

Minutes of the workshop: “Victim Participation in Transitional Justice Processes”

Phnom Penh, 23rd September 2009

1. Opening Remarks (Thorsten Bonacker)

The workshop was opened by a welcome address by Prof. Dr. Thorsten Bonacker. He started the workshop by presenting an overview of the overall zivik project. Its overall objective is to assess the possibilities of victim participation for strengthening civil society and civil conflict management in Cambodia and Uganda. For that reason, we want to bring people together who are working in transitional justice affairs with special reference to victim participation.

The organizing institutions are the Center for Conflict Studies and the International Research and Documentation Center for War Crimes Trials, both of the Philipps-University of Marburg, and the Chair for Peace and Conflict Studies of the University of Augsburg. The donors are the Federal Foreign Office of Germany (AA) as well as the Institute of Foreign Relations (ifa).

The projects assumptions are the following:

- Transitional justice is a necessary – but not sufficient – condition for stable peace
- The legal approach of transitional justice is important, but not the only possible way of dealing with past human rights violations
- Transitional justice mechanisms and processes are also a matter of civil society actors
- Transitional justice has also to strengthen civil society (vice versa)
- Victim participation is needed for several reasons:
 - To be recognized as victims
 - To make own contributions to transitional justice
 - To be engaged in the political and societal process
 - To gain local legitimacy for transitional justice

Furthermore, it was stated that the projects aims are:

- To discuss possibilities for victim participation with key stakeholders

- To strengthen the link between transitional justice and civil conflict management (no peace and stability without justice)
- To learn about the situation in Cambodia and Uganda regarding victim participation: similarities and differences
- To connect people who are working in the field of transitional justice in different countries

The introducing remarks were concluded by presenting the steps and measures of the overall project, reflecting on the step we are now with the workshop.

Also, Thorsten Bonacker presented the program of the workshop and asked the participants for any changes that need to be made. There were no objections to the program, so the workshop started with the first presentation.

2. Victim Participation and Social Capital (Dominik Pfeiffer)

Victim participation is about empowerment – this is the starting point for the following presentation. I will try to illustrate a potential and the challenges for empowerment through victim participation by using social capital theory. To illustrate the rather abstract theoretical implications, I chose the example of victim participation in Nepal.

In fact, I am of course not the first one to draw the connection between victim participation – it is a central theme in the discourse about this issue. In connection to outreach, DED peace expert Christoph Sperfeldt (2009) states for example: „Outreach processes should be designed to empower victims and survivor communities. (...) There is still much outreach needed to reverse this trend (top-down procedures, DP) to include input from the grassroots level, as has been successfully demonstrated in many Latin American countries“ (emphasis added). The empowerment through victim participation is not limited to the participation in court proceedings. To focus on this in the light of empowerment, it is best to step back and review some aspects of social capital theory. But let us first start with thinking about what empowerment means.

„Empowerment is a multi-dimensional social process that helps people gain control over their own lives. (...) Empowerment also occurs at various levels, such as individual, group, and community.

Empowerment, by definition, is a social process, since it occurs in relationship to others.“ (Czuba/Page 1999) So, to get more insight on what empowerment means, we need to take a deeper look on how social relationships are built up. We will thus review some ideas of social capital theory and social network theory.

Social capital can be defined as the „investment in social relations by individuals through which they gain access to embedded resources to enhance expected returns of instrumental or expressive action“ (Lin 1999: 39) People connect with other people because through the interaction with others they get access to things they would otherwise not have, and this access (the things and the interactions) increases the chance that their actions are more successful.

The resources embedded in social relations can vary. The classic ones are wealth and power. The idea that engaging in social interaction and build up relationships to increase wealth and/or power is common sense and known to e.g. traders and politicians since ancient ages. Also, power does not necessarily mean the limited notion of the term, which focuses on domination (the classic Weberian definition). Nor is power a zero sum game, in the sense that to the extent the power of one group is raised, the power of another group is diminished. Power may also mean shared power, the power to create things a singular individual cannot accomplish, or security from the power of others. In fact, especially the latter one is important when it comes to victim participation. Other resources can also be important: status, knowledge and mental wellbeing. These are especially important to keep in mind for victim participation, too.

Lin (s.a.) differentiates between instrumental and expressive actions. A classic example for instrumental action is using the political influence of a connected actor to put more weight to ones claims. The notion of expressive action is closely (but not solely) connected to the idea that knowledge and mental wellbeing are also resources of social relations. Sharing e.g. the experience of hardships one has endured with others, especially those who might have experienced similar things will help to better cope with the experiences.

The use of the term “capital” also incorporates the idea that social relations and the embedded resources can be accumulated. Although it might not generally be a simple equation (e.g. some relationships are more beneficial than others in a special situation or for certain resources), the more connections one has, the greater the outcome may be.

What does this show us with regards to victim participation? What are the implications of our investigations in empowerment as a social process, a process of increasing social capital? First, we have

seen, that social capital is not only about outcomes of instrumental action, but also for expressive actions. This means, that empowerment through victim participation then not only means that victims get more power to lobby for their interests (instrumental actions). The mental wellbeing of the victims can be supported by increasing their social capital, too (expressive actions). Through sharing experiences about the past, but also about the present, people feel that they are not alone with their endured hardships and can support each other.

