

VICTIMS LEGAL REPRESENTATION BEFORE ICC FREEDOM OF CHOICE AND THEIR ROLE

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Abstract

Legal representation is particularly crucial in proceedings before international tribunals, especially in the International Criminal Court and a warranty to a fair trial. The paper thus focus on the importance of the legal representation of victims and defendants before the ICC, the role of the legal representatives in the proceedings before the court and the principle of freedom of choice of legal representatives. Also, the paper presents a short overview on the significance of legal representatives for victims and the necessity to protect their primary role in the ICC system, and ensure that it is coherent and respectful of victims' rights. Proper and quality legal representation ensures meaningful participation of victims at stages of the proceedings before ICC. Finally, the paper acknowledges the role of legal representatives during the pre-trial, trial and post-trial phase, the different modalities in selecting the legal representatives as well as balancing victims' participation with the right of the accused to a fair trial.

Keywords: international criminal court; victims; legal representatives; fair trial; freedom of choice principle;

Introduction

The International Criminal Court (ICC) results from the adoption of the *Rome Statute* by the diplomatic conference organized by the United Nations on 17 July 1998 which entered into force the 1st July 2002 after the 60th ratification. The International Criminal Court (ICC) is an independent and permanent court whose mission would be to punish the most heinous of all crimes: crime of genocide, crimes against humanity, war crimes and the crime of aggression.

During the negotiations of the *Rome Statute*, an extensive debate on the role of victims in the judicial process, at the ICC, occurred. It was the first time that an international court took into account the participation of victims in the criminal proceedings and granted great significance to victims' voices. From now on, victims will play a key role in the international justice system. The Rules of Procedure and Evidence, the Regulations of the Court and the Regulations of the Registry further define the modalities of victims' participation.

According to Article 68(3) of the *Rome Statute* specifies that "*Where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial*".

Thus, under the *Rome Statute* victims have the right to present their 'views and concerns' at stages of the proceedings where their interests are affected and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The participation of victims

in proceedings represents a landmark development in international criminal justice. The Rome Statute allows victims to participate actively and independently in ICC proceedings, rather than merely as witnesses called by the Prosecution or Defense. In order to participate and to seek reparation before the ICC, victims shall have legal representation.

The general principle, under Rule 90 (1) of Rules of Procedure and Evidence is that victims are free to choose whether to be legally represented (*The Rome Statute, Art.19.4*). Consequently victims may, at any stage of the proceedings, be represented by a legal representative. In this way, their status becomes equivalent to a "party bringing a civil action". (*ICC Manual for legal representatives: Representing victims before the International Criminal Court*)

Legal representation is particularly crucial in proceedings before international tribunals, such as the International Criminal Court (hereinafter "ICC"). This is so because of the complexity of those proceedings. The proceedings often involve hundreds of witnesses, masses of evidence some of which is technical in nature, and a wide range of legal texts that may be unintelligible to someone not trained in the law. (*L. Moffet, 2014, 98*)

1. Legal representation before ICC

Legal representation is universally acknowledged to be a fundamental right. (*International Covenant on Civil and Political Rights, Article 14(3)(d)*). Participation of a lawyer (counsel) in any criminal proceedings on behalf of a suspect, an accused person or a victim is essential to a fair trial. Consequently, proceedings will be considered unfair and fatally irregular if a judge omits to inform a suspect or accused person of his or her right to be assisted by counsel, denies accused the right to appoint counsel of his or her own choice, fails to facilitate counsel's full and effective participation, or in any other way hamper counsel in the performance of his or her duties (*W. A. Schabas, 858*).

1.1 Legal representation for victims

Before trying to explain in this paper how the legal representation for victims is realized before the ICC, it is important to first give a definition who a victim is. The ordinary usage of the term "victim" was revolutionized after the UN General Assembly first adopted the Declaration on Basic Principles of Justice for Victims of Crimes and Abuse of Power (the "Victims Declaration") on 29 November 1985. Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that: "'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States [...]"

The Rome Statute does not define who a victim is. Nevertheless, a definition was finally included in the Rule 85 of the Rules of Procedure and Evidence (RPE). Rule 85 of the RPE: "(a) 'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes and to their historic monuments, hospitals and other places and objects for humanitarian purposes".

