injuries and to improve access to medical attention to victims in more places.

4. Is the TFV planning on expanding its activities to countries like Kenya and Ivory Coast?

The TFV Intends to conduct assessments in the situations in both Ivory Coast and Kenya sometime between 2014-2015, security permitting. The assessment reports will be presented to the TFV Board of Directors to determine whether or not assistance projects shall be initiated for the benefit of victims.

5. What are the key priorities of the TFV Strategic Plan 2014-2017 in relation to assistance pro-

The TFV Strategic Plan 2014-2017 will address seven prominent cross-cutting themes as outlined below:

Support the advancement of women's human rights, increase the participation of women and incorporating gender perspectives including addressing disparities and the impact of sexual and gender-based violence in line with *the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and UN Security Council Resolutions on women, peace and security.

Promote peace building, community reconciliation, acceptance, and social inclusion through conflict-prevention, the rebuilding of community safety nets, and mitigation of stigma, discrimination, and trauma.

Support the rights of children affected by armed conflict by supporting intergenerational responses for integrating and rehabilitating former child soldiers and other war-affected youth in line with the *UN Convention on the Rights of the Child (CRC)*.

Develop and implement communications and outreach initiatives for cultivating relationships, enhancing visibility, mobilising communities, changing attitudes, managing crisis, generating support, and encouraging financial contributions.

Based on best practice and evidence-based programming, link grant-making to technical and organisational capacity building activities to ensure sustainability.

Work with implementing partners to assess, mitigate and evaluate the likely environmental impact of a proposed project or programme, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse.

Facilitate action learning through participatory planning, research, programming, monitoring and evaluation by safeguarding a dynamic, interactional, and transformative process between people, groups, and institutions that enables victims both individually and collectively, to realize their full potential and be engaged in their own redress.

We would also like to ensure that our programmes are moving beyond a restorative function to a more transformative approach to programming. In the context of the crimes under the jurisdiction of the ICC, addressing the transformative dimension may serve not only as a form of reparative justice but also as an opportunity to overcome structural conditions of inequality, violence and exclusion.

It is often not appropriate to simply restore the *status quo* that gave rise to such crimes, in particular because the majority of victims of gross human rights violations will likely have been the powerless and dispossessed at the time when the conflict erupted. Therefore, combining reparations and assistance with structural transformative approaches will be of particular importance to those who have suffered irreparable harm and are marginalized in their communities, especially for many women and girls, and victims of sexual and gender-based violence. •

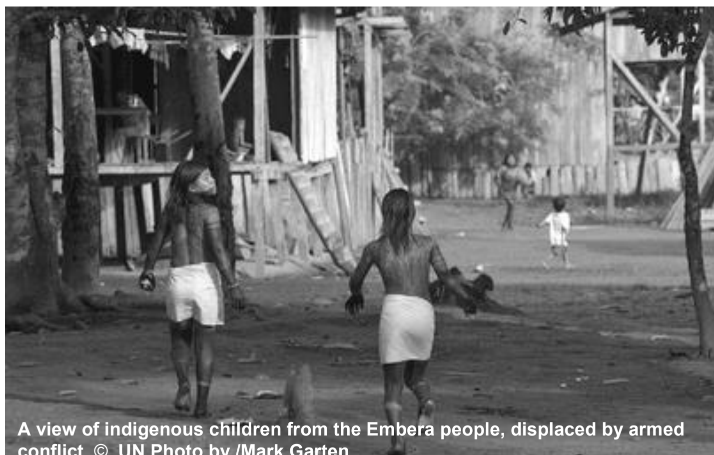
Further details are available at *www.TrustFundforVictims.org*

[1] Kristin Kalla, MA MPH is a public health anthropologist and Senior Programme Officer at the Trust Fund for Victims (TFV) at the ICC where she oversees the assistance and reparations programmes in ICC situation countries. The views expressed herein are those of the author(s) alone and do not reflect the views of the ICC.

Peace and Justice in Colombia: A Difficult Path

Adriana Arboleda Betancur, Corporación Jurídica Libertad

The government of Colombia has been holding peace talks with guerrillas from the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) since September 2012. The aim of the talks is to put an end to a fifty-year-long internal armed conflict. However, the process is complicated by the fact that, although the government promotes the idea of transitional justice, the conflict is actually still on-going: military confrontations, expansion of the paramilitary project and human rights' violations continue.


