

Chapter 3

The Normative Basis for Victims' Rights and Their Status in the Criminal Justice Process

ABSTRACT

In this chapter, the study moves from the legal basis upon which these crimes can be prosecuted to victim-oriented approaches in the criminal justice system. It critically examines the emerging trend of victims-centred approach in international criminal justice system and especially how developments in some domestic systems have informed the growing trend to address the needs of victims in international criminal justice. The discussion in this chapter indicates that the relatively new idea of justice for victims of international crimes suggests that the international criminal justice process should attend to victims' needs, thereby contributing in the rebuilding of war-torn communities. The author argues that while the relatively new victim-centred approach to international crimes remains a significant component of comprehensive victim-focused responses, the complex realities of victims of sexual violence in conflict situations provide a unique range of challenges in addressing the needs of victims in the context of international criminal justice system.

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INTRODUCTION

The overriding interest must be that of the victims, and of the international community as a whole ... The eyes of the victims of past crimes, and of the potential victims of future ones, are fixed firmly upon us. Former UN Secretary-General, the late Kofi Annan.¹

Until recently, victims of crimes have for too long been described as forgotten parties in the criminal justice system. An explanation for this can arguably be connected to the fact that the primary mission of criminal justice has always been the punishment of the guilty or acquittal of the innocent in order to achieve justice while providing fair procedures for the suspects (J. Doak, 2005). Criminal justice proceedings ought to be solely between the prosecutor on one hand and the offender on the other hand as well as the judge who determine the accused's guilt in order to determine his/her sentence, if found guilty. In this sense, there were virtually no concerns about victims as the introduction of a private party into the process was deemed incompatible with the need to preserve fair trial rights for the accused.

In various parts of the World, the scepticism as to the inclusion of victims in the criminal justice process was largely based on concerns that this approach could introduce a subjective voice into the proceedings, especially as regards guilt and sentencing considerations (D. N. Nsereko, 2010). The domestic conventional legal view has thus generally been suspicious of victims as party to the criminal justice process, and virtually absent in the international context (R. Zauberman, 2000, I. Bantekas, 2010).

Overtime and with increasing attention paid to the plight of victims in the criminal justice system by legal schools and various human rights advocacy groups, victims have been subject of extensive legal reforms at the domestic level. While examples of the growing development in this regard may be drawn from all continents, the extent to which victims have a role in domestic criminal system depends on each jurisdiction criminal justice model. In countries with adversarial models, emphasis is put on the equality between prosecution and defence, and therefore limiting victim participation in the criminal proceedings.

On the other side, countries with civil law jurisdictions, under their inquisitorial models, their jurisdictions have provided substantial participatory rights for victims. That said, the last years have witnessed instances of countries with adversarial models also gradually moving towards this victim

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