Generally, by focusing on the social relations the victims already have and increase their social capital, they get better chances to push through their interests (be they instrumental, be they expressive). But with stating that we have to look at the social bonds that are already in place, another aspect of social networks needs to be mentioned. The relations between people and groups can be distinguished between strong and weak ties. „The strength of a tie is a (...) combination of the amount of time, the emotional intensity, the intimacy (...) and the reciprocal services which characterize the tie“ (Granovetter 1973). So, examples for strong ties can be families or the bonds of good friendship. A weak tie would be e.g. a short-term business contact, a random neighbor etc. Now clearly it is not possible to build up and maintain strong ties with everyone – not even in the direct social environment. But while being embedded in some strong ties is necessary for the wellbeing of an individual, weak ties are also very important, especially when it comes to empowerment. This is because the „strength of weak ties“ (Granovetter) lies in their ability to connect various groups / cliques with strong ties, thus mutually increasing their power.

Our theoretical explanations can be illustrated on the example of the history of the Conflict Victims Society for Justice (CVSJ) in Nepal. The background of the conflict is the civil war between the Royal Government and the Maoist insurgents. When being allowed to file complaints about human rights violations after the conflict, people who wanted to do so had to travel to the capital city of Katmandu. Even after the civil war was “officially” over, this journey could be very dangerous for people from the far provinces when travelling alone. So, in 2003, people in one province started to form small groups to travel together and mutually protect each other. In the terms of our theory, they engaged in social relations for the outcome of more power – mainly in a negative way: to be protected from the power of others. Eventually a big human rights NGO, Advocacy Forum Nepal, got to know about this practice and started to spread the word to other provinces, encouraging people to travel together and filing complaints. They also facilitated a meeting of twelve victims in one province, thereby forming the first Victim Pressure Group (VPG) to lobby further for the interest of the victims. When more of these groups

were build up in the various provinces, strong ties were made up in each of them. So, the next step was to connect these groups with strong ties to each other – via weak ties. This was facilitated in Katmandu in 2007, were after a consultation of 13 representatives of the VPGs a coordinating body was created – and so, CVSJ emerged as a strong civil society actor. CVSJ had their first general assembly in 2009. The role of Advocacy Forum Nepal in the process was a aiding and abetting one. They documented cases, they provided psychosocial, legal and medical assistance and inspired the unification of the victims and later provided training, advisory, financial and logistic support to CVSJ. By empowering the victims through increasing their social capital, step-by-step a strong new actor emerged.

But although the story of Nepal is one of success, there are some challenges to empowerment through victim participation. First, it should be clear that while incentives can be given to pursue this kind of victim participation and victim empowerment, it cannot be a top-down process but is undisputedly a bottom-up version of the concept – the victims have to stand up themselves. Second, victims are not a homogenous group. Their interests and goals may vary and conflicts between them can arise. This is also more likely if different victim statuses exist, e.g. victim vs. victim/perpetrator identities. And third, conflicts may not only arise in the network, but also with other actors and groups outside the network. So, awareness of these issues is a key factor to success and preparations for peaceful conflict resolution must be taken in advance to ensure that increasing the social capital of the victims and the empowerment through this process will be beneficial.”

Discussion

The presentation was followed by a discussion evolving around victim participation and empowerment.

One participant highlighted how victim empowerment is country specific, as different countries have different norms, rules and traditions. Furthermore, it has to be ensured that victims are not victimized for the rest of their lives. Therefore, top-down processes are also deemed to be necessary. Moreover, victims are the ones who know clearly what they want. They have an existing self-interest, so our job is to encourage them to start to do something. The key is to define a curriculum or approach to deal with the situations before we finally work on victim participation. He further mentioned that telling about legal aspects just informs victims about their rights, but that alone does not truly empower them. In the meantime, another representative was concerned about the issues of different groups of victims and throw the question of how we can help victims to work together.

The panelist responded that, of course, some incentives could be given from the states and civil societies. However, it can't always be a top-down process, because some incentives are more negative

than positives. For us, we should think about diminishing negative incentives, though he agreed that cultures, traditions, norms, and ways of life of particular country are need to be taken into consideration. Though the complete definition of victims was not provided at that time, the panelist agreed to use the term victims or survivors (which may be more appropriate, as this has been discussed and debated in Germany and elsewhere).

TJ differs from country to country, but we can at least learn from another country/society and get inspirations for the specific context. In Cambodia, one may find a different political agenda than in Nepal or Germany. The panelist stated that he used Nepal to give an example for instigating the formation of a grassroots victim association. But in transferring this information, we must anticipate the conflict lines of the specific context. For Cambodia, it might be inspiring in the light of the current situation to start to talk about victims participation and empowerment through the lens of the theory of social capital.

3. Presentation by the Victim Unit (Chet Vanly)

One participant from the ECCC's victim unit (VU) talked about the work and operation of the organization and gave an update on the recent proceedings. The victim unit plays very important role in this hybrid tribunal of fixed mandates. As case 001 is proceeding, the VU helps to guarantee that victims—both complainants and civil parties—have rights to participate in all stages; in that, complainants assist in giving evidence while civil parties are given legal representation and are eligible to seek reparations. There are 91 civil parties in case 001 and now 170 in case 002 that have been recognized by the court while more than a thousand applications are under consideration. The reasons for being rejected as civil parties include the lack of ID card, and a number of other reasons. The participant continued by stressing that this tribunal would be a role model for the future, as it ensures that it provides all rights to the victims. The VU provides independent lawyers receiving funds to defend the victims. Currently, the ECCC raised high consideration about having co-lawyers, who are also to be intermediaries in pre-trial and trial stages and in the hearings. This will serve the interest of the victims. It was mentioned that the victim association under the leadership of Mr. CHUM Mey will raise more awareness among victims and will mobilize more victims to join the proceedings.

