

QUESTIONS & ANSWERS ON VICTIMS' PARTICIPATION AND DEFENDANTS' DUE PROCESS RIGHTS: COMPATIBLE REGIMES AT THE INTERNATIONAL CRIMINAL COURT

What role may victims play in proceedings before the ICC?

The ICC may recognize victims as participants in its proceedings. Each Chamber governs the scope of participation of victims in its activities. Participation may, but will not necessarily, include the ability to participate in hearings, to make written submissions and observations, and to question witnesses at trial. Rather than act on their own, victims will typically be represented by counsel, and the Chambers may request that large numbers of victims have a common legal representative. The Chamber may also seek the views of victims.

How do victims obtain permission to participate before the ICC?

In order to participate in proceedings before the ICC, victims must first send a written application to the Office of the Registrar. The Registrar sends that application to the pertinent Chamber, which will decide whether the applicant qualifies as a "victim" within the meaning of the statute, and whether the applicant's injuries are connected enough to the situation or case on which the Chamber is acting.

At what stage of the proceedings may victims participate at the ICC?

Individuals who qualify as victims within the meaning of the Rome Statute may seek to participate in all stages of a situation on which the Court is acting, including the investigations stage.

Can victims participate in criminal proceedings in the United States?

A victims' rights movement that began in the 1960s, and continues today, has advanced the role of victims in criminal proceedings in the United States. This movement has led to advancements in the compensation of crime victims, and the ability of victims to participate at sentencing. However, crime victims are not formally recognized as participants in criminal proceedings.

Do other countries allow victims to participate in criminal proceedings?

A number of countries allow victims to participate as independent third parties in criminal proceedings. This is particularly common in countries that follow the civil law tradition, including France, Guatemala, Italy, The Netherlands, and Portugal. Decisions of the European Court of Human Rights and the Inter-American Court of Human Rights have upheld these practices.

Do the ad hoc tribunals for Rwanda and Yugoslavia permit victims' participation?

The ad hoc tribunals for Rwanda ("ICTR") and the former Yugoslavia ("ICTY") do not provide as extensively for the participation of victims as the ICC does. At the ICTR and the ICTY, victims can only take part in the criminal proceedings as witnesses called to testify by the Prosecutor and, at least in theory, by the judges or the defense.





What are the due process rights of defendants at the ICC, and how do they compare to due process rights in the United States?

Defendants at the ICC enjoy all the due process rights of defendants in US courts except trial by jury. Even US military courts martial do not provide jury trials. The US has also extradited Americans for trial in countries which do not use juries and has strongly supported the ICTY and ICTR, neither of which provides for trial by jury.

Does victims' participation hamper defendants' due process rights?

Victims' participation may bear on a limited number of due process rights, including: (1) the right to be considered innocent until proven guilty; (2) the right to a fair and public hearing by a competent, independent, and impartial tribunal; (3) the right to equality of resources, access and information between the Office of the Prosecutor and the Defense; and (4) the right to be tried without additional or undue delay. However, victims' participation at the ICC, even during the early stages of situations before the Court, need not diminish these rights. There are sufficient safeguards to protect these rights, including the appointment of ad hoc counsel to represent the interests of unnamed defendants and a Chamber's ability limiting the participation of victims when necessary.

What is the benefit of participation of victims in the proceedings before the ICC?

Victims' participation benefits the Court and the parties to a case by bringing forth as much relevant evidence as possible, particularly in the early stages of an investigation. The participation of victims also helps post-conflict communities to recover from atrocities by providing an opportunity to tell their stories and by seeking reparations.

*Researched and drafted by Karen Corrie
Updated February 15, 2007*

