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Satisfying Victims and Healing Societies: The Promises of Justice after Extreme Violence¹

By Susan F. Hirsch

Victims of the conflict in the Darfur region of Sudan have suffered vicious attacks, including murder, rape and displacement from their communities. They have been targeted for their ethnicity, their gender, their occupation of land that others covet, and the suspicion that they lack allegiance to the Khartoum government accused of supporting those who attack them. Their suffering draws the attention of humanity, and it should. Although it seems too little too late, humanitarian aid, peacekeeping troops, and diplomacy have been provided. And the world community has offered something else to these victims. In 2005, the Chief Prosecutor of the International Criminal Court offered the promise of justice. He promised that those responsible for harming them and killing their loved ones would be held accountable in front of the world. His promise made these Darfurians among the first of what I call: “victims deserving of global justice”.

This working paper explores the promises of justice that the global community has made to these and other victims of extreme violence. Over the last 10 years, through two major projects, I have been engaged in thinking about the promises made to victims in the name of justice. One project, born out of a personal encounter with mass violence, resulted in an ethnography of my experience seeking justice. The second project focuses broadly on the concept of victim and one aspect examines victims deserving of global justice. The creation of new institutions, such as the International Criminal Court, raises pressing questions: does global justice satisfy victims? Does it heal societies torn apart by conflict? Does it reflect what we need as a global community struggling to end both extreme violence and impunity?

I'll begin by briefly describing the new legal arrangements that promise global justice to victims. Then, I'll turn to my own experiences as a victim who sought satisfaction through a trial. This will lead me to the current concern that justice provided through trials might fall short of satisfying victims or of healing society. A case study of the conflict in Northern Uganda will show this point more vividly and urgently.

When I working on this paper, I took to heart the notion of presenting a vision. In the conclusion, I want to share with you, as I see it, a hard problem created by the promises made to victims of extreme violence. But I must admit that while that hard problem is in my line of sight, I have yet to envision the solution. I am convinced it will require collaborative efforts from colleagues in the several fields I call home: anthropology, sociolegal studies, and conflict analysis and resolution. But it will also require the broader public. In sharing my vision of the problem and the direction toward a solution, I

¹ This working paper is a slightly revised text of a lecture delivered by the author on March 17, 2008, as part of the *Vision Series* at the Center for the Arts at George Mason University. More information available at: <http://www.gmu.edu/cfa/vision/>. Portions of the talk are adapted from other works by the author cited herein.

want to convince you that we all have a stake in the promise of global justice and an obligation to deserving victims.

THE CURRENT MOMENT IN INTERNATIONAL LAW

Let me begin by outlining the current landscape of international criminal law. Since the war crimes trials of Nuremberg and Tokyo after the atrocities of World War II, the commitment to use international law after extreme violence has grown. The 1990s saw the establishment of tribunals and special courts to address crimes in the former Yugoslavia, Rwanda, and more recently Sierra Leone. Of course nation states have also prosecuted human rights violations; the 1980s trials in several Latin American nations are instructive examples. The global community's concerted attention to war crimes, genocide, and crimes against humanity is a remarkable development explained as a commitment to end impunity, to stay the hand of vengeance, and to deter further instances of the world's worst crimes. Despite differences of opinion as to whether trials achieve these goals, the move toward global justice has been strong and steady.

For at least a decade legal scholars and activists representing many nations worked to develop a comprehensive approach to the aftermath of extreme violence. The International Criminal Court located in The Hague came into being with the passage of the Rome Statute in 1998. These are among the goals laid out in the preamble to the Statute: "Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes, Resolved to guarantee lasting respect for and the enforcement of international justice." The statute establishes the court's jurisdiction over crimes against humanity (such as systematic rape, displacement, extermination, and slavery), war crimes, genocide, and will eventually include the crime of aggression. 105 nations are signatories and thus members of the Assembly of States parties. The Court's jurisdiction follows the principle of complementarity, which means that member nations should prosecute the crimes mentioned above when they occur in their territory. Every case should NOT come to The Hague. The Prosecutor initiates investigations toward prosecution when referred by a member nation that is unable to prosecute, as in the case of Uganda, when it is referred by the United Nations Security Council, as was the case with Darfur, or when a member nation is unwilling to prosecute. The Chief Prosecutor, Luis Moreno-Ocampo can initiate an investigation himself, including in response to requests from the public. At the Institute for Conflict Analysis and Resolution (ICAR thereafter) at George Mason University we have twice had the privilege of hosting the Chief Prosecutor and benefited enormously from our interactions with him.

