



ENSURING THE EFFECTIVE PARTICIPATION OF VICTIMS BEFORE THE INTERNATIONAL CRIMINAL COURT

COMMENTS AND RECOMMENDATIONS REGARDING LEGAL REPRESENTATION FOR VICTIMS

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THE REDRESS TRUST (REDRESS)
3rd Floor, 87 Vauxhall Walk, London SE11 5HJ
Tel: +44 (0)20 7793 1777 Fax: +44 (0)20 7793 1719
Registered Charity Number 1015787, A Limited Company in England Number 2274071
info@redress.org (general correspondence)

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¹ http://www.vrwg.org/Publications/01/VRWG_nov2003.pdf

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I. INTRODUCTION

The drafters of the Rome Statute and the ICC Rules of Procedure and Evidence recognised the importance of involving victims of the most serious crimes directly and integrally in the Court's procedures, not only as witnesses for the prosecution but as actors with a number of roles and rights within the process. As had already been recognised by the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*,² and has since been affirmed by the finalised text of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the Human Rights Commission in April 2005, the Rome Statute recognised a trinity of rights:

- a. The right to an effective remedy and access to justice, including the ability to have access to, and participate in, proceedings where interests are affected;
- b. The right to fair treatment, dignity and respect throughout the process including protection from reprisals and re-traumatisation, access to support and respect for victims' privacy; and
- c. The right to adequate and effective reparation, including access to appropriate forms of reparation.

The fact that victims are included as participants in the process, and not merely the objects of the prosecution's case, is some recognition that an equitable justice requires that victims are heard in dignity, that their concerns and needs are taken into account alongside the rights of the accused and a fair and impartial trial.³

The ability for victims to be legally represented in proceedings before the Court is intended to be a key means by which the aforementioned rights may be realised. Legal representation for victims is in this way, both an additional right afforded to victims under the Statute as well as a method by which other rights afforded to victims may be exercised. Adequate and effective legal representation is therefore critical to the success of the Court's mandate to victims. Legal representatives are intended to play a key role in explaining the Court's procedures to victims and advising them of their rights and will be important interlocutors for victims throughout the proceedings.

At the time of writing, the Prosecutor had announced the formal opening of his investigation in the Democratic Republic of Congo and made public the referrals received from the Governments of Uganda and Central African Republic as well as the referral of the UN Security Council of the situation in Darfur, Sudan. There are a range of expectations that accompany these announcements, not only from victims but from all those that are following the Court's progress. Yet these first situations make real the complexity of the Court's task in respect of victims, given the massive scale of victimisation, the range of individuals and groups affected by the crimes, ongoing security risks and the serious logistical and informational challenges when trying to engage the most vulnerable victims in remote communities in the midst of conflict.

This Report comes at a time when the Registry is consulting on its draft regulations, the Court has recently adopted its regulations and preliminary discussions on next year's budget are underway. It is prepared in order to draw attention to the key challenges that the Court faces in making operational an

² Adopted by General Assembly resolution 40/34 of 29 November 1985.

³ Art 68(3) of the Rome Statute. This principle of victim participation in criminal proceedings was also affirmed in the recently updated Set of principles for the protection and promotion of human rights through action to combat impunity, see principle 19 (2), E.CN.4.2005.102 Add.1.

effective system for legal representation for victims and provides a number of comments and recommendations.

II. ROLE OF LEGAL REPRESENTATIVES

The Court appears to have approached counsel issues through the lens of defence counsel. This is most evident when reviewing the draft code of conduct, but is also the case when reviewing the draft Regulations of the Registry. Victims' legal representatives differ from defence counsel in a number of significant ways, in particular:

- The interests of their clients are different from that of the accused. In an obvious way, their clients are not accused persons who risk conviction and sentence;⁴ their interests are wider, more diffuse. Victims may want to be in a position to give evidence in a safe space, to narrate their stories, at times in ways different from what the prosecution may seek to elicit from them. More broadly, they may have interest in seeing certain crimes dealt with, and recognised by, the Court that give meaning to the specific forms of their victimisation. They may want to be kept informed, to be participants in justice and to present their views and concerns. They may want both the process to be reparative as well as to receive forms of reparation that coincide in a very real way to the specifics of the harm they suffered as well as the manner in which they were victimised;
- It will be usual for legal representatives for victims to represent large numbers of persons jointly;
- Their clients will often be far from where they themselves are situated, and these clients may themselves be dispersed in different regions of a country and/or beyond borders and regions;
- They will not necessarily have met each client individually.

