

The importance of creating awareness

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Usta Kaitesi - National University Rwanda

Within the context of trying to create awareness about sexual crimes it is important to look at what each victim needs for justice. Speaking specifically about Rwanda, a clear perspective on sexual violence could not be attained until there was an understanding as to how it was employed during the genocide. The significance of the gacaca system lies in the fact that it encompasses access to justice as well as serving to chronicle events by making an account of the experiences of people, not just as victims but as individuals. The gacaca is a traditional dispute resolution mechanism in Rwanda, mainly on a community level and is comprised of highly respected members of the community who attempt to reinstate peace. The gacaca of today represents something of a development in the aftermath of the genocide, due to the fact that individuals on both sides of the conflict were still in the same communities there was thus a need for them to live together in harmony as well as the more obvious requirement for justice to be done. This requirement for justice was all the greater given that in the past there were a number of instances of mass violence against the Tutsi which were followed by amnesty laws. Therefore in dealing with the genocide that occurred, the response would have to come from a judicial background. The creation of the International Tribunal for Rwanda in 1994 was an international attempt to deal with the genocide, followed in 1996 by attempts on the national level to create a system of justice to deal with cases of genocide of mainly 120,000 detained suspects. In the 1996 organic law to prosecute genocide perpetrators had been put into categories according to the seriousness of their acts of genocide, sexual violence was made a category one offence. However progress was slow, five years into the specialised chambers only 1/3 of the 120,000 people in detention had been tried and it was estimated that for justice to be done in these cases it would take a century.

There was thus a need for other options, with the requirements that it would be capable of dealing with very serious crimes and it doing so – eradicating impunity, that it would be participatory and that it would prove internal capacity to solve problems. This desire fuelled the need for the use of the *gacaca* system. In 2001 the Gacaca law was promulgated leaving three categories and allowing these courts jurisdiction over the less serious categories two and three but not one.

The *inyangamugayo* often known as persons of integrity or as may be directly translated to understand their value ('people who dislike blemish') preside over the gacaca process, they would otherwise be called the judges although not strictly judges in the common classical sense were appointed in 2001 by their communities who identify the people amongst themselves who are persons of integrity. At that time a training process began, the *inyangamugayo* being lay people were aware of the context of the crimes but not of the law. The gacaca system was supposed to close at the end of 2007 however, at that time there were still 10,000 cases remaining nationally, the majority of which involved sexual crimes which only the classical judicial system was empowered to adjudicate upon. The view of victims of sexual crimes was that while the gacaca had been successful, they themselves had been denied access to justice given that those crimes were not admissible before the gacaca. In the midst of this discussion and as a result of the influence of victims, the law

was amended in 2008 to include crimes of sexual violence in the gacaca. As a result of the law, the gacaca were given the power to try crimes of sexual violence for the first time and in doing so had to face the societal stigma attached to dealing with such crimes. Against this background the training in which Ms. Kaitesi was involved was introduced. The inyangamugayo were required to re-elect amongst themselves persons regarded as having higher standards of integrity as the nature of the crimes was seen to require so.

The training was to be aimed at the creation of awareness amongst especially these Inyangamugayo but also the community at large. A training manual was compiled which included the work of a clinical psychologist in order to gauge the impact of the gacaca on both the victims and the accused and a legal approach. Training was given to 120 gacaca district co-ordinators who were in charge of the gacaca services and to 120 trauma councillors from victim organisations. The intention was to train these individuals on the relevant legal and psychological aspects and they in turn would train the inyangamugayo in their area and by doing so reaching the inyangamugayo, the victims (through the work of the councillors) and also the entire community. Training was divided into a number of days, the first of which dealt with rules and procedure on the trial, they were informed that trials were to be exclusively in camera, with a trauma counsellor present for the support of both the victim and the perpetrator and the requirement of the presence of a member of a security organ, the goal being the attainment of the best justice possible. Penalties were introduced for the violation of confidence, the breach of which was criminalised. Public confessions were prohibited to guard against any false or other claims aimed at the character of the victim, included was also the task of breaking the taboo about talking openly about sex.

