

EXPERT MEETING
CENTRE FOR JUSTICE AND RECONCILIATION
21 – 24 September 2003
REPORT

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INTRODUCTION TO THE REPORT

On 17 July 1998 in Rome, 120 States adopted the Rome Statute for the establishment of the International Criminal Court (ICC) in The Hague, The Netherlands. The ICC has jurisdiction over genocide, crimes against humanity and war crimes, committed after 1st July 2002 (date of entry into force of the Statute). A unique task of the Court is its duty to guarantee the rights and interests of the victims at all stages of the proceedings.

With a view to this, Justice and Peace the Netherlands, based in The Hague, has taken the initiative to establish the Centre for Justice and Reconciliation (CJR). Justice and Peace, just as the organisations Cordaid, Solidaridad and CMC with which it co-operates, has a network of partner organisations around the world, especially in areas where conflict and violence rule. These groups have indicated their strong interest to co-operate with the CJR: to be shown the way to the ICC and to receive assistance in national lobby- and education activities. In addition, the CJR aims to serve as an expertise centre to contribute to reflection and initiatives around themes of transitional justice: establishing the truth and going through reconciliation processes. In doing so the Centre will operate from a broad international and inter-faith basis. The Centre will be advised by an International Advisory Council.

While preparing the establishment of the CJR it was felt that further exchange with experts was necessary around the issues at stake and the mandate of the CJR itself. From 21 to 24 September 2003 Justice and Peace therefore invited a group of sixteen experts to come to The Hague. They held in-depth discussions on the themes 'Truth and Reconciliation', 'Supporting Victims' and 'The Support of Victims' Rights at the International Criminal Court'. Also included was a visit to the ICC. The agenda of the meeting is attached. The meeting was certainly successful. Its fruitful debates benefited everybody and have greatly enriched Justice and Peace in drawing the vision and mission of the Centre for Justice and Reconciliation. Once more we thank all experts for their enthusiastic and inspiring contributions.

Herewith you will find the report of the expert meeting. It will provide the reader with a reflection of the discussions held, as well an understanding into the plans of the Centre for Justice and Reconciliation. The CJR was officially registered on 10th of December, 2003, International Human Rights Day.

Centre for Justice and Reconciliation
The Hague, December 16, 2003

I. TRUTH AND RECONCILIATION

Introduction by Guillermo Kerber (World Council of Churches)

In the last years we have been witnesses of how Truth and Reconciliation Commissions (TRC) spread around the world¹. It is interesting to note the addition of the word “Reconciliation” to these Commissions. Truth Commissions have been an instrument to deal with issues related to human rights violations in more than twenty countries in the last three decades². But only in the last one, after the South African Truth and Reconciliation Commission, these two concepts have become a “trade mark” of these initiatives. This addition has not been done without strong discussions. In the Peruvian case, for instance, many human rights organizations still question the inclusion of this concept. For many, it is only a Christian perspective that instead of adding something to Truth weakens the process of pursuing justice.

Therefore, if we are for a Centre for Justice and Reconciliation (CJR), we should make it clear that Reconciliation not only does not diminish the importance of Justice but opens it to a different dimension, which includes restorative processes, reparations and healing.

It is important, however to admit that the resistance to include reconciliation has historical bases. In some cases the voices of the churches have called for reconciliation requesting that facts from the past should be forgotten. But these facts included summary executions, torture, and disappearance!

The reconciliation process

I believe that some of the classic moments of the reconciliation process, as understood by the Christian churches, although related to the individual, could offer some criteria of discernment to pursue true reconciliation³.

One of the moments of the reconciliation process is the moment of *confession*. In it the sinner recognizes the sin he/she has committed and asks for forgiveness. Confession includes the acknowledgement of the violation committed, of the harm produced and the acceptance of the own responsibility.

¹ Cf. e.g. ROSENBERG, Tina, *Truth Commissions spread and adapt*, International Herald Tribune, February 27, 2001.

² Cf. the excellent study by HAYNER, Priscilla B. *Unspeakable truths*, Routledge, New York 2001.

³ Although some authors point out the difference of perspectives on reconciliation from a Protestant and a Catholic perspective, I prefer not to enter into this discussion taking into account the goal of this introduction. A good summary of these perspectives are presented by Robert SCHREITER in *The ministry of reconciliation* (Orbis, New York 1998) in the following way: “For Protestants, there is an emphasis on reconciliation as the result of Christ’s atoning death and the justification by faith. By focusing on the atoning death, this position has the advantage of seeing reconciliation in continuity with the saving acts of God through history, especially in a theology of covenant. If there is a classic location for a Protestant theology of reconciliation, it is Romans 5:6-11.

The Catholic emphasis would be slightly different, focusing on the love of God poured out upon us as a result of the reconciliation God has effected in Christ. Here the emphasis is on the new creation. If there is a classic location for this theology, it is 2 Corinthians 5:17-20” (p. 14).

This acknowledgement of the fact and its consequences has a lot to do with the issue of truth⁴. A week ago a colleague and friend, who has been working on human rights for twenty years and is now working at Human Rights Watch, told me the following: “*You know, for years I have thought that to create commissions to investigate what had happened was a waste of resources. We knew, I thought, what had happened. However, now after having participated at different TRC processes I realized we didn’t know, societies didn’t know what happened in their own countries*”.

I think this is true. Having heard from victims the atrocities committed in Peru or Sierra Leone, for instance, I realized, truth is not something fixed, abstract, an absolute value, “*Veritas*”, but something painfully built through the sharing of memories, experiences, sadness and hope.

Reconciliation as a spiritual journey

In Ayacucho, when the public hearings of the Peruvian TRC began, victims (most of them indigenous) walked for days to deliver their testimonies. It was indeed a physical walk through the Andes, but also a spiritual path towards recovering their violated human dignity. Coming before the International Criminal Court (ICC) will also be a physical journey. I think perhaps one of the contributions of the CJR would be supporting the spiritual journey. Firstly, a journey for the victims. To continue their journey, it is crucial that victims be listened at while telling their stories, as their own approach to truth.

