

Assembly of States PartiesDistr.: General
10 November 2009

Original: English

Eighth session

The Hague

18-26 November 2009

Report of the Court on the strategy in relation to victims**I. Introduction**

1. The Rome Statute establishes a framework for recognition of victims as actors within the international justice scheme greater than any previous international criminal tribunal. Since the Court's establishment, this framework has been developed to make these aspirations an operational reality. The relevant units of the Office of the Prosecutor (OTP) and of the Registry, the Secretariat of the Trust Fund for Victims (TFV) and the Offices of Public Counsel for Victims (OPCV) and for the Defence (OPCD), with a representative of the Presidency as observer, have now come together to set out a common broad vision that will provide a common framework and serve as a guide for the development of specific objectives and work plans. The ICC Strategy in Relation to Victims (the Strategy) is the result of that process, but is also intended to provide a basis for further development in the future.

2. The decision of the drafters to recognize the importance of victims is rooted in an understanding of the devastating effect that crimes can have on victims and those close to them. The Preamble to the Statute recalls that during the last century, millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity. The drafters recognized also that positive engagement with victims can have a significant effect on how victims experience and perceive justice and, as such, contribute to their healing process. Victims also bring a unique perspective to the judicial process.

3. A key feature of the system established in the Rome Statute is the recognition that the ICC has not only a punitive but also a restorative function. It reflects growing international consensus that participation and reparations play an important role in achieving justice for victims.

4. The Strategy reflects the nature of the Court as a judicial institution and the different responsibilities of the various organs and bodies that comprise it. The Strategy is based first and foremost on the legal framework of the Court, and takes into consideration the jurisprudence of the Court. It is recognized that important aspects of the legal framework still await judicial determination or interpretation and the Strategy does not in any way impinge on the powers of the Chambers in that regard.

5. This Strategy comprises one element of the Court's strategic planning, and will evolve over time taking into account future ICC planning. The principles and objectives adopted herein derive from Rome Statute and other legal instruments of the Court and from the aims set out in the Strategic Plan of the Court as well as other processes deriving from it including those relating to outreach, cooperation, prosecutorial strategy and policies, the Trust Fund and legal aid for victims.

6. The Strategy is also based on international instruments that formed part of the development of the Rome Statute. In particular, it has regard to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which calls for victims to be treated with compassion and respect for their dignity. It also draws on the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which calls for victims to be treated with humanity and respect for their dignity and human rights, and for appropriate measures to be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.

7. While in some areas there are lessons learned from other international criminal tribunals, the specificity of the Court – its permanent nature, its potentially worldwide scope, and its introduction of new substantive law in relation to victims' participation – means that in other areas few precedents exist. The first cases before the Court have provided examples of concrete victims' participation, fully respecting the conduct of fair and expeditious proceedings. The challenge to the Court at this early stage is to apply this innovative framework in each case in a consistent manner.

8. For the purpose of this Strategy, a victim is a natural person who has suffered harm as a result of the commission of any crime within the jurisdiction of the Court, or in certain circumstances an organisation or institution that has sustained certain harm to its property, as defined in Rule 85 of the Rules of Procedure and Evidence. In all cases, the definition takes into account the jurisprudence of the Court in relation to the notion of "victim". However, the term "victim" may refer to different persons at different times, as specific victims interact in distinct ways with different parts of the Court at different phases of the proceedings. For instance, the term is used to describe persons having sent communications/information of crimes to the Office of the Prosecutor, or allowed by the relevant Chamber to participate in the proceedings or having applied to do so, persons who receive reparations as a result of an order of a Trial Chamber following a conviction, or persons who require specific measures of protection or psycho-social support related directly to their appearance before the Court. Some victims are likely to also be witnesses in the proceedings. A possibility may also equally for victims to appear in person before the Court. The term is also used in a broader sense to describe those who benefit from assistance provided by a project supported by the TFV, or members of a community affected by crimes in the context of a particular situation or case who as a result is targeted by outreach activities of the Court.