Consequently the ways in which legal representatives for victims will work will be different from defence counsel. The different phases can be outlined as follows:⁵

a. Providing general advice to victims and victims groups about their rights and assisting victims to organise into groups

At the earliest phases, even before counsel is appointed, lawyers working in areas closest to victims will have an essential role to play in advising victims and victims associations of their rights under the statute. This function will naturally fall to local lawyers working in conjunction with grassroots and national nongovernmental organisations as part of broader awareness raising campaigns.

Generally, NGOs in DRC reported fear and lack of trust amongst victims and this is likely to inhibit their early participation in proceedings. The fears concern the risk of reprisals if victims cooperate with, or otherwise participate in, proceedings of the ICC, and the fact that little information is available on how victims and witnesses may be protected. Victims do not trust local authorities to ensure protection, especially in the East and North East parts of the country. The lack of knowledge amongst victims

⁴ While in the majority of cases this will be true, it is not beyond the realm of possibility that certain accused persons may also be recognised as victims in related proceedings.

⁵ These tasks are listed as discrete phases yet in most cases the phases will overlap and will not necessarily follow the listed chronology.

regarding the ICC feeds this lack of trust. The lack of a real presence of the Court in the field leaves room for further confusion.⁶

Victims' interests will be multiple and diverse, despite their shared association to a particular situation or case before the Court. However, it will be impossible for all or even most victims to participate in Court proceedings individually. Therefore, the organisation of victims into groups that adequately reflect their interests is a necessary precondition to their effective participation. Local grassroots organisations will have a key role in facilitating this process. The draft Regulations of the Registry (ROR) importantly refer to possible assistance to be provided by the Registry in defining groups of victims and identifying an appropriate legal representative or representatives. [122(1)]

b. Appointment of legal representatives

Once a degree of organisation is achieved, it will be easier for victims to discuss and agree issues relative to their participation. Many may submit applications to participate without the benefit of secured legal representation, either independently or more often through their contacts with organisations already in touch with the Court. Others may do so through independent lawyers working in the countries concerned, at times in conjunction with local or international organisations. Due to the features of the qualifications and the extraordinary nature of the Court's proceedings, not all of these lawyers will fulfil the criteria for counsel set out in rule 22 of the Rules of Procedure and Evidence (RPE). It is our understanding that in DRC, none of the activists from civil society or church groups that are well anchored in the areas where victims are located (usually in remote areas and villages) will satisfy the rule 22 criteria. Most lawyers and magistrates operate out of the big cities, and about half of the lawyers are registered to practice in Kinshasa (before the two Bars – Kinshasa Gombe and Kinshasa Matete, and the Supreme Court).⁷ Furthermore, some of the lawyers that are registered to practice in the East nonetheless base themselves elsewhere, and often in Kinshasa.⁸

Whilst it is imperative that standards for legal representatives for victims are as high as those set out for the defence, due to the different nature of the work, some flexibility may be in order. For instance, experience in handling mass claims will be as relevant, if not more so, than experience in the conduct of criminal trials.

While rule 90 (1) of the RPE makes clear that a victim shall be free to choose a legal representative, ultimately the Registry will have a significant role to play in most if not all cases. Where victims have listed their own counsel, these will have to be approved by the Registrar, if not already on the Registry's list of counsel. It is likely that a variety of assistance may be required:

- One task that the Registry may need to undertake is to confirm that the purported counsel and team is acting bona fide. It is not obvious to merely leave this to the regulatory structure of the draft Code of Conduct or for clients to complain directly to the Court as it will not always be possible for them to do so. This is a serious concern with group representation, which is mitigated only in part by the receipt by the Registry of powers of attorney and the provisions of

⁶ The lack of outreach and information available in Uganda has also been stressed by the Women's Initiative for Gender Justice. See Press Release by the Women's Initiative for Gender Justice, in collaboration with Isis-WICCE and Uganda Women Activists (23 November 2004).

⁷ These figures, published in *the Registre national des avocats RDC* (June 2004) were made available by the *Association pour la Défense des droits de l'enfant (ADDE)*.

⁸ This has been underlined by the 2004 final report of the *Mission Multi-Bailleurs de l'Audit du Système Judiciaire en République Démocratique du Congo, Rapport Final des Ateliers et du Séminaire pour un programme cadre de la justice en République Démocratique du Congo*, Kinshasa, 15 November 2004.

the draft Code of Conduct, and it is expected that some oversight by the Registrar may be required.

