



Report on the International Conference

“The Contribution of Victim Participation and Civil Society in Transitional Justice Processes”

in Marburg, December 2-6, 2009

The conference was part of the project “The Contribution of Victim Participation in Transitional Justice Processes to Strengthening Civil Society and Civilian Conflict Management” funded by the German Foreign Ministry’s Program on Civil Conflict Management and Crisis Prevention (zivik/ifa).

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Wednesday, December 2, 2009

Keynote speech on “The Role of Development Aspects in Transitional Justice Processes”

Prof. Dr. Susanne Buckley-Zistel

Prof. Dr. Susanne Buckley-Zistel began her keynote speech by introducing the respective post-conflict and conflict contexts of Cambodia and Northern Uganda and outlined the differences which define each case. Cambodia’s history of mass human rights abuses and genocide dates back 30 years, whereas the conflict in Northern Uganda is still ongoing. Yet there was one common feature: Similar surveys had been conducted in the two countries with a focus on the priorities of the people affected by conflict. In the surveys people were asked to name their “most immediate concerns” which were “poverty reduction, economic growth, health care and education – justice ranked rather low on their list of priorities. In short, development seemed more important than transitional justice” (p.1).

With reference to this example, Buckley-Zistel presented the basic outline of her presentation on the link between development and transitional justice. She emphasized that transitional justice (TJ) and thus different forms of rehabilitation of society after periods of mass atrocities and other violent occurrences affecting a whole or great parts of society is closely linked to international support for development of the respective countries. After explaining her understanding of transitional justice and briefly mentioning its different forms, Buckley-Zistel picked out three instruments of TJ - tribunals, truth commissions and reparations as examples. She mentioned that the link between development and TJ is a new field of investigation and that her presentation was aiming at highlighting some of these links.

Buckley-Zistel used the Development Report of the United Nations Development Programme (UNDP) for her definition of development and pointed out that one common goal of TJ and development can be seen as : “The improvement of relations and structures in order to enhance the well-being of all members of a society” (p.4). TJ approaches this objective by looking at the past, while development efforts focus on the future. By analysing how various facets and impacts of poverty can lead to violence in the long run, Buckley-Zistel highlighted another connection between TJ and development. She thus posed the question whether the different causes of violent conflict in societies – regarding lack of development – must also be addressed in a TJ process in the form of social justice. Moreover, Buckley-Zistel drew attention to further issues where the link between development and TJ becomes relevant.

First, poverty does not only have the potential of creating an environment where violence may emerge, but it is also a consequence of violence in most cases, so one must “exit the conflict trap and [create] conditions for development” (p.6).

Secondly, it was also mentioned that on a world scale interest has risen concerning the convergence between TJ and development. Buckley-Zistel enumerated a number of German development cooperation organizations which have initiated several projects in the field of TJ. Thirdly, Buckley-Zistel expounded the dimension of economic, social and cultural rights (ESC rights) and stated that addressing so called “development-related” crimes must be integrated in transitional justice measures. These crimes refer to issues such as unjust land allocation or land grabbing or discriminating education and health provisions, among others. These might be tackled by addressing breaches of ESC rights in the various forms of TJ mechanisms. She noted further that as a counterpart of these ESC rights, civil and political rights tend to be highlighted much more in TJ processes than ESC rights, which often remain barely or not at all addressed.

At one point of her speech Buckley-Zistel indicated to the audience and specifically to the international guests that practitioners in the field of TJ must carefully assess what exactly their societies need and to formulate their own priorities. An emphasis was put on the fact that TJ initiatives in order to be effective and meaningful within a particular society need to emerge from within that society itself and not be driven exclusively by external agents.

Buckley-Zistel then exemplified the connection between TJ and development by looking more closely at the link between three TJ measures – tribunals, truth commissions and reparations – and ESC rights. How can development and specifically ESC rights manifest themselves in these three TJ instruments? One example of violations of ESC rights being integrated in court proceedings, was a case of the International Criminal Tribunal for the former Yugoslavia, where “the comprehensive destruction of homes and property” was recognized as “the crime against humanity of persecution when committed with...intent” (p.9). Another example of truth commissions and specifically the “independent Commission for Reception, Truth and Reconciliation (CAVR) in East Timor” gave an insight into how even truth commissions can deal with ESC rights. But just like in the case of tribunals, resources, whether financial or concerning time cannot be stretched to an endless extent, which subsequently leads to a moderate reservation in the question of widening the mandate of truth commissions.

Lastly, concerning reparations, their role is primarily found in compensating for civil and political rights restrictions in the aftermath of violent conflicts. Incorporating ESC rights in

reparation programmes may have the potential of laying the foundation for a more “substantial social justice and change” if they are considered “as part of a political project of constructing a more legitimate and inclusive political order” (p.11).

Buckley-Zistel concluded by remarking that development and TJ do converge to some extent since they have similar if not at least one common goal of “improving human lives and societies”. Justice can be served, yet must go along with the tackling of serious socio-economic inequalities, so that “a fragile peace in the aftermath of violence and repression” can be consolidated (p.12). By posing some key questions in regard to the role of development aspects in TJ processes, she finally encouraged the participants of the conference and especially the practitioners in the field of TJ to look at the mentioned links of development and TJ and to examine what is really needed for their own societies.

After the presentation the audience was invited to join in an open discussion. The questions during the discussion mainly revolved around issues of the status of victims and advocacy with international donors to take development issues seriously. Some questions also referred to the danger of one conflict party possibly hijacking parts or the whole of the TJ process.

What reason could be named for lack of development in Northern Uganda (NU)?

The Acholi, an ethnic group of Northern Uganda, among other reasons, had not been integrated justly into the policies of the government.

Could justice be served after years of delay? How could one call the government accountable for its involvement in the specific crimes?

Buckley-Zistel made clear that she is not the one to answer those questions; the civil society in Uganda has to lobby for those issues. There cannot be an answer on an academic level.

What implications does a holistic approach, which includes development aspects, have for practitioners and how can one lobby for this approach with donor countries?

Few other exchanges between the audience and Buckley-Zistel revolved around the issue of reparations and how TJ measures could be more responsive towards victims. Buckley-Zistel made clear in this context, that development cannot be a substitute for reparation programmes, but should rather happen complementary. Apart from compensating for material loss, reparations were also of symbolic nature. The fact that the government of Uganda has submitted to implementing a reparation programme for victims of the NU conflict shows that

it is identifying itself with being a conflict party. Further, the issue of accountability problems of the ICC (International Criminal Court) in Uganda as well as the ECCC (Extraordinary Chambers in the Courts of Cambodia) in Cambodia were addressed by participants from Uganda and Cambodia respectively.

Summing up the discussion, Buckley-Zistel once again pointed out that all issues which were discussed are matters, which in the end have to find their solution, not exclusively but first and foremost within the respective societies.

Thursday, December 3, 2009

Group work presented in the plenary on key questions:

How does your organisation engage with victims? How do you contribute or facilitate victim participation in transitional justice?

Moderator: Prof. Dr. Christoph Weller

Group 1: Chanrith Ang, Julika Bake, Jeudy Oeung, Putheary Sin, Sylvia Opinia, Victor Ochen

Group 2: Alena Hartwig, Benard Okot Kasozi, Christ Ongom, Saray Run, Sophyady Sar

Group 3: Bolin Laing, Christoh Safferling, Joseph Akwenyu Manoba, Mey Chum, Pich Ang, Zahara Nampewo

Group 4: Christoph Weller, Daniel Komakech, Joyce Ayikoru, Leang Sok, Mark Avola, Sophea Im, Daina Hues

Group 5: Boniface Ojok, Minea Tim, Paddy Musana, Sothara Muny. Soviry Vuon, Thorsten Bonacker

Group 6: Chhaya Hang, Dominik Pfeiffer, Kizito Wamala, Ky Latt, Martin Dennis Okwir, Stephen Makumbi

The six international groups presented the results of their work from earlier that morning. The group had collected the following answers¹.

¹ In order to facilitate reading the outcomes of each working group have been summarized.

How does your organisation engage with victims?

