



17 July: Ensuring Justice for Victims at the ICC on International Criminal Justice Day

On 30 May 2024, experts gathered at the ICC to address the critical and urgent issue of victims' rights during the early stages of ICC proceedings. This event highlighted significant challenges, such as diminishing participation opportunities, insufficient information and outreach to victims, and limited support for legal representation and participation of victims on the part of the Court. These issues not only undermine victims' rights but also threaten the credibility and legitimacy of the ICC. The event aimed to explore the evolution of victims' rights, understand their impact, and propose practical solutions to ensure that victims are genuinely included in the justice process from the very outset. This summary provides key takeaways from the various expert presentations, and action-oriented recommendations to the ICC judges, Registry, Office of the Prosecutor (OTP), and States Parties to the Rome Statute.

Watch a video of the event [here](#).

Key Takeaways of experts (victims' counsel, and former ICC staff and officials):

- **Expand Victims' Rights:** The Court as a whole needs to broaden opportunities for victims to receive information, be represented, and participate in all stages of ICC proceedings, rather than to restrict these rights.
- **Credibility to be Gained Through Participation:** Victims' participation is fundamental to the very legitimacy of the ICC, yet current practices are reducing their involvement at critical early stages.
- **Adequate Legal Aid and support to counsel:** Provide sufficient legal aid and administrative support for victims' counsel to ensure genuine representation, especially during preliminary examination and investigation stages. Effective legal representation is crucial for victims and the integrity of legal processes.
- **Effective Outreach:** The lack of timely and clear communication to victims has eroded trust and reduced their ability to participate meaningfully. Consistent and meaningful communication and information dissemination to victims is critically needed to ensure they are informed and engaged.
- **Concrete Actions Needed for a "Victims' Court":** Experts emphasised that the ICC's legal framework and declarations of ICC officials to centre victims must be

matched by concrete actions reflecting the needs and perspectives of victims, essential for meaningful justice processes. Failure to address these needs has led to widespread disillusionment among victims.

- **Need for Consistent Jurisprudence:** Ensure consistent jurisprudence to enhance fairness and clarity in victim participation across cases.

Background

For victims, the early stages of a criminal process are crucial: this is when it is decided whether an investigation will occur, what it will focus on, and how alleged crimes will be characterised. In various national systems, both civil and common law, victims can be heard at this stage, including by seizing judges with requests regarding the content and conduct of investigations and requests for decisions not to proceed with a prosecution.

At the ICC, Article 68(3) of the Rome Statute grants the possibility for victims to participate at all stages of proceedings. During the early years of the Court's operation, victims were active at this stage: applications were received and processed by the Court; and Legal Representatives of Victims (LRVs) were able to receive legal aid. Decisions issued by the Appeals Chamber and Pre-Trial Chambers eventually confirmed that victims *are* entitled to participate in proceedings at the situation stage, including by initiating those proceedings themselves. Recent LRV requests in the Bangladesh/Myanmar Situation include summaries of these important decisions (see ICC-ROC85-01/23-1-Red at paras 23-25, 45-48 and ICC-01/19-52-Anx1-Red at paras 9-10).

But despite these foundational legal provisions and initial judicial decisions enabling victim participation from the earliest stages of ICC proceedings, today, the scope for victim participation has been dramatically reduced. In nearly all respects, the practice of the Court has *reduced* victims' rights at the early stages. Many voices within the international justice community have expressed concern over the shrinking scope for victim participation, and the obstacles frequently encountered by victims and their legal representatives in securing standing, obtaining necessary legal aid, and accessing fundamental Registry services, including security measures. In most ICC situations, outreach activities, essential for engaging and informing victims about their rights and the proceedings, are also inadequate or entirely absent at this crucial stage.

