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Victim Participation in International Criminal Justice

Practitioners' Guide

Kinga Tibori-Szabó
Megan Hirst *Editors*



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Victim Participation in International Criminal Justice

Practitioners' Guide



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Foreword

The participation of victims in criminal justice has fluctuated and changed throughout history. Although victims were once instrumental in bringing their offenders to justice, the prevailing practice in recent history has been to relegate victims' interests to the sidelines in favour of the interests of society as a whole. However, contemporary international criminal justice has been turning its focus to elevating and legitimising victim participation, and to recognising the need to better take into account the restorative dimension of the international criminal process.

As this book demonstrates, this shift in focus has resulted in the acceptance of victim participation as integral to modern international criminal justice processes. Yet no consensus exists among practitioners or academics around the precise form this participation should take at the international level. Reflecting the diversity of perspectives on the issue, the frameworks and rules currently in place at international courts and tribunals differ in important ways from one another, and no one model replicates any particular national approach. We thus find ourselves in a place where both theories and the actual practice of victim participation continue to evolve.

With their experience to date, international courts and tribunals, in addition to already achieving a measure of justice for victims, have served as laboratories for the benefit of future endeavours. This book, through its comprehensive coverage of and thoughtful commentary on that experience, is an essential contribution to the international discussion. It makes clear that victim participation is a work in progress and reminds us that critical questions for the international justice community concerning effectiveness, expeditiousness and cost remain. Part of the book's significant value will be to stimulate debate that is necessary for progress.

It will also have immediate utility in proceedings. Victim participation at the international level is multifaceted and challenging. Among the issues that arise are the right to participate, how such participation is determined, the timing and manner of participation, victims' well-being and compensation. As the first practitioners' guide for victim participation work at international courts and tribunals, and one grounded not only in theory and the existing rules but also in the now

extensive record of practice, this book will enable victims' interests to be better represented and heard through international criminal justice efforts, as well as enlighten other judicial and non-judicial actors with responsibilities pertinent to victims.

Her Honourable Judge Ivana Hrdličková
President of the Special Tribunal for Lebanon

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This book is the product of three years of research and cooperation of an ensemble of enthusiastic practitioners working in or familiar with the field of victim participation in international criminal justice.

The editors express their gratitude to all contributing authors, who, besides preparing their own chapters, have also helped reviewing and improving each other's contributions and provided invaluable information to fellow authors on topics within their specialised knowledge.

In addition, the editors owe thanks to all practitioners who agreed to be interviewed for this book, namely Alice Banens, H  l  ne Ciss  , Eleonor Fernandez, Paolina Massidda, Brianne McGonigle Leyh, Fiona McKay, Carine Pineau, Virginie Roche, Helena Vranov Schoorl, Luc Walley, Marten Youssef, as well as those who preferred to be referred to solely by their positions within the relevant organisations.

Special thanks go to Christoph Sperfeldt who dedicated a lot of his time and energy in supplementing and reviewing information regarding the Extraordinary Chambers of the Courts of Cambodia.

The editors are also grateful to Thomas Pinto Vasconcelos for his dedicated editing work.

This book would not have been finalised without the meticulous and thorough review work of Kiat Wei Ng, to whom the editors are especially grateful.

The Hague, The Netherlands
November 2016

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Abbreviations

ADHOC	Cambodian Human Rights and Development Association
ASP	Assembly of State Parties
AU	African Union
BMZ	Federal Ministry for Economic Cooperation and Development (of Germany)
CDP	Cambodian Defenders Project
CLR	Common Legal Representative
CPLCL	Civil Party Lead Co-Lawyer
CSS	Counsel Support Section
DC-Cam	Documentation Center of Cambodia
DRC	Democratic Republic of the Congo
ECCC	Extraordinary Chambers at the Courts of Cambodia
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Corporation for International Cooperation)
ICC	International Criminal Court
ICCPP	International Criminal Court Protection Programme
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IR	Internal Rules
IRA	Individual Risk Assessment
IRCT	International Rehabilitation Council for Torture Victims
IRS	Initial Response System
KID	Khmer Institute of Democracy
LRV	Legal Representative(s) of Victims
NGO	Non-governmental Organization
OPCV	Office of Public Counsel for Victims
OTP	Office of the Prosecutor
PIDS	Public Information and Documentation Section
PIOS	Public Information and Outreach Section
PTSD	Posttraumatic Stress Disorder
RPE	Rules of Procedure and Evidence

SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
TPO	Transcultural Psychosocial Organisation
VPP	Victim Participating in the Proceedings
VPRS	Victims Participation and Reparations Section
VPU	Victims' Participation Unit
VSS	Victims Support Section
VWS	Victims and Witnesses Section
VWU	Victims and Witnesses Unit
WESU	Witness/Experts Support Unit

Chapter 1

Introduction: Victim Participation in International Criminal Justice

Kinga Tibori-Szabó and Megan Hirst

Abstract This introductory chapter sets out the purpose and structure of this book. It contends that victim participation in international criminal justice is a novel concept with a practice that is still evolving. It also states that the purpose of this book is to offer a guide to the law and practice of victims' roles before the ICC, ECCC and STL. It is a book written mainly by practitioners and it is addressed to those who work or wish to work in the field. The last sections of this introductory chapter explain the structure and the terminology used.

Keywords Formally recognised victim participants • Practice • *Ad hoc* victim engagement • Terminology

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1.1 Preliminary Remarks

Victim participation in international criminal justice is a novel concept. The last two decades have seen a clear shift as regards the roles victims of mass crimes can play when the perpetrators accused of such crimes are prosecuted internationally.¹ The first international criminal tribunals did not provide victims an independent role in their proceedings. The Nuremberg and Tokyo Tribunals as well as the *ad hoc* tribunals for the former Yugoslavia and Rwanda acknowledged victims in their process only as witnesses. While the outreach efforts of the two *ad hoc* tribunals involved victims' issues, this was done in the context of legacy-building within the relevant societies.²

A right of victims to participate in the criminal justice process was internationally recognised for the first time in the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.³ This possibility was later acknowledged in the creation of a new generation of international criminal courts and tribunals. Victims' role as independent participants in proceedings was thus included in the statutory documents of the International Criminal Court (ICC), and subsequently in the founding documents of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Tribunal for Lebanon (STL).⁴ Victims were also allowed to participate and obtain reparations at the Extraordinary African Chambers in the Courts of Senegal.⁵ More recently, the law establishing the Kosovo Specialist Chambers and the Specialist Prosecutor's Office also adopted victim participation.⁶

While a lot has been written on the development, significance and impact of victims' participation schemes at the ICC, ECCC and STL, no comprehensive guide to the practical implementation of these schemes has been put forward. One reason for this may be the still developing nature of the field, which means that the actual practice of victim participation before international criminal courts continues to evolve rapidly.

It is the purpose of this book to offer a guide to the law and practice of victims' roles before the ICC, ECCC and STL. It is a book written mainly by practitioners and addressed to those who work or wish to work in the field. The book is thus not envisaged as a historical overview of the development of the concept and various

¹ Bonacker and Safferling 2013, pp. 1–7; McGonigle Leyh 2011, pp. 493–495.

² Bonacker and Safferling 2013, p. 2.

³ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution (40/34), adopted by the General Assembly of the United Nations on 29 November 1985, UN Doc. A/RES/40/34.

⁴ Article 68(3) of the ICC Statute; Rule 23 of the Internal Rules of the ECCC; Article 17 of the STL Statute.

⁵ Statute of the Extraordinary African Chambers within the Courts of Senegal, Articles 14 and 27.

⁶ Article 22 of the Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 2015.

schemes of victim participation in international criminal justice. Nor is it a review of the ample literature on the significance, advantages and challenges of victim participation. Instead, the various chapters focus on the relevant provisions at the three courts and the case-law interpreting and applying those provisions. Where relevant literature is nevertheless reviewed, it is done complementarily to the analysis of the pertinent jurisprudence.