9. The needs of all of these victims should be taken into consideration by the relevant organs and bodies of the Court. In formulating the Strategy document, the Court has sought to draw a distinction in the strategies developed in the different functional areas, even though each of these principles is closely interrelated. One of the goals of the Strategy is to ensure consistency and co-ordination across different organs and bodies of the Court dealing with victims.

10. It is recognized that there is a fine balance to be maintained between the rights of victims and the rights of the Defence. Vigilance is necessary by all parts of the Court in order to ensure this.

11. In order to ensure the success of the Strategy, each organ and body has committed to setting out:

- a) The actions they are taking, and plan to take, to ensure that the principles of the Strategy are met;
- b) The steps they are taking to inform victims of the standards they can expect; and
- c) The details of methods by which implementation and progress of the Strategy will be monitored and evaluated, including through measurable objectives and indicators and seeking feedback.

12. It is recognized that the way in which they are treated by officials of the Court will be very important for victims and how they feel about the justice process before the Court. All organs and bodies of the Court that interact with victims will take steps to ensure that their staff have appropriate training including in how to deal with vulnerable victims.

13. The Strategy recognizes that a wide range of actors including local authorities, non-governmental and community based organisations, States Parties and international organisations have been instrumental in bringing about an increased awareness of victims' needs, as well as in responding to those needs. The Court takes account of the work of these stakeholders too, and recognizes that it does not work in isolation. Wherever possible, it seeks a common approach with other actors. In doing so, the Court will look for opportunities to promote the principles underlying the Rome Statute at the local level, consistent with the principle of complementarity.

14. It is the underlying premise of this Strategy that no action of the Court should do harm, and that respect must be paid to each individual, bearing in mind the statutory provisions providing that in taking appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, the Court shall have regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.

II. Broad principles

15. The broad principles which underpin the Strategy are:

- a) A recognition of the importance of the victim and the need to take account of their needs and interests;
- b) A commitment to communicate with victims both in order to provide information so that the Court's mandate on victims is widely understood by victims and in order to listen to victims;
- c) A recognition that victims should be enabled to have a voice throughout all stages of the proceedings, subject to the rights of the defence and a fair and impartial trial, starting at the preliminary examination stage and to seek reparations in the event of a conviction;
- d) A commitment to providing victims with equal and effective access to the Court, including effective representation of their interests by qualified counsel;
- e) A commitment to enable victims to interact with the Court with maximum security, consistent with the Rome Statute, and without suffering further harm as a result of this interaction;

- f) A commitment to transparency and clarity in conducting relations with third parties; and
- g) A commitment to serving as a catalyst for improving realisation of the rights of victims of genocide, crimes against humanity and war crimes worldwide.

16. In order to achieve these principles, the ICC Strategy in Relation to Victims consists of the following six main policy objectives.

Objective 1:

Ensure that the role of the Court and its judicial activities are clearly communicated to all victims of a situation or case potentially falling within the jurisdiction of the Court, including their right to petition the Court (i.e. the right to give information to the Prosecutor to form the basis of a *proprio motu* investigation), to participate in proceedings at the Court or to seek reparation.

17. This objective aims to ensure that victims have the information they need at the right time, in the right level of detail, and in the right format for their needs. This will enable them to make informed and appropriate decisions. Communications efforts impact upon attitudes towards and interest in co-operating or engaging with the Court.

18. It is recognized that not all victims will want to have the same level of information or want to engage with the Court in the same way. Some victims may only wish to have general information. Others may have a desire to engage more actively in the Court's activities such as by bringing information on crimes, testifying as a witness, participating in proceedings, or benefiting from the assistance of the Trust Fund. Victims should be informed about what they can expect, what support or protection is available for them, and what choices are open to them. Where victims are participating in proceedings, they should be kept informed of developments.

19. The Court's outreach activities, which are targeted at affected communities, are detailed in the Strategy on Outreach. They aim to cultivate a level of awareness and understanding of the Court's mandate and activities, and promote access to and understanding of judicial proceedings. They also foster realistic expectations about the Court's work and engender greater participation of local communities by addressing their concerns and countering misperceptions. Victims are one target of the outreach activities, and strategies will continue to be developed and implemented to reach victims specifically, and to communicate up to date information about decisions of the Court concerning victims specifically. The outreach unit of PIDS in the Registry has primary responsibility for outreach, and will involve other organs and bodies of the Court.