- Another role of the Registry will be to integrate into the counsel team as assistants to counsel or in other ways, those that have the trust of the groups of victims that wish to participate, who may not fulfil the Rule 22 criteria, and at times may not even be qualified lawyers. The Draft Regulations of the Registry (ROR), regulation 135 (1) specifies that assistants to counsel should have “five years of relevant experience in criminal proceedings, as well as competence in international or criminal law and procedure” and (2) of the same regulation states that other persons assisting counsel can have the experience OR the competence in these same areas. This provision does not adequately take into account the type of assistance that will be required in respect of victims, which will often be: liaising directly with victims groups in the field in order that they are kept informed of the process and that they are consulted about strategies in the unfolding case, persons that can seek further evidential information from victims and comply with confidentiality requirements. This will require persons of trust but not necessarily experts in criminal procedure, and hence there should be much wider discretion about the characteristics of who should be assisting the team. In DRC, direct contact with victims will likely need to proceed through already established networks, usually through church groups or other community structures. Indeed, victims will probably not trust “strangers”, including Congolese from other regions. A victim seen communicating with an outsider may be identified as collaborating with the ICC, and such collaboration could put them at risk in some regions. A second tier of support would be in the regional centres, where local lawyers who are familiar with the procedures of the ICC and might satisfy the criteria for counsel in Rule 22(1) or for assistants to counsel as stipulated in ROR 135 may operate.
- Furthermore, outreach to, and training of, lawyers in the areas of situations dealt with by the Court will help to increase the numbers of counsel that fulfil the criteria in Rule 22. We are therefore supportive of the specific reference to training programmes in the ROR, with emphasis on countries where a situation has been brought before the Court.⁹

c. Role of legal representatives for victims in the pre-trial phase

The decision on appointment of legal representatives will need to be made known to victims. Irrespective of whether the victims groups, themselves, have put forward counsel to represent them which has been confirmed by the Registry, or the Registry and/or the Court have assigned a common legal representative in accordance with RPE 90 (2) and (3), victims will need to be informed of who their counsel is, what to expect from counsel, how to be in contact with them, and how to complain if and as necessary. This will fall upon the appointed counsel to convey the fact of their appointment to victims and to seek further instructions. It is likely that in order to effectively convey this information, the counsel team will need to communicate with victims that they have not previously been in touch with. At this stage, a number of complications may arise:

- **Security and confidentiality:** The counsel team will need to reveal to ‘new’ victims that they have been appointed in respect of certain groups or class of victims, and will need to discuss preliminary issues of strategy and approach. Compliance with the draft Code of Conduct’s provision on respect for professional secrecy and confidentiality will require a careful balancing act, as the more information that is shared with victims who may be a large and diffuse group,

⁹ ROR 149 (2).

the more likely that this information will get into the wrong hands and pose security risks for other victims. Already, there are indications that certain persons assisting victims in Eastern DRC in connection with the ICC investigation have come under threat. It is likely that these threats will augment with time, and measures to forestall reprisals and ensure security for such persons is a primary responsibility for the Court.

- **Conflicts of interest:** Despite the best efforts of the Registry in identifying where potential conflicts of interest require the appointment of separate legal representation [ROR 122], legal representatives will often be faced with questions related to real or perceived conflicts. Article 15 of the draft Code of Conduct which adopts a rigorous approach to any conflict [“counsel shall exercise all care to ensure that no conflict of interest arises. ...”] does not adequately address this situation and therefore as part of the discussions at the third meeting of the Task Force of the Hague Working Group of the Bureau of the Assembly of States Parties when the draft code was discussed, REDRESS and FIDH raised this matter and suggested that additional language be included.¹⁰

Where counsel have been appointed after the submission of applications to participate, it should be possible for counsel to submit supplementary information. Whilst every effort should be made to ensure that the forms can be completed by lay persons, undoubtedly the answers given by victims will impact upon their rights, and counsel should have the opportunity to clarify or amend any points listed therein. ROR 116 (3) enables the Registry to contact the victim’s legal representative for supplementary information, yet the opportunity should equally be afforded to the legal representative to contact the Registry on his or her own initiative to clarify or amend a prior submission, or to provide supplementary information.