It is important to note the parallel proliferation of other judicial and quasi-judicial efforts, such as truth and reconciliation commissions, official apologies, and public memorializations. Victims, who are enabled to participate directly in some of these processes, have also been at the forefront of calls for restitution, reconciliation, truth tellings, and "local" or "culturally-specific" responses to extreme violence. The active pursuit of responses to mass atrocity that address victims' interests explicitly have influenced the development of international criminal law.

In its imaginings, the inclusion of victims in the legal mandate, investigatory logic, and prosecutorial practices of the ICC was nothing short of history-making. Victims of mass atrocity could expect to be included to a greater extent than previously in international criminal prosecutions. Victims were promised protection, reparations through a Victims' Trust Fund, and a role in investigations and court proceedings. As the ICC investigated atrocities, issued indictments and began its first case last year, critics have charged that the Court has not kept all these promises. Including victims in investigations and hearings has proved harder in real cases than when the ICC was a court only in theory.

Let me be clear up front. The International Criminal Court has many critics. Some routinely charge that the current international legal mechanisms are not serving victims' needs or fulfilling their interests with respect to justice and recovery whether narrowly or broadly conceived. Their arguments vary but often implicate the remoteness—in time, place, and manner—of international justice from the site of the violence and the lives of the victims. To be fair, concerns that international legal remedies fail victims are rarely the primary charge of critics, because of the indeterminate nature of “victims' rights” under international law and most domestic legal regimes. Other critics argue that Western-style criminal justice is a flawed response to mass atrocity in part because it focuses on victims and perpetrators as individuals rather than as members of groups. After all, group membership is at the heart of genocidal crimes. Relatedly, the emphasis on prosecuting only those most responsible and not all the perpetrators risks encouraging impunity in the lower ranks. Still other critics dispute the hegemonic expansion of Western liberal legalism and raise concerns that the ICC might erode the particularity of justice in member states. A strong critic of the ICC's role in “externalizing justice”, Yale law professor Owen Fiss makes the point that “delegating responsibility to [international bodies] qualifies the commitment of the nation-state to human rights and lessens the meaning of the trial that eventually takes place” (Fiss 2007). In his view the African nations currently involved in the cases before the Court should hold their own trials. If these are lacking in some way, so be it. The Chief Prosecutor of the ICC answered Fiss directly, arguing that “massive crimes are never simply domestic.” Addressing such crimes requires an integrated system of international and national courts.

It goes beyond the scope of this paper to answer the critics. Rather, following the great French philosopher Michel Foucault, I want to highlight what the court has produced. What has its existence, however contested, created in the world? For one, the ICC has presided over extensive law reform in the nations that have signed the Rome Statute. In signing nations pledge to tailor their laws to conform to international standards. Here the charges of hegemonic replication of liberal legalism seem apt. But of more interest to me here is the creation of certain categories at the broadest global level. Specifically: the “victim deserving of global justice”. With each new case, this subject is being constituted, and ongoing processes related to international law are actively shaping the new subject's meaning and experience. In fact, two victim categories have emerged. The Rome Statute identifies one explicitly as those persons and institutions actually attacked and harmed. I am engaged in ongoing research on how these victims participate in constituting themselves as victims. For example, they do so by telling their stories to ICC personnel and NGOs engaged in gathering evidence of crimes committed against them. This is an emerging phenomenon: individuals are speaking themselves into this

new role of victims deserving of global justice. At the same time the ICC's operations have constituted a second victim category, though more implicitly: the rest of the world community. This group—not always conscious of its status—is framed as an entity with obligation to hear those individual stories of suffering and to end impunity.

