

International Seminar on access of victims to the International Criminal Court

(Paris 27-29 avril 1999)

Report of workshops

29 of april, 1999

WORKSHOP 1 - Definition of victims, role of victims during referral and admissibility proceedings

RULE X (Article 15) Definition of victim 1

1. "Victim" means any person 2 or group of persons who individually or collectively, directly or indirectly, suffered harm as a result of crimes within the jurisdiction of the Court.
2. "Harm" includes physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights.
3. Victims, where appropriate, may also be organizations or institutions which have been directly harmed.

RULE A (Art. 15 (1) and (2))

In the event of information submitted under Article 15 (1) or of oral and written testimony pursuant to Article 15 (2), the Prosecutor shall preserve the confidentiality of any information or take any other necessary measures pursuant to his or her duty under Articles 68 (1) and 54(3)(f) of the Statute. Where appropriate, the Prosecutor shall seek the intervention of the Victims and Witnesses Unit.

RULE B (Art. 15 (3))

1. Where the Prosecutor intends to seek authorization of the Pre-trial Chamber to initiate an investigation pursuant to Article 15 (3), the Prosecutor shall inform victims or their representatives of such intention

for the purpose of enabling them to make representations, unless doing so would pose a danger to the integrity of the investigation or to the life and well-being of victims and witnesses. In the event that the Prosecutor decides not to inform victims, he or she shall ensure that the initial submissions made by the victims if any, are presented before the Pre-trial Chamber. Notice may also be given by way of public announcement.

2. (a) The representations of victims or their representatives under Article 15 (3) may be made in written form or, with the leave of the Court, in any other form. The Prosecutor may provide victims or their representatives with a summary of his or her request for authorization to initiate an investigation, if this can be done without endangering the integrity of the investigation or the safety of any person.

(b) In deciding, pursuant to Article 15 (4) whether there is a reasonable basis to proceed with an investigation, the Pre-trial Chamber shall consider any representations made by the victims or their representatives.

3. The procedure described in paragraphs 1 to 2 above shall also apply where the Prosecutor decides to submit a new request pursuant to Article 15 (5).

RULE C (Article 15 (6))

1. In the event of a decision taken pursuant to Article 15 (6), the Prosecutor shall ensure that notice is provided, along with the reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under Article 15 (1) and (2), or the integrity of investigations or proceedings.

2. The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

3. When the original information has been provided by victims, notice shall be made without unnecessary delay and with compassion and respect for their dignity.

RULE D (Article 19 (3))

(1) For the purposes of Article 19 (3) victims or their representatives, may present written observations or, if the circumstances of the case so require and with leave of the Court, in any other form.

(2) Following consultations with the Prosecutor, the Chamber of the Court shall direct the Registrar to make a public announcement of the initiation of proceedings with respect to jurisdiction and admissibility, in order to inform victims for the purposes set forth in paragraph (1), unless such public announcement would endanger the integrity of the proceedings or the life and well-being of victims and witnesses.

(3) The Registrar shall provide the victims who have expressed their intention of submitting observations, or their representatives, with a summary of the grounds on which the admissibility of a case or the jurisdiction of the Court has been challenged, in a manner consistent with the duties of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence.

RULE E (common)

If a person, organization or institution claims to be a victim and intends to make submissions pursuant to Articles 15 (3) and 19 (3), the Court shall determine the right to do so under the applicable provisions of the Statute and the Rules of Procedure and Evidence.

RULE F (common) [3](#)

Prior to any contact with the Court that requires his or her physical presence, a victim shall be informed of the existence, functions and availability of the Victims and Witnesses Unit.

WORKSHOP 2 - Place and rights of victims in procedure

RULE A

1. Victims shall make written [4](#) application to present their views and concerns to a Chamber of the Court. [5](#) Subject to provisions of the Statute in particular article 68 par. 1, the written application shall be communicated to the Prosecutor and to the Defence [6](#) , who shall at all times be entitled to reply within a period of time to be set by the Chamber in question.

2. A Chamber of the Court may, on its own initiative or at the application of the Prosecutor or of the Defence, reject the written application of the victims, if it considers that the criteria set forth in article 68 par. 3 are not fulfilled.

3. A victim whose written application has been rejected by a Chamber of the Court under paragraph 2 of this Rule, may file a new application at a later stage in the proceedings. If a Chamber decides that the application is admissible, it shall permit the participation of the victim in such proceedings and in such manner as are considered appropriate by the relevant Chamber.

RULE B

1 . Subject to the provisions of Rule A paragraph 1, a victim shall be free to choose a legal representative [7](#) .

Where there are a number of victims the chamber may, for the purpose of ensuring the effectiveness of the proceedings, invite the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives .

If the victims are unable to choose a common representative or representatives, the Chamber may ask the Registry to appoint one or more legal representatives.

2 . A person shall be qualified to be a legal representative of a victim if he or she is admitted to the practice of law in a state or is a university professor of law [8](#) .

3 . In facilitating the co-ordination of victim representation in accordance with rule B paragraph 1, the Registry may also provide assistance including financial assistance.

A victim or group of victims who lack the necessary means to pay for an appointed legal representative may apply to the Registry for assistance including financial assistance.

4. The Chamber and the Registry shall ensure that, in the selection or appointment of legal representatives, the distinct interests of the victims, particularly as provided in Article 68 (1), are represented , and that any conflict of interest is avoided.

RULE C

1. The legal representative shall be entitled to attend and participate in all of the Chambers hearings in accordance with the ruling under Rule A, unless the Chamber concerned rules, giving grounds, that the representative's intervention should be confined to the deposition of written observations .

When a hearing is in progress, the Prosecutor and the Defense must be able to reply to the oral interventions of the victims legal representatives.

If the legal representative of a victim submits a written motion, the Prosecutor and the Defense shall be allowed to reply within a period of time to be set by the Chamber.

2. When a hearing is in progress, the legal representative of the victims may [9](#) , with the permission of the President of the Chamber concerned, question the accused, the witnesses and experts , taking into account the rights of the accused and the need for a fair and impartial trial [10](#) .

RULE X

1. In matters relating to victims the Registry [11](#) shall perform, inter alia, the following functions

a) Inform victims of the rights conferred upon by the Statute and the Rules of Procedure and Evidence;

b) Inform victims of the progress of proceedings and shall notify them, in a timely manner, of key decisions which may impact upon their interests;

c) Notify victims of the relevant decisions of the Court in accordance with the Rules of Procedure and Evidence;

d) Assist victims to participate in the different phases of the proceedings in accordance with the Rules of Procedure and Evidence;

e) Assist victims to organise their legal representation before the Court in accordance with the Rules of Procedure and Evidence.

WORKSHOP 3 - Protection of victims and witnesses

RULE A (article 43 (6))

1. Protection should be afforded to all victims, witnesses, and other persons at risk on account of the Court's proceedings, in accordance with their particular needs and circumstances. In this respect, the Victims and Witnesses Unit services the Court and defense.

2. The Victims and Witnesses Unit should include, inter alia, persons with expertise in the following areas:

- Witness protection and security
- Legal/administrative
- Logistic administration
- Psychological expertise in criminal proceedings
- Trauma, in particular related to crimes of sexual violence and torture
- Children, in particular traumatized children
- Social work and counseling
- Health care
- Interpretation and translation

3. The Victims and Witnesses Unit must ensure equitable gender representation in its staff.

4. The Victims and Witnesses Unit must ensure representation of people with different cultural perspectives on victimization and with different legal systems.

Rule B

To ensure efficiency and effectiveness of its work, the unit shall:

- ensure that all staff, contract employees, and volunteers in the Victims and Witnesses Unit maintain confidentiality at all times.
- have sufficient, adequate and long term funding.

- recognizing the different interests of the Office of the Prosecutor and the witness, respect the interests of the witness, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers.
- have administrative and technical assistance available for victims, witnesses and other persons at risk on account of the Court's proceedings, during all stages of the proceedings on a 24 hour basis.
- ensure training of its staff with respect to victims and witnesses security, integrity and dignity.
- where appropriate be able to enter into contracts in order to obtain supplementary assistance in other fields.
- where appropriate, cooperate with inter-governmental and non-governmental organizations.

Rule C [12](#)

The areas of operation of the unit are protection and security matters, support, and negotiation and liaison with States.

The Victims and Witnesses Unit shall, inter alia:

- in accordance with article 43(6) recommend to the organs of the Court and relevant States the adoption of protection measures;
- inform victims and witnesses of their rights under the statute and rules, and the potential consequences of their testimony;
- formulate long and short-term plans for the protection of victims, witnesses and others at risk who have given testimonies, as necessary; in

cases of victims of sexual violence, gender sensitive measures may be taken facilitating the participation and testimony at all stages of the court proceedings;

-act in co-operation with the States where the victims, witnesses and others at risk live and States to which they might seek relocation;

- in consultation with the Office of the Prosecutor, provide training emphasizing the vital nature of security and confidentiality to all members of the Prosecution team on the conduct of investigations, in particular in emergency situations;

-in consultation with the Office of the Prosecutor, recommend the elaboration of a code of conduct, emphasising the vital nature of security and confidentiality for investigators and all organizations, as appropriate ;

- in consultation with the Court, provide training to all members of the Prosecution team on the issues of traumatization.