But secondly, a journey also for the perpetrators. Many of them will not recognize facts and responsibility. This wouldn’t be surprising. It’s the same attitude of Cain when he denied having killed his brother. But the accompaniment of both victims and perpetrators coming to the ICC would be an issue to be discussed at the CJR.

Thirdly, a journey, a reconciliation process for the whole society. The reconciliation of the society is one of the requisites, I believe, of restorative justice procedures. At the communal level it is quite clear that restorative process’ methodologies have as goal not only to restore relationships between victims and offenders but within the whole community⁵. Shifting from community to national and international level on Restorative Justice procedures is still a big challenge. But if we pursue, as I think we should, reconciliation within the whole society, then other means should be looked for. I am thinking specifically of the awareness-building

⁴ In the Introduction to *Impunity. An ethical perspective* (WCC, Geneva 1996), Charles HARPER synthesises the common threads from the studies in six countries in Latin America. “A number of common ethical themes appear as prerequisites for the achievement of reconciliation, in other words, wholeness for society and for its individual members:

- The importance of preserving memory
- The need for the truth to be known and told
- The need for punitive justice to be served
- The need for acknowledgment to be made
- The role of forgiveness
- The primacy of hope” (o.c. p. XV)

⁵ From a theological perspective, Alan FALCONER wrote “The Hebrew and New Testament understanding of ‘remembering’, then, makes of memory-memorial a dynamic process where the past is contemporary. The identity and self-understanding of the community is celebrated, responsibility is accepted and forgiveness of sin sought.

The reconciliation that results from this way of remembering will be honest and vital, never cheap. Such reconciliation entails recognising the interdependence of our histories, even appropriating each other’s histories, through which each will empower the other to be free. Through the reconciliation of memories a new identity is born” FALCONER, Alan, *Remembering* in FALCONER, A. and LIECHY, Joseph “Reconciling memories”, The Columba Press, Dublin 1998, p. 17-18.

responsibility of the CJR and the relation with the media that has been and still is a hard work for many TRCs.

Reparation

The process of bringing their stories, cases before the Court and to the public is in itself a process of restoring human dignity⁶. When you are witness of the testimony-taking procedures you can see the changes in the faces of the victims and in some cases of the perpetrators.

The notion of *reparation* is also central to the process of reconciliation. The spirit of the ministry of reconciliation is to relate the reparation to the sin that has been committed. There should be a direct relation between sin and reparation. In many cases the reparation cannot change the damage, the harm made. If a person was killed, if a girl was raped, if a child lost his hands because of the explosion of an antipersonnel mine, there is no possibility to get back to the previous stage.

In many cases the issue of reparation has been central to TRCs, Tribunals and Courts. Discussions on reparations were many times limited to the State possibilities to give economic reparations to the victims⁷.

But let me stress the need of *symbolic reparations*. The CJR should consider how it can contribute to this process.

After more than fifteen years of democracy, relatives of disappeared people in my own country Uruguay are still looking for different ways of symbolic reparations. There is a large memorial monument in Montevideo. They appreciate this symbol. But they are continuously looking for more. This could also be a never ending story.

A never ending story

From the Christian theological perspective, “true reconciliation is an eschatological process that doesn’t reach its perfection in history, but is a never reachable however obligatory aim”⁸. Perfect reconciliation can never be reached but is a constant exigency. In other words the circle of reconciliation is open, it is not closed.

⁶ “Criminal justice thus makes an extremely important contribution to the process of restoring broken relationships by:

- restoring the human dignity of the victims on the eyes of society and in their own eyes;
- recognizing the humanity of the perpetrators by affirming their responsibility;
- educating public opinion by affirming the supremacy of the law over vengeance”

JACQUES, Geneviève, *Beyond impunity. An ecumenical approach to Truth, Justice and Reconciliation*, WCC, Geneva, 2000, p. 36.

⁷ However it has been very clear for years that reparations should not only be limited to them. “A whole series of non-monetary means of reparation may be made to victims of gross violations of human rights, depending on the situations, the nature of the violations and the position and needs of the victims. (These include) reinstallation in a function, provision of new employment, pension rights, medical and educational services, social security, housing, restoration of reputation, acknowledgement of wrong done and, last, but not least, revelation of the truth...” van BOVEN, Theo, FLINTERMAN, Cees, GRÜNFELD, Fred, WESTENDORP, Ingrid, “Seminar on the Right to restitution, compensation and rehabilitation for victims of gross violations of Human Rights and Fundamental freedoms: Summary and conclusions” in KRITZ, Neil (ed.), *Transitional Justice* (vol I) p. 500.

⁸ COMBLIN, Joseph, *Teología de la reconciliación*, Conference at the Congress of Moral Theologians in Latin America, January 2002 (mimeo).

Discussion

Truth and Reconciliation Commissions

The final report of a Truth and Reconciliation Commission does not automatically lead to reconciliation. The process of reconciliation is a never ending story or at least a very long process. It would take generations to overcome the trauma of violent conflict situations. However, the work of most TRC's is of major importance in itself and therefore deserves support as a form of transitional justice. Often NGOs and/or churches prepare truth reports before the establishment of TRC or parallel to them. These reports may very well be complementary to the official reports, as was the case in Guatemala.

The question was raised whether in a situation like present-day Democratic Republic of Congo (DRC), where the perpetrators of past human rights violations are still in power and fighting continues in many regions, a Truth and Reconciliation Commission would nevertheless be a good option. It was stressed that TRC's should not be seen as a magical solution to solve every problem in society. It cannot just stop the fighting. It will also be very difficult to have the proper TRC setting and implementation of its recommendations when no real transition has taken place yet. Further reflections seem needed before establishing a TRC in the DRC.

The concept of reconciliation as a "never ending process" encountered support from many participants. The example of Georgia was mentioned. Its transition from Soviet province to independent country is completed, there is no open conflict. However many divisions and misconceptions are prevailing in people's minds and result in suspicion and discrimination by many. Therefore, it is important to identify the different stages in a country's reconciliation process and intervene with the right conflict prevention methods.

The relation between a TRC and judicial procedures is not the same in every case. Sometimes identified perpetrators are brought to justice; sometimes they are granted amnesty for reasons of maintaining / restoring peace in the country. Most participants felt that the first would be preferable in order to break the vicious circle of impunity. Of major importance to secure peace and build true democracy is the strengthening of the judiciary against prevailing impunity.