- Teach victims the framework of victim participation and provide them support
- Register victims and provide legal (representation), financial and administrative support
- Create networks providing solidarity
- Help victims share information and learn about the victims' history; provide resources
- Linking victims to other stakeholders for specific support
- Provide support for victims' families especially children; humanitarian aid
- Educate and train victims, also train people who can train others
- Provide consultation: conducting individual and group counselling, especially trauma counselling
- Conducting information hearings on victims' rights and on possibilities how to participate in TJ
- Engage with different generations; provide activities for different generations
- Community debates on specific topics related to issues of conflict
- Conducting research, surveys, mapping and documentation/ producing papers related on current issues
- Conducting outreach to the victims' communities, e.g. airing radio programmes, talk shows in selected topics, carrying out interviews, e.g. on gender based violence
- Collecting and submitting victims' views to the court; also help or assist victims to fill in victim participation forms
- Facilitating meetings with victims organisations to provide specialised skill trainings on victims' rights
- Provide capacity to stand alone; have respect for the victims
- Work for the rehabilitation of victims and talk to them about their problems
- Help victims to speak freely without being afraid of any pressure; empower them
- Reach out for forgiveness and reconciliation; facilitate trust building and relationships
- Establishment of a victim association, so that victims speak with one voice
- Enlightening the TJ processes

How do you contribute and facilitate victim participation in Transitional Justice?

- Provide for documentation as a TJ mechanism and keep the records
- Carrying out research studies about different protection mechanisms for victims

- Public awareness to fight victim stigma and promote confidence to victims to participate in TJ; develop information on TJ
- Setting models/examples for innovation
- Using victim-centred approaches, also traditional approaches
- Provide victims with legal representation, physical and psychological support
- Provide capacity building by improving infrastructure and living conditions
- Consult with victims to recognize themselves as victims and motivate them to participate
- Maintaining confidentiality on information regarding victims
- Lobby and build coalitions with other organisations to work in different areas on victim-related issues, also strengthen cultural institutions
- Provide skill trainings to different organisations that can educate victims on their rights and the available justice mechanisms on the international, national and informal level; arrange seminars or trainings to prepare for court hearings
- Organisation of victims so that they can fight back for their rights and establish pressure groups speaking for victims
- Empower victims so that they can start to think about their situation
- Assure victims that they can give testimony and collect victims' complaints
- Involve victims from the beginning of the process
- Bring victims together so they can share experiences and desires
- Organise dialogues between youths and elder people about the history
- Press for a policy change by the government in dealing with victim participation
- To engage the government in the process of TJ and bring the process of TJ closer to the people; outreach

What is important to keep in mind when facilitating victim participation?

- Interests and expectations of the victim, victim protection
- Be patient: consider timeframe needed to work with the victims
- Political, cultural and religious respect, also ethnic minority values; engage victims respectfully; realising different backgrounds; need for education
- International and national law; human rights
- Special interests of particular victim groups such as women, children and others
- What kind of reparations victims require, i.e. individual or collective reparation
- Working closely together with different partners during the TJ Process

- The involvement of victims and informing them at all stages of the TJ processes
- Provide adequate assistance during participation to address emotional and psychological problems; reduce stigmatization
- Monitoring the processes of TJ to identify gaps and address them
- Respecting victims' rights during TJ processes and inform them about their rights
- Advising victims to tell the truth during all justice processes to promote justice and facilitate the reconciliation process
- Respectful treatment and empowerment; provide a good environment
- No further harming, endangering and traumatising of victims; provide a safe platform to talk, giving victims the feeling that they are heard/ public recognition
- Thinking about how the Transitional Justice Process is understood and enabling victims to understand it better
- Giving feedback, especially when someone is denied the status of a victim
- Be clear about the relevant issues
- Listening to the voice of survivors to fully understand the cultural context
- Working *with* victims and not only for them; listen to and learn from the victims
- Identification with the victims; be part of their suffering
- Awareness for the victims' living conditions; engage in their day-to-day life
- Thinking about the definition of a victim which is to be applied
- Trust and honesty from the beginning of the process
- Address but never promise actual reparations; also be aware that justice is possibly the last of their priorities
- Awareness for the question of victimhood

What are the benefits of victim participation from your experience?

- Victims' satisfaction by getting rights
- Sharing of experiences, also knowledge for younger generations
- Victims' voices are heard and recognition of victims
- It gives victims an opportunity to ask for reparation
- Victims' rights can be restored
- Opportunity for victims to articulate their concerns to help in deciding about the best remedies
- It helps in the process of deterring potential perpetrators from committing crimes in the future and promotes the means of holding perpetrators accountable

- It facilitates reconciliation processes for national unity and peaceful coexistence
- It promotes national and international principles in the justice system in the fight against serious human rights abuses and violations
- It helps the government to develop laws and policies which maintain order and peace in the society; promotion of a proper legal system; helps victims to get legal representation
- In the case of Uganda the ICC has facilitated the identification of people, thus furthering their recognition by the state
- In the case of Cambodia just the actual participation itself is a benefit in that people are being heard and enabled to raise their voice; in this regard people are enabled to take the chance especially by providing them with transportation and pocket money to get to the proceedings
- Victims are enabled to get information and skills
- People get knowledge, especially the area of human rights is demystified
- Sustainability and suitability
- Find out the truth and knowledge for the future
- Politics of memory and healing process (through engagement)
- Empowerment through e.g. victim associations
- Victims are not just objects to work for but subjects to work with
- Victims are part of TJ processes and therefore understanding is established
- Acceptance of responsibility and ownership
- More capacity to deal with the past and better understanding of the past

Several questions were asked: How do you teach victims without conditioning a negative thinking about history? What do you teach and what are your assumptions while teaching? Both questions referred to problems too broad to be answered. Thus the moderator suggested to discuss them later.

A representative from Uganda asked what solidarity networks were and how they worked. A Cambodian participant replied that in such networks victims are identified, brought together and are given a room for recreation thus feeling not being alone any longer. It was urged to discuss the following issues later on: What definition of victim is to be applied? When talking about Transitional Justice, do the victims know that they are victims according to that definition and do they know what is being talked about at all?

One of the groups also raised several problematic issues while presenting its results: While the need for justice is high, the resources are few; thus it is difficult to balance the two. The definition of a victim is crucial, especially when, as in the case of Northern Uganda, nearly everyone has suffered. It has to be asked if, by a link to the court, the victims' needs are addressed in an adequate manner, thus if the court proceedings are the victims' trial or the prosecutor's trial and if those two can possibly be separated or balanced.

The following comments were mentioned:

One should reduce politics of memory through victim participation because it is selective. While forgiveness may never become a condition for receiving aid or other support, it is still an element of healing from within. However, a victim may never be forced to forgive. It is important to involve victims in the relevant processes from the beginning. One has to keep in mind what the victims can do for themselves.

These issues were commented as follows:

One should not use a phrase like "victims fight back". It was replied, however, that this is to be understood as "victims demand their rights". Victims must be involved alongside perpetrators. There may be the problem that a person can be both victim and perpetrator. There may still be respect for the perpetrators in the community, so involvement must be cautious, to not give power to the perpetrators.

One of the groups pointed out that, in general, several issues have to be kept in mind. Those are: Victim participation is very complex. The definitions of both victim and perpetrator are crucial. It is difficult to explain their rights to the victims. It is very important to know about the victims' expectations. Victim's lack of knowledge may be a problem.

It was mentioned that it may be beneficial to engage a victim in an informal way rather than in court, so the victim is not overstrained by the proceedings.

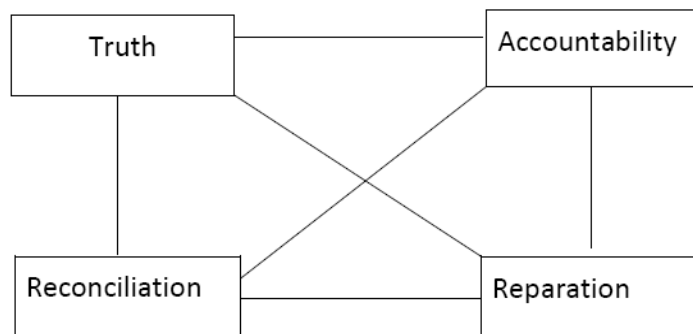
In his closing remarks Prof. Dr. Weller pointed out that there are both differences and similarities concerning the situations in Cambodia and Uganda. Then he expressed his gratitude to all participants and underlined that he was eagerly looking forward to the upcoming discussion of the above-mentioned topics.

Presentation on “Restorative Justice for Victims of Mass Violence”

Speaker Prof. Dr. Elmar Weitekamp

Moderator Prof. Dr. Christoph Safferling

Mr. Weitekamp started his presentation by outlining the key issues and their challenges in a transitional justice process. These are truth, accountability, reconciliation and reparation which are all intertwined.