My point is that the court's operation can cause us to think of ourselves as a global community with new responsibilities. We might already feel a moral duty toward victims of extreme violence, but now that sense is bolstered by a legal obligation to act as a world body. Well, not all of us are obligated to act. The United States is not a signatory to the International Criminal Court. We do not participate. Though not a strong supporter of the ICC, Bill Clinton signed on just before his presidency ended, but these orders were nullified by George W. Bush as soon as he took office. I'll return to this issue, but I would suggest it should not stop us from thinking about ourselves as part of the global community constituted by the Court's action to stand against impunity.

There is a tension between the two kinds of victim I've described. The focus on accountability and ending impunity that underpins tribunals and trials tends to position the international community as the more important victim deserving of justice after mass atrocity. One critic writes that he is "troubled by a justice process that may favor the interests of those only morally affected by the violence over those actually physically afflicted by it" (Drumbl 2005:124). From all accounts trials of those most responsible focus primarily on satisfying the world community's interest in accountability. But should we assume that trials are unsatisfying for harmed victims? This is an important question because the prosecutor and others routinely defend their actions by invoking the promise of bringing justice to victims. Let me address this question by describing my own experience of turning to law after suffering harm, having my day in court, seeing justice done, and yet feeling strangely unsatisfied.

A PERSONAL PERSPECTIVE ON SATISFYING VICTIMS

On Friday, August 7, 1998, my husband Abdulrahman Abdallah and I were preparing to travel to the United States from Tanzania, where we had lived for the previous year while I taught at the University of Dar es Salaam through the Fulbright program. That day, we stopped at the U.S. Embassy in Dar to cash a check. I went inside, while my husband, whose nickname was Jamal, waited for me outside. When a truck bomb detonated a few moments later, I escaped the building with minimal physical injuries. After hours of searching at the Embassy site and area hospitals, I learned that Jamal had been killed, along with 10 others, mostly Tanzanian security guards. A bomb also exploded in Nairobi, Kenya, that morning, killing hundreds and wounding thousands, mostly East Africans. Twelve Americans were killed in Nairobi, and many U.S. government employees suffered injuries in both bombings. It was immediately evident that the bombings were a major attack on U.S. interests, and the U.S. government accused Osama bin Laden and what was then an organization relatively unknown to the public: al Qaeda.

As you might imagine, similar to other bombings victims, I experienced severe shock, grief, and terror. Although I found myself struggling to understand what had happened and why, it was difficult for me to get information. In a pre-9/11 atmosphere,

there was little discussion of terrorism or public interest in this—for me—enormous tragedy.

But after the embassy bombings hundreds of FBI agents mounted what was at the time the largest criminal investigation ever undertaken outside the United States. Within a few months, a dozen suspects had been arrested and indictments issued for over 20 people, including Osama bin Laden and the members of secret cells in London, Kenya, and Tanzania. The embassy's legal status as federal property justified holding a trial in U.S. federal court. When the trial of four defendants began in the winter of 2001, I decided to attend. In part I wanted to represent Jamal, his family, and the East Africans who seemed to have been forgotten. I also sought recognition for my own suffering. I was also looking for information about the crime. At the same time I sought a definitive official response. For me, that meant a judgment of guilt or innocence and some remedy. Other victims expressed different reasons for attending: to find out whether the U.S. government had warning of the bombings beforehand, to see the accused face-to-face, to get revenge, to make sure that justice was done. The embassy bombings trial was held in New York City in the first six months of 2001. On trial were four men accused of, among many other crimes: conspiracy to kill Americans, using weapons of mass destruction, and murder on federal property.

I turned to the embassy bombings trial for justice. But my scholarly study of law here and in East Africa made me aware that justice is often elusive. Power, politics, and the idiosyncrasies of the legal system often get in the way. As a life-long opponent of the death penalty, I was especially apprehensive about the prospects for justice because two of the defendants faced capital charges.