4. Presentation by the civil party representative (Chum Mey)

The civil party representative shared his experiences about his life before and after the establishment of the ECCC. He also explained his future plan and that he had been waiting for 30 years for this court to exist, as he recalled his scared life under the Khmer Rouge time. With regards to how he was able to participate in the ECCC, he narrated that it was ADHOC that helped him with filing the victim application form, and still helps him to financially afford his participation. At that time, no one knew who he was. A staff from DC-Cam introduced him to Mr. Reach Sambath, the then press officer of the Public Affair Section (now being the Head of Public Affairs). He was disappointed at the beginning when he first learnt about the rumor that victims would not be allowed to take part, but was enormously relieved when learning that he, as a victim, could join the proceeding; he never missed any single day since start of Duch's trial. He said that he did not really have trust in Cambodian judges, but in the international ones. He was not happy that even civil party lawyers were not allowed to make any observation during hearings of Duch's character. To him, 50-60% of justice through this court will be enough to make him happy.

Discussion

Another participant responded that he was so happy to get to know that the victim association is now pending to get approval from the Ministry of Interior and will then be forwarded to the VU and to the ECCC for acknowledgement. He has the objectives to reconcile between victims and perpetrators in every province throughout Cambodia. He has received a lot of questions about Duch from victims, and further mentioned that they sometimes think that it would be useful if Duch were killed, as they think it would bring the 16.000 lives back.

One participant from OSJI contributed that what really struck her is when Chum Mey said that it is very important for victims to speak out. We have the situation to reconcile in post-conflict areas after the ECCC is over. The question is how we can benefit from the ECCC for the future, which is not only about healing but also about reconciliation. It also struck her when the civil party representative said that the court is restricting victim participation. We have not yet taken any good advantages yet. But the VU statement is a very important move; something which did not happen a year ago.

A representative from CJR appreciated the hard work in establishing the victim association and said that it is a way to empower victim participation, and draw the connection to the foregoing presentation. She

asked the representative from the victim association about his prospects after the ECCC's mandate runs out.

The answer was, that there is a long-term dream. He wants to explain younger generations about what happened to Cambodia and to people's lives in the S-21 detention center. He believed that the causality is more than 2 million, as it happened even before 1975. He goes to the court every Monday, Tuesday and Wednesday while he spends his Thursday, Friday and Saturday at S-21. He emphasized that he didn't want to be blamed for not passing the stories to younger generation, and, as a result of this attitude, he told his story to everyone.

A representative from TPO asked about the fact that, when establishing the victim association, it seems to include the victims themselves and also the victim/perpetrators. He asked whether it would be more appropriate if different victims associations were established for the different groups. He said that one needs to define who a victim is or which the different victim groups are

The speaker said that we are building a mechanism for future victim participation and also a mechanism for legal representation for victim participation.

A representative asked the civil party representative if he had been psychologically calm after this period of legal proceeding in the ECCC.

The response was, that before the substantial trial, he felt very interrupted and worried and suffered from insomnia. But after having actually participated in the proceedings, he felt healed and reconciled. His victim association is open to everyone: survivors and perpetrators. If we still divide, there will be no reconciliation. We should use Buddhism as a means to make it meaningful. The logo of the victim association is a woman carrying a baby and walking the other child. This is because a huge burden is always on the women, especially the mothers.

Coffee Break

5. Presentation by ADHOC (Latt Ky)

The representative from ADHOC talked that the vision of his organization is to have a country where human right are respected and the rule of law is guaranteed. The projects at ADHOC include, amongst

others: land issues, the people empowerment project (so that they can manage their conflict themselves), ICC/ECCC in general and victim participation in particular.

ICC/ECCC and civil parties: to provide justice to victims according to international standards, also to ensure that Rome Statute can be implemented in Cambodia, and to prevent such crimes from happening again.

Important elements:

- Nak Chea Bulletin, free of charge across Cambodia; and Radio program in 19 provinces/municipalities; training program of ICC/ECCC—basically providing updated information and knowledge on ICC.
- ADHOC as a networking agent to provide facilitation for CP.
- ADHOC started its project since before the establishment of ECCC.
- ADHOC is also the head of sub-committee of KRT at CHRAC.
- ADHOC provides legal supports and all kinds of support to victims
- ADHOC pioneers the Reparation issue: collective and individual, leading to the national workshop on reparation, whose objectives are very important.
- Rights to sue the criminal and demand reparation.
- ADHOC intermediary between three of the four groups of lawyers, to ensure unity.

ADHOC always cooperates with all other local and oversea NGOs, with VU, WPU, OCIJ and others (formal and informal). In CHRAC they actively participate and share the information among ourselves and hold monthly meetings with other NGOs to learn from each other and to find ways how to assist victims. In this, some NGOs find it difficult to participate, because of their rule and policies.

