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## Court's Revised strategy in relation to victims

### *List of Abbreviations and Acronyms*

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| ASP  | Assembly of States Parties  |
| CAR  | Central African Republic  |
| CSS  | Counsel Support Section   |
| DRC  | Democratic Republic of the Congo  |
| FIDH | International Federation for Human Rights<br>(Fédération internationale des ligues des droits de l'Homme) |
| ICC  | International Criminal Court  |
| IRS  | Initial Response System   |
| LRV  | Legal Representative of Victims   |
| NGO  | Non-Governmental Organisation   |
| OPCD | Office of Public Counsel for the Defence  |
| OPCV | Office of Public Counsel for Victims  |
| OTP  | Office of the Prosecutor  |
| PIDS | Public Information and Documentation Section  |
| PMP  | Performance Monitoring Plan   |
| SGBV | Sexual and Gender Based Violence  |
| SOP  | Standard Operating Procedure  |
| SSS  | Security and Safety Section   |
| TFV  | Trust Fund for Victims  |
| VPRS | Victims Participation and Reparations Section   |
| VWU  | Victims and Witnesses Unit  |

## I. Background

1. During its tenth session, the Assembly of States Parties (ASP) recognised that victims' rights to equal and effective access to justice; protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms, are essential components of justice.<sup>1</sup> The ASP emphasized the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the ICC towards victims.<sup>2</sup> At that time, the ASP noted the ongoing work of the Court in reviewing its Strategy in Relation to Victims and its report thereon, and requested the Court to finalize the review in consultation with States Parties and other relevant stakeholders, and report thereon in advance of the Assembly at its eleventh session.

2. In accordance with the decision of the ASP during its eighth session, the Review Conference in Kampala included under the agenda item "Stocktaking of international criminal justice" the topic of the "Impact of the Rome Statute on victims and affected communities." The Review Conference noted the Court's seriousness and its efforts to realise its mandate regarding victims, as well as the development of the Strategy in Relations to Victims.<sup>3</sup> An outcome of the Review Conference was the recognition of both the achievements and challenges that the Rome Statute system as a whole faces in realising the unique mandate created by the Statute enabling victims to participate and exercise their rights as actors within the international criminal justice system in the setting of an international tribunal; recognition that the ICC has not only a punitive but also a restorative function; that positive engagement with victims can have a significant effect on how victims experience and perceive justice; and that it can contribute to their healing process.

3. The Court was requested to revise its Strategy in Relations to Victims in light of the recommendations of the Review Conference. The Court prepared this Revised Strategy in Relations to Victims (Revised Strategy) in response. The revisions are based on the results of the stocktaking exercise at the Review Conference, best practices from the field, as well as the many constructive comments received from non-governmental organisations (NGOs), civil society and other stakeholders. This Revised Strategy is a step in the ongoing dialogue between the ICC and the States Parties and the non-state actors that are partners and stakeholders in the Court's work in relation to victims. In a separate document,<sup>4</sup> The Report on the ICC Revised Strategy in Relation to Victims: Past, Present and Future (Revised Report), the Court reports on its experience in implementing the original Strategy, and explains the implications of the Revised Strategy.

4. As with the original strategy, the Revised Strategy grows out of the common vision of all the relevant elements of the ICC system.<sup>5</sup> The Revised Strategy reflects the nature of the ICC as a judicial institution and different responsibilities of the various Organs and Sections which, in supporting and/or participating in the judicial process, comprise the whole.<sup>6</sup> It provides a flexible shared framework in which the specific objectives and activities of the elements of the ICC that deal with victims can be coordinated and harmonised and within which the strategies of the Organs and Sections of the ICC and the Trust Fund for Victims (TFV) are intended to fit. Important aspects of the legal framework, especially in relation to victims, still await judicial determination or interpretation. This

<sup>1</sup> ICC-ASP/10/Res.5, Strengthening the International Criminal Court and the Assembly of States Parties, *Adopted at the 9th plenary meeting, on 21 December 2011, by consensus.*

<sup>2</sup> ICC-ASP/10/Res.5, Strengthening the International Criminal Court and the Assembly of States Parties, *Adopted at the 9th plenary meeting, on 21 December 2011, by consensus.*

<sup>3</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Ninth session, The Hague*, (International Criminal Court publication ICC-ASP/9/25 or RC/11).