Mr. Weitekamp then differentiated between “four notions of truth”:

1. Factual or forensic truth, meaning the evidence obtained and corroborated through reliable procedures
2. Personal or narrative truth, meaning the many stories that individuals tell about their experiences
3. Social or dialogue truth, established through interaction, discussion, and debate
4. Healing and restorative truth, meaning the truth that places facts and their meaning within the context of human relationships

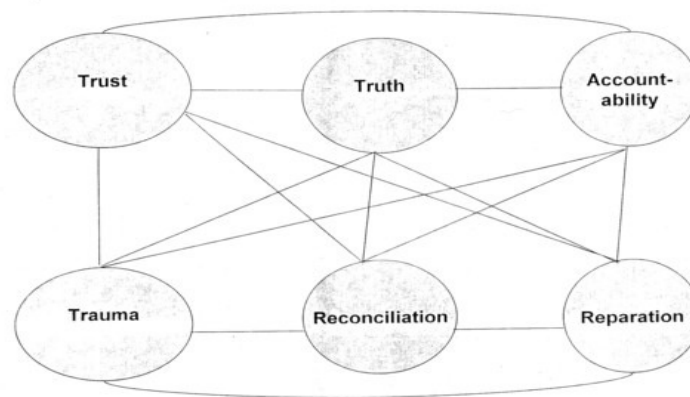
He claimed that new ways are to be explored on the road to global justice. Also, traditional retributive (judicial) approaches to justice should be considered when setting up transitional justice measures. Mr. Weitekamp made a case for restorative justice through listing the problems of (international) criminal justice mechanisms. The latter are based on a Western intervention model and implemented through top-down processes. They focus on punishment and only have short-term vision regarding society and its needs. Restorative justice, on the contrary, focuses on the victim and also tackles the underlying problems.

It follows six key principles:

- Bringing victims and offenders together
- Focusing on the harm that has been caused by the crime
- Holding perpetrators responsible for their acts
- Meeting the needs for victims' redress
- Promoting the reintegration of both victims and perpetrators
- Preventing future harm by building on the strengths of the community and government

Restorative justice is process oriented (Marshall) and goal oriented (Bazemore and Walgrave). It is “a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future (Marshall, 1996)”. Further, “every action that is primarily oriented towards doing justice by repairing the harm that has been caused by the crime” (Bazemore and Walgrave, 1999) may be called restorative justice.

Mr. Weitekamp proceeded to present a restorative justice model for post-conflict situations that he developed together with Stephan Parmentier in 2007. He made the point to further extend the four key notions of transitional justice with “trust” and “trauma”.



Through peace circles, or healing circles, people would be able to be part of a dialogue and thus a trust building process.

Afterwards the groups used the opportunity to ask several questions on the topic.

Are the healing circles part of the dialogue between offender and victim or are they first practised within one of those groups? (German participant)

Mostly healing circles start within one group, offenders or victims, and then bring the conflict groups together. Although healing circles are a kind of peaceful mediation up until today, only a few states still practice those healing circles. The circles are very common in Canada, where healing circles are used before a trial to bring the offender and the victim together. Healing circles are also practised in Scotland and Southern France.

What is the aim of the healing circles? Healing the conflict or preparing the reparation? (Ugandan participant)

Healing Circles are the first step in the process that leads to reconciliation. Healing circles are followed by dialogue which may lead to reconciliation. The result of a healing circle can be nearly everything which is useful for the truth-finding process, to assess what really happened in the past. So the result could be reparation, imprisonment, just revealing the truth or other useful steps for the dialogue.

Which one is the starting point for the process of trust building, which is a problem in Cambodia, because the civilization trusts neither other people nor the court? (Cambodian participant)

The best starting point is the earliest starting point. By starting with education of the younger generation, for example starting in Kindergarten, and using peers as mediators for conflict a large step is taken. A necessary step while educating is to show the younger generation that solving a conflict doesn't need to include violence. This education process needs time, maybe some generations, then the civilization can start trusting again.

After adding the components of "trust" and "trauma" to restorative justice, how do you distinguish between restorative and transitional justice? How important are legal approaches for restorative justice? (Cambodian participant)

Restorative justice focuses on the victims, individually or as a community, which is the main difference to transitional justice. This is why mediation is important for restorative justice, because it is a very effective way to deal with the conflict. Transitional justice can also be seen as a broader term than restorative justice and includes a more judicial process.

Legal approaches can be very distracting from the aim of restorative justice. Restorative justice needs a replacement of the old system, especially the judicial system, because it focuses on retribution and punishment. Ancient mechanisms, that are unique for a country and how they dealt with conflicts within their civilization in the past, are often more helpful than

criminal law and a penalty. Always try to offer possibilities to perpetrators and victims, imprisonment should be the last resort.

What happens if you climb up the scheme and pass the trust building phase? (Ugandan participant)

After trust-building comes reconciliation. When all groups come together and trust is built you can start to reconcile, but only if the trust-building process is accomplished.

Do you think restorative justice can become a real component of the chambers of international criminal courts although it is missing criminal proceedings? (Ugandan participant)

In New Zealand restorative justice works very well in criminal cases, they use family groups where the offender, the victim and the families come together. Those circles try to find a way how to handle the criminal case without the judicial system. If the circle fails, the standard criminal proceedings take place.

What mechanisms are used for restorative justice, especially for the trust building process? (Ugandan participant)

The best way for trust building is bringing people together in some sort of activity. It is not important which activity it is exactly, but by working and living together conflict groups get closer to each other and get into a dialogue which helps them to understand the other part.

Can restorative justice work without a political component, without the acceptance of the government? (Cambodian participant)

This may lead to double jeopardy, because if you don't work together with the state, the prosecutor is not bound to what happens within the restorative justice process. Although the healing circles lead to trust building and the outcome satisfies all needs of the victims, the prosecutor of the state could still prosecute the offender. Therefore there would be no need for the offender to work together with the restorative justice group, if he could still be prosecuted.

Restorative justice is problematic in Uganda, because of the intervention of the ICC. Having this in mind how is the presentation of restorative justice in such an environment and are we looking at restorative justice as a form of informal justice or as a reinvention of how people solve their conflicts, as a human phenomenon? (Ugandan participant)

Re-establishing old values is necessary to bring people together, on the basis of old values people are more comfortable to get in touch with each other. But still this process is quite difficult, because breaking up existing rules and dogmatic needs time. It also helps to teach law students the new system, so they can use restorative justice later on in their profession. Law is often one-way-thinking; therefore restorative justice is more a mixture between informal justice and a human phenomenon.

Restorative justice as a discourse of transitional justice relies very much on the voluntariness of doing this process, but when does punishment begin in this form of justice? (Ugandan participant)

Restorative justice is based on the voluntariness by the victim and the offender. The punishment starts as soon as it comes to a hearing between the groups or if the restorative justice process fails and the standard criminal legal way has to take place.

Is there a difference between reconciliation and conciliation? (Cambodian group)

These are two terms for the same process and therefore they mean the same.

Friday, December 4, 2009

Panel on “Transitional Justice and Victim Participation in Germany”
Speaker: Prof. Dr. Eckart Conze, University Marburg and Günther Saathoff, EVZ
Moderator: Prof. Dr. Christoph Safferling, Philipps-University Marburg

In his introduction to the panel Prof. Dr. Safferling emphasized the importance of two different transitional justice processes in Germany: the first one started with the end of the Second World War in 1945 and last until today, the second one began in 1990 after the fall of the Iron Curtain and, although the prosecution of the perpetrators has ended, reconciliation processes are still taking place. The moderator pointed out that the Panel was going to focus only on how German society was coming to terms with the past after the period of National Socialism. In this context Prof. Dr. Safferling introduced the speakers of the Panel:

Prof. Dr. Eckart Conze: Dealing with the past

The speaker argued that “coming to terms with the past” consists of political, administrative, penal, historical and socio-cultural aspects, but includes also the dimension of historical

learning. Although Germans hesitate to use the term “Transitional Justice” for their own past, in regard to the Second World War Germany is still coming to terms with its history. In the course of the past 65 years, Professor Conze identified four different periods of dealing with the Nazi past in West Germany:

This first period started with the end of the Second World War in 1945 and lasted until the foundation of the Federal Republic of Germany in 1949 (so called Policy of Purge). It was characterized by two main processes: tribunals and denazification. In the former the allies established international tribunals for the Nazi leaders as the famous Nuremberg Trials, where 24 leading representatives were judged, or the so called Nuremberg follow-up military Trials for business men, diplomats, high civil service personal and so on. The latter was a systematic attempt to identify supporters of the regime on all levels with the aim of punishing them and preventing them from regaining public offices. Problems which arose in the denazification process were for example: the identification and size of Nazi regime supporters (sheer masses of NSDAP members and the problem of criteria for identification). Another problem was necessity for reconstruction (of the economy, public structures, educational system...). The need for qualified personal led to compromises in the denazification process. Problematic was also the opportunity for perpetrators to receive mild sentences and to start a new life with a new identity when they managed to hide their responsibility for atrocities during the war. Also the impact of the Cold War provoked the end of the denazification process in 1949 as Western Germany was considered an important ally against communism.

