

**Victims of Crimes and their Concerns under  
International Criminal Court.**

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*Abstract*

*In international criminal law, victims have been ignored for far too long. Most international criminal courts and tribunals established since Nuremberg to bring justice to victims of international crimes, including the ad hoc International Criminal Tribunals for Rwanda (ICTR) and International Criminal Tribunals for the Former Yugoslavia (ICTY), have failed to give victims' concerns due consideration. The International Criminal Court's Rome Statute affirms that "during this century (20th century), millions of children, women, and men have been victims of unimaginable crimes that deeply shock the consciousness of living beings," and grants victims a set of legal safeguards, participation, and protective measures by adopting the International Criminal Court (ICC) Statute.*

*The International Criminal Court (ICC) is a pioneering and complex system of justice that protects victims' rights. Although these rights are not absolute, the Court regards victims as valid participants in its proceedings since they are entitled to the guarantees of a fair and impartial trial. Nonetheless, this approach poses a significant challenge to the Court, which it has already confronted during its preliminary investigations and at the commencement of its first case.*

*Furthermore, victim participation in criminal processes is a relatively recent phenomena. While victim involvement as a "partie civile" in criminal procedures is common in some national jurisdictions, it is uncommon in international criminal trials. The International Criminal Court (ICC) Statute's drafters opted to include a rather extensive victim involvement structure.*

*Although it has been welcomed as a crucial and useful tool for allowing victims of egregious human rights violations and violations of international humanitarian law a voice, the procedural and substantive aspects are still being worked out. This paper begins with the analysis of the evolution and development of victims' rights in international law, followed by an examination of the extent to which victims' interests are addressed before the ICC. Attempts have been made to define and comprehend the fundamental ideas crucial to the subject, such as victim, compensation, restitution, and victim and witness protection.*

**Keywords:** International Criminal Court, Victims, Rights of Victims, Right to Participation, Right to Protection, Right to Reparations.

## I. INTRODUCTION

Victims have been increasingly important in our modern international criminal justice system. The Rome Statute<sup>32</sup> makes various allusions to their function and interests, including the ability of victims to intervene in proceedings, the establishment of a Victims and Witnesses Unit within the Registry, and the acknowledgement of victims' right to restitution. 'During this century, millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,' says the Preamble to the Statute.

Furthermore, the Rules of Procedure and Evidence affirms, "General principle: A Chamber, in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into

<sup>32</sup> Saumya Uma, Victims at the Heart of International Criminal Justice, Wire(March 27, 2022, 9:29 AM),

<https://thewire.in/rights/victims-at-the-heart-of-international-criminal-justice>

account the needs of all victims and witnesses in accordance with Article 68, particularly children, the elderly, persons with disabilities, and victims of sexual or gender violence."

Some alternatives, particularly those based on civil law or continental-style systems, allow victims to participate directly in proceedings (*partie civile*) and subsequently permit them to use issues adjudicated during a criminal trial in order to address essentially private concerns.

Criminal prosecution is viewed as largely a matter of public policy under common law, with victims playing only a minor part at best." Those on the "defence side," in particular, are sceptical of efforts to encourage victim participation, seeing it as a threat to further distort the alleged "equality of arms" balance between accused and accuser. However, in recent years, this resistance has weakened, maybe as a result of the growing popularity of restorative justice discourse. It cannot be said that, until recently, international humanitarian law was primarily concerned with the methods and materials of war and had little to say about victims, at least in the sense that victims were considered to be "innocent" civilian non-combatants (as opposed to wounded soldiers or sailors, or prisoners of war). for example, The regulations appended to the fourth Hague Convention of 1907, do not employ the phrase "victims."

There may be some indirect references, such as the preambular paragraph declaring the Convention's proposals to be "inspired by the desire to diminish the evils of war, to the extent that military requirements permit," and that they are "intended to serve as a general rule of conduct for the belligerents in their relations and in their relations with the inhabitants."

Only with the 1949 Geneva Conventions, adopted by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of

War, the victims of armed conflict begin to move to the forefront of international humanitarian law.