The embassy bombings trial was incredibly important to me, and in retrospect, to the public. After 9/11, it was a significant source of information about al Qaeda. But in the book I wrote about my experience of the bombings and the trial, I describe how the specter of the death penalty hanging over the trial compromised the justice it produced. I wrestled with the burden of being pressured to tell the story of my loss in the trial's penalty phase to convince the jury that one convicted defendant deserved death for his role in the crime. Prosecutors' repeated requests in the face of my refusal led me to resent pressure tactics that failed to respect my position that I could not participate in a process that could lead to the intentional killing of another person. As I watched the penalty phase testimony of others, I agreed with political scientist Austin Sarat who argues that victims' voices and stories are used to provoke a desire for revenge in the jurors. This is a difficult issue. Some victims want to tell their story, but it seemed to me they are rarely afforded the opportunity to express themselves fully and instrumental uses by the prosecution are common. This frustrates some victims who seek other forums besides trials to gain recognition for lost loved ones. My point is that a trial can fail to satisfy all victims, especially a trial with multiple victims of diverse background. The failure to convict can be profoundly disappointing for victims. A death sentence is justice for some victims and a perversion of justice for others. And yet, recognition for us as victims, a public explanation of the crime, and a determination of responsibility, were, for me, elements of justice promised and delivered through the trial. These were satisfying as justice, but afterwards I realized that justice was not enough.

Justice was not enough because trials have inherent limitations. For instance, trials are limited in that they are not designed to answer fully the question of why

violence, especially political violence, occurs. So when the trial left me still asking why, I began a quest to understand what motivated the east African attacks. My quest has proved hard. I won't learn anything more from the four defendants; they are all incarcerated for life terms under Special Administrative Measures with no access to anyone other than family and attorneys and with no possibility of parole. At the same time, explanations for such violence lie well beyond the individuals who carried them out. My colleagues in conflict analysis and resolution are making headway in explaining the causes and dynamics of terrorism, which lie in the socioeconomic and political conditions that frustrate and repress large sectors of humanity and in the contested foreign policies of powerful nations. Such approaches to explaining terrorism take us well beyond simplistic attempts to blame it on a religion or an ideology. As I write in the book, the search for root causes of the violence is a quest necessarily undertaken to supplement what legal justice fails to provide.

Over the past year, I have been using my book as a platform, and my victim role as a persona, to encourage audiences to question the U.S. death penalty, the war on terror, and the abandonment of justice as a crucial counterterrorism measure.² For all their flaws, trials stand in stark contrast to military campaigns, secret tribunals, indefinite and abusive detentions, and railroaded prosecutions. Most recently, I have joined the call for prisoners at Guantanamo Bay to be brought to justice or released. In making that call as a victim, I note that one Guantanamo detainee—Ahmed Khalfan Ghailani—is an indicted embassy bombings suspect, and I see no reason not to try him in federal court (Hirsch in press).

ON VICTIMS

I have written elsewhere about my distress over the reality that in the public arena my victim status seems to authorize my claims more effectively than my position as a university professor (Hirsch 2007). Speaking as a victim can lend a compelling authority to my words, but it is terribly risky. As feminist work has taught us, “Victim” is a highly volatile subject position. The violation that made me a victim is forever destabilizing and, in the eyes of some, renders me emotional or unreliable or partisan.

Allyson Cole has captured the cloying negativity of victim status in a book titled “The Cult of True Victimhood” (Cole 2006). In her analysis, true victims must exhibit propriety, responsibility, individuality, innocence, and moral uprightness. They retain “true victim” status by convincing others that they played no role in their own injury. Feminist perspectives on victims of sexual assault have long drawn attention to the tendencies of social science, legal professionals, and the public to blame the victim. Pundit Ann Coulter’s attack on the 9/11 widows as whiney and self-absorbed is evidence

² Right now Guantanamo Bay poses a huge challenge to American justice. The longer it stays open, the worse the U.S. reputation around the world in terms of our ability to stand for the commitment to do justice when it is needed. Its existence and other tactics in the war on terror are eroding the security of the US. The refusal to try terror suspects in open court not only risks violating their individual rights—a criticism made by many—but it also robs victims and the public of the right to justice in its sense of establishing who was responsible for crimes of terror, what they did, and why they might have participated, as revealed through a fair process where the accused can defend themselves. Current political realities lead me to embrace reforms in the justice system and to call for its use as a response to terrorism.

of how victims routinely fall from an initial sacred status.³ From the other side of the political spectrum, liberal legalism offers sharp criticisms of the victims' rights movement, which I share given the many inroads of that initiative on due process for defendants.