The second day of training was aimed at the psychological aspects of the trials and engendering the requisite skills to handle sensitive cases. The aim was to aid the councillors to help victims to speak of their experiences while not re-traumatising them and to let the victim know what the law provided for and thus give them the choice or whether they wished to pursue justice or not. The final day comprised of a moot trial giving the councillors the opportunity to understand the onus placed upon the inyangamugayo. As of March 15 2009, at least 6,707 of the 7,949 cases have gone to trial at the first level, though these figures need to be read bearing in mind that some victims/perpetrators have died and some may have decided not to go to trial. Definitively 1,739 cases have finished at the level of appeal with justice remaining unobtainable for some where the perpetrator has fled, died or is unknown to the victim. Ms. Kaitesi warned of the difficulties of referencing such statistics as the number of prosecutions relative to the number of cases can be viewed negatively. Rather, effectiveness should be measured by how much people are aware of the functioning of that system. Gacaca takes justice to the people who need it most; it comprises a desire to improve justice and to explain in greater depth the complexity of the genocide that occurred. It also allowed victims to recognise their own role in the judicial process. In terms of the personal lessons which Ms. Kaitesi drew from her involvement she stated that raising awareness improved the lives and the justice of the community, it allowed for a feeling of connection with the community and very importantly it allowed for the transference of shame from the victim to the perpetrator. In the case of victims with HIV, they needed people of the community to know that it was not their fault. In concluding, Ms. Kaitesi called for an interdisciplinary approach to create and influence the memory of what has happened. "To render justice to victims of violence against women is neither one man's act nor one country's act, nor one system's reach; it should be a collective responsibility and effort".

Questions:

Dr. Renée Römkens - raised the question of whether any evaluation of the gacaca system had been done from the victims perspective?

Usta Kaitesi - Such an evaluation would be a worthy exercise. It is important to note that for the victim that wishes to go forward, they have the opportunity to do so and for those who do not wish to, they can wait until they are ready or choose not to.

Question - Are there any plans for this type of training for police, prosecutors and judges who are not part of the gacaca?

Usta Kaitesi - There are other important community activities ongoing, there was a law passed in 2001 on the rights of the child and protection against sexual violence and a 2004 law on gender based violence. Training is ongoing but needs to be more consistent, there are not as much resources for knowledge. Sexual violence is now a priority on police and prosecutors agenda's but questions remain as to how they are handling it, there is a need to make such training gender sensitive in order to impact the past and the future.

Sanne Bijlsma - What about awareness raising for perpetrators?

Usta Kaitesi - Reaching perpetrators can be complicated as they do not live in one group, for instance some are in prison which has its own systems of information such as public awareness talks. However, reaching the population is reaching these perpetrators, those not in prisons are in the community and if you reach the influential people in the community you will reach the perpetrators. When training was completed in a certain area there would be local radio interviews conducted in order to reach the community also.

Ana Uzelac – CARE Netherlands

In terms of prosecutions Rwanda was an exception; usually prosecutions reach a low number of perpetrators and victims. Prosecutions though are but one of the four pillars of transitional justice. Truth telling is also an important part, as are guarantees of non-performance and institutional reforms. The fourth pillar and a very important one is that of reparations, not just material but also symbolic reparations which have the potential to create awareness of crimes and may contribute to non-repetition. Much discussion has occurred about the increasing recognition of the importance of reparations in international law. Within this discussion there has been a worthy attempt to bring the topic of law and gender into the mainstream. It is important to remember that some forms of offences are experienced similarly for men and women and that some are experienced differently which raises the question of whether reparations should be tailored differently for men and women.

It is a work in progress, in general the victim's procedure at the International Criminal Court is a good start with the trust fund for victims now up and running. CARE international also runs a trust fund for victims in Rwanda. It is important that the legal base for such reparations has been laid, be they individual or collective reparations. It is extremely important to also recognise the power of

reparations, be they material or symbolic. Being willing to offer both can be a first modest step in which a new regime may legitimise itself for victims and the population in general in a post conflict situation.

For a long time the gender aspect of reparations has been neglected, there is no specific monument to commemorate the suffering of female victims of violence as in some sense it is still viewed as taboo. Sexual violence it is not just another crime, there is a specific stigma attached to sexual violence, a whole contextual background to it as well as the huge risks that women take in coming out and talking about it. One of the most obvious ways to offer symbolic reparations are different types of monuments. There are numerous examples in any European capital of monuments to known/unknown soldiers of war, eternal fires commemorating soldiers who have fought and a new generation of monuments commemorating victims of war. Thus started the question of whether a monument representing sexual violence should commemorate victims of sexual violence throughout the world or whether it should be for unknown raped women. Official reaction to such a proposal was critical of its focus on women as victims. It is clear however that women suffer more consequences in the aftermath of sexual violence and their sufferings affect the greater community for instance through their children. It was decided that the proposed monument should be for unknown raped women.