<sup>4</sup> The Strategy was fully integrated into the initial report of the Court on the Strategy in Relation to Victims, ICC-ASP/8/45 or RC/11. However, the Revised Strategy is an independent document from this Report.

<sup>5</sup> Those participating in the formulation of this strategy include: elements of the OTP and of the Registry, as well as the Secretariat of the TFV and the Offices of Public Counsel for Victims (OPCV) and for the Defence (OPCD). The Presidency participated in the drafting process as an observer.

<sup>6</sup> In this context, when the report refers to the ICC system, this includes not only the Judiciary, the Presidency, the Registry and the Office of the Prosecutor (OTP), but also the Trust Fund for Victims (TFV), the Secretariat of the Assembly of States Parties, the Internal Oversight Mechanism as well as the defence and victims' representatives. In contrast, when the report refers to the Rome Statute System, it refers to all the elements of the ICC system enumerated above as well as the ASP and its subsidiary bodies and the States Parties.

Revised Strategy fully respects this process and does not impinge in any way on the powers of the Chambers and remains flexible to incorporate judicial rulings.

5. The Revised Report accepts the definition of victim used in the original report and strategy.<sup>7</sup> However, the Revised Report refines the earlier understanding of victims by recognising that certain groups of victims have special or particular needs. These include, but are not limited to, victims of sexual violence, children, the elderly, persons with disabilities and the severely traumatised. In certain cases, such as working to ensure adequate and representative participation of women and girls, the Court appreciates the need for, and will undertake, focused and proactive interventions.

## II. Revised Strategy in Relation to Victims

### A. Introduction

6. The Revised Strategy has been developed using a rights-based perspective and therefore focuses on realising and actualising the rights of victims as contained in the Rome Statute and the ICC's legal framework. This approach is used as it recognises the dignity of the victims as human beings and focuses on them not as someone with needs who requires assistance, but as a rights holder to whom the duty bearer - in this case the Court, the TFV and the Rome Statute system as a whole - owes an obligation it must fulfil. This approach also enables one to look at the fundamental structural causes that underlie the failure to realise one's rights if and when that occurs. Finally, a rights-based perspective reconfirms and empowers the victim as a vital actor in the justice process rather than a passive recipient of services and magnanimity.

7. In addition to the rights-based approach, there have been some other substantive changes in the Strategy's underlying principles. The addition to paragraph 11 highlights the Court's aspiration to have the interaction between victims and the Court be positive and beneficial, exceeding the standard of "do no harm." Some elements of paragraph 15.b and 15.e have been revised and expanded to include input from the Review Conference and the NGOs' comments on the Strategy.

8. In response to reactions to the original strategy, Objectives 2 and 3 as well as Objectives 4 and 6 have been merged. As the merged Objectives were different facets of related rights, this involved no real substantive change to their content. In the Revised Strategy there are now four Objectives dealing with the themes of: (1) communication; (2) protection and support; (3) participation and representation; and (4) reparations and assistance. Over and above that, gender has been incorporated as a issue of vital importance that cross-cuts all of these Objectives .

9. The effective realisation of victims' rights and the ICC system's sensitivity to the requirements of victims broadly and to individual groups of victims specifically, will be a measure of the Court's success in fulfilling the unique mandate articulated in the victim related sections of the Court's statutory framework.

### B. Broad principles

10. As mentioned in the final report of the focal points on the stocktaking exercise of international criminal justice at the Review Conference, victims' participation empowers them, recognises their suffering and enables them to contribute to the establishment of the historical record, the truth as it were of what occurred.<sup>8</sup> Victims play an important role as active participants in the quest for justice and should be valued in that way by the justice process. Moreover their participation in the justice process contributes to closing the impunity gap and is one step in the process of healing for individuals and societies.

