

Conference on International Criminal Justice

Turin, 14 May

- Speaking points -

PLEASE CHECK AGAINST DELIVERY

Mr. President,
Excellencies,
Colleagues,
Ladies and Gentlemen,

First of all, let me express my gratitude to the Military Tribunal of Turin, and in particular to Mr. Bellelli, for having invited the International Federation for Human Rights to speak at this conference. I would also like to acknowledge the hard work that has been done by the organisers to make this event possible. Let me also say, as an introductory remark, that I feel privileged and honoured to be part of such a distinguished panel and to address such a distinguished audience today.

My presentation, unlike other presentations at this conference, is not going to deal with technical legal issues, but will approach the practical dimension of one aspect related to the work of the ICC. And I say “one aspect related to the work of the ICC” and not “one aspect of the work of the ICC” because I am going to approach my presentation from the perspective of the work done by non-governmental and civil society organisations.

As it has already been mentioned, the Rome Statute undoubtedly represented a step forward in the recognition of the role of victims in international law and, particularly, in international criminal law. By allowing victims to participate in the proceedings before the Court, to claim for reparations, by granting them the right to protection and

to legal representation, the Rome Statute acknowledged victims' vulnerability as a central element of armed conflicts, thus acknowledging their suffering.

In the view of those of us working to assist victims of mass atrocities, this recognition in an instrument of international law is indeed very significant. However, in order for that development of International Law to become tangible to victims, those rights must be implemented in practice, and that must be done in full respect of victims' dignity.

What I will try to do in this presentation is to show the variety of forms of assistance afforded to victims and some of the challenges that we face in our work. Because I am very well aware that time is limited, I have confined my presentation to a limited number of issues. However, I would like to briefly mention some areas that I will not have the time to address in full.

Firstly, I have been requested to address assistance to victims in the field. I would like to highlight, however, that organisations like FIDH and many others, participate in the process of assisting victims not only through this type of direct assistance (in the field or elsewhere), but also through what could be conceived as some sort of “indirect assistance” to victims, and this includes all the activities related to facilitating victims' access to international fora and advocating for their rights at the governmental and inter-governmental level. In the context of the ICC, this entails advocacy vis-à-vis the different organs of the Court and the Assembly of States Parties for a fair implementation of victims' rights.

Secondly, as we are all very well aware, victims of serious crimes find themselves in a situation where they need a variety of types of assistance, including medical and psychological care, social rehabilitation, as well as other kinds of assistance that address their basic needs for food, cloth, shelter and education. It would indeed be

very ambitious to address all of this in my presentation. Moreover, as a human rights organisation FIDH does not have the expertise to provide this kind of assistance; this work is done instead by humanitarian agencies and other organisations.

I will mainly focus then on assistance that is related to aspects related to justice. And yet, when it comes to justice, there are different levels of justice: national justice, transitional justice and international justice (including international tribunals and universal jurisdiction).

I do not have the time to address all of this, but I would like to highlight that in the context of massive crimes, and in relation to the work of the ICC (which will try only very few persons, those most responsible for the crimes committed in each of the situation), there is a need to adopt a comprehensive approach. In order to fight against impunity, to reinforce the national justice system, to reestablish the rule of law and to fill the impunity gap, victims must be encouraged and assisted to seek remedies before national tribunals.

Sometimes victims also need advice on transitional justice mechanisms.

Now that I have briefly mentioned all these issues, I would like to focus on the assistance afforded to victims for the exercise of the rights enshrined in the Rome Statute.

I would like to mention that different organisations work in different ways. In the case of FIDH, we are a Federation composed of local human rights NGOs (some of which are situated in the countries where the Court is currently operating). Because one of the objectives of the Federation is to strengthen members' capacity, we work

mainly with and through our members and other partners, and the victims that have approached them or that they have approached as a result of their work. This means in practice that we do not “go out to seek victims” but that we use a network that is already established.

I would like to share with you three aspects of the way in which FIDH assists victims, although it is difficult to talk about these three aspects as separate clusters, because all of them are interrelated, as you will see.

1) Informing and training victims and those who work with them

In order for victims to exercise the rights that are recognised to them by the Rome Statute, victims must be made aware of those rights and informed on the general context of how to exercise those rights. This implies providing general information on the ICC and the rights to participate and to claim for reparations, but also, as the ICC evolves, on how those rights are interpreted by the Chambers and on what the implications of that interpretation are.

With a view to victims' involvement in proceedings before the Court, it is particularly important to prepare them for the obstacles that they might face, the risks that may result of their choice to get involved in the process, i.e. threats, reprisals, further trauma.

For example, victims that have participated in the proceedings so far have done so under condition of anonymity. This means that their identity has not been disclosed to the Defence. However, it is unclear whether the ICC Chambers will decide at a later stage that victims' identity must be disclosed to the accused in order to ensure his/her right to a fair trial. Victims need to be made aware of this possibility, as well as of other risks that they face, in order to be in a position to make an informed decision as

to whether they want to participate in the proceedings or not.

