

*Las víctimas y la Corte Penal Internacional. Análisis de la participación de las víctimas ante la Corte.* By Esperanza ORIHUELA CALATAYUD (Thomson Reuters Aranzadi, Madrid, 2014) 275 pp.

Approaching a subject such as the participation of victims before the International Criminal Court (ICC) is a risky adventure which is furthermore sentenced to early obsolescence, given the evolution of the jurisprudence in this regard. Prof. Esperanza Orihuela has nevertheless brought us a book which successfully sails these stormy waters and deserves full consideration by anyone interested in these issues.

Indeed, the ICC system has brought into the international criminal law the participation of victims and the possibility of granting them reparations and the system is far from being well defined. Works like the one discussed today are thus very welcome as they not only present the situation in law and in fact, but also propose solutions to the main problems the Court faces today in this regard.

While there has been a great interest in the international criminal law doctrine regarding this innovation, we are before the first book on the subject published in Spain by an international law specialist, and follows another authored by lawyer and lecturer on procedural law Salvador Guerrero Palomares under the title *La defensa procesal de las víctimas ante la Corte Penal Internacional* (Thomson Reuters Aranzadi, Cizur Menor, 2014). It is not the purpose of this review to compare both books, but it must be noted that their approach and final scope are substantially different.

The book has a classical structure. The introduction gives way to a first part which lays the ground for the participation of victims before the Court by presenting the legal and material bases, followed by the conditions to appear before the Court in this condition and the regime of their participation, divided between the general regime and three specific regimes which constitute the fourth part.

In the fifth part, the author presents her assessment of the participation system of the Court and makes a series of proposals for its improvement. While this part closes with four pages of “Conclusions”, the reader will note that they are present throughout it; it does not seem fair to the quantity and the quality of her work to reduce the consideration of conclusions to those final few pages.

Further to the bibliography, three annexes detail the participation rights of victims as mentioned in the Statute and the other texts of the Court, the decisions mentioned in the book and the phases of the proceedings in the Rome Statute system. The last two are particularly useful, the third for any person who wants to have a clear view of these proceedings and the second because it lists all the available decisions on victim participation rendered by the Court until the moment of the closure of the investigation, making it an important research tool. While this date is not precisely established in the text, it is apparent that it was June 2014: the reader must take this into account.

Throughout the book, all issues deserving in-depth consideration are correctly identified by the author, and she endeavours to provide us with a sound analysis and a reasonable proposal. Examples of this consistent approach are provided by the role – and its limits – of intermediaries in the support to victims (103-104, 208), obviously related to the information that victims should receive (135) and the

consequences of the – potential and actual – number of victims applying to participate and actually admitted by the Chambers to do so (112).

Prof. Orihuela also helps understanding the different levels of the Court's action (situation, case and the latter's different phases), the scope of the right to participate throughout them (see, e.g., 138-139 and 144, where she notes that the participation during the investigation stage is fundamentally through their cooperation with the Office of the Prosecutor) and the need or not that the different Chambers have felt to reassess the applications to participate in each of them (108, 121, 130). She also gives us a clear view of the varied approaches that Chambers have taken to the application to participate (103 regarding the application for and its evolution, 113 regarding the introduction of a simplified form in the case *The Prosecutor v. Bosco Ntaganda*).

The reader will understand from the book that casuism and the lack of a consistent jurisprudence are the main problems for the practitioner before the Court in this regard (113, 120, 131). Maybe one of the most important issues yet to be solved, leaving aside the reparations procedure, is the model of common legal representation that the Court should adopt when it is its legal aid budget that has to cover its cost. While rule 90 (5) draws a series of caveats that establish a clear (and wide) distance between the right of defendants to receive legal aid where they are indigent, the Court has acknowledged that the right of victims to participate cannot be effective if they do not have the means to finance such participation.

When appointing common legal representatives, Chambers have oscillated between external counsels and the Office of Public Counsel for Victims (OPCV), with a series of mixed solutions. As of today, no model has been retained as final, although several voices have raised concerns about either formula.

The OPCV is only one of the structures put in place by the Registry of the Court to assist victims, and its role is confined to substantive law and representation; today the Registry has two other administrative units which assist victims as a central part of their mandate: the Victim Participation and Reparations Section (VPRS, “Sección de Participación y de Reparación de las Víctimas” in the book), which assists victims to submit their applications and, on the other hand, processes those applications and submit them to the relevant Chamber for decision on their admission, and the Victims and Witnesses Unit (VWU, “Dependencia de Víctimas y Testigos” in the Spanish version of the Rome Statute and the book), which among other services provides protection and support services to victims, witnesses and other persons at risk in relation with the Court proceedings.

The specificities of the ICC system in relation to general international law principles are also well taken into account and explained in the book. This is the case of the exhaustion of internal remedies, whose requirement by the Office of Public Counsel for the Defence in relation with applications by victims to participate in the Court proceedings was defined by the Chamber as a “fundamental misunderstanding” (105).

One of the practical concerns arising from the current system is the management of victims' expectations regarding the proceedings before the Court. While some consideration is given to this problem (see, e.g., 99), the main test in this regard is yet to be carried out with the first reparations procedures in *The Prosecutor v. Thomas Lubanga Dyilo* and *The Prosecutor v. Germain Katanga*. Only

by the end of these two cases, so far the only ones where the accused has been found guilty, will there be elements to make a global assessment of the perceptions of victims and their comparison with the assumptions they had in the beginning.

Another concern always present in the decisions on victim participation and in the book is the balance which requires the due respect of the rights of defendants, whether they are identified or not. In the second case it has been the practice to appoint counsel to represent the general interests of the defence whenever the Chamber had to decide on applications to participate submitted in the framework of a situation, that is where no persons have yet been charged by the Prosecutor. And, at every stage, a major challenge to the fairness of the procedure is presented by the request of victims to keep their identity hidden from the other participants, in particular the defence; the Chambers have limited the rights of victims granted anonymity (154-155, 161) but this limitation is difficult to implement since the legal representation is always common and common legal representatives normally represent both victims with and without this limitation.

The present review being published in English, there is a limited place in it to language considerations but I deem it necessary to salute, in spite of the unavoidable typos, the use of Spanish by the author, which is not only correct but also makes it an interesting , smooth read for which I am personally very grateful.

Finally, it should be noted that the Registry of the Court is undergoing a general review of its structure and internal organisation which might bring on some changes in the organisation of the assistance to victims and the practical modalities of their participation before the Court. Such potential changes, nevertheless, cannot reduce the virtues of the book and its importance for the studies in international criminal law in Spanish.

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