6. Presentation by DC-Cam (Chy Terith)

The representative from DC-Cam talked about the victim participation project which has been on the run for about 2 years called (VPA) part of “Promoting Accountability” project. The project aimed at reactivating the informal truth commission in the 1980s, 1990s (“Renakse”), when the government collected “petitions”, which were supposed to be used to call for the UN General Assembly to take away the UN’s seat from the KR. There are individual and collective petitions. With the petitions, there are

names and signatures of the individuals and we inform them about their rights to participate. There are thousands of petitions and millions of signatures. These petitions never been sent to the UN and now archives at DC-Cam.

DC-Cam uses the petitions to locate the survivors. They give factual information about the crimes and what happened and ask them if they want to join as civil party. One other reason is that they want to contribute to compiling the history of the atrocity, and they also wish to demand reparation. As this is very limited by the mandate of the court, we have to be careful to not exceed the victims' expectations.

This court does not award individual and financial reparations. And no one so far can say what collective reparations actually mean. What we can do is to ask people about what they really want as reparation. We say it should correspond to their needs, like building pagodas, roads and the like while others say the court should fund Genocide education. But DC-Cam was cautious and said that they can only forward the demands and ideas to the court but that there is no guarantee for fulfillment. For sure, only civil parites with legal injuries can claim reparation.

As Cambodian families are extended families, we should extent the definition of victims of immediate family members as they for sure suffered psychologically.

DC-Cam now is helping Cham victims, and victims abroad through e-mails and foreigners in case 001 and 002. So far, 1600 applications have channeled through the project that started in 2007. More than 95% chose to be complainants rather than civil parties because of limited knowledge about the rights and access to be a civil party. Most are unwilling to participate. Perpetrators participate but they only told one part of the stories: about their hardship and not what they did. In Genocide education tour, one civil party was in fact a perpetrator in the regime.

One common concern is that the younger generation does not believe what happened. They laughed when the elderly told their stories. Therefore, the elder people are very willing to share the information with DC-Cam, as they have tools to spread the information, thus making it more convincing.

Now the plenary of ECCC seems to limit individual's participation. In a press release, they seem to prevent rights of observation, which the DC-Cam representative considers not to be a good move. Personally, to him it seems to be the limiting civil party participation very much, though not entirely putting an end to it.

DC-Cam will continue this informal Truth Commission to let go of their sufferings/stories with it, and DC-Cam will continue collecting stories. Anyway, DC-Cam has very similar objectives than other organizations with regard to healing the nation.

The speaker said that TJ in Cambodia is becoming bigger now. So we need efforts on how to relate these different mechanisms of TJ in Cambodia.

Discussion

A participant asked DC-Cam about the victim's reaction when DC-Cam went back to meet with victims who joined in the petitions. The response is that DC-Cam found out that some of them forgot that they joined the petition, as they signed the petitions in 1983. Hard life and immediate needs are the cause of that. But when talking about suffering in the regime, it seems to be very vivid and recent. Now they could write better petitions if given opportunity to do it again. Even if they choose not to participate in the legal proceedings, they are eager to share their stories. One indicator for their interest is that they called DC-Cam when they saw reports on their work on TV. DC-Cam receives a lot of calls asking for help to fill out the victim participation forms. They also ask for help to find information about their loved ones.

A participant asked who will be liable for the compensation; and what victim's expectations are.

The participant from ADHOC added, that they have 24 offices in the country. So it is not difficult to meet with people to obtain this information. Their KRT project started in 2006. ADHOC also joined in the petitions that were mentioned by DC-Cam. Their priorities now include: Gender-based crimes and Cham, and others as well. ADHOC works directly with civil parties and consults with those wish to file the complaints and refer them to the VU. He also mentioned that they are advocating for victims to be able to participate. Without participation, justice will not be complete, as victims should be the owners of the process and the proceedings.

How to help the victims to participate?

First ADHOC published posters on "Justice and Peace" which caused a lot of complaints from the authorities and others. Then they have training/outreach programs that are conducted in pagodas across the country. As at first the monks rejected to use their pagoda space, it needed to build up trust to make them participate.

Now achievement is that among 1600 victim participation forms at the VU, 1200 are from ADHOC.

Among 93 civil parties in Case 001, 33 are from ADHOC. Among these, ADHOC fully supports 5 civil parties directly to attend the hearing for the complete proceedings.

Regarding reparation, they also spread the information on what is stated in the law, but victims continue to demand more.

ADHOC submitted to the lawyers about what kind of reparations victims' want, regardless of how the judges think about that.

We talked a lot about the possibility of a trust fund. It should be initiated and pioneered by NGOs, before the state institutions take action, as usual.

The DC-Cam representative said that building up a trust fund can be problematic in Cambodia, especially in the light of the corruption allegations so far. This will be a concern, whether it is national managed or international managed or jointly managed. The internationals might leave once the court ends and leave it then to the Cambodian government. Although this might not necessarily bad it can be something to be concerned about.

End of morning session – Lunch break

Start of afternoon session

Discussion

The first comment on the afternoon session by the Victims Unit was about the closing of Case 001 at the ECCC. On the one hand, closing the case soon means reducing the rights of the victims, as less time will be available for them to make their statements and file their complaints. On the other hand, the detention time for the defendants is limited and should not be further prolonged. The rights of the accused and those of the victims have to be balanced. As for Case 002, it was stated that it is not clear up until now in which form and to what extent victim participation will be possible. Victim association and group participation seem to be options. With regards to the suggestion of the one-dollar reparations, the participant from the VU pointed out that while such a proceeding would be possible in the national courts, the ECCC statute allows only collective and moral reparations. But since reparations of just one dollar would be mere symbolic, one could just as well go for these collective reparations.