Forgiveness

The notion of reconciliation encompassing forgiveness from the victims has sometimes become like a fashion tool in the hands of governments, donors and church leaders. The argument is that only if victims forgive what happened then society can move on. Several participants expressed arguments against this concept of forgiveness as a top-down command. They stressed that it is up to the victims themselves to voluntarily decide whether they will forgive or not. During the South African TRC some mothers said they could now forgive the murderers of their children, others said they could not do so. To forgive the perpetrators becomes especially difficult if the societal context has not changed yet, for example in Guatemala, where the former dictator is now heading the Senate and the structures of injustice are still there.

Thus, instead of demanding forgiveness, the international community, governments, churches and NGOs could just underline that forgiveness is possible and help victims to decide, but leave it open as an individual option.

Reparations for the victims

Asked for clarification on the term 'symbolic reparation' Kerber explained that this provides for a creative response to the harm done with, preferably, opportunity for the community to participate. Victims should have the opportunity to express their wishes in this field and this should be decided upon from a 'holistic perspective'. For example, one could think of scholarships to children who lost their father and family income, transfers to hospitals for disabled, planting of trees to mourn and reflect and erecting memorials. Kerber underlines that apart from symbolic reparation economic reparation remains of course very important. It is the Government's responsibility to contribute to this, however often their means are limited after a conflict period. Therefore international support is necessary in this field. In the Rome Statute of the ICC a Victims Trust Fund is foreseen. After the Judges final verdict victims may be granted reparations from this Fund.

It was added that reparation should be as direct as possible to the benefit of the victims, and preferably with contribution of the perpetrators. It was added, however, that acts as the rebuilding of schools fall within the State's human rights obligation and should not be seen as reparation, except when it is the victims' specific request!

Involvement of wider community

Often it is not easy to identify victims and offenders. Victims may be relatives of the deceased, the local community and the whole society. Offenders may be the individual perpetrator, the institution / army and State responsible but also the silent community. Perpetrators can sometimes be victims, in the sense that (s)he was in a way forced to commit the crimes, e.g. when influenced by 'hate speech'. Even though (s)he remains responsible for the acts s/he has committed, the need for compassion is pertinent. Therefore, when talking about reconciliation it is essential to distinguish between the different levels of responsibility within the society that should be involved.

During the course of conflicts and wars ethical values within society tend to change and violence becomes a way of life. One of the most pressing needs in the transition phase and later is to change this culture of violence and impunity into a culture of peace. Participants indicated that if this not tackled and if the structures responsible for the violence are not changed one sees a rise or corruption as well. Also in this respect it shows that to strengthen the judiciary is of utmost importance!

Role of the media and education

As was mentioned before, and as an example, in countries like Georgia the totalitarian regime is still in the minds of the people. The media does not touch upon this issue; it is practically a taboo because everything is supposed to have changed for the better now. But the inner-censorship remains. Support for media programs that dare to touch upon this question is very imminent at present. The same goes for education projects that can take people into a change of mind.

SUPPORTING VICTIMS

Summary of the introduction by Yael Danieli Ph.D. (International Society for Traumatic Stress Studies, USA), with excerpts from previous articles, distributed at the meeting⁹.

Trauma and the continuity of the Self

An individual's identity consists of his/her complex physical, intrapsychic, interpersonal/familial/social/communal, religious/ethnic/cultural/spiritual, material/economic, political, national, and international spheres or systems. These systems dynamically coexist along the *time dimension* to create a continuous conception of his or her life from past through present to the future. Ideally the individual should simultaneously have free psychological access and be able to move freely within all these identity dimensions. In workshops with victims' groups Danieli therefore works with the questions: 'who are you', 'who were you' and 'how would you like to be remembered?' That results in different answers from everybody. The same goes when you would ask persons to tell the true story about what happened. It shows that it is hard to establish one truth but that, at the psychological level, it would be your truth and my truth. Different disciplines are based upon and therefore will create different perspectives.

The experience of victimisation causes a **rupture**, a possible regression, and a state of being 'stuck' or 'frozen' in this free flow, which Danieli calls **fixity**. The time, duration, extent, and meaning of the victimisation for the individual as well as post-victimisation traumata and the 'second wound', will determine the elements and degree of the rupture, the disruption, disorganization, disorientation, and the severity of the fixity.

The first wound is caused by the traumatic experience itself. The indifference, avoidance, repression and denial of society result in the second wound. Survivors' war accounts are often too horrifying for most people to listen to or believe. Victims are also faced with the pervasively held myth that they had actively or passively participated in their own destiny by 'going like sheep to the slaughter' or otherwise blamed for their victimisation. Additionally, bystander's guilt leads many to regard the survivors as pointing an accusing finger at them and projecting onto the survivors the suspicion that they had performed immoral acts in order to survive. Victims face being told to 'let bygones be bygones' and get on with their lives.

Such reactions ensure the survivors' silence about the horrors they have experienced. They are forced to conclude that nobody cares and that 'nobody can really understand' unless they have gone through the same experience. This is the second wound; the internalisation of the second wound is then the third wound. This is the wound that is in control of the victims to heal! Nevertheless, the conspiracy of silence between victims and society in general and

⁹ See T.C. van Boven, C. Flinterman, F. Grunfeld & I. Westendorp (Eds.) *The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*. Netherlands Institute of Human Rights, Special Issue No. 12 (1992) (pp. 196-213). Also published in N.J. Kritz (Ed.) (1995). Transitional Justice: How Emerging Democracies Reckon with Former Regimes. Vol. 1 (pp. 572-582). Washington, D.C.: United States Institute of Peace. An updated version, *Justice and reparation: steps in the process of healing* appeared in 1998 in C.C. Joyner (Ed.), Reining in Impunity for International Crimes and Serious Violations of Fundamental Human Rights: Proceedings of the Siracusa Conference 17-21 September 1998. *International Review of Penal Law*, 14., pp. 303-312

mental health and other professionals (police and law enforcement) has proven detrimental to the victims' familial and socio-cultural reintegration by intensifying their isolation, loneliness and mistrust of society. Danieli underlines that suffering makes you vulnerable, not stronger, as they say. Many victims have to cope with Post Traumatic Stress Disorders, depression, grief and anxiety.

