

Helping victims make their voice heard

The Office of Public Counsel for Victims

5 years of activities



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For the first time in the history of international criminal justice, the negotiators of the *Rome Statute* placed victims at the heart of proceedings, recognising in the second paragraph of the preamble that States Parties were “mindful that during [the last] century millions of children, women and men have been victims of unimaginable atrocities that deeply shocked the conscience of humanity”.

The *Rome Statute*, especially article 68(3), enables victims of crimes falling under the jurisdiction of the Court to make representations, to submit observations and to have their views and concerns presented and considered “when [their] personal interests [...] are affected” at all phases of the proceedings. In addition, victims can seek reparations for the harm suffered as a result of these crimes pursuant to article 75 of the *Rome Statute*.

In order to assist victims in exercising their rights under the *Rome Statute*, rule 90(1) of the *Rules of Procedure and Evidence* provides that “victim[s] shall be free to choose a legal representative”. However, given the potentially high number of victims who might wish to participate in the proceedings before the Court and to strengthen the capacity of their legal representation, regulation 81 of the *Regulations of the Court*, read jointly with regulation 80, directs the Registrar to “establish and develop an Office of Public Counsel for victims.”

Accordingly, the Office of Public Counsel for Victims was established on 19 September 2005.

The Establishment of the Office of Public Counsel for Victims

The establishment of the Office of Public Counsel for Victims (OPCV) in September 2005 in accordance with regulation 81 of the *Regulations of the Court* was an effective step in strengthening the legal representation of victims in proceedings before the ICC. Its main aim was to reinforce the capacity of external legal representatives by providing legal advice and research, and, where deemed appropriate by Chambers, representing victims, as well as appearing before the Chambers in respect of specific issues.

The establishment of the Office presented a real challenge. Since the ICC was the first institution in the international criminal justice system to allow victims to participate in the proceedings, the OPCV had nothing on which it could model itself. All it had to rely on was the personal knowledge, experience, and expertise of its staff members, their awareness of victims’ representation issues, and their creativity. A Principal Counsel was duly appointed to develop the new Office, which rapidly became well structured and ready to fulfill its mandate of providing support and assistance, both to legal representatives of victims and to victims themselves.

Whilst the Offices of Public Counsel, – the OPCV and its sister office, the Office of Public Counsel for the Defence (OPCD) – fall within the remit of the Registry solely for administrative purposes, they are otherwise totally independent, both from the Registry and from each other. It is important to note, however, that the OPCV and those sections of the Registry responsible for ensuring victims' rights do co-operate to ensure that they support each other effectively. I believe that a strong dynamic exists at the ICC to ensure that the right of victims - to be properly represented, well advised, and kept informed of the status of the proceedings - cannot be called into question. In this regard, the OPCV and the Registry work together in harmony to achieve their common goal of assisting victims to have their rights fully recognised.

I hope that this booklet will give you an insight into how this unique Office operates within the international criminal justice system: its role, how it fulfils its mandate, and the new challenges it faces. In the last five years, the OPCV has proved its effectiveness in allowing victims, directly or often through their legal representatives, to have their voices heard.

Silvana Arbia, Registrar of the International Criminal Court

Pursuant to regulation 81(4) of the *Regulations of the Court*, the Office “shall provide support and assistance to the legal representative for victims and to victims, including, where appropriate, legal research and advice; and appearing before a Chamber in respect of specific issues”.

Moreover, members of the Office can be appointed as legal representatives of victims in accordance with regulation 80(2) of the *Regulations of the Court*. When appointed as legal representative, their mandate does not differ from that of external legal representatives. Therefore, in fulfilling their responsibilities, members of the Office enjoy the same rights and prerogatives as external legal representatives of victims and they are bound by the same obligations, including those arising from the Code of Professional Conduct for Counsel before the ICC.

The role of the Office of Public Counsel for Victims in trial proceedings

Under the *Regulations of the Court*, the OPCV is mandated to provide support and assistance to victims and their legal representatives, including by way of legal research and advice, and appearing in court on specific issues. During the ICC's first trial, the Lubanga case, the OPCV has played an active and extensive role. It has represented a number of individual victims, and more generally it has

provided, on occasion, notable assistance to the Court by undertaking what has been, in effect, a coordinating and *amicus curiae* role. Although the bench in this case has supported the stance that participating victims should be represented by (limited) teams of counsel who are independent of the Court, in particular circumstances – when sufficient justification has been provided – Principal Counsel of the OPCV has been permitted to act as their representative. In these various ways, it has played a key role in assisting victims.