A view of indigenous children from the Embera people, displaced by armed conflict © UN Photo by /Mark Garten

The actors also lack equality in the peace negotiations. The guerrillas, although not defeated, have been weakened and have little support from society. The army has gained economic and political power, which has enabled it to impose conditions, such as the expansion of the military tribunals' jurisdiction and the possibility of obtaining legal benefits for members of the army who may have been involved in crimes against humanity.

In this web of conflicting interests, we wonder what happens with victims' rights. According to records, 5 million people have been displaced and have lost their land, 122,000 people have been victims of forced disappearances, over 4,000 women have suffered sexual violence, about 1 million people have been killed[1], and over 6,000 children have been conscripted or enlisted by the guerrillas or the army. None of the survivors, victims' family members, victims' associations or human rights organisations has been invited to the peace talks. However, the government and the illegal armed groups hold discussions and reach agreements on issues that affect the rights and interests of relevant segments of the population. This is probably the largest obstacle for civil society to feel part of and legitimise the process.

So far, the government has denied the State's direct involvement in the perpetration of grave human rights violations and crimes against humanity. It portrays itself at the negotiations as a spokesperson for the victims and for the society in general, which throws into question any potential agreement. The government should acknowledge its responsibility for the commission of crimes, commit to shedding light on those events and accept the institutional reforms that would be needed to implement guarantees of nonrepetition, as opposed to simply pointing to the responsibility of the guerrillas. Also, victims' direct participation is needed so that they can voice their concerns and put forward proposals for the respect of their rights. The issue of justice continues to bring about much controversy. The extreme right opposes any concession to illegal armed groups, but, at the same time, demands unequal treatment to members of the army which would lead to total impunity for State agents who have committed atrocities. Others reckon that international law cannot become an obstacle to the peace process, because that would overlook the high cost of the war, particularly in terms of human lives. As for the victims, they have manifested that a peace agreement cannot be reached by sacrificing their rights, and that both the government and the guerrillas must commit to truth, accept their responsibility and provide reparations for the harm caused.

However, there are different positions. Victims of crimes allegedly committed by State representatives demand that a distinction be made in respect of crimes that bear no relation to the armed conflict and therefore, should not benefit from the concessions in the agreements requested by the army. It is necessary that the Colombian people move towards a consensus that is based on an understanding of the reality of the conflict and the victims, but that also embraces the urgency of moving towards a reconciliation process that can prevent the perpetuation of the tragedy that we have been undergoing.

The General Prosecutor has recently suggested a transitional justice model for Colombia that would involve prosecution and conviction of members of the illegal armed groups for their crimes, and the possibility to benefit from alternative penalties. According to the Prosecutor, a distinction should be made as international justice principles impose an obligation to investigate the crimes, but no such imperative exists in relation to sanctions. Alternative penalties would include, for example, community work. This appears to be in line with the guerrillas' position not to spend one single day in prison. According to the army, the Prosecutor has proposed that those cases are not considered to be part of the armed conflict, and therefore, not covered by any benefits decided upon in the agreement. Those crimes could, however, be subject to an alternative trial model, that would, for example, allow them to serve their sentences through an "open prison regime". While some disagree with this proposal because they consider that it perpetuates impunity and affects victims' rights, it appears to be the strongest proposal on the way forward.

All in all, what is certain is that Colombia has not yet found its own transitional justice path. Foreign experts from South Africa, Rwanda, Central America and other countries which have undergone similar processes have visited Colombia and made contributions. However, it is important to avoid simply copying other models and overlooking that each process is unique, relating to a unique history, context, identity and diversity. Simply reproducing other countries' experiences is a mistake that can bring about frustration for the victims and the Colombian people. The Colombian conflict has specific traits that need to be acknowledged in the peace talks, the peace agreements and the post-agreement process. We still have a long way ahead and much remains to be discussed and agreed upon. •

[1] The NGO network *Coordinación Colombia Europa Estados Unidos* has documented approximately 4,500 extrajudicial executions which were committed by members of the army that later presented their victims as members of illegal armed groups killed during combat. The Colombian judiciary has opened over 2,000 investigations.

This article was completed on 10 May 2014. The peace talks have continued and, before this issue was finalised, negotiators had entered consideration on the rights of victims, the last agenda point. Significantly, both the government and the FARC have reportedly acknowledged victims and their rights to truth, justice, reparations and guarantees of non repetition. Also, victims have been invited to send a delegation to express their views at the negotiating table.