In this way massive traumata can have long-term effects for the victims and their families and the psychological effects can be transmitted intergenerationally. Children of survivors seem to have consciously and unconsciously absorbed their parents' experiences into their lives. As Bettelheim observed in 1984: 'What cannot be talked about can also not be put to rest; and if it is not, the wounds continue to fester from generation to generation'. One can identify at least four ways in which families cope with the traumas. The first is the victims' family: whose identity will remain 'being victim'. The second is the fighting family. The third 'category' is the numb family that has lost all immediate relatives, including children. They are frozen in their situation. The fourth are 'those who made it', partly because of denial of what happened. By this denial they cut themselves again and this takes the highest price. These families have the highest rates of suicide.

The healing process

An essential aspect of the establishment of a healed perspective is that when we speak of integration for severely victimized people we speak of integrating a rupture and the **extraordinary** into one's life. That is, confronting and incorporating aspects of human experiences that are not normally encountered in ordinary everyday life. Recovery involves re-establishing the sense of continuity, belongingness and rootedness. These and integration through awareness are our optimal vehicles in achieving our reparative and preventive goals of psychological liberation from the traumata.

Especially with these individuals, repairing the rupture and thereby freeing the flow rarely has the meaning of 'going back to normal'. This is true both in terms of (re)adapting to 'normal society' or returning to pre-victimisation ways of being and functioning, as if one could resurrect one's previous (destroyed) fabric of life. In fact, the latter hope in particular is not only unrealizable but clinging to it possibly attests to attempted denial of their experiences and thereby to fixity.

Cognitive recovery involves the ability to develop a realistic perspective of what happened, by whom, to whom, and accepting the reality that it had happened the way it did. For example, what was and was not under the victim's control, what could not be, and why. Accepting the impersonality of the events also removes the need to attribute personal causality and consequently guilt and false responsibility. An educated (knowing) and contained (feeling) image of the events of victimisation is potentially freeing from constructing one's view of oneself and of humanity solely on the basis of those events. For example, having been helpless does not mean that one is a helpless person; having witnessed or experienced evil does not mean that the world as a whole is evil; having been betrayed does not mean that betrayal is an overriding human behaviour; having been victimized does not necessarily mean that one has to live one's life in constant readiness for its re-enactment; having been treated as dispensable vermin does not mean that one is worthless; and, taking the painful risk of bearing witness does not mean that the world will listen, learn, change, and become a better place.

The Latin American Institute of Mental Health and Human Rights in Santiago, Chile stated that “The victims know that individual therapeutic intervention is not enough. They need to know that their society as a whole acknowledges what has happened to them...Truth means the end of denial and silence...Truth will be achieved only when literally everyone knows and acknowledges what happened during the military regime. ... [They concluded:] Social reparation is thus... simultaneously a socio-political and a psychological process. It aims to establish the truth of political repression and demands justice for the victims...both through the judicial process and through the availability of health and mental health services...The new democracy that now offers the possibility of reparation will deteriorate into a frail bureaucratic system if the process of social mourning is not realized fully.”

Thus, you need to heal the socio-political context for the full healing of the individuals and their families, as you need to heal the individuals to heal the socio-political context. As a Bosnian woman commented in Danieli's Project by this name: ‘Democracy cannot be built with the hands of broken souls’. It involves a mutually reinforcing context of shared mourning, shared memory, a sense that the memory is preserved, that the nation transformed it into a part of its global consciousness. The nation shares the horrible pain. The survivors are not lonely in their pain.

Some aspects of victims’ participation with the ICC

Western culture has little patience for grieving and mourning. Efficiency considerations are dominating the judicial process and donor agencies alike. It is outcome- rather than process-oriented, leading to premature closing of projects. This is of course not beneficial to the healing processes of victims! Some elements that should be taken into consideration in the participation of victims at the ICC are:

- Each individual person is different and will have different behaviour and needs while interacting with lawyers and judges. The prosecutor and the judges may only want to hear facts whereas victims may wish to share what they experienced and may not find it easy to do so. It is important to have an individualised approach and be compassionate, in order to support victims and witnesses. The Centre for Justice and Reconciliation can provide this but ICC staff needs to be trained in this respect as well.
- Remember that healing and integration cannot be done alone and that victims therefore should feel that they are not alone in the Court. They need professional and genuine support; otherwise they may encounter victimisation again - the rupture in the free flow of feelings and experiences (‘fixity’).
- Evaluate every short-time decision from the long-term perspective of the victim’s healing process.
- Have an honest, patient attitude, otherwise a second wound will be added to the wound inflicted by the violations of human rights.
- The work of the ICC can definitely contribute to restoring the sense of continuity and belongingness of victims. ‘The world cares about us’. It will also contribute to the national and, because of the magnitude of mass atrocities, to the international memory. All records need to be well protected, e.g. in international archives kept, by for example UNESCO.

Short discussion

Participants mentioned examples of closed societies where on the individual as well as on State level most of the people have internalised the trauma. When asked to describe his country's identity a young Armenian pupil answered: 'It is a nation united by a collective memory of genocide.' His picture is not corrected by the outside world. It shows the necessity of healing processes on all levels of society. Danieli remarked that a people in Diaspora can be just as stuck in their painful memory as a people within a nation.

The question was raised how the community can restore help to recover. Often, communities with a specific culture are targeted in genocide cases. The heart of the culture then needs recuperation while at the same time the community's culture can contribute to the restoration. Danieli referred to culture as a potential healer; as a buffer to internalisation of the trauma but also as a transmitter of traumatic memory. Serbian women once pictured the stories of the Hero's of the Serbian People from ages ago as if it happened yesterday and they almost seemed to be in love with them. It shows the strength of the myths of their culture.

