

Access

Victims' rights before the International Criminal Court

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61 more victims participate in DRC Situation proceedings

On 24 December 2007, Judge Sylvia Steiner, granted participant status to 61 victims including a school.¹ On our count, this now brings the total number of victims participating in the DRC Situation to 71.

The judge recalled the criteria for an application to be considered complete as well as the principles for being granted victim status for both individuals and organisations. She also confirmed that victims and their legal representatives would not, in principle, have access to non-public documents.

On the criteria for an application to be considered complete, the judge indicated that the following elements needed to be

included:

- The identity and a proof of the identity of the applicant;
- The date as well as location of the crimes committed; and
- a description of the harm suffered.

Judge Steiner also indicated in the 24 December 2007 decision that if the application is made on behalf of a victim, express consent of the victim must be shown. If the victim is a child, then evidence of either a parental relationship or legal guardianship must be given. In all cases the signature or

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Lubanga Case: Landmark decision on victim participation

On 18 January 2008, Trial Chamber I set important precedents regarding victims' participation.¹ The majority decision of this date was given by Judge Fulford and Judge Odio Benito with Judge Blattman dissenting. On 28 January, both the Defence and the Prosecution sought leave to appeal the decision.

The 18 January Decision covered:

- The criteria to establish victim status in the Lubanga case;
- The modalities of victim participation;
- Common legal representation for victims;
- Protective and special measures for victims;
- The dual status of victims-witnesses; and
- Protection for victim applicants.

Criteria for participation in the case

A significant part of the ruling, contested by Judge Blattman in his dissenting opinion, is that victims do not need to bring evidence of harm suffered as a result of the charges confirmed against the accused (Thomas Lubanga). Instead, they have to establish a link to the evidence being brought against

Mr. Lubanga. Victims must establish either:

- i) an evidential link between *"the victim and the evidence which the Court will be considering during Mr Thomas Lubanga Dyilo's trial, leading to the conclusion that the victim's personal interests are affected"* or
- ii) *"whether the victim is affected by an issue arising during Mr Thomas Lubanga Dyilo's trial because his or her personal interests are in a real sense engaged by it"* (Para 95).

Protection of victims and applicants

Regarding the protection of victims, the Trial Chamber decided that in some cases victims could remain anonymous: *"the Trial Chamber rejects the submissions of the parties that anonymous victims should never be permitted to participate in the proceedings. Although the Trial Chamber recognizes that it is preferable that the identities of victims are disclosed in full to the parties, the Chamber is also conscious of the particularly vulnerable position of many of these victims, who live in an area of ongoing conflict where it is difficult to ensure their safety"* (Para 130). However, the Trial Chamber added: *"The greater the extent and the sig-*



Judge Sir Adrian Fulford © ICC

nificance of the proposed participation, the more likely it will be that the Chamber will require the victim to identify himself or herself."

Another precedent concerns the protection of the applicants. Article 43, which has been said to restrict protection to "victims appearing before the Court" has now been clarified,

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61 more victims participate in DRC Situation proceedings

thumb print of the applicant must be shown.

The judge also clarified the issue of applications received on behalf of deceased or missing persons. This has been a point of confusion for applicants, as the application form seems to allow applications to be made on behalf of deceased persons. Judge Steiner indicated that it is not possible to apply on behalf of a deceased person. Family members of a deceased or missing person can apply as applicants themselves if they can show they have suffered personal harm, directly linked with the death or disappearance of a close family member.

Judge Steiner¹ decided not to determine the status of 25 applications on the basis that these were pending before the Trial Chamber in the Lubanga case. She explained that applicants whose status is granted by the Trial Chamber will be automatically considered as victims in the Situation. This last point has been contested by the Office of Public Counsel for Victims (OPCV).

Parties Appeal 24 December Decision

The OPCV² sought to appeal Judge Steiner's decision, claiming that victims' right to participate in a given situation and in specific cases were independent and separate from each other. It submitted that victims who have applied to participate in the Situation should be considered of their own right regardless of whether they are granted

status in a specific case. Furthermore, all the victims who applied and were granted status in the Situation had also applied to participate in the Lubanga case, so the selection of 25 applications by the Pre-Trial Chamber appears somewhat arbitrary to the applicants.

In addition to OPCV's application for leave to appeal the decision, both the Office of the Prosecutor (OTP)³ and the office of Public Counsel for the Defence (OPCD)⁴ also sought to appeal the decision. The OTP questioned the content and the modalities of the procedural status given to the victims and the OPCD submitted that no assessment had been made as to whether the personal interests of the applicants were affected by proceedings in the Situation.

