



## MAKING VICTIM PARTICIPATION EFFECTIVE AND MEANINGFUL

June 2014

### Introduction

The Victims' Rights Working Group (VRWG)<sup>1</sup> is pleased to share these comments with the International Criminal Court (ICC) and States Parties with a view to help ensure that the provisions of the Rome Statute are effectively implemented in order to render victims' participation before the ICC meaningful and effective. Article 68(3) of the Rome Statute is an important recognition of the central role victims should play in ICC proceedings. More than a decade after the Statute has come into force, the practice and jurisprudence of the ICC has revealed both the importance and the challenges of such participation. In this light, there is a need for continued discussion on how to ensure that the system of victim participation enables victims to have a clear voice in ICC proceedings and find ways in which to make the system of victim participation more meaningful, effective and consistent.

This paper aims to contribute to this discussion; it addresses both the Court and States Parties and in particular explores what might be meant by meaningful and effective participation.

### Background

The ICC's system of victim participation is of longstanding interest to the VRWG. The participation of victims in proceedings is a unique feature of the ICC and an essential part of its reparative mandate. We have regularly underscored the importance of victim participation both for the victims and for the proceedings as a whole<sup>2</sup> and have stressed that any review of the legal framework governing victim participation and the policies for its implementation, should be led

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<sup>1</sup> The Victims' Rights Working Group (VRWG) is a network of national and international civil society groups and experts created in 1997 under the auspices of the NGO Coalition for the International Criminal Court (CICC). Its membership includes international as well as local NGOs and experts from a wide array of countries, in particular those affected by ICC investigations and prosecutions. For more information, please visit the VRWG's website at: <http://www.vrwg.org/>

<sup>2</sup> VRWG Submissions to the Hague Working Group of the Assembly of States Parties, "The Importance of Victim Participation", 8 July 2013, [http://www.vrwg.org/VRWG\\_DOC/2013\\_July\\_VRWG\\_HWG\\_ParticipationFINALrevised.pdf](http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf)

by the responsible organs of the Court, in consultation with victims' representatives and civil society.<sup>3</sup>

The VRWG recalls and welcomes the Court's report on the implementation of its Revised Strategy in Relation to Victims in 2013,<sup>4</sup> the Assembly of States Parties (ASP) resolutions on victims,<sup>5</sup> the Plenary discussion on the impact of the Rome Statute system on victims and affected communities at the ASP's 12<sup>th</sup> session,<sup>6</sup> as well as the initiatives promoted at The Hague Working Group level to consult and engage with the various organs of the Court and civil society in relation to these matters. The VRWG encourages the Court to continue to work with all relevant stakeholders to attain an effective and meaningful system of victim participation and the States Parties to support its implementation.

At present, there are a variety of **different approaches to victim participation** that have been adopted by different chambers in ICC proceedings. These differences relate mainly to the application process<sup>7</sup> and the appointment of legal representatives;<sup>8</sup> Chambers have also varied in their understanding of the scope of victim participation during proceedings and the modalities employed to give effect to victims' rights.

The VRWG recognises the importance of case-specific approaches reflecting and taking into account the particular features of each case. However, it has been observed that "[t]he system is also significantly affected by divergent visions of the participation system within the ICC."<sup>9</sup> In addition, the lack of consistency risks affecting the exercise of the rights arising from Article 68(3) of the Rome Statute, confusing victims and raising false expectations. While recognising

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<sup>3</sup> VRWG Recommendations to the 12th Session of the Assembly of States Parties 20-28 November 2013, The Hague, 18 November 2013, <http://www.vrwg.org/downloads/20131113vrwgap12final.pdf>.

<sup>4</sup> Report of the Court on the implementation in 2013 of the revised strategy in relation to victims, Twelfth session, ICC-ASP/12/41, 11 October 2013, available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP12/ICC-ASP-12-41-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-41-ENG.pdf)

<sup>5</sup> Resolution ICC-ASP/12/Res.5 on Victims and Affected Communities, Reparations and Trust Fund for Victims, adopted at the 12th plenary meeting, on 27 November 2013, by consensus, [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ASP12/ICC-ASP-12-Res5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res5-ENG.pdf); Resolution ICC-ASP/11/Res.7 on Victims and Reparations, adopted at the 8th plenary meeting, on 21 November 2012, by consensus, [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ASP11/ICC-ASP-11-Res7-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP11/ICC-ASP-11-Res7-ENG.pdf).