Notification

The Statute and RPE provide for a series of formal notice requirements to victims, commencing with the opening of an investigation by the Prosecutor. Rule 50(1) of the RPE provides that “when the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to Article 15(3), the Prosecutor shall inform victims, known to him or the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses...” Further, the RPE provide that the Registrar is obliged to notify victims or their legal representatives of the decision of the Prosecutor not to initiate an investigation or not to prosecute,¹¹ the decision to hold a

¹⁰ See FIDH and REDRESS, Comments on the Draft Code of Professional Conduct before the International Criminal Court, 14 April 2005, available online at: <http://vrvwg.org/Publications/02/FIDH%20Redress%20code%20of%20conducts%202.pdf> “Some element of conflict of interest is inherent to common legal representation. Legal representatives for victims will regularly face potential conflicts of interest between individuals and groups of victims. Article 15 does not adequately address this situation and it is therefore suggested that the following language is considered for a 3rd additional paragraph:

« Notwithstanding paragraph 2 above, where counsel is retained by multiple victims or is appointed as common legal representative, he/she shall advise his/her clients at the outset about the nature of the representation and the potential for a conflict of interest and shall organise the representation in such a way so as to ensure a fair representation of the different yet consistent positions of his/her clients. Where however a conflict of interest prevents a fair common representation of victims, the counsel shall inform at once all potentially affected clients of the existence of a conflict; and either:

(a) Withdraw with the prior consent of the Chamber; or

(b) Seek the full and informed consent in writing of all potentially affected clients to continue representation. »”

¹¹ RPE 92(2).

hearing to confirm charges,¹² of any question or challenge of jurisdiction or admissibility,¹³ or of motions or requests affecting a particular witness or victim.¹⁴

Once legal representatives are involved, it will be standard for such notifications to be made by the Registry only to counsel, in compliance with the RPE. While the Registry will have satisfied its literal obligations in respect of the Statute and RPE by proceeding in this way, it will be a difficult task for legal representatives to ensure that their clients are subsequently notified in a timely and effective way, due to the range of practical and logistical constraints, security and budget considerations. Indeed, in DRC any method of communication is extremely difficult: Postal services do not operate; Internet is only available in the large city centres and connections are extremely slow, and only few people have mobile phones. Few roads are usable making travel time-consuming and costly, and posing further security risks when travelling to liaise with victims, as it makes it easier for delinquents to set up roadblocks.

It is likely that there will be several layers of actors between the lead counsel and victims in remote villages, and the costs associated with carrying out effective notification should be factored into the budget for counsel teams. It will be a challenge to ensure security and confidentiality of information in such circumstances, and it is advisable that the Registry, in consultation with those most affected, develop protocols for the transmission of this type of information. It is also advisable that the Code of Conduct incorporate specific provisions in this regard.

Nature of representations at pre-trial phase

Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence. There are a variety of issues that they may wish to address during this phase:

- **Issues relating to the emphasis of the unfolding investigation:** Victims may wish to present their views to the Pre-trial Chamber on the commencement of the investigation: they may, for instance, wish to add support to the request for authorisation, or to draw to the attention of the Pre-trial Chamber other crimes that are outside of the Prosecutor's focus that they believe merit investigation. It will be difficult for victims to submit such observations within the 30 day deadline stipulated by the Regulations of the Court for the obvious reason that it will take time to adequately consult with victims in remote areas.¹⁵ Victims may also wish to make representations to the Prosecutor, and possibly to the Pre-trial Chamber, on their views regarding 'interests of victims' and 'interests of justice,' and whether the investigation or prosecution would serve the interests of justice in accordance with Article 53(1)(c) and (2)(c) of the Statute respectively.

- **Submission of observations to the Court regarding challenges to the jurisdiction of the Court or the admissibility of a case:** Art 19(3) of the Statute provides that victims may submit observations to the Court in respect of proceedings on jurisdiction or admissibility. Victims' legal representatives may have a central role in such proceedings, particularly in respect of challenges by States, where they may have useful information to share on the willingness and capacity of the State to undertake an investigation or prosecution, e.g., victims' experiences with the local justice system.

¹² RPE 92(3).

¹³ RPE 59(1).

¹⁴ RPE 87(2)(c).

¹⁵ Regulations of the Court, 50(1).

