



Ugandan International Crimes Division (ICD) Rules 2016

Analysis on Victim Participation Framework

Final Version

August 2016

Introduction

REDRESS welcomes the adoption of the ICD Rules at the High Court in Uganda (the 'Rules').¹ This is an important step in ensuring accountability for international crimes on the domestic level. In light of the importance of engaging victims in such processes, the inclusion of aspects of victim participation and protection in the Rules is commendable.

In this brief, REDRESS provides an analysis of the stipulations in the Rules of concern to victims in order to support the ICD in ensuring that victims can exercise their right to the fullest extent. The recommendations made herein are based on good practices identified by REDRESS in a study on victim participation in criminal proceedings across 22 countries.²

Overall Observations

The Rules incorporate three essential aspects relevant to victims all of which can be strengthened. It is important that these three aspects of the Rules are interpreted in a way in which they can be most meaningful and effective for victims.

- **Victim protection:** It is welcome that the Rules consider victim protection from the start during trial preparations, in the pre-trial, trial and post-trial phases. The Rules currently

¹ Statutory Instruments 2016 No. 40, The Judicature (High Court) (International Crimes Division) Rules, 2016 – Arrangement of Rules, in Statutory Instruments Supplement to the Uganda Gazette No. 42, Volume CIX, dated 15th June 2016.

² REDRESS, Victim Participation in Criminal Law Proceedings – Survey of Domestic Practice for Application to International Prosecutions, September 2015, available at <http://www.redress.org/downloads/publications/1508Victim%20Rights%20Report.pdf> (hereinafter Victim Participation Report).

specify that victims can pro-actively request protective measures only at trial stage even though the issue of security and well-being is of utmost concern to them. The Rules should be applied in a way to allow such requests at all stages of the trial. In our experience, serious protection risks can exist in the pre-trial phase when certain victims may be pressured so as not to engage in the proceedings. Following the trial, serious protection risks can exist for certain victims who testified or otherwise cooperated with the prosecution, in the form of reprisals from the accused/convicted person, his/her family or community.

- **Victims' right to information:** For victims to engage with and benefit from criminal proceedings, at a minimum they need to understand and be able to follow it. This right is only explicitly listed at some stages of the process but should be granted throughout.
- **Victims' best interest:** According to Rule 35(1), the ICD must take into account the best interest, rights and needs of victims when making decisions. This welcome generic rule applies to all organs of the ICD and mainstreams the interest of victims. It should be applied whenever decisions can affect victims.

Definition of Victim (Rule 3)

According to Rule 3, victims are defined as

“persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute crimes under the jurisdiction of the Division and may include

(a) the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization or organizations; or

(b) 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.”

Analysis: The definition corresponds to the UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power and to national jurisdictions around the world.³ The extension to immediate family members or dependents is laudable. The inclusion of institutions follows the definition used at the International Criminal Court (ICC).⁴

³ See Victim Participation Report, p. 15-19.

⁴ ICC Rules of Procedure, Rule 58; see also discussion about institutions in Victim Participation Report, p. 25-29.

Pre-Trial Stage (Rules 6–22)

Once an accused is committed to trial before the ICD, the trial is prepared through a series of hearings at pre-trial stage. The Rules address victims' issues at this stage.

Pre-Trial Conference

The first step towards trial is the organisation of a pre-trial conference. The Pre-Trial Judge considers the status of victims (Rule 6(2)(e)) and as per Rule 7(1)(c) can issue orders for protection and privacy of victims on his or her own motion or upon request by the Prosecution.

Analysis: The Rules do not mention if victims have the right to be present at the pre-trial conference and victims do not appear to have a right to be heard on the issue of protection and privacy.

It is commendable that the Rules consider victim protection at this early stage. However, victims' right to protection also encompasses their right to be consulted on the necessity and details of protection. In some cases, neither the Prosecution nor the Pre-Trial Judge may be aware of the need for and form of protection required. Since the pre-trial conference deals with issues relevant to victims, their presence and right to be heard on those two issues is essential.⁵

Furthermore, even though the status of the victim is to be considered during the pre-trial conference, it is unclear what this entails. Rule 46(1) refers to "victims who have indicated their desire to participate in the proceedings". Read together with Rule 6(2)(e), it can be assumed that the consideration of victim status at pre-trial stage is an assessment of such applications to participate. The Rules, however, remain silent on what procedure the Pre-Trial Judge will adopt to determine applicants' eligibility to participate, and what actions the Pre-Trial Judge can take after having considered these applications. The Rules also do not set out how victims can apply to participate in the proceedings.

