

## **RESEARCHING VICTIMS OF CRIME UNDER INTERNATIONAL CRIMINAL LAW: ISSUES AND CONCERNS**

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### **Abstract**

For too long victims have been neglected in international criminal law. Most of the international criminal courts and tribunals established since Nuremberg to bring justice to victims of international crimes including the *ad hoc* International Criminal Tribunals for Rwanda (ICTR) and International Criminal Tribunals for Yugoslavia (ICTY), have not given their due consideration to the victims' concerns. The Preamble of the Rome Statute of the International Criminal Court acknowledges the fact that 'during this century (20th century) millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity' and adopting the International Criminal Court (ICC) Statute has, however, been granted set of procedural rights for victims-reparations, participation, and protection. This paper starts by exploration of the development and growth of the victim's rights in international law and, examine the extent to which victims' interests are considered before the ICC. The endeavours have been made to define and understand the basic concepts central to the study such as victim, compensation, reparation, protection of victims and witnesses.

### **I Introduction**

### **II Tracing the development of victim right in the international law**

### **III Evolution of victims' rights in the history of criminal prosecution**

### **IV Notion and role of victims in the framework of the Rome statute and the rules of procedure and evidence**

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### **I Introduction**

TRADITIONALLY, THE accused is the major part of the criminal process and hence, to ensure fair process it is important to afford rights and protection to him or her. At the formative stage of the development of the international criminal law, the idea and concept of 'justice to victims' was not of a major concern and the same remained confined to social justice and retribution of accused. Participation of victim in the criminal trial of the accused

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missed the very attention of international legal system.<sup>1</sup> Thus, rights of the victims is a relatively novel and constantly developing branch of public international law. Since Nuremberg, a lot of tribunals and international criminal courts have been established, which also includes the *ad hoc* criminal tribunals for the former Yugoslavia and Rwanda as well as the Special Court for Sierra Leone, have limited the space for their active engagement with such institutions beyond the role of prosecution witness and also, have given only sparse consideration to victims' issues and concerns. Rome Statute was the first to declare act of inhuman treatment, tortuous retributions to prisoners of war and others, genocide and certain acts against humanity as an offence.<sup>2</sup> And the ICC has given victims a voice to speak out against their abuser. Throughout this paper, author shall attempt to provide a holistic view by examining the victim's role and rights in the ICC's criminal justice system, and other rules and regulations governing the proceedings and working of the court. Furthermore, author shall clarify the framework established by the court to fulfil this important mandate.

## II Tracing the development of victim right in the international law

Not much attention was drawn to the victims of the crime by the international community for historically, its interstate structure and norms were designed to respond to interests of the States and their goals. After 1648 Treaties of Peace at Westphalia to World War II, international law's primary subject has been the state, and the state was exclusively prerogative of the municipal law with the individuals rights and obligations. However, the state could treat its very own citizen as they pleased before the municipal law.<sup>3</sup> Also, the states remain accountably averse to committing themselves to the individual victims for the very obvious reasons such as economic and political. States resorting to use of force have managed to escape the civil liability for harm to individuals as well as property and they argue on the ground of legal technicalities based on different legal sources and the binding obligations stemming from them and thus make an attempt to create a dichotomy between international humanitarian law, international human rights law and international criminal law. Such approach projects that individuals do not have the procedural capacity (*i.e.*, power) to

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<sup>1</sup> Robert Cryer, Hakan Friman, Darryl Robinson, Elizabeth Wilmschurst, *An Introduction to International Criminal Law and Procedure* 488 (Cambridge University Press, Cambridge, 2010).

<sup>2</sup> The Rome Statute of the International Criminal Court, 1998, art. 7 and 8.

<sup>3</sup> Gerard J. Mekjiant and Mathew C. Varugheset, "Hearing The Victim's Voice: Analysis Of Victims' Advocate Participation In The Trial Proceeding of The International Criminal Court" *Pace University School Of Law International Law Review* (2005).

enforce their claims in international sphere.<sup>4</sup> To summarize the exact position of the individuals who suffered through violation of international law, Dionisio Anzilotti, who sat on the International Court of Justice, at the time of its seminal *Factory at Chorzow judgment*, wrote that- “the conduct of a state, however contrary it may be to the rules of international law, can in no circumstances give rise to an individual right to reparation in respect of harm suffered”.<sup>5</sup>

But this panorama began to change since different international norms and related to victims have progressively been introduced. These are norms of institutional or conventional nature of general or regional frame, all related to concrete categories of victims, namely, victims of gross violations, victims of crime, victims of abuse of power in relation to the international human rights law and of serious violations of international humanitarian law, victims of enforced disappearance, victims of violation of international criminal law, and finally, victims of terrorism. These norms are characterised by specific category of victims who are entitled to certain rights enlisted for them. These rights at the same time also constitute an obligation on part of the states.<sup>6</sup>

### **1985 United Nations Declaration and its aftermath**

The United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power has been considered the “Magna Carta for victims” (hereinafter, referred to as “Victims Declaration”). The Victims Declaration begins by a contributing a definition of what it means to be a victim and then put forward four proposed avenues for the redress for victims: access to justice and fair treatment, restitution, compensation, and assistance. The Victims Declaration<sup>7</sup> broadly defines victims are:

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, including those laws prescribing criminal abuse of power. The term “victim” also includes, where appropriate, the immediate family or

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<sup>4</sup> M. Cherif Bassiouni, “International Recognition of Victims’ Rights” *Human Rights Law Review* 203-279 (2006).

<sup>5</sup> Conor McCarthy, “Victim Redress and International Criminal Justice Competing Paradigms, or Compatible Forms of Justice?” 10 *Journal of International Criminal Justice* 351-372 (2012).