In my own experience, it is difficult to avoid the slide toward being a bad victim, an unsatisfying victim, if you will, especially when one speaks out or fails to exhibit true victim status. Think about why women and children in Darfur might be satisfying victims. And why child soldiers who killed family members after being abducted into the Lord's Resistance Army might not be. And what about the Serbs protesting Kosovo independence? Their claims to victim status go back hundreds of years. Who is a satisfying victim and why? I play on my title to highlight what is required of victims and to suggest that we find more tolerance for what Sharon Lamb calls "New Versions of Victims" in book of the same title: victims who have agency, who speak up, and who question justice and other options offered them after violence and loss (Lamb 1999).

Turning back to the original interpretation of "satisfying victims", what does social science tell us about justice and victims' satisfaction? O'Connell makes that point that we know little empirically about what trials do for victims of torture and other human rights violations. He asks, after trials of human rights violators "do the victims feel better--less unhappy, less uneasy, less helpless?" (O'Connell 2005). The meager evidence, including O'Connell's interviews with therapists and others who have worked closely with victims, leads him to conclude that by and large trials produce only mildly positive effects for victims; for those who participate, these effects are strongest, and they are weakest when the trial is prolonged or highly adversarial. In a book titled *The Witnesses* Eric Stover concludes that the experiences of victims who testified at the ad hoc tribunal on the former Yugoslavia were extremely varied (Stover 2005). Some were haunted with trauma from the experience and fear from the exposure. Some benefitted enormously—finding a new voice and purpose through testifying. The death of Slobodan Milosevic during his trial created a wide range of reactions among victims.

This is an area ripe for social science investigation, especially as the ad hoc tribunals conclude and the ICC's work begins, but, drawing on my experience, I have cautioned those studying victims' views of justice to be aware of ethical and epistemological challenges. Victims are a diverse group and over time, as we recover, or not, our perspective on what satisfies us can change. And every encounter—even with researchers—shapes our recovery.

Another area ripe for social science investigation is the question of whether international criminal trials play any role in healing societies torn apart by extreme violence. Do trials restore relationships or rejuvenate civil society? There is little scholarship on this point, and given the void many have concluded that trials have negligible or detrimental effects. The work of healing society is assumed to lie in techniques and institutions of restorative justice.

Accordingly, truth and reconciliation commissions have been embraced by many who counsel turning away from retributive prosecutions in order to focus on healing society (see, e.g., Hayner 2002). TRCs have proliferated widely in post-conflict settings

³ This comment was made in an interview with Matt Lauer on The Today Show broadcast on June 5, 2006.

from Sierra Leone to Nepal to Sri Lanka, and possibly Kenya after the recent violence there. TRCs foreground victims' stories and might thereby further recovery; the truth-telling of perpetrators might restore relationships. Social scientists are heavily engaged in evaluating the healing effects of this form of restorative justice. The emphasis on restoring relationships is crucial after mass atrocity, and perhaps especially appropriate after civil war or ethnically-based strife, when groups pitted against each other must learn to live together.

In addition to more social science research, some in the legal field are calling for a new theoretical approach to international criminal law. In a recent volume titled *Atrocity, Punishment, and International Law*, law professor Mark Drumbl charges that the hegemonic deployment of the liberal legal model through the ICC and other bodies has been undemocratic in its disinterest in local perspectives. Drumbl argues: "until the voices of afflicted populations are more clearly heard, channeled through bottom-up perspectives, and loosened from ... internationalist visions, we simply do not know exactly what values pertaining to the punishment of enemies of humankind--if any--truly are shared among us all" (Drumbl 2007:20-21). In seeking out the perspectives of victims to advance the refashioning of international criminal justice, Drumbl turns concertedly to the local context, the non-Western, and justice options other than liberal legalism and presumably more congruent with victims' cultural understandings. Taking these seriously would significantly alter the international community's approach by opening it beyond the one-size fits all retributive proceeding currently pursued through ICC prosecutions or through national courts that operate with the same logic. Drumbl's goal is to convince ICC member nations to change the rules so that some accountability can be achieved through local, culturally-relevant practices, which he asserts many victims would prefer and which he argues would be a better approach to healing society. He would insist that those local practices authorized to stand in for the court meet international standards, such as operating in good faith and avoiding gratuitous or iterated punishment. In my read of Drumbl, and what is becoming a reform movement, the ultimate goal after mass atrocity is to increase the chance of satisfying those victims actually harmed by providing them a remedy that furthers individual recovery, societal healing, and justice (Hirsch under review).