<sup>7</sup> Report of the court on the strategy in relation to victims, *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Ninth session, The Hague*, (International Criminal Court publication ICC-ASP/9/25 or RC/11).

<sup>8</sup> RC/11, annex V(a) Stocktaking of international criminal justice, *The impact of the Rome Statute system on victims and affected communities*, Final report by the focal points (Chile and Finland) (Previously issued as ICC-ASP/9/25).

11. The interaction between the victims and the ICC should be a mutually beneficial one in which both their rights and responsibilities are realised.<sup>9</sup> It is the underlying premise of this Revised Strategy that no action of the Court should do harm, and that respect must be paid to each individual. When working 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.<sup>10</sup>

12. The Rome Statute system is based on the principle of complementarity and consists of many elements of which the ICC is only one. To fully address the rights of victims and to both empower them and to fulfil the system's duty to offer victims appropriate remedies, which may include but are not limited to reparations,<sup>11</sup> the participation of all elements of the Rome Statute system is necessary: The ICC, The Trust Fund for Victims, the States Parties, the ASP and its subsidiary bodies, etc.

13. Therefore, the principle of complementarity is the keystone of the Revised Strategy. As a court of last resort with limited resources but a broad area of responsibility, the Court can only achieve its goals when it works in cooperation with others. A wide range of actors including States Parties, local authorities, non-governmental and community based organisations, as well as international organisations have been and continue to be instrumental in bringing about an increased awareness of victims' rights, as well as in enabling them to realise their rights. Wherever possible the Court seeks to identify a common approach and to coordinate with the above actors.

14. Finally, many of the specific rights of victims are being determined in concrete detail by the relevant chambers during the proceedings and deliberations. This Strategy cannot and is not intended to infringe on judicial independence or to presuppose the rulings of the chambers. Victims' rights continue to evolve and this Strategy will have to adapt in response. Part of that evolution will be maintaining the balance between the rights of victims and the rights of the accused, as well as the right to a fair, effective, expeditious, and impartial trial.

15. The broad principles that underpin the Revised Strategy are:<sup>12</sup>

(a) A recognition of the importance of the victim, the importance of victims' participation in the trials and their right to have their distinct needs and interests taken into account by the Court and in the Court's activities;

(b) A commitment to realise victims' rights to information related to the Court, its activities and processes. The Court is committed to meeting victims' need to understand this information: tailoring it to the differing cultures and circumstances of affected communities, as well as with an awareness of different attitudes toward the ICC, the alleged crimes and justice in affected communities;

(c) A recognition that according to the Rome Statute and the other legal instruments of the Court, victims have a right to apply to the Court for recognition as well as to have a voice in and participate in all stages of the proceedings, starting at the preliminary examination stage, subject to the rights of the accused and a fair and impartial trial, and they have a right to seek reparations in the event of a conviction;

(d) A commitment to ensure that victims can actualise their right to equal and effective access to the Court, including effective representation of their interests by qualified counsel;

(e) A commitment on the part of the Court to fulfil its duty to victims to provide for their safety, physical and psychological well-being, dignity and privacy consistent with

<sup>9</sup> Annexed to this Revised Strategy are the rights of victims and obligations of States Parties under the ICC system.

<sup>10</sup> *Rome Statute*, Art. 43, 54(1)(b), 57(3)(c), 68; *Rules of Procedure and Evidence*, Rules 18(d), 87, 88.

<sup>11</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 60/147, 16 December 2005 (hereinafter UN Basic Principles).

<sup>12</sup> These principles assume the fundamental principle that the rights of victims will be realised in manner consistent with a fair and impartial trial and the rights of the accused in the proceedings.

the Rome Statute and the other legal instruments of the Court, and relevant rulings of the Chambers;

(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 on the international and local levels.