<sup>6</sup> Carlos Fernandez de Casadevante Romani, 14 *International Law of Victims* 219-272(2010), available at: [http://www.mpil.de/files/pdf3/mpunyb\\_06\\_casadevante\\_14.pdf](http://www.mpil.de/files/pdf3/mpunyb_06_casadevante_14.pdf) (last visited on Jan. 20, 2020).

<sup>7</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34, 29 Nov. 1985, A/CONF.121/22/Rev.1 (Basic Principles of Justice, 1985).

dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

The Declaration stipulates some generic entitlements for the victims which a balanced fair criminal justice ought to rope in. Victims should “receive the necessary material, medical, psychological and social assistance” that can be dispensed through “governmental, voluntary, community-based and indigenous means”, and that all such assistance should be made readily available for them and also with special attention paid to individual concerns. This was the first constructive effort by the UN to provide some substantial rights to the victims of crime.

### ***Theo van boven/bassiouni principles (basic principles and guidelines 2006)***

On April 19, 2005, the United Nations (UN) Human Rights Commission at its 61<sup>st</sup> session in Geneva adopted 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”.<sup>8</sup> The adoption of the “Basic Principles” and “Guidelines” refers to the first comprehensive codification of the rights of victims by the international community affirming its solidarity with victims of violations of international law. The basic principles and Guidelines “do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms.”<sup>9</sup> The Basic Principles and Guidelines developed out of the 1985 Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the seventh United Nations in 1985, also known as *Van Boven* Principles.

### **Victims declaration and *theo van boven* principles: Distinction**

Broadly speaking, there are majorly two differences between the former, Victims Declaration and the later, *Van Boven* Principles. Firstly, the *Van Boven* Principles emphasizes on the state, as opposed to individual responsibility which the former does, doing this, it shifts the accounts for the realistic understanding that restitution as a general rule is easier and convenient to procure from states, as opposed to the limited resources of individuals in the

<sup>8</sup>Commission on Human Rights, Resolution 2005/35 of 19 Apr. 2005, UN Doc E/ CN/4 RES/2005/35.

<sup>9</sup>Commission on Human Rights, Resolution 2005/35 of 19 Apr. 2005, UN Doc E/ CN/4 RES/2005/35 Commentary on 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, *available at*: <https://www.cairn.info/revue-internationale-de-droit-penal-2005-1-page-77.html>. (Last visited on Jan. 20, 2020).

victim declaration. Secondly, the *Van Boven* Principles gave the introduction to the term “reparations” into the colloquial speech of international criminal jurisprudence. Reparations, which is used as a general term in the Victims Declaration, to describe all forms of redress, including but not limited to, restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition. The *Van Boven* Principles then goes ahead to examine each form of reparations. Firstly, the *Van Boven* principal explained that restitution should be applied to “re-establish the situation that existed before the violations of human rights and humanitarian law,” hence, restitution requires restoration of freedom, liberty, family life, and citizenship, including may other aspects as well. Interestingly, compensation is summarized very close to the sense of the word ‘restitution’ in *Van Boven* as the term was used in the Victims Declaration. Thus, it stated that compensation should be provided for and to any economically assessable damage resulting from violations of human rights and humanitarian law.<sup>10</sup> Further, Theo *Van Boven* advocated for rehabilitation to victims, taking care of their medical and psychological care in addition to legal and social aid. Finally, to provide satisfaction and guarantees of non-repetition, victims should be provided with, among other things, cessation of continuing violations; public disclosure of the truth fully; a declaration which officially restores the dignity, reputation and legal rights of the victim; and other important and valuable measures that would help prevent the recurrence of victimization. In devising strategies of justice it must be borne in mind that lack of reparation for victims and impunity of offenders are not distinct concerns. Therefore in quest for real justice, the normative framework of international criminal law must reflect the nexus existing between impunity of offenders and reparation for the victims.<sup>11</sup>

### **III Evolution of victims’ rights in the history of criminal prosecution**

Internationally, an increasing focus on the role of the victim is discernible. Until the World War II, the rights and obligations of the individual with respect to the state were the exclusive dimension and closure of the municipal law and under the international law the state was free to treat its own citizens as it pleased. The magnitude and the margin of human victimisation arising out of the great wars, World War I and World War II and the conflicts thereafter came from essentially the state action, either it was intentional or it was negligent. After the World War II, various international instruments established protection and rights for individuals,

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<sup>10</sup>Michael Bachrach, “The Protection and Rights of Victims under International Criminal Law”, *available at*: <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1947&context=til>. (last visited on Jan. 20, 2020).

<sup>11</sup> *Ibid.*

requiring states to enact domestic legislations to protect these rights<sup>12</sup> In order to prevent reoccurrence of abhorrent acts committed against humanity during World War II, allied nations established Nuremberg tribunal for the purpose of prosecuting the officials of axis powers.<sup>13</sup>

### **Nuremberg and Tokyo tribunals and victims' rights**

The tribunals, namely, the Nuremberg and Tokyo tribunals laid out the appendix for the first international criminal tribunals and these were established for 'the just and prompt trial and punishment of the major war criminals' of the European Axis and in Japan. There was no mention of the word 'victim' in the founding statute of Nuremberg International Military Tribunal, also, it did not indicate that victims or witnesses might have rights to protection and support. Sadly, reparation to victims went amiss in both Nuremberg and Tokyo trials and therefore Nazi victims, in absence of civil remedy mechanism, were ultimately satiated with compensation by their respective states.<sup>14</sup> Under international criminal justice, these tribunals paved the way for a persistent blindness to victims' rights.