Although these are early days for the Court, and bearing in mind that time and experience alone will dictate what in the long-term is the correct role for the Office, in the current trial the present arrangements appear to have afforded the twin advantages of enabling the OPCV to provide support and assistance to the teams of victims' representatives, whilst allowing counsel to develop first-hand experience of appearing for individual victims during a trial at the ICC. It is likely to be an advantage for the OPCV to gain real experience of the vicissitudes of acting for those who have been allowed to participate as victims in the Court's trials. This first-hand experience will assist the Office, particularly in its role of advising those legal representatives of victims who have not previously appeared before international criminal tribunals or who do not have experience of victim participation in criminal proceedings.

The precise nature of the relationship between the OPCV and individual teams of victims' representatives will become clear as the jurisprudence of the Court develops, and particularly as regards any suggested conflict of interest on the part of the OPCV when it acts as a general resource for all participating teams, whilst representing individual victim participants. These issues were raised and resolved in the context of the present trial.

Indeed, the jurisprudence of the Court on participation by victims grows apace, and I anticipate that over the years to come the presence of a permanent body at the ICC which is able to provide expert advice and assistance, particularly to new victims' representatives, will prove to be an invaluable resource. The issues that can arise in our cases are manifold, and having an established guide through the labyrinth will be essential for those participating on behalf of victims in these international war crimes trials.

I look forward with interest to see how the role of the OPCV develops over time.

Judge Sir Adrian Fulford

In accordance with regulation 81 of the *Regulations of the Court*, the Office functions as an independent office. Members of the Office do not receive instructions from anybody in relation to the fulfillment of their mandate. Therefore, the Office falls within the

Registry solely for administrative purposes. This independence is a prerequisite for carrying out its mandate of assisting external legal representatives of victims and assisting and representing victims. It also allows the Office to work without being subjected to pressure of any kind and preserves the privileged relationship between victims and their legal representatives.

Furthermore, the role of the Office is in constant evolution since it is intrinsically linked to the jurisprudence of the Court concerning victims.

Since its inception in September 2005, the Office has assisted 30 external legal representatives of victims in all situations and cases and provided close to 600 legal advices and researches to them.

The Office of Public Counsel for Victims and the external legal representatives

In September 2010, the Office of Public Counsel for Victims (OPCV) celebrates its 5 years of existence.

Five years ago, so to say not a very long time ago, none of the numerous mandates assumed today by the Office was fulfilled within the Court.

Hence, the very creation of the Office reflected the evolution and the maturity reached by the Court with regard to victims' participation, as well as the necessity to face such an innovation by constituting a team able to implement it. Innovating is a difficult mission.

Without precedent or case law to refer to, lot of energy, imagination, competence and will were necessary in order to meet the great expectations and correlative needs that did exist in respect of this particular issue.

Complex mandate, indeed, sensitive even and requiring some subtlety since one of the first impediments to be faced was by no mean the least: existing was not sufficient and finding the right place was necessary. This required the ability to find its own identity, strenuous task of self-development, which depended so much on the others' perception.

The Office managed to endow itself with a young and competent team, brilliant even, able to act, react, adapt to and evolve according to the needs and circumstances.

A genuine feat has been achieved and if many challenges remain, the feared difficulties regarding the implementation of victims' participation in the proceedings have been progressively overcome.

Moreover, the intervention of the Office in the proceedings in its capacity of legal representative constituted an important evolution. It also represents, in many respects, a difficult step – if not dangerous – for the Office since the workload requires an unquestionable adaptation involving a reassessment of its resources.

Furthermore, thank to a partnership characterized by a rare loyalty with the external legal representatives, the Office has contributed to the setting up and the implementation of the procedural rights of victims. The role of the Office has indeed been fundamental in this gathering of competencies and went far beyond the provision of legal researches and legal advices.

The quality of its support has contributed to the development of a genuine dynamic collaboration with the victims as well as with their legal representatives, making the Office an inevitable actor in the process allowing the optimisation of the legal representation and the defense of victims' interests.

Therefore, the Office can be proud of having admirably fulfilled its mandate of support and assistance to the external legal representatives and to the victims themselves.

I am personally amongst those who praise and battle in favour of team work, the fertility and potentialities of mixing cultures and of identities endowed with complementary skills. Together, the members of the Office and the external legal representatives belonging to the “bar of the world” can continue working on the evolution of the rights of victims in the proceedings towards more favourable results and more Justice.