The Additional Protocols of 1977 are even more explicit: the word "victims" is in the title<sup>33</sup>. Even yet, these mechanisms, while addressing the plight of victims, place the issue in the broader framework of the state's interests. At the early stages of prosecution before the international military tribunals in Nuremberg and Tokyo, victims did not fare well. Although we now regard the Nuremberg Tribunal's formulation of the idea of crimes against humanity as its crowning achievement, this category of crime, which focused so appropriately on civilian victims, was largely neglected at the time. The International Military Tribunal notably proclaimed aggression to be the "supreme international crime," rather than crimes against humanity. Aggression, at least as it was defined at Nuremberg<sup>34</sup>, was basically a state-centered notion, with one entity being held accountable for breaking its commitments to another. The interests and sufferings of Nazi victims before to September 1939, before the Nazis were involved in worldwide military combat, were finally betrayed by the Nuremberg verdict.

The Security Council resolution establishing the International Criminal Tribunal for the former Yugoslavia mentions victims, but it is hardly a mandate for them to play an active role in proceedings: "the work of the International Tribunal shall be carried out without hindrance to victims' rights to seek compensation for damages incurred by violations of international humanitarian law through appropriate procedures."

The resolution establishing the International Criminal Tribunal for Rwanda contains nothing significant. In actuality, their contribution to the work of the ad hoc tribunals has been minimal.

<sup>33</sup> The Geneva Conventions of 1949 and their Additional Protocols, INTERNATIONAL COMMITTEE OF THE RED CROSS, (Mar 27, 2022, 9:29 AM), <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>

<sup>34</sup> Devin O. Pendas, *Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945–1950*, 43 JSTOR 428, (2010), <https://www.jstor.org/stable/27856215>

Any genuine concern for victims' rights in contemporary international criminal law stems from outside the tradition of international humanitarian law and international criminal law. A victim-centered approach emerged initially in the distinct but interrelated subject of international human rights law.

Since the system's inception in the late 1940s, victims have had the right to participate in international human rights legislation systems. Following some reservations about the UN's authority to even consider individual petitions from human rights victims, the relevant bodies within the organisation, specifically the Commission on Human Rights (now the Human Rights Council) and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now the Human Rights Council Advisory Committee), devised elaborate mechanisms to process the hundreds of thousands of communications were received in Geneva and New York.

Individual victims of human rights have the right to a remedy, which is specifically recognised in both regional and worldwide human rights treaties.

By the 1980s, new instruments aimed at improving the status of victims in the context of international human rights protection had begun to develop. The Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted the 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,' which was later endorsed by the United Nations General Assembly, in 1985.

## II. BASIC PRINCIPLES OF VICTIMS RIGHTS

The Basic Principles<sup>35</sup> recognise that victims should be treated with compassion and dignity, that their right to access to justice and redress mechanisms should be fully respected, and that national funds for victim compensation should be

encouraged, along with the rapid development of appropriate rights and remedies.

Parallel to this, human rights treaty organisations and courts began to build a corpus of jurisprudence addressing victim concerns as 'horizontal.'

abuses of human rights, making states accountable in accordance with their obligations international treaty responsibilities even where no obvious relationship could be seen between the State and the offender. This pioneering work was followed by attempts inside the United Nations Sub-Commission and Commission to produce more comprehensive rules on the right to remedy and reparation, led by two famous human rights experts, Theo van Boven and M. Cherif Bassiouni.

Professors van Boven and Bassiouni proposed basic principles such as a duty on states to prosecute serious violations of human rights (arising from the obligation to respect and ensure respect, codified in common Article 1 of the Geneva Conventions), the right of victims to redress and reparation, and the right to know the truth.

When compared to the historically limited role played by international criminal law and international humanitarian law, the Rome Statute of the International Criminal Court, as well as subsidiary instruments such as the Rules of Procedure and Evidence, pays extraordinary attention to the role and rights of victims. This is undoubtedly the result of the incorporation of human rights principles derived from recent case law of international treaty bodies and tribunals, as well as the progressive development of law found in the van Boven and Bassiouni principles, and the work of organisations such as the United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

The agenda was also supported by specialist non-profit groups, such as Redress, and national delegations from

<sup>35</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations Human Rights, (Mar 27, 2009, 9:29 PM),

<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

countries where a victim-centered approach to criminal law could be developed from their own traditions, such as France.

Other recent attempts to combat impunity through criminal law measures must definitely be a huge let down if the victim's point of view becomes the standard of success. Few victims of grave violations of international humanitarian law in the former Yugoslavia or Rwanda<sup>36</sup> will be pleased with the meagre output of two international courts created by the Security Council.

