

## VICTIMS' RIGHTS

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"Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered." - U.N. Victims Declaration, para. 4

Victims have often been silent partners in the legal process, with little role other than as witnesses, and at the mercy of the courts. In the past, victims were practically shut out of the very process that was supposed to address the wrongs they had suffered, and few steps were taken to reduce their alienation from the process, or to ensure that the experience did not contribute to further trauma or to a risk of reprisals. Giving victims a real voice in the legal process is crucial because it contributes to healing and the potential for closure. Only with a constructive interaction between victims and the legal process can courts fulfill their promise of reconciling society.



Victims of the Srebrenica massacre, Bosnia © Isabelle Eshragi

Victims have the right to truth, justice and reparation. They have the right to be treated with humanity and respect for their dignity. Appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. Victims have the right to participate in the proceedings and to adequate, effective and prompt reparation which should be proportional to the gravity of the violations and the harm suffered.

### **AI's Fundamental Principles Concerning Reparations:**

- States must provide effective mechanisms for victims to obtain reparations;
- States must cooperate in preventing violations of human rights, international criminal law or international humanitarian law;
- States must permit suits against anyone found in their territory or jurisdiction who is responsible for violations of human rights, international criminal law or international humanitarian law;
- Victims must be able to sue corporations which are involved in crimes under international law and are acting globally wherever they are present or carrying out activities;
- States must not enforce sham or unfair judgments;
- Treaties must be consistent with obligations to victims.

### **What's the international definition of "victim?"**

"Victim" has been defined as any person or group of persons who individually or collectively, directly or indirectly, suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights, as a result of crimes within the jurisdiction of a court. (see *U.N. Victims Declaration*)

### **What are the relevant international standards?**

International standards include the *U.N. Declaration of Basic Principles for Victims of Crime and Abuse of Power*

("the Victims Declaration") and the *U.N. Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (for a complete list of documents, please visit [amnestyusa.org/icc](http://amnestyusa.org/icc)). These documents recognize that victims should be treated with compassion and respect for their dignity, and recommend measures to improve their access to justice and prompt redress (restitution, compensation and rehabilitation) for the harm they have suffered.

### **Are special considerations given to victims who are women or children?**

The investigation and prosecution of crimes must take into account the special interests of especially vulnerable victims and witnesses, including women and children. Under the International Criminal Court Statute, for example, the Prosecutor is required during the course of an investigation or prosecution to respect the interests and personal circumstances of victims and witnesses, including age, gender and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

### **Is it possible to respect victims' rights without harming defendant's rights?**

International and domestic standards establish a balance between the fundamental rights of suspects and offenders and the rights and interests of victims. Moreover, a court must ensure that measures protecting victims' rights are not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial.

### **What rights do victims have under U.S. law?**

Under U.S. law, victims have the right to be present at public court proceedings involving the crime and to be "reasonably heard" during certain portions of the criminal process – the release, plea and sentencing. See *Crime Victims Rights Act*.

### **Can civil remedies in U.S. courts play a role in victims' rights?**

Although civil remedies should not replace the rights provided by the criminal process, the availability of civil remedies against human rights abusers can provide an important measure of justice for victims. For example, the Alien Tort Claims Act (ATCA) allows foreign victims of human rights abuses to sue perpetrators who are present in the United States. In June 2006, U.S. Supreme Court handed a critical victory to the human rights movement by ruling that victims of egregious international human rights violations have a right to sue perpetrators found within the United States for monetary compensation.

### **Why is it important to guarantee victims' rights in pursuing international justice?**

Victims can make an important contribution to helping bring perpetrators of human rights abuses to justice, but they can do so only if they are provided with a constructive, respectful and safe place within the process. Allowing victims to participate in the criminal process serves a dual purpose: (1) it may deter potential future perpetrators, and (2) it may enable victims to start to heal any emotional trauma suffered as a result of the crime, and to regain the sense of control that the crime itself may have taken from them.

### **How can respect for victims' rights be ensured?**

Victims' rights can be ensured by enforcing the rights enshrined in existing national and international laws. Systems of justice, at both the national and international levels, should be developed and strengthened. Institutions and laws that fulfill the promise of providing justice for victims, such as the International Criminal Court and its Victims Trust Fund, the Alien Tort Claims Act, and the Crime Victims Rights Act, should be supported and strengthened.

## **Crime Victims Rights Act (CVRA)**

The U.S. "Crime Victims Rights Act" (CVRA) of 2004 grants victims of federal crimes a range of rights in federal criminal proceedings. The CVRA defines a victim as "a person directly and proximately harmed as a result of the commission of a Federal offense." It provides victims with substantial rights to observe and participate in portions of the trials of those accused of victimizing them. Victims also have the right to confer with the prosecutor, to be protected from the accused and to receive compensation for their injuries.

## **The International Criminal Court and Victims' Rights**

The International Criminal Court (ICC) enshrines three key principles relating to victims' rights: (1) victim participation in the proceedings, (2) protection of victims and witnesses and (3) the right to reparations.

### **Right to Participation**

The Court recognizes the contribution that victims can make to the criminal process and the importance of that process to victims. Victims are entitled to present their views and concerns for consideration at any appropriate stage of the proceedings and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

### **Right to Protection**

To help victims and witnesses face the judicial system, the ICC incorporates measures to guarantee the safety, physical and psychological well-being, dignity and privacy of victims, witnesses and their families before, during and after trial.

⇒ **The Victims and Witnesses Unit** of the Court provides protective measures, security arrangements, counseling and other appropriate assistance to victims, witnesses who appear before the Court and others, such as family members, who are at risk because of such testimony.

⇒ **The Prosecutor** is required during the course of an investigation or prosecution to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

### **Right to Reparations**

In addition to bringing the perpetrators to justice, which is itself a crucial form of reparations, the Court establishes principles for reparations to victims, including restitution, compensation and rehabilitation. The Court is entitled to determine the scope and extent of any damage, loss and injury to victims, and to order a convicted person to make reparations directly to victims or through a Trust Fund.

### **The Trust Fund for Victims**

The International Criminal Court's Trust Fund provides victims with help and compensation to enable them to rebuild their lives, which in many cases have been shattered by war. Victims may include child soldiers who may have suffered greatly as a result of being forced into front line service, or rape victims who may require trauma counseling. Some victims may have seen their property and livelihood destroyed. In other cases, funds may be needed to rebuild an entire village destroyed in the fighting.

### **For additional information, updates and actions:**

Amnesty International USA Program for International Justice and Accountability, [amnestyusa.org/international\\_justice](http://amnestyusa.org/international_justice)  
The Trust Fund for Victims, <http://www.icc-cpi.int/vtf.html>  
Center for Justice and Accountability, <http://www.cja.org>