Before turning to an example highlighting the dynamics of local, national, and international justice, I want to raise a concern. Those coming from a Western liberal legal position sometimes assume that other societies, especially "non-Western" are more adept at "healing". In contrast to the punitive society we inhabit here, these are depicted as "healing societies" with rituals, procedures, and commitment to reknit the social fabric. While anthropologists are the first to embrace the notion of culturally different approaches to conflict and its aftermath, we are also the first to point out the danger of dichotomizing stereotypes that might paper over a more variegated reality. With that, let me turn to a case study.

CASE STUDY: THE CONFLICT IN NORTHERN UGANDA

In early 2008, the Government of Uganda and the leaders of the Lord's Resistance Army or LRA signed a ceasefire agreement. Over twenty years of war between these parties has devastated parts of Northern Uganda, permanently displaced 2 million people, and resulted in the deaths of 100,000 and the abduction of about 50,000, mostly children. If it holds, the ceasefire might offer respite from violence to Acholi people, who have borne the brunt of the violence and displacement in comparison to other ethnic groups.

In late 2003, Uganda's president, Yoweri Museveni, informed the International Criminal Court that his government—a signatory to the Rome Statute—was unable to prosecute those responsible for extensive violence in the two decade long civil war and asked the Chief Prosecutor initiate an investigation. The war had pitted Museveni's government (and previous Uganda governments) against the Lord's Resistance Army or LRA. The LRA rebel group led by Joseph Kony stood accused not only of battling against government forces but also terrorizing the local population throughout northern Uganda and the region. Accusations against LRA commanders included kidnapping, rape, murder, use of child soldiers and property destruction, among other crimes. The violence displaced thousands who had fled to camps that were rife with disease and despair. Among the ethnic groups living in the ravaged northern region, the Acholi was hard hit not only by LRA rebels aggressively seeking their loyalty but also by virtue of the Ugandan government's long-term neglect of the region. Over many years Acholi children were kidnapped by LRA rebels who forced them into military and/or sexual servitude. Numerous attempts at peace negotiations had failed to produce a lasting agreement, and earlier amnesties of LRA leaders—proffered to end the conflict--were rescinded when violence broke out again. In 2004, the ICC Chief Prosecutor launched a formal investigation and, in the fall of 2005, unsealed arrest warrants for five LRA commanders, including Joseph Kony.

The ICC's role in Uganda has been very contentious. Those seeking to resolve the conflict through peacetalks, including long time mediator Betty Bigombe, denounced the ICC's involvement. Some in the conflict resolution field used the example to argue that justice has no chance of succeeding before peace is secured. Others have argued that the indictments led to widespread defections in the LRA ranks and ultimately brought leaders to the table to talk peace. With the benefit of hindsight, scholars, including some ICAR students, will analyze these events and provide more subtle explanations than the raging peace vs. justice debate.

Other Ugandan voices argued that the need for social healing far outweighed the need to punish perpetrators through trials in The Hague. Their arguments were very compelling; for instance, many perpetrators had family members willing to welcome them back. When the demand for local remedies includes a claim that culturally familiar justice will be more efficacious to victims and society, it takes on a moral force. Over the past decade Ugandan political and traditional leaders, along with churches, NGOs, and others in civil society, have been investigating and reviving various rituals of cleansing, accountability and reconciliation. One of the most prominent is a ceremony called *Mato Oput* or “drinking the bitter root” that at some point in the past was used by Acholi people to bring together families after a homicide. I won't go into the details of this and other rituals, but I want to make the point that they have been championed by many in

and out of Uganda but for reasons that vary widely. Some people embraced local remedies to make the case that ICC prosecutions were not needed. Some embraced them to empower local political leaders who were needed to revive the rituals. Some were looking to reinvigorate Acholi culture after the ravages of the war. Some insisted that this option was far superior to prosecution to achieve the ultimate goal of societal reconciliation. Many returning combatants have participated in adapted cleansing rituals, but reconciliation rituals have yet to be institutionalized perhaps because of the competing views and the politics behind their regensis.