The second period (so called Politics of the Past) of coming to terms with the past after the end of the war was marked by a clear normative, public demarcation and dissociation from Nazism and the assumption of responsibility. Moreover, the 1950s were characterized by a policy of reconciliation (especially with Israel) and first attempts for compensation of the victims of National Socialism. However, a massive effort to reintegrate Nazis (affected by denazification) into German society and public services took place, too. Therefore a lot of amnesty laws were passed in the 1950s accompanied by an enormous public West-german pressure on the allies demanding transformation of sentences. Consequently the former-Nazi functional elites were reintegrated and a continuity of elites in civil services, armed forces, diplomatic services, journalism and industry is observable. In addition, this particular social climate in the 1950s inhibited a debate about the past within society. This consensus of not asking questions, however, is nowadays considered a contributing factor to Western Germany's stability.

In the following period in the 1960s and 1970s (so called Public Memory) the socio-cultural climate change with a growing liberalization and westernization of Germany and led to a new public awareness of Nazi crimes. The development in the 1960s grew apparent during the Auschwitz Trials (1963/64), which were the first trials under German responsibility, the Eichmann Trial in Israel and the foundation of the Ludwigsburg – Institution, a central institution for criminal investigation into Nazi crimes and a political sign for the willingness to deal with the Nazi past. In this period, research on the Third Reich also intensified, which represents the starting point of contemporary history as a discipline. Another important impact on Germany coming to terms with its past was 1968, the year of massive students unrest and youth movements in Europe, which provoked an intensification of the public debate and ended in an generational conflict with students asking their parents about their actions under Nazi regime. The following years showed a broader public awareness of the committed crimes and focused more on victims and their perspective. This development is due to the broadcasting of a US Docu-drama “Holocaust” in 1978. This can be thought of a culturalization of memory e.g. dealing with the past in form of movies, TV series or exhibitions.

Beginning with the late 1970s until now (so called Conservation of the Past period) one can identify an intensification of public memory about the victims of National Socialism. For instance, November 9 has become an important memorial day and a Holocaust memorial in Berlin has been constructed. Moreover, the speaker identifies a globalization of memory (regarding the Holocaust) and a new debate about compensation (of mostly East European victims) after the End of the Cold War. However, there are still pending questions: how can/will the German society remember the Third Reich once the last witness has died? Will there be a change in public memory?

Afterwards the participants took the opportunity to ask Prof. Dr. Conze several questions:

The development in the 1950s was presented as a stabilizing factor for the German State. Was the following chance (from forgetting to remembering) a development within society or a policy by the government?

The speaker clarified that aim in the 1950s was not to bury the past. There has been a strong element of addressing the Third Reich period on state level in public speeches and memorial days. This, however, was often used as an alibi as there has not been any related process on societal level. Therefore it has been a very ambivalent way of dealing with the past.

Who initiated the trials against the Nazi leaders after 1945?

The trials after the end of World War II were a firm intention of the Allies and not of the Germans. Soon after 1945 there was a massive German opposition against those trials of the winners and when the allies relinquished the responsibility of prosecution to the Germans, hardly anyone was indicted between 1949 and 1960. The continuity of elites was the biggest burden that hindered earlier measures.

Did Germany learn from history? Is the youth now more tolerant due to the politics of coming to terms with the past?

The speakers' opinion is that in nowadays Germany there is a wide-spread awareness of the problematic, but he cannot identify major differences between eastern or western youth due to different approaches of dealing with the past.

From an African perspective the Berlin Conference is very important because it led to the colonization of Africa. As Germany serves as a model for dealing with the past, shouldn't it feel obliged to use its impact and influence on EU, AU,.. to advocate for fairness (in governance, trade...) having in mind that a "genocide of poverty" is taking place?

In general German colonialism is regarded as a minor problem in German history. It was seen a long time as only short period in history and Germans regarded themselves without this "burden". This is why Germans often see themselves in a morally better position than other colonial powers. Nevertheless, Germany made the first experiments with genocide in Namibia which is not present in the today's debate. Moreover, Germans have a problem with the universalization of the Holocaust calling colonialism or the forms of international trade a Holocaust, because it is a German consensus to consider the crimes of the World War II to be unique.

Germans themselves consider their reconciliation as a success, but external actors still possess a lot of stereotypes about Germany. Didn't the transformation reach the international level?

Stereotypes about Germans will stay and will constitute a permanent challenge. German policy tries to find a way between the attempt to show how Germany has changed and the dominant picture of Germany as responsible.

Is the dealing with the Nazi past so present in our German society that it prevents us from dealing with other forms of human rights abuses?

Of course, it is very present. But facing the horrors of the Nazi regime, this overshadowing is legitimate. But it never prevented the Germans from addressing other forms of human rights abuses. The opposite is the case, and this tendency has even become stronger after 1990.

Günter Saathoff: Foundation Remembrance, Responsibility and Future

First, the speaker outlined the dimension of injustice concerning the Nazi Regime: about six million Jewish people and 500.000 Sinti and Roma left their life under Nazi persecution, 12 million people were deported and forced to labor, 400.000 persons were sterilized and many other victims more – the context of injustice is very broad and has to be kept in mind when talking about compensation.

60 years were necessary for Germany to find a way how to deal with its past. An historical break constitutes the end of the Cold War as many victims were living in Middle or East-European countries. From 1945 until 2008 a total amount of 65 billion Euro was paid by the German government for compensation of Nazi victims. For force labour victims, compensation was provided by the German government and several German companies. 5.2 billion was the capital of the Foundation “Remembrance, Responsibility and Future” (EVZ) the speaker represents; most of the money was distributed for forced labour and other Nazi victims. The EVZ is a German institution with international focus. It was (in cooperation with several partner organizations) responsible for the payment process, through which more than 1.7 Million forced laborers and other Nazi victims in almost 100 countries were paid an amount totaling to more than 4.8 Billion Euros. These payments programs were closed in 2007. This compensation of forced laborers was possible only due to three factors: the fall of the Iron Curtain, the growing awareness for compensation in the coalition agreement of SPD/The Green and US trials on German companies, which forced political decisions. As the demanded payments would have signified the end to some companies, the solution of administrated compensations was settled.

In addition to the compensation efforts the EVZ now focuses on projects in three different areas: critical examination of history, human Rights and victims of National Socialism. Furthermore the EVZ initiated and realized more than 20 programs, inter alia interviews with

583 survivors to document their experiences, meetings of victims with German youth, social assistance for traumatized people and human rights education

The overall goal of all these projects is to share German Transitional Justice Experiences and to prevent new human rights abuses.

In a very motivated discussion the conference participants used the chance to ask the following questions to the presenters:

How did the process of identification of victims take place?

In the 65 years of compensation politics, some groups have been compensated, others excluded. The Foundation especially focused on the compensation of forced laborers, which were mainly identified by partner organizations in other countries. The Germans only created the standards, but the partners collected the stories and proofs.

Have there been any consultations with victim organizations to find out if money was really what victims needed?

Before compensation, victims always claimed that money is what they wanted, because it also shows the recognition of injustice, the recognition as a victim and the recognition as a person. Afterwards some felt that it wasn't enough and that they needed another kind of recognition but the most of the victims accepted the amounts. We organized encounters with German youth, who were about their age when they were forced to labor. This project shows that compensation is not merely about money, but about morality.

Why did German companies contribute money to the compensation fund? Have there been any legal implications for companies to pay?

German enterprises were always forced to pay compensations; there was always pressure on them. Anyhow, nowadays this is coupled to a growing awareness and willingness to contribute. As mentioned earlier, the pressure on them was the fear of bankruptcy that would have followed the US led indictment. So the payments relieved the trials.

