



Judge Silvia Fernández de Gurmendi
President of the International Criminal Court

**Seminar on victim participation at the International Criminal Court
– Introductory remarks –**

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*The Hague
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Your Excellencies,
Dear colleagues,
Ladies and gentlemen,

It is a great pleasure for me to open today's seminar on victim participation at the International Criminal Court.

I would like to thank the two co-focal points of the Study Group on Governance on increasing the efficiency of the criminal process, Ms Erica Lucero and Mr Philipp Dixon, for their work in the organisation of this very important event.

Finally, I would like to thank Ambassador Wilson for opening the doors of your residence to host today's discussions.

We are gathered today to discuss matters related to the participation of victims in proceedings before the ICC. This discussion could not be timelier. With four trials completed and three currently ongoing, the ICC has gained experience in victim participation and reparations and today's conversation will enable us to reflect together – the Court, States Parties and civil society – on ways to strengthen and improve this practice.

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As we all know, the ICC system is innovative in this regard. For a long time, international criminal justice was mainly about retribution, with victims being confined to the role of witnesses. The drafters of the Rome Statute took the view that such a role was not fit to adequately respond to the expectation of justice of victims of mass atrocities.

The resulting legal framework allows victims to express their views and concerns throughout the judicial cycle and seek reparation for the harm suffered. While innovative at the time of the adoption of the Rome Statute, victim participation can now be said to form part of international criminal justice. The Special Tribunal for Lebanon, the Extraordinary Chambers in the Courts of Cambodia and the Kosovo Specialist Chambers have indeed followed

ICC's example and all provide for victim participation in their proceedings. The Cambodian Extraordinary Chambers and the Kosovo Specialist Chambers also both provide for the possibility of granting reparations to victims.

Yet, ensuring an effective participation and reparation of victims of mass atrocities is challenging in practice. The ICC is faced with an ever growing interest on the part of victims to engage in its proceedings which translates in a growing number of victims that apply to participate and seek reparations. We have gone from hundreds of victims in the initial trials to thousands in later proceedings.

In the latest trial, in the *Ongwen* case, four thousand victims have been admitted to participate in the proceedings. Such an interest begs a number of practical questions. How to effectively manage and review thousands of applications for participation? How to ensure that the views and concerns of thousands of victims are effectively and adequately presented in courtrooms, bearing in mind fair trial rights for the accused?

Different chambers of the Court have tried a number of different approaches to victim participation and they are now also exploring different options for victim reparations.

Taking stock of lessons learned since the beginning of its operations as well as the different systems that were used, the Judges revised the system of victim applications to participate and agreed on a common approach that is now reflected in the Chamber's Practice Manual.

Yet, there remain a number of areas where the system continues to be tested and different approaches coexist. This is particularly so in respect of common *legal representation* of victims. I am happy that today's discussions will focus on this topic, which raises a number of questions that need to be addressed. A good system of legal representation is crucial for the genuine and effective participation of victims in our proceedings. To open up the conversation, I would like to offer a description of the most recent developments in this regard.

In accordance with our legal framework, victims are free to choose a legal representative. Such a possibility is, however, subject to practical considerations. If there are a number of victims, the relevant chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims to choose a *common* legal representative. The Regulations of the Court permit a chamber to appoint itself a common legal representative “where the interests of justice so require”.

Due to the great number of victims usually affected by crimes within the ICC’s jurisdiction, common legal representation has become the rule. A recurring issue is when to appoint the common legal representative and *who* to appoint in such circumstances.

Various chambers have explored different options seeking to ensure sufficient experience in ICC proceedings as well as field-based knowledge, in particular, knowledge of the cultural, historical and social context in which the crimes took place.

How to strike a proper balance between these two added values has been the object of persistent debate within the Court as well as among external observers.

As said, Chambers have provided different solutions to this question. In the first cases before the Court, *Lubanga*, *Katanga/Ngudjolo* and *Bemba*, the relevant chambers preferred to appoint external counsel, emphasizing that the primary function the Office of the Public Counsel for Victims (OPCV) was to support the external representatives of victims.

Other chambers in later proceedings opted for appointing OPCV as common legal representative while others explored mixed approaches both at pre-trial and trial.

Such “mixed” approaches have taken different forms. In the *Kenya* cases, the relevant chambers decided that the common legal representative would be based in the field and that counsel from OPCV would attend all hearings in

which victims are allowed to participate. In the *Gbagbo* and *Blé Goudé* cases, the principal counsel is a counsel from OPCV, but is assisted by an external team member located in Côte-d'Ivoire. A similar system was put in place in the *Ntaganda* case.

In the *Ongwen* case, the representation scheme at trial is twofold: certain victims are represented by an external counsel they have chosen themselves and others are represented by the OPCV as the common legal representative appointed by the Court.

More recently, however, in the *Al Mahdi* case, an external counsel was appointed common legal representative, with the OPCV's role being limited to providing assistance if so requested.

This brief overview evidences the absence of a unified approach in the matter of legal representation of victims, which is of vital importance for them as well as for the overall proceedings.

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Ladies and gentlemen,

The Court is entrusted with the important mandate to include victims in its proceedings, and remains committed to this goal.

Today's conversation forms part of a greater dialogue between the Court, States Parties and the civil society on how to best ensure an effective role for victims in ICC proceedings.

We, judges of the Court, very much welcome such platforms of exchange. As said, we are actively involved in improving and enhancing the victim participation and reparation scheme at the ICC. As said, while a lot has been achieved in the streamlining of the victim application process, the work is still ongoing in other areas. It is a topic which remains close to our interests and which generates lively discussions and debates.

As always, the Court stands ready to listen to the concerns and proposals with a view to improving its practices and methods of work.

I look forward to the discussion and wish us all fruitful exchanges.

Thank you very much for your attention.