Victims at the International Criminal Court

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I. Introduction

The International Criminal Court is the first international court to give victims the opportunity to participate in legal proceedings. This makes it unique since it provides both retributive and reparative justice – it brings criminals to justice while also assisting victims to rebuild their lives through participation and reparation. The Court trusts that the truth-telling by the victims at the trial offers them redress by making it clear that these atrocities are universally condemned. In her acceptance speech for the Nobel Prize, Yazidi survivor Nadia Murad reiterated the importance of justice for victims. She stated that “the only prize in the world that can restore our dignity is justice and the prosecution of criminals, the only prize that will restore a normal life between our people and our friends is justice and protection for the rest of this community.”

Initially, “victims” were natural persons who had suffered harm as a result of the commission of any crime within the jurisdiction of the Court. However, the Appeals Chamber in the Lubanga case has narrowed that definition to include only those persons who have suffered directly or indirectly from the charges against the accused.

The Rules of Procedure state that “victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art of science or charitable purposes, and to their historic monuments, hospitals, and other places and objects for humanitarian purposes.” Therefore, the definition of victims remains large enough to include many atrocity survivors.

This paper will address the benefits of victim participation both for the Court and the victims, as well as reparation.

II. Victim participation

For the first time in the history of international criminal justice, victims can share their views and concerns in the court room, often represented by lawyers. Victim participation is provided for in article 68(3) of the Rome Statute: “where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court.” Victims participate in the Court’s proceedings in four ways. They make opening and closing statements, consult the record of proceedings, receive notification of all public findings and confidential filings that

3 Rules of Procedures and Evidence, rules 85 and 86
4 ICC, Rome Statute, Article 68(3)
affect their personal interest, and examine evidence if the Chamber feels it will help in determining the truth.\(^5\)

In the *Bemba* judgement for example, victims were authorized to “participate at hearings and status conferences, to make opening and closing statements, to file written submissions, to introduce evidence, to question witnesses, and to have access to confidential documents in the records.”\(^6\) This significant participation allows victims to feel empowered and included in the judicial process, which helps them with redress.

The right of participation is not absolute but it can provide a key bridge between victims and affected communities and the ICC. It helps to ensure that justice is not only done, but seen to be done by those impacted by the crimes being prosecuted by the Court. While some victims will participate in proceedings in person, many will participate through legal representatives, who will accompany them throughout the whole judicial proceedings.

This process has been proven to be beneficial both to the victims of atrocity crimes, and to the Court’s proceedings.

1. **Victim participation facilitates the victims’ redress**

Victim participation can promote individual healing and rehabilitation by giving the victim a sense of empowerment and closure. It is an avenue for victims to exercise their right to access justice for violations. The victim develops a sense of ownership in the Court when they feel involved in the justice process and their participation is meaningful. This justice, which is usually abstract, takes a concrete and personal dimension, since the victims can experience justice being done and know their voice was heard. It also serves a learning purpose – by exchanging with their legal representatives, victims learn about the rule of law, their rights and the Court’s mandate. This is favourable because the victims are more likely to claim their rights in the future.

The Court makes every effort to accommodate the victims as much as possible, so they do not have to travel to the Court in order to be included effectively in the proceedings. It is also crucial for the Court that the victims feel safe and comfortable throughout the participation process. Therefore, the identities of the victims are protected so their names do not appear in public domain. Furthermore, the Court’s staff is carefully trained to work with victims to address specific needs, especially children, elderly persons, persons with disabilities and victims of sexually and gender based violence.\(^7\)

2. **Victim participation’s benefits for the Court’s proceedings**

Victim participation does not only benefit the victims and communities – judges recognized that it helps them uncover the truth. Most importantly, it provides factual and cultural information that can help judges understand the context of the events, which is an invaluable assistance. Victims bring attention to the reality on the ground and matters that the Court may


\(^6\) *Bemba*, Judgment, para. 24

\(^7\) [https://www.icc-cpi.int/about/victims](https://www.icc-cpi.int/about/victims)
be unaware of given the physical and cultural distance between the Court and the affected communities.

It also helps gather social support for the ICC in the countries concerned. The Court can hold its proceedings or part of them locally (in situ). These proceedings bring the trial closer to the victims and the affected communities and allow better participation. This enables the communities to follow the trial, understand the importance of justice and promote accountability and healing. This shows that the Court is an institution which is ready to move outside its protected zone to fight for justice. Nonetheless, in situ proceedings increase costs and allow for the possibility of intimidation against victims. Therefore, it is important to consult with victims on the grounds to see where they want the trial to be held. For instance, the communities in Tanzania and Kenya preferred to have the proceedings at the headquarters of the ICC in The Hague. By allowing victims to participate in the legal proceedings, the ICC proves it is an institution which is sympathetic to the plight of victims and concerned with their redress and wellbeing.