To be fair, ad hoc tribunals undoubtedly aid victims of crimes, notably in their ability to explain historical truth, one of the virtues emphasised in M. Cherif Bassiouni's work. They also serve a denunciatory role by stigmatising the criminals. But there is no restitution or compensation, and there is rarely even an apology.

The Court's manifested of its responsibility to safeguard victims was evident from the start. Many times, the Pre-trial Chamber advises the Court on appropriate measures for the protection of victims during an investigation, as was the case of the Darfur case, where the chamber designated two amici curiae, Antonio Cassese, who chaired the United Nations Commission of Inquiry that recommended the Court's prosecution in its January 2005 report, and Louise Arbour, the UN High Commissioner for Human Rights.

### III. VICTIM PARTICIPATION IN PROCEEDINGS

The Rome Statute gives a forum for victims to participate in the proceedings<sup>37</sup>, which is one of its greatest improvements. Witnesses' opinions and concerns may be raised at any time throughout the proceedings. As a limitation on this basic concept, the Statute states that it must be applied in a way that is neither harmful to or conflicting with the accused's rights to a fair and impartial trial. It's impossible to know how

<sup>36</sup> Claire Felter, The Role of the International Criminal Court, Council on Foreign Relations (Mar. 27, 2022, 10:29 PM), <https://www.cfr.org/background/role-international-criminal-court>

<sup>37</sup> Elisabeth Baumgartner, Aspects of victim participation in the proceedings of the International Criminal Court, 90

much power victims actually have. Nonetheless, the procedural issues around their participation have proven to be significantly more time-consuming and costly than most expected.

The number of victim applications has increased considerably since the Court's inception. From a few hundred in 2006 and 2007, the number increased to over 7,000 by 2011, though it has since decreased to a few thousand each year. <sup>3</sup> By 2011, the Assembly of States Parties had raised worry over the Court's allegations of ongoing backlogs in processing petitions from victims requesting to participate.

To overcome the issues, Pre-Trial Chambers have experimented with alternate techniques to the processing of applications since 2012. Although the details differ, there are certain similarities, such as a shorter application form, more delegation of the determination to the Registry, fewer redactions, and early arrangement of shared legal counsel.

Rule 85 of the Rules of Procedure and Evidence contains a definition of victims that is applicable to all cases but is particularly relevant for the purposes of participation: In accordance with the Statute and the Rules of Procedure and Evidence:

(a) Victims are natural beings who have been harmed as a result of a crime committed within the Court's jurisdiction.

(b) Victims may include organisations or institutions that have suffered direct damage to any of their property dedicated to religion, education, art, science, or philanthropic purposes, as well as historic monuments, hospitals, and other humanitarian-related sites and items.

#### A. Victim Criteria & their Interests

The victim must meet three conditions in order to participate<sup>38</sup>: the victim must have been harmed; the harm

IRRC 409,(2008),

<https://www.corteidh.or.cr/tablas/R21692.pdf>

<sup>38</sup> Kerstin Braun, Victim Participation in Criminal Procedure: An Introduction, 1 PSVV, (2019), [https://link.springer.com/chapter/10.1007/978-3-030-04546-3\\_1](https://link.springer.com/chapter/10.1007/978-3-030-04546-3_1)

must have resulted from a crime within the Court's jurisdiction; and there must be a causal relationship between the crime and the injury.

Pre-Trial Chamber II stated in the case of Uganda that harm is considered to be the result of an incident when the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident appear to overlap, or at least to be compatible and not clearly inconsistent:

According to the Appeals Chamber, victim participation must also be relevant to the accusations in the case. Victims' personal interests must be affected in order for them to be able to participate. 'Personal interests' refers to victims who suffered harm as a result of the crime or crimes under investigation, confirmation, trial, appeal, revision, and sentence reduction.

Chamber considered that victims' personal interests included the right to receive reparations and justice. This may include procedural issues, which are crucial to the result of substantive questions.

### **B. Provisions Of Rule & Procedure**<sup>39</sup>

Natural persons, as well as organisations or institutions, may be victims.

The primary distinction between a natural person and an organisation or institution is that the former just has to establish 'harm,' whilst the latter must prove 'direct harm.' As a result of this distinction, natural-person victims are classified as "direct" or "indirect." Persons who experience injury as a result of violence inflicted against direct victims are referred to as "indirect victims." Indirect victimisation includes parents of victims, persons who are harmed while attempting to aid victims, and crimes against civilians. However, the concept does not apply to people who are

harmed as a result of the actions of other victims, such as child soldiers.

