Chapter 5
Victims’ Participation in International Criminal Proceedings Beyond Mere Witnesses: Opportunities and Challenges in Sexual Violence Cases

ABSTRACT
This chapter elaborates upon the framework set forth in the preceding chapter about the unique nature of sexual violence as a tactic of war and implications of this for the victims’ needs to examine the limitations and challenges in addressing these needs within the context of the international criminal trials. The discussion offers a critical evaluation of the effectiveness of the growing victim-oriented approach in international criminal justice in responding to the needs of victims of conflict-related mass sexual violence. It presents an in-depth analysis of the procedural, legal, and practical aspects of the growing trend of victims’ participation in international criminal justice proceedings, as currently being developed by the ICC, highlighting issues impeding its effectiveness in advancing effective redress for victims of sexual violence in conflict situations. This chapter argues that, while the growing victims’ inclusion in the international criminal process remains a significant component of comprehensive victim-focused responses, it risks failing to consider the contextual dynamics surrounding the plight of victims of conflict-related sexual violence during and after conflicts, thereby falling short of providing effective responses to the needs of victims.

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INTRODUCTION

All too often in situations of armed conflicts, rape and other acts of sexual violence are used as a weapon. Distinct aspects of widespread and systematic sexual violence in conflict situations and their implications for the victims’ needs in transitional justice processes have been identified and analysed in the previous chapter. The analysis in the earlier discussion focused on various mechanisms developed in recent years to cope with the consequences of crimes on victims and address their needs which recently reached its high point with the Rome Statute’s recognition of victim participation in the criminal justice process and certain rights of reparations. This landmark development in international criminal justice system reflects the emerging sense of the need to accommodate the victims’ needs within the criminal justice process. While such mechanisms are a necessary component of a comprehensive approach to post-conflict justice responses to mass crimes, post-conflict justice process absent of a consideration of the needs of victims will arguably fall short of bringing effective redress to the victims.

This chapter builds upon the framework set forth in the previous chapter about the complex nature of wartime sexual violence and its implications for the victims’ needs in transitional justice to critically examine potential challenges and limits of the growing victim-centred approach in international criminal justice system in providing effective redress for victims of such crimes. The discussion in the previous chapter shows that the complexity of the victims’ experiences during and after conflicts is profoundly reflected in victims’ needs in post-conflict justice processes, and this reality implies that mechanisms to address the needs of victims of these crimes must be able to address the broadest spectrum of effects of these crimes on victims and the resulting direct social and community consequences, covering all dimensions of the victims’ conditions in post-conflict settings.

The discussion in this chapter examines the effectiveness of growing victim-centred approach in international criminal justice process in providing effective responses to the needs of victims of sexual violence as a weapon of war. Specifically this implies that the chapter reviews the procedural, legal and practical aspects of the victims’ participation in the criminal justice process under development before the ICC, noting issues impeding this approach to effectively address the needs of victims of widespread and systematic sexual violence in conflict situations. As noted above, it is often argued that the integration of victims in international criminal proceedings is a critical
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