Judge Steiner denied the OPCV's request for leave to appeal, holding that applicants do not have standing to request leave to appeal decisions arising out of their own application process. She granted leave to appeal to the Prosecutor in relation to whether victims can be granted "procedural status" independent of any finding that the requirements of article 68(3) and rule 89 are satisfied, and without addressing and providing for a definition of the personal interests. She also granted leave to the OPCD in relation to: i) whether the right to participate is a general right, or whether victim participation is conditional upon a determination that specific proceedings impact on the per-



Judge Ms. Sylvia Steiner © ICC

sonal interests of the applicants, ii) an assessment as to the propriety of their participation; iii) whether, in order to establish moral harm based on harm suffered by a second person, it is necessary to prove the identity of this person and the relationship between both. ●

¹ <http://www.icc-cpi.int/library/cases/ICC-01-04-423-FRA.pdf>

² <http://www.icc-cpi.int/library/cases/ICC-01-04-426-ENG.pdf>

³ <http://www.icc-cpi.int/library/cases/ICC-01-04-428-ENG.pdf>

⁴ <http://www.icc-cpi.int/library/cases/ICC-01-04-429-ENG.pdf>

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suggesting that victim applicants should not be excluded: "[...] *once a completed application to participate is received by the Court, in the view of the Chamber, "an appearance" for the purposes of this provision has occurred.*" (Para 137). The Chamber also recognises the burdens on the Victims and Witnesses Unit, and held that the extent of such protection will have to be realistic.

Access to filed documents

The Trial Chamber ordered that all participating victims should be provided with the full case index. Applicants should be provided with a public version of the prosecution's "summary of presentation of evidence". Victim participants are to receive, "upon a specific request, subject to a demonstration of relevance to their personal interests, material in its possession and public evidence listed in Annexes ... to the prosecution's "summary of presentation of evidence" (Para 138).

Prosecution seeks to appeal the Decision on three grounds:²

i) **Whether the Statute allows for the participation for victims unconnected to the charges against the accused at trial.** The

OTP also stressed that the extension of the protection of the Court's duty to victim-applicants would impact on expeditiousness;

ii) **Whether participating victims may lead evidence on matters pertaining to the guilt or innocence of the accused.** The OTP indicated in its submission that this capacity would impact on the fairness of the proceedings. It submitted that this created a third party, that would affect the way the OTP executes its mandate and might compromise the appearance of impartiality of the Chamber.

lii) **Whether participating victims have a right to access material in the OTP's possession or control.** The OTP argued that such an "unprecedented rule" would make it lose control over its own material.

Lubanga's Counsel also seeks to appeal the Decision on two bases:³

i) It contested the criteria set out to grant victims' status at trial: The Defence submitted that official documents or two-witness declarations must be required to prove applicants' identity. It added that the Chamber must verify the reliability of the applications' contents:

applicants must show personal and direct harm linked to a crime included in the charges confirmed against the accused. It argued that fair trial considerations require the accused to be informed of victims' identities;

li) The modalities of victims' participation: The Defence claimed that the possibility, granted by the Chamber, for the victims to lead and contest evidence creates a new party against the accused and added that victims' rights are limited to presenting their views and concerns. It submitted that victims do not have any right to be communicated evidence. Finally, the Defence claimed that presenting evidence linked to reparations during the trial is contrary to the presumption of innocence. ●

¹ <http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-1119-ENG.pdf>

² <http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-1136-ENG.pdf>

³ <http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-1135-FRA.pdf>

Colombia's Peace & Justice process: shielding paramilitaries from accountability?

For decades civilians in Colombia have been caught up in a long term battle between left wing guerrilla groups and right wing paramilitary organisations.

In 2005 the Justice and Peace Act was adopted within a broader framework of executive decrees that, according to the Government of Colombia, seek to demobilise the right-wing paramilitary United Self-Defence Forces of Colombia (AUC), allegedly responsible for war crimes, crimes against humanity, other serious human rights violations. The Álvaro Uribe administration sees the disbanding of some 32,000 AUC paramilitaries from 2003-6 as a key step towards peace. However, observers like the International Crisis Group point out that while taking members out of the conflict has certainly altered the landscape of violence, there is growing evidence that new armed groups are becoming active as a next generation of paramilitaries.

The International Federation of Human Rights (FIDH) and numerous other organisations claim that since the adoption of the Justice and Peace Act in 2005, crimes continue to be committed by paramilitary structures. Indeed, since early 2006 the Organization of American States (OAS), human rights and civil society organisations have repeatedly warned of the re-arming of demobilised paramilitary units as well as the continued existence of groups that did not disband because they did not participate in the government-AUC negotiations, as well as the merging of former elements with powerful criminal gangs involved in drug trafficking.