Was there an evaluation of the compensation program?

There will be an evaluation study conducted by the University of Bochum about the acceptance of the payment programs of the EVZ. What is already known through personal contacts, is that most victims after receiving payments felt recognized and rehabilitated, but

others wanted either more money. In general the “morality” of the symbolic payments is most important to meet with approval.

How to deal with the survivors of the Khmer Rouge regime? The courts follow a very repressive legal system that only knows collective reparations. Indeed this is a morally better way than individual compensation. But the question in court is: who is a victim? In Cambodia the notion is that low rank perpetrators are victims too, as they only obeyed the order of rule. Therefore reconciliation is needed and not compensation.

Presentation on “Empowerment of Victims”
Speaker: Dr. Undine Whande
Moderator: Prof. Dr. Thorsten Bonacker

In her introduction Dr. Undine Whande told a very personal story about herself growing up in a nice and peaceful environment. But she always noticed an existential fear in her mother who was in a permanent sense of hurry, of danger, of racing from someone or something, of fighting against some unknown foe in the family’s life. Sometimes her mother got nervous and started talking to herself in angry whispers of which Whande felt embarrassed. In the worst case her mother hit her fists against her head or fell to her knees and prayed. The child felt angry at her mother’s behavior and felt confused. So she had to be strong, somehow pretend that all was fine. Grown up, the girl wanted to have answers on the questions she took with her all her life.

Dr. Whande shared these personal memories not for the sake of the story alone, which speaks to some extent of the realities the children of war survivors are faced with, even if they grow up in times of peace, but in order to locate her voice, the place she was speaking from. She learnt over the years of working in the field of transitional justice that it was as much a journey of making sense of her own story as it was about the bigger questions of how to enable a better future when emerging from a past of atrocity and injustice.

Then Dr. Whande talked about the idea of empowerment with the help of Wikipedia where it is defined as a vast rare landscape of meanings, interpretations, definitions and disciplines ranging from psychology and philosophy to the highly commercialized Self-Help industry

and motivational sciences. Sociological empowerment often addresses members of groups that social discrimination processes have excluded from decision-making processes through - for example discrimination based on disability, race, ethnicity, religion, or gender.

Meaningful in this context was also the fact that power is never given -it is always taken from someone. That means that no-one can 'empower' someone else! Empowerment happens from within e.g. a group or an individual. But a space can be created. It is perhaps possible to enable and facilitate the creation of such a space in which power can be taken, in which people can access their own strength and inner resourcefulness in order to explore and make sense of what happened to them, to find meaning in it and seek out the purpose that springs forth from their experience for the future and for their life.

Hence the very idea of empowerment of victims, individual or in groups, assumes in a way their exclusion, marginalization and deprivation. It does not cast them as resourceful and powerful. But in TJ contexts not everybody who might deem themselves victim is in this way disempowered.

Perhaps it was worth asking: who exactly then are we seeking to empower? To what end? Where does our intention to do so come from? And is what we are seeking really an empowered victim? Or rather a survivor who has transformed the limitations of victimhood? Too often such efforts of empowerment are the result of an unreflected mixture of assumptions that become visible in terms such as 'giving voice', 'empowering' and 'healing and dealing with the past'.

Another topic in her speech was the question if empowerment of victims is in the end about our own redemption (as whites, as the Western World, as whoever) from what Karl Jaspers called metaphysical guilt that makes us co-responsible for all wrong and injustice committed in our presence (whether or not we claim to have known)?

For Dr. Whande "victim" was a negatively connoted word and normally victims are seen in need of help rather than resourceful, rich and strong. But for her many survivors of violence were all three of these things.

Empowerment is individual only, something that belongs merely to the psychological realm, to the modus of the personal. It was shown through some examples that it is from starting

with the personal that the social and the political realm can be touched, more often than the other way around. Dr. Whande found several spaces useful for such a notion of empowerment.

- separate 'safe' spaces for survivors with similar experiences
- spaces in which contrasting and contradicting narratives can encounter one another
- spaces about remembrance and teaching the young
- space for silences

Mamphela Ramphele, an anti-apartheid activist from South Africa once said: 'Transformation has come to represent a way of compensating previously disadvantaged people, rather than creating opportunities for all citizens to contribute their talents and energies to the process of developing our country.'

To facilitate spaces for empowerment to happen, in particular the spaces of encounter between others, it is important to have the courage and the willingness to be changed, to fail, to stand up and persevere, to contribute and accept what each generation can do to belabour the past and give birth to new imagination and new realities.

Working Group I: Victim Participation in Criminal Proceedings
Moderator: Alena Hartwig and Prof. Christoph Safferling
Rapporteur: Prof. Dr. Elmar Weitekamp

Participants: Christ Ongom, Zahara Nampewo, Jeudy Oeung, Saray Run, Chanrith Ang, Ky Latt, Pich Ang, Benard Okot Kasozi, Joseph Akwenyu Manoba

Five central questions for the discussion were posed to the participants at the beginning:

- Should victims have a right to participate in criminal proceedings?
- If yes, in what way?
- Issues of victim protection²

² Only the first three issues were addressed; yet it was felt that, concerning the 4th topic (outreach), Working Group III would sufficiently cover this topic; whereas part of the 5th topic (best practice) was in fact addressed while discussing the first three questions.

- Outreach
- Victim Participation in ICC/ECCC proceedings – lessons learned

Should victims have a right to participate in criminal proceedings?³

It was general consensus among the participants that victims have a right to participate. Though the reasons given for this point of view varied, the participants agreed that victim participation in criminal proceedings is necessary for achieving justice and can help the healing process of victims and society. Some of the reasons given for the desirability of victim participation included that their participation can help the victim to come to terms with the crimes and thus contribute to the overall healing process. It was also mentioned that where there is a perpetrator, there is also a victim, and that the criminal proceedings should not put their sole focus on the perpetrator. The Rapporteur made reference to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (of 29 November 1985 – UN Doc.A/RES/40/34).

In what way should victims participate in the proceedings?

Concerning the actual implementation of the right to participate, the approaches varied. The German side pointed to the structural difficulties of allowing victims to participate substantially in the proceedings. Allowing them to be a party may be problematic, because the victims may be biased. Another issue is quantity – how many victim participants can a trial in a macro-criminal context bear?

Addressing these issues, the Cambodian participants explained the system at the ECCC, which has a civil law approach with a few adversarial elements and allows for a broad participation of victims. In the ECCC procedure, there are three different ways of the victims to participate. Victims can participate as complainants, witnesses and civil parties. While complainants support the prosecutor by sending him statements and reports, witnesses can volunteer to appear in the proceedings. Civil parties, in turn, take part in the proceedings with an own right to actively participate as a party to the proceedings, while not being able to testify. In the proceedings, the civil parties are represented by counsel. The different civil parties are categorized by the kind of their respective victimization. Even though the

³ The following minutes oversimplify the discussion to some extent, in that they do not mention the interventions of each individual participant, but rather categorize the interventions by the nationality of the participating countries. While this is, to some extent, inaccurate, it helps to follow the overall discussion

Cambodian participants conceded that the high number of victims participating in the proceedings has caused challenges, the Cambodian experience is generally positive.

The co-chairman, while recognizing that a more sensible approach has yet to be found, pointed to the problem of managing the participation of a large number of victims, not only in Cambodia, but in international proceedings. It was criticized that each individual victim is hardly personally represented, since it is mediated by victim sub groups and larger groups, which for their part are represented by counsel. The victim is thus personally very remote from the actual proceedings.

The Cambodian delegation pointed out that this was challenging indeed, but that their experience with a somewhat formalized approach of filling out specific forms with the assistance of various NGOs is quite good.

The Ugandan side stressed the fact that it is important for the victims to know that they contributed and that participation of the victims should, from the outset, be on an individual basis, since the interests of individual victims, victim groups and prosecutors differ. It was recognized that their number has to be limited in order to keep the trial manageable and that therefore a legal representation in the proceedings make sense. The Ugandan representatives pointed out that the interests of individual victims may range from claiming compensation to just trying to forget and carry on with their lives. It was therefore proposed that the victim groups should not predominantly be categorized by their victimization, but rather by their personal interests.