According to Principle 8 of the Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, a victim may suffer from harm in a variety of ways, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of his or her fundamental rights, either individually or collectively.

The Rules of Procedure and Evidence provide detailed provisions for informing victims at various stages of the proceedings. Victims must submit a written request for permission to speak about their experiences and concerns.

The following stages are:-

#### **a. Identification**

A natural person victim must offer some type of acceptable identification.

Victims may not always have access to necessary documents to confirm their identification due to the nature and conditions of conflicts. Judges have been fairly lenient when it comes to admitting forms of identity, such as letters from local officials, driver's licences, and business cards. In the absence of documents, a statement signed by two trustworthy witnesses has been deemed adequate. The Prosecutor and the defence may challenge the application, and the Chamber may reject it on its own initiative.

#### **b. Representation**

Within legal systems, issues of representation in such circumstances have relatively elaborate answers, but the Rules of Procedure and Evidence leave it to the judges to resolve any complications that may occur. When many applications are filed, the Chamber may consider them all "in

<sup>39</sup> Garwake, The Role of the Victim During Criminal Court Proceedings, UNSW 595, (1994),

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/swales17&div=27&id=&page=>



order to guarantee the efficacy of the procedures" and make a single ruling.

Despite the fact that victims are free to choose their legal representatives, a Chamber may require that victims or certain groups of victims select a common representative. The Registry has been assigned a specific role in this process.

Victims who are unable to afford for legal representation may be eligible for aid from the Registry." In effect, the Court pays for the legal representation of victims without exception.

The Committee on Budget and Finance has voiced concern about the need to combine meaningful engagement for victims with the economic consequences of such participation. While naming joint legal representatives, the Chamber and the Registry must take "all reasonable means to ensure that the unique interests of the victims are preserved and that any conflict of interest is avoided."

The Court's Regulations provide that "consideration should be given to the opinions of the victims, as well as the need to respect local customs and aid specific groups of victims" while selecting a common representative for victims.

Victims are allowed to participate in the procedures from the beginning, as long as their personal interests are not jeopardised. They may even interfere at the circumstance stage, after the prosecutor has chosen to pursue an investigation but before individual accused persons have been identified and arrest warrants or summonses have been issued.

Victims have the right to express their opinions and concerns under Article 68(3) when their personal interests are at stake.

Unless the Chamber determines that this should be limited to written observations or submissions, victims' legal representatives are entitled to attend and participate in proceedings.<sup>5</sup> Any written or oral submissions by victims may be responded to by the prosecutor and the defence. Questioning of witnesses by legal representatives of victims

is permitted under Rule 91, although not at the same extent or with the same freedom as the Prosecutor of defence counsel. When the hearing is solely about compensation, victim representatives are granted more leeway.

### c. **Analysation of Victim Participation**

As a result of varied opinions among judges, the level of victim participation that is authorised during proceedings remains somewhat ambiguous. The disparate methods were noticed by an expert panel organised by REDRESS, a non-governmental organisation, which voiced worry that "multiple attempts aimed at tackling the current difficulties are disconnected and risk further eroding the participation system." Another group of experts pointed to some Chambers of the Court's very generous approach to victim participation, which has given victims a role so broad in scope and nature that it may raise difficult issues about the proper delineation of their and the Prosecution's roles and responsibilities, effectively creating a second, de facto prosecuting body in the proceedings. Unrestricted victim involvement may jeopardise the overall balance of the proceedings (to the detriment of the accused's rights and position, as well as the general fairness of the processes), as well as raise the financial cost of victim participation and the length of the procedures.'

However, some jurisprudence implies that the bar governing victims' eligibility to participate has been set exceedingly low, according to the study.

- i. **In the Bemba case**, for example, the Prosecution, Defense, Victims' Representatives, and Chambers had to study, evaluate, and make submissions in respect to over 5,000 individual applications, according to the 2014 expert panel. For all those concerned (Chambers, Prosecution, Defense, Registry, victims' advocates), this equals hundreds, if not thousands, of hours of work. Victim representatives then make written submissions,

which the prosecutor, defence counsel, and judges must read and consider.

- ii. There were almost 200 written sub-missions filed by victims' advocates **in the Lubanga case alone**, totalling thousands of pages. During the proceedings, oral interventions by victim advocates and responses by the parties waste time. Written and spoken contributions must also be translated, sometimes into many languages. All of this must add up to a substantial sum, but the exact quantity, or even the order of magnitude, is unclear. Victim involvement's undeniably high cost must be weighed against the benefits of active victim engagement in the processes, not merely clichés about how good it is for victims to be there.