In this complex situation with conflict still ongoing, many local and international NGOs found themselves supporting practices deemed “authentic” by some and condemned as “invented traditions” by others. Anthropologist Tim Allen has a fascinating account of the opportunistic and cynical misrepresentations of newly created local remedies, which have been depicted as rites practiced for centuries (Allen 2006). Anthropologists have offered especially sensitive critique of the politics of culture, tradition, and authenticity that surrounds advocacy for certain approaches over others. Creative new rituals are potentially very effective, yet in the fierce struggle over post-conflict remedies, their lack of traditional authenticity can be used to delegitimize their very revival and practice. The situation belies any simple conclusion that local remedies will satisfy all victims (Hirsch under review).

Let me offer a different concern about local Ugandan remedies. Victims have complained that their stories of harm have no place in the rituals that welcome back perpetrators who are cleansed and granted absolution. Some feel silenced by this process, especially if they have told their stories in other contexts, such as in encounters with ICC or NGO personnel. After the rituals, victims feel pressure not to confront those who have caused harm or to speak about their deeds. I am not arguing against the use of these rituals. Rather, the example suggests to me that the stories victims told for the ICC or some other body are a crucial artifact of global justice. Therefore the hegemonic effect of liberal legalism includes the construction of individual victims through particular kinds of speech and that remains a central feature of globalizing justice. It remains so, even if the ultimate remedy to mass atrocity is undertaken through a local justice that silences victims. My question would be, having elicited those stories for the world to hear, and constituted those victims, what is the responsibility of the broader global community?

The Ugandan situation remains unresolved. The new ceasefire agreement calls for traditional justice for lower level offenders and trials in a specially-designed national court for LRA commanders. In early March 2008 the agreement seemed unlikely to be finalized given the rebel condition that the ICC drop its outstanding warrants. Shortly after, the ICC broke this impasse by asking the government of Uganda to provide the plans for the new court. Presumably, if the government demonstrates that it is now able to prosecute, the ICC will back away.

Comments broadcast by the BBC and other news outlets provide a window onto the complex issues. One woman, whose daughter was abducted, insisted that those responsible should “face justice”. Other victims have announced their willingness to welcome back the rebels who have been in the bush and neighboring Sudan. Still others hold on to hope that the International Criminal Court will prosecute several high ranking LRA commanders. Just these perspectives alone suggest that satisfying the victims of this conflict is an extremely difficult endeavor.

MY VISION

This is an extraordinary moment with respect to global justice. Law professor Diane Orentlicher has long been known as an “accountability hardliner” for her insistence that combatting impunity with criminal trials is absolutely necessary after mass violence. Yet recently she has revisited this view and joined Mark Drumbl and other lawyers to argue strongly for recognizing the agency of victims, including their interests in restorative justice, in order to devise approaches that could replace or complement trials. But what makes this an extraordinary moment is that at the same time as Orentlicher and others look to the local justice, traditional remedies themselves are coming in for heightened scrutiny as in Tim Allen’s critique of Ugandan remedies. Many have criticized the *gacaca* courts in Rwanda, including Lars Waldorf who uses the example of to argue that “national justice and less formal local justice may be no more successful than international criminal justice in promoting accountability, reconciliation, victim satisfaction, collective memory, and democratic deliberation.” A recent report assesses examples of local justice in several African contexts, including Uganda and ends up denouncing the “myth-making” that those seeking power used to elevate some of these practices and the “hype” that made them the darlings of the international community. Even South Africa’s Truth and Reconciliation Commission has come under criticism for its shortfalls, especially with respect to gender bias.