FIDH issued a report in October 2007¹ that alleges that from January to June 2007 alone, more than 770 civilians were murdered in or fell victim to forced disappearance. More than 80 mass graves have been discovered. It is alleged that since paramilitary structures first appeared, they have committed approximately 60,000 war crimes, crimes against humanity or serious human rights violations. According to World Bank statistics, 50-60% of the 2 - 3 million forcibly displaced Colombians were forced from their land by paramilitaries.²

FIDH has submitted several communications to the Office of the Prosecutor of the International Criminal Court requesting investigations. From the outset, FIDH has warned that the Álvaro Uribe administration should withdraw its declaration under Article 124 of the Rome Statute, whereby it denies the ICC jurisdiction over war crimes.

Decree 4760 of 30 December 2005 sets out the requirements for demobilised combatants or armed groups to benefit from the Justice and Peace Act 2005. These include:

- Demobilising, and in the case of groups, dismantling the armed group;
- Handing in all fruits of illegal activity in

order to repair victims;

- Handing over all minors to the Colombian Institute for Family and Well-Being;
- Ceasing all interference with the free exercise of political and civil rights;
- Handing over all abducted persons;
- Laying down arms in accordance with government imposed terms;
- Giving a "free statement" to a prosecutor to pursue an investigation and draw up charges against the former combatant.

The decree also enables victims to "participate actively in proceedings under the Justice and Peace Law by submitting evidence to the judicial authorities, and hearing and challenging any decisions adopted therein." The State is responsible for ensuring that victims receive payments from a Victims' Compensation Fund.

While the process of demobilisation is still ongoing, observers raise serious concerns. It is clear that providing a "free statement" to a prosecutor is a first step in the process, however, it seems that very basic information provided during prior demobilisation ceremonies is being used in lieu of proper truth telling, without the designated Justice and Peace authorities having any direct knowledge of what or how such information was provided during demobilisation in the field. This circumnavigation of the truth telling requirement has allowed 92% of the 30,000 demobilized paramilitaries to benefit from a de facto amnesty.

The paramilitaries exempted by the Justice and Peace Act may be sentenced to no more than 8 years imprisonment, which they may serve in "work farms." They may even impose their own conditions for "imprisonment," which flies in the face of the most basic principles of justice in view of the seriousness of the crimes committed. It so happens that the paramilitaries are in any case actively working on newly acquired farm land. According to statistics available in Colombia, the paramilitaries have illegally acquired 4 to 5 million hectares of land originally belonging to the "campesinos" (peasants) through intimidation, selective killings and massacres. This is triple the amount of land redistributed 40 years ago in Colombia to ensure agrarian reform. Colombia ranks second in the world in terms of the number of persons that have been forcibly displaced.

No reparation has been paid to victims, nor have they been given back title to their land. Despite legal action, the Colombian Government has not redressed the problem. Instead, paramilitaries have been able to develop large territories for commercial agriculture.³

The Constitutional Court has ruled that the Justice and Peace Act should be amended to avoid violating victims' rights to truth, justice and reparations. It struck down a provision

that would have given prosecutors a cripplingly short time to prepare cases. It also was able to impose requirements of full confessions of crimes and provision of information necessary to dismantle criminal networks. However, the Constitutional Court was not able to extend the significantly shortened sentences. In fact, Álvaro Uribe's administration has passed several bills restricting the jurisdiction of the Constitutional Court.

Following observations of the Justice and Peace Act Hearings from May to July 2007, FIDH claims that the "free statement" hearings have become a forum for justifying crimes and paramilitarism. The paramilitaries are not forced to confess their crimes, disclose the truth about who supported their structures, or even show repentance. They have not been forced to turn in all their weapons or hand over illegally obtained assets to compensate victims. Victims and their representatives on the other hand have very lim-



Displaced family from Chinolito. Credit: Refugees International, 15 February 2007

ited access to hearings and are hindered from participating in them. Furthermore, those victims who have attended the hearings have not received adequate protection. Already, sixteen of them have been murdered with impunity.

FIDH's report reveals the lack of true willingness on the part of the Government to bring to trial and dismantle the paramilitary groups. It concludes that the ICC should act to investigate and try those responsible for crimes against humanity committed in Colombia since 1 November 2002.

FIDH concludes that this process appears to have been set up for the purpose of removing the high paramilitary commands from the jurisdiction of the ICC. FIDH has urged the Colombian administration to repeal the legal framework of the Justice and Peace Act or issue a legal framework that complies with international standards.

¹ FIDH's report (Spanish) : <http://www.fidh.org/IMG/pdf/Colombiejustice481-32007.pdf>

² Refugees International : *Colombia: No Incentives to Paramilitary until Victims of Violence Receive Reparations*, <http://www.refintl.org/content/article/detail/5022/>

³ idem.

Interview with KEAT Bophal, Head of the Victims' Unit in Cambodia's Extraordinary Chambers

KEAT Bophal, could you tell us about the mandate of the ECCC and your unit?