There were several important aspects to consider; to begin with this should be the first of many initiatives for symbolic reparations. It was decided that The Hague would be the most appropriate site for the first of such monuments, given the stigma felt in areas still scarred by conflict and also because of the presence of international tribunals and the International Criminal Court in the city, the monument would engender a certain meaning. Negotiations are being conducted to have such a monument placed in the general vicinity of the International Criminal Court.

As to the messages that it should convey, it should try to deconstruct the issue of victimisation. The idea of the monument would be for people to gather, to think and debate about what can be gained in the future, it should be an act of empowerment, sufferings recognised not shame or mourning. It is hoped that it will engage women, not just in the Netherlands but that it will be endorsed by women in the communities where they are most affected. The message is one of ownership, to give women the opportunity to discuss the meanings they would like the monument to convey. The idea is to have women's groups participate and choose the type of monument, and in this process achieve ownership for victims or better for survivors as there is a need to move away from the term victims. It is hoped it would become a source of inspiration for demands on the international community, not just judicial but also demands on the international political community as well as being a proper way to address the problems that have been suffered and the way to go forward.

Questions/Comments:

Amira M. Khair - In the field one of the things people are looking for is reparations. There is a need to link it to the needs of the victims and a need to recognise the cultural aspect as it often a cultural issue. For example in Sudan there is a need to raise awareness of the importance of reparations, in Chad there is an expectation of reparations but still a lack of knowledge about the subject while in Sudan, in the case of a woman who is raped the compensation will go to the family.

Katy Glassborow – Institute for War & Peace Reporting

A project of the Institute for War and Peace Reporting is that of reporting on the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia. This encompasses a number of different things, one of the most important of which is the training of local journalists on the ground in the countries in which the International Criminal Court is investigating. Training involves how to report on the court, on sexual violence issues and on international justice. The most important means of communication is through the medium of the radio, for example in the Democratic Republic of the Congo, however much may be written and translated not many people have access to papers. The radio programme which is broadcast by the IWPR weekly is in three languages and reaches an estimated 15 million listeners.

The main concern as a journalist is the lack of knowledge as to what is happening in the Hague. The International Criminal Court face an enormous challenge as victims are far away, have no access to computers and many don't speak English, French or Arabic. The way for the court to raise awareness is through a bottom up, top down approach. In the Central African Republic victims groups on the ground are gathering testimonies and working with NGO's to raise the profile of sexual violence. Some are doing this by allying themselves with local hospitals and churches in order to reach women. The worry is that local NGO's and victims groups can only do so much. Journalist's represent something of a middle layer writing about what's happening on the ground, however the ICC need to provide information to them in the local language. While the ICC is doing some awareness in Bangui, local journalists are not getting a sufficient amount of information from the source which they can then disseminate. Furthermore, no efforts are being made to go out into the provinces. The question is whether this will have an impact on victims coming forward and participating and is a big challenge facing the Court.

Security is also a big problem in countries in or emerging from conflict. Lacking information, victims do not know who to turn to and this can lead to disinterest among victims which is a very dangerous problem. There have been many evolutions in international justice but if people on the ground do not know about them then what is it that is hoped to be achieved? The ICC has only one outreach officer in the CAR and that person does not leave Bangui. However it is not only a task for the ICC, local NGO's have to be equipped to spread the word also, otherwise the evolutions of criminal justice will be insignificant if people are unaware of them.

Questions between **Katy Glossborow** and **Jack Kahorha** (IWT reporter in Goma)

How do people in Goma think the ICC is dealing with crimes of sexual violence?

People know the ICC is concerned and that the ICC is investigating on the ground, but the strategies which the ICC is developing are unclear. Many NGO's participate in the recovery of the community; there are different aspects to their work for example in the medical field there are people trained at medical centres to deal with victims of sexual crime and psychological support for trauma. Others deal with judicial aspects, NGO's encourage and try and enable victims to go to justice. Councillors help women to go back to their communities as often once a woman is the victim of a rape her

husband will reject her. Councillors try to create a reconciliation which can take a long time and in the interim these women have to be housed somewhere.

What are the realities of reporting on sexual violence crimes in the DRC, is it dangerous for journalists?

Judicial matters don't really interest journalists as it is a long process and sexual violence is a very sensitive concept which often cannot be spoken about. Gaining access to a victim can take time and involve a lot of negotiating as victims need preparation to be sure it won't re-traumatise them. A law passed in 2006 tries to show how sexual violence is a priority among crimes but this is not in fact the case. It is still an issue of influence of the authorities, if an accused has friends in power; it is a danger for journalists as they cannot know who the person may have connections to.