Recommendations:

- The Registrar should establish a process through which victims can indicate their desire to participate in the proceedings and inform victims about such a process through outreach.
- The Registrar should give notice to the victims and/or their counsel to allow victims'/their counsel's attendance at the pre-trial conference.
- At the conclusion of the pre-trial conference, the Pre-Trial Judge should issue an explicit decision on whether those victims that have applied to participate in the proceedings are eligible to do so.
- The Pre-Trial Judge should apply Rule 36(1), which allows victims or their counsel to

⁵ For example, in EU states the assessment of protection needs must closely involve victims and take their wishes into account, see Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, 25 October 2012, Article 22(6), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>.

request protective measures at trial stage, also at pre-trial stage.

- The Pre-Trial Judge should apply Rule 36(5), which allows victims or their counsel to respond to protective measures ordered by the Trial Chamber on its own motion or upon request by the Prosecution, also at pre-trial stage.

Pre-Trial Hearing

A pre-trial hearing is held by the Pre-Trial Judge to confirm the charges. During this pre-trial hearing, a number of procedural actions can be taken that can affect the rights of victims.

(1) Amendment and Confirmation of Indictment

At the pre-trial hearing, the Prosecution can request the amendment of charges (Rule 13). The Pre-Trial Judge determines if the case justifies the indictment (Rule 14(1)). The Rules do not make clear whether victims have the right to be heard on either.

Analysis: To many victims, the scope of the indictment is of great importance as it determines the crime sites, mode of responsibility and type of crimes that will be scrutinized in the main trial. Their involvement at the pre-trial hearing and ability to express their views on the nature and scope of the charges can make sure that the charges best reflect the nature of the alleged crimes (type of crimes committed, multidimensional nature of crimes), prevent amendments at a later stage, and give legitimacy to the process.⁶ In the case against Dominic Ongwen, the ICC gave an opportunity to the victims' counsels to present the views of victims at the hearing on confirmation of charges.⁷ After victims raised the need to include additional crimes, the Prosecutor amended the charges which were eventually confirmed.⁸

Even if the Rules do not explicitly confer the right to victims to be consulted on the indictment, the Prosecution and Pre-Trial Judge should give consideration to Rule 35(1), according to which the ICD must take into account the best interest, rights and needs of victims when making decisions.

Recommendations:

⁶ For example, at the Extraordinary Chambers in the Courts of Cambodia, victim lawyers requested the inclusion of forced marriage, a widespread and harmful practice, see Co-Lawyers for Civil Parties, Second Request for Investigative Actions Concerning Forced Marriages and Forced Sexual Relations, Case 002/19-09-2007-ECCC/OCIJ, Doc. 188, 23 July 2009, available at

http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D188_Redacted_EN.pdf.

⁷ Ongwen case: Summary of the Confirmation of Charges hearing, January 2016, available at <https://www.youtube.com/watch?v=ufo-r0hEygE>.

⁸ See Application by the Uganda Victims Foundation to Submit Amicus Curie Observations pursuant to Rule 103 of the Rules of Procedure and Evidence', ICC-02/04-01/15-211, 19 March 2015; Office of the Prosecutor, Public redacted version of "Prosecution's Application for Postponement of the Confirmation Hearing", 10 February 2015, ICC-02/04-01/15-196-Conf-Exp, available at <https://www.icc-cpi.int/iccdocs/doc/doc1918352.pdf>; and Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15, 23 March 2016, available at <https://www.icc-cpi.int/iccdocs/doc/doc2228214.pdf>.

- The Prosecutor should hear victims' views before requesting the amendment of charges.
- The Pre-Trial Judge should hear victims' views before confirming the indictment.

(2) Disclosure of evidence

The Prosecution has the obligation to disclose to the Defence all evidence which will be presented at trial (Rule 21). There is no such obligation towards victims. The Prosecution or Defence can request or the Pre-Trial Judge can order on its own motion limited disclosure to protect the safety of victims and their families (Rule 22(3)) but victims cannot request such limited disclosure. The Prosecution must not disclose material that may lead to grave endangerment of the security of victims and their families (Rule 22(7)) but victims do not have the right to request non-disclosure. The Registrar must inform the witness in advance about disclosure and ensure protection measures where such disclosure may pose a risk to the safety of witness (Rule 22(6)) but the obligation does not explicitly apply to victims.

