

## Seventeenth session of the Assembly of States Parties

### Panel discussion: Achievements and challenges regarding victims' participation and legal representation 20 years after the adoption of Rome Statute

11 December 2018

#### Informal summary by the co-focal points for Cluster I<sup>1</sup> of the Study Group on Governance, Ms. Erica Lucero (Argentina) and Mr. Philip Dixon (United Kingdom)

##### I. Introduction

1. On the 20th anniversary of the adoption of the Rome Statute the international community was of the view that it was vital to focus on victims and their integral role in the international criminal justice process. Victims' participation in the Rome Statute system had been a central innovation in international justice, allowing victims to stand before the International Criminal Court ("the Court") as participants in their own right.

2. At its seventeenth session, the Assembly of States Parties ("the Assembly") held a special plenary session<sup>2</sup> on victims' participation and legal representation, which brought together stakeholders from the Court, practitioners and civil society, to reflect on what had been achieved in that regard since 1998, the challenges faced, and how those challenges could be overcome.

3. The plenary session was organized by the co-focal points for Cluster I of the Study Group on Governance, Ms. Erica Lucero (Argentina) and Mr. Philip Dixon (United Kingdom). The President of the Assembly, H.E. O-Gon Kwon, opened the session, followed by remarks by the two co-focal points. The Assembly viewed an extract of a video prepared by the Office of Public Counsel for Victims ("OPCV") for the opening statements at trial, which provided first-hand accounts by victims in the case of *Dominic Ongwen*.

4. The co-focal points moderated the panel which comprised Mr. Hiram Abtahi, Head, Legal and Enforcement Unit, Presidency and Acting Chef de Cabinet, Presidency; Mr. Fabrizio Guariglia, Director, Prosecution Division, Office of the Prosecutor; Mr. Philipp Ambach, Chief, Victims Participation and Reparations Section ("VPRS"), Registry; Ms. Paolina Massidda, Principal Counsel, OPCV; Mr. Francisco Cox, Legal Representative of Victims in the ICC case against Dominic Ongwen; and Ms. Christine Alai, Technical Advisor to the International Commission of Jurists-Kenya Chapter, International Justice Program.

##### II. Discussion

5. Mr. Hiram Abtahi discussed the challenge of managing the large numbers of applicants for victims' participation before the Court. He described the development, streamlining and simplification of the victim participation application process by judges of the Court, which was intended to improve efficiency and effectiveness of proceedings, while also ensuring that victims' expectations were met.

6. Mr. Fabrizio Guariglia provided the perspective of the Office of the Prosecutor ("OTP") on how victims' participation works in practice. He noted that during the pre-trial phase, the OTP received vital information from victims regarding the existence of the crimes, the overall context of the crimes which had occurred, including the violence in the

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<sup>1</sup> Increasing the efficiency of the criminal process.

<sup>2</sup> Tenth plenary meeting, held on 11 December 2018.

situation. He noted that, once an investigation was underway, the OTP had a much deeper interaction with individual victims, who could be sources of key evidence. Once the trial began, the nature of the interaction changed because victims then participated in the proceedings and represented their own independent interests, which was separate from those of the OTP. He explained that two key benefits of victims' participation were firstly, that they provided a bridge between the Court in The Hague and affected communities; and secondly, legal representatives of victims from the same country where the alleged crimes had occurred were able to provide in-depth knowledge of that country which could meaningfully assist judges in determining the facts.

7. Mr. Philipp Ambach discussed best practices from the VPRS perspective, noting for instance that it had become clear that sufficient time was needed for the victim application process, but that continuous workflow adjustments have led to an efficient process not negatively impacting on the length of proceedings. Another lesson learnt was the importance of engaging with relevant external actors, such as NGOs and local community leaders, since they were essential in advancing victims' interests. While a number of methods had been tested over the years, the Court was still exploring the best ways to collect and process applications, and it was not yet clear whether a standardized process ought to be applied in all cases, or if a more flexible approach was needed. A common standardised process is presently tested in Mali and Central-African Republic. In terms of successful innovations, Mr. Ambach described a recently introduced online application process which had been applied in the victim representation process (article 15(3) of the Rome Statute) in the situation in Afghanistan, and in the *Al Hassan* victim application process in Mali, and was accessible in all relevant languages. Another innovation is the use of mobile tablet devices in the field to collect victims' applications – to be deployed in early 2019.

