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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 28 : THE STATUS OF VICTIMS IN INTERNATIONAL AND REGIONAL COURTS

Several statuses are possible for individual victims in supranational judicial bodies. They may be :

- ✓ A civil party (they initiate the action, and take part in the proceedings).
- ✓ A witness.
- ✓ A participant (they may give their point of view and defend their interests)

The first supranational judicial body to allow a direct referral by an individual victim was the European Court of Human Rights.

Such a procedure is now possible with the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights, but not with the Inter-American Court of Human Rights or the African Court on Human and People's Rights. The status of the victim is then that of a witness or participant.



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Changes in international criminal courts have been accompanied by an increased role for victims in procedures. Whereas the statutes of international criminal tribunals only grant them the role of witness without any specific rights, the Statute of the International Criminal Court allows victims to participate in procedures and to claim reparations for damages.

Guarantees accompanying the status of victims are the right to protection and the right to legal representation.

Comparative table of victims' rights in the various international and regional courts for the protection of human rights.

	European Court of HR	Inter-American Court of HR	African Court on Human and People's Rights	International Criminal Court
Participation	<p>Art. 34 of the European Convention on Human Rights : right of individual petition for victims. Victim → party.</p> <p>Art. 6 of the European Convention on Human Rights : rules for the right to a fair trial : right to examine witnesses, etc. Rights and duties attached to the status of party to the procedure : to submit evidence, participate in hearings, call witnesses, etc.</p>	<p>Art. 25 of the Rules of the Court : Victims may submit their petition, points of view and evidence throughout the procedure.</p> <p>Art.50 of the Rules of the Court : Victims may set out in writing questions for the declarants.</p> <p>Art. 51 of the Rules of the Court : victims may express their points of view during hearings.</p> <p>Comment : Possible to « indirectly refer a case » to the Court : under article 44 of the Inter-American Convention on Human Rights, victims may submit a communication to the Inter-American Commission on Human Rights, which has the power to refer a case to the Court.</p>	<p>Art. 5 §3 of the Protocol on the African Charter on Human and People's Rights relating to the creation of an African Court of Human and People's Rights : right of direct referral of a case by victims (subject to a declaration of acceptance of the jurisdiction of the Court by the State in question, in accordance with art. 34 §6). Victim → party.</p> <p>Rights and duties attached to the status of party to the procedure : to submit evidence, participate in hearings, call witnesses, etc.</p> <p>The right to be heard as a witness.</p> <p>Comment : Possible to « indirectly refer a case » to the Court : under article 55 of the African Charter on Human and People's Rights, victims may submit a communication to the African Commission on Human and People's</p>	<p>Art. 68 § 3 of the Statute of the Court : where the personal interests of the victims are affected they may express their views and concerns.</p> <p>Victims may question witnesses, experts and the accused and / or set out in writing any questions to the declarants, if certain interests were threatened (rights of the accused, interests of witnesses, necessity of a fair trial).</p>

	European Court of HR	Inter-American Court of HR	African Court on Human and People's Rights	International Criminal Court
			Rights, which has the power to refer a case to the Court.	
Representation	Art. 36 §1 of the Rules of the Court : Possible to submit applications through a representative.	Art. 25 of the Rules of the Court : in the event of multiple victims, victims should be represented by one common representative.	Art. 10 §2 of the Protocol : right of victims to be represented by the legal counsel of their choosing.	Rule 90 of the Rules of Procedure and Evidence of the Court : Victims are at liberty to select their own legal representative. In the event of there being multiple victims, the chambers may request victims to select one common legal representative.
Protection	Art. 6 of the European Convention on Human Rights : rules for the right to a fair trial : possible to have hearing <i>in camera</i> to protect the privacy of victims. Art. 33 §2 of the Rules of the Court : the Court may restrict the publication of documents. Art. 63 §2 of the Rules of the Court : the Court may restrict hearings in public.	Art. 54 of the Rules of the Court : victims cannot be prosecuted or be the subject of reprisals owing to their declaration before the Court. Art. 51 of the Rules of the Court : Victims may be heard by means of audio-visual electronic equipment.	Art. 10 §3 of the Protocol : right of victims and witnesses to protective measures (refers to facilities recognised by international law).	Art. 68 §1 of the Statute of the Court : The Court takes appropriate measures to protect the security, physical and psychological well-being, dignity and respect for the privacy of victims and witnesses. In doing so, it takes into account all relevant factors (age, sex, state of health, nature of crime, etc.) Art. 68 §2 of the Statute of the Court : victims may be heard as witnesses and may request the Court to adopt protective measures : closed hearings, testimonies given using audio-visual electronic equipment.

	European Court of HR	Inter-American Court of HR	African Court on Human and People's Rights	International Criminal Court
				<p>Art. 68 §3 of the Statute of the Court : Victims may set out questions in writing to declarants, if the interests of witnesses were threatened.</p> <p>Art.43 §6 of the Statute of the Court : setting up, within the Court Registry of a legal aid division for victims and witnesses.</p>
Reparations	<p>Art. 5 of the European Convention on Human Rights : the right to reparations for victims : According to the Rules of the Court, damages sustained may be either physical or moral.</p> <p>Art. 39 of the Rules of the Court : parties may request the adoption of protective measures.</p>	<p>Art. 27 of the Rules of the Court : victims may request the adoption of protective measures.</p>	<p>Art.27 of the Protocol : right of victims to reparations (When it estimates that there has been a violation of human or people's rights, the Court orders all appropriate measures to remedy the situation, including the payment of fair compensation or the awarding of reparations.</p>	<p>Art .75 of the Statute of the Court : Victims and their beneficiaries are entitled to claim reparations. Reparations may be in the form of restitution, compensation or rehabilitation.</p> <p>Art. 79 of the Statute of the Court : setting up of a Compensation Fund for victims of crimes falling within the jurisdiction of the Court and for their families.</p> <p>Rule 99 of the Rules of Procedure and Evidence of the Court : Victims may request urgent measures to be taken for the purposes of</p>

	European Court of HR	Inter-American Court of HR	African Court on Human and People's Rights	International Criminal Court
				confiscation of assets belonging to persons being prosecuted.

- Sources :
- European Convention on Human Rights, and Rules of the Court.
 - American Convention on Human Rights, and Rules of the Court.
 - Protocol on the African Charter on Human and People's Rights relating to the creation of an African Court on Human and People's Rights.
 - Statute of the International Criminal Court, and Rules of Procedure and Evidence of the Court. ,
 - Henri D. Bosly, Damien Vandermeersch *Génocide, crimes contre l'humanité et crimes de guerre face à la justice : les juridictions internationales et les tribunaux nationaux*, Bruylant, 2010.
 - Web site of Trial Watch : <http://www.trial-ch.org/en/home.html>
 - 10 key points for understanding and using the African Court of Human Rights and People's, IFHR.
 - L'actualité de la Justice Pénale internationale*, Actes du Colloque organisé par le Centre de recherche en mutation pénal F. Boulan, Aix-en-Provence, 12 mai 2007.