Analysis: Given that the disclosure of evidence may pose a risk to the safety of victims, it is commendable that the Rules provide for means to protect victims from such exposure. However, the victims do not have a say on when such protection becomes necessary, nor can they request limited disclosure where they believe that there is a risk to their safety. A victim cannot always rely on the Prosecution to raise protection risks. This is in contrast to Rule 35(1), according to which the ICD must take into account the best interest, rights and needs of victims when making decisions and to general Rule 51(2)(a), according to which victims who are at risk have the right to be informed about their rights and about court decisions that can impact their interest. This can only be ensured if victims are adequately consulted on decisions affecting their safety. Rule 22(6) does not necessarily include victims as a victim is not always a witness.

Recommendation:

- The Registrar should apply Rule 22(6) to victims and inform them and/or their counsel in advance of disclosure if such disclosure may pose a risk to their safety.
- The Prosecution and Pre-Trial Judge should hear victims' views to assess the risk of disclosure for them.

(3) Right to Information

The Registrar must inform the Prosecution, the accused and Defence, and the community where the case originates about the outcome of the pre-trial hearing (Rule 18). There is no explicit obligation to inform victims. Victims or their counsel participating in the proceedings have the right to consult the records of the pre-trial hearing unless restricted by reasons of national security, confidentiality or witness protection (Rule 24(2)). The Rules do not mention if victims have the right to be present at the pre-trial hearing.

Analysis: Victims' right to information is an essential right, recognised under international law and

most domestic legislation.⁹ The Rules provide for a limited right to information at the pre-trial stage which needs to be expanded. This also follows from Rule 49(2) which calls on the Registrar to provide assistance and information to victims' counsel for the purpose of protecting the rights of victims during all stages of the proceedings. Informing the affected community may not reach victims, as not all victims necessarily reside in the community where the case originated. Similar to the pre-trial conference, the pre-trial hearing addresses issues that concern victims so that their presence is indispensable.

Recommendation:

- The Registrar should apply Rule 18 to victims and inform victims/their counsel about the outcome of the pre-trial hearing.
- The Registrar should give notice to the victims and/or their counsel to allow their attendance.

Trial Stage (Rules 23-44)

At the trial stage, hearings are held by the Trial Judge or Trial Panel (hereinafter 'Trial Chamber') to decide on the guilt or innocence of the accused.

Commencement of Trial and Preliminary Hearing

During the commencement of trial, the charges are read to the accused and he/she can plead guilty or not guilty (Rule 26). Subsequently, a preliminary hearing is held to discuss preliminary issues, such as agreed facts (Rule 29). The Rules do not mention if victims have the right to attend either of the two hearings.

Analysis: Victims' right to information extends to the trial stage.¹⁰ The understanding of the charges in their final form and the accused's response to them constitutes an essential piece of information for victims. This also follows from Rule 49(2) which calls on the Registrar to provide assistance and information to victims' counsel for the purpose of protecting the rights of victims during all stages of the proceedings.

Recommendation:

- The Registrar should give notice to the victims and/or their counsel to allow their attendance at the commencement of trial and preliminary hearing.

Status Conference

The Trial Chamber must hold a status conference to set the dates of the trial (Rule 31(1)). The

⁹ See Victim Participation Report, p. 78-80.

¹⁰ *Ibid.*

dates must be announced to “all participants in the proceedings” and the public (Rule 31(3)). Victims are not explicitly listed as such participants. During the status conference, the Prosecution or Defence can request to discuss protective measures for victims previously ordered by the Pre-Trial Judge (Rule 34(1)). The Trial Chamber can also order authorities which ensure the safety and well-being of witnesses and victims to be called to appear on its own motion or upon request by the Prosecution or Defence (Rule 34(2)). The Rules do not explicitly allow for victims to provide their views on a discussion of protective measures, or request that authorities responsible for their safety and well-being are called.

Analysis: Victims’ right to information calls on the court to provide them the dates of the main trial in accordance with Rule 31(3). This also follows from Rule 49(2) which calls on the Registrar to provide assistance and information to victims’ counsel for the purpose of protecting the rights of victims during all stages of the proceedings. It is laudable that the Rules include victim protection at the status conference. However, similar to the pre-trial stage, victims do not have enough say in this matter.