A proper study would also try to poll the victims, not just their representatives, to assess their own perceptions of the importance and value of participating in the proceedings. It would be interesting to hear their answers if they were told the true cost of victim participation and then asked if they would prefer the money to be spent on helping them in other ways.

### Reparation for Victims

The Rome Statute empowers the Court to handle the subject of victim reparations by defining broad guidelines for restitution<sup>40</sup>, compensation, and rehabilitation. The Court has the authority to "judge the scope and degree of any damage, loss, or harm to, or in respect of, victims" on its own initiative in circumstances where the victims have not made a specific request.

The Lubanga Trial Chamber declared in its first reparations order that reparations serve two purposes: they obligate individuals responsible for significant crimes to restore the harm they caused to victims, and they allow the Chamber to

ensure that offenders account for their actions. The Appeals Chamber, citing these phrases with satisfaction, stressed on the terms ensuring that offenders account for their actions. The Appeals Chamber has recognised the notion of requiring the convicted person to rectify the harm caused by his or her unlawful activities. In considering Lubanga's responsibility, the Trial Chamber decided not to issue a reparations order due to his financial limitations. The Appeals Chamber disagreed, citing Article 75(4)'s particular reference to States Parties' assistance in locating and freezing property and assets. It was stated that indigence was not an impediment to the imposition of obligation.

According to the Appeals Chamber, "indigence at the time when the Trial<sup>41</sup> Chamber issues an order for reparations is not an impediment to imposing liability because the order may be implemented when monitoring of the person sentence's financial situation reveals that he or she has the means to comply with the order."

### Principles

The Court is required by Article 75(1) to "create norms" pertaining to restitution to victims. Restitution, recompense, and rehabilitation are among the options. The principles governing reparations must be separated from a reparations decree. principles, according to the Appeals Chamber, should be broad concepts that can be applied, adapted, expanded upon, or added to by future Trial Chambers, despite being formulated in light of the circumstances of a specific case.

A proper study would also try to poll the victims, not just their representatives, to assess their own perceptions of the importance and value of participating in the proceedings. It would be interesting to hear their answers if they were told the true cost of victim participation and then asked if they

<sup>40</sup> L. Zegveld, "Victims' Reparations Claims and International Criminal Courts, Incompatible Values?", 8 *Journal of International Criminal Justice* 79, 111 (2010), <https://rwi.lu.se/app/uploads/2012/04/Reparations-for-Victims-Evans.pdf>

<sup>41</sup> Reparations, ICTJ, (Mar. 29, 2022, 9:29 PM), <https://www.ictj.org/reparations>

would prefer the money to be spent on helping them in other ways.

The court has the authority to impose an order for "Restitution, recompense, and rehabilitation are examples of proper reparations. An order for reparations must include the following: "Have at least five important parts. It must be directed against the person convicted, it must establish and inform the person who is convicted, of his or her liability, it must clearly specify whether reparations are individual or collective, it must define the harm caused to direct and indirect victims, and it must identify the victims eligible to receive reparations awards or set out the criteria for eligibility based on the link between the victims' harm and the crimes for which the person was convicted. The Appeals Chamber explained that including these five elements ensures that 'critical elements of the order are subject to judicial control' in accordance with Rule 97(3) of the Rules of Procedure and Evidence, which states that the Court must respect the rights of victims and the convicted person in all cases [when reparations are awarded].

#### A. Awards

Individual or collective reparations awards are possible. The Court's Principles, created in accordance with Article 75(1), apply to both individual and collective remedies. The Appeals Chamber, on the other hand, has emphasised the distinction between individual and group awards. Individual reparations awards are generally based on application ("request"), with Rule 94 and Rule 95 of the Rules of Procedure and Evidence governing the process. Rule 97(1) and Rule 98, on the other hand, deal with collective restitution payments (3). The Appeals Chamber decided that a Trial Chamber is not necessary to judge on the merits of individual petitions for reparations where only collective reparations are given under rule 98(3) of Rules of Procedure and Evidence.

Individual victims may feel that their claims have been disregarded or insufficiently handled if group compensation are paid.