This, however, was disputed by the Rapporteur who held that this procedure was hardly feasible. The Ugandan side disagreed and pointed out that this approach could be managed on a case-by-case basis. The chairwoman raised the question how a legal representative far away could be of help at all, and whether it would not suffice to let the victims fill out a form? With this, the Cambodian and Ugandan representatives strongly disagreed and held that it is very important to keep the victims, which usually do not have a higher education, let alone a judicial formation, informed about the proceedings. The Ugandan participants added that in their country, there is a deeply rooted distrust in courts and the legal system in general.

The Cambodian and Ugandan participants made clear that it should not be tried to influence the court by the demonstrative suffering of the victims in open court, since the accused must also be protected. In this regard, the Cambodian delegates pointed out that, at least in their system, there is no need for the victims to be “hooking up” with the prosecution, since they have a genuine right to appeal. They could, of course, assist the prosecutor in his investigation.

Issues of victim protection

All participants pointed out that there are different issues to be kept in mind in the protection of victims, be it physical or mental. The Cambodian side stated that, since the victims are very often not well educated, they are afraid to speak in a court surrounding, which they are not used to. The Ugandan representatives concurred, stressing that traumatized and emotionalized victims can in fact obstruct the truth finding process and criminal justice in general, because of their unpreparedness in regard to the formalities of criminal proceedings. They are thus in constant danger of secondary victimization.

With regard to physical protection of witnesses, it was asked whether Germany has made specific experience with witness protection laws in the post war era. The co-chairman pointed out that this was not the case, since there was generally no particular need for the protection of witnesses, for the war was over and the German society was peaceful overall. Today, there are just standard schemes of witness protection, primarily in organized crime proceedings. In Cambodia, physical protection of witnesses appears to be secondary, as well. Victims can ask for protection only in the trial stage, not before. On the other hand, it was also reported that some victims do fear for their personal security, since the perpetrators still have networks. This situation is fundamentally worse in Uganda, where the conflict is still going on and there is a dire need for the physical protection of witnesses. It was stated that the different international tribunals have witness protection laws in place; these were, however, not discussed in detail.

Ms Hartwig summarized the discussion, stating that while all participants agree that victim participation is a desirable feature of criminal proceedings, the desirable degree of participation rights remains a disputed issue.

Working Group 2 on “Victim Participation in Non-criminal Approaches ”
Moderator: Prof. Dr. Christoph Weller and Dr. Wolfgang Form
Rapporteur: Dr. Marcel Baumann

Participants: Anke Groll, Paddy Musana, Stephen Makumbi, Daniel Komakech, Joyce Ayikoru, Minea Tim, Sophea Im, Boniface Ojok, Sothara Muny, Mey Cum, Bolin Laing, Martin Dennis Okwir, Barbara Kemper, Sylvia Opinia

Introducing the working group Prof. Dr. Weller spoke of the general idea of the work and the outcome and highlighted the common experiences, the collective focus. Although coming from different backgrounds, all the participants shared the same interest in tackling the existing problems. Hence, three aspects were mentioned in every group during yesterday's group work: empowerment, ownership and the question of who should be considered as a victim. Bearing these in mind, there is the opportunity now to work together and to carve out some details for future work.

Which aims of Transitional Justice can be best realized with non-criminal approaches?

And what are the personal experiences in the field?

Referring to the four dimensions of restorative justice, the speaker emphasized the need for building trust. After violent conflicts the truth telling should be promoted to answer the question of: "Why did we end up in this conflict and killing?" Therefore, perpetrators are provided with the guarantee of no-prosecution to induce truth telling and, in the long run, to build trust. There is a need to collect all different views and every aspect has its distinct value that adds to the general endeavor. Consequently the speaker highlighted the need to integrate the survivors (who have an additional value in truth telling), the perpetrators (to possibly find answers to the question of why the killing occurred) and the youth (to prevent future conflict). Television, Radio and face to face talk were mentioned as methods to reach different groups. Although it was said that it is easier for survivors to get access to information.

Why is it easier to approach survivors than perpetrators?

Survivors enjoy more freedom to express what happened. And especially in Cambodia the perpetrators live in remote areas. So they are geographically isolated. This is exacerbated by the fact that there is no trust between the society and politicians on the one hand and the perpetrators on the other hand. Therefore they were satisfied with the solution that the perpetrators established their own order and society in the remote areas. Entering these territories is like entering the enemy's zone.

Do the perpetrators live in a parallel society?

It can be described as coexistence. Especially the perpetrators feel safer in their own administered territory, where they maintain the control over the resources. They are

independent. However, the policy of sharing resources is only possible with trust and safety. Everybody has to respect the law and that is a critical issue in Cambodia.

In Uganda the issue of dealing with the past is handled differently. They do not ask what crime had happened. That would be a legal approach. Instead they focus on the urgent need of restoring the society. It was not a crime committed but a wrong doing - a wrong on the community that has to be healed again. So it is an issue of accountability. But accountability is not to be regarded in a legal manner, but as social responsibility of the perpetrator. The aim is for the perpetrator to accept his responsibility. In order to restore the community again, truth telling serves as a reconnecting mechanism. Truth is to be regarded as the foundation of the community. It is an engagement from a human point of view. All this does not mean impunity for the perpetrator. This is rather a western misconception. These mechanisms are not just symbolic, they enhance real reconnection. Referring to the retributive procedure of the ICC, the speaker accentuated the difficulty of reconnecting once the distinction between victim and perpetrator is established in the court. Having this in mind, justice rather should be conceptualized as how to bring people back to talk, how to reconnect the people? This broader view is contained in the traditional mechanisms. Another advantage is the fact that perpetrators are readier to talk in the community, because it is not as intimidating as in courts. Therefore, truth can be expressed in its fullest. And to bring justice can sometimes mean to bring perpetrator and survivor together to talk.

Another Cambodian speaker highlighted trust as well. It is especially important for the victims to encourage the members of society to show a good relationship. It is this trust building mechanisms that have to be fostered in every aspect and in the smallest unit. Hence, it can be regarded like the relationship between neighbors that are eager to help each other. This constant assistance makes life possible. But also the biggest units are to be integrated. The Cambodians need the assistance of the international community. There are projects in Cambodia where people in communities are taught how to raise cows together. This is a way to bring people together, to make them talk and build up trust.

A Ugandan speaker takes up this topic of a joint endeavour. He mentions the connectedness of humanity. The grief over the death of people is not only felt in the affected society, but in the whole world. Therefore the tradition of Ubuntu is not an African one only. As the connection is humanity, we can share our experiences and decisions to learn and move forward.

Another comment put forth the problem of institutionalized law. Rather than being a legal problem, it is a human problem to restore societies in the aftermath of violent conflict.

A German participant agreed in general with the preceding speakers but raised the question of the ability to transfer solutions across different countries. She stressed the different cultures and the different societies. She asserted that we have learnt to deal with conflicts in different ways and even the meaning of community differs. Therefore the transfer is very difficult and a unique solution more meaningful.

Another Ugandan speaker disagreed with this notion. He saw the differences just on the surface. Having said this he continued to expound upon the disadvantages of retributive justice. In his opinion criminal procedures, hence, are just one form of violence and are not targeted at sustainability. Fear of punishment is not the right basis for future building. Also Transitional Justice brings in violence when it comes to legal processes. It just serves to distribute and ascribe punishment, and does not foster coexistence.

The African society, however, has strong ties and does well to use them. As persons feel touched by the community, it can be used successfully. People undergo special procedures that enable others to forgive. Punishment is not helpful, but rather counterproductive. Criminal processes can not heal bitterness and only suppress direct violence. In this manner forgiving is not possible.

The rapporteur also disagreed with the former notion of non-transferability. He mentioned his own work that deals exactly with different cultures that use instruments of restorative justice – be it Northern Ireland or the Pacific Islands, be it state actors or not state-actors. The variety is huge and what unites them is the conviction that punishment does not solve the needs. To tackle the needs re-education of the society and the conflict behaviour is necessary. And this is best to be exercised by the society and not the state. This is a question of ownership, also of the conflict. Punishment also bears the problem of re-offence and therefore does not work to end the conflict in the long run.

Picking up the initial question, which aims seem to be best realized by non-criminal approaches, another comment called the attention to the problem and the cause of the problem. Punishment, in his opinion, just takes away the person, but the problem continues to exist. He also agreed that the victim – perpetrator distinction is difficult and causes a lot of problems. Also the ownership is questionable when it comes to legal processes. They take it away from the people, because the show is run by others, most often by the internationals. He plead for the process to be given back to the people as they can handle it better.