The mandate of the ECCC (Extraordinary Chambers in the Courts of Cambodia) is to bring to trial senior leaders of the Democratic Kampuchea and those who were most responsible for serious crimes and violations that were committed during the period from 17 April 1975 to 6 January 1979. In the ECCC there is an enhanced recognition of victims in its proceedings. This reflects the commitment of the ECCC to its mandate of helping the Cambodian people pursue justice and national reconciliation, as stated in the Preamble to the Agreement between the United Nations and the Cambodian Government.

Victims of crimes that fall under the jurisdiction of the Chambers are given a fundamental role in the ECCC. Victims can submit complaints to the Co-Prosecutor who must take the interests of victims into account when considering whether to initiate an investigation or a prosecution. Victims have the right to participate as Civil Parties at appropriate stages, so long as it does not interfere with the rights of the accused or with a fair and impartial trial. Victims have the right to choose their lawyer and when there is a large number of civil parties, the ECCC will organise common legal representation for them. Victims are also afforded the right to collective and moral reparations. The ECCC is responsible for ensuring that victims are kept informed and that their rights are respected throughout the proceedings.

The Victims Unit has been established to assist victims who want to participate in the proceedings. The Unit is the central contact point between the ECCC and victims or their representatives. The Unit will support the work of the Co-Prosecutors and the Co-Investigating Judges by processing complaints and civil party applications and preparing reports for these offices. It will also maintain contact with victims and their lawyers regarding the status of their complaints and applications, and keep them updated regarding developments in individual cases. The Unit also assists victims to obtain legal advice and to organise their legal representation, as well as psychosocial support.

The Chambers is responsible for the safety, security and well-being of victims who participate in the proceedings. It takes measures to minimise risks and to mitigate and prevent victims' psychological burden, which might be triggered by the process of their participation in the proceedings.

The Unit has a neutral role and it aims to enable each individual victim to make an informed choice.



How do victims apply to participate in proceedings before the ECCC?

Victims who might have relevant information about serious crimes that were committed may want to send this information to the Office of the Co-Prosecutors. Victims who have suffered physical, psychological and material harm as a result of a crime investigated by the Chambers, may apply to become a civil party. They can also organise their civil party action by becoming members of an association of victims.

Victims who wish to participate in the proceedings of the ECCC as complainants or as civil parties, should complete a Victims Information Form and submit it to the Victims Unit or to one of the intermediary organisations. It is important to note that civil party applicants should submit their request before the opening of the proceedings of the Trial Chamber. Forms can be requested from the Victims Unit and are also available on the web site of the ECCC at www.eccc.gov.kh. The Forms are also distributed by partner organizations.

The response from victims so far has been encouraging. The ECCC has received more than 600 complaints and civil party applications up to date. At the moment, there are five civil parties participating in the two cases of the Court.



ECCC outreach programme supported by the governments of Australia and Norway. (Stung Treng province) © ECCC.

Does your unit and/or the ECCC conduct outreach to victims?

The Victims Unit and the Public Affairs Section are collaborating in developing a communication and outreach programme that informs victims about their rights and roles. The Unit should identify potential communities where victims may be located, and conduct activities accordingly. This includes reaching out to those members of the Cambodian diaspora community who are currently living abroad by making the Victim Information Form widely available online and producing outreach materials targeted at these communities. These activities will be made possible by drawing on existing networks of victims associations, civil society organizations, and bar associations in Cambodia and abroad.

The Chambers intends to follow the following steps in conducting outreach to victims:

i) The Chambers should first identify and provide support to intermediaries. The Unit must provide these groups with support regarding message development and outreach tools. In order to create a common understanding between the intermediaries and the Victims Unit, it is essential to conduct workshops on material design and consistent message development. The Chambers and intermediaries should engage in continuous consultation as the trial progresses. This will not only allow intermediaries to conduct effective outreach, but also strengthen communication between the Chambers and those victims who choose to participate in proceedings.

ii) Second, the Unit should work with these groups to ensure that victims throughout the country receive a clear and consistent message about the work of the Chambers. In this regard, clarifying victims' understanding of the collective and moral nature of reparations at the ECCC is particularly important.

iii) Third, the Chambers should take into consideration feedback from groups working with victims in the field, in order to amend and simplify the complaint form and any other outreach material.

iv) Lastly, the Unit must develop its own capacity to conduct outreach in those few areas where the networks of intermediaries do not reach.

How is civil party participation different from victim participation at the ICC?

One of the remarkable differences between the ECCC and the ICC in terms of victim participation is that at the ECCC victims can be civil parties and actively and fully participate in the every stage of criminal proceedings. The ICC allows victims to present their

views and concerns to the Court, at stages of proceedings considered appropriate by the judges.