The Congolese participants described women support projects where female victims of sexual violence receive psychosocial and health support and where room is provided to tell their stories. If they wish, the stories are recorded for possible judicial prosecution of the perpetrators. Otherwise, the perpetrators are encouraged to pay for the compensation and rehabilitation of the victims. With this restorative rather than punitive approach, it prevents these cases from being brought to Court, where there are no guarantees for justice. The CJR was called upon to support such initiatives.

III. THE SUPPORT OF VICTIMS' RIGHTS AT THE ICC

Gabriela Gonzalez Rivas, Associate Legal Officer, Victims Participation and Reparations Unit, ICC

Within the Registrar of the ICC there are two units that deal specifically with victims. One is the Victims Participation and Reparations Unit (VPRU) and the other is the Victims and Witness Unit (VWU). Gilbert Bitti is heading the first unit, whereas the second is headed by Harriet Sulliver, only since yesterday. Together the two units form the Witness Protection and Victims Participation Section.

The tasks of the VPRU are to develop mechanisms to guarantee the participation of victims in Court proceedings and provide institutional support for reparations. It will also assist the newly chosen Board of Directors of the Victims Trust Fund.

Activities

The VPRU has developed several short and medium-term projects aimed at improving the capacity of the Court to support and promote the rights of victims, as included in the Rome Statute and the Rules of Procedures and Evidence.

At present Regulations of the Court are being drafted with regard to the participation of victims in proceedings, their legal representation, and reparations. This will be decided upon at the next plenary meeting of the Judges in November.

The Unit is also conducting research on issues of legal representation for victims and diverse models of reparations. In October an experts' seminar on these two fundamental topics will be held. The seminar will include the discussion of the organisation of legal representatives, the relation of the ICC with potential representatives, the training of lawyers.

In order to raise awareness on victims' issues within the ICC's staff and the Judges the VPRU is in the process of setting up a library on victims' issues within the ICC. The Judges will receive a special package of information on victims. On internet a special link will be made on victims and this will contain links to relevant articles and sources. Input from NGOs and experts are most welcome.

The ICC needs to provide guidance and improved understanding of the Court to its potential users of the Court regarding its aims and functioning. Given that the participation of victims is of the greatest importance for the accomplishment of the mission and mandate of the ICC, information materials about victims' rights, the Court, and how to access the VPRU are being elaborated. This material will provide guidance to victims, their legal representatives and others. In addition, the VPRU has elaborated a standard form that will guide victims and representatives in presenting information to the Court. Consultations with the Office of the Prosecutor (OTP) and NGOs have taken place to get feedback.

These materials should of course reach the potential users of the Court at the national and local level. The Unit is working on strategies to reach even the remote areas and even those

that do not comprehend one of the working languages of the ICC. This will be further discussed at an experts meeting in November next.

Given the limited resources of the Court and the need for general cooperation amongst organisations and agencies, a general project is required for developing working relations with different *inter- and non-governmental organisations*, especially those working on monitoring human rights situations throughout the world and have presence in the field. These groups may assist in providing access to victims, promote the use of the ICC, and assist in providing the field presence that will be essential to effective communication with victims and local advocates.

The documentation with regard to victims' participation in proceedings should be well managed. In order to coordinate with other sections and organs of the Court involved in these matters, VPRU will organise a series of meetings among different sections of the Registry and other Court organs.

They will as well prepare a meeting of the newly elected Board of Directors of the Trust Fund and give the Directors materials that will assist them in establishing criteria on the management of the Trust Fund. Guidelines on the way the Board of the Trust Fund will operate with the Court will be drafted by the VPRU.

Protection and support for victims and witnesses that participate in ICC proceedings is evidently of great importance. The Victims' Witness Unit (VWU) will facilitate an expert's seminar on this topic December 2003 in Vancouver, in collaboration with the International Centre for Criminal Law and the Liu Centre for the Study of Global Issues. These two institutes are currently drafting an *Operational Guide on Victims and Witnesses Issues for the ICC*. For the ICC these materials provide sources on which to base its own materials.

Challenges

1. Strengthening domestic capacities to use the ICC

The VPRU can play a role in providing a forum for coordination among NGOs and other organisations working on victims' issues and interested in using the Court. Providing for mutual beneficial working relations is one of the primary goals of the VPRU.

2. Training for lawyers and NGOs that work as victims' advocates.

To create effective capacity building at the local level will prove very challenging to the VPRU, but it is essential that the representatives of victims have at least a minimal understanding of the Court's functions and the normative framework that supports it.

3. Strategies for cooperation with inter-governmental organisations

Such strategies must be developed and implemented to expand the logistical capacity of the Court in terms of access to victims. This is particularly important for those organisations that have a field presence and monitor human rights violations.

Discussion

It was brought forward that on September 22nd the Registry organised a meeting with key NGOs to present its plans and projects and to involve NGOs as much as possible in the work. Victims' issues were among the most debated in this meeting.

Some participants voiced disappointment about the budget of the Section. For example, the amount of money available for legal assistance is far too small. Gonzalez explained that the budgetary requests of the VPRU were not met in the final budget. Though this is disappointing the VPRU is committed to make the best of it with the means and personnel available and still to come. It would be good to remain lobbying on the budget next year.

With regard to the future tasks of the Centre for Justice and Reconciliation, Gonzalez referred to the example of the Centre for Justice and International Law (CEJIL) with offices in USA (Washington), Costa Rica and Brazil and various country representatives. This Centre works as service-point for Latin-American NGOs to the Inter-American Court. Its mandate is fulfilled through trainings (by themselves or with external expertise), co-operating with local key-NGOs as multipliers, research in close contact with local NGOs, disseminating the right information and (legal) representation at the Inter-American judicial bodies. It would be good to exchange ideas and experiences with CEJIL in order to learn from their strengths and weaknesses.

IV. BUILDING THE CENTRE FOR JUSTICE AND RECONCILIATION

Presentation of the partner network

Jonneke Naber briefly described how the international partner network responded to the initiative of establishing the Centre for Justice and Reconciliation in The Hague. 100 Partner NGOs of Justice and Peace Netherlands, Cordaid, Solidaridad and CMC have been sent a questionnaire. 35 Of them responded and this is a good response rate for a written questionnaire.