### **The *ad-hoc* tribunals**

Other conflicts started after the Second World War and hence, the Security Council in the year, 1993 and 1994, created two *ad hoc* International Criminal Tribunals (ICTs) the ICTR and ICTY in order to adjudicate the crimes of the wars. Although these two tribunals were the landmark achievements against the continuing struggle of impunity for serious violations of international law, but they were widely criticized for ignoring the victims' needs and interest.<sup>15</sup> In these tribunals, the concept of stimulating justice for victims was simply the retributive purpose of punishing the defendants. This position is in adherence with the view that the criminal proceedings are between the prosecution and the defence. Possibly, absence of victim's participation was due to lack of deliberation required for establishing these tribunals for they were an outcome of Security Council's resolutions and thus, unlike ICC, members states missed the opportunity to negotiate the statutes regulating them. This may be

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<sup>12</sup>M. Cherif Bassiouni, 'International Recognition of Victims' Rights' *Human Rights Law Review* 203-279 (2006).

<sup>13</sup> Gerard J. Mekjiant and Mathew C. Varughese, "Hearing the Victim's Voice: Analysis of Victims' Advocate Participation in the Trial Proceeding of the International Criminal Court" 17 (1) *Pace International Law Review*, available at: <http://digitalcommons.pace.edu/pilr> Spring 2005 (last visited on Jan. 20, 2020).

<sup>14</sup>Miriam Cohen, "Victim Redress from Nuremberg and Tokyo to the ICTY and ICTR", available at [revista.ibdh.org.br/index.php/ibdh/article/download/278/277/](http://revista.ibdh.org.br/index.php/ibdh/article/download/278/277/) (last visited on Jan. 20, 2020).

<sup>15</sup> Charles P. Trumbull, 'The Victims of Victim Participation in International Criminal Proceedings' 29 (4) *Michigan Journal of International Law*, available at: <http://repository.law.umich.edu/mjil>. (last visited on Jan. 20, 2020).

one of the underlying reasons that victims' participatory rights were not a concern in the creation of these tribunals and the adoption of their statutes.<sup>16</sup> The drafters and makers of the Rome Statute did recognise that the ad hoc tribunals in past have escalated the desire of international community to choose retribution of offenders as the means of attaining Justice over interests of victim in ascertaining reparations. The drafters also believed that "international criminal law had hitherto objectified victims, and that they are significant as mere witness of crime. One of the goals behind Rome Statute was to "put the individual back at the head of the international criminal justice system, by giving it the means to accord the victims their rightful place." Kofi Annan described victims' concerns as the 'overriding interest' that should drive the Rome Conference, and many delegates heeded his call. Many believe that as a result, the drafters of the Rome Statute created a "more expansive model of international criminal law that encompasses social welfare and restorative justice and not just retribution and deterrence."<sup>17</sup>

#### **IV Notion and role of victims in the framework of the Rome Statute and the rules of procedure and evidence**

ICC is undoubtedly the first ever international tribunal to have accorded victims their rights and their due recognition in the criminal process. Until the adoption of the ICC Statute in 1998 victims were not considered as a legitimate part of the international criminal procedure other than as witnesses. *Ad Hoc* tribunal system of the United Nations has been based on the accusatorial procedural system which justifies the exclusion of victim participation in the trial procedure of the accused. In the 'United Nations' *ad hoc* tribunals system, victims exclusion from trial procedure was justified considering the tribunals, their nature and structure for accusatorial legal system do not incorporate the participation of victim. It has been well acknowledge that punishing the criminals will not ensure complete justice to victims even justice cannot be ensure completely without ensuring justice to victims Moreover, the participation of victim in the proceedings may prevent them from taking justice into their hands and commit violence. Taking part only as witnesses in the proceedings in front of the ICC does not address victims' issues and concerns; as witnesses they are an object to the criminal process because they have not only witnessed the crimes but also live with its consequences. Therefore their position and rights as victims go beyond that of a witness. The adoption of provisions that allow victims to participate in proceedings regarding gruesome

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

crimes can also represent an achievement in bringing criminals to justice. Victims can provide the court with knowledge that only those who experienced these crimes can give “their attendance in person at the trial, and may help the court in order to establish the truth.”<sup>18</sup>

Rome Statute and rules of evidence and procedure, is an important innovation in international justice. With the establishment of the ICC as a permanent international criminal court, victims have been given the most comprehensive and specific list of rights in criminal proceedings including, the right of victims to intervene in proceedings,<sup>19</sup> the establishment of a Victims and Witnesses Unit within the Registry,<sup>20</sup> and the recognition of the entitlement of victims to reparations<sup>21</sup>. Article 64(2) of the Rome Statute establishing the ICC stipulates that the “Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.”<sup>22</sup>

It is acknowledged in the Preamble to the Rome Statute of the International Criminal Court that during this century millions of people *i.e.*, children, women and men have been victims of unimaginable atrocities that deeply shocked and broke the conscience of humanity.<sup>23</sup> In addition, the Rules of Procedure and Evidence express in following ‘General principle’: ‘A Chamber in making any direction or order, and other organs of the court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witness in accordance with article 68,<sup>24</sup> in particular children, elderly persons, persons with disabilities and victims of sexual or gender violence’.

The rights of victims contained explicitly in various legislation that govern the proceedings of the court, namely: the statute, which establishes the principal rights; the rules of procedure and evidence; the regulations of the court; and the regulations of the registry of the court. These instruments contain more than 115 provisions that make reference to victim,<sup>25</sup>

<sup>18</sup> Miriam Cohen, ‘Victims’ Participation Rights Within the International Criminal Court: A Critical Overview’, available at: <https://www.law.du.edu/documents/djilp/37No3/Victims-Participation-Rights-Within-International-Criminal-Court-Critical-Overview-Miriam-Cohen.pdf>. (last visited on Jan. 20, 2020).

<sup>19</sup> Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90, Arts. 15(3), 19(3) and 82(4).