<sup>6</sup> See Official Records of the 12th session of the Assembly of States Parties, available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP12/OR/ICC-ASP-12-20-ENG-OR-Vol-I-18Dec1230.AV.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP12/OR/ICC-ASP-12-20-ENG-OR-Vol-I-18Dec1230.AV.pdf)

<sup>7</sup> For example, Trial Chamber V in both Kenya cases decided that only victims who wish to appear, in person or via video-link, before the Chamber should submit the standard application form, whereas other victims can instead 'register' with the Court as victim participants (ICC-01/09-01/11-460; ICC-01/09-02/11-498); in the Laurent Gbagbo case, Pre-Trial Chamber I determined that victims could complete a group application form to which individual declarations would be attached (ICC-02/11-01/11-86); in the Ntaganda case, Pre-Trial Chamber II ordered the use of a simplified, one-page individual application form and directed the Registry to group the applications prior to transmitting them to the Chamber for a ruling (ICC-01/04-02/06-67-Anx).

<sup>8</sup> While in the Lubanga trial two teams of lawyers and the OPCV represented individual victims, in the Katanga and Bemba cases common legal representatives were appointed. In both Kenya cases two Common Legal Representatives based in the field were appointed, with OPCV acting as the "interface between the Common Legal Representative and the Chamber in day-to-day proceedings" (ICC-01/09-02/11-498, para. 42 and ICC-01/09-01/11-460, para. 43). In the Laurent Gbagbo case, a Counsel from the OPCV was appointed as common legal representative for the victims authorised to participate in the case with a team member based in Ivory Coast to be paid by the Court's legal aid budget (ICC-02/11-01/11-138).

<sup>9</sup> Independent Panel of experts report on victim participation at the International Criminal Court, Based on the Panel's meeting and consultations held in The Hague on 24-27 April 2013, para. 5, <http://www.vrwg.org/downloads/1307independentpanelexpertsreportvictimparticipationicc.pdf>

the independence of judges to organise the proceedings, the VRWG highlights the need for consistency and predictability for victims. The VRWG believes it is for the judges to develop a consistent jurisprudence that may serve as a basis for clear inter-organ policies and guidelines in relation to victim participation. Such policies and guidelines should be developed in consultation with victims, counsel, intermediaries, experts, civil society and other relevant stakeholders.<sup>10</sup>

### **Effective and Meaningful participation**

To exercise their rights in Article 68(3) effectively the Court must ensure that victims are: informed about their rights; informed about the ICC's proceedings; enabled to access the participation process, and enabled to present their views and concerns to the Court. Effective systems must therefore be put in place, in particular: a clear and accessible application process; an effective system of legal representation and comprehensive outreach programmes. The system must be able to deal effectively with all victims falling within the mandate of the Court, regardless of the number or location of victims who may be affected by particular proceedings. The Court should also be able to accommodate the cultural factors and particular sensitivities at play in local contexts.

The system of participation is likely to have meaning for victims if: they understand the process, including its limitations; they are treated at all times with humanity and respect for their dignity and human rights; appropriate measures are taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families; they are able to follow the proceedings substantively; they feel properly consulted and represented by their legal representative; and they can see how their views are presented and actively considered by the Court.

### **Recommendations**

The VRWG considers that the system of victim participation as it has evolved before the various chambers merits holistic evaluation and reflection by the Court. The VRWG stresses the importance of a **“shared vision of victim participation” based on common overarching principles as a fundamental step towards the harmonization of the current system.**<sup>11</sup> The VRWG therefore encourages the Court to work with all stakeholders, including victims' legal representatives in particular, to make sure that a common understanding of victim participation, that gives full effect to the rights enshrined in the Statute, is reflected in court proceedings and the way in which the Court approaches victims in general. In addition, any efforts aimed at addressing the current challenges should be coordinated and should take into account external

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<sup>10</sup> In particular, it is important to stress that the Court should make all possible efforts to consult victims and gather information on their experience participating in ICC proceedings. The views of lawyers representing victims, who are the main service-providers to victims who apply to participate, should also be particularly taken into account.