III. Victims’ reparations

In addition to assisting victims to participate in its proceedings, the Court provides them with reparations to help them rebuild their lives. Article 75 of the Rome Statute states: “the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.” This is the cornerstone of the Court’s victim-centred approach. The Rome Statute was deliberately vague in defining reparations, allowing for interpretive discretion. Restitution, compensation and rehabilitation were the three kinds of reparations generally accepted in international law and therefore incorporated into the Rome Statute under Article 75(1).

At first States Parties were hesitant about reparations because of the large number of victims of the crimes the ICC tries. However, they became favorable once the Trust Fund for Victims was included in the Statute since its money is collected from fines, confiscated property and voluntary contributions. Though the TFV is separate from the Court, it was created in 2004 by the Assembly of State Parties as required by article 79 of the Rome Statute. The TFV supports and implements programs that address harms resulting from crimes under the ICC’s jurisdiction. At the end of a trial, if there is a conviction, the Trial Chamber may order the convicted person to pay reparations to the victims of his crimes. It may order such reparation to be paid through the TFV. It implements reparations ordered by the Court against convicted persons, as well as providing physical, psychological, and material support to victims and their families through voluntary contributions from donors.

The Court may award reparations individually or collectively, depending on what it believes to be most appropriate for the victims in the particular case. Collective and individual reparations may include monetary compensation, return of property, rehabilitation, medical support, victims’ service centres, or symbolic measures such as apologies or memorials.

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9 ICC, Rome Statute, article 75(1)
11 https://www.icc-cpi.int/about/victims
Reparations can only be ordered by the Trial Chamber after a defendant has been convicted. After Katanga’s conviction for example, the TFV awarded 1 million euros to victims: nearly 300 individual compensations of €250 and 4 collective awards covering housing and education assistance, incoming generating activities and psychological rehabilitation. TFV opinions will differ on whether to prioritize individual or collective compensation. Victims themselves do not all agree on this issue either so it is important that the TFV continues to award both individual and collective reparations based on the victims’ desires.

Moreover, the victims can still receive assistance in the case of a non-guilty verdict. In fact, the Rome Statute allows for assistance to victims through the Trust Fund for Victims, following a decision by the Court. For example, following Bemba’s acquittal, the TFV decided to accelerate the launch of an assistance program in the Central African Republic. This will offer physical and psychological rehabilitation as well as material support, for the benefit of victims and their families. The board will consider first the harms suffered by victims in the Bemba case, as well as victims of sexual and gender based violence arising out of the situation in the CAR. Therefore, regardless of the judicial outcome, victims in the Bemba case are victims of the situation in the CAR and will receive support from the TFV. To date, it has provided assistance to over 120 000 victims in countries where the Court has active investigations like Uganda and the Democratic Republic of the Congo.

While Court-ordered reparations can come from the convicted person’s assets, the Trust Fund’s ability to provide general assistance is dependent on voluntary contributions by member states and individual donors. Although support among States is rising, governments must increase their contributions to ensure that the Court is able to keep victim survivors’ concerns at heart.

In partnership with the Court, the Trust Fund’s task is to ensure that the awards for reparations are responsive to the specific harms suffered by victims in each case as found by the Trial Chambers. It is also crucial that through efficiency and timely implementation, the promise of reparations can become a concrete and meaningful reality for victims, setting them on a path to healing and positive reintegration within their families and communities.

IV. Conclusion

The ICC uses a victim-centred approach in its trials, from the start of the proceedings with victim participation until the end through reparations. The Court’s preoccupation for victims of atrocity crimes is one of its top priorities. This was shown at the recent Assembly of State Parties of 2018 where many events and conferences focused on victims’ wellbeing. Another example is how in an extraordinary move, the Pre-Trial Chamber issued a decision in July 2018 ordering the Registry “to establish, as soon as practicable, a system of public information and outreach activities for the benefit of the victims and affected communities in the situation in Palestine.” It is the first time that the Court has issued an order for outreach at the earliest stages of the process, and before a decision has been reached by the Prosecutor to open a formal investigation.

12 https://www.icc-cpi.int/Pages/item.aspx?name=180613-TFVPR
13 http://www.coalitionfortheicc.org/explore/trust-fund-victims
Nonetheless, the Court still faces some challenges regarding victims. Firstly, victims have asked\textsuperscript{15} to be able to choose their own lawyers while still receiving legal aid: at the moment, only lawyers chosen by the Court are eligible to receive it. Then, the Court faces difficulties on how to inform victims of proceedings and possible participation when many of them live in inaccessible and insecure locations. Finally, victim participation slows down proceedings which goes against the accused’s right to a speedy trial. This is because the Defence, Prosecution and Judges scrutinize thousands of individual victim application forms to decide which of them are eligible to participate in the proceedings. Like most issues the Court faces today, these can be resolved by augmenting the Court’s budget so it can have adequate human resources to work on matters like sorting out applications, and going on the ground to communicate with victims.