The book's principal focus is the role accorded to formally recognised victim participants: in other words, those victims who submit written applications for the ongoing status of victim participants and who, if successful, are recognised and legally represented before the court. By contrast, the book does not purport to address the various ancillary methods in which victims can engage with international criminal institutions. For example, at all international courts, victims—like other persons—can put information concerning a crime before prosecutors, for the purpose of requesting an investigation. At the ECCC, special forms and procedures exist by which victims can make complaints.⁷ At the ICC, victims are also provided with various other opportunities to be heard before the court through less stringent procedures than those involved in formal participation, and sometimes without the aid of a lawyer. For example, where the ICC prosecutor requests the opening of an investigation *proprio motu*, victims may make representations on this question to the Pre-Trial Chamber.⁸ This has occurred in the situations in Kenya, the Ivory Coast and Georgia, with the Registry collecting and reporting on victims' representations.⁹ Victims are also permitted to submit observations in ICC proceedings on jurisdiction or admissibility under Article 19 of the ICC Statute,¹⁰ although this has been understood as restricted to those victims who have at least applied for formal participation in the case.¹¹ A similar provision exists in respect

⁷ ECCC, Practice Direction 02/2007/Rev.1, Victim Participation, Article 2.

⁸ ICC Statute, Article 15(3); ICC RPE, Rule 50.

⁹ ICC, *Situation in the Republic of Kenya*, Victims Participation and Reparations Section, Public Redacted Version of Corrigendum to the Report on Victims' Representations (ICC-01/09-17-Conf-Exp-Corr) and Annexes 1 and 5, ICC-01/09-17-Corr-Red, 29 March 2010; ICC, *Situation in the Republic of Côte D'Ivoire*, Registry, Report on Victims' Representations, ICC-2/11-11-Red, 29 August 2011; ICC, *Situation in Georgia*, Registry, Report on the Victims' Representations Received Pursuant to Article 15(3) of the Rome Statute, ICC-01/15-11, 4 December 2015.

¹⁰ ICC Statute, Article 19(3); ICC RPE, Rule 59.

¹¹ For example: ICC, *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, Pre-Trial Chamber II, Decision initiating proceedings under Article 19, requesting observations and appointing counsel for the Defence, ICC-02/04-01/05-320, 21 October 2008, p. 7; *Prosecutor v. Callixte Mbarushimana*, Pre-Trial Chamber I, Decision requesting observations on the "Defence Challenge to the Jurisdiction of the Court", ICC-01/04-01/10-377, 16 August 2011, pp. 3–4; ICC, *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Pre-Trial Chamber II, Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute, ICC-01/09-01/11-31, 4 April 2011, para 12; *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Pre-Trial Chamber II, Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute, ICC-01/09-02/11-40, 4 April 2011, para 12.

of proceedings under Article 53 of the Statute to review a decision by the Prosecutor not to investigate.¹² A question remains as to what other roles the ICC might afford to victims who have not been formally recognised, for example pursuant to Rule 93 of the Rules of Procedure and Evidence.¹³

However, these avenues for *ad hoc* victim engagement have in practice been substantially overshadowed by the possibility for victims to obtain formal recognition and thereby ongoing standing and legal representation in international criminal proceedings. It is on that form of ongoing role, and its various aspects before the ICC, ECCC and STL, which this book is focused. Such participation exists in varying forms at the three tribunals. At the ECCC, it has its roots in the French civil law tradition, with “civil parties” having the expressly stated purposes of supporting the Prosecution and seeking reparations.¹⁴ At the ICC, which attempts to blend different legal traditions in its procedural law, a *sui generis* approach to victim participation was created, which was subsequently followed in the texts of the STL. Its guiding principle is based on the 1985 UN Declaration’s reference to allowing ‘the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected.’¹⁵ This model has created a slightly different approach to victim participation, where victims are not treated as “parties”, but rather as “participants” in the proceedings. In some ways this can limit victims’ roles, however, in other ways it enables victims to engage with proceedings for purposes other than to support the Prosecution or to seek reparations. Indeed, it could be argued that victim participation at the ICC has been most meaningful and effective where—rather than seeking to support the Prosecution—it has held the Prosecution accountable to the victims’ interests.¹⁶ Nonetheless, the differences

