

# **VICTIMS' RIGHTS AT THE INTERNATIONAL CRIMINAL COURT (ICC):**

## **Making Victims' Rights Enshrined in the Rome Statute a Reality**

**DECEMBER 2024**

The Victims' Rights Working Group (VRWG), initially established in 1997, is an informal platform of diverse national and international civil society organisations (CSOs) as well as national coalitions, working to ensure victims' access to justice and the ICC and assisting victims and affected communities, in particular in ICC situation countries and other countries where the Court is engaged. The VRWG Secretariat has engaged with its member organisations for input on a position paper (coming in 2025) outlining shortcomings in the Court's current engagement with victims at all stages of proceedings, identifying priority areas for the Court's Victims' Strategy, and proposing recommendations for its operationalisation, in light of the current Victims' Strategy revision process. This paper identifies priority areas and key recommendations for the Court.

### **PRIORITY AREAS FOR THE COURT'S STRATEGY ON VICTIMS' RIGHTS**

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#### **1. Victim-centred approach**

The ICC must place victims at the center of policies concerning their rights, adopting a truly victim-centered and trauma-informed approach. This involves upholding victims' legal rights (information, participation, protection, representation, and reparations) and ensuring all aspects of the Court's work are inclusive and responsive to victims' needs, including through improved mental health and psychosocial support services. The scope of a victim-centred approach must be clearly defined and consistently applied in all Court's activities.

#### **2. Information and Outreach**

Victims have the right to be informed about matters affecting their interests. Effective, early outreach is essential, especially during preliminary examinations when decisions on investigations are made, and during the reparations phase. Victims often lack information, hindering their ability to engage. Outreach should begin as soon as a preliminary examination opens, with information tailored to the language, cultural needs, and psychosocial challenges of victims and affected communities: while avoiding legalistic and technocratic language, ICC's outreach efforts must be based on multi-disciplinary analysis and content. While civil society organizations (CSOs) often play an important role in bridging the gap between the Court and victims' communities, they should not bear the burden of filling these gaps.

#### **3. Victim Participation**

Under Article 68(3) of the Rome Statute, victims have the right to participate in all proceedings. However, victim participation, particularly in early stages, is increasingly limited. Victims should have more opportunities to have their voices heard at the early stages of proceedings, including the investigation stage, which currently lacks the sort of procedural protocols that exist for later stages of proceedings. Other challenges related to victim participation include short timeframes for submitting representations (e.g., 30 days in the Georgia situation), which are insufficient, especially given security, language, and gaps in domestic legal knowledge of international criminal law processes. The Court must balance expeditious proceedings, which are also in the interest of victims, with enabling meaningful participation.

#### **4. Legal Representation**

Victims' right to choose and have appropriate support from their counsel is vital for building trust in the ICC process. Inconsistent practices regarding counsel selection and participation undermine this right.

The new Legal Aid Policy, effective January 2024, improves access to funding but concerns remain about arbitrary legal aid caps. A flexible, evidence-based legal aid system is crucial for fair trials and adequate representation. Additionally, victims should have the opportunity to have their counsel present during all OTP interviews. Current practices that exclude counsel threaten the fairness of proceedings and risk imposing additional stress on victims.

### 5. Reparations

A victim-centered approach should be applied to reparations as a condition for their effectiveness. The process must be transparent, with clear eligibility criteria and accessible information on how victims can apply for reparations. Early provision of information about the reparations process is required in managing expectations of participating victims; and continuous engagement with victims throughout the reparations phase is essential. The delivery of reparations should be co-designed with victims, both in the design and implementation stages, taking into account the modalities determined by the Chambers in the reparations orders.

## OPERATIONALIZING A VICTIM-CENTERED APPROACH: RECOMMENDATIONS TO THE COURT

ICC implementation of a victim-centred strategy requires concrete steps:

- **Dissemination and Community Building:** Raise awareness of the victims-strategy and its practical implications within the ICC and with external partners, ensuring resources are accessible.
- **Resources and Tools:** Develop court wide and organ-specific resources for victim engagement, including a centralized platform for information on victims' rights.
- **Technical Support:** Train ICC staff in trauma-informed practices and culturally sensitive engagement and provide ongoing guidance to support victims effectively, including when victimization is connected to multi-generational processes and 'historic' impunity.
- **Institutional Expertise:** Hire staff with expertise in victim-sensitive, trauma-informed and intersectional approaches, ensuring staff well-being to prevent secondary trauma.
- **Regular Progress Review:** Establish review mechanisms with feedback from victims and external stakeholders, including CSOs, to ensure accountability and transparency. Review process should include clear progress indicators and baseline data to measure progress.
- **Sustainability:** Ensure sufficient resources to fully operationalise victims' rights into the Court's budget. This requires the Court to adopt a more pro-active approach to outreach to States on the role of victims in the Court's work.
- **Resource Mobilization for the Trust Fund for Victims:** In light of the TFV's subsidiary role in funding reparations when the convicted persons' assets are insufficient to fulfill reparations' orders, ensure that the TFV has the legal ability and the expertise to mobilize resources from any appropriate public or private entity.

For the ICC to fulfil its commitment to victims' rights, it must integrate a victim-centered approach across its work. This includes improving outreach, ensuring meaningful participation, providing adequate legal representation, and guaranteeing reparations that reflect victims' voices and concerns. By operationalizing these principles, the ICC will rebuild victims' confidence in the Court and thereby strengthen its legitimacy, credibility and effectiveness.