20. In light of the fact that it will often be the Office of the Prosecutor that has the earliest contact with victims, the Prosecutor plays a role in raising awareness and is given certain duties aimed at ensuring that victims are given every opportunity to participate in proceedings.

21. The OPCV, VWU, VPRS and TFV also communicate with victims in the course of carrying out their specific mandates.

22. Key features of the Court's objective as regards communications are:

- a) A commitment to two-way communication; to conduct interactive activities, to listen to victims and respond to what they are saying, and to take into account victims' concerns when developing policies;

- b) General information on the Court, thematic information – gender crimes, children issues - and case specific information will be provided;
- c) Providing information that is up-to-date, appropriate to the stage of proceedings, of good quality, relevant, communicates in a meaningful way and is available in a range of formats;
- d) Ensuring consistency of communication across different organs and bodies of the Court;
- e) Developing communications tools for victims that are appropriate to their needs and in a form which is accessible. In producing them, the languages spoken by the victims, cultural, social and other factors such as levels of education and customary means of communication will be taken into account;
- f) In developing communications tools and strategies, the views of victims will be sought and taken into consideration;
- g) All communications efforts will bear in mind the need to respect the safety, well-being, dignity and privacy of victims; and
- h) Specific strategies will be developed in order to ensure that communication with victims includes and is appropriate for specific vulnerable or marginalised groups.

23. Staff will be trained, but it is recognized that communications with victims are frequently conducted in partnership with intermediaries who have established relationships with victims. The Court is committed to ensuring adequate training and support, and establishing relationships based on clear and transparent understandings about what is expected of each.

Objective 2:

To enable victims to interact with the Court without suffering further harm as a result of this interaction, including by providing protective measures and security arrangements at all stages.

24. This objective comprises one element of the Court's strategy to "put in place a system to address all security risks, striving for maximum security of all participants consistent with the Rome Statute" (Goal I, Objective 2 of the *Strategic Plan of the ICC*, 4 August 2006). It aims to facilitate proceedings and to ensure an appropriate level of protection for victims in relation to their contact with the Court.

25. It is important to be able to inform at the outset the witnesses who are also victims, as well as all participants to the proceedings, of the range of possible protective measures as well as the relevant procedures, in a neutral and objective manner. It is crucial to build upon the experience of the last four years of activities of the Court, during which time the Court has been able to address threats to the life and well-being of victims and witnesses. The security of victims and witnesses must continue to be rigorously safeguarded bearing in mind that their protection should not be prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial.

26. The Court as a whole is given the responsibility to take appropriate measures, while the VWU, OTP and Chambers are given specific responsibilities.

27. It is incumbent on all parts of the Court interacting with victims to develop appropriate policies and ensure that staff members as well as external legal counsel receive training or support needed.

28. In order to achieve the objective the responsibilities must start from the first interaction with a victim whether a first contact by an investigator with a potential witness or the receipt of an application to participate in proceedings. The responsibilities continue throughout the proceedings and afterwards, if necessary, and involve activities in the places where the victims are located as well as where the Court is sitting.

29. This does not mean that the full range of protective measures will be either appropriate or available in each case.

30. The fundamental and most important bedrock of the Court's approach is prevention and risk mitigation through adherence to good practices and maintenance of confidentiality. All organs and bodies interacting with victims will adopt good practice guidelines that aim to reduce the physical exposure of victims by managing the contact in such a way as to minimise risk. Court policies and guidelines will also be implemented to ensure strict maintenance of confidentiality and security of information. The OTP aims to minimise the number of potential witnesses who enter into contact with the Court and are thus exposed to risk. Strategies will be developed for ensuring that individuals who are not staff of the Court but who have contact with victims or with information relating to victims, such as legal representatives or intermediaries, are also made aware of good practices.