- **Access to protection and support:** Legal representatives for victims will have an important role to play in liaising with the Victims and Witnesses Unit in order to clarify their client's protection needs, and to report back to victims on what type of protection they can expect to receive. This will help victims to take informed decisions about whether to cooperate with and participate in proceedings of the Court. Legal representatives may also seek to bring a request to provide for their clients' protection or privacy in accordance with Article 57(3)(c) of the Statute and rule 87 RPE.
- **Application for protective measures:** After a warrant for arrest has been issued, legal representatives for victims may seek to make a request to the Pre-trial Chamber for an order for protective measures pursuant to Article 57(3)(e). In order to make the most use of this possibility, legal representatives may need to seek out specialised advice from asset tracing experts, particularly when there is a belief that the accused person has foreign bank accounts.

d. Role of legal representatives for victims in the trial and post-trial phases

During the trial, legal representatives will have to continue many of the functions referred to above, in particular, to maintain effective channels of communication with their clients in order to keep them apprised of developments at the Court.

New tasks specific to the trial phase will include:

- **Assisting clients that are also called as prosecution witnesses:** While the Statute and RPE do not refer specifically to this role, it is clear that it will be one of the most important, given the anecdotal challenges faced by victim witnesses in the ad hoc tribunals, particular in relation to inappropriate cross-examination and lines of questioning. Legal representatives may make requests, where they are not already made by the Prosecutor, for special measures to facilitate testimony and ensure the dignity and privacy of victims as appropriate.
- **Ensuring that the interests of clients are maintained throughout the trial process:** For example, legal representatives may apply to question witnesses before the Court [RPE 91(3)] and may request the Trial Chamber to order a more complete presentation of the facts of the case in accordance with Article 65(4) of the Statute. They may also comment on any discussions between the Prosecutor and the defence in respect of modification of the charges, findings of guilt or sentence. [Statute 65(5)]
- **Applying for reparations:** Legal representatives for victims will have a central role in compiling victims' applications for reparations and in liaising with the Victim Participation and Reparations Section of the Registry. This will include assistance to victims in the collection and analysis of evidence in support of their claims and presenting these to the Court. They may also be making observations on reports of experts commissioned by the Court and presenting more generalised observations on the nature, scope and modalities for reparation, taking into consideration the situation of the clients. At this stage in proceedings, conflicts of interest between victims represented by a single counsel team may become more acute, particularly where the counsel team is required to comment on a proposed reparations model that impacts upon the clients in different or disproportionate ways. This is another reason why the conflict provisions in the draft Code of Conduct should better reflect the realities that common legal representatives will face.

Legal representatives may also appeal a reparations order in accordance with Article 82(4) of the Statute.

- **Enforcement of reparations awards:** Legal representatives for victims may need to provide observations to the Presidency on issues related to the enforcement of awards, in accordance with regulation 117(c) of the Regulations of the Court, though it is not clear what independent standing they have to petition the Presidency in cases of non-enforcement.

III. THE OFFICE OF PUBLIC COUNSEL FOR VICTIMS

The establishment of the Office of Public Counsel for Victims is an important precedent and should enhance the overall system of representation for victims. The office appears to be an effort to rationalise few resources. However, there are several aspects regarding the mandate and operation of the office and its relationship to private counsel that merit some clarification:

- **The functions of the Office:** There appears to be some confusion about the role of this Office. Regulation 81(4) of the Regulations of the Court suggests that staff of the office will undertake subsidiary functions and will not act as legal representatives for victims *per se*, (other than as a type of duty counsel) and this is further spelt out in ROR 126. However, Regulation 80(2) of the Regulations of the Court provides that “the Chamber may appoint counsel from the office of public counsel for victims,” and the possibility for the Counsel to act is referred to again in ROR 123(2), as a factor governing whether financial assistance should be provided.

If the office is to undertake veritable representation of victims, it would seem that aside from the lead counsel and support staff, a significant portion of the team should be based in areas closest to victims. It would appear however, from the discussions on the 2005 budget, that greater emphasis was placed on travel to the field than on the development of field presence and/or for local lawyers and field liaisons to work within victims’ communities in conjunction with the Office of Public Counsel for Victims.¹⁶ If the office is only to undertake subsidiary functions of support, it would seem that the bulk of the budget for legal representation should shift to funds for private legal representation.