Victims at the ICC also need to apply separately for reparations; this is not the case for civil parties. However, reparations applied to civil parties in the ECCC are limited to collective and moral reparations. The ICC, on the other hand, can order various forms of reparations including restitution, compensation and rehabilitation.

The ECCC has no legal aid programme for victims and no Office of Public Counsel for Victims. In the ECCC there is no Trust Fund for Victims. The ECCC is located in the country where many of the victims are, and will open soon an office in Phnom Penh which victims can access easily. Khmer is one of the working languages of the ECCC which

facilitates the participation of victims by easing outreach, communication exchanges, and making proceedings intelligible and accessible to civil parties.

What impact might victim participation may have on victims?

It is essential for the effectiveness and legitimacy of the Court that victims are part of the process, and that they have their own voice. Participation restores faith in the justice system and provides the first hand satisfaction of making public the harm suffered. The process of participation also allows victims the opportunity to denounce the crimes committed against them and support norms and laws that prohibit such actions and events. Also, through participation, victims can benefit from psychological and social support.

Nevertheless, it is important to acknowledge that involvement in criminal proceedings as victims (witnesses, complainants or civil parties), may entail various risks and psychological burdens. As ECCC staff members, it is absolutely required that we carry out our functions in a manner that mitigates, to the greatest degree possible, such negative elements which may concur with the process of participation in proceedings. •

The Victims Unit can be contacted at:

Victims Unit, No. 6A, Street 21, Sangkat Tonle Basac I, Khan Chamcarmon, Phnom Penh or National Road 4, Chaom Chau, Dangkao, Phnom Penh
Tel. + (855) 23 219 814 Ext. 6058
E-mail: victimunit@eccc.gov.kh

While ICC Prosecutor monitors Sudan, national law reform efforts continue

Under the ICC's principle of complementarity, the Office of the Prosecutor monitors ongoing accountability initiatives in Sudan. The Office has stated that *"this analysis is not an assessment of the judicial system as a whole, but an assessment as to whether or not the Sudan has investigated or prosecuted, or is investigating or prosecuting genuinely the case(s) selected by the Office."*¹

In the Prosecutor's statement to the Security Council in December 2007, he restated that *"there appeared to be no proceedings which were ongoing or had taken place in relation to Harun and Kushayb."* The ICC has issued arrest warrants against these individuals.

While the ICC Prosecutor continues to monitor activities relating to Harun and Kushayb, national initiatives promoting law reform continue in Sudan:

- In 2005 the National Interim Constitution was adopted in the context of the Comprehensive Peace Agreement (CPA).
- The new Constitution contains a full bill of rights that incorporates international human rights standards binding on Sudan.
- The new Constitution also provides for a Constitutional Court composed of nine judges, tasked with, inter alia, the protection of human rights and the adjudication of the constitutionality of laws.

The Constitutional Court became operative in

2006 and a number of cases are pending before it, though few judgments to date have been rendered.

It is perhaps premature to judge the effectiveness of the new Constitutional Court, but it certainly constitutes an important legal avenue whose performance and jurisprudence will be indicative of the state of the rule of law in Sudan.

As seen in the case reported below, lawyers are already using the Constitutional Court to challenge laws violating human rights standards. •

¹ Sixth Report of the Prosecutor to the Security Council, 5 December 2007.

Darfur case before Sudan Constitutional Court Mayor Sayo & others vs. Darfur State Police

Darfuris are challenging the compatibility of emergency legislation with relevant international standards in a case submitted to the Sudanese Constitutional Court in early 2007. The substance of the complaint relates to the lack of an investigation whatsoever into wrongful arrest and detention, the withholding of medical treatment, and the absence of compensation for the violation of individual rights by police officers in North Darfur.

In late December 2006, two policemen entered the Abushauk camp for internally displaced people in El Fasher (North Darfur) at night. A fight took place between the two policemen and unknown persons. The policemen lost their guns in the camp. The chief mayor (first plaintiff) was summonsed along with others and they were assigned to search for the perpetrators and the two lost guns.

The chief mayor, another mayor and the Sheikhs intensified the search for the perpetrators and the two lost guns but they failed. Following that failure, a criminal case was filed against them in El Fasher and they were arrested on 3 January 2007. The total number of persons

arrested was 19. They were kept in detention for 20 days during. They were beaten and punched and subjected to other forms of torture in order to extract judicial confessions and to disclose the whereabouts of the lost guns.