¹² Article 53, ICC Statute; Rule 92(2), ICC RPE; ICC, *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Pre-Trial Chamber I, Decision on Victims’ Participation, ICC-01/13-18, 24 April 2015, paras 8–10.

¹³ This rule allows a chamber to seek the views of victims ‘participating pursuant to rules 89–91’, but additionally permits it to ‘seek the views of other victims, as appropriate’. In the *Mbarushimana* case Pre-Trial Chamber I rejected a proposal made by the Registry for Rule 93 to be used where insufficient time remained to process victim applications before the confirmation of charges hearing; ICC, *Prosecutor v. Callixte Mbarushimana*, Pre-Trial Chamber I, Decision on the “Proposal on victim participation in the confirmation hearing”, ICC-01/04-01/10-229, 10 June 2011.

¹⁴ ECCC Internal Rules, Rule 23(1).

¹⁵ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution (40/34), adopted by the General Assembly of the United Nations on 29 November 1985, UN Doc. A/RES/40/34, para 6(b).

¹⁶ See for example the following steps taken by victims’ lawyers in the *Kenyatta* case: ICC, *Prosecutor v. Uhuru Muigai Kenyatta*, Common Legal Representative of Victims, Victims’ response to Prosecution’s application for an adjournment of the provisional trial date, ICC-01/09-02/11-879-Red, 13 January 2014, paras 25–31, 58–61; ICC, *Prosecutor v. Uhuru Muigai Kenyatta*, Legal Representative of Victims, Request for access to filings which may relate to steps taken to identify, trace, freeze or seize assets of the accused, ICC-01/09-02/11-899, 29 January 2014 (reclassified as public on 11 December 2014); ICC, *Prosecutor v. Uhuru Muigai Kenyatta*, Legal Representative of Victims, Victims’ response to the ‘Prosecution’s notice of withdrawal of the charges against Uhuru Muigai Kenyatta’, ICC-01/09-02/11-984, 9 December 2014.

between the ECCC's civil party system and the model of victim participation established at the ICC and STL should not be overstated. Perhaps the most fundamental similarity is a key limitation on victims' potential roles, and a source of common frustration experienced by them: before all the three courts, victims have an extremely limited ability to influence prosecutors' selection of cases. Other than presenting complaints and information, victims have been allowed a minimal role in this area. At the ICC, despite initially confusing jurisprudence, the Appeals Chamber eventually clarified that although victims can participate in *judicial proceedings* which occur in respect of a "situation" (as opposed to a specific case against identified individuals), a prosecutorial investigation is itself not a judicial proceeding.¹⁷ As a result victims have very limited rights to seek review of prosecutorial policy or decisions implementing it. A similar situation prevails at the ECCC and the STL.

Similarities also exist in more mundane aspects of the practice and jurisprudence of the three courts, numerous examples of which are set out in the pages of this book. Many common challenges have arisen in the experience of victims participating before the three institutions, and not infrequently similar practices and legal approaches have been adopted. Unfortunately, mutual learning has often been inhibited by a lack of communication. It is one of the goals of this book therefore, to enable practitioners working before one of these courts to easily identify practice from the others which may be of relevance.

1.2 A Continuously Developing Field

While each chapter of this book strives to give a comprehensive view of the practice of the three courts on particular topics, the book is not an exhaustive compendium of every application of each provision related to victims' participation. Rather, it informs the reader of the principal ways in which the relevant practice is developing, the distinct avenues taken in the application of similar provisions as well as the ensuing advantages and challenges.