Rule D

1.The relevant Chamber on its own initiative may, at the request of the Prosecutor, the victim, the witness or their legal representatives, after having consulted with the Victims and Witnesses Unit, as appropriate, order measures to protect the victims, witnesses and others at risk, pursuant to Article 68-1. All persons seeking protection must freely and fully consent to the protective measures.

For this purpose, the relevant Chamber may hold a hearing in camera to determine if there is a need to order in particular, measures to prevent the release to the public or press and information agencies of the identity or locating of a victim, a witness or others at risk, by including inter alia:

the expungement of the name of the relevant party and indications allowing for his/her identifications from the chamber's public records;
the prohibition for the prosecution and the defense from releasing such information to a third party;
during testimony, the use of technical means enabling the alteration of pictures or voice, of audiovisual technology- in particular video-conferencing or the use of close-circuit television-or the exclusive use of the sound media;

- * the use of a pseudonym;
- * the holding of in camera hearings;

2 .Specific measures in view of facilitating the testimony of traumatized victims, a child, or a victim of sexual violence, in particular:

- the attendance of a psychologist during the testimony

- in the case of minors, the Court may order, taking into account the age and maturity of the minor and after consultation of the minor, the presence, during the testimony of :

- a psychologist,
- a member of his/her family,
- other legal representative.

3 .Taking into consideration that violations of victims'/witnesses' privacy may create risk to their security, the Chamber shall, after consultation with the Unit, be vigilant in controlling the manner of questioning to avoid any harassment or intimidation, paying particular attention to attacks on the victim's right to privacy in cases alleging crimes of sexual violence.

4 . All communications between individuals and medical doctors, psychiatrists, psychologists or counselors, including those in the victims and witnesses unit, shall be regarded as privileged and consequently not subject to disclosure at trial unless the individual consents to such disclosure;

Rule E

In exceptional circumstances, the Court may order on the request of the parties, victims or their representatives and witnesses, other special measures than those listed above. These measures must be in accordance with the Statute.

Rule F

Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others at risk may be negotiated with the States by the Registry on behalf of the Court.

Negotiations and the eventual signing of such agreements may remain confidential at the request of the State or by the Registry on behalf of the Court.

In determining a relocation environment, the Court should endeavour to ensure meaningful rehabilitation, taking into account the circumstances of the relocation context.

WORKSHOP 4 - Reparations

RULE A : presentation of claims

1. A claim for reparations under Article 75 of the Statute may be made by victims.

2. A claim shall be made in writing or in electronic form and filed with the Registrar.

3. The claim must contain at least the following particulars:

(a) Information regarding the identity and address of the claimant, subject to any protective measures ordered by the Court

(b) A description of the injury, loss or harm caused by the person or persons named in the charges

(c) Where restitution of assets, property or other tangible items is sought, a description of them

(d) Claims for compensation

(e) Claims for other forms of remedy

(f) Any relevant supporting documentation, including names and addresses of witnesses

4. Unless the person is not at the seat of the Court and can not be located, the claim shall be served on the person or persons named in the claim, any other person whose interests may be adversely affected and on any interested States.

5. Those served under sub-paragraph 4 will have the right to respond to the claim.

RULE B : Notifications

1. In cases where the Court decides on its own motion that there exist exceptional circumstances in which to determine the scope and extent of reparations, it shall give notice of what it intends to do.

2. The Registrar shall record any such notice and shall serve it on the person or persons against whom the Court is considering making a determination, on victims to the extent possible, on any interested persons and on any interested states.

3. If, as a result of giving notice to any victim under 2, the victim decides to bring a claim for reparations, the claim will be determined as if the claim had been brought under Rule « A ». In such a case, the Court will consider whether to continue to exercise its powers on its own motion.

4. If, once notified under 2, a victim does not bring a claim, the Court shall permit the person against whom it is considering making a determination to put forward a response.

RULE C : Publication of proceedings

1. Without prejudice to any other rules requiring notice of proceedings before the Court to be given, the Registrar shall, having regard to any information provided by the prosecutor and insofar as practicable, take such steps as are necessary to give adequate publicity of proceedings before the Court to victims to the extent possible, or their legal representatives, to interested persons and interested states.

2. The Court may take steps to notify States Parties likely to have an interest through the channels provided for in Article 87

3. The Court may request that any State takes steps to publicise the proceedings before the Court within its territory as widely as possible and by all possible means, in accordance with Part 9 of the Statute. [13](#)

4. The Court may also seek the assistance of organs of the United Nations, intergovernmental or non-governmental organizations.

RULE D : Appointment of experts

At the request of victims or their legal representative, or on its own motion, the Court may appoint experts to assist in determining the scope, extent of any damage, loss and injury to, or in respect of, victims and to suggest the appropriate scope and forms of reparation.

