



ADVOCATING FOR THE RIGHTS OF VICTIMS AT THE INTERNATIONAL CRIMINAL COURT

VRWG Paper on the need to issue new integrated participation, reparation and indigence forms as well as decisions on victims' status without delay

26 February 2010

1. The need to issue new integrated participation, reparation and indigence forms without delay

The **Victims Rights Working Group (VRWG)** welcomes the Report of the Court on Legal Aid, dated 5 October 2009, presented by the Registry to the 8th Session of the Assembly of States Parties.¹ The report contributes positively to the debate on legal aid for victims and how to ensure their effective participation in the proceedings, as granted by the Rome Statute. The VRWG also reiterates its appreciation of the consultation that the Registry held with civil society organizations on 6-7 July 2009 and the opportunity to comment upon a new draft 6-page form that integrates participation and reparations into one form.

Furthermore, the VRWG welcomes the draft ICC Strategy in relation to Victims, that was equally presented to the 8th Session of the Assembly of States Parties, and looks forward to an opportunity to provide written comments thereon. The document provides a useful first framework with which to consider the implementation of the Court's activities. The VRWG also welcomes the Registrar's letter of 17 February 2010 commenting on an earlier draft of this paper.

The VRWG welcomes the Registry's indication that the new forms will be presented for approval by the Registrar and the Presidency in Mid March 2010. However the VRWG is concerned about the delay in issuing the new forms and their unavailability to civil society in situation countries. Furthermore, the VRWG remains concerned at the resistance against integrating the declaration of indigence and acceptance of a possible investigation into means into the form. It is appreciated that the financial information is not part of the information required by the Chambers, in accordance with Rule 89(1) or 94(2) of the RPP, however for the reasons outlined below, it is suggested that the financial information should still be an integral part of the form which could then be detached by the Registry so that it need not be transmitted to the Chambers.

The VRWG respectfully submits that the declaration of indigence should be integrated into the 6(now 8)-page form for the following reasons:

- The current 2-page indigence declaration, as a separate form, is generally **overlooked or omitted** in first meetings between intermediaries/lawyers and victims for a variety of reasons (lack of training, unavailability of the declaration, the length and complexity of the other existing forms, distances to be travelled, poor communications networks, etc). This results in intermediaries and lawyers having to go back to victims months later in order for them to sign

¹ ICC-ASP/8/25, Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court, 5 October 2009.

this additional form. While training might be possible for some intermediaries, as situations multiply, there will be ever new actors on the ground acting as intermediaries.

- The need for further meetings with the victims goes against the **general protection approach** whereby minimal contacts with victims are required to ensure their safety. One has to recall that “unusual” activities undertaken the victim, such as meeting with intermediaries, can raise suspicions. In addition, transmission of the forms to the Court can also be the source of difficulties. While some intermediaries are able to meet with representatives of the Victims’ Participation and Reparation Section, which can collect forms and transmit these to the Court, some are further afield or less able to contact VPRS staff, and rely on local scanning and computer facilities at public internet cafés.
- While communication with victims is essential, follow-up meetings requiring more forms to be completed is for the most part perceived negatively by victims; it is often seen as another instance of outsiders taking something away from them, without them seeing any benefits. This must be understood in the context of the oral cultures prevalent in rural areas (where paper is a scarce resource), and where there can be deep suspicions about the motives of outsiders.
- It is important to note that each meeting disrupts victims’ daily activities and their struggle to survive in difficult conditions, and thus should be carefully planned and justified.² Victims and intermediaries who have used such forms and have not seen any benefits as yet, have been reported to perceive the Court as “Presque inutile” (“almost of no use”). In order to reverse this perception, victim sensitive policies need to ensure less effort and obstacles on behalf of victims and more visible and accessible results.
- Finally, the delays, logistics and communications required in establishing indigence and entitlement to legal aid as a result of the separate declaration of indigence comes at a cost for victims, intermediaries and legal representatives at a time when victims *de facto* do not benefit from legal aid. While the form itself indicates that an application to participate in the proceedings is free, the additional such as printing, scanning, phone credit and transport costs associated with meeting the victim again to fill the declaration are significant expenses for both the victims, intermediaries, NGOs and pro-bono lawyers upon whom the burden of the application process currently rests.

With respect to the content of the declaration, the VRWG would like to point out that the current 2 page form comes across as somewhat heavy handed and threatening. It appears to undermine the Court’s commitment to respect the dignity of victims and ensure their protection, not just physically but also psychosocially. A large number of victims will be suffering from trauma or will be vulnerable victims, whereas the language does not recognise this, and appears to have been drafted for the use by accused persons. The VRWG suggests that the language should be adapted to recognise victims’ inherent vulnerability, respecting their dignity and avoiding language that might be perceived as a presumption of ill faith.

Furthermore, the language is perceived as complicated and unclear. It is suggested that broader (less detailed) and more accessible language be used so that the victim can understand in practice what this declaration is about.

The VRWG urges the Court to integrate the elements related to indigence declaration and legal aid requests into the new combined forms and to release them without delay.

² It must be noted that victims in Eastern DRC and Uganda live in regions where the average income is less than 1 USD per day. Victims in general will be struggling to survive, and meetings with intermediaries will usually require some travel by foot and at least one day of disruption to their activities that might be the only source of livelihood for themselves as well as dependants. This concern was pointed by in 14 April 2008 submission from victims’ legal representative requesting review of the Registrar’s decision on the application for legal assistance paid by the Court, 28march 2008.

2. The need to issue decisions on victims' status pending since 2006 without delay

The second issue that the VRWG would like to raise with the Court is the backlog of applications to participate in proceedings, many hundred of which date back to 2006. Intermediaries have been trained, local NGOs have diverted their minimal resources to assisting victims complete forms, victims have taken the time to tell their stories, supporting documentation has been sought and obtained, and forms have been submitted to the Court.

It is difficult for victims to understand why there has been no determination on their applications, a large number of which are within the 'Situations' as oppose to cases. The jurisprudence of the Court has determined that victims may participate in the investigation phase of proceedings, indeed a time where their interests are of utmost importance in relation to the evolution of future cases.

We appreciate that a reason for the delay is that a Pre-Trial Chamber decision on the interpretation of the Appeals Chamber's decision of 19 December 2008 (ICC-01/04-556) on victim participation in the investigation phase of proceedings is awaited. In this respect, perhaps an indication as to whether resolution of this matter has been scheduled on the judicial calendar would be appreciated. We might also kindly request that this paper be brought to the attention of the relevant judges as appropriate.

For victims justice is not only confined to an eventual result, but also in the process of obtaining a result. It is important that their applications are processed and decided upon without delay. Acknowledgment of victim status has an intrinsic value in and of itself.

The VRWG urges the Court to process the backlog of applications and to hand down decisions on victims' status without delay, several hundred of which are pending since 2006.