Event Summary

Marie-Hélène Proulx, ICCBA President, opened the event by emphasising the importance of legal representation for victims. Proulx highlighted: "We believe that legal representation of victims is crucial not only for the victims but also for the benefit of the legal proceedings themselves." **Judge Elizabeth Odio Benito**, ICC Judge from 2003 – 2012, delivered the keynote and emphasised that inclusion of victims' rights is essential for the credibility and legitimacy of the ICC. Without this, the court's legitimacy is significantly diminished. Victims have always been key in ICC proceedings, with over 50,000 victims and survivors (including women, the elderly, children, LGBTQ+ individuals, and indigenous people) participating in ICC proceedings since its creation. Judge Odio Benito commented directly and critically about recent pre-trial jurisprudence: in situations such Georgia and Colombia, stating that Pre-Trial Chamber judges have failed to allow victim participation, to hear victims' views and

concerns after the Prosecutor requested authorisation to halt the investigations, which was an error according to Judge Odio Benito.

Panel 1: Ensuring victims are heard - legal standing and avenues for recognition by judges and other decision-makers

The first panel was moderated by **Lorraine Smith van Lin**, Director of Tallawah Justice for Women, who stressed that this discussion on the participation of victims in the early stages is needed because these precious spaces appear to be shrinking. Smith van Lin echoed the powerful words of Judge Odio Benito: “without including victims in proceedings, justice is not complete.” During the panel discussion, experts discussed recent challenges faced by victims at early stages in contexts including Palestine, Venezuela, Colombia, Afghanistan, and Comoros. They explained similar problems across situations including a stark lack of communication from the Court about investigations to victims, an absence of support and clear guidelines for victims’ legal representatives on accessing court materials and facilities.

Judge Gilbert Bitti, Judge at the Kosovo Specialist Chambers, and former Senior Legal Adviser at the ICC Pre-Trial Division, emphasised the need for the OTP and Judges to make space for victims in all stages of proceedings. He stressed, “it is time for the Court to understand that the victims who must have access to the ICC are not only the victims selected by the OTP in the context of its cases. This is especially true where the cases selected by the OTP are in no way representative of the victimisation in a given situation.” Based on his experience working at the Court, he contends that the OTP prefers to engage only with the victims of the cases who will be supportive overall of the Prosecution’s work, as opposed to the majority of situation victims who are excluded and not listened to. Judge Bitti also emphasised that “it is for the judges, especially those in Pre-Trial Chambers, to ensure that those victims have an effective right to have access to the Court, even if the OTP opposes it. Judges must also ensure that victims have an effective right to challenge the decisions of the OTP not to investigate a particular situation, in accordance with internationally recognised human rights as prescribed by Article 21(3) of the Rome Statute”.

Jimena Reyes, Director for the Americas, FIDH, and ICC victims’ representative (Venezuela and Colombia), explained that victims seek to participate at early stages on many issues, including whether an investigation will occur, what it will focus on, also on jurisdiction, or on the decision of the OTP not to investigate a situation. She explained that in Colombia, the closure of the preliminary examination by the OTP in 2021, after 17 years, left victims and local lawyers struggling to understand the reasons behind this decision due to the insufficient information provided. Reyes stressed that, “victims want the investigation to move forward and if it doesn’t, they want to know why.” She also recalled that when Venezuela appealed the Pre-trial decision in November 2023 to continue the investigation in Venezuela, judges only permitted OPCV to intervene at a hearing. Surprised by this, LRVs requested to intervene on behalf of the 609 victims they represent, and in December 2023, the Appeals Chamber partially agreed, ordering Victims Participation and Reparations Section (VPRS) to collect these opinions and then transmit them to the Chamber, denying counsel the possibility of intervening during the hearing but allowing OPCV to do so. Reyes stressed, “in our view OPCV cannot be the only representative of victims. Victims must have a choice.”

Haydee Dijkstal, ICC victims' representative (Afghanistan, Ukraine, and Comoros), emphasised that while ICC officials often speak of “victim-centred justice,” it is crucial to move beyond mere rhetoric and genuinely achieve this goal, rather than just repeatedly stating they are doing it. She proposed specific strategies to ensure that the justice process truly addresses and incorporates the needs and perspectives of victims. She stressed that, “in order to meaningfully represent and protect victims' interests at the Situational phase, there is a need for open doors for dialogue with the OTP and the ability to engage the Chamber.” In practical terms she says, “this must start with the Court recognising the status of victims lawyers and the work they do for victims at this stage as fundamental and necessary to victim representation as a whole – currently this is often overlooked.”