31. Another important set of tools available to the Court for avoiding putting victims at risk is procedural protective measures. These are measures that a Chamber may order when appropriate such as redactions of documents, expunging information from the public record, giving testimony through electronic or other special means (such as facial or voice distortion) and the possibility to order closed sessions. All organs of the Court will remain vigilant so as to ensure that these measures are used when needed, while respecting at all times the rights of the defence and the need for a fair trial.

32. Despite every effort to avoid putting victims at risk, the Court must be ready to respond where victims are exposed to threats to their safety as a result of their status before the Court. Where witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses are exposed to risk, the Court will implement protective measures and security arrangements through the VWU.

33. Many victims live in areas of general insecurity and may be at risk, not as a result of their interaction with the Court, but also because they live in inherently insecure areas.

34. Key features of the Court's approach to protection include:

- a) Informing victims at an early stage about measures and procedures;
- b) Identifying victims who are at risk due to their interaction with the Court and what is the most appropriate action to take in a particular case;
- c) Clearly defining eligibility requirements, feasibility and procedures for protective measures; and
- d) It is essential that in providing for protection for victims, the Court shall strive to implement the most effective measures consistent with the Rome Statute with the least disruption to those protected and should not impact their well-being.

35. It is recognized that it is necessary for the Court to work together with and rely on national authorities and other external actors in ensuring protection for victims. Co-operation from States is essential, and the strategies pursued in this regard are set out in a separate document. Plans will also be developed and implemented for ensuring co-operation from international organisations.

Objective 3:

Provide support and assistance to victims in order to safeguard their psychological and physical integrity and well-being, ensure respect for their dignity and privacy, and prevent them from suffering further harm as a result of their interaction with the Court.

36. This objective aims to facilitate the proceedings, and to ensure that victims have access to appropriate support, with the result that they feel supported through the proceedings and afterwards if necessary.

37. All contact with victims, however brief, should be characterised with compassion and respect. Training in victim awareness will therefore be provided to all staff in contact with victims to ensure high standards, and efforts will be made to pass on good practices to legal representatives, intermediaries and others interacting with victims in relation to Court proceedings.

38. Interviews with investigators and any other interactions between victims and staff members of the Court must be carefully managed in order to avoid retraumatization or other problems. The OTP will conduct assessments before interviewing vulnerable witnesses in order to determine if they are physically and psychologically fit to go through the interview, and will ensure that a psycho-social expert is available in case an intervention is needed. The OTP, as well as other relevant organs and bodies of the Court, will also ensure that their staff receive training on techniques when interviewing children and victims of sexual violence. External counsel interacting with victims are also engaged in this regard.

39. Victims continue to be vulnerable after they have been interviewed, and it can be many months or years before a victim may actually appear before the Court. The VWU will ensure that mechanisms are in place, in line with established clear, transparent and consistent criteria, to respond to requests for support or assistance, including medical and psychological support or counselling. These interventions aim at facilitating participation of victims in Court proceedings.

40. It is recognized that much can be done to reduce the stress experienced by victims who appear before the Court to give evidence or to participate in proceedings.

41. Also, by taking care over arrangements, stress can be reduced and participation can be facilitated. In arranging transportation and accommodation, and in looking after victims when they are in The Hague or where proceedings are held, care will be taken to make them feel comfortable and provide any support they might need. Victims will be assisted to understand the proceedings and their role, including explanations of what to expect while giving evidence.

42. Key features of providing support to victims include:

- a) Hiring staff with relevant expertise, including in relation to crimes of sexual violence and crimes involving children, and providing adequate training to staff;
- b) Identifying victims' needs, including identifying those especially vulnerable, and facilitating access to appropriate services;
- c) Developing a thorough understanding of the cultural context in order to identify appropriate forms of support;
- d) Providing information to victims about support available;

- e) Developing clear protocols for referring victims for support, and clear criteria for determining which support measures will be provided at each stage;
- f) Seeking to reduce stress and secondary victimisation created by involvement in the Court's proceedings, while recognizing that some victims may be especially vulnerable to distress;
- g) Putting in place quality control mechanisms to ensure the victims are treated with professionalism and respect and that they receive the assistance they need; and
- h) Seeking and respond to feedback from victims and their representatives, to ensure that services provided reflect their needs.