<sup>20</sup> Arts. 43(6) and 68(4).

<sup>21</sup> Arts. 75, 79 and 110(4) (b).

<sup>22</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (1998) art 64.

<sup>23</sup> Rome Statute of the International Criminal Court, Preamble.

<sup>24</sup> Protection of the victims and witnesses and their participation in the proceedings, art 68.

<sup>25</sup> Some of the provisions that make explicit reference to the victims are: Statute articles: 15 (3), 19 (3), 68 (3), 64, 65 (4), 82 (4), 43 (6), 75 (3), 79, 82, 76 (3), 57 (3) (e) and 93 (1) (k); rules: 16, 49, 50, 59, 81 (3), 85, 87 (2), 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 101 (1), 107, 119 (3), 131 (2), 132 (1), 143, 144 (1), 148, 150, 151 (2), 156 (2), 217, 218 (4), 219, 221, 223 and 224; regulations: 2, 21, 24, 32, 38, 39, 41, 42, 50, 54 (o), 56, 79, 80, 81, 82, 83, 85, 86, 87, 88, 101, 116 and 117; regulations: 2, 18, 21 (2), 28 (2), 36 (3), 43 (3), 47, 51 (d), 64 (4),

but conversely they indicate complexity involved in the system describing the rights guaranteed to victims and the procedure undertaken by courts to fulfil its mandate towards the victims.

### **Defining the word ‘Victim’**

Rules 85 of the Rules of Procedure and Evidence of ICC gives the definition of the word ‘victim’<sup>26</sup> in detail. This is a wide definition compared to different categories of victims made in other international norms. The inclusion of the rights of victims in the Statute is an innovative development for international criminal justice, unlike of the other criminal court preceded by the ICC, namely Nuremberg and Tokyo tribunals and ad hoc tribunal of Yugoslavia and Rwanda which failed to consider victims as an independent part of the proceedings and instead restricted them to mere testifying witness.<sup>27</sup>

The decision to include victims’ concerns in the ICC system was left to the preparatory committee in charge of adopting the rules of procedure and evidence was motivated by the widespread support of the civil society, the commitments of some academic circles and the support of some delegations. The divergent notions on the participation of victims in the criminal proceedings resulted into an ambiguous normative framework.<sup>28</sup>

The Preparatory Commission for the establishment of the ICC adopted an expansive definition of the word ‘victim’. It encapsulated in its Rules of Procedure and Evidence four classification of victims:-

- a) Individual who directly suffer harm
- b) Family and dependents of victim indirectly suffering due to primary victims  
Individuals injured while intervening to prevent violations
- c) Collective victims such as organizations or entities.

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65 (4), 79 (2), 80, 81 (1), 82, 83, 84, 88 (1), 89, 90 (1), 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110, 112, 113, 114, 115, 116, 118, 122 (2) (d) and 163 (3); however, many other provisions in these pieces of legislation also apply mutatis mutandis.

<sup>26</sup> Rule 85 :Definition of victims For the purposes of the Statute and the Rules of Procedure and Evidence: “(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”.

<sup>27</sup> Paulina Vega Gonzalez, “The role of victims in International Criminal Court proceedings: their rights and the first rulings of the Court” , *available at*: <http://dx.doi.org/10.1590/S1806-64452006000200003>. (last visited on Jan. 20, 2020).

<sup>28</sup> Salvatore Zappala, “The Rights of Victims v. The Rights Of The Accused” 8 *Journal Of International Criminal Justice* 137-64 (2010).

- d) The ICC in rule 85 of the Rules and Procedure and Evidence articulates victims as Organizations or institutions as well as natural persons may be victims. The essential difference between the natural person and the organisation or institution is that the former need only show 'harm', whereas the latter must demonstrate 'direct harm'. This definition leads to a classification of victims who are natural persons as 'direct harm'. This distinction leads to classification of victims who are natural persons as 'direct' and 'indirect'. The term 'indirect victims' has been used to designate persons who suffer harm as a result of harm perpetrated against direct victims<sup>29</sup>. Examples of indirect victimhood include parents of victims, person who suffer harm while intervening to assist victims and crimes generally directed at the civilian population. However, the concept does not extend to persons who suffer harm as a result of the conduct of other victims, such as those who are victimized by child soldiers.

Although rule 85, incorporated the expansive definition of 'victims' that includes natural and others, an area of concern has been the lack of focus on how violations of socio- economic rights would entail a person to be clubbed under the category of being a 'victim'. Thus the definition accorded to the term 'victim' might not reflect a holistic and comprehensive meaning.

#### **IV Rights of victims under international criminal justice**

Participation of victims is certainly not a new phenomenon for victims have since historic times been instrumental in making offenders accountable. In Germany and other civil law traditions victims have lately acquired significance in criminal trial as compared to common law traditions. In adversarial legal systems prosecution and defence facilitate courts in determining the factual matrix of the case headed by a neutral judge. Victim participation as noted above is limited to a mere witness of the incident which implies they can speak and testify only when called as witness. Besides this under Indian legal system victim can also testify in case a judge poses question under section 165 of Indian Evidence Act, 1872.<sup>30</sup> Thus

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<sup>29</sup> William A. Schabas, *An Introduction to the International Criminal Court* 343 (Cambridge University Press, Cambridge, 2017).