Recommendation:

- The Registrar should apply Rule 31(3) to victims and announce the dates of the trial and any subsequent changes to those dates to victims and/or their counsel.
- The Trial Chamber should hear victims' views prior to making any decision on protective measures or on calling relevant authorities.

Evidentiary Hearings

Following the trial preparations, evidentiary hearings are held during which the Prosecution and Defence examine witnesses and eventually make closing arguments. The Rules grant victims a number of rights in this stage.

(1) Right to Protection

As a general rule, the Trial Chamber must ensure that the trial is conducted with due regard to the protection of victims (Art 25(1)(a)). The following provisions contain more specific obligations:

- Victims or their counsel can request protective measures (Rule 36(1)). Where possible, protective measures should be ordered with the consent of victims (Rule 36(2)). The Prosecution and Defence have the right to respond to such a request (Rule 36(4)). If such a request is made by the Prosecution or Defence or by the Trial Chamber on its own motion, victims can respond to it (Rule 36(5) and (6)).
- Upon a request for protective measures, the Trial Chamber can order measures to prevent the release of information on the identity or location of victims to the public (Rule 36(9)).
- Public access to hearings can be limited in the interest of victims (Rule 35(2)).
- Victims can request special measures for their testimony in court, e.g. accompanying support person (Rule 36(10)). Trial Chamber can also order this on its own motion but

must take victims' views into account.

- The Registrar must inform victims who are at risk on their rights (Rule 51(2)(a)) and on court decisions that can impact their interest (Rule 51(2)(b)).

Analysis: It is laudable that, at the trial stage, victims can be pro-active and heard when their protection is concerned. This standard should be applied at all stages of the proceedings, including the pre-trial and post-sentencing stage.

(2) Right to Assistance

At trial stage, the Registrar may take a number of measures for the benefit of victims, including arranging accommodation, medical/psycho-social assistance, security measures, escort to courtroom, training for judges, prosecutors, defence lawyers, and advice on gender-sensitive measures (Rule 34(3)). There is no express right for victims to request any of these measures.

Analysis: It is laudable that the Rules seek to set up a holistic victim support scheme whereby other needs of victims that may arise outside of the courtroom can be addressed. Whether such measures are put into practice is a question of resources and capacities which both need to be secured by the Registrar as early as possible. As the Registry itself will not be in the position to provide such services on its own, a referral system could assist the Registry in ensuring that Rule 34(3) is implemented in practice.

Even though the Rules do not explicitly allow victims or their counsel to request such measures, it would be difficult for the Registrar to be aware of the needs of victims without such requests. At the same time, such requests require that victims or their counsel are aware of the assistance mandate. This also follows from Rule 49(2) which calls on the Registrar to provide assistance and information to victims' counsel for the purpose of protecting the rights of victims during all stages of the proceedings.

Recommendations:

- The Registry should secure sufficient budget to fulfil its assistance mandate.
- The Registrar should sign Memoranda of Understanding with non-governmental or governmental service providers on the provision of certain forms of assistance.
- The Registry should inform victims' counsel on the possible support services provided under its assistance mandate.
- The Registry should allow for victims' counsel to make requests for measures provided for under Rule 34(3).

(3) Right to Information

At the end of the trial, the Registrar must inform the affected community about the date of the closing arguments (Rule 44(5)) but victims are not explicitly mentioned.

Analysis: As raised above, victims' right to information encompasses all stages of the proceedings, including important steps such as the closing arguments. This also follows from Rule 49(2) which calls on the Registrar to provide assistance and information to victims' counsel for the purpose of protecting the rights of victims during all stages of the proceedings.

Recommendation:

- The Registrar should apply Rule 44(5) to victims and announce the dates of the closing arguments to victims and/or their counsel.

(4) Victims' In-Court Testimony

There are no special rules for in-court testimonies by victims on the charges. They testify like any other witness (see Rule 38 ff), which means they can be examined by the Prosecution and Defence.

Analysis: Like any other witness, victims must be called by the Prosecution or Defence to testify on the charges and cannot request this. However, at the sentencing stage victims can produce evidence on their own (see below). It should be noted that the above-mentioned provisions on victim protection and assistance are applicable during such in-court testimonies.

Recommendation:

- In line with Rule 49(2) which calls on the Registrar to provide assistance and information to victims' counsel for the purpose of protecting the rights of victims during all stages of the proceedings, the Registrar should inform victims' counsel on possible protection and assistance measures prior to the in-court testimony.