43. The Court will make every effort to ensure that any support for victims is sustainable even beyond the end of proceedings. Co-operation will be sought with counselling and rehabilitation centres and local and international organizations dealing with victims.

Objective 4:

To ensure that victims are able to fully exercise their right to participate in ICC proceedings, in a manner that is sensitive to their rights and interests and consistent with the rights of the Defence and the need to ensure a fair trial.

44. By providing victims with an opportunity to articulate their views and concerns, enabling them to be part of the justice process and by ensuring that consideration is given to their suffering, it is hoped that they will have confidence in the justice process and view it as relevant to their day to day existence rather than as remote, technical and irrelevant. It is recognized that victim participation will contribute to the justice process at the Court and will make the proceedings more sensitive to victims.

45. Victims' participation is a statutory right, not a privilege. While implementation might vary according to the specific circumstances, as provided in the Statute and the Rules, it is crucial to build upon the experience of the last four years of activities of the Court in this regard and address issues of relevance to victims' participation in a clear, consistent and certain manner.

46. The Court acknowledges the many forms that victims' participation can take from petitioning the Court or volunteering information to applying for participant's status and recognizes the challenges involved in ensuring effective participation. If the rights of victims are to be effective, victims must first be aware of their right to participate so that they can take informed decisions about whether and how to exercise it, and must be assisted to apply to participate throughout if they wish to do so. The Court recognizes that these can most effectively be carried out in partnership with individuals and organizations that are close to victims. To that end, the Court will identify and provide training and support to intermediaries who decide to assist victims in relation to their participation in ICC proceedings. The Registry will make available standard application forms that are both user-friendly for the victims and capable of providing the Chambers with the information they need. It will co-operate with intermediaries and legal representatives to ensure that victims can present complete information so as to allow their applications to be properly considered by the relevant chambers.

47. An effective participation system necessitates efficient systems to enable the Court to manage and process applications received. The Registry, which has been given responsibility for this, will put in place and implement systems able to receive applications from victims in the field, process potentially large numbers of applications while maintaining quality and accuracy, meeting the demands of the pace of judicial proceedings and maintaining

confidentiality, and provide any support required by Chambers to enable them to decide on applications.

48. If participation of victims is to be meaningful for victims, it is important to evaluate the experience of participating so that necessary adjustments can be made to Court policies and approaches. To this end, programmes will be developed to evaluate the satisfaction of victims with the experience of participating in proceedings.

49. Key features of ensuring victims' right to participate in proceedings include:

- a) Carrying out functions in a timely manner to ensure victims may apply and have their applications considered so as to keep pace with the proceedings;
- b) Developing strategies for ensuring confidentiality of information and the need to respect the safety, well-being, dignity and privacy of victims; and
- c) Specific strategies will be developed in relation to vulnerable or marginalised victims.

Objective 5:

To ensure that as many victims as possible are able to exercise their rights as regards reparation and to benefit from assistance.

50. This objective involves the Court developing, in time, principles as regards reparations envisaged under article 75, paragraph 1, of the Statute, which give effect to the right.

51. Every effort must be made to ensure that reparations are meaningful to victims. To this end, it is recognized that not all victims will want the same things and efforts must be made to ascertain what the most appropriate form of reparation is in a particular case, including restitution, compensation and rehabilitation. This would include conducting consultations with victims and taking care to avoid creating a negative impact, as well as making efforts to harness the maximum possible impact of the Court's mandate as regards reparations.

52. When reparations awards are issued by the Court, it will be important to make them known as widely as possible. The Registry will ensure it is prepared to publicise reparations proceedings and decisions.

53. The effectiveness of the Court's action on reparation will depend upon the availability of assets. This requires Chambers, OTP, Registry, and the TFV to make efforts in this regard. Such efforts might include identifying assets of the accused and seeking co-operation of States in tracing, freezing and seizing them and in enforcing reparations orders. The OTP will pay particular attention to the investigating and tracking of financial assets as part of its investigative procedures. On the part of the TFV, it is responsible for securing voluntary contributions to meet reparations awards where there are insufficient assets from the Accused. The TFV will then prepare the implementation plans for delivering reparation awards, if requested to do so by a Chamber.