<sup>11</sup> Independent Panel of experts report on victim participation at the International Criminal Court, Based on the Panel's meeting and consultations held in The Hague on 24-27 April 2013, para. 7, <http://www.vrwg.org/downloads/1307independentpanelexpertsreportvictimparticipationicc.pdf>

initiatives to appraise the system and consult victims on their experience of participation before the ICC.<sup>12</sup>

In particular, the VRWG underscores:

- The importance of Article 68(3) of the Rome Statute whereby the **views and concerns of victims shall be presented at stages of the proceedings where their interests are affected, through a legal representative of their choice**;
- the **importance of victim participation for the Court**: victim participation helps to bridge the divide between the Court and the persons and societies most affected by the crimes; contributes to the establishment of the truth and reinforces the Court's legitimacy by providing local ownership over the process and creating confidence in the system;<sup>13</sup>
- Recognition of the individual victim, even if part of a large group that is commonly represented, is –in and of itself– an essential procedural decision that needs to be addressed by each Chamber, given that such a recognition is an essential condition for meaningful participation and the respect of human dignity;
- The system of victim participation should be **accessible, effective** and **meaningful** to victims.

**We therefore call on:**

The Court to:

- Initiate an internal, inter-organ process to review the system of victim participation in 2014;
- Ensure a consultative process that seeks out relevant expertise and includes consultations with victims, victims' legal representatives and other relevant stakeholders including NGOs, experts, and other national or international bodies involved with victim participation;
- Consider drawing up a victims' charter or set of principles, that guide the Court's approach to victims in a manner that may focus minds on ensuring a process that is meaningful, respectful and in line with international standards of justice for victims of crimes under international law;
- Ensure that the planning of the Court's interactions with victims on the ground is underpinned by an understanding of the importance of victims participation to the Court's justice mandate;

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<sup>12</sup> See, for example, the Independent Panel of experts report on victim participation at the International Criminal Court, Based on the Panel's meeting and consultations held in The Hague on 24-27 April 2013; the project that is being prepared by the University of California Berkeley to conduct surveys of victims in ICC countries; and other documents, studies and reports published by VRWG members, available at <http://www.vrwg.org/documents/members-documents>.

<sup>13</sup> VRWG Submission to the Hague Working Group of Assembly States Parties, 8 July 2013, p. 1, [http://www.vrwg.org/VRWG\\_DOC/2013\\_July\\_VRWG\\_HWG\\_ParticipationFINALrevised.pdf](http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf)

- Ensure that each individual application from victims is treated by relevant Court officials with the necessary experience, time, attention and care that the human dignity of every individual, whether she or he is part of a large group, demands;
- Adequately and regularly consult victims in relation to legal representation and case strategy;
- Appropriately engage victims in a two way dialogue about their rights, the proceedings in which they take part and the ICC as a whole through outreach activities;
- Ensure all staff, as well as legal representatives of victims that interact with victims are provided with appropriate training on trauma to avoid potential re-victimisation.

States Parties to:

- Call on the ICC to continue its review relating to the victim participation system through a consultative process and to ensure that such discussions seek out relevant expertise and include consultations with relevant stakeholders, including victims themselves, victims' legal representatives, NGOs, and national authorities involved with victim participation;
- Recognise the benefits that victims' participation in the proceedings brings for victims themselves and for their communities, but also for the legitimacy and mandate of the Court and for international justice as a whole;
- Express clear support for the system of victim participation in ICC proceedings;
- Work with other States Parties to create support at the national level for initiatives to give effect to the rights of victims of crimes under international law and affected communities and to mainstream assistance and support to victims to have access to justice at the national and/or international level.

The VRWG looks forward to continuing the constructive dialogue with the Court and States Parties on this important matter.