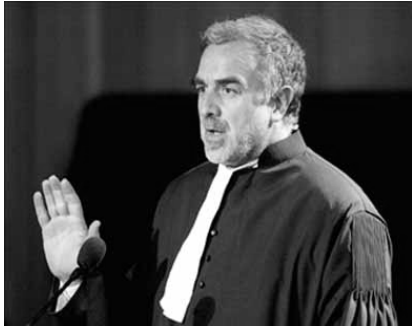
They were released on bail on 23 January 2007 but were re-arrested on 1st February 2007 under the emergency and public safety act of 1997 and the bylaw on emergency and public safety of 1998. They were detained in Nyala prison for 25 days to put pressure on them to supply the lost guns. During the period of detention, the plaintiffs were held incommunicado without access to a lawyer, family member or a medical doctor. The second plaintiff was not provided with medical treatment even though he was seriously ill and requested medical help.

On the 26th of February 2007, the plaintiffs were released by the governor of the north Darfur state. •

Victims' voices in Lubanga Case differ from that of the Prosecutor

Jo-Anne Wemmers, Université de Montréal

In the fall of 2007 I had the privilege of attending two hearings at the ICC. In both hearings, the counsel for victims took a position that was diametrically opposed to that of the Office of the Prosecutor. It was a fascinating experience that illustrated the importance of giving victims a voice of their own.



ICC Prosecutor Luis Moreno Ocampo

In the first instance, the matter at hand was a request by the Prosecutor to reduce the charges against the accused. It was clear why the Prosecutor made this request: this would make it easier for him to prove beyond a reasonable doubt his case. Also clear was that the Defence counsel had no objection to this request, which in effect meant a reduction of the charges against his client.

Normally, this would be the end of the legal discourse. At least that would be the case in common law where there are only two parties: the State and the defence. However, in the ICC victims can participate and to this end, they are represented by a lawyer. After the Prosecution and the Defence outlined their positions, the legal counsel for victims intervened. One of the lawyers representing

victims then eloquently presented the impact of the pending request on victims. It was a wonderful opportunity to hear the voice of the victims. Of course we will have to wait and see to what extent the judges actually let this voice influence their decision, but that is not the main point. More importantly, the victims' voice, a voice that is usually silenced in the court was heard.

The second hearing was even more fascinating. The hearing centred on the question of whether or not the court was responsible for the protection of victims who participated in the proceedings and were not witnesses. Not surprisingly, the counsel for victims was of the opinion that yes, the court was responsible for the protection of this group of victims. Failure to do so, they argued, would have a negative impact on victim participation.

Interestingly, the Prosecutor was of the opinion that the court was not responsible for this group while the Defence did not comment on this question. This was odd. Why would the Defence not comment on the protection of victims, which would probably entail the use of measures meant to protect the identity of the victim? Such measures could arguably have consequences for the rights of the accused. And why was the Prosecutor so strongly opposed? Yes, it would cost money but this did not come from the Prosecutor's budget. Why was this important to the Prosecutor but apparently unimportant to the defence?

One possible explanation is that if victims can obtain protection as participants, then it may be less attractive for them to act as witnesses. If, as participants they can voice their interests without the added stress of

cross-examination and still enjoy protection, it may not be very interesting for them to testify. The Prosecution might lose witnesses and this would make it difficult for them to build their case. Hence, the position of the Prosecution was based on self interest: a desire to retain control over victims.

Often victims think of the Public Prosecutor as their lawyer and the defender of their interest. Indeed, the Prosecution sometimes presents itself as the defender of victims. And while there are times when victims and the Prosecution have shared interests, this is not always the case. Strictly speaking, the Prosecutor represents the State or, in the case of the ICC, the international community. The Prosecutor is not the victim's lawyer. These two hearings made it very clear why the Prosecutor does not and cannot be seen to represent victims' interests and why victims need to have their own voice. In addition, it showed how this voice changes the discourse before the judges as well as the balance of power in the court. In this respect, victim participation in the ICC is the start of a transformation in how we think about criminal justice. ●



Victims' Lawyer Luc Walley

Ugandan civil society raise concerns to Annex of Accountability Agreement

HURINET and the Ugandan Coalition for the ICC (UCICC) raise concerns about the ANNEX to the Accountability and Reconciliation Agreement that was adopted in Juba on 19 February 2008. This ANNEX mandates the Government of Uganda to enact legislation putting into effect the principles found in the Accountability and Reconciliation Agreement adopted on 29 June 2007.