RULE E : assessment of reparations

1. The Court shall award reparations, where possible on an individualised basis, taking into account the scope and extent of any damage, loss and injury and the gravity of the harmful act.

2. Where the large number of claimants precludes individualised determination of damage, loss and injury, and of reparations, the Court may appoint a representative to recommend to the Court the appropriate reparations based on a representative sample of the victims and the damage, loss and injuries they have suffered, utilising accepted scientific methodology.

RULE F : Trust Fund

1. In making an order for reparations to be awarded through the Trust Fund, the Court may make such orders as it sees fit. The Court may order that an award of reparations be made through the Trust Fund to an international or national organisation which has agreed to cooperate or to assist the Fund.

The Court may also order the Trust Fund to provide funds for legal assistance as well as other appropriate assistance during the trial.

RULE G : Evidence

1. The Court shall award reparation to, or in respect of, victims for damage, loss or injury caused by the convicted person. [14](#)

2. The Court may accept representations and evidence on reparations in writing, through oral testimony, and in electronic form, including video and audio tapes and computer data.

RULE H : Protective Measures

1. In accordance with the Statute, the Pre-Trial Chamber or the Trial Chamber may, on its own motion or at the request of the Prosecutor or at the request of victims who have filed a claim for reparations or who have given an undertaking to do so, hold proceedings in order to determine whether protective measures should be requested under Article 93.

2. a) The person seeking the measures, or the Registrar in the case of the Court acting on its own motion, shall give notice of the proceedings to the person against whom a claim is made or any interested persons or any interested states.

b) If any such notice is given, the persons or states shall be entitled to make representations.

3. a) In urgent circumstances, proceedings may be held without giving notice under sub-paragraph 2.

b) If an order is made without notice, the Court shall as soon as practicable hold an inter partes hearing to enable any persons against whom a claim is made or any interested persons or any interested states to make representations that the order should be revoked or otherwise modified.

RECOMMENDATIONS

A. The Workshop believes that the Court, in establishing principles regarding reparations, should be guided, inter alia, by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, by the draft Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, and any subsequent revisions to or developments of this instrument as may be adopted by the Commission on Human Rights or other body of the United Nations, and by any other existing standards in international human rights law and in international humanitarian law.

B. The Workshop was concerned to ensure that national limitation periods and other procedural laws do not defeat an order for reparations. A key difficulty arises from the proper interpretation of Article 109.

C. A question was raised regarding the possible role of national authorities in various regards in applying principles established by the Court relating to reparation.

Endnotes:

1. This definition follows the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (United Nations General Assembly Resolution 40/34, 1985). Views were expressed that mechanisms to address practical difficulties that may arise from the scope of the definition need to be considered. The view was expressed that the definition may be too broad.

2. In order to eliminate any ambiguity, "person" means a natural person.

3. It may be more appropriate to include this rule under the rules developed under Article 43 (6) of the Statute or in a general provision.

4. The need to give assistance to victims who are illiterate or who have difficulty in preparing a written application could be developed in the Rules of procedure and evidence.

5. Reference to a "Chamber of the Court" does not preclude other communication between victims and other organs of the Court.

6. "Defence" here refers to persons subject to a warrant for arrest or who have been summonsed to appear, or who have been accused, and to counsel for these persons.

7. Reference to a legal representative in this context is a reference to legal counsel. See reference to Rule X of workshop 1 regarding the appointment of other persons to represent the interests of victims.

8. This provision , to the extent relevant, should be consistent with the rules for the appointment of defense counsel. This includes the keeping of a list of the names of qualified counsel. The qualifications mentioned are minimum requirements and others qualifications may also be considered.

9. The view was expressed that the ability of the victims to question the accused, witnesses and experts may have to be exercised in consultation with the Prosecutor.

10. It may be necessary to elaborate rules to provide for the notification of information to victims

11. It may be necessary to discuss whether a specialised structure within the Registry is necessary to undertake the functions listed in Rule X

12. The provisions adopted in this Rule should take into account the third rule (rule X) adopted by workshop 2.

13. Only States Parties are bound by this provision

14. In its report, the working group on reparations suggested to add at the end of the paragraph a reference to the "balance of probabilities". The aim was to provide for a lesser standard of proof in the field of reparations as compared to standard of proof required to establish guilt (article 66, paragraph 3), since it would be very difficult for a victim to gather evidence. When the report was introduced, two difficulties were identified : (1) First, it was emphasized that two issues should be dealt

with in this context, namely the "" and the standard of proof" and it was difficult to adress them both in a short sentence ; (2) Secont, it was noted that the Statut contained no provision on those two issues. Hence the need for further discussion on the subject.