The civil party representative argued, that collective reparations in the form of building infrastructure are the government's job anyway. And if infrastructure, such as schools and hospitals is being built, who would further supply them? Besides, what are moral reparations supposed to mean? He argued, that

moral reparations could only be individual reparations. Although collective reparations, such as a ceremony for the lives lost is a good action, individual money is needed to pay for the ceremony.

The VU representative answered that there are different interpretations of moral reparations possible. Besides, with regards to the infrastructure issue, it would be the case that here, the perpetrators would have to pay and not the government.

Another issue was raised by the Womens Media Center. Towards the representative from DC-Cam it was asked that, since most of the victims are women, how many of them do participate. Since women are shy, which special mechanisms are used to encourage them? It was added that because many people in Cambodia are illiterate, the emphasis should not be on print media but on radio and television instead, and the films have to look real.

The representative of the victim association was addressed to target more on women, as mothers are closer to the children and are generally better at Public Relations. So, women should be encouraged to educate others.

The representative from DC-Cam agreed that most victims who want to participate are women (around 70%). He said that DC-Cam encourages women to file complaints. He invited the audience to a book launch by DC-Cam at the following weekend and said that DC-Cam has - in cooperation with FM 100.2 - used broadcasting a lot to inform illiterate people, although DC-Cam now reduced their media programs. DC-Cam has also produced a lot of films; the ones who have copyrights on them can be watched at the DC-Cam headquarters.

On behalf of CJR it was stated that they broadcast a session every month in cooperation with OSJI. Although the capacity of the organization is limited, a nationwide coverage is not possible. And although great efforts have been done so far, there remains a lot to be done.

One participant responded by pointing out the connection between development and transitional justice. As research suggests, not every corner of the country is reached, and this is because of too little resources. Two-way communication is always better than one-way communication, but many people are not well educated. Explaining court procedures is difficult.

The moderator closed the discussion round and introduced the further agenda. It is necessary to talk about the case of transitional justice in Uganda as the conference in Marburg in December will be about the exchange of the experts in transitional justice from the two countries. So, two presentations will be

given about 1) about the case of Uganda and 2) about similarities and differences in the processes in the two regions.

7. Presentation on Transitional Justice in Uganda – Background information and report of the workshop in Uganda (Alena Hartwig)

Part 1: History

After the removal of the former leader Idi Amin Dada, elections in December 1980 gave rise to the presidency of Milton Obote and his UPC (Uganda People's Congress). However, the UPC Party's opposition believed that the elections were rigged / manipulated, so that some opposing groups evolved for the purpose of insurgency and the removal of Obote. One of these groups was the NRM (National Resistance Movement) with its military wing, the NRA (National Resistance Army) under the leadership of Yoweri Museveni.

This rebel army waged a guerilla war against the government of Obote and the following government of Tito Okello. Okello got to power when an army brigade took Kampala in July 1985 and proclaimed a military government.

Okello opened negotiations with Museveni's insurgent forces. But in spite of peace negotiations, the NRA continued fighting, and seized Kampala and the country in late January 1986, forcing Okello's forces to flee into Sudan. Museveni's forces organized a government with Museveni as president, dominated by the NRM – which is in force since then.

From 1986 to 1990, the Museveni regime tried to end various insurgencies and. Despite repeated government claims that the NRA had defeated diverse rebel groups, insurgent activity continued, especially in the northern, eastern, and western regions of Uganda.

After the 1995 Ugandan constitution was enacted, the NRA was renamed the Uganda People's Defence Force (UPDF).

Since assuming power, the government of Museveni has largely put an end to the human rights abuses of earlier governments, initiated substantial political liberalization and general press freedom, and instituted broad economic reforms.

But in northern areas such as Acholiland, there has been armed resistance against the government since 1986. The most “important” / well known of these rebel groups is the Acholi based HSM (Holy Spirit Movement), which later turned into the LRA (Lord’s Resistance Army). Acholi is an ethnic group from Northern Uganda, where most of the LRA’s activities took place.

Part 2: LRA and ICC

Now, this leads us to the point where the International Criminal Court becomes relevant. The ICC issued arrest warrants against five LRA leaders in 2005.

The LRA understands itself to be fighting in the name of God, led by Joseph Kony. It is accused of widespread human rights violations, including murder, abduction, mutilation, sexual enslavement of women and children, and forcing children to participate in hostilities (that is the recruitment of child soldiers). The LRA is the only remaining rebel group in Northern Uganda, fighting against the government of Museveni (the UPDF).

The arrest warrants were issued against Joseph Kony, his deputy Vincent Otti, and LRA commanders Raska Lukwiya, Okot Odhiambo and Dominic Ongwen, charging them with crimes against humanity and war crimes. None of these five leaders has been arrested until today. They are hiding in the outback / bush and operating from there, committing further crimes in parts of Sudan and the Democratic Republic of Congo. The LRA has stated that they would never surrender unless they were granted immunity from prosecution. Peace talks between the rebels and the government of Museveni failed because of the remaining ICC arrest warrants.