The drafters of the Rome Statute and the ICC Rules of Procedure and Evidence recognized the importance of involving victims of the most serious crimes directly and integrally in the Court's procedures, not only as witnesses for the prosecution but as actors with a number of roles and rights within the process.

As had already been recognized by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and affirmed by the finalized text of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Rome Statute recognized to victims a trinity of rights:

- a. The right to an effective remedy and access to justice, including the ability to have access to, and participate in, proceedings where interests are affected;
- b. The right to fair treatment, dignity and respect throughout the process including protection from reprisals and re-dramatization, access to support and respect for victims' privacy; and
- c. The right to adequate and effective reparation, including access to appropriate forms of reparation. The fact that victims are included as participants in the process, and not merely the objects of the prosecution's case, is some recognition that an equitable justice requires that victims are heard in dignity, that their concerns and needs are taken into account alongside the rights of the accused and a fair and impartial trial.

The ability for victims to be legally represented in proceedings before the Court is intended to be a key means by which the aforementioned rights may be realized. Legal representation for victims is in this way, both an additional right afforded to victims under the Statute as well as a method by which other rights afforded to victims may be exercised. (*J. C. Ochoa, 2013,165*). Adequate and effective legal representation is therefore critical to the success of the Court's mandate to victims.

There are two main reasons for encouraging victims to have legal representation:

- Firstly, because victims are unlikely to have experience in criminal proceedings, in particular at the international level, or to have a full understanding of their rights; and
- Secondly, due to the very nature of the crimes within the jurisdiction of the ICC there will potentially be a large number of victims applying for participation.

A key component in guaranteeing the rights of participants in ICC proceedings is the legal aid system of the Court, which provides financial assistance to those who lack sufficient means to pay for their legal representation. Moreover, victims' participation in the proceedings is limited to the extent that the relevant Chamber authorizes them to present their views and concerns, and therefore the scope of legal aid depends on the actual forms of participation decided in each case.

1.1.1 The Importance of the Victims' Legal Representative

Legal representative for Victims is the term used to define the counsel who are allowed to work at the ICC and who are in charge of presenting the "views and concerns" of victims before the Court. Legal representatives for victims (LRVs) play a key role and are increasingly significant actors in the ICC system in ensuring the meaningful and effective participation of victims in International Criminal Court (ICC) proceedings. (*N. K. Calvo-Goller, 2006, 232*).

Under Rule 90 of the *Rules of Procedure and Evidence*, the general principle is that, "a victim shall be free to choose a legal representative". However, freedom of choice is not absolute. The general principle is subject to two important qualifications:

- Legal representatives are required to meet certain criteria and be admitted to the Registry's list of counsel

- In certain specified circumstances, the Court can require victims to form groups with a Common Legal Representative (CLRs)

Legal representatives are not employees of the ICC, but rather are admitted to the ICC's List of Counsel and selected from it to represent victims. Thus, to be a Legal representative for Victims, being admitted to the ICC's List of Counsel is required first. For this purpose, the lawyer has to submit an application to the ICC provided that he or she demonstrates competence and experience in criminal or international law and requisite language skills, has not been convicted for a criminal offence and has not been subject to disciplinary proceedings in his or her country of residence. (*Situation in the Democratic Republic of the Congo, ICC-01/04-01/07, 2009, para. 10*)

In total there are four specific criteria to be fulfilled by a legal representative in order to be admitted to the List of Counsel (*M. Bohlander; R. Boed; R.J.Wilson, 2006, 164*):

- a. **Competence:** Candidates shall have proven competence and expertise in international and national criminal law and procedure;
- b. **Experience:** Candidates must have the necessary relevant experience in criminal proceedings, whether as a judge, prosecutor, advocate or in another similar capacity. This must amount to at least ten years. Professors of law meet this requirement only where they have intervened in criminal proceedings for a minimum of ten years in one of the capacities listed above; otherwise, they can be admitted to the List of Assistants. Experience could be demonstrated by providing copies of work contracts or reference letters etc.
- c. **Language skills:** Applicants must have excellent knowledge of and fluency in at least one of the working languages of the court: the working languages of the ICC are English and French;
- d. **Record of High Standing Required of the Profession:** Candidates must not have been convicted of a serious criminal or disciplinary offence, "considered to be incompatible with the nature of the office of counsel before the Court. In cases where candidates have been the object of such a conviction, the Registrar will assess whether the imposed sanction is of a nature that impedes the candidate's ability to act before the Court in accordance with the relevant provisions of the legal texts of the Court. Candidates in this situation are invited, at the time of submitting their applications, to provide the Court with a copy of each relevant decision, as well as any observations they wish to provide