<sup>30</sup> S. 165- Judge's power to put questions or order production.—"The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the

in the entire trial process victim performs like other witness. Their testimonies are significant in determining compensation and the extent of offenders liability. Whereas in civil law (*partie civile*) victim has right to initiate the proceedings and claim compensation by becoming a civil petitioner in the proceedings and is authorised to present evidence, closing statements and cross examine witnesses.<sup>31</sup>

The rights of victims can be classified into three main categories: (i) the right to participation, (ii) the right to protection and (iii) the right to reparations, which will be explained in detail in the article ahead. However, the courts being duty bound to protect the rights of accused, do ascertain the extent to which a victim can exercise his her rights in the wake of a fair and impartial trial. Nonetheless, rights of victim are qualified but not absolute for a fair and an impartial trial guarantees rights to an accused as well and court recognizes the obligation to strike a balance between the interests of the two parties. Strike necessary balance between the rights of the accused and the rights of the victims in an effective manner or justify why restrictions have been placed on the exercise of these rights.<sup>32</sup>

### **Victim participation at different stages of the ICC proceedings**

Under the proceedings of ICC, victim perform an unprecedented role with increasing interests of states in developing schemes to ensure fair treatment and rights to victims. Various national jurisdictions provides for victim participation in criminal proceedings in order to protect their interests. Civil law countries recognised wide range of participatory rights of victims in criminal proceedings, such as *partie civile*<sup>33</sup> and *Nebenklage*.<sup>34</sup> Furthermore, victims in Islamic law countries have the right to prosecute privately an offender and to claim compensation. Few common law countries allow victims to initiate private prosecutions and deliver “victim impact statements” during sentencing.

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adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted”.

<sup>31</sup> *The Victims’ Court: A Study of 622 Victim Participants at the International Criminal Court* 16 (Human Rights Centre at the University of California, Berkeley, School of Law 2015) .

<sup>32</sup> Paulina Vega Gonzalez, “The role of victims in International Criminal Court proceedings: their rights and the first rulings of the Court”, *available at*: <http://dx.doi.org/10.1590/S1806-64452006000200003> (last visited on Jan. 20, 2020).

<sup>33</sup> The *partie civile* procedure in French-speaking countries victims can initiate prosecutions, participate as a party in proceedings, and to bring ancillary claims for damages on the prosecution’s case. See articles 52 and 706–742 of the French Criminal Code; and articles 85–91, 371–375 and 418–426 of the French Code of Criminal Procedure.

<sup>34</sup> In the German-speaking countries under the *Nebenklage* procedure victims can appoint their own counsel to act as a private accessory prosecutor, who can inspect files, present their case in a trial, question witnesses, object to judges’ orders and questions, apply for evidence to be taken and make statements. S. 397 and 403–406 of the Strafprozessordnung of the German Criminal Code.

Even under hybrid tribunals of International Criminal Justice (ICJ) like Special Tribunal of Lebanon, victims can request specific investigation, file appeal against decision of the tribunals. For instance, at Extra- Ordinary Chambers of the Courts of Cambodia (ECCC) victims are entitled to form associations to facilitate their participation in the trial process collectively. In addition to this, victims can present evidence against accused other than one that involves their personal interest. Thus integration of victim through such mechanisms is indicative of the normative culture in international criminal justice system.<sup>35</sup>

Roy S. Lee writing shortly after the inception of the international court in relation to the innovative, victim-focussed provisions of the Rome Statute observes that:<sup>36</sup>

One of the greatest innovations in the Rome Statute is the place it creates for victims to participate in the proceedings this new Court has been transformed from an instrument initially designed for punishing individual perpetrators of atrocious crimes to an international court administering restorative justice. Under this system reparations will be made to victims, and victims will also be able to take part in proceedings, with rights to privacy, representation, and to security of person. The newly finalized Rules protect and promote these rights and interests, and establish a procedural framework to give meaning and effect to these important provisions, without in any way infringing upon the rights of the accused. A mechanism is also provided in the Rules to set up institutional support to victims through the Victims and Witnesses Unit.

Notwithstanding the view and concerns of witnesses may be presented at any stage of the proceedings. Article 68(3) of the Rome Statute, recognises general provision for victim participation that, it must be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.<sup>37</sup> However, the ICC's decisions

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<sup>35</sup> Moffett, L. Meaningful and Effective Considering Victims' Interests Through Participation at the International Criminal Court Criminal Law Forum, 26(2), 255-289. DOI: 10.1007/s10609-015-9256-1, available at: [https://pure.qub.ac.uk/portal/files/15375987/Journal\\_article\\_Meaningful\\_and\\_effective\\_Considering\\_victims\\_in\\_terests\\_through\\_participation\\_at\\_the\\_International\\_Criminal\\_Court.pdf](https://pure.qub.ac.uk/portal/files/15375987/Journal_article_Meaningful_and_effective_Considering_victims_in_terests_through_participation_at_the_International_Criminal_Court.pdf) (last visited on Jan. 20, 2020).

<sup>36</sup> Gerard J. Mekjiant & Mathew C. Varughese, "Hearing the Victim's Voice: Analysis of Victims' Advocate Participation in the Trial Proceeding of the International Criminal Court" 17 *Pace International Law Review* 18 (2005), available at: <http://digitalcommons.pace.edu/pilr> (last visited on Jan. 20, 2020).

See also Roy S. Lee, *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence*.

<sup>37</sup> The right of victims to participate in the proceedings of the court is the primary right granted by the Statute and its basis is found in article 68 (3), which establishes:

Where the personal interests of the 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 and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and

on victims participation have attracted some controversy. In the *Lubanga* case,<sup>38</sup> for example, the pre-trial Chamber of court held that article 68(3) is applicable to ‘situation’ as well as ‘case’ which implies victims may too and not just in the trial process. Since this interpretation overlooks the prospects of danger to accused rights during pre-trial stage, the appeals chamber overruled it. It is difficult to assess how much influence victims may really have. However, the procedural issues relating to their participation have proven to be far more time consuming and costly than most had anticipated.<sup>39</sup>

### **Modalities for victims to participate in proceedings**

Under the proceedings of ICC, victims enjoy the right to participate in proceedings as ‘participants’. However, unlike defence and prosecution, victims participation is restricted in nature since they can only participate in the proceedings and cannot file an appeal against the negative decision of the proceedings. It is significant to point out that rights of victim are influenced by the stage of the proceedings. For instance, victims can file an appeal against the reparation issued by the court/tribunal.<sup>40</sup> Further, the exercise of victims right to participate in the proceedings is subjected to discretion of court which is guided by the principle of fair and impartial trial of the case and also keeping in view the interests of the accused.