8. Mr. Francisco Cox highlighted some of the challenges of representing many, and sometimes thousands of victims. He noted that it was important to bear in mind that each victim was an individual person with his/her own story and views. He explained that in order to properly represent over 2,500 victims as he was doing in the *Ongwen* case, effective communication was paramount. The challenge lay in finding ways to meet with victims from different communities situated long distances apart, and gather their very diverse views. Mr. Cox stressed that even after the number of years that had elapsed since the alleged crimes, victims still had a strong yearning for justice, evidenced by the willingness of many to walk long distances to meet with legal representatives and receive updates on the case. He also noted that having part of his team in the field was fundamental to keeping victims connected with their counsel and to properly represent them in Court.

9. Ms. Paolina Massidda addressed some of the key factors necessary to ensure the effective legal representation of victims. Since its creation in 2005, OPCV had been involved in all proceedings before the Court, with over 50,000 victims having benefited from the services of lawyers in that office. She highlighted that at the heart of legal representation, it was necessary for lawyers to make victims' voices heard in the proceedings. Ms. Massidda stated that only when this was understood, could each victim be treated as an individual with different views and interests. Two key factors that could contribute to effective legal representation for victims were (a) gaining knowledge of the client's background, as well as of the case, historically and culturally; and (b) field work which included regular meetings with clients, which were absolutely essential to effectively representing victims before the Court.

10. Ms. Christine Alai observed that, as the Rome Statute's 20th anniversary was being marked and various stakeholders had taken stock of its impact, victims had, importantly, taken centre stage in the conversation. She focussed on the impact and value of victims' participation in the Kenya situation. Ms. Alai posed the question whether participation caused further harm to victims or ensured that their voices were heard and represented. In her view, when the Kenya cases collapsed, there had been no process to assess the impact on the victims, and to date they continued to feel desolate because of the lack of a support mechanism to address their concerns. She noted that ultimately, when the Court engages victims, there is an ethical and legal responsibility to ensure that they do not leave the

process feeling objectified or used as a tool mainly for the purpose of holding perpetrators accountable. She stressed the importance of outreach, i.e. that it ought to reach even the most inaccessible victims, which made a big difference in terms of the value and quality of victim representation. She suggested that even when proceedings failed, there ought to be a fall-back in the form of assistance from the Trust Fund for Victims.

11. Following the panel discussion, States Parties, Court officials and NGOs participated in an interactive discussion. Austria, on behalf of the European Union, stressed the primacy of victims within the Rome Statute system, and urged States to contribute to the Trust Fund for Victims, and to implement aspects of the Rome Statute relevant to victims in their domestic legislation. The United Kingdom emphasized that victims' participation must be meaningful and effective, and that the Court and its judges should review the current system and work towards a more standardized system, in order to manage victims' expectations and understanding of the process.

12. Norway enquired about the feasibility of an increased use of modern technology, such as video-link, in the victims' participation process. Ms. Massidda replied that technology could offer important tools to strengthen victims' participation, such as regular Skype sessions with clients, and she indicated that the video shown at the beginning of the plenary had been presented at the start of the Ongwen trial to highlight the first-hand accounts of victims to judges, as opposed to having only lawyers speak on their behalf. Argentina asked whether States could contribute in ways other than through reparations. Mr. Ambach answered that States could provide swift operational and technical support to the Court on victim-related matters. On the issue of use of modern technology, he referred again to the online application platform for victims, as well as the future use of tablets in the field. Palestine raised the issue of how outreach affected or interrelated with victims' participation during preliminary examinations.

13. Mr. Xavier-Jean Keita (Principal Counsel, Office of Public Counsel for the Defence) stressed that the fate of whether victims received reparations should not hinge on whether an individual was found guilty by the Court. Rather, States or the international community should provide reparations in a process which was separate from Court proceedings.

14. The *Federation Internationale des Droits de l'Homme* (FIDH) asked whether victims' participation was being implemented in a meaningful or merely symbolic manner, pointing to several challenges, including providing effective outreach and representation which included a comprehensive field presence, and also ensuring access to legal aid. FIDH encouraged States Parties to critically reflect on the purpose and practice of victims' participation, and to avoid applying a purely resource-driven approach. FIDH recommended that States restore the facilitator on victims' issues, which had existed until recently.

15. The Women's Initiatives for Gender Justice highlighted the Court's successes including the Registry's targeted outreach programmes for victims and survivors of sexual and gender-based crimes, as well as the OTP's victim-centred approach applied in its investigations and prosecutions. The Transitional Justice Coordination Group-Afghanistan highlighted the challenges faced by Afghan victims, noting that to date there had been no Court outreach, but that this was greatly needed even during the preliminary examination phase.