(5) Right to Make Submissions

The Prosecution and Defence can make written submission before the start of the trial hearings on facts and law (Rule 33). The Defence can file a "no case to answer" motion after prosecution presented their evidence (Rule 43) and the Prosecution has the right to make submissions on it. The Prosecution and Defence can submit closing briefs and make closing arguments (Rule 44). In contrast, the Rules do not explicitly provide for victims or their counsel to make any written or oral submissions to the Court concerning the charges.

Analysis: As the Rules do not explicitly recognize victims as a party to the proceedings, their influence on the determination of guilt may be limited. However, according to Rule 35(1), the ICD must take into account the best interest, rights and needs of victims when making decisions. This general clause applies to all organs of the ICD and to all stages of the proceedings. The Trial Chamber thus has the discretion to hear victims' views (outside of the instances when they are called as witnesses by the Prosecution or Defence) where this serves their best interest, rights and needs.

Recommendation:

- The Trial Chamber should hear victims' views on facts or law where this serves their best interest, rights and needs.

Judgment and Sentencing Stage (Rules 45-47)

Once the Trial Chamber has heard all the evidence and deliberated the judgment the question of guilt or innocence is announced. In case of a conviction, a date for sentencing is fixed (Rule 46(3)). Victims enjoy a number of rights at this stage.

(1) Right to Information

The Trial Chamber must inform all “those who participated in the proceedings” on the date for the judgment (Rule 45(2)). The Registrar must inform victims “who have indicated their desire to participate in the proceedings” and the community where the crime was committed about the date for the judgment (Rule 46(1)) and the date for sentencing (Rule 46(3)).

Analysis: The Rules explicitly provide for the right of victims “who have indicated their desire to participate in the proceedings” to be informed at the judgment and sentencing stage. As mentioned above, this duty to inform applies at all stages and to all relevant information.

(2) Right to Produce Evidence on Harm

In order to determine the sentence, the Trial Chamber can request victims to produce evidence in accordance with the Sentencing Guidelines¹¹ (Rule 46(4)). According to these Guidelines, this can be done in the form of victim impact statements (see Art. 55(3)(a) of the Guidelines). The Sentencing Guidelines provide a template for such statements (Form A in Annex of the Guidelines). The Trial Chamber can take the harm suffered by victims and their families into consideration for sentencing (Rule 47(2)(c)(i)). The vulnerability and number of victims can be aggravating circumstances (Rule 47(3)(b)(iv)).

In direct connection with sentencing, Rule 46(5) stipulates that the counsel of victims is entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Trial Chamber. The Prosecution can file a response to the Defence's mitigation statement (Rule 47(5)) but victims do not have this right.

Analysis: At the sentencing stage, victims have a more active role than in any of the other stages of the proceedings. This corresponds to most of the domestic practices in common law countries.¹² The fact that victims can be requested to produce relevant evidence on harm is a welcome variance to the Sentencing Guidelines according to which it is only the Prosecution who can

¹¹ The Constitution (Sentencing Guidelines for Court of Judicature) (Practice) Directions, 2013.

¹² See Victim Participation Report, p. 69-70.

present information on the impact on victims and their families (Sentencing Guidelines Art. 55(3)(a) and Art. 14(2)(a)). The Rules do not explicitly require victims to testify in-court on the impact but the Sentencing Guidelines do not rule out this possibility. Art. 55(3)(a) of the Sentencing Guidelines refers to all relevant information on the impact of the crime on the victim, the family members, and the community, and only cites written impact statements as one form. The acknowledgement of their harm in a court hearing can be beneficial and important for victims.¹³

It is laudable that the Rules allow victims the right to legal representation through a victims' counsel who can attend and participate in the sentencing stage. However, the need for legal representation arises at all stages of the proceedings. Lawyers play an important role in ensuring that victims understand their rights, can exercise them, and that their interests are protected.¹⁴

Recommendations:

- The Trial Chamber should hold hearings on sentencing where victims can testify in-court about the harm they suffered if they wish to do so.
- The respective organs should apply Rule 46(5) which allows the presence and participation of victims' counsel at all stages of the proceedings.

Reparation, including Compensation

The Trial Chamber has the discretion to award fair and reasonable compensation against a convicted person when another person "whether or not she/her is a victim or witness in the case has suffered material loss or personal injury as a result of the offense" (Rule 48(1)). In addition, the Trial Chamber can order reparation if "deems fit and proper against the convicted person" (Rule 48(2)). In doing so, the Trial Chamber must take into account the views of victims on reparations (Rule 48(3)). The Rules do not mention if victims have the right to request reparation and compensation. They also do not specify the forms of reparation that can be awarded.