At least two of the LRA leaders have been killed since the issuance of the arrest warrants: Lukwiya in 2006 and Otti in 2007. Odhiambo was rumoured to have been killed in 2008.

The main crimes Kony and his rebel group are accused of are the widespread abduction of children to serve as soldiers or sex slaves. More than 20.000 children have been abducted by the LRA over the years. Aside from receiving military training, children are abused and often used as laborers, sex slaves or human shields in combat. They are forced to take part on atrocities against their own communities or in the killings of other disobedient children, further isolating the survivors from society and binding them to the LRA. Every night, approximately 40.000 children seek safety from LRA raids in urban centers, where they sleep on streets, in bus parks, church grounds and local factories. Another result of the ongoing violence was the increasing number of IDP’s (Internally Displaced Persons). Nearly 2 million people have abandoned their homes in exchange for shelter in crowded camps for IDP’s. These

“protected villages”, which often lack food, clean water, sanitation, and medicine, are safeguarded by local militias or the UPDF.

The UPDF, as troops of Museveni’s government, launched operations in Northern Uganda to fight the LRA. The UPDF itself has been said to have committed crimes in their struggle against Kony and his rebel group. In its attempts to flush out the LRA, the UPDF bombed and burned down villages. Furthermore, mistreatments of IDP’s by undisciplined UPDF soldiers are reported. This is, amongst others, one point of criticism as regards the involvement of the ICC. Since the situation in Uganda has been referred to the Court by Museveni, the ICC is only investigating the crimes committed by the LRA, but not the ones committed by Museveni’s troops.

Furthermore, the ICC is said to be limited to only one specific period of time, with no regard for the crimes that were committed before the establishment of the Court in 2002 or after the incidents that are not subject to Museveni’s referral and the subsequent arrest warrants.

The people’s view on the ICC is that it admittedly provides an opportunity for victims to participate in the proceedings and that it intends to address the most serious crimes, including gender-based crimes. Nonetheless, the activity of the ICC is under the impression that the issuance of arrest warrants made negotiations between government and LRA difficult and became a stumbling block to peace. Moreover, the focus has been on holding the LRA leadership accountable, and less focus has been given to other important issues like return, resettlement and re-integration.

Victim Participation at the ICC is defined as the right of victims to put their views and concerns directly to the Judges during the proceedings. As participants, victims have the following rights:

- Victims can present their views and concerns to the Court, at stages of the proceedings considered appropriate by the Judges.
- After having been accepted by the Judges as a participant, the Court must keep him / her informed about developments in the proceedings.
- Victims have the right to have a legal representative.
- Victims have the right to ask the Court to take all possible measures to respect their safety, well-being, dignity and privacy.

As you can see, victim participation at the ICC contains a legal status with fewer rights than the victim participation at the ICC – at least according to the situation at the present time. Up until May 2009, the

Court has received 466 applications from victims to participate in the Northern Ugandan situation. The Pre-Trial Chamber has so far admitted 41 victims to participate in the case against Kony and the others. However, real progress in the case has been hampered by the absence of the accused.

Part 3: Different TJ measures

Concerning transitional justice, there are several approaches that can be pursued. Issues of importance for the Ugandan society are

- Accountability for those who have committed violent crimes
- Reconciliation for communities at war with each other and
- Justice.

These issues have taken a center stage in Uganda, a country which has experienced more than three decades of conflict and violence resulting in huge violations of human rights by all parties involved, but with little accountability. For the past years, a variety of community based organizations including traditional and religious institutions and a wide range of civil society actors have tried to understand the existing transitional justice mechanisms in Uganda. They carried out independent and joint consultation processes with the grassroots communities to ensure the inclusion of victim's voices in the peace process. This process culminated in the formation of the Northern Uganda Transitional Working Group in July 2008 with the aim of working proactively and positively and where appropriate in partnership with other TJ actors including

- The Government of Uganda
- The Justice, Law and Order Sector
- Traditional and religious institutions
- Grassroots community initiatives

CSO's in Uganda see the starting point in the understanding of the context, needs and experiences from the point of view of the conflict-affected communities. This is based on the realization that, although "justice" is a universal human attribute, both the concept and the understanding is influenced by other factors which include cultural and religious perceptions as well as the types and magnitude of the problems being experienced by individuals and communities. It is therefore very important to Ugandan

civil society actors to know the people's understanding of those terms and what they want to be done based on their pressing needs and aspirations.

Based on this attitude, all forms of accountability should guarantee the following principles:

- Gender-inclusive justice and the involvement of women in the development of accountability mechanisms
- Meaningful participation of victims
- The rights of the accused and the security of the victims must be satisfied
- Truth-telling
- Compensation
- Reparations
- Appropriate forms of punishment for the crimes committed

Part 4: Juba Peace Talks

Issues of Accountability and Reconciliation were discussed in Juba / Southern Sudan. The Juba talks were a series of negotiations between the government of Uganda and the Lord's Resistance Army rebel group over the terms of a ceasefire and possible peace agreement. Having begun in July 2006 and resulting in a ceasefire by September 2006, the talks were described as the best chance ever for a negotiated settlement to the 20-year-old war. However, Kony refused to sign the peace agreement in April 2008.