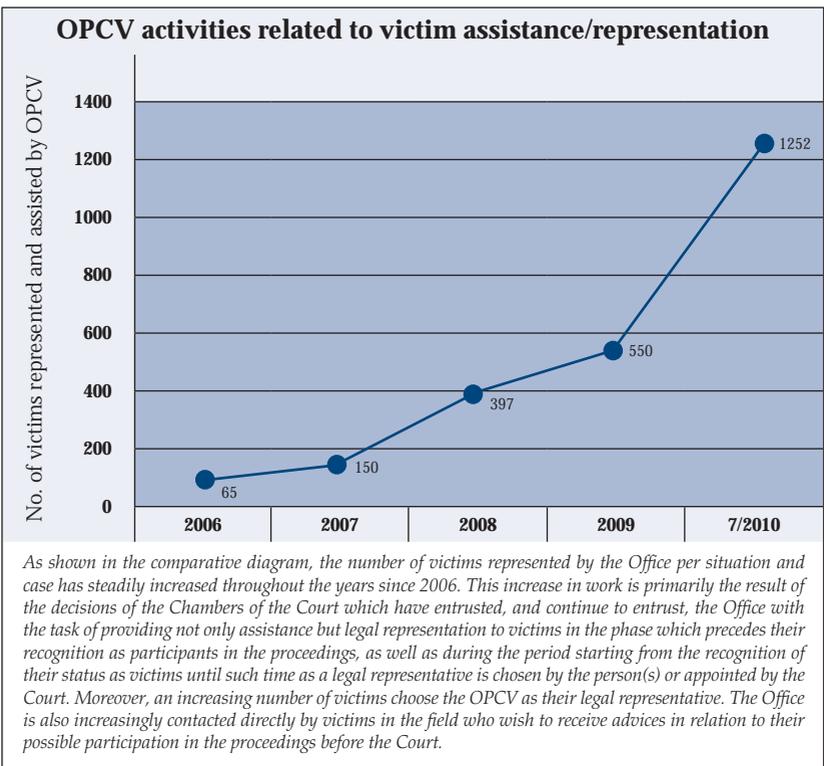
Jean-Louis Gilissen

Lawyer registered at the Liège Bar (Belgium)

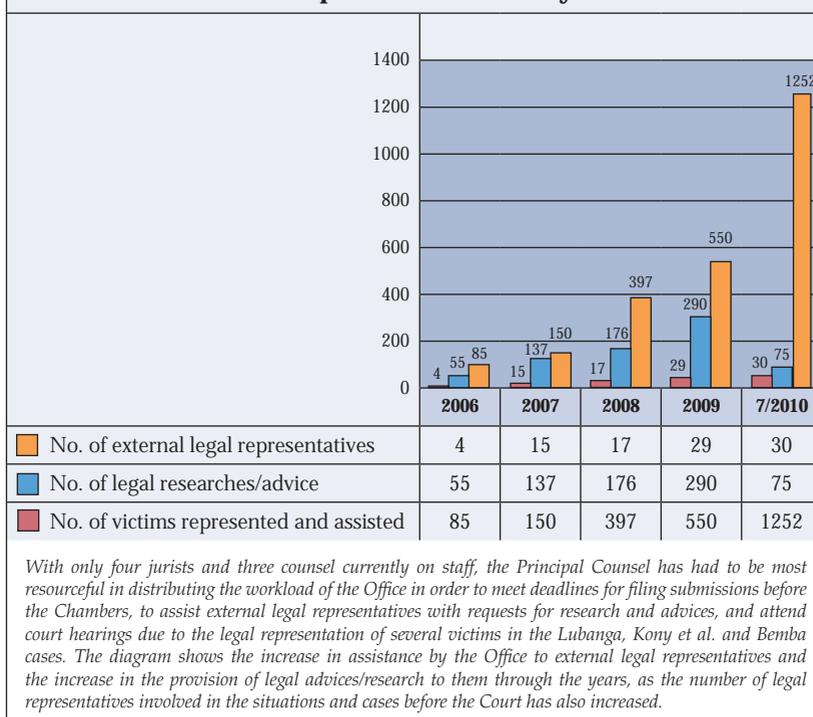
Legal representative of victims in the case