Furthermore, given the potential high number of victims seeking participation to the proceedings, and to ensure the effectiveness of the proceedings, the Court may invite them to be represented collectively, through the Common Legal Representatives (CLRs). In this case, the Chamber and the Registrar make sure that the specific interests of each victim are taken into consideration and that any conflict of interest is avoided. When a victim or a group of victims cannot afford to pay the costs for legal representation, they may seek legal assistance paid by the Court. (*L.Moffet, 2014, 110*) In such cases, the Registry determines the scope of legal assistance the ICC will pay for. Victims can also be represented by the Office of Public Counsel for Victims.

Therefore, as can be understood, the right to legal advice, at no cost when the person cannot provide for his or her own lawyer is recognized as a right in itself under international law, a necessary precondition for the exercise of other rights and an important safeguard to ensure fairness in judicial proceedings and trust in the administration of justice. (*G. Knaul, 2013, para 20 onwards.*)

1.1.2 Freedom of choice as a principle

One of the key elements of legal representation is the freedom to choose a counsel. (*FIDH, November 2013*, 22) The right to freely choose counsel for legal representation is well safeguarded in the legal regime of the Court both for defendants and for victims. The freedom to choose a counsel is a necessary pre-condition for credibility and confidence in the client-lawyer relationship. (*N. K. Calvo-Goller, 2006*, 232). According to fundamental texts, the representation of victims is a possibility, not an obligation. (*Rule 90 of the Rule of Procedure and Evidence*). Specifically, the text states that victims ‘may’ choose to present ‘their views and concerns’ through a legal representative (Article 68 (3) of the Rome Statute), not ‘shall’. However, in practice, being represented has become a necessity to ensure the efficiency of victims’ participation, for two main reasons:

1. First, certain acts can only be performed by the Legal representatives. Regarding the Legal representatives for victims it is provided that only they are allowed to question witnesses, experts or the accused(s), the victim is not permitted to do this by her or himself. (Rule 91(3) of the Rules of Procedure and Evidence). This restriction underlines that the participation of the victim may be limited if she or he is not represented by a Legal representative.
2. Second, with regards to their legal background, Legal Representatives are necessary to ensure not only victims’ participation but also the effectiveness of the proceedings. Thus, Legal representatives have a role to play since in the beginning of the proceedings on helping victims in filling their application. Legal representatives often know the legal criteria that shall be met for an applicant to be registered in an ICC’s situation or case. (Rule 85(a) of the Rules of Procedure and Evidence).

The Registry of the Court facilitates the exercise of this freedom of choice by providing any person in need of legal representation with the List of Counsel, which contains detailed information, permitting the individual concerned to make a preliminary shortlist of suitable counsel. This shortlist is then provided to representatives of the Registry, who will in turn make available to him or her, in the shortest possible time, the complete files of the short-listed counsel for the purpose of detailed review, and eventually, a final decision on the choice of counsel. After an examination of the files the person concerned notifies the Registrar of the Court of the name of the lawyer he or she would like to have appointed as counsel. The Registry then contacts the named counsel to notify him or her that they have been chosen and requests their availability. The procedure is finalized when the chosen counsel confirms his or her acceptance and communicates it to the Registrar. The Registry then seals the appointment by arranging for the formalities of the appointment and other logistical matters. Appointed counsel is responsible for structuring his or her team, including the selection of the associate counsel, who must also be admitted to the List of Counsel. (*Official website of the International Criminal Court, (online), Available at:*

www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/defence/counsel/Pages/counsel%20for%20the%20defence%20authorised%20to%20act%20before%20the%20court.aspx (February 20th, 2015)

1.2 Legal representation for accused persons and suspects

Article 67(1) Rome Statute provides that in the determination of any charge against an accused person, such person shall, in full equality, be entitled to minimum guarantees. These guarantees include: (*W. A. Schabas, 858*)

- Right to a public hearing
- Right to a fair hearing conducted impartially
- Right to be tried without undue delay
- Right to adequate time and facilities within which to prepare defense
- Right to legal assistance

The effective right to legal assistance is an essential element of the right to a fair trial. The ICC's legal framework provides for an accused to be represented by counsel at both trial and investigation stage of the proceedings before the Court (Art.67 (1) (d) and Art.55 (2) of the Rome Statute). However, under the Rome Statute defendants at the ICC have the right in principle to represent themselves in proceedings before the Court. (Art.67 (1) (d) of the Rome Statute and Rule 21(4) of Rules of Procedure and Evidence).