Nevertheless, an important aspect is that on 29 June 2007, the sides agreed to the principles of how justice and reconciliation will be handled, the third of the five-point agenda. This agreement is called the Agenda Item No. 3 of the Juba Peace Talks on Accountability and Reconciliation, which incorporated the above mentioned people's suggestions. The LRA and the government agreed that both formal domestic justice procedures and informal mechanisms like the traditional Mato Oput ceremony would play a role in matters of accountability and reconciliation. Mato Oput, which in the Acholi language literally means "to drink a bitter potion made from the leaves of the 'oput' tree" is one of the mechanisms for forgiveness and reconciliation among the Acholi people in Northern Uganda. The drinking of this bitter herb means that the two conflicting parties accept the bitterness of the past and promise never to taste such bitterness again. The payment of compensation follows the ceremony. The victim or his/her family is compensated for the harm done, for example, in the form of cows or cash – if possible.

A further breakthrough in negotiations was reached on 3 February 2008 regarding accountability and reconciliation. A deal was signed which decided that the war crimes would be tried in a special section of

the High Court of Uganda, thus bypassing the International Criminal Court and also removing one of the last obstacles to a final peace deal.

In spite of those objectives accomplished, the full treaty hasn't been signed by Kony until today. The rebels demand a retraction of the ICC arrest warrants, but such a step isn't in sight. The LRA refuses to come out of the bush or to agree to disarmament, so that the next steps on both sides are unclear.

Part 5: Traditional Justice Systems

Many people favor an approach based on the use of traditional justice system. There is a strong belief that traditional mechanisms of justice can be used to compliment formal domestic justice approaches, since it has the potential of bringing a wide range of perpetrators to publicly accept what they had done. Although Uganda has many ethnic groups (there are 56 different groups) and traditional justice systems have been given local names, they have basic common principles. They tend to

- promote community participation in the settlement of conflicts
- re-unite those who have been torn apart by conflicts
- seek to rehabilitate and reintegrate the offenders into the community instead of condemning them to death and long term imprisonment

Such mechanisms can therefore benefit many war survivors.

Changes are required insofar, as traditional justice processes need to recognize women's rights. The challenge is that women are not involved in those processes and that mediation, negotiations, assessing compensation and so on, are all done by men. Traditional justice practices are further devoid of a clear process to address rape, indecent assault and abduction of children.

Part 6: Amnesty Act 2000

A further component of transitional justice mechanisms has been the Amnesty Act 2000. The Act owes its origins to the determination of the people of Uganda to seek reconciliation with those who have inflicted so much pain and suffering through conflict. It was enacted to ensure the return of LRA rebels and the end of conflict. However, victims have not been given any space in the work of the Amnesty Commission.

The Act exempts from punishment or prosecution all those who, since 1986, were actual participants in combat or who collaborated with or otherwise aided the perpetrators of war or armed rebellion. This

applies under the condition that they report to the authorities and renounce their association. The sole exception to the amnesty appears to be the senior leadership of the LRA. But still, individuals may be excluded at the discretion of the Minister of the Interior.

The general attitude towards the amnesty was initially one of indifference. The significance of amnesty began to change in 2005, when the Amnesty Commission began providing “reinsertion packages” to all former rebels, consisting of a substantial cash payment and several household items.

According to the Act itself, “amnesty” has the meaning of “pardon” and “forgiveness”. But the general idea of amnesties has caused some re-integration challenges of formerly abducted children or ex LRA combatants. They are considered both victims and perpetrators but suffer a high level of stigmatization and resentment which has increased the level of trauma and is acting as a barrier to re-integration. A number of people in the community tend to hold returnees with suspicion. Many people are also resentful for the financial aid that is being provided to them by NGO’s and the Amnesty Commission. There is a perception that the returnees are being rewarded for killing and other wrongdoings.

What is left to say is that there is a general feeling that the existing instruments of accountability and reconciliation such as the Amnesty Act have so far failed to deliver peace, justice and reconciliation to the communities.

Part 7: JLOS

As regards legal and political developments in the Ugandan Transitional Justice Process, the work of the Justice Law and Order Sector (called JLOS) comes into play. In April 2008, JLOS takes over the before mentioned Agenda Item No. 3 of the Juba Agreement and creates an administrative war crime court as a special division of the High Court of Uganda. An obstacle to the work of this war crime court could be the massive re-drafting of the ICC Bill, that is the implementation of the Rome Statute into domestic law. It is pointed out that Uganda’s lack of legislation to prosecute war crimes is a clear obstacle to putting Kony and his men on trial in the country. At the centre of the matter lies the ICC Bill that has been languishing in Uganda’s parliament since 2004. The legislation proposes to make the crimes of the Rome Statute punishable under Ugandan law. If passed, it would allow the country to prosecute war crimes and crimes against humanity, including genocide.

In July 2008, JLOS developed a working group for matters of transitional justice. Within this working group, several committees were established (for example truth-telling, traditional justice), but the work of these committees has just started.