The Ugandan International Crimes Division: a Model for Kenya?

Joseph A. Manoba[1] and Gaia Pergolo, REDRESS

The International Crimes Division (ICD), a specialised division of the High Court of Uganda established to try suspected perpetrators of serious international crimes, has become a model for neighbouring Kenya in a bid to demonstrate to the world that the Kenyan Government, a State party to the ICC, is capable of exercising jurisdiction over genocide, crimes against humanity and war crimes.

At a roundtable meeting for civil society and the ICD, organised by Uganda Coalition for the ICC (UCICC), Uganda Victims Foundation (UVF) and London-based REDRESS on 1 April 2014 in Kampala, it was confirmed that a Kenyan delegation had come to Kampala to see how this system is playing out in Uganda. The roundtable was organised to provide an avenue for dialogue with the Court's officials and to share updates and developments in relation to the Court's activity.

The interface, being the first of its kind, was welcomed by all, particularly as developments within the Court, such as the drafting of the rules of procedure, were discussed. Only one war crimes suspect, Thomas Kwoyelo, has been arraigned before the ICD – and his case is still pending before the Supreme Court.

The Lord's Resistance Army (LRA) rebel commander Thomas Kwoyelo was captured in the Democratic Republic of the Congo in 2009, taken to Uganda and charged by the ICD Prosecutor with violations of Uganda's 1964 Geneva Conventions Act and other crimes under Uganda's penal code. His defence claimed that he was eligible for amnesty under the Amnesty Act 2000. The matter was brought to the attention of the Constitutional Court, and later of the Supreme Court, where the Principal State Attorney questioned whether the Act violated the Ugandan Constitution and Uganda's international law obligations. In the meantime, Thomas Kwoyelo's lawyers filed a petition to the African Commission on Human and Peoples' Rights, on the basis of arbitrary detention and the violation of other rights under the African Charter. During its 55th Ordinary Session from 28 April to 12 May 2014, the African Commission found this petition to be admissible, and pleadings will now follow on the merits of the case.

Is the Ugandan ICD a good model for the authorities in Kenya? As was pointed out at the roundtable by a former ICD Registrar, the ICD must be considered in the context of its wider mandate, which is also to try human trafficking, terrorism and piracy cases.

The Head of ICD Directorate of Public Prosecutions (DPP) explained that five human trafficking cases have been investigated, in particular regarding Congolese youth trafficked to DRC with the prospect of finding jobs, but then recruited into the M23. In such instances where there are areas of overlap between human trafficking and war crimes cases, the DPP has tried to characterise the latter as human trafficking cases in order to overcome the obstacles raised by Uganda's Amnesty Act. The Head of ICD DPP also indicated that her office investigates the financial means of perpetrators in order to confiscate goods or assets in case of a conviction.

The roundtable also discussed developments with respect to the role of victims in proceedings before the ICD. Whilst victims' participation in a common law legal system might be a strange notion, the role of victims cannot be underestimated. The argument was offered that victims' interests are properly covered by the prosecutor as a state legal representative. However, one CSO participant observed that this kind of argument makes victims feel that the Court is not a victims-friendly institution.

A girl helps her family build a new house in Pader district, northern Uganda, 13 December 2007. Up to 90 percent of the population of northern Uganda was forced into displacement camps fin 2002. © Monica Arach/IRIN

The ICD may not necessarily allow victims to participate in proceedings like the ICC does; however, it must be appreciated that this is a specialised court which deals with crimes involving large numbers of victims. As such, the interests of these victims cannot be presumed by the Prosecutor, and specific means of making contact with them in preferring an indictment need to be considered.

While the Ugandan ICD may in time prove to be a useful model, particularly in demonstrating how a single case can trigger a review of the legality of Amnesty legislation, with hopefully a positive resolution on this critical issue, there is still room for development with respect to the role of victims in the process. Regular roundtable discussions that solicit input from civil society, could be a useful starting point becoming a feature of the Court's activities, inspired along the lines of the ICC's biannual ICC-NGO roundtables.

Victims need to be informed of the developments at the Court. In addition to regular dialogue with civil society, direct outreach should be considered, with specific communication strategies for the ICD DPP. In order to make this possible, the Registry of the Court needs to have sufficient resources to conduct public information sessions on the cases and other developments. •

[1] The writer is a Ugandan lawyer, victims' rights advocate and QUB Stephen Livingstone Scholar.