Another comment took the same line. It stressed the restoration of the relationships, which will not be realized by punishment. There also remains a stigma of punishment, namely you go to prison guilty and come out guilty.

The discussion was picked up by a Cambodian victim of the Khmer Rouge. He talked about his experiences and the current situation. He described an atmosphere of "do not see, do not hear and do not speak". Children are brainwashed, which raises the question of Human Rights in times of conflict. It is a question of education, and therefore very susceptible to the context. He also raised the difficult question of how to deal with high profile perpetrators? Is restorative justice possible for them? What if they do not show remorse or did not change? What if they do not even show respect for the trial or the attending victims?

Picking up these questions, a German participant stipulated that talks can just be entertained at community level. Therefore victims need trials at the national level. A combination is needed. Hence the question where restorative justice should start was raised. Some suggested that it can also be promoted when perpetrators are released from prison.

Restoration can also be done at national level. There should be a national agenda of reconciliation. The focus should be on listening to the truth telling and dealing with the question of how it happened.

Is restorative justice really solely a healing process? Is it a kind of panacea to overcome the shadow of violence on the society? And what are the advantages of criminal procedures? What the shortcomings?

A Cambodian speaker tackled these questions and demanded the prosecution of top leaders that concerted atrocities. But this procedure is inefficient for low profile perpetrators. He stressed that we have to respect the perpetrators too, as they had traumatic experiences as well. Therefore Cambodians regard these perpetrators also as victims and try to include them in non-criminal ways to reconstruct relationships and reconnect with community again (if they live close by). The pending question is, how to learn to express emotions and experiences. Trauma and trust work at the same time. He therefore demanded symbolic gestures like apologies or assistance in rebuilding infrastructure.

Another Cambodian speaker took the same line and highlighted the time factor. As law and legal processes depend on evidence, these procedures are very time consuming. Law is not capable of dealing with immediate needs.

He also introduced the religious notion of Karma, which accompanies restorative justice. Doing well is essential in the Buddhist belief and therefore supports the participation in these processes.

A Ugandan speaker also emphasises non-criminal approaches. Especially in absence of formal justice and institutions, restorative justice is computable in the communities. It also has the advantage that it does not lead to victimisation, besides its flexibility, morality and adaptability. So we should resist the temptation to uniform or institutionalize it.

In the end a German participant dwelled on the intersection of the two forms of justice. When to adopt one and when the other? Do we need the combination with cultural responsiveness to promote peace?

Summarizing all the comments, Wolfgang Form introduced his model of five different level: They consist of state level, province, regional, cell/community and family level. He stressed the uniqueness and distinctiveness of all the levels. Restorative justice loses the possibility to ensure trust building as you go higher on the ladder. Therefore other tools are needed for these levels and so maybe traditional, retributive justice mechanisms can be a possible mean to find truth and reconciliation.

Working group 3: Public outreach and information
Moderators: Daina Hues and Dominik Pfeiffer
Rapporteur: Patrick Kroker

Participants: Chhaya Hang, Putheary Sin, Soviry Vuon, Kizito Wamala, Sophyrady Sar, Leang Sok, Mark Avola, Victor Ochen

The moderators suggested to deal with the following three questions.

- What are the challenges/achievements so far?
- What questions do you have to the participants from other countries?
- What issues would you like to discuss today?

After working on these questions in small groups for about 15 minutes working group 3 started to collect and discuss the answers of its participants.

What outreach and information activities does your organization engage in?

- Mass media campaign (radio, TV)
- Community dialog/mobilizations (through traditional cultural structures)
- Publications/documentary
- Grassroot engagement/training (of citizens)

- Assist victims
- Treatment activities
- Advocacy
- Face to face communication
- Seminars/meetings/public forums

It was pointed out that it is necessary to distinguish between the target groups on the one hand and the different ways of distribution on the other hand. As target groups of outreach were considered: family, groups, youth and women (widows). As its distribution ways are used: radio talk shows, leaflets, reports, newsletters and personal contact (face to face communication). The working group members confirmed widely the importance and usefulness of (radio) talk shows for outreach and transitional justice. Some broadcasts and TV programmes in Cambodia or Uganda are rather interactive (e.g. call-in talk shows) and popular.

What questions do you have to the participants from other countries?

The following table illustrates the challenges public outreach and information are/were confronted with in Uganda and Cambodia as well as the achievements that have been made since the beginning of the transitional justice phase.

Challenges	Achievements
Poor basic understanding of formal proceedings	Target groups understand process and their role
Invite/engage perpetrators → disbalance	Call-in talk shows have success in improving accessibility (eg perpetrators are handed over to the ECCC)
Hostility/threats because of information dissemination	Outreach has been successful for lobbying/policy change
“It’s a slow process”	Awareness arising among youth
Trust issues	Improves attitudes
Negative position towards juridical system	More victims come forward with their stories
Insufficient funding/limited resources	Stronger allegiance to tradition
Generation gap	
Government not held accountable/not willing to admit responsibility for crimes	

What issues would you like to discuss today? Which role do cultural institutions and traditions play? How optimistic/pessimistic are Ugandan NGOs regarding Transitional Justice? How did Cambodians manage to overcome cultural divides?

Many problems of Transitional Justice depend on the ethnic, social, religious and national conditions of a society. The discussion emphasized some specific differences between Cambodia and Uganda. It was stated that there are several dozens of tribes living in Uganda. Each of them is based on its own traditions and cultural institutions which makes the TJ process sometimes more confusing. Here emerges the necessity of regional strategies of national or local NGOs. And it is respect for all groups that appears to be the decisive premise for national initiatives.

On this point the discussion showed that preconditions in Cambodia are probably better because of Buddhism being an effective medium of social and religious integration. But taking into account the considerable minority of Muslim Chams the aspect of Buddhism can't be the only reason for recent successful TJ activities. Although the Chams might be classified as a specific victim group they consider themselves as Cambodian. Of course, such an attitude combined with having equal rights in victim participation (and TJ processes in general) can make special outreach for a certain group unnecessary.

Nobody in the circle doubted the importance of cultural institutions and traditions for public outreach and information. But some participants also stressed the usefulness of mass media, e.g. interactive radio talk shows which have the advantage of two-way-communication. Despite their tendency to entertainment mass media offer good opportunities for innovative outreach concepts. What about broadcasts informing both about severe human rights violations and the chances of Transitional Justice in a literary way? Such outreach could especially find the interest of uneducated and younger audiences. Amongst other things artificial media like comics or novels are suitable to distribute the messages of NGOs engaged in TJ processes.

Towards the end of the meeting the working group members from Uganda and Cambodia questioned the German staff members about their experiences in a society which is in a certain extent still characterized by a post-conflict situation. Unfortunately, the time was not sufficient to discuss this issue more detailed.

Closing remarks
Speaker: Prof. Dr. Christoph Safferling

In his closing remarks, Prof. Safferling summarised the three days of the conference. In his 15 minutes speech, he stated that the remarkable character of the workshop was due to the different viewpoints with which the participants looked at the subject of the conference: victim participation. The participants were able to bring in their respective experience and professional expertise, be it as a member of an NGO, as academics or lawyers. The fact that the participants came from different countries, all of which have gone through or are going through transitional justice processes, proved very fruitful, for the participants were able to learn from one another and establish networks.

Professor Safferling centred his remarks on what he called a “multi-level” aspect of transitional justice. He identified five different levels: international, national, community, family and individual. On these levels, the strategies of transitional justice are different, but nonetheless essential. Professor Safferling went on to analyse whether and where criminal justice can play a role in the transitional justice process. At the “upper levels”, international and national, criminal prosecutions can be useful for achieving justice, in that they stigmatize the worst perpetrators. On the other hand, criminal law with its oversimplifying approach (“black and white scheme”) is often not particularly useful for the overall truth finding process, which is essential for a society in coming to terms with its past. Societal and collective aspects are widely blinded out in formalised criminal proceedings. Therefore, at the “lower levels”, i.e. the individual, family and community levels, other forms of conflict resolution must be found, e. g. with restorative justice approaches.

The “multi level” approach is therefore to be flanked by other aspects, which Professor Safferling identified as transdisciplinary and transnational aspects.

As regards the transdisciplinary aspect, in addition to law, such disciplines as (socio-) psychology, sociology and political science are needed to implement a promising system of transitional justice. At the different levels within the said multi-level approach, different mechanisms must be applied, borrowing from all of the said disciplines. At the “lower levels”, non-judicial mechanisms will often prove to be more promising than criminal law. As regards the individual, family and also community levels, reconciliation and the quest for truth are the foremost goals of the transitional justice process; these can often be reached more

effectively by restorative than by criminal justice, implementing, for example, the work with traumatized victims and their psychological and social care.