Among the respondents 88 % was very positive about the initiative. The NGOs are experienced in the fields of training, lobby & advocacy, networking and monitoring, and some have specific expertise with regards to victims support and shelter, and women and children. In general they have heard of the ICC but do not follow developments closely. Most of them do not know the CICC. Nevertheless, 97 % would very much like to be better informed about the ICC and want to co-operate with the CJR. This is felt as a good starting-point for the establishment of the CJR. What comes next is the more precise identification of the mandate of the CJR, its priorities, strategy and co-operation with other NGOs and experts.

Faith and ethics perspective

The Centre plans to work from a faith and ethics perspective and would thereby have a broader than purely legal perspective. This would mean that concepts on justice and reconciliation will be brought in from various religious sources. Next to the conceptual input religious communities all over the world have been active supporters of justice and reconciliation processes and accompanying victims. The CJR can build on their experiences and networks without choosing rigid perspectives from any religion.

Participants agreed that this is a very relevant perspective and as yet not brought in by anyone else. However, it was stressed that it is important not to create tight ties with churches in order not to render itself useless in cases where churches are involved in grave violations. A remark came preferring to speak of religious persons that might be perpetrators, but not 'the church' as a whole.

Religion as such has a healing capacity. This should be underlined and clergy should be trained in using this capacity to free people from their distress. In many places churches are the only reliable and trustworthy structure left. Both victims and perpetrators listen to what is being said and done by the church. Therefore religious communities, churches should be challenged to work on these issues and call upon their believers to work on healing and transformation.

It was said that human rights organisations are also among the structures that have a reliable, neutral stand in society, even though they are a more recent phenomenon.

In conclusion the CJR's faith and ethic perspective is a right one but it should be an independent organisation, not specifically linked to any church or religion. Apart from working religious networks the CJR should work with those structures within civil society that have shown to be an effective player towards conflict resolution, justice and reconciliation.

Priorities in Asia

Asian participants stressed the low level of ratifications in Asian countries and the modest expertise among Asian NGOs. Therefore, it was felt that the CJR should prioritise *to increase the expertise on ICC issues within its Asian network*. Apart from that a positive effort should be undertaken to support its Asian constituency to *co-operate together with the existing networks* of CICC, Asian Network for the ICC, Amnesty International etcetera. Participants from these groups invited the CJR to explore the best ways to do so together. There are many human rights violations in Asian countries that fall under the jurisdiction of the ICC sooner or later. *Human rights monitoring by local NGOs* provides very important material for the Prosecutor to rely on. The CJR could see to it these reports are known by the OTP. Also it could *facilitate issuing complaints at grassroots level*, for example in Afghanistan, possible together with more INGOs with more legal expertise.

Priorities in Latin America

The Latin America experts underlined that the CJR should not reinvent the wheel, also invented by other NGOs in the region. CJR could *act as broker* between its network and other existing networks.

When it comes to the broader *reconciliation efforts in Latin America*, e.g. the recent work of the Truth and Reconciliation Commission in Peru, the CJR could *tap on the lessons learned*. It could do research on the level in which those reconciliation processes have actually reached and rooted on grassroots level.

Given the fact that in several Latin American countries former dictators have left but the rotten structures have not actually been removed and therefore human rights violations remain rampant, it is essential to *strengthen the local and national judicial systems*. The international system, among which the ICC, serves as needed last resort.

Priorities in Africa

In many African countries democracy is not functioning and impunity of gross human rights violations prevails. The dependency on Western countries is still acute in many ways. As counterbalance NGOs nationally and internationally now have a key-role to press the governments to apply the rule of law. It is felt that justice and therefore strengthening of an independent judiciary is essential, otherwise no lasting peace is possible.

The present focus of the Prosecutor on the Democratic Republic of Congo is understood as a message of hope for the Congolese people and can be a deterrent for further violations in present and future. As the first case will most probably be in DRC what is needed for Congolese NGOs is *general information* and updates about the ICC and *formation* regarding procedures, participation of victims, etcetera. The CJR should play its role in providing this towards their Congolese network, and especially see to it that *grassroots groups* are reached. *Theatre and drama* could be used as tools to inform that the ICC exists and what it can and cannot do. Apart from this the CJR can *facilitate access* to the ICC.

With regard to other areas in Africa, it would be good to set-up *regional networks* or collaborate with already existing networks, with which the Centre could interact on a regular basis. A subject that needs special attention is the developments of the entering into *bilateral agreements* with the USA.

Priorities in Europe

With regard to Europe as well the suggestion came to work through *national and regional networks*, which would be most effective. This could be done in several stages: (1) to disseminate information in round-table meetings; (2) to create national platforms with NGOs that are able to uphold an independent position, that can link up to the CICC; (3) to see which expert NGOs are most involved and chose them as focal point (as national liaison/coordinator that maintains links to CJR, CICC and the local network, e.g. by e-mail forum); (4) to back the focal points with a certain international status to secure their work at home and which enables them to bring cases to the ICC; (5) to stimulate cross-regional networking where there is a certain similarity in history and approach, e.g. Balkan-Caucasus. This could also be useful in and with other continents.

Next to this, the CJR could also provide for *training, opportunities to participate* at the ICC, to stimulate the national acceptance of *implementation legislation*. It should be stressed that within the new legislation issues concerning the reparation and participation of victims should be incorporated. Amnesty International and others are already taking this on.

Miscellaneous

Role of the media

The media is a very important channel to bring the message about the ICC across. The Public Information and Documentation Section within the ICC has started its activities in this field (see next chapter of report). As said, it would be important to use theatre and drama to inform the people.

Most media attention will focus on the perpetrators and the criminal proceedings. Therefore it seems highly relevant to bring to the fore the plight of the victims by producing documentaries. An organisation called Witness is doing this. The CJR has established contact with them.

Victims and perpetrators

Within the CJR should be discussed whether one can really only focus on victims and not on perpetrators. Sometimes these qualifications are interchangeable: e.g. child soldiers are offenders but can also be regarded as victim of the conflict, being bought to fight while being too young really to make an impartial decision to do so. Also, offenders could be regarded as victims of the prevailing culture of violence, while they are not violent by heart. At the other hand it should clearly not be suggested that victims are not real victims, that they are guilty to their situation etcetera. However, this difficult ethical debate cannot be avoided when framing the mandate of the CJR.