16. The realisation of these rights is at the centre of the ICC's Revised Strategy in Relation to Victims. For the purposes of actualising these rights, the Court has organised them into four main policy Objectives.<sup>13</sup> These Objectives are phrased in part as aspirations. While it is not always possible to achieve these ambitious goals due to the reality in the field, resource limitations etc., the Court continually strives to do its utmost and remains committed to achieving the best possible outcome within the limits imposed by existing resources and our operating environment.

17. Gender is a cross-cutting issue with significant impact on victims and on the work of the ICC system with victims and affected communities. Victims have a right as set out in the Court's legal framework<sup>14</sup> to have gender and its impact taken into consideration in certain circumstances. In accordance with its legal framework, the ICC system will continue to do its utmost to interact with victims and affected communities with an awareness of gender as well as developing and implementing its programming and victims' related work incorporating gender considerations.

## C. Strategic Objectives

### 1. Objective 1: Communication

18. Ensure that victims of situations under preliminary examination<sup>15</sup> or victims of a situation or case under investigation, trial, appeal or for which reparations are being adjudicated receive clear communications about the ICC, its mandate and activities as well as their right as victims in relation to the elements of the ICC system and at all steps of the judicial process.<sup>16</sup>

### 2. Objective 2: Protection and Support

19. Provide protection, support and assistance to victims interacting with the Court in order to safeguard their security, 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.<sup>17</sup>

### 3. Objective 3: Participation and Representation

20. Ensure that victims are able to fully exercise their right to effectively participate in the ICC proceedings with effective legal representation in a manner that is consistent with their rights and personal interests as well as with the rights of the accused to a fair, expeditious and impartial trial.<sup>18</sup>

<sup>13</sup> These objectives have been condensed in number in areas where the substantive elements of the objectives made it possible to do so.

<sup>14</sup> *Rome Statute*, Art. 43(6). 68(1); *Rules of Procedure and Evidence*, Rules 16(1)(d) 17(2)(a)(iv), 17(2)(b)(iii) 18(d) and 19(e). See also annexed to this Revised Strategy, a list detailing the rights of victims and obligations of States Parties under the ICC system.

<sup>15</sup> At this stage of the process, the OTP is the leading actor in communicating with victims and is proactive as it sees fit. The other parts of the ICC system may react, as appropriate, to enquiries during the preliminary examination phase, without prejudice to any relevant rulings or orders of the Court.

<sup>16</sup> *Rules of Procedure and Evidence*, Rule 92..

<sup>17</sup> *Rome Statute*, Art. 68(1); *Rules of Procedure and Evidence*, Rules 87 and 88.

<sup>18</sup> *Rome Statute*, Art. 68(3); *Rules of Procedure and Evidence*, Rules 89-99.

#### **4. Objective 4: Reparations and Assistance**

21. Ensure that victims are able to exercise their rights as regards reparation consistent with the Rome Statute and the ICC system's legal framework and to benefit from assistance.<sup>19</sup>

#### **D. Monitoring and Evaluation**

22. During the first two years, the Court's inter-organ Working Group on Victims (WG) will monitor the implementation of the Revised Strategy at bi-annual meetings to assess the level of implementation and identify the obstacles and revisions needed to enable the most effective and efficient implementation of the Revised Strategy. The WG will also conduct periodic consultations with various knowledgeable stakeholders from both within and outside the ICC system. The WG will receive and share recommendations and foster the exchange of experience and information with other members of the ICC system.

23. A detailed review will take place eighteen months after the adoption of the Revised Strategy and will aim to assess its implementation and its overall effectiveness at the levels both of policy and of practice. The Court will engage an independent unbiased evaluator, from either an external source or a capable internal office, to conduct a comprehensive evaluation process with a primary focus on the outcomes of the Strategy. The Strategy will be updated and suitable measures will be integrated based on the outcome and suggestions of that evaluation. The Court will provide States with a complete report on its progress at the end of every detailed evaluation, or every two years, whichever is shorter.

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<sup>19</sup> Reparations are a right of victims, under Article 75(1) of the Rome Statute. Assistance is not a right of victims. It is based on Rule 98(5) of the Rules of Procedure and Evidence, implemented in accordance with Regulation 48 and is considered to be the second mandate of the TFV. Their general assistance function is supported by voluntary contributions from donors to be used for the benefit of victims of crimes within the jurisdiction of the Court and their families.