On the other hand, while it is true that, as one of the participants of the conference remarked, it is essential to work *with* the victims, and not *for* them, in criminal justice, as far as the “upper levels” (international, national) are concerned, the vast majority of the victims will be relatively remote from the proceedings and will therefore be less involved. Here, the work will actually often prove to be *for* the victims, not *with* them.

The second flanking aspect of the “multi-level” approach which Professor Safferling pointed to is the transnational aspect.

Foreign intervention and help from the outside is often needed to help societies in the process of coming to terms with their past. This holds true for all of the said levels. At the “lower levels”, experts coming from the outside can help in the reconciliation process. A look at the interior of a society from the outside can be generally useful. In some cases, and this applies especially to the “higher levels”, even an international intervention with coercive measures can be necessary. As the German example shows at least for the transitional justice process after the Second World War, foreign intervention is often needed in order to hold the perpetrators accountable and implement a scheme of alternative processes at the lower levels. The identified “multi-level” approach can thus only be successfully implemented via transdisciplinary and transnational mechanisms, which are interconnected and depend on each other.

Summing up, Professor Safferling reminded the participants that the said processes of transitional justice can take very long. Recalling Dr. Saathoff’s morning presentation, in which Dr. Saathoff had spoken on reparations for foreign slave workers during the Nazi era who received (a little) compensation more than 40 years after the fall of the 3rd Reich, Prof. Safferling called upon the participants to have patience.

**„The Contribution of Victim Participation and Civil Society in Transitional Justice Processes“
Marburg, 2-5 December 2009**

Short biographies of Speakers and Rapporteurs



Susanne Buckley-Zistel is currently a professor at the Centre for Peace and Conflict Studies at the University of Marburg. Before that she was visiting professor in Berlin and project director at the Otto-Suhr-Institute in Berlin. Her previous research projects include dealing with the past after the Rwandan genocide (Peace Research Institute, Frankfurt), the nexus between development assistance and violent conflicts (King's College, London) and conflict transformation in post-war societies.



Elmar Weitekamp is a restorative justice expert in Germany . His research focuses on the relationship between the restorative justice movement and the human rights movement which led to truth and reconciliation commissions. He currently serves as Professor of Criminology, Victimology and Restorative Justice in the Department of Criminal Law and Criminology at Katholieke Universiteit in Leuven, Belgium.



Undine Whande is a social anthropologist and mediator. She has accompanied the process of the Truth and Reconciliation Commission in South Africa and worked as a mediator at the Centre for Conflict Resolution in Capetown. From 2002-2005 she was working as a Civil Peace Worker at the Peacebuilding Organisation U Managing Conflict. Whande's work focuses on civil society interventions in transitional justice processes.



Patrick Kroker is a research assistant at the University of Hamburg at the Department of European Law. He spent several months as an assistant at the Extraordinary Chambers in the Courts of Cambodia. Currently, Kroker is writing his doctoral thesis and working as a teaching assistant in Administration Law and Procedural Administration law at the University of Hamburg.

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Eckart Conze is Professor of Modern and Contemporary History at the University of Marburg and Deputy Director of the ICWC. His academic focus lies on the history of international relations and the history of the Federal Republic of Germany. He is chairman of the Independent Historians' Commission appointed by the German Foreign Minister in 2005 to investigate the history of the German diplomatic service during the Nazi regime and in its aftermath.



Günter Saathoff was an assistant professor at the University of Marburg and the University of Applied Sciences of Emden until 1990. He worked as an academic coordinator for the fraction Alliance90/The Greens in the German Federal Parliament with the main focus on legal compensation for Nazi victims and the victims of the former regime of the German Democratic Republic. Since 2003 he is Member of the Board of Directors of the foundation Remembrance, Responsibility and Future (EVZ) in Berlin. He was responsible for the payment process, through which more than 1.7 Million forced laborers and other Nazi victims in almost 100 countries got payments totaling more than 4.8 Billion Euro.



Marcel M. Baumann, born in 1975, studied Political Sciences, Psychology and History at the University of Freiburg and Basel. After his M.A. in Peace and Conflict Studies at the University of Ulster (Ireland) he is now a research assistant at the Arnold Bergstraesser Institute in Freiburg. Moreover he took a doctoral degree at the Humboldt University of Berlin on the Fragility of Peace Processes. His work concentrates on Peaceful Conflict Management and Peace Theories with focus on Northern Ireland, South Africa and Macedonia.

List of Conference Participants

Name	Organisation	City	Country
Ms. Alena Hartwig	zivik Project - Philipps-University Marburg	Marburg	Germany
Mr. Ang Pich	ECCC Victims Unit	Phnom Penh	Cambodia
Ms. Barbara Kemper	DED/Makerere University	Kampala	Germany
Mr. Benard Okot Kasozi	Refugee Law Project	Kampala	Uganda
Ms. Bolin Laing	Accompany for Chum, YRDP	Phnom Penh	Cambodia
Mr. Chanrith Ang	KKKHRA	Phnom Penh	Cambodia
Mr. Chhaya Hang	Khmer Institute of Democracy (KID)	Phnom Penh	Cambodia
Mr. Christ Ongom	Uganda Victims Fund (UVF)	Lira	Uganda
Mr. Christoph Safferling	zivik Project - Philipps-University Marburg	Marburg	Germany
Mr. Christoph Weller	zivik Project - University of Augsburg	Augsburg	Germany
Ms. Daina Hues	zivik Project - Uganda Coordinator	Kampala	Germany
Mr. Daniel Komakech	Gulu University, Institute for Peace and Strategic Studies	Gulu	Uganda
Mr. Dominik Pfeiffer	zivik Project - Cambodia Coordinator, Philipps-University Marburg	Marburg	Germany
Mr. Eckart Conze	University of Marburg, Chair for Modern History	Marburg	Germany
Mr. Elmar Weitekamp	University of Tübingen	Tübingen	Germany
Mr. Günter Saathoff	Foundation EVZ	Berlin	Germany
Mr. Jeudy Oeung Joseph Akwenyu	CHRAC	Phnom Penh	Cambodia
Mr. Manoba	Ugandan Coalition for the International Criminal Court (UCICC)	Kampala	Uganda
Ms. Joyce Ayikoru	Participatory Rural Action for Development (PRAFORD)	Yumbe	Uganda
Ms. Julika Bake	zivik Project - University of Augsburg	Augsburg	Germany
Mr. Kizito Wamala	African Center for the Rehabilitation and Treatment of Trauma Victims (ACTV)	Gulu	Uganda
Mr. Ky Latt	ADHOC, KRT	Phnom Penh	Cambodia
Mr. Marcel Baumann	University of Freiburg	Freiburg	Germany
Mr. Mark Avola	Ker Kwaro Acholi	Gulu	Uganda
Mr. Martin Dennis Okwir	Empowering Hands	Gulu	Uganda
Mr. Mey Chum	CP case 001	Phnom Penh	Cambodia

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Mr. Paddy Musana	Makerere University, Peace and Conflict Studies Programme	Kampala	Uganda
Ms. Putheary Sin	Youth for Peace (YFP)	Phnom Penh	Cambodia
Mr. Saray Run	Legal Aid of Cambodia	Phnom Penh	Cambodia
Mr. Sophea Im	CJR	Phnom Penh	Cambodia
Ms. Sophyady Sar	CDP	Phnom Penh	Cambodia
Mr. Sothara Muny	TPO	Phnom Penh	Cambodia
Ms. Soviry Vuon	Women's Media Center of Cambodia (WMC)	Phnom Penh	Cambodia
Mr. Stephen Makumbi	Teso Initiative for Peace (TIP)	Soroti	Uganda
Ms. Susanne Buckley-Zistel	University of Marburg, Chair for Conflict Studies	Marburg	Germany
Ms. Sylvia Opinia	Concerned Parents Association	Gulu	Uganda
Mr. Thorsten Bonacker	zivik Project - Philipps-University Marburg	Marburg	Germany
Ms. Undine Whande	DED Bonn	Bonn	Germany
Mr. Victor Ochen	African Youth Initiative Network (AYINET)	Lira	Uganda
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Ms. Zahara Nampewo	Human Rights and Peace Center (HURIPEC)	Kampala	Uganda