The ensemble image that emerges from a brief perusal of the chapters shows a multi-directional evolution process, through which victims' rights have been interpreted and applied in distinct ways, ranging from very strictly defined criteria to poignantly permissive standards.

As discussed in Chap. 2, the three courts analysed herein—and the various chambers within the ICC—have adopted differing approaches to the application process required of victims to partake in the proceedings. While various forms of

¹⁷ ICC, *Situation in the Democratic Republic of the Congo*, Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, ICC-01/04-556, 19 December 2008.

individual written applications are the general rule at all three courts, the ICC has also allowed collective applications or simple registration (as opposed to judicial scrutiny) in certain cases. Moreover, as shown in Chap. 3, the three courts have applied different evidentiary standards in assessing the applications of victims, with the STL's Pre-Trial Judge adopting the strictest approach in this respect.

The roles which third parties (often referred to as "intermediaries") have played in the work of the three courts are also distinct. As indicated in Chap. 4, while the role of third parties at the ECCC has been viewed largely positively, the experience of the ICC with intermediaries is mixed.

While all three courts have opted for schemes of common legal representation for victims, they differ in the manner in which these schemes have been implemented. As Chap. 5 explains, the institutional frameworks set up for the representation of victims and the system for resourcing legal representatives are combined in different ways at the three tribunals. The relative merits and cost implications of internal legal representation versus external counsel are yet to be seen.

Furthermore, the three courts have applied different approaches to protecting the safety and well-being of victims participating in their proceedings. Chapter 6 elaborates on these differences and highlights that while anonymity is accepted at the ICC, the STL Appeals Chamber has rejected it and the ECCC never contemplated it as a protective measure. The same chapter also touches upon a very important, but largely underrated aspect of victim participation: special (psycho-social) measures undertaken to facilitate the testimony of vulnerable victims (and witnesses) and to prevent further traumatisation. While all three courts have set up a basic scheme of such measures, systems to cater for the psychological well-being of non-witness participating victims are still in their infancy.

Victims' access to confidential information is also regulated differently. As elaborated in Chap. 7, civil parties at the ECCC and participating victims at the ICC and STL can only access public information. The trends are dissimilar when it comes to legal representatives' access to information. While the ECCC and STL allows victims' lawyers access to confidential information, the practice at the ICC has been less consistent, although recent decisions seem to be moving in the same direction.

The modalities through which victims' lawyers can represent their clients during proceedings also take different forms at the three courts. Chapter 8 delves into the various modalities for participation as well as the differences and similarities in practice. It shows the scant consistency with which chambers at the three courts have set limitations on victims' lawyers' rights to intervene in the proceedings, such as the different approaches adopted by chambers of the ICC to the scope of questioning witnesses by legal representatives. The three courts have also adopted different approaches in relation to in-person participation of victims in the trial process as well. Chapter 9 focuses on the two main manners in which victims can participate in person in proceedings at the three courts. As the chapter shows, one method, presenting views and concerns, has only been applied at the ICC. The other method, giving evidence, is used at all three courts, although the ECCC only permits civil parties to give unsworn testimony. The book also looks at

victim testimony as a source of information and the factors that mainly influence its reliability. While Chap. 10 only focuses on victim testimony in ICC cases, it offers invaluable advice on barriers to and factors negatively influencing testimony of victims. It elaborates on the clinical impact of trauma and the way in which this may prevent victims from producing a complete, coherent and credible account of their experience.

Another difference of practice is highlighted in Chap. 11: while the ECCC and STL have created opportunities for civil parties and participating victims, respectively, to observe proceedings in the courtroom, the ICC has not yet developed a comparable system accommodating victims' observational attendance. Chapter 11 also elaborates on the personal impact such form of attendance has had on participating victims at the STL.