The Prosecutor v. G. Katanga and M. Ngudjolo Chui

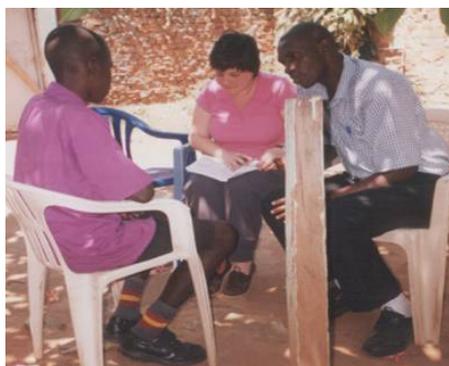
Furthermore, the Office has assisted approximately 2000 victims and has submitted approximately 300 submissions in the various proceedings before the Court. The task of providing support and assistance to victims includes direct legal representation in the proceedings, and Chambers have maintained their practice in accordance to which the Office is appointed as legal representative for unrepresented applicants. It is noteworthy to mention that the number of victims represented by the Office mentioned above does not include victims and affected communities contacted through joint efforts with other sections of the Court in order to reach targeted groups, and increase awareness of the proceedings before the Court and encourage victims' applications for participation.



OPCV output from 2006 to July 2010



The involvement of victims in the proceedings requires taking into account the realities of the situation in each specific country, as well as factors such as the prosecution of complex and lengthy trials, likely involving hundreds or thousands of victims, in locations far from where the relevant crimes have occurred. To that end, the Office, within the framework of the privileged relationship between lawyer and client, undertakes missions in the field in order to meet with its clients,



Interviewing victims in the field

to collect their views and concerns, to collect evidence and material to be used in the proceedings, and to keep them updated on the proceedings before the Court.

Nonetheless, there remain multiple challenges faced by the Office with respect to fulfilling its mandates, not the least pertinent of which in recent times has been the increase per staff member of the workload faced by the Office. Another challenge is the ability to maintain contact with its clients, who often live in remote, non-urban areas without access to telephone lines. To further complicate this situation, victims



Informing victims of the proceedings

are subject to relocating often due to security concerns or in order to simply survive. In such cases, the Office attempts to reach victims via intermediaries in the field or by soliciting the help of ICC staff from other departments who have a permanent presence there. It is crucial for the Office to be able to maintain contact with its clients in order to keep them informed as well as to obtain any necessary information and input from them concerning their participation in the proceedings.

Another pervasive challenge is that of ensuring that victims understand the proceedings which concern them before the Court. This does not only entail an issue of possible language barriers between counsel and his/her client and a need for translation of relevant documents and transcripts of the proceedings themselves, but also involves explaining to the victims complex substantive and procedural aspects thereof, which can be daunting concepts for them to grasp due to the oftentimes lack of previous exposure to either national or international courts of law. The Office deals with the language challenges by ensuring that there will



Reviewing victims' applications

always be an interpreter present during its interviews with clients in the field, as is the case where clients' mother tongue is Lingala, Alur, Swahili or Sango. The challenge of making sure that victims comprehend the nature of the proceedings is a more difficult one, and one which takes a consistent effort on the part of the Office during the entire period of the representation. This effort includes regularly updating the client and explaining to him/her the most recent developments in the relevant situation or case. Different ways are used by the Office to keep clients constantly updated and informed of the proceedings: direct communication, when possible, is always preferred and can be achieved via phone conversations, individual or group meetings in the field, e-mail communications. On occasion, the Office has also used radio programmes

or published information sheets in newspapers in the countries concerned to this effect.

Finally, and as part of its related role of representing the general interests of victims and raising the awareness on victims' rights and prerogatives under the *Rome Statute* and the *Rules of Procedure and Evidence*, the Office has been and continues to be involved in outreach activities for members of the judiciary, the legal profession and the civil society in countries where investigations and/or cases are ongoing, as well as in other countries. The Office has also participated in several conferences and seminars on victims' issues and in several publications.



Presenting the views and concerns of victims in the proceedings

Notwithstanding the challenges confronted by the Office, it has still managed to promote, in a short period of time, numerous goals which champion victims' rights in international criminal law, by, *inter alia*,

- i) Facilitating the process by which victims, through their participation before the Court, can “tell their story” and have a recognised voice in the proceedings,
- ii) Contributing to victims' general awareness of their ability to influence the proceedings before the Court by actively responding to any requests for information and by helping them navigate the procedural steps required for their participation, thereby promoting their sense of empowerment,
- iii) Legally advocating victims' rights to hold the dual status of victims and witnesses before the Court, thereby promoting their sense of dignity as a witness while at the same time helping to meet their need for international recognition as victim of crimes within the jurisdiction of the Court,
- iv) Paving the way for victims' rights in international criminal law through the Office's active advocacy in the proceedings.