This provision is important in five important respects.

- First, Recognize and guarantee the right of the accused to be assisted by counsel.
- Second, for the accused to be able to exercise the right he or she must be aware of it; (*Bojang v. State, 1994, 159*)
- Third, the provision stress out that mutual trust and confidence is indispensable to the lawyer-client relationship. Thus, for counsel assistance to be effective it should be by counsel that has been selected by the accused person at his own choice.
- Fourth, the provision guarantees that in cases of indigence, a person who lacks sufficient means to afford defense counsel, the accused shall be offered legal assistance *gratis* at public expense. It is only when "the interests of justice" so demand that the free legal assistance is extended to the accused concerned. The Interest of Justice has to be determine by the Court's Registrar, upon the defendant's request, whether the defendant is indigent and thus entitled to legal aid. Legal aid at the ICC covers "all costs reasonably necessary as determined by the Registrar for an effective and efficient defense" (Regulation 83 of the Regulations of the Court). These include expenses such as remuneration for the counsel and his legal assistants, budget for investigation and related daily subsistence allowance.
- Lastly, although the accused is free to waive the right to legal representation and represent himself in person the Tribunal will insist that he does so explicitly and in writing.(*K. Gallant, 36*)

It is also noteworthy that the Statute extends it to the suspect as well. (Rule 42 of the Rules of Procedure and Evidence) In so doing it recognizes that a suspect does also have rights that need protection and that counsel has a vital role to play in protecting those rights.(*D. D. Ntanda Nsereko, 1988, 211*)

1.2.1 Ad hoc counsel

A Chamber can appoint ad hoc counsel to represent the general interests of the defense where there is a unique opportunity to take testimony, a statement from a witness or to examine, collect or test evidence which may not be available subsequently for the purposes of a trial or, finally, where the interests of justice so require. (*N. K. Calvo-Goller, 2006, 235*) This type of appointment is especially relevant where there is no person charged but investigative activities are being carried out

by the Prosecutor, in particular where victims apply to participate in the proceedings at this preliminary investigation stage. The mandates of ad hoc counsel are limited in time and scope and have a clear purpose in the context of a situation or case under the jurisdiction of the Court.

1.2.2 Duty counsel

Where any person requires urgent legal assistance and has not yet secured legal assistance, or where his or her counsel is unavailable, the Registrar can appoint duty counsel. (M. Bohlander; R. Boed; R.J.Wilson; 2006, 158) Duty counsel can be appointed in various circumstances, including at the initial appearance; to assist persons being interviewed in the field by the Office of the Prosecutor in accordance with article 55.2 of the Rome Statute; where counsel has not yet been appointed or where counsel has withdrawn or has been taken off the case and no replacement counsel has yet been appointed. During the appointment process, the Registrar takes into account all relevant factors, such as geographical proximity of and languages spoken by potential counsel and checks their availability.

1.3 Balancing Victims' Participation with the right of the accused to a fair trial

An innovative feature of the Rome Statute is the right given to victims to obtain reparations for the harm suffered and participate in the proceedings. The legal instruments of the Court also codify internationally recognized fair trial rights and guarantees of the defendant. Under the Rome Statute, the right of victims to participate must be exercised in a manner that is not prejudicial to or inconsistent with the fair trial rights of the accused. (M. Bohlander; R. Boed; R. J.Wilson; 2006, 14)

As Article 68 demonstrates, the drafters of the Rome Statute sought to ensure that victims' participation would not conflict with the rights of the Defense. Nevertheless, concerns have been raised that victims' participation unbalances the equality of arms between the Defense and Prosecution. To mitigate the impact that their participation may have, the ICC's foundational texts and the ICC's judges have limited the extent to which victims can participate.

