

AMNESTY INTERNATIONAL

The International Criminal Court Fact sheet 6 Ensuring justice for victims

“Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.”

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 4

There is currently a resurgence of international interest in ensuring that criminal justice takes better account of victims and their rights. This is reflected in the Rome Statute of the International Criminal Court (Statute), which enshrines three key principles: victim participation in the proceedings, protection of victims and witnesses and the right to reparations. The Statute requires the International Criminal Court (ICC) at all times to ensure that the measures taken are not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial.

I. PARTICIPATION IN THE PROCEEDINGS

What is the place of the victim under the Statute?

The Preamble indicates that ensuring justice for victims lies at the heart of the Statute, by recalling “that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity”.

The Statute recognizes that the interests of justice and the interests of victims are complementary. The overriding interest of victims is likely to be the interest in seeing that crimes are effectively investigated and that justice is done.

Can victims participate in the proceedings?

The ICC does not treat victims as passive objects of protection or instruments of the prosecution. The Statute recognizes the contribution that victims can make to the criminal process and the importance of that process to victims. Accordingly, Article 68 (3) requires the ICC to permit the views and concerns of victims to be presented and considered at appropriate stages in the proceedings.

What is the role of victims in initiating an investigation or prosecution?

Article 15 authorizes the Prosecutor to initiate investigations based on information from any source, including from victims. Victims may make representations when the Pre-Trial Chamber is deciding whether to authorize an investigation, and must be informed when the Prosecutor or the Pre-Trial Chamber decide not to proceed with an investigation.

Can victims participate at any stage of the trial and post-trial proceedings?

Article 68 (3) provides that the ICC shall permit victims to present their views and concerns to the ICC for its consideration at any appropriate stage of the proceedings and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Appropriate stages of proceedings should encompass the trial, sentencing, award of reparations and post-trial proceedings, including the appeal, sentence reduction hearings, review and release hearings.

II. PROTECTION OF VICTIMS AND WITNESSES

Does the Statute recognize the importance of protecting victims and witnesses?

The Statute recognizes that measures to guarantee the safety, physical and psychological well-being, dignity and privacy of victims, witnesses and their

families are essential to support the ICC's credibility and legitimacy.

Will there be a special unit to assist victims and witnesses?

Article 43 (6) provides for the establishment of a Victims and Witnesses Unit in the ICC Registry. It will provide protective measures, security arrangements, counselling and other appropriate assistance to victims, witnesses who appear before the ICC and others, such as family members, who are at risk because of such testimony. Article 68 (4) authorizes the Unit to advise the Prosecutor and the rest of the ICC on such measures. It will include experienced staff, trained to deal with traumatized individuals, including victims of sexual violence and child victims.

What are the responsibilities of the Prosecutor to victims under the Statute?

Article 54(1)(b) requires the Prosecutor during the course of an investigation or prosecution to respect the interests and personal circumstances of victims and witnesses, including age, gender and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

In addition, Article 68(1) requires the Prosecutor to take appropriate measures, particularly during the investigations and prosecutions of crimes to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

Article 68(5) further provides that the Prosecutor may withhold until the trial evidence and information, by submitting a summary thereof, if it may lead to grave endangerment of the security of the witness or his/her family.

What are the responsibilities of the Pre-Trial Chamber and the Trial Chamber to victims?

Article 57(3) states that the Pre-Trial Chamber may, where necessary, provide for the protection and privacy of victims and witnesses and Article 68(1) authorizes the Trial Chamber to take

protective measures. Article 68(3) provides that the ICC may also protect the identity of victims and witnesses from the press and public by conducting any part of the proceedings by video camera or allow the presentation of evidence by electronic or other special means.

III. REPARATIONS

Can the ICC award reparations to victims?

In addition to bringing the perpetrator to justice, which is itself a crucially important form of reparations, the ICC is required under Article 75 (1) to establish principles relating to reparations, and it may order a convicted person to provide reparations to victims, including restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, and any other type of reparations to victims it deems appropriate in the particular case.

How will such awards be made by the ICC?

Article 75 (2) provides that the ICC may order a convicted person to make reparations directly to victims or through an ICC Trust Fund. Before making such an award, the ICC may invite, and must take account of, the views of the convicted person, victim and interested persons or states. To ensure that assets are not concealed or transferred to avoid paying reparations, the ICC can take protective measures to ensure that assets of an accused are preserved pending the outcome of the trial, so that they can be forfeited, particularly for the benefit of victims, if the person is convicted.

What is the role of states in reparations?

States parties agree under Article 75 (2) to give effect to any ICC decision on reparations. In some cases, states parties will also have an obligation under international or national law to ensure that they themselves provide reparations to the victims, either when the convicted person is unable to make reparations or when the state itself is also responsible for the crime.

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