Concerns include:

- 1) The need for transparency and civil society involvement in the design of the entity to be established by the government "to inquire into the past and related matters";
- 2) All perpetrators should be subjected to the same standards of justice;

- 3) The Special Division of the High Court, which is to be mandated to try serious crimes related to the conflict, should try both former rebels and UPDF soldiers alike, and should be given sufficient resources;
- 4) Measures to protect the independence of the Special Division of the High Court should be guaranteed;
- 5) The rights of victims, witnesses and the accused must be protected and special funds set aside for this purpose;
- 6) The planned National Recovery Strategy for the North should not replace reparations to victims or their communities. Separate funds must be made available;
- 7) Uganda's international obligations should be respected. ●

Ugandan Victims' Group sets out its Strategy at Lira Workshop

From 6-8 February 2008 the Ugandan Victims Rights Working Group (UVRWG) and REDRESS held a three day workshop in Lira, Northern Uganda. This was the second in a series of three workshops. Some 30 Members of the group came from organisations large and small spanning across the northern districts of Adjumani, Moyo, Gulu, Apach, Kitgum, Lira and Soroti.

vival and reintegration difficulties for child mothers (formerly abducted girls who escaped from the LRA but are now mothers themselves) were discussed. Basic social services, such as life skills training are in high demand for these young girls who are children themselves and do not have experience or knowledge of how to care for their babies.

ticularly insensitive. In one instance the LRA consultations had taken place on top of an unmarked mass grave. People were very bitter but too scared or pained to talk. It was noted that the LRA team came but showed no remorse, made no apologies and now wanted to be received back with open arms.

Following these reports concerning the views and needs of victims, a strategy was developed to focus on three objectives and related activities:



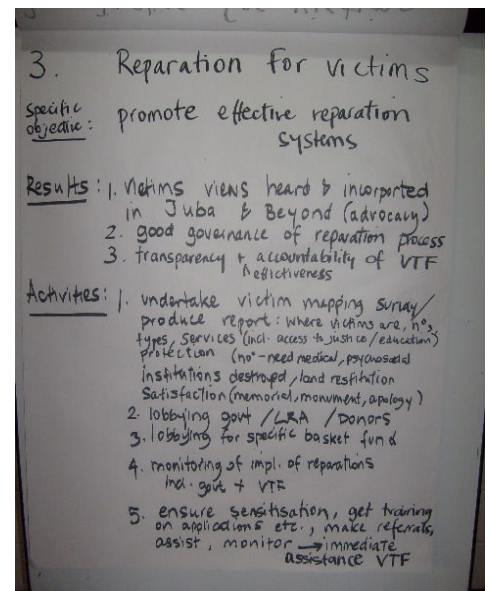
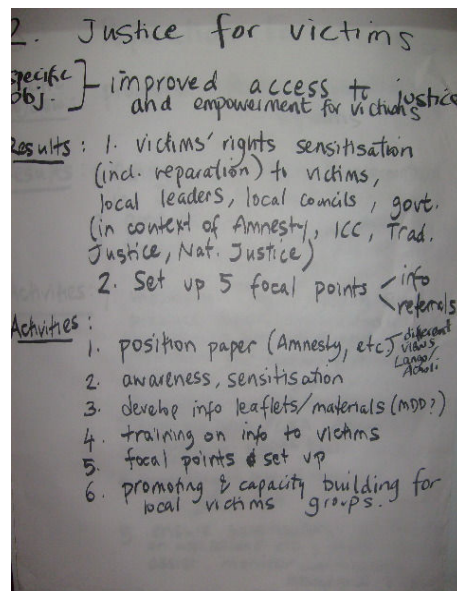
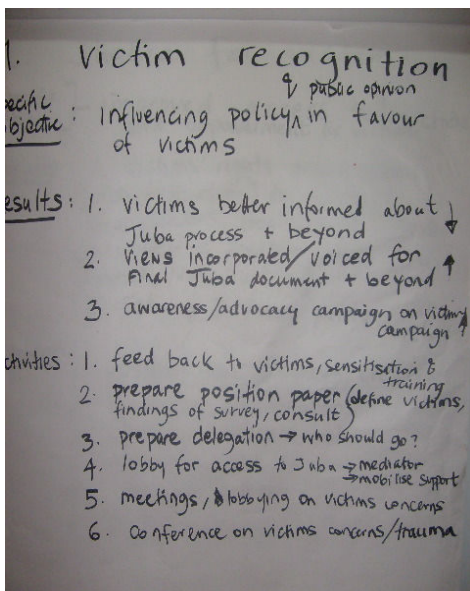
At this meeting members reported back to the Group on consultations they had had with victims in their areas. From the consultations it emerged that generally, victims had no idea they had any rights as a result of crimes they had suffered. Large numbers were in areas with no access to services and little NGO activity resulting in basic medical needs not being met. Many reported victims harbouring bullets, or needing basic equipment such as wheelchairs. The acute sur-

Members also stressed that the peace process was the politicised and confusing environment for victims, who have little access to independent information. In general members reported that the recent government and LRA consultations with victims about accountability and reconciliation in the context of the implementation of the Accountability and Reconciliation Agreement was highly politicised - akin to an election rally. The LRA consultations were said to be par-

- **Victim Recognition.** It was felt that a two way process needed to be adopted to promote recognition for the situation of victims in Northern Uganda whereby victims are better informed and empowered with respect to the political processes that concern them on the one hand and have better access to voicing their needs and concerns on the other;

- **Justice for Victims.** Victims as well as local leaders, local councils and government generally need sensitisation about victims' rights. Training of trainers, production of leaflets and establishing local focal points can be undertaken.