However, the Appeals Chamber appeared to reach the conclusion that if collective reparations are awarded, there is no entitlement to have individual claims handled under international human rights law. As a result, the decision not to grant reparations on an individual basis has no bearing on the eligibility of persons who filed individual reparations claims to participate in any collective reparations scheme. The financial realities of the situation nearly always confine litigation over restitution at the domestic level in typical civil liability disputes. If there is no reasonable possibility of collecting on a judgement debt, the victim of a crime will not invest in the costs of the proceedings. This constraint does not appear to exist at the International Criminal Court, where the costs of pursuing victims' claims are funded from the Court's resources. Perhaps the Court and the victims will get lucky with a wealthy offender, but this appears to be the exception rather than the rule. **Institution for Victims**

The Trust Fund for Victims, the Victims and Witnesses Section, and the Office of Public Counsel for Victims are three entities within the Court specialized to the rights and interests of victims<sup>42</sup>.

#### A. Trust Fund:

The Trust Fund is one of the International Criminal Court's distinguishing elements. According to the Rome Statute, the Trust Fund is to be utilised "for the benefit of victims of crimes within the Court's jurisdiction, as well as the families of such victims: There has never been anything like it at an international criminal tribunal. The Court's architects most likely believed that the assets of the Trust Fund for Victims would come from offenders after their conviction. Nothing of the sort has happened so yet.

Despite this, the Trust Fund has been able to function solely on the basis of voluntary contributions, the majority of which

<sup>42</sup> ICC Trust Fund for Victims assists over 80,000 victims, raises reparations reserve, International Criminal Court,

(Mar. 30, 2022, 11:00 AM), <https://www.icc-cpi.int/Pages/item.aspx?name=pr780>



have come from States Parties. It has disbursed resources to numerous projects in the areas where the Court operates, much like a small-scale international development organisation. Because the cost of administering the Fund cannot be considerably different from the amount of its income, this use of its income has not been efficient.

However, because the Fund's operational expenditures are paid from the Court's general budget rather than the Fund's own profits, this disturbing truth is concealed. If the Fund's operational expenditures were met entirely by the Fund, there would be little or no money left for the victims.

### **Establishment and Appointments:**

The Assembly of States Parties decided to establish the Trust Fund during its inaugural session in September 2002. A permanent secretariat manages the Trust Fund, which is governed by a five-person Board of Directors comprised of eminent worldwide figures. Its members work on a rotational basis. The members will be of various nationalities, elected on the basis of equitable geographic distribution and taking into mind the requirement for gender equality and equitable representation of the world's major legal systems.<sup>43</sup> The Fund commenced operations in early 2007 after establishing its regulatory and administrative structure.

Even before the Court's first trial, and therefore any judicial finding that a crime within the Court's jurisdiction had occurred, the Fund began giving funds to programmes ostensibly benefiting victims. These were carried out in Uganda and the Democratic Republic of the Congo, where the Chambers were dealing with active situations. A decision to authorise Trust Fund projects prior to any convictions by the Court was unsuccessfully challenged by defence counsel.

The defence claimed unsuccessfully that the Court would be prejudging whether there were victims of a crime within the Court's jurisdiction, which would be a violation of the presumption of innocence.

Physical rehabilitation, including reconstructive surgery, general surgery, bullet and bomb-fragment removal, prosthetic and orthopaedic equipment are some of the services that the Fund covers.

Referrals to services such as fistula repair and HIV/AIDS screening, treatment, care, and support; psychological rehabilitation, including individual and group-based trauma counselling; music, dance, and drama groups to promote social cohesion and healing; community sensitization workshops and radio broadcasts on victims' rights, information sessions, and large-scale community meetings; material support, such as environmentally friendly livelihood activities and education grants; vocational training or access to referral services that provide income generation and training possibilities with an emphasis on long-term economic empowerment, as well as special efforts for victims of sexual assault and their children's, including those who are born out of rape.

### **B. Victim & Witnesses Unit**

The Rome Statute also mandates the establishment of a Victims and Witnesses<sup>43</sup> Unit, presently known as the Victims and Witnesses Section. The Section's establishment is the responsibility of the Registry. The Section's mission is to provide witnesses, victims, and those who are at risk due to their testimony with protection measures and security arrangements, counselling, and other relevant help.

The Rules of Procedure and Evidence contain detailed guidance on the Victims and Witnesses Section's obligations.

<sup>43</sup> PROTECTION OF VICTIMS, WITNESSES AND OTHER COOPERATING PERSONS, <https://www.icc-cpi.int/about/witnesses>, last visited Mar. 30, 2022).