- **The independence of the Office:** Regulation 81(2) of the Regulations of the Court specifies that counsel and assistants within the office act independently, and only fall within the remit of the Registry for administrative purposes. However, ROR 125(1) indicates that “The members of the Office of Public Counsel for Victims shall not receive any instructions from the Registrar *in relation to the conduct of the representation of a person entitled to legal assistance under the Statute and the Rules.*” (emphasis added). It would appear that Regulation 125(1) allows the Registrar to provide instructions to members of the Office in respect to all matters which fall outside of the conduct of the representation. It is suggested that there can be both wide and narrow interpretations to what constitutes the ‘conduct of the representation’ and it would be clearer if the provision simply mirrored Regulation 81(2) and allowed for instructions that relate to administrative purposes only.

¹⁶ See, in this regard, the comments made by the CICC Budget and Finance Team’s submission to the Committee on Budget and Finance, April 2004, at pp. 10-11.

The Office will only be capable of acting independently to the extent that it has a budget that provides it with the freedom and flexibility to act.

IV. FINANCING LEGAL REPRESENTATION

If the strong system of protections and rights for victims is to have any effect in practice, adequate and effective legal representation must be assured by the Court, whether this is through the Office of Public Counsel for Victims or through private counsel.

Criteria for legal assistance paid by the Court

Regulation 123 of the ROR provides that victims seeking legal assistance paid by the Court must apply to the Registry and sets out that “2. In determining whether to grant such assistance, the Registrar shall take into account, *inter alia*, any special needs of the victims, the complexity of the case, the possibility of asking the Office of Public Counsel for Victims to act, and the availability of pro bono advice and assistance.” It also notes that regulations 141-146 (on criteria for financing defence counsel; indigence criteria) apply *mutatis mutandis*.

Several points are worth exploring:

- **indigence criteria may only be applicable for individual applications of victims:** It would be difficult to see how indigence criteria could be applied to group claims. It would be administratively difficult to separate out those victims who satisfy indigence criteria from those that do not and to require those that do not to contribute to the legal fees of joint representation.
- the criteria set out in para. (2) of Regulation 123 appear to suggest that legal representation will only be financed in special cases. The criteria of ‘special needs of the victims’ and ‘the complexity of the case’ appear to refer to instances when separate legal representation (e.g., outside of any common legal representative to be appointed) is merited, yet this is not clear from the text as there is no separate mention of the funding of common legal representatives.
- **Availability of pro bono advice or assistance:** Whilst pro bono advice or assistance might be available in some cases, it will usually take the form of an agreement of a senior counsel to provide pro bono advice to existing counsel or to make an appearance to argue a specific point before the Court. It is perhaps not realistic to think that pro bono counsel will be secured for lengthy proceedings (pre-trial, trial and post-trial), and in the rare cases that it is, this will be a no-fee arrangement; it is usual for costs to be paid. While it is probable that some organisations will have the capacity and will agree to represent some victims on a pro-bono basis, this possibility cannot be a basis for the financing of victims’ representation. Some NGOs have a practice of representing victims before a variety of jurisdictions and may have their own funding to do so. In most cases, however, the scope of representation that is required before the ICC will go beyond their usual budgets and they will undoubtedly require coverage of the costs of representation.

It would therefore be advisable for the Registry to allow for a variety of payment structures, from full payment, to partial payment of fees, coverage of costs only, etc.

- **Appointed Common Legal Representatives:** The ROR do not explicitly refer to the funding of common legal representatives.¹⁷ Rule 90(5) of the RPE provides that “A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.” This would seem to imply that financial or other assistance would only be granted on a case by case basis. Yet as mentioned earlier, it is difficult to see how indigence criteria can be applied to victims assisted through common legal representatives, and to impose some form of joint representation and expect the very few victims within the group that may have access to resources to pay for the broader representation and taking into account that the draft code of conduct rightly disallows contingency fee arrangements.¹⁸
- **Gender sensitivity:** ROR 123(2) should make more explicit reference to gender issues. In particular, some victims of sexual violence may feel more comfortable liaising with a representative who is from the same sex, particularly female victims.

Financing counsel teams

As has been described earlier, counsel teams will need to incorporate not only lead counsel and assistants as set out in the ROR, but also local liaisons that have the most direct contacts with victims. It is not feasible to assume that local civil society groups can meet these costs on a long term basis and it is therefore important that these costs are incorporated into the planning and budgets for counsel teams. Several Congolese NGOs have already raised this issue with REDRESS.

¹⁷ ROR 122.

¹⁸ See FIDH and REDRESS, Comments on the Code of Conduct, supra., n. 10.