## Annex

### **Rights and Prerogatives of Victims in Proceedings before the ICC**

1. This Annex enumerates the rights of victims' in relation to the various stages of proceedings. According to Article 68(3) of the Rome Statute (RS) some of these rights may be exercised directly by the victims or through their legal representative. This Annex identifies the rights of victims and also further prerogatives - noted as "possibilities" - that victims have and may be able to exercise. For example, while not containing victims' rights per se, Article 79 RS established a Trust Fund "for the benefit of victims within the jurisdiction of the Court". The rights and possibilities of victims enumerated below are categorised according to the stages of proceedings: at all stages of proceedings (A); situation and pre-trial stages (B); confirmation of charges (C); trial (D); delivery of a Trial Chamber's decisions (E); reparation (F); appeal stages (G); and sentencing (H).

2. These rights and possibilities derive from multiple sources of law in accordance with Article 21(1) RS. Firstly, victims' rights derive from the Rome Statute, the Elements of Crimes, Rules of Procedure and Evidence (RPE), the Regulations of the Court (RoC) and the Regulations of the Trust Fund (RTFV). Where appropriate, victims' rights also derive from applicable treaties, principles and rules of international law, including the established principles of the international law of armed conflict. Victims' rights may also be applied from the general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of states that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with the RS, international law and internationally recognised norms and standards. According to Article 21(3) RS, victims' rights may also be applied from internationally recognised human rights.

3. Of note, many of the rights and possibilities in this annex are not absolute, but are subject to limitations based on the circumstances of the case. For example, Article 68(3) RS stipulates that victims' rights to participate where their personal interests are affected can be exercised if not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. In addition, many of the rights and possibilities that victims have are being interpreted by the relevant chambers during proceedings before the Court. For example, victims' rights regarding reparations proceedings under Article 75 RS are currently being considered in the *Lubanga* case. The enumeration of rights and possibilities in this Annex is not intended to infringe upon judicial independence or to presuppose the rulings of chambers. As victims' rights and possibilities evolve and this annex will be adapted as necessary.

4. The Rome Statute system is based on the principle of complementarity and, as such, it is also the keystone of this Revised Strategy. As a court of last resort with limited resources but a broad area of responsibility, the Court can only achieve its goals when it works in cooperation with others. A wide range of actors have been and continue to be instrumental in bringing about an increased awareness of victims' rights and enabling them to realise their rights. The final table in the Annex (I) enumerates the obligations of States Parties regarding victims. These obligations derive from the text of the RS and RPE. In order for these rights to be meaningful in practice, States Parties must fulfil certain ancillary obligations. Therefore, further obligations of States derive from an interpretation of these rights. As a whole, this Annex was prepared to assist all of the duty bearers in the RS system to understand and fulfil their obligations to victims.