### **Pre-trial**

The pre-trial chamber has laid down several specific examples of proceedings in the situation where victims could potentially participate. The second part of the Rome Statute contains important provisions on victims’ participation rights in the pre-trial phase of proceedings. In this context, this section will focus on article 15(3) and article 19 of part 2 specifically. Victim may provide the prosecutor with information for the purpose of criminal investigation, but this is not a formal report of crime (*notitia criminis*) which automatically triggers an investigation. The information may, however, contribute to the Prosecutor seeking authorization to commence an investigation under article 15 of the ICC Statute<sup>41</sup> and participation in the pre-trial chamber’s authorization process is explicitly spelled out. Victims

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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.

<sup>38</sup> *Prosecutor v. Lubanga Dyilo* (Situation in the Democratic Republic of the Congo), Decision on Victims Participation, ICC-01/04-01/06-1119,T.Ch.I, January 18, 2008 (hereinafter Trial Chamber *Lubanga* Decision).

<sup>39</sup> *Supra* note 28.

<sup>40</sup> Rome Statute, art.75,

<sup>41</sup> Art. 15(3) provides that “If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence”.

can also participate in the review proceedings of the pre-trial chamber of the court under article 53(3) of the Rome Statute. However, victims are not authorised to initiate such proceedings.<sup>42</sup> Though the legal representatives of the victims can examine witnesses and make opening and closing statements, submit written submissions at the stage of charge, they are not permitted to present evidence at review proceedings.<sup>43</sup>

### **Participation at trial proceedings**

At the stage of trial, victims can exercise their rights through their counsels with the permission of the chamber. For instance, sending questions for witnesses in advance. They can participate in judicial proceedings concerning the extension of charges, requalification requests, and even release of the accused. They can file written submissions and question witnesses, experts and the accused. Victims can also appear before the court during trial to testify, provide evidence or share their views and concerns. Their participation is determined on the basis of certain considerations like their involvement or presence in/at the incident, identifiable harm due to the incident reported *etc.*

### **Right to reparation and trust fund for victims**

Repairing the harm caused to victims has never been a concern of international criminal law. It has traditionally remained accused/offender centric. For the first time in the history of international criminal justice, it is recognised that victims of international crimes may claim reparations for the harm suffered. Before the ICC was established, no international regime existed that allowed victims to apply for and receive reparations from individual perpetrators.<sup>44</sup> The growing attention to victims can also be explained as a reaction to criticism for the manner in which victims' concerns were considered by the ICTY and the ICTR<sup>45</sup>. Reparations orders to victims are not frequently passed by ICTY and ICTR which restrict themselves only to restoring property to victims. The only remedy before victims is to claim compensation from their respective states under domestic law based on the decision pronounced by international tribunals. The recognition largely took place due to influences

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<sup>42</sup> Robert Cryer, Hakan Friman, *et.al.*, *An Introduction to International Criminal Law and Procedure* 488 (Cambridge University Press, Cambridge 2010).

<sup>43</sup>See Fidl: 'Enhancing Victims' Rights Before the ICC' November 2013, *available at*: [https://www.fidh.org/IMG/pdf/fidh\\_victimsrights\\_621a\\_nov2013\\_ld.pdf](https://www.fidh.org/IMG/pdf/fidh_victimsrights_621a_nov2013_ld.pdf) (last visited on Jan. 20, 2020).

<sup>44</sup> *Ibid.*

<sup>45</sup> Christine Evans, "Reparations for Victims in International Criminal Law", *available at*: <https://rwi.lu.se/app/uploads/2012/04/Reparations-for-Victims-Evans.pdf> (last visited on Jan 20, 2020).

from international and regional human rights treaties and jurisprudence UN 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 2006 also known as the *Van Boven* Principles).

During negotiations, concerns were raised by various states regarding overburdening of courts due to reparation demands especially by common law nations which lack adequate mechanism and modalities for victim reparations in their criminal proceedings and advocated for excluding civil claims from the jurisdiction of ICC. However, taking in account the strong lobby of NGOs asserting compensation to victim, states have agreed to consider proposals on victim compensation under ICC. This recognition by ICC marks a significant step towards development of victims rights in the jurisprudence of international criminal law. In order for a reparations regime to provide justice and adequate reparations to victims, Professor Theo van Boven stresses the importance of criminal prosecution:<sup>46</sup>

In devising strategies of justice it must be borne in mind that lack of reparation for victims and impunity for perpetrators are two sides of the same coin [...] Therefore, all efforts and strategies aimed at strengthening the normative framework in the quest for peace and justice must reveal the clear nexus that exists between impunity of perpetrators and the failure to provide just and adequate reparation for the victims.

The reparation regime finally adopted is set out in article 75 of the Rome Statute provides for the possibility to grant reparations to victims and developed further in rules 94 to 98 of the Rules of Procedure and Evidence. Article 75(1) of its statute states the basic conceptual framework of reparations to victims:

The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation.<sup>47</sup> On this basis, in its decision

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<sup>46</sup> Malin Aberg, "The Reparations Regime of the International Criminal Court Reparations or General Assistance", available at: <http://www.diva-portal.org/smash/get/diva2:801293/FULLTEXT01.pdf> (last visited on Jan. 20, 2020).