Amnesty International's activities

Amnesty International (AI) has around sixty national co-ordinators working on international justice (10 in Latin America, in W/East Europe, a growing number in Africa, the least in Asia). AI is currently especially involved in pushing for and influencing the national implementation legislation. Preferably, within this legislation the Rome Treaty provisions, as the highest existing standards, should be incorporated as fully as possible. Further relevant provisions: fair trial, defence, victims, subject matter of crimes, co-operation with ICC (police, Public Prosecutor). For example, Canada has included the establishment of a national trust fund for victims, similar to the ICC Trust Fund, in its legislation. States can also include

making voluntary contributions to the trust fund in their legislation. AI also lobbies states to include relevant provisions on the protection of victims and witnesses in their national legislation. Amnesty pleads that the legislative processes in each country will be transparent and in consultation with civil society.

Next to this, AI joins the international lobby against the US bilateral agreements.

V. VISIT TO THE INTERNATIONAL CRIMINAL COURT

Meeting at the ICC with Judge Erkki Kourula (responsible for victims' issues), Ms. Claudia Perdomo (Information Officer at Public Information and Documentation Section) and Ms. Gabriela González-Rivas (Victims Participation and Reparations Unit).

Judge Kourula opens the meeting and welcomes the group on behalf of the *ICC Judges*. He has been member of the Finish delegation to the Prep-com meetings to adopt the Rome Statute and expresses his readiness to listen to and support NGOs wherever he can. Most Judges are now only temporarily based in The Hague, because their work has not yet really started. However, the Pre-Trial Chamber will be established fairly soon, and thereafter the Appeals Chamber will be set up. The Prosecutor has announced that the first case might be the situation in Ituri, East-Congo. Before going to the Pre-Trial Chamber he needs either one Member State to lodge the complaint, or the Security Council or otherwise he will start the proceedings *proprio motu* (by his own). Most probably a Court Chamber will be set up in Congo (if that will be the first case indeed). Information will also distributed through electronic media and radio, TV and video programmes.

Presently the Judges work on drafting and deciding on the *Court Regulations*. With regard to victims this means to formulate how they are to participate, can have legal representation and receive compensation on their request. Kourula shares with us that not all Judges are familiar with the participation of victims in Court proceedings and they have their hesitations. During the Rome Conference the position of victims became a hot issue, dividing countries with civil and common law systems). Coming from Finland where participation of victims is very normal and without problems, Kourula feels obliged to defend such a system. Therefore he is member of the Victims Group of the Judges.

Asked about whether the *bilateral agreements* that the US has signed with now 63 countries pose a threat to the ICC, Kourula says he just hopes that this is not a precedent for other countries to find ways to escape from the jurisdiction of the ICC. It took Finland 10 years before joining the UN, so there is always a chance that the USA will join in the long run as well. But the Court remains neutral on this issue of course. It doesn't call for quick adoption of implementing legislation either, which is more a task of the Assembly of States Parties.

With regard to establish whether an individual or a group is entitled to receive *compensation* it is necessary to determine exact criteria on who is a victim and on what evidence is needed to proof the circumstances of the crimes inflicted upon them. One possible solution that is being brought forward for collective compensation is to add up all the costs of losses and to divide the money available accordingly. Judge Kourula is proponent of building up jurisprudence on a case by case basis, rather than drafting strict rules in advance.

Claudia Perdomo introduces the activities of the Public Information and Documentation Section. This section falls under the Registry and should be distinguished from the Public Information Unit and the spokes person within the Immediate Office of the Prosecutor. The PIDS has produced several leaflets, a photo and video archive, an ICC exhibit etc. They are creating an international network of artists to promote the image of the Court, sensitise and

raise awareness amongst the general public. The main challenge is to ‘delegalise’ the information to the world (in States Parties as well as in non-States Parties). PIDS now drafts policies how to distribute public information to several target audiences. Mechanisms for coordination within the ICC pillars are necessary in this respect. In Perdomo’s opinion one should not so much speak of outreach but of communication, as two-way traffic is needed.

There are daily, weekly press reviews, press toolkits and press briefings prepared. PIDS targets the media, especially the leading opinion makers, as the latter (in particular in the USA) can spread messages that undermine the ICC. With regard to the ICC logo, a world wide logo contest will be launched in October, among others with Schools of Design.

A special concern is how to communicate with victims, at what time, without raising too much expectation? And also, to be able handle this logistically. Perdomo kindly requests the participants to send in best practices on how to disseminate such communication.

Gabriela Gonzalez and Claudia Perdomo have just started the Public Awareness Campaign on Victims. Research will be done and then detailed materials will be elaborated describing the ICC structure and the different kinds of protection needed (e.g. for children, victims of sexual offences, those that lost loved ones etcetera). It will also include an assessment of the specificities of different regions whereto the material will be sent. As mentioned earlier a draft will then be discussed in an interdisciplinary expert meeting and a Committee within the Court will finalise it. Next the text will serve in a pilot project with sectors of civil society. The final text will be translated into French, English and Spanish as well as languages in the context of specific cases. Of course the project will be monitored closely.

Asked about the promotion of the Trust Fund Gonzalez explains that known persons will be asked to be Goodwill Ambassadors. Also so-called Friends of the Trust Fund, consisting of persons, NGOs etcetera) will campaign for contributions.

ANNEX I

ANNOTATED AGENDA

I. Agenda item ‘Truth and Reconciliation’ (Monday morning 21st)

A short introduction will be given by Guillermo Kerber, Programme Executive on ‘Impunity, Truth and Reconciliation’ for the World Council of Churches in Geneva.

As point of departure for the work of the CJR we will deepen our understanding of processes of reconciliation, especially with help of faith-based principles. We will identify obstacles and preconditions of reconciliation at work.

Out of the experience and expertise of the participants the discussion will follow on questions as:

- How do victims define reconciliation processes, what is essential for them to recover from the wounds (see also afternoon’s discussion)?
- How far is reconciliation actually possible, between victims and offenders, among communities and in the wider society (recovering the social tissue of society)?
- To what extent is reconciliation as such necessary for peace?
- What is the relevance of the criminal system in relation to reconciliation: what are the requirements for reconciliation?
- Which theological, spiritual values are relevant in this respective?
- What is the role of the media with regard to reconciliation?