For the purpose of training, FIDH has recently issued a Manual on victims' rights to the attention of victims, their legal representatives and NGOs. This manual will be distributed among those who work with victims, so that they will be in a better position to inform and assist them.

FIDH organises trainings not only in the field but also in The Hague, by bringing representatives of victims' associations and NGOs to the seat of the Court. The idea behind this type of trainings is to facilitate the dialogue between local organisations and the ICC.

2) Assisting victims to participate in the proceedings before the Court

According to Article 68(3) of the Rome Statute, victims can participate in the proceedings before the Court: they can present their views and concerns when their personal interests are affected.

NGOs play an important role in this regard to bridge the gap between the ICC in The Hague and victims in the field. NGOs can help victims fill out applications, collect those applications in the field and forward them to the ICC. A decision of the Pre-Trial Chamber I rendered on 17 January 2007 accepted indeed the possibility that applications to participate in the proceedings can be filed by an NGO on behalf of the victim, when the victim has authorised the relevant NGO to do so.

NGOs also assist victims to find a legal representative and help in the legal representation of victims before the Court. In the case of FIDH, the Federation has a Legal Action Group, which is a network of lawyers, jurists and other experts that, on a pro bono basis, provide legal advice, help victims bring cases against the

perpetrators of grave Human Rights violations, and represent them in those cases. FIDH Legal Action Group has been active for several years now in the representation of victims as “partie civile” before national tribunals (mainly before foreign courts under the principle of universal jurisdiction). Taking into account the expertise gained in this regard, it was decided to extend the Group’s action to the international level and this is how members of the FIDH Legal Action Group have now taken up representation of victims before the ICC.

FIDH supports these lawyers through legal research and also by facilitating, through its contacts in the field, communication between the legal representative and his/her clients.

Another aspect in which NGOs also play a role in this regard is by organising trainings for lawyers. Since victim participation is a new field in international criminal law, there are currently no lawyers specialised in this area of law. In order to represent victims, a lawyer should ideally have expertise in international law and procedure, criminal law and procedure, Human Rights, gender-based crimes, as well as experience in dealing with victims of massive crimes and victims of trauma. Additionally, the system of the Rome Statute creates new proceedings lawyers are not yet familiar with. Therefore, lawyers normally need to undergo some type of training before they are ready to represent victims before the ICC.

Although I said that I would not talk about material assistance to victims, I would like to mention that in practice legal assistance might also imply some sort of material assistance. As I said, FIDH does not provide general humanitarian aid, because it is not its role and it does not have the expertise required for this purpose. However, when working with victims who are involved in one way or another in FIDH activities on the ICC, we are faced with the reality of victims in this context, who might either need to flee their country temporarily or permanently, as a result of

regular threats to their lives; or who live in remote areas, including refugee or IDP camps, and might need to be assisted to communicate with their legal representative. A certain capacity to tackle emergency situations is therefore needed.

3) Assisting victims to seek reparations

According to the Rome Statute (Article 75), victims of the crimes within the jurisdiction of the Court can claim for reparations. Although there is no practice in this regard yet (as the first case has not yet attained the trial phase), it can be foreseen that NGOs will play a role similar to the one they play with regard to participation of victims, i.e. assisting victims to fill out forms, collecting those forms, filing them on behalf of the victims and providing assistance to their legal representatives throughout the reparations phase.

And when it comes to reparations, another way of assisting victims (and this does not concern NGOs exclusively but also states and intergovernmental organisations) will be through the implementation of the awards. Involvement of states, intergovernmental organisations and NGOs as “intermediaries” in the implementation of awards is specifically provided for in the Regulations of the Trust Fund for Victims.

With respect to the Trust Fund for Victims and in relation to the topic of assistance to victims in the field, it is worth reminding that the Fund’s role is two-fold. It is not only involved in the implementation of reparations awards (ordered by the ICC Chambers) but it can also provide physical or psychological rehabilitation or material support to victims (para. 50 (a) of the Regulations of the Trust Fund) where that assistance is needed, through a process that involves the ICC Chambers in order to ensure that the rights of the Defence are respected. It can be foreseen that NGOs, in particular those in the proximity of the beneficiary groups, will play an important role

to propose projects to the Trust Fund and, later on, to implement projects for assistance of victims, on behalf of or in collaboration with the Trust Fund.

Concluding remark

I am now coming to the end of my presentation and I would like to say as a concluding remark that assisting victims is indeed a fulfilling task since this is a way to bring a glint of hope to those who have in many cases lost everything, from property and all their belongings, loved ones, or many years in their lives in the quest for justice.

But it is also a difficult task. Victims normally find themselves in one of the two extremes of the spectrum: they are either completely discouraged and do not believe in anything (which is understandable after having lost everything, after having trusted in other mechanisms to obtain justice and having been disappointed) or they place too much hope on the process, and for instance when they hear about reparations they believe that poverty will come to an end overnight.

Thus the job of assisting victims consists in finding the right balance between bringing hope and being realistic, through the art of managing expectations.

Thank you very much for your attention.