| <i>Source</i>   | <i>Right or possibility</i>   |
|---|---|
| <b>A. Rights and prerogatives of victims in relation to all stages of proceedings</b> |   |
| Article 68(1) RS  | Right to protection of their safety, physical and psychological well being, dignity and privacy protected   |
| Rule 86 RPE   | General right of all victims and witnesses, in particular children, elderly persons, persons with disabilities and victims of sexual or gender violence, to have their needs taken into account by the Chamber in making any direction or order and by the other organs of the Court in performing their functions under the RS or the RPE  |
| Rule 16(2)(a) RPE   | Right to be informed by the Registrar of their rights under the RS and the RPE, and to be informed of the existence, functions and availability of the Victims and Witnesses Unit   |
| Rule 16(2)(b) RPE   | Right to be informed by the Registrar in a timely manner of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality  |
| Rule 90(1) RPE  | Right to choose freely their legal representatives  |
| Rule 16(1)(b) RPE   | Right to be assisted by the Registrar in obtaining legal advice and in organising their legal representation, and to have the Registrar provide their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting the victims' rights during all stages of the proceedings in accordance with Rules 89 to 91 RPE |
| Reg 81 RoC  | Right to support and assistance from the Office of Public Counsel for Victims with support and assistance   |
| Rule 90(4) RPE  | Right to have the Registry and the Chamber concerned take all reasonable steps to ensure that, in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in Article 68(1) RS, are represented, and that any conflict of interest is avoided   |
| Rule 16(1)(a) RPE   | Right to be provided by the Registrar with notice or notification   |
| Rule 16(1)(c) RPE   | Right to be assisted by the Registrar when participating in the different phases of the proceedings in accordance with Rules 89 to 91 RPE   |
| Rule 16(1)(d) RPE   | Right to be afforded by the Registrar with gender-sensitive measures to facilitate their participation at all stages of the proceedings   |
| Article 68 RS and Rule 87(1) RPE  | Right to request the Chamber concerned to order protective measures to protect them   |
| Article 68 RS and Rule 88(1) RPE  | Right to request the Chamber concerned to order special measures to protect them and to facilitate their testimony  |
| Rule 17 RPE   | Right to be afforded, by the Victims and Witnesses Unit in accordance with the RS and the RPE and in consultation with the Chamber, the Prosecutor and the defence, as appropriate, protection and support when they appear before the Court and when they are at risk on account of their testimony in accordance with Article 43(6) RS  |
| Article 75 RS and Rule 94 RPE   | Right to request reparations for harm suffered as a result of the commission of crimes within the jurisdiction of the Court, which right is without prejudice to the victims' rights to reparations under national or international law   |
| Article 68(3) RS and Rule 89 RPE  | Possibility, subject to the authorisation of the Chamber concerned*, to present their views and concerns in accordance with the modalities allowed by the Chamber concerned   |
| Article 68(3) RS and Rule 93 RPE  | Possibility to be requested to submit their views "on any question"   |
| Article 79 RS and RTFV  | Possibility for victims to benefit from assistance and/or reparations from the Trust Fund for Victims   |
| Rule 91(2) RPE  | Possibility to attend and participate in the proceedings "unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions"  |
| Rule 89(1) RPE  | Possibility to "make opening and closing statements" subject to the authorisation of the Chamber concerned*   |
| Rule 91(3)(a) RPE   | Possibility, subject to the authorisation of the Chamber concerned*, to examine a witness, an expert or the accused   |

\* In order to authorise such request, the relevant Chamber makes sure that the conditions established under Article 68(3) RS are fulfilled.