- **Reparation for Victims.** In order to promote effective reparation systems, initially a baseline study or 'victim mapping exercise' should be undertaken to provide data on where victims are, what their needs are, as well as what services are already provided and what their views are on reparation. Then, advocacy and monitoring of government and other reparations programmes must be undertaken, including the Trust Fund for Victims set up under the International Criminal Court's Statute. It is key that the Government's current "Recovery Plan" for the North is seen as separate to the need for specific reparation for victims. •



Pre-Trial Chamber considers first projects of the Victims' Trust Fund

Carla Ferstman, Director, REDRESS Trust

The ICC's Victims' Trust Fund is a vehicle to provide solace to victims and to underscore the important connection between crimes within the jurisdiction of the Court and the suffering of victimised individuals and communities. As Archbishop Desmond Tutu stated at the inaugural ceremony for the Trust Fund in April 2004: 'The law alone cannot repair the scars of war, and survivors need financial support to rebuild their lives.' The Rome Statute referred to the creation of a fund to benefit victims and their families. The Victims' Trust Fund was ultimately established by resolution of the Assembly of States Parties on 9th September 2002. Regulations on the operation and management of the Trust Fund were adopted on 3rd December 2005.

The Regulations provide a framework for the Trust Fund's work, setting out key principles, such as the different sources of funds, how they can be used, how decisions on the use of funds are taken and the relationship between the Trust Fund and the Court. They indicate two main ways in which the Trust Fund may operate: (i) to implement reparations awards determined by the Court; (ii) to support victims and their families through projects if the Board considers it necessary to provide physical, psychological rehabilitation or material support.

The challenges for the Victims' Trust Fund are immense. Faced with vast needs, large expectations and limited resources, the Trust Fund must be capable of identifying, through a transparent process, projects that resonate with local communities and that can also be practically implemented. Its flexible mandate enables it to apply its voluntary resources to the communities broadly affected by the crimes. However, the Fund operates within the context of a criminal justice institution, and this should have a bearing on its strategies as well as on its public profile.

Regulation 50 of the Trust Fund's Regulations provides that when the Board of Directors decides to provide support to victims and their families through activities

and projects, it must formally notify the Court of its intention. The purpose of this notification is to give the Court an opportunity to advise the Trust Fund if a particular activity or project would pre-determine any issue to be determined by the Court, violate the presumption of innocence or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial, in which case, the Court would presumably request the Board of Directors to desist, modify or delay the implementation of the activity or project.

On 24th and 25th January 2008, the Board of Directors provided its first notifications to the Court in the situations of the Democratic Republic of Congo and Uganda. In these notifications, the Board indicated that it had approved specified activities to respond to the needs of physical, psychosocial rehabilitation and/or material support of the victims of crimes within the jurisdiction of the Court. It noted that the activities focus on the crimes committed in the DRC and Uganda situations *generally*, and not on the crimes allegedly committed by identified persons. It also indicated that in order to maximize the number of persons to benefit of its assistance, the Board of Directors specified activities should collectively benefit groups of victim communities and not individually identified victims. It indicated further that the identified projects would be implemented by intermediaries in order to avoid identifying individual victims.

The Office of the Prosecutor submitted observations responding to the Notification. It claimed that since the projects are aimed at benefiting general groups of victims and not specific individuals participating in the proceedings of a case, the analysis of the information did not suggest that the projects could predetermine any issue to be determined by the court, violate the presumption of innocence or be prejudicial to or inconsistent with the rights of the accused. A similar view was taken by the Office of Public Counsel for Victims as well as victims' legal representatives.

The Office of Public Counsel for the

Defence (OPCD) also made observations to the Notification. It expressed concern that as the projects and activities extended beyond the current prosecution focus before the Court, the activities could prejudice the outcome of future proceedings.

The Regulations of the Trust Fund are silent on the extent to which a link is required, if at all, between the decision of the Board of Directors to initiate projects and some specific action or decision relating to a situation or particular investigation. Thus procedurally at least, the project identification is completed unrelated to the judicial process.

The Pre-Trial Chamber has provided the Board of Directors with an opportunity to file clarifications and explanations on the observations and the outcome of this process is expected in due course. ●



Amputation survivors in northern Uganda and TFW Director André Laperrière.
Credit: Gabriela Gonzalez-Rivas © ICC

Working Group affiliated organisations:

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

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