Amira M. Khair – Women's Initiatives for Gender Justice

Women's Initiative for Gender Justice is an international movement established in 2004 in The Hague and is the leading organisation for issues of women in conflict. It has been vocal in its advocacy for the prosecution of gender based crimes in the ICC. The organisation has conducted a documentary analysis on gender based crimes in three cases pertaining to the Democratic Republic of Congo at the ICC and was the first NGO to file before the Court. It has also worked within the Court in the area of victim's participation by giving support to victims in the Lubanga case. Further, it partakes in constant and strategic advocacy work with the Court.

The organisation is involved in the states in which the ICC has conducted investigations. In Sudan, work has been ongoing since 2004. In June 2007 the organisation was actively involved in peace talks as well as capacity building in the area. In the CAR it was involved in the framing of charges in the Bemba Gombo case as a result of which rape and torture were added to the list of crimes against humanity in the indictment. In Darfur against a very challenging background, the organisation has been involved in peace activities and the supporting of women in the national elections. The organisation uses the process of documenting as an effective support for women, in Darfur this is a strategic process to influence and change important components in the armed conflict, it represents more than raising awareness, it seeks to raise visibility. In seeking to document the situation the organisation is working with IDP's in places such as the Kelma Camp in Southern Darfur and have found a great willingness to participate. This is necessary given that in such camps national security related to the government try to stop people from reaching the camp and see what is happening.

The main purpose of such documentation is to find out about different women's experiences, to find out about those who have been attacked and have fled their villages. Not a lot of this kind of work has been done previously and that which has been done, usually relates to a professional area such as Médecins Sans Frontières which is specifically medical and confidential. Documentation has been used as an advocacy tool with the ICC, for instance in 2005 when there were rumours that the Office of the Prosecutor was not going to pursue the prosecution of crimes of sexual violence. Such work has inherent challenges, in the Sudan there is a real security risk as well as difficulty of access. The organisation requires its own security given the risk that a camp may be attacked at any time. The transportation of documentation from Darfur is also a real problem.

Men and women of the organisation work with victims and try and ensure that they are ready when they decide to break the silence. The organisation has found that there is an important need for oral education in camps for matters such as the requirement that treatment be given to a victim of sexual violence within 72 hours and information pertaining to sexually transmitted infections and injuries caused by rape. There is also a lack of effective psychological support such as in the cases of children born as a result of rape who are not accepted and are known as 'son of janjaweed', or where divorce occurs because the husband no longer accepts the wife or even where it is the woman who feels that they should not remain married.

In the Kelma camp, most residents are from the village of Shatia in the south which was aggressively attacked. There is a suspicion that a bomb dropped over the area by the government was a chemical one, given the number of miscarriages in the area in its aftermath. In interviews conducted with 470 residents of the camp, 183 of them were victims of rape, their ages ranging from 10-45 years.

The organisation has a number of recommendations, firstly the government should take seriously sexual and gender based violence. The rape law should be amended; as it currently stands there is a victimisation of women before the law. There is a reluctance to report rape as Sharia law requires four witnesses otherwise a charge of adultery can be made against the victim. Victims should receive the necessary treatment and protection should be provided for women going in search of firewood. Rehabilitation should be provided for families of the victims who also suffer traumatisation. Raising awareness and the importance of reporting rape even if that is to NGO's or INGO's is also included in the recommendations.

General Questions/Comments:

Dorina Damsa: Having previously studied international relations and human security, there is a real lack of treatment given to the question of sexual violence.

Amira M. Khair: In many criminal justice masters and courses relating to genocide, crimes against humanity, international relations and human security, the sexual violence element is missing and is not part of the curriculum and this is something that should be resolved.

Ana Uzelac – Ways should be thought of in which to economically empower these women. May women may not live to see a case going to trial, what is really needed is to emancipate these women by giving them the financial tools as they are often ostracised from their communities.

Amira M. Khair: Why is there not more awareness being raised regarding the second victim of sexual violence/rape, that of the children born as a result.

Katy Glassborow: In the Lubanga trial, the victims lawyers have launched an appeal to have sexual violence charges added to the charge of conscription of child soldiers which is significant as it is an acknowledgement that girls in the militias were often raped. More attention needs to be given to this generation of kids born out of rape.