The contradictory movements toward and against local and/or restorative justice might reflect the reality that after mass atrocity no form of justice is fully satisfying for victims or anyone else. Certainly, simple solutions are unsatisfying. It would be a simple but flawed solution to tell the victims in Northern Uganda or Darfur that they should be satisfied with local justice, especially in its current, contested form, that is, to cut them loose from the international options originally promised; and it would be a simple but flawed solution for the global community to offer only accountability and no other assistance or capacity-building toward healing after mass atrocity. In crisis moments like this, when the complexity of the problem is exposed, and previously adamant positions soften into uncertainty, innovation can emerge.

In my view, in my vision, the moment is ripe for a global conversation about justice and the forms it can and should take after mass atrocity. Such a conversation would focus on determining the constellation of remedies that will satisfy both harmed victims and the larger global community that stands against atrocities. It is crucial that the world community take on not just accountability but also the work of putting societies back together. Given its narrow mandate, the International Criminal Court cannot accomplish all this, but I would argue that it cannot bring satisfying justice unless other remedies operate alongside it. It is that complementary effort—justice and peacebuilding, and a new robust process of incorporating multiple approaches—that the world community could discuss and embrace.

This conversation will need to be quite different than one I witnessed a couple of years ago at the height of the controversy over the ICC intervention in Uganda. I was participating in a workshop with experts on the ICC, ICAR grad students, and conflict resolution practitioners. One of the practitioners was arguing that all conflict, even massive human rights violations, could be addressed through restorative justice and that criminal punishment was unwarranted. Justice Richard Goldstone interrupted him. For Goldstone,

a South African jurist and first prosecutor of the ICTY, law had been a key tool in overturning apartheid and countering impunity. He leaned across the table and asked: “Sir, what would you do with a *genocidaire*? With a perpetrator who had ordered the killing of thousands? Would you rehabilitate him? Would you have him do community service?” His interlocutor continued to insist on restorative justice, and the conversation ended in frustration. In my view we are beyond that moment. No longer should we think that one kind of justice suffices. These forms can and will operate together and ideally in complementary ways. The world community now needs to work out more of the details, but the struggle to recognize local forms of justice in a new, integrated system will require an ongoing conversation.

Even as prosecutions and the threat of prosecutions go forward, projects of restoration and healing should also receive global support. Let me give you two examples:

- 1) The Darfur Peace and Development Organization, which provides grassroots groups with humanitarian assistance and also conflict resolution training so that they can address past harms and with across lines of difference. I am proud to say that DPOD is run by an ICAR PhD student, Suliman Giddo;⁴ and
- 2) Arthur Serota who directs the United Movement to End Child Soldiering (UMECS). UMECS was founded to help build a grassroots culture of peace and provide direct assistance to children harmed in the Northern Uganda conflict.

These could receive support through the ICC’s Victims’ Trust Fund, which is woefully underfunded. My point is that a commitment to support local efforts, especially those with a strong conflict resolution or restorative component, should go along with a commitment to accountability.

My vision might sound rather naïve. Is such a global conversation even likely? Well, consider the crisis created through the ICC’s involvement in Uganda, consider the uncertainty of scholars and practitioners over whether local or national or global justice is most effective, consider the fact that each of the three U.S. Presidential candidates (i.e., McCain, Obama, and Clinton) has said that, if elected, he or she would re-visit whether the United States should join the ICC. U.S. interest and involvement alone could spark that conversation. This would certainly happen if members of the American public were to show interest in global justice. And we should. We are that other group of victims, those positioned to work toward justice for those harmed. We are morally, if not yet legally, obligated to think about whether and how we are part of a world community that is bringing justice in its broadest and best sense.

But a new more comprehensive approach is not enough. Judging from my own experience, we must also determine why instances of mass violence take place. Justice or healing without answering the why question and without searching for root causes is very much incomplete. When I talk with other victims, we acknowledge that, when all is said and done, trials, memorials, reparations, and other responses to violent acts might bring some solace, might effect some accountability, might help to knit together our societies

⁴ See also the website at <http://www.darfurpeaceanddevelopment.org>.

and our lives, but to be honest something so lofty and important as justice might remain elusive.

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