Victims' rights to appeal judicial decisions also differ at the three courts. Chapter 12 explains that while civil parties have relatively broad rights to appeal interlocutory decisions, the STL has allowed the same under limited conditions, whereas the ICC entertains no such possibility. The same chapter also elaborates on the various approaches to victims' participation in interlocutory appeal initiated by (other) parties, as well as on victims' rights as regards appeals against final judgments and sentencing. In particular, while the ECCC does not permit civil parties to appeal a sentence, the Appeals Chamber at the ICC has allowed victims to make observations on sentence in appeal proceedings.

Victims' rights to reparations have also followed different paths at the three courts. Chapter 13 elaborates on the provisions and practice regarding reparations at the ICC and ECCC. The STL does not provide reparations at all. The ECCC enables the grant of (collective and moral) reparations to those victims who were admitted to participate in the proceedings as civil parties, while the ICC treats victims' participation and reparations requests distinctly, but has yet to finalise its first reparations implementation procedure. At the time of writing, the first order on the implementation of a symbolic reparations project has already been issued.¹⁸ The ICC Trust Fund for Victims has emphasised that such a symbolic reparations project was feasible as long as it was not conceived as a stand-alone undertaking, disconnected from the forthcoming service-based reparations awards.¹⁹ Echoing that stance, Trial Chamber II held in its decision that the proposed symbolic reparations project 'provide for an enabling environment to develop and implement service-based collective reparations awards'.²⁰

¹⁸ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber II, Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations, ICC-01/04-01/06-3251, 21 October 2016.

¹⁹ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, The Trust Fund for Victims, Public redacted version of the Filing regarding symbolic collective reparations projects, ICC-01/04-01/06-3223-Red, 19 September 2016, para 13.

²⁰ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber II, Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations, ICC-01/04-01/06-3251, 21 October 2016, para 12.

There is minimal guidance in the texts of the three courts as to the manners in which a victim's participation in the proceedings can be brought to an end. Chapter 14 considers the practice to date on this issue. Notably, it discusses the different consequences the death of a participating victim or civil party can have at the three courts. While at the ECCC, a deceased victim's participation can be continued by a successor, at the ICC the jurisprudence has been inconsistent and this situation has not yet arisen at the STL.

Of crucial importance in the development of victims' participation in international criminal justice is communication between client and lawyer. Chapter 15 looks at the manner and methods of communication with victims in the context of an international criminal trial.

The above examples show how victim participation in international criminal justice is far from being fully developed. At best, it is an assortment of distinct trends and differing practices fuelled by a common drive to involve victims of mass crimes in the proceedings prosecuting the accused perpetrators of those crimes. That being said, the various trends and practices within this process have the ability to become general norms and thus broaden or narrow the interpretation given to victims' rights. The last chapter of this book, Chap. 16, focuses on some of the most important issues that need to be addressed while victim participation in international criminal trials evolves, so as to ensure that the emerging scheme(s) of participation are able to represent meaningfully, efficiently and effectively victims' interests.

1.3 Structure of the Book

Each chapter of this book addresses a particular step or aspect of the participation of victims in international criminal proceedings. The order of the chapters largely follows the logic of participation schemes: from application (Chaps. 2 and 3) and modalities of participation (Chaps. 7–10), to appeal rights (Chap. 12), reparations (Chap. 13), and termination (Chap. 14). Some chapters address issues that relate to the participation of victims throughout the process: involvement of third parties (Chap. 4), legal representation (Chap. 5), protective measures (Chap. 6), observational attendance (Chap. 11), and communication with victims (Chap. 15). Some chapters—like those on application and modalities of participation—will most likely have to be read together. In any case, where relevant, a chapter contains references to other chapters.

The particular step or aspect of victim participation addressed in each chapter is discussed with a view to all three courts and their comparative practice wherever possible. In some cases, however, an issue under discussion is not relevant to the work of one or more of the institutions. For instance, Chaps. 4 and 13 do not address the perspective of the STL, as neither third parties, nor reparations, respectively, are germane to that court.