The Unit is responsible for all witnesses, victims who come before the Court, and those who are at danger as a result of witness testimony:

- Providing them with suitable protective and security measures, as well as long- and short-term protection strategies;
- Recommending the adoption of protective measures to the Court's organs, as well as informing relevant States of such measures;
- Assisting them in receiving appropriate medical, psychological, and other services;
- Making trauma, sexual violence, security, and secrecy training available to the Court and the parties;
- Recommending the development of a code of conduct in consultation with the Office of the Prosecutor, emphasising the importance of security and confidentiality for Court and defence investigators, as well as all intergovernmental and non-governmental organisations acting at the Court's request, as appropriate;
- When necessary, collaborating with states to provide any of the above-mentioned measures.

**The Section also has specific responsibilities with relation to witnesses:**

- Advising them on where they can get legal help to preserve their rights, particularly in connection to their evidence;
- Assisting them when they are called before the Court to testify;
- Taking gender-sensitive steps to make it easier for victims of sexual violence to testify at all stages of the case.

The Section gives special attention to the needs of children, the elderly, and those with disabilities. To encourage participation and safeguard children as witnesses, the Unit

may appoint a child-support person to help a child through all phases of the proceedings, with the approval of the parents or legal guardians. Staff with trauma expertise, especially trauma connected to sexual assault offences, are needed to work in the Section. The Section must remain independent from the Court's other organs.

**C. Office of Public Counsel For Victims**

The Office of Public Counsel for Victims<sup>44</sup> is the primary means by which the Registry fulfils its overall duty of assisting victims in receiving legal counsel, coordinating their legal representation, and providing necessary support, assistance, and information to their legal representatives.

It is a requirement of the Court's Regulations. Its presence is unprecedented, as no comparable organisation has been established by other international tribunals. The Office is intended to ensure victims' effective involvement in Court processes. Its duty is to provide support and assistance to victims' legal representatives and victims themselves, including, if necessary, legal research and advice, as well as appearances before a Chamber on specific matters.

This may include preparing factual background documentation on cases before the Court, as well as research papers, legal opinions, and bibliographies on areas of international criminal law, particularly those pertaining to victim rights. The Office is completely independent of the Court's other organisations.

**IV. Conclusion**

The victims' status and situation have mostly remained silent, unheard, unseen, and unsaid; thus, it is critical that the victims' claim to remedies be explicitly presented. The adoption of the "Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" by the United Nations General Assembly in 2005 paved the way for restorative

<sup>44</sup> Representing victims before the International Criminal Court: The Office of Public Counsel for Victims publishes Fifth Edition of its Manual for Victims' Legal

Representatives, International Criminal Court (Mar. 31 2022, 10:30 PM) <https://www.icc-cpi.int/Pages/item.aspx?name=pr1447>

responses to crime under traditional legal systems, namely, rehabilitation, reparation, and compensation to victims. The participation of victims in ICC cases is often regarded as the Rome Statute's most important aspect. The ICC granted victims of crime a number of rights that had never been granted previously to preserve victims' rights. The ICC's presence has had a significant positive impact on domestic justice administration norms. Many nations have included measures in their domestic law to implement victims' rights to compensation as outlined in the Rome Statute, as well as to guarantee effective collaboration with the ICC.

The ICC's judicial processes illustrate some of the most pressing issues in the pursuit of justice. One of the most challenging tasks is to come up with a comprehensive victim participation programme. A major challenge has been a lack of awareness among victims about their role and involvement in ICC proceedings. As a result, victims have long awaited not only help but also understanding of<sup>45</sup> their rights and roles. The International Criminal Court's Rome Statute enables a variety of remedies for the benefit of the victim, including compensation, restitution, and rehabilitation. However, reparations orders are subject to certain limitations, such as the fact that they cannot be granted until the accused has been found guilty. Assistance in the form of rehabilitation and a source of income provided by a trust fund is likely to have a positive influence on victims' lives. Many victims regard justice as alien unless it is accompanied by reparations. A trust fund for victims, a body autonomous from the court, is still in its infancy in terms of protection measures dedicated to the rights and interests of victims and witnesses. It has the capacity to reach a large spectrum of victims and give a variety of sorts of aid. This challenging goal may be accomplished with the aid of efforts involving both the public and commercial sectors, as well as the backing of the International Criminal Court (ICC), which will assure total justice for victims.

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