Analysis: It is commendable that the Rules allow reparation awards against the convicted person that go beyond monetary compensation. As the right to reparation is a universally acknowledged right of victims,¹⁵ it is essential that they can be pro-active in seeking reparation provided for in Rule 48(1) and 48(2). The 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 (the 'UN Basic Principles') can provide guidance as to the form and requirements for such reparation orders. It would be important to consider how

¹³ *Ibid*, p. 71.

¹⁴ *Ibid*, p. 82.

¹⁵ See Victim Participation Report, p. 91-92.

the principle of joint and several liability may be implemented in decisions on reparation. We also draw to the attention of the UN Basic Principles which says that “States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”¹⁶

Recommendations:

- The Trial Chamber should allow victims’ counsel to request compensation and reparation awards.
- The Trial Chamber should give consideration to the UN Basic Principles when deciding on reparation awards.
- The Trial Chamber should develop internal guidelines on reparation awards, including on how to determine the amount of compensation and what other forms of reparations can be ordered.

Post-Sentencing Stage

The Trial Chamber on its own motion or upon request by the Prosecution or Defence can order protective measures for the time after sentencing (Rule 49(1)). The Registrar must implement this order (Rule 49(2)).

Analysis: Similar to the pre-trial stage, victims cannot request protective measures after sentencing, nor can victims respond to requests for protective measures from the Prosecution or Defence.

Recommendations:

- The Trial Chamber should apply Rule 36(1), which allows victims or their counsel to request protective measures at trial stage, also at post-sentencing stage.
- The Trial Chamber should apply Rule 36(5), which allows victims to respond to protective measures ordered by the Trial Chamber on its own motion or upon request by the Prosecution, also at post-sentencing stage.

Other Rights

In addition to the above rights that are applicable to specific stages of the proceedings, the Rules address additional generic issues of concern to victims.

¹⁶ Para. 16 of UN Basic Principle.

(1) Bail

At any stage of the proceedings, the Trial Chamber can release the accused on bail (Rule 54).

Analysis: Rule 54 does not provide victims with a right to be heard or to be informed about approved bail. The release of the accused can have a tremendous impact on the security as well as mental well-being of victims. In view of Rule 35(1) which requires the ICD to take into account the best interest, rights and needs of victims when making decisions, consideration needs to be given to their views on this matter.

Recommendation:

- The Trial Chamber should hear victims' views on the release of the accused on bail before deciding on bail requests.
- The Registrar should inform victims and/or their counsel about any up-coming releases prior to the release.

(2) Right to Legal Representation

Victims have the right to legal representation with assistance by the Registrar (Rule 51(1)(b)). Where there are several victims, the Trial Chamber can request victims to choose a common counsel with the help of the Registrar (Rule 46(4)). The Registrar must provide assistance and information to victims' counsel for the purpose of protecting the rights of victims during all stages of the proceedings (Rule 49(2)).

Analysis: It is laudable that the Rules allow legal representation of victims and offers assistance through the Registry. Rule 46(4) and Rule 49(2), however, only appear under the section applicable to the judgment and sentencing stage, although both are essential for all stages of the proceedings. Grouping victims under a common counsel can already become necessary at pre-trial stage. Victims' counsel needs assistance and information throughout the proceedings to be able to fulfil their representation mandate.

Recommendations:

- The respective organs of the ICD should apply Rule 46(4), which allow for grouping of victims under a common counsel, and Rule 49(2), requiring the Registrar to provide assistance and information to victims' counsel, at all stages of the proceedings.

(3) Right to Access Court Records and to Registration

Victims or their counsel participating in the proceedings have the right to access the record of all proceedings subject to restrictions of confidentiality (Rule 50(2)). The Registrar must keep a register of all victims who have participated in the proceedings (Rule 51(3)).

Analysis: The right to access court records is an important aspect of victims' right to information. The register of victims who have participated in the proceedings acknowledges their victimhood

which for some constitutes a form of satisfaction. However, since personal data of victims will be recorded in such a register, it is essential to obtain consent and ensure the protection of such information.

Recommendations:

- The Registrar should obtain consent from all victims before storing their personal data in the register.
- The Registrar should establish a safe system of storing the victims register with a protocol on who can access it.