Each chapter concludes with key points summarising the main issues to remember regarding that particular step or aspect of victim participation. The main purpose of the key points is to highlight the main trends of practice, but also to emphasise the different directions taken by the court and, where pertinent, the challenges lying ahead.

The chapters have been updated to the end of October 2016.

1.4 Notes on Terminology

The term ‘victim’ is used throughout this book as a common denominator of those persons who have been granted participant status before the ICC and STL, and civil party status before the ECCC. ‘Participating victim’ is generally used to refer to victims participating before the ICC and the STL, whereas ‘civil party’ denotes victims before the ECCC. Where it is material that the persons referred to do not (or do not yet) have a participant or party status, that is indicated (as in Chap. 2, where the authors refer to ‘applicants’).

The term ‘victims’ lawyers’ is used to refer to all counsel representing victims before the three courts. The term ‘legal representative of victims’ is used in relation to ICC and STL, as this role exists at those two courts. As regards the ECCC, the general term ‘lawyers representing civil parties’ is employed to refer both to Civil Party Lead Co-Lawyers (CPLCL) and civil party lawyers. The distinction between these latter two roles is elaborated in Chap. 5.

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Chapter 2

The Application Process: Procedure and Players

Mélissa Fardel and Nuria Vehils Olarra

Abstract When a person, having suffered harm as a result of the commission of a crime falling within the jurisdiction of the International Criminal Court, the Extraordinary Chambers in the Courts of Cambodia or the Special Tribunal for Lebanon, wishes to be granted status as a victim before one of these tribunals, he or she usually has to apply to do so. This step opens the door to the so-called application process for victims, a process that may lead to the recognition of the status of victim and the granting of the rights and obligations relating to it. This chapter gives a comprehensive overview of this application process, its procedure and the players involved in it, by focusing on the major issues related to this process.

Keywords Institutional players • Submission of applications • Assistance • Time limits • Assessment • Observations by the parties • Decisions • Appeals

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2.1 Introduction

This chapter describes the procedure of application for victims who wish to participate in international criminal proceedings at the International Criminal Court (ICC), the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Tribunal for Lebanon (STL).

It first defines the players involved in the application process, and explains their roles and how they interact with each other (if at all).

Attention will then be paid to the process for the submission of applications by victims who wish to participate in the proceedings at any of the three courts mentioned above. The chapter will examine the assistance provided to these applicants, particularly by whom such assistance is undertaken, and the time frame in which such applications can be submitted.

The chapter further addresses the next steps in the application process, dealing with the receipt and processing of applications, observations that can be made in relation to the applications, protection of victims' identities and, finally, whether appeals can be lodged against decisions made on the applications.

Throughout this chapter, when describing the application process which victims of a crime within the jurisdiction of any of these courts must undergo before being granted the status of participating victims (or civil parties for the ECCC) in the proceedings, victims will be referred to as *applicants* as opposed to *participating victims* in order to reflect the different legal nature of these two statuses.

While this chapter concentrates on the application procedure, the next chapter looks at the substantive requirements to become a victim participating in the proceedings (ICC, STL) or a civil party (ECCC). The two chapters should therefore be read together.

2.2 Players

This section gives a general overview of the most important players involved in the victims' application processes of the ICC, the ECCC and the STL. Many other actors play a key role in these victims' participation systems.¹ However, as they *usually*² come into play after an applicant has been granted the status of victim participating in the proceedings (or civil party for the ECCC), they are not directly related to the subject matter of this chapter, and consequently will not be described in this section.

2.2.1 *International Criminal Court*

Both sections of the Registry described below are involved in the ICC's victims' application process:

- The Public Information and Outreach Section (PIOS)³: while PIOS does not assist with the applications as such, it leads the initial approach towards affected communities, through its outreach activities and as a neutral representative of the Court. In the implementation of its functions, this section is helped by intermediaries,⁴ such as NGOs who are normally based in the situation country and can help access and communicate with the affected communities in their local languages.⁵
- The Victims Participation and Reparations Section (VPRS): the VPRS plays a central role throughout the victims' application process as it acts as a focal point facilitating access to the Court for potential applicants and is the main section responsible for the collection and processing of applications for victims' participation. The VPRS receives application forms, reviews them, collects any

¹ For example, lawyers representing victims, the Office of Public Counsel for Victims (at the ICC) and the respective units entrusted with the protection of victims and witnesses.