What can the (modest) contribution of the CJR be in this field:

- with regard to the ICC?
- With regard to e.g. linking the concrete initiatives of our partners?

II. Agenda item ‘Supporting victims’ (Monday afternoon 21st)

A short introduction will be given by Yael Danieli, International Society for Traumatic Stress Studies, New York, USA.

Participants then share their experience and expertise of the participants on this issue. The discussion follows questions as:

- The torments of victims: what do they experience?
- What do they need to heal from the past and restore their dignity, individually and socially?
- How can the community culture help to recover (often groups with specific cultures are victims of genocide; the hart of the culture then needs recuperation)
- Is it beneficial for victims to co-operate with crimes trials? Reflection on when to participate and when not.

III. Agenda item: ‘Preliminary discussion on victims’ rights before the ICC’ (Tuesday morning 22nd)

Short introduction by Gabriela Gonzalez Rivas, Victims Participation and Reparation Unit, ICC.

The ICC focuses on persecuting the perpetrators but victims have gained important rights, namely participation, protection and compensation. The discussion will follow questions as:

- What is the relevance of international criminal procedures such as ICC to restore local and national relations?

- Under what circumstances can victims benefit as much as possible from co-operation with the Court?
- With regard to giving evidence, receiving protection, participating and obtaining redress?

Ending with: What tasks can be identified for the future work of the CJR in this field?

IV. Agenda item 'Building the partner network' (Tuesday afternoon 23rd)

A questionnaire was sent out to 100 partners of Justice and Peace Netherlands, Cordaid, Solidaridad and CMC/AMA. Until now 35 questionnaires have been answered and returned. The data from these answers have been analysed by Jonneke Naber and she will present the main findings in the beginning of afternoon's meeting.

After this presentation the regional groups report on their specific proposals on how the CJR can bring support in their region.

Then follows the discussion on the possible tasks of the CJR: mandate, priorities, strategy, and co-operation with experts.

ANNEX to Annotated Agenda

OVERVIEW OF POSSIBLE TASKS OF THE CENTRE FOR JUSTICE AND RECONCILIATION

- ◆ Training about ICC/Rome Statute with whom to co-operate, depending on expertise and regional networks?
 - preferential regions?
 - capacity local NGOs?
- ◆ Lobby:
 - assistance to local, regional network; link to other initiatives; form a national NGO Platform
 - towards ICC (victims' issues, specific cases)
 - towards Dutch Government (with Dutch NGO Platform)
- ◆ Human rights monitoring assistance
 - what materials
 - what kind of training
 - relevance of monitoring reports to Prosecutor ICC
- ◆ Participation/witness/compensation assistance:
 - rendering judicial expertise
 - escort, host in the Hague
 - psycho-social support
- ◆ Specific tasks with respect to truth & reconciliation?

ANNEX II

LIST OF PARTICIPANTS

EXPERT MEETING *CENTRE FOR JUSTICE AND RECONCILIATION*
21-24 SEPTEMBER 2003, THE HAGUE

| Name | Organisation |
|--|---|
| Lia van Broekhoven | Cordaid (Netherlands) |
| Joanna Carr | Amnesty International – International Secretariat (UK) |
| Yael Danieli | International Society for Traumatic Stress Studies (USA) |
| Jonathan Donohu | Amnesty International – International Secretariat (UK) |
| Gabriela Gonzalez | International Criminal Court |
| Sheldon Hangi | ASPD, Goma (Dem. Republic Congo) |
| Guillermo Kerber | World Council of Churches (Switzerland) |
| George Khutsishvili | International Centre on Conflict and Negotiation (Georgia) |
| Rev. Francis Mercer | Unitarian Universalist UN Office (USA), Faith & Ethics Caucus CICC |
| Abbé Bonaventure Mirindi Kishingoko | Commission Justice et Paix, Bukavu (Dem. Republic Congo) |
| Cecilia Nilsson | Coalition for the ICC, the Hague office |
| Alessia Rossetti | intern International Criminal Court |
| Jennifer Schense | Idem |
| Marlies Stappers | Solidaridad / CMC (Netherlands) |
| Jan Stuyt | Jesuit Refugee Service Europe (Netherlands) |
| Samuel Kofi Woods | Foundation for International Dignity (Liberia/Sierra Leone) |
| Ahmed Ziauddin | Asian Network for the ICC (Bangladesh/Belgium) |
| Anne Offermans | Justice and Peace - Netherlands |
| Jonneke Naber | Idem |
| Victor Scheffers | Idem |

ANNEX III

UPDATED (1998) STATEMENT OF GOALS AND RECOMMENDATIONS

In the following **Yael Danieli** summarizes the necessary components for healing in the wake of massive trauma. Emerged from interviews with survivors of the Nazi Holocaust, Japanese and Armenian Americans, victims from Argentina and Chile, and professionals working with them, both in and outside their countries, these components will be presented as goals and recommendations, organized from the (A) individual, (B) societal, (C) national, and (D) International perspectives, as follows:

A. Reestablishment of the victims' equality of value, power, esteem (dignity), the basis of reparation in the society or nation. This is accomplished by, a. compensation, both real and symbolic; b. restitution; c. rehabilitation; d. commemoration.

B. Relieving the victim's stigmatization and separation from society. This is accomplished by, a. commemoration; b. memorials to heroism; c. empowerment; d. education.

C. Repairing the nations' ability to provide and maintain equal value under law and the provisions of justice. This is accomplished by, a. prosecution; b. apology; c. securing public records; d. education; e. creating national mechanisms for monitoring, conflict resolution and preventive interventions.

D. Asserting the commitment of the international community to combat impunity and provide and maintain equal value under law and the provisions of justice and redress. This is accomplished by, a. creating ad hoc and permanent mechanisms for prosecution (e.g., ad hoc Tribunals and ultimately an International Criminal Court); b. securing public records; c. education; d. creating international mechanisms for monitoring, conflict resolution and preventive interventions.