The Rome Statute and Rules of Procedure and Evidence give victims reduced participatory rights compared to the Prosecution and Defense. For example, victims cannot appeal trial judgments or sentences. Also, Chambers have not allowed victims to present evidence at the confirmation of charges hearing, which the Prosecution is obliged to do and the Defense has a right to do.

Furthermore, even after victims are admitted to participate, they must typically seek permission from the Chamber when they want to intervene in proceedings – e.g. to question witnesses, to introduce evidence, to testify. Victims must typically make a detailed written application to the Chamber showing that their personal interests are affected by the matter in which they want to intervene. Even if victims are allowed to intervene, the Chamber can limit the manner in which the participation will occur. Thus, Trial Chambers have limited victims to questioning witnesses on matters impacting reparations and establishment of the truth, or to clarifying and complementing previous evidence. The Chamber can then give directions on the manner and order of questions, and can put the questions to the witness itself on the Legal representatives' behalf. (*Prosecutor v. Martić*, 2002, pp 5-6.)

2. Role and Importance of Legal Representatives for Victims

Article 68(3) of the Rome Statute provides that victims' views and concerns “*may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance*

with the Rules of Procedure and Evidence.” While the Statute does not prescribe that victims participate via a lawyer or legal representative of victims (LRV), in practice given the complexity of ICC proceedings, the large number of victims involved and the distance that separates victims from the Court, victims have participated in ICC proceedings through a legal representative. Thus, the role of such a legal representative is essential to ensuring that victims are able to meaningfully and effectively participate in ICC proceedings. (*The Office of Public Counsel for Victims, ICC, 2013, 81*). The effectiveness of victims’ legal representation depends on a variety of factors. These include the performance of counsel, the legal framework governing the relationship between victims and their lawyers at the ICC, the role played by Chambers and the Registry in the appointment of counsel, the availability of funds for legal representation and the way such funds are allocated.

The specific role of a Legal Representative for Victims (LRVs) is closely linked to the status of victims before the Court. By virtue of Rule 91 (3) of the *Rules of Procedure and Evidence*, legal representatives for victims have to be authorized by the relevant Chamber if they wish to question a witness, an expert or the accused. They have to show that the personal interests of their clients are affected by the matter to obtain this permission. Thus, LRVs are only allowed to question witnesses, experts or the accused(s) in a restrictive manner under the close watch and direction of Chambers. These limits do not apply during the phase of the proceedings dealing with reparations of the harm suffered by the victims. During this phase, the restrictions on questioning do not apply, in accordance with rule 91(4) of the *Rules of Procedure and Evidence*. When the issue of reparation for damages incurred is considered the victims’ counsel may directly question the accused, the witnesses and the experts with the permission of the Chamber concerned (Rule 91 [4] of the Rules of Procedure and Evidence), without directions on the manner and order of the questions and the production of documents.

2.1 Nature of representations at pre-trial phase

Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence. There are a variety of issues that they may wish to address during this phase (*W. A. Schabas, 2006, 446*):

- Commencement of investigation: Victims may wish to present their views to the Pre-trial Chamber on the commencement of the investigation. Article 15 of the ICC Statute explicitly stipulates that the Prosecutor may open an investigation on the basis of information provided by the victims or the NGOs. Victims may file complaints and relevant evidence with the Office of the Prosecutor. Such elements may convince the Prosecutor to initiate an investigation. When the Prosecutor receives information on crimes within the jurisdiction of the Court, he must analyze the seriousness of the information and decide whether there is “a reasonable basis to proceed with an investigation.
- Submission of observations regarding jurisdiction or admissibility of a case: In each case brought before the Court, the judges are required to establish that the Court has jurisdiction and the case is admissible. Art 19(3) of the Statute provides that victims may submit observations to the Court in respect of proceedings on jurisdiction or admissibility. The Registrar is responsible for notification and is required to provide victims with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged. Victims’ legal representatives may have a central role in such proceedings.
- Access to protection and support: The protection of witnesses and victims is paramount for the proper functioning of the International Criminal Court (ICC) and the attainment of its

objectives. Article 68(1) of the ICC Statute imposes a fundamental duty upon the entire Court to “protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses” at each stage of the proceedings. Legal representatives for victims will have an important role to play in liaising with the Victims and Witnesses Unit in order to clarify their client’s protection needs, and to report back to victims on what type of protection they can expect to receive. Legal representatives may also seek to bring a request to provide for their clients ‘protection or privacy in accordance with Article 57(3)(c) of the Statute and rule 87 RPE.