<sup>47</sup> According to M.C. Bassiouni, "Draft Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," (E/CN.4/2000/62), these forms may be defined as follows: Restitution should seek to restore a victim to the status quo ante, the original situation before the violation(s) of international human rights or humanitarian law occurred. This includes such measures as the restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property. Compensation may be provided for: • Physical or mental harm, including pain, suffering and emotional distress • Lost opportunities, including

the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

The article 75(2) further states that such awards may be made directly against a convicted person, or that the court may order for the award to be made through the trust fund for victims. The trust fund was created under article 70 of the Rome Statute. Trust Fund is one of the unique features of the ICC. ICC promotes reparations not as a penalty imposed on offenders but as a due share of victim due to the harm suffered by them. In court first reparations order, the *Lubanga* trial chamber stated that the reparations fulfil two main purposes: ‘they oblige those responsible for crimes to repair harm they caused to the victims and they enable the Chamber to ensure that offenders account for their acts’.<sup>48</sup>

Article 75(1) of the Rome Statute directs the court to ‘establish principles’ relating to reparations to victims. These are to include restitution, compensation, and rehabilitation. These principles relating to reparation are to be distinguished from an order of reparations. The court may make an order for appropriate reparations, including restitution, compensation, and rehabilitation. An order for reparations must, ‘at a minimum’ have five essential elements. It must be directed against the convicted persons, it must establish and inform the convicted person of his or her liability, it must specify whether reparations are individual or collective, it must identify the victims eligible to benefit from awards for reparations or set out the criteria of eligibility based on link between harm suffered by the victims and the crimes for which person was convicted.<sup>49</sup> In addition to this, the trust is duty bound by the objective of providing adequate support material for physical or psychological rehabilitation of the victim and his family which must not be inconsistent with orders passed by the court and be passed after due approval of Chamber.<sup>50</sup>

Trust fund may obtain its funds from three sources, namely: (i) the seized assets of the accused/convicted persons, collected through fines and forfeitures; (ii) reparation orders; and (iii) the voluntary contributions from states or institutions, organizations and individuals The trust fund is established by decision of the assembly of states parties at its first session in

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education • Material damages and loss of earnings, including loss of earning potential • Harm to reputation or dignity.

<sup>48</sup> Lubanga (ICC-01/04-01/06), Decision establishing the principles and procedures to be applied to reparations Aug. 7, 2012, para.179.

<sup>49</sup> *Supra* note 36.

<sup>50</sup> Art. 75 para 2 states that, where appropriate, the court may order that the award of reparation may be made through the Trust Fund provided for in art. 79.

September 2002. The trust fund is managed by a permanent secretariat and overseen by the five -person board of directors composed of prestigious international personalities. Its members serve in voluntary capacity. The members are to be from different nationalities and are elected on the basis of equitable representation from different geographical regions and keeping in view the principle of gender parity. With its regulatory and administrative framework in place, the fund actually began its operations early in 2007.

The Trust Fund for Victims (the “Trust Fund”) was created under article 79 of the Rome Statute: “A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims.” Victims that are eligible to receive funds from the Trust Fund Victims are defined in rule 85 of the Rules of Procedure and Evidence as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court” and “may include organizations or institutions that have sustained direct harm to any of their property.”

Furthermore, according to rule 98 of the rules of procedure and evidence, the trust fund victims will make awards in the following situations;

- i. Against convicted person directly;<sup>51</sup>
- ii. When it is either impossible or impracticable to make awards directly to all victims;<sup>52</sup>
- iii. When collective award is more appropriate considering the number of victims, scope, forms and modalities of reparations;<sup>53</sup>
- iv. After consultations with interested states and the Trust Fund, reparation orders to intergovernmental, international and national organisations by Trust Fund Victims;<sup>54</sup>
- v. For the benefit of victims;<sup>55</sup>

As per rule 98(2) and (4), the Trust can collect funds through fines, forfeitures and with voluntary contributions, whereas under rule 98(5) disbursements made by Trust are from voluntary contributions.

### **Victims and witnesses protection**

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<sup>51</sup> Rule 98(1), Rules of Procedure and Evidence, Rome Statute of International Criminal Court, 2002.

<sup>52</sup>*Id.*, Rule 98(2).

<sup>53</sup>*Id.*, Rule 98(3).

<sup>54</sup>*Id.*, Rule 98(4).

<sup>55</sup>*Id.*, Rule 98(5).

The focal point pertaining to victim and witnesses protection should not be perceived as a novel concept under Rome Statute for it already found place in the statutes of *ad hoc* Tribunals and their rules. The witness is universally considered to be one the most instruments to ascertain the truth in criminal proceedings or as Bentham says “Witnesses are the eyes and the ears of justice.” Victim and witness protection is a critical component of the court’s work. The most egregious crimes fall under the jurisdiction of the ICC, therefore its main function is either to provide justice for the victims and to prosecute the perpetrators and, the most important – to find the truth. Indeed, to perform its duties the court depends on the people who have been witnesses of the crimes from which a big part are victims. Moreover, those witnesses may need a certain protection and to be assured that they and their families will not be victimized before, during or after testifying in the court, which brings forward the concept of witnesses and victims protection.<sup>56</sup>

Rome Statue has incorporated significant provisions dealing with protection and support of victims as well as witnesses. Court, prosecutor and the registry together as responsible for the measures and support to victims and witnesses. Presence of the witness is essential for fair and just proceedings and therefore, protection of witnesses becomes a responsibility of court. Victims and their families require privacy, psychological and mental support, safety both physical and financial in order to ensure their right to access justice. The Rome Statute under article 68<sup>57</sup> requires the court to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses,”

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<sup>56</sup> Gergana Rabatileva, “Comparative analysis of witness protection within the ICC and the Bulgarian Criminal Justice System”, *available at:*

[intralegalis.com/.../essay-comparative%20analysis%20of%20the%20witness%20protec...](http://intralegalis.com/.../essay-comparative%20analysis%20of%20the%20witness%20protec...)