In their own words: statement from a victim in an active ICC situation

A **Rohingya victim's** story was shared by [video](#), highlighting the importance of receiving information about the ICC proceedings, described as their “only and highest hope” for justice. The victim expressed that the total lack of information from the ICC is deeply distressing and leads to a loss of hope. He also highlighted the crucial need for victims to be represented by legal professionals to better understand the complex legal procedures and advocate for their cases. **Danya Chaikel**, FIDH ICC Representative, presented his statement, emphasising the crucial and overlooked need to directly listen to victims and support their agency when advocating for their rights. She stressed the importance of going beyond focusing on their views and concerns about the crimes they endured, and also asking them from the early stages what ICC proceedings mean to them, whether in their view the proceedings are genuine and meaningful, and whether they are receiving enough information and support.

Panel 2: Are ICC services for victims and legal representatives — information, security, legal aid, and other essential support — fit for purpose?

The second panel, moderated by Janet Anderson of Asymmetrical Haircuts, focused on whether essential support services provided by the ICC, including information, security, and legal aid, are adequate and effectively meeting the needs of victims and their legal representatives. Anderson framed the discussion by stepping back and reminding the audience of a fundamental challenge: “Despite all the rhetoric around the way the ICC is different because it was set up with victims in mind, the reality is somewhat different - confusion, different judges making contradictory decisions, and no clarity on when victims really play a role. Who is this justice really for becomes the question that all observers need to ask.”

Megan Hirst ICC victims' representative (Bangladesh/Myanmar and Afghanistan), stressed that “we need to change our mindsets. The Prosecution might lead the preliminary examination and investigation stages but they don't own them: let's remember why the Court exists and for whose benefit.” Hirst, outlined three significant challenges faced by lawyers representing victims during the early stages: the lack of funding for legal aid to victims, the lack of basic services from the Registry (such as IT, security and cooperation), and the lack of essential information needed to effectively represent their clients, adding, “it's not only victims who don't have information; many LRVs don't have the information either.” She refuted the idea that upholding victims' rights in the early stages of proceedings would result in the Court being inundated with victims' interventions. Rather, there are

practical and inclusive solutions, saying, “let’s stop crying ‘floodgates’ and shutting victims out. It is possible to create realistic frameworks for victim legal representation and participation at the early stages. LRVs and CSOs are ready to be partners in that process if the Court will engage with us.”

Fiona McKay, former Chief of VPRS, now working with a legal team supporting victims, also noted the lack of support and clear guidelines for legal representatives such as in accessing court materials and facilities as well as legal aid. McKay also lamented the Court’s lack of early communication to victims, despite a judicial order to do so and plentiful evidence of its importance, which directly impacts their ability to play their role in proceedings. She shared that “victims from Palestine feel overwhelmingly a sense of abandonment by the Court. The information is just not reaching people.” She argued that the Court’s denial of support to legal representatives, and lack of information and outreach efforts to victims, until suspects are before the Court, stem from policy decisions from the Registry rather than its legal mandate, and have regrettably hardened over time. The good news, however, is that this can be remedied on a policy level.

Ehsan Qaane, Member of Afghanistan Transitional Justice Coordination Group (TJCG-Afghanistan), shared his experience in the Afghanistan situation, also emphasising the serious lack of services provided by the ICC, particularly in terms of information, outreach, and legal aid. He explained that “there has been no effective outreach or provision of information to victims in languages they understand through accessible means.” Most victims are unaware of the ICC or its investigations in Afghanistan and this lack of awareness has led to minimal victim participation, especially concerning the OTP’s decision to [deprioritise](#) investigations of crimes allegedly committed by Afghan National Security Forces and the armed forces of the United States of America and its Central Intelligence Agency, which significantly affects many victims and their rights. This deficiency fosters profound misinformation and mistrust towards the ICC and contributes to feelings of re-victimisation among excluded victims.