- Application for protective measures: Protective measures are measures of protection and support ordered by a Chamber, at the request of the prosecution, defense, witnesses, victims or their legal representatives, or on the Chamber’s own initiative. Protective measures for victims and witnesses are of first importance in order to encourage them to communicate with the Court and to testify without endangering their security. After a warrant for arrest has been issued, legal representatives for victims may seek to make a request to the Pre-trial Chamber for an order for protective measures pursuant to Article 57(3)(e). In order to make the most use of this possibility, legal representatives may need to seek out specialized advice from asset tracing experts, particularly when there is a belief that the accused person has foreign bank accounts.

3.2 Role of legal representatives for victims in the trial and post-trial phases

During the trial, legal representatives will have to continue many of the functions referred to above, in particular, to maintain effective channels of communication with their clients in order to keep them apprised of developments at the Court. (*T. M. Funk, 2010,85*). The main idea of consultation is to equip them to present their views and concerns in the courtroom.

New tasks specific to the trial phase will include:

- Assisting clients that are also called as prosecution witnesses: Legal representatives may make requests, where they are not already made by the Prosecutor, for special measures to facilitate testimony and ensure the dignity and privacy of victims as appropriate. Special measures can include measures taken in respect of particularly vulnerable witnesses and victims, such as children, elderly persons, and victims of sexual violence, during proceedings before the Court, to assist them in giving evidence.
- Ensuring that the interests of clients are maintained throughout the trial process: For example, legal representatives may apply to question witnesses before the Court (91(3) Rules of Procedure and Evidence) and may request the Trial Chamber to order a more complete presentation of the facts of the case in accordance with Article 65(4) of the Statute.
- Applying for reparations: Article 75(1) of the Rome Statute requires the International Criminal Court (ICC) to “establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation” for victims of war crimes and crimes against humanity. Legal representatives for victims will have a central role in compiling victims ‘applications for reparations and in liaising with the Victim Participation and Reparations Section of the Registry. This will include assistance to victims in the collection and analysis of evidence in support of their claims and presenting these to the Court.

3. Conclusions

The participation of victims in the ICC proceedings allows those individuals most affected by the crimes to have a say about what happened to them, their families, and their communities and to seek to hold responsible those who victimized them. The Rome Statute was an important turning point for international criminal justice: it recognized that victims had the right to access such justice and gave them the place they deserve in these kinds of proceedings. An essential element to ensure effective victims' participation in the proceedings is that victims need to clearly understand their rights and how to participate. To ensure meaningful victim participation in the proceedings it is required to guarantee that the participating victims are represented by good, competent, counsel, able to take their instructions and to sufficiently investigate the matters which victims want to raise. Thus, legal representation for victims is a key element in respecting, protecting and fulfilling victims' rights at the ICC.

For victims, it is essential to have a close relationship with their lawyers, and ensure their legitimacy as the victims' representatives. Regular consultation between the legal representatives and the victims he/she represents is also essential. Victims should be consulted about the appointment of the counsel, before any substantial filing and when key decisions are taken so that they can understand the consequences of the decisions for their interests. Constant communication with victims is also an essential element to ensure meaningful participation. But most importantly, victims should be able to reach their lawyers at any time. Therefore, because of their legal background and the relationship they often build with victims, they become key intermediaries between victims and the Court, ensuring effective participation at the proceedings.

The significant role of legal representatives for victims in promoting an effective and meaningful participation of victims at the ICC has been consistently challenged by budgetary issues. Most of victims cannot pay their legal representatives and the remuneration of the latter relies on the ICC's budget through the legal aid system. Legal aid is 'an increasingly important cost driver' in the ICC budget and is considered as a key issue that must be handled each year. Financial considerations should not override respect for victims' rights at the ICC. This is a major concern and a source of disappointment for victims.

With the conclusion of the *Lubanga* trial, the ICC completed a full test of its victims' participation regime, from the initiation of an investigation through trial judgment.

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