54. The TFV has been given the additional mandate to use resources to benefit victims of crimes and their families, outside the context of a particular case. The TFV, with the guidance of its Board of Directors, will advocate for and assist the most vulnerable victims of the crimes within the Court's jurisdiction.

55. Key features of the Court's approach to providing assistance and reparations include:
- a) Close partnership with partners at the grassroots level (local NGOs, traditional/religious leaders, local authorities, and especially the victims themselves) to ensure assistance and reparations are culturally appropriate and meaningful;
 - b) Presence of field staff in communities to ensure proper technical support, monitoring and evaluation of projects;
 - c) Assisting the victims to 'assist themselves' through empowering them to undertake the rehabilitation activities required to help them restore, to the extent possible, the life they had or would have had if they had not been victims of the crimes under the jurisdiction of the ICC;
 - d) Mobilising victims with the specific focus on the most vulnerable in order to provide group assistance and encourage self help initiatives; and
 - e) Working with the communities, insisting on a mixed participation of the families and communities alongside victims in community rehabilitation efforts.

Objective 6:

To ensure that victims obtain high-quality legal representation before the Court.

55. In order for victims to fully exercise their rights under the Rome Statute, they must receive assistance in navigating the complexities of the legal process before the Court. The distance of the Court from the location of the victims and the numbers of victims who may wish to participate or seek reparation also mean that their interests can most effectively be represented through legal representatives.

56. For many victims it is also important to have a lawyer of their choice or at least from their own community or country to represent them, given their knowledge of the context in which crimes were committed and the conditions in which they live. The continued involvement of qualified lawyers from around the world is also important in promoting the Rome Statute at national level and thus the principle of complementarity.

57. Legal representatives of victims will be provided with the administrative and logistical support that they need to carry out their functions, including office facilities at the seat of the Court, access to and training in the electronic systems used by the Court and support to communicate with their clients in the field.

58. Legal representatives will also be provided with legal support. The Court will maintain an adequately resourced OPCV to provide legal support and assistance to legal representatives of victims and to victims. The Office will be able to build up an expertise in the law and practice of the Court and provide specialist legal research and other support. The Office will also be available to represent victims directly. The Court will seek to ensure that no victim participating in Court proceedings is unrepresented.

59. Another essential element in ensuring quality legal representation of victims is legal aid. The legal aid scheme will be managed by the Registry, in consultation with the chambers, in a way that allows for flexibility and is tailored to the specific needs of legal representation of victims. Legal aid must reflect the modalities of participation and reparation as decided by the chambers. It must also allow regular and effective communication between the legal representatives and their clients. It is recognized that the legal aid scheme of the Court may well not be able to cover all the legal assistance provided to victims, particularly in the early

stages when they are filling in their applications. The Court will be open to exploring options for assisting in assuring legal assistance for victims where legal aid is not available.

60. It can be expected that many victims will approach the Court without a legal representative. When this occurs, and subject to judicial decisions, they will be represented by the OPCV or the Court will assist them to choose a lawyer.

61. The Rules of Procedure and Evidence (RPE) provide that where there are a number of victims, a Chamber may ask them to choose a common legal representative in order to ensure the efficiency of the proceedings, whilst taking into account the need to avoid any conflict of interest. In assisting the organisation of common legal representation, every effort will be made to ascertain and respect the views and interests of the victims.

III. Co-ordination and monitoring

62. The internal Working Group on Victims is developing indicators and evaluation tools for monitoring progress made in implementing the Strategy, taking into account the different functions and obligations of the different organs of the Court. Having set its objectives and targets, the Court will continue to review and further develop the Strategy as it monitors and evaluates the results from the Strategy put in place. For this reason, as the Court develops, so will it progressively develop better ways of monitoring and measuring progress, and will report to the States Parties periodically.