Kate Gibson, ICC victims’ representative (Bangladesh/Myanmar), presented closing remarks, stressing the collective responsibility of practitioners, State Parties, and civil society to support the Court and find solutions to improve victim participation. Gibson summarised the main issues raised by the panellists during the discussions, namely limited access to information, lack of proximity between victims and the Court, selective victim engagement by the Office of the Prosecutor, inconsistent jurisprudence on the matter, absence of concrete legal aid framework for victims, insufficient outreach and accessibility efforts by the Court as well as resource limitations. She concluded by emphasising that the “ICC is not static. It is a growing institution, and one that we are all invested in, as practitioners, as States Parties, as civil society. If we see things going wrong, we have a responsibility as supporters of the Court to come together and talk, and try to find solutions.”

Expert Recommendations

For Judges

- **Create a Victims' Participation Resource:** Develop a Chambers' resource reviewing historical victim participation jurisprudence. This will ensure that precedents are not lost and are referenced in case law. If needed, approach the ICCBA for support on this.
- **Alignment with Established Jurisprudence:** Ensure decisions on victim participation align with established jurisprudence, especially of the Appeals Chamber.
- **Ensure Consistency in Victims' Participation:** Address inconsistencies in victims' participation across cases and situations, so there is more legal certainty for victims.
- **Include Experts in Judicial Seminars:** In future events on victims' participation (e.g. January 2024 judicial seminar on [victims' participation](#)), invite experts in this field, including CSOs who work directly with victims and individuals who have acted as LRVs at the ICC. They can provide practical perspectives on representing victims and interacting with them daily.

For the Registry

- **Agree on Protocol for Services to Victims' Counsel:** Finalise, publicise, and implement the ICCBA's proposed protocol for services to victims' counsel at the situation stage. Ensure this protocol is publicly available and comes with a public commitment from the Registry.
- **Develop a Comprehensive and Realistic Updated Victims' Strategy:** Apply an inclusive and pragmatic approach to the victims' strategy revision process, ensuring that victims, legal representatives, and CSOs are genuinely included and provided enough time to provide comments and in their own language. Also, ensure that implementation of the strategy is the main focus, so the strategy is not wishful thinking, and rather a roadmap which will lead to real progress.
- **Make Adequate Annual Budget Requests:** Request sufficient annual budgets from State Parties for necessary services, including legal aid and outreach, which are currently critically underfunded. This is to address the current budget impasse where the Registry claims insufficient funds from States Parties, while States Parties assert that increased funds for these services have not been itemised in the Registry's annual budget request.

- **Assess Effectiveness of Legal Aid Policy at the Situation Phase:** Review the new legal aid policy critically to ensure it is effective and sufficient at the situation stage. Involve ICCBA in this review process to address current shortcomings.
- **Strengthen Collaboration with LRVs and CSOs:** Recognise that victims are important actors at the situation stage. Commit to working with ICCBA and CSOs on frameworks to support and regulate work at this stage, including the organisation of legal representation and determining what information can be shared with LRVs and victims at this stage.

For the Office of the Prosecutor

- **Acknowledge the Importance of Victims' Participation:** Recognise and prioritise the significance of victims' participation at the situation stage.
- **Stop Opposing Victims' Standing:** Cease opposition to victims' standing and commit to working with ICCBA and CSOs to support and regulate work at the situation stage.
- **Engage with LRVs and CSOs:** Actively collaborate with LRVs and CSOs to enhance victims' participation and representation frameworks.
- **Train Personnel on Victims' Rights:** Provide specialised training for ICC personnel on victims' rights, with a particular focus on addressing issues such as sexual violence.

For State Parties

- **Provide an Adequate Annual Budget:** Ensure sufficient funding to support legal aid, outreach, and other essential services for victims, including at the situation stage. Require the Registry to justify the sufficiency of these budget requests.
- **Proactively Support Victims' Rights:** Actively seek insights into how victims are impacted by the Court and their views on ICC processes. Advocate for and protect these rights at all stages of the legal process, ensuring that the ICC's actions are meaningful and beneficial for victims.
- **Sign Agreements on Victims' and Witnesses' protection with the ICC:** Sign cooperation agreements with the Court on the protection of victims and witnesses with, to facilitate the relocation of victims at risk and ensure their safety and protection.
- **Offer Supplementary Funding:** While legal aid and services remain insufficient, consider providing additional funding for victims' needs outside the framework of the Court. This could include direct support to organisations working with victims or to victims' lawyers.