² The roles of court-appointed lawyers and of the Office of Public Counsel for Victims (OPCV) usually come into play after an applicant has been granted victim status. However, at the ICC, victims can give powers of attorney to private lawyers of their own choosing up until the point when common legal representation is arranged, and these persons are sometimes involved in the application process. In some cases, the OPCV has been appointed as lawyer for unrepresented applicants (see Chap. 5). In this capacity, the OPCV may assist applicants to provide supplementary information, and, while in the field, might also assist other victims to apply for participation where this is requested.

³ Formerly the Public Information and Documentation Section (PIDS).

⁴ For more information on intermediaries, see Chap. 4.

⁵ For example, specific directions were given by the Chamber to (then) PIDS regarding its role and the need to coordinate with the VPRS in ICC, *Prosecutor v. Dominic Ongwen*, Pre-Trial Chamber II, Decision Establishing Principles on the Victims' Application Process, ICC-02/04-01/15-205, 4 March 2015, paras 10–13.

missing documents or information, and files them with the respective chamber and to the parties, if necessary in redacted version. The VPRS also enters information from the applications into a database, performs *prima facie* analysis, and extracts reports for the chambers.⁶ Additionally, the VPRS is mandated to inform victims of their participation rights and about reparations, to assist them in obtaining legal advice and legal representation, and to provide information related to the application procedure to the Legal Representatives of Victims (LRVs).

It should be mentioned however that, while the VPRS still serves as the focal section handling the victims' application process before the ICC, the Assembly of States Parties (ASP) has mandated the Registry 'to reorganize and streamline the Registry's organizational structure' with the goals of 'eliminating duplication, increasing effectiveness and efficiency, as well as creating synergies.'⁷ A proposal made for this reorganisation included restructuring the institutional units working in the victims' participation system.⁸ The Registrar proposed establishing a single Victims Office, 'which would consolidate the functions currently performed by the Office of Public Counsel for Victims (OPCV) and the Registry's VPRS, as well as redefining some functions currently being performed by the Counsel Support Section (CSS).'⁹ However, the establishment of the proposed Victims Office would require an amendment to the Regulations of the Court and thus the approval of the judges.¹⁰ While the Registrar had hoped for consideration by the judges in 2014 so as to enable implementation in 2015,¹¹ the 4 May 2015 report on the revision project noted that any recommendations or decisions on, *inter alia*, the OPCV and the VPRS have been postponed, pending the outcome of the discussions on the possible creation of a single Victims Office and a single Defence Office.¹² To date no progress has been made on this proposed reorganisation and it is not clear whether it has any prospects of proceeding.¹³

⁶ Interview with Fiona McKay, former Head of Victims Participation and Reparations Section, ICC, 3 March 2015, (records on file with the authors).

⁷ ICC, Resolution adopted by the Assembly of States Parties, ICC-ASP/12/Res.1 2013, section H, para 3.

⁸ ICC Registry *ReVision* Project: Basic Outline of Proposals to Establish Defence and Victims Offices, 2014b, http://www.uanet.org/sites/default/files/Registry_ReVision_BasicOutline_Defence_Victims_Offices_0.pdf. Accessed 1 March 2015.

⁹ *Ibid.*, p. 2.

¹⁰ ICC, Assembly of States Parties, Report on the review of the organizational structure of the Registry, ICC-ASP/13/26, 28 October 2014a, para 19.

¹¹ *Ibid.*

¹² ICC, Assembly of State Parties, Report on the review of the organizational structure of the Registry, ICC-ASP/14/18, 4 May 2015, para 6.

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