Syria: The Current State of Affairs Regarding the International Criminal Court

Stephen Arthur Lamony[1], Coalition for the International Criminal Court

Since the conflict began in Syria in 2011, estimates show that more than 160,000 people have been killed, 2.7 million have been forced to flee abroad, and 6.5 million are displaced within the country. The situation continues to escalate rapidly as the months pass, which has prompted the international community to garner support to take action to resolve the crisis. Given the heinous nature of the violence and prolonged period in which it has been allowed to perpetuate, it appears that the only hope at obtaining justice for Syria is a referral to the ICC. But because Syria is not a party to the Rome Statute, the UN Security Council must vote to refer the conflict to the Court.

Islahiye camp for Syrian refugees in southern Turkey © Jodi Hilton/IRIN

In January 2013, the Swiss made a worthy attempt in the form of a letter to the UN Security Council, urging it to hold all parties to the conflict accountable for alleged crimes. Despite receiving support from 58 countries, the Security Council did not formally vote on a referral to the ICC, given that vetoes by China, Russia, and the US seemed inevitable. Most unsettling is the fact that these three permanent members are non-state parties to the ICC, yet they have the power to vote, veto Security Council referrals, and maintain territorial immunity from the Court. This failed attempt at referral serves as a message to the world that the UNSC has a limited ability to act due to its very structure, which too easily allows gridlock to block action.

On 12 May 2014, France made another concerted effort to bring Syrian authorities and pro-government and rebel militias before the ICC for atrocities allegedly committed since March 2011. The French draft resolution was based on the findings of the independent commission appointed by the UN Human Rights Council to investigate human rights abuses in Syria last September. The French text received broad support from the Security Council, and even managed to garner U.S. support, due to its confirmation that Israel would not come under scrutiny by the Court for its occupation of the Golan Heights. The draft also endeavored to appeal to China and Russia by respecting the sovereignty of national judicial systems and leaving room for Bashar al-Assad to step aside with some dignity prior to facing any legal action.

Despite these efforts, on 22 May Russia and China vetoed the resolution. Given this recent development, it appears as though "the civil war in Syria is something of a proxy battle with Russia arming the government and the 'West' arming the rebels (consequently, the (re)solution of the Syrian civil war is likely to depend on the relationship between Russia and the 'West' as much as what happens on the ground). The debate over intervention in Syria is thus not one of action versus inaction."[2]

Despite claims that the vetoes were to prevent Western interference in Syrian domestic affairs, it appears more likely that Russia and China were protecting their own interests. Russia, for example, is undoubtedly concerned with protecting its naval base in Tartus, which allows it to maintain influence in the region. For its part, China is Syria's primary supplier of imported goods, which allows it to wield influence in the region. It also traditionally vetoes measures that allow the international community to intervene in states' domestic affairs, since China itself has a poor human rights record.

In response to the vetoes, a number of Council members highlighted the fact that an inability to act cohesively presented an obstacle to justice in the future for Syria. Many others reaffirmed the vital need to implement special rules aimed at restricting the use of veto in situations where brutal crimes are being committed. Chile and Argentina delivered strong responses to the veto, articulating their concern for Security Council referrals that undermine the ICC, such as including exemptions to UN-funding of Council-referred situations, the fact that the resolution fails to impose any obligation to cooperate on non-ICC members, and lastly it allows parties of states other than Syria to evade prosecution.

The road forward appears to be grim as no plan has been formulated to bring an end to the violence in Syria and solidify a path to obtaining justice and conflict resolution at the ICC. As such, the question then arises; at what point does the world sit back and do nothing, despite the knowledge that unlawful atrocities are occurring? It has been suggested that it is best to wait until the opposition assumes control of the country and then accepts ICC jurisdiction. Studies have shown that countries transitioning to a democratic system are more likely to sign human rights treaties and statutes than established governments. However, waiting for this post-conflict period could take years, which the Syrian people cannot possibly endure. ●

[1] Senior Adviser, United Nations (UN), African Union (AU) & Africa Situations, Coalition for the International Criminal Court.

[2] Kersten, Mark. "Why Syria still won't be referred to the ICC" http://justiceinconflict.org/2013/08/22/why-syria-still-wont-be-referred-to-the-icc/

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

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

We are grateful for the support of Humanity United and the John