<sup>57</sup> Rome Statute art. 68 reads: Protection of the victims and witnesses and their participation in the proceedings “1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. 2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness. [...] 5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. [...]”.

The prosecutor as under article 7(3) is duty bound to ensure protection of victims and witnesses interests and their personal circumstances including age, gender and health at the *investigation stage*, and take into account the nature of the crime, particularly where it indulges sexual violence, gender violence or violence against children<sup>58</sup>. The Prosecutor is entitled to withhold disclosure of evidence if disclosure of said information may lead to the ‘grave endangerment’ of a witness or his or her family.<sup>59</sup> Further, article 54(3)(f) casts an obligation upon prosecutor to take necessary measures to ensure protection of any person. Trial chamber takes ‘appropriate measures to protect the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses.’ While taking appropriate measures, court shall take in consideration all relevant factors including age, gender, health and the nature of the crime especially those that involve sexual or gender violation against children.<sup>60</sup> Court is empowered to proceed with in *camera* proceedings or allow presentation of evidence through electronic means as an exceptional recourse. This refers to testimony where the witness testifies by video and cannot see the perpetrator, this is a practice that is widely used in national justice systems involving children. The views of the witnesses are taken into consideration by the court in making such determination.

Registrar gives to Victims and Witnesses Unit (VWU) a statutory mandate dedicated to protecting, supporting and providing other appropriate assistance to victims and witnesses. While article 43<sup>61</sup> sets up a Victims and Witnesses Unit in the registry to provide protection and support.

Putting the support program aside, the confidentiality and credibility of all communications between the court and victims<sup>62</sup> is another of the general measures that the Court has pretext to assure the victims’ right to safety. Whereas rule 87(2)(b) of Rule of Procedure and Evidence provide for disclosing application submitted by victims, to Prosecution and Defence if it is necessary in the interests of justice and fair trial, this disclosure must be restricted by court so as to ensure safety of victims.<sup>63</sup> To fulfil this obligation, court may direct registry to

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<sup>58</sup> *Id.*, art. 54(1)(b).

<sup>59</sup> *Id.*, art. 68(5).

<sup>60</sup> *Id.*, art. 68(5).

<sup>61</sup> Rome Statute art. 43 reads: The Registry “The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence. “

<sup>62</sup> International Criminal Court, Regulations of the Registry, Doc. ICC-BD/03-01-06, regulation 97.

<sup>63</sup> *Ibid.*

conceal the identity of the victims by use of facial or voice distortions, pseudo appellations *etc.*<sup>64</sup>

## VI Conclusion

The status and condition of the victims has majorly remained silent, unheard, unseen and unspoken, hence, it is important that the victim's entitlement to remedies should be clearly provided. The adoption in 2005 by the UN General Assembly 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" paved way for restorative responses to crime under traditional legal systems namely, rehabilitation reparation and compensation to victims. The role accorded to victims in the ICC proceedings is considered as the most significant feature of the Rome Statute. The ICC conferred various rights to victims of crime where such rights never before conferred to protect the rights of victims. The presence of the ICC has remarkably in a positive sense influenced domestic standards on justice administration. As for victims' redressal, many countries have incorporated in their domestic legislation provisions to implement victims' rights to reparation as expressed in the Rome Statute, and to ensure proper cooperation with the ICC. The legal proceedings of ICC highlight main challenges in the alignment to justice. One of the greatest challenges is to devise a comprehensive victim participation scheme. Lack of awareness amongst victims regarding their role and participation under ICC proceedings has also occurred as a major challenge. Thus it is not just support but also awareness regarding their rights and role that victim have long been awaiting. The Rome Statute of ICC authorizes range of reparations including compensation, restitution, and rehabilitation for the benefit of the victim. But reparations order is subject to certain restrictions like, they cannot be awarded until the accused is convicted. Assistance in the shape of rehabilitation and means of livelihood by trust fund are likely to make a positive impact in the lives of victims. Many victims perceive the concept of justice as alien, unless accompanied with reparations. As far as protective measures dedicated to the rights and interests of victims and witnesses are concerned, a trust fund for victims, a body independent from the court, which is still in its infancy. Certainly it has the potential to reach a wide range of victims and provide assistance in many forms. This cumbersome objective can be achieved with the help of initiatives that involve public as well as private sectors and support of ICC to ensure complete justice to victims. In Madrid Summit Secretary-General Kofi Annan urged:

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<sup>64</sup> *Id.* at 94.

Some injuries can be healed with the passage of time. Others can never heal fully-and that applies especially to the mental anguish suffered by the survivors, whether wounded in body or, by the loss of their loved ones, in spirit....words of sympathy can bring only hollow comfort.., no one who is not directly affected can truly share the victims' grief.

He urged:<sup>65</sup>

At least let us not exploit it. We must respect them. We must listen to them. We must do what we can to help them.... We must resolve to do everything in our power to spare others from meeting their fate. Above all, we must not forget them

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<sup>65</sup> Press Release, Secretary-General Kofi Annan, Secretary-General Offers Global Strategy for Fighting Terrorism, In Address to Madrid Summit. Secretary-General Offers Global Strategy for Fighting Terrorism, U.N. Doc. SG/SM/9757 (Oct. 3, 2005). The UN Security Council, in its Resolution 1566 (2004) adopted October 8, 2004, has also acknowledged the need to fill the gap in international deliberations about combating terrorism regarding the neglect of the aftermath to the victims and their families of their experiences of terrorism and their subsequent role in it. S.C. Res. 1566, U.N. Doc. S/RES/1566 (Oct. 8, 2004).