

REDRESS

Ending Torture. Seeking Justice for Survivors

Beyond Kampala: Reaffirming the Victims' Mandate of the Rome Statute System

12th Session of the Assembly of States Parties
22 November 2013, The Hague

Presentation at the Assembly of States Parties Plenary Session on Victims

Thank you, Madam President, Excellencies, Ladies and Gentlemen,

Thank you in particular to the co-facilitators on "Victims and affected communities and Trust Fund for Victims, including reparations and intermediaries", Ambassador Mohamed Karim Ben Becher (Tunisia), and Ambassador Eduardo Pizarro Leongómez (Colombia).

I have been asked to focus my presentation on the issue of meaningfulness: how to enable victim participation that is meaningful.

REDRESS has been working on victims' rights in the Rome Statute system since 1997, before the Statute was adopted, and continues its work on this now to ensure their effective operationalisation. REDRESS also facilitates the Victims' Rights Working Group, that was established under the auspices of the CICC, and that brings together a large number of NGOs and experts to present common positions on victims' rights in this context. In this regard, REDRESS takes note of the Report of the Bureau on Victims and affected Communities,¹ and in particular, references to the need to ensure that victims' rights are fully realised, and that their implementation is sustainable.

I suggest considering the question of meaningful participation by looking three points:

1. What the ICC offers victims;
2. Whether this is or can be meaningful; and

¹ Report of the Bureau on victims and affected communities and the Trust Fund for Victims, including reparations and intermediaries, ICC-ASP/12/38, 15 October 2013.

3. What needs to be done

The ICC Rome Statute provides an integrated, “joined-up” framework that gives effect to victims’ rights, reflecting international standards. This *integrated* framework is important because our experience of justice does not just relate to the final result, it also relates to the experience of the justice process itself. This goes to the very heart of what justice means to us. You may not get the result that you want, but if the process is fair, and respects your procedural rights, you may be able to accept that justice has nonetheless been done. Thus, the ICC’s integrated framework safeguards victims’ *procedural* rights, that relate to their engagement with the process, as well as their *substantive* rights that relate to the final outcome.

These inter-related rights enable victims’ access to justice at a practical level. In order to access justice:

- they must be informed of the mechanisms that are available;
- if appropriate, they should be able to express their views and concerns;
- where their legal interests are at stake, they should have legal representation;
- where there are risks to their lives on account of engaging with the justice process, they will require protection;
- they may also require support in order to ensure that immediate medical or other impediments do not frustrate their ability to seek and obtain justice.

However, there is a critical ingredient that must underlie access to justice at the practical level, if these procedural rights are to be meaningful. The implementation of each and every procedural right must respect the dignity of the victim.² Implementation of each practical measure or every policy must, as its starting point take consciousness of the victim.

The UN Committee Against Torture has recently emphasised the importance of victim participation in the justice process, explaining that the ultimate objective in the provision of redress is restoring the dignity of the victim.³ Crimes of genocide, war crimes and crimes against humanity dehumanise, subjugate and terrorise populations inflicting long-lasting trauma. Victims will have suffered physically, mentally, and socially; they will have suffered individually, but also in their relationships and as a community. Trauma implies a notion of tearing, rupture or structural breakdown; where rebuilding self-worth and personal relationships may be just as difficult as rebuilding a livelihood, a family and a community.

Recovery relies on the recognition of harm, and a process of reintegrating fragmented experiences at a number of levels. Because of the disorientation that ruptures and fragmentation generate, the relationship aspect of healing is always more powerful and

² See article 68(1) of the Rome Statute.

³ UN Committee Against Torture, General Comment No.3 (2012) on the implementation of Article 14, CAT/C/GC/3, 13 December 2012.

important than the aspect referring to the content. Experts on trauma working in the field have explained that 'in this sense, to cure means not so much to repair destruction, rather it emphasizes a willingness to share it.'

The joined-up framework of victims' rights enshrined in the Rome Statute system affords victims an opportunity for redress, which can be an instrument to restore victims' dignity. However, these procedural rights need to be implemented in a manner that takes consciousness of the victim; that recognises the harm suffered, and their underlying humanity. Justice is not just about the result. It is not just about verdicts and reparation. What the process will mean to individual survivors will depend on each and every victims' life story.

It is worth stressing here that victims rarely form a unified, homogenous group. While individuals may suffer from the same events or crimes, they experience harm differently, and have varied expectations when it comes to justice, and reparation. The consequences of a crime will also depend on the victim's support network, role and place in her/his society, age but also his/her gender. Our experience working with former child soldiers is telling in that regard. Expectations when it comes to justice and reparation varied greatly depending on whether the children had joined voluntarily or been abducted. Whether they had been reintegrated successfully in their communities or not. Whether they were boys, or girls.

Our responsibility is to provide an enabling framework that ensures a process above all that respects victims' dignity. The manner in which victims are treated throughout the process, the quality of the recognition that the process provides them, may often be more important than the final result.

For one former child soldier we worked with, getting a victim file number, that showed that she was recognised as a victim in a case carried huge symbolic value. For one of REDRESS' clients in a case against Chile, having his day in Court, where he was treated with respect and dignity in front of his tormentors empowered him beyond recognition.

The good news is that these key elements are already part of the Rome Statute. The joined up framework of procedural rights include: victims' right to information, their ability to present views and concerns, the provision for legal representation, rights to protection (that include also psychosocial protection) and potential support through the Trust Fund for Victims. Treating victims with respect for their dignity and privacy is also in the Statute. However, there is much that remains to be done to infuse every policy and measure with an intention to recognise and take consciousness of the victim.

Lack of information or follow up, delays, processing backlogs, legal representation that is remote, inconsistent decisions and changing procedures, the lack of clarity on reparations

(the lack of court-wide principles) are all areas where much thought has been given and is still being given to identify viable and sustainable strategies that will provide a meaningful process. In the meantime, exercising truth, honesty, respect and empathy where the Court faces challenges will be all the more necessary.

Given the context of mass violations, which necessarily implies large numbers of victims, it is critical that victims feel respected and considered and that the role of victims in the proceedings is not reduced to tokenism. When looking forward, and acknowledging existing challenges, it is essential that Victims do not become avague, anonymous and amalgamated category of participants, in whose name justice is rendered but a justice that is in fact blind and death to them and their plight.

The Court will need to continue to find creative ways to reach, engage and recognise victims, in order to afford them with the rights that are available under the Statute, with particular attention to respecting their dignity. This will apply to all the policy areas relating to the implementation of the integrated framework of victims' procedural rights.

What can we do to support meaningful participation at this Assembly of States Parties Session?

- Lend support to effective outreach to victims, noting the importance of recognising survivors' suffering and humanity;
- Support the adoption and implementation of the *Guidelines on Intermediaries*, particularly aspects relating to training of intermediaries, including basic understanding of trauma and the importance of respect for dignity, including the exercise of truth, fairness and empathy;
- Support staff training as necessary;
- Implement provisions to support victims and witnesses protection;
- Support approaches to victims' applications to participate and legal representation that respect victims' dignity, privacy and need for individual recognition;
- Contribute to the Trust Fund for Victims;
- When considering measures to domesticate the Statute and prosecute ICC crimes at the domestic level, endeavour to reflect, as appropriate, victims' rights in national proceedings.

Thank You.