8. Presentation on Transitional Justice in Cambodia and Uganda: Similarities and Differences (Wolfgang Form)

Different situational components indicate various forms and strategies of transitional justice. Four main straits can be illustrated:

- Trials and Prosecution (domestic/international/hybrid)
- Truth and Reconciliation Commissions (investigate the past, forging reconciliation, memorializes victims, prevent future violations)
- Lustration (purging the public services; democratization and credibility of institutions)
- Reform of the public Institutions (democratization and credibility of institutions)

Links can be draw from each of these to victim participation. They were presented in the course of the workshop with the following examples:

- Investigating past crimes
- Identifying those responsible for human rights violations
- Imposing sanctions
- Providing reparations to victims
- Preventing future abuses
- Preserving and enhancing peace

In the next step, similarities and differences between Cambodia and the ECCC and Uganda and the ICC can be developed. This is illustrated in the following scheme:

Uganda	Cambodia
ICC – Rome Statut	Law on the establishment of the ECCC
Independent international court	Hybrid court with domestic influences

Focus on individuals who are the most responsible

Focus on individuals who are the most responsible

Nobody has immunity

? (Amnesty)

Discussion

The first response pointed out that the notion of trying only „those most responsible“ is the best coincidence. But, as they haven't been arrested yet in Uganda, how can victim participation be meaningful?

It was answered that the issue of victim participation at the ICC is difficult, even in the future. The main obstacle may be the courts location in The Hague. Other ways of victim participation have to be found in the case of Uganda.

The next question was connected to reparations. How is the Trust Fund founded? Is the money coming from convicted persons or from other sources? How can the victims get reparations?

It was answered that the Trust Fund is still a mere theory. The board, occupied by Desmond Tutu, amongst others, collects money for special situations. Since there is no case finished yet, no decision about how the money is to be used or distributed has been made yet.

Another question was asked about which law would be applied. It was shortly answered: „the Rome Statute“.

A question about the relevant institutions for the outreach of the ICC was answered by pointing out that the Court has several offices in Uganda with the main office being in Kampala. Besides, most of the outreach is indeed conducted by NGOs.

A short discussion arose about the application of truth commissions. It was stated that it is so far a broad issue in Uganda. However, a qualitative TRC as in South Africa to bring out the truth and which would be largely NGO-sponsored might be an option for the future.

Furthermore, another point of discussion was the general topic of lustration, with special questions in regards to de-nazification in Germany and its Italian counterpart. Dr. Form elaborated on the Laws and other measures the Allies used to implement these concepts.

Coffee break

9. Presentation by Alena continued:

Questions of the Ugandians:

Question about amnesties in Cambodia

- Which kind of reforms regarding reparations are there in Cambodia (also in practical terms, besides social services?) Are reparations financial, and further, are they collective or individual?
- Victim participation in Uganda is being hampered. How does it work in Cambodia, is there sufficient victim participation? Which role do NGOs play in this regard?
- In Uganda, civil society has biases against international standards of justice. To which degree does civil society in Uganda accept the ECCC?
- Does the ECCC, being a hybrid court, compromise victim participation?
- Which kind of victims are there in Cambodia, i.e. direct /indirect victims? Are there many "second generation victims"?
- How are victims categorized in Cambodia?
- How are victims organized in Cambodia? Are there victims' organizations or networks?
- Are there, like in Uganda, local / traditional justice mechanisms? If yes, are they used?
- Are there victims who are children in Cambodia? How are they being taken care of?
- Are victims able to speak out against the Cambodian government before the ECCC? Can they speak openly? Are there confidentiality issues?
- Were those victims who officially registered as victims and testified harmed in any way? Security and stigmatization issues?
- In Uganda, many victims can at the same time also be regarded as perpetrators. Is it the same in Cambodia, and if yes, how is this handled by the ECCC?

Discussion

After the presentation of the questions of the Ugandians it was asked if they have been already answered in the workshop there. While it was partly approved, it was pointed out that they represent an incentive for further discussion, especially for the conference in Marburg in December.

Furthermore, as a major difference in the near future it was stressed that the Ugandan government wants to shift towards trials at a national level and that developments in this regard are undertaken at the moment.

More questions were asked about the outreach. Especially the quality was questioned due to the bias of many people towards the ICC. It was answered that the Human Rights Center of the University of Berkeley conducted a survey about the topic, after which efforts in outreach were increased.

Another participant asked whether the death penalty still exists in Uganda, and if it plays a role in the transitional justice process. It was stated that although indeed the death penalty is still law in Uganda, it is very seldom applied. The ICC, bound to international law, does not apply the death penalty.

With regards to the differences in the transitional justice in Uganda and Cambodia, it was suggested that (at least for the general discourse) while in the former the focus is on peace and stability, the later is more concerned about human rights and justice. It was responded that the indictment of Al Bashir shows that there can be no peace as long as accused persons remain in government positions. Peace, stability, justice and human rights have to be thought together.

The last statements of the workshop were about the future outlook on transitional justice in Cambodia. It was said that the process is not over and that it has to be thought of other mechanisms of dealing with the past. Talking about the connection between the ECCC, the victims and the civil society, the statements circulated about improving the two-way communication between the court and the victims. Also, talking about the victim association, one has to think about a future after the ECCC. Finally, the question of reparations were brought up again.

Sok Leang gave an extensive conclusion of the workshop. He summarized the discussions and presentations and stated that they show that a more comprehensive approach to transitional justice is needed and that Cambodian civil society should think of integrating more different measures.

Thorsten Bonacker thanked all participants for their contributions in the workshop. He said that the organizers will be happy to welcome the delegation from the Cambodian NGOs in Marburg in December and expressed his hope that the deep discussion will be continued there.

The workshop closed at 5 pm.

END