| <i>Source</i>  | <i>Right or possibility</i>   |
|--|---|
| Rule 90(5) RPE   | Possibility to receive assistance from the Registry when lacking the necessary means to pay for a common legal representative   |
| Rule 119(3) RPE  | Possibility to present observations related to proceedings pertaining to the imposition or amendment of any conditions restricting the liberty of a suspect or accused person.  |
| <b>B. Rights and prerogatives of victims in relation to the situation and the pre-trial stage</b>            |   |
| Article 15(3) RS and Rule 50 RPE   | Right to make representations to the Pre-Trial Chamber concerned with regard to proceedings following a request for authorisation of an investigation   |
| Article 19(3) RS   | Right to submit observations in proceedings with respect to the jurisdiction of the Court or the admissibility of a case  |
| Rule 92(3), (5) and (6) RPE  | Right to be informed of the decision of the Court to hold a hearing to confirm charges pursuant to Article 61 and to be notified of the date of proceedings; requests, submissions, motions and other documents; and decisions of the Court   |
| Article 54 RS  | Right to have their interests and personal circumstances, including age, gender as defined in Article 7(3) and health, respected by the Prosecutor when she/he is taking appropriate measures to ensure the effective investigation and prosecution of crimes within the Court's jurisdiction   |
| Article 54 RS  | Right to have the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children, taken into account by the Prosecutor when she/he is taking appropriate measures to ensure the effective investigation and prosecution of crimes within the Court's jurisdiction   |
| Articles 68(3), 53 RS, Rules 89(1), 92(2), (5) and (6) and 93 RPE  | Right to be notified of the decision of the Prosecutor not to initiate an investigation or not to prosecute and the possibility to apply for participation should there be ensuing proceedings, and the possibility, subject to the authorisation of the Pre-Trial Chamber concerned*, to present views in a review following the decision of the Prosecutor not to initiate an investigation or not to prosecute |
| Articles 56(3), 57(3)(c), 68(1) RS   | Possibility to be requested by the Pre-Trial Chamber concerned to submit views in proceedings relating to measures to protect the safety, physical and psychological well-being, dignity and privacy of victims, as well as proceedings relating to the preservation of evidence  |
| Reg 50(a) RTFV   | Possibility to receive physical or psychological rehabilitation or material support from the Trust Fund for Victims   |
| <b>C. Rights and prerogatives of victims at the confirmation of the charges hearing</b>                      |   |
| <b>Anonymous victims</b>   |   |
| Article 68(3) and Rules 91 and 92 RPE (see No ICC-01/04-01/07-474, paras 124-152, and 171-183). <sup>1</sup> | Right to be notified of the public filings and decisions contained in the record of the case  |
| <i>Ibid.</i>   | Right to attend the public sessions of the confirmation of the charges hearing  |
| <i>Ibid.</i>   | Possibility to seek the authorisation of the Pre-Trial Chamber concerned to intervene during the public sessions of the confirmation of the charges hearing*  |
| <i>Ibid.</i>   | Possibility, subject to the authorisation of the Pre-Trial Chamber concerned*, to make opening and closing statements at the confirmation of the charges hearing  |
| <b>Non-anonymous victims</b>   |   |
| <i>Ibid.</i>   | Right to attend public and closed sessions of the confirmation of the charges hearing, subject to limitation under certain conditions   |
| <i>Ibid.</i>   | Possibility to be notified of all filings and decisions contained in the record of the case, including the confidential ones, excluding any <i>ex parte</i> materials, subject to limitation under certain conditions   |
| <i>Ibid.</i>   | Possibility, subject to the authorisation of the Pre-Trial Chamber concerned*, to make submissions on issues relating to the admissibility and probative value of the evidence upon which the parties intend to rely  |
| <i>Ibid.</i>   | Possibility, subject to the authorisation of the Pre-Trial Chamber concerned*, to participate in relation to all matters other than those in which their intervention has been expressly excluded   |

<sup>1</sup> The Court notes that the jurisprudence is not uniform regarding all of the rights and possibilities listed.

| <i>Source</i>  | <i>Right or possibility</i>  |
|--|--|
| <i>Ibid.</i> and Rule 91(3) RPE  | Possibility, subject to the authorisation of the Pre-Trial Chamber concerned*, to examine witnesses  |
| <i>Ibid.</i> and Rule 89(1) RPE  | Possibility, subject to the authorisation of the Pre-Trial Chamber concerned*, to make opening and closing statements at the confirmation of the charges hearing   |
| <b>D. Rights and prerogatives of victims at the trial stage</b>  |  |
| Rule 131(2) RPE (see No ICC-01/04-01/06-1119, para 105).   | Right (including through legal representatives) to consult the record of the proceedings, subject to any restrictions concerning confidentiality and the protection of national security information   |
| Rule 92(5) (see No ICC-01/04-01/06-1119, para 107)   | Right to be notified of all public proceedings and filings contained in the record of the case   |
| <i>Ibid.</i>   | Right to be notified by the Registry of confidential filings when the name of their legal representative is on the cover, subject to limitation under certain conditions   |
| Article 69(3) RS and Rule 91(3) RPE (see No ICC-01/04-01/06-1119, para 108.)   | Possibility, once the Trial Chamber concerned has “requested” and their personal interests are engaged by certain evidence, to present and examine that evidence and not to have their questions limited to reparations issues   |
| Article 68(3) RS (see No ICC-01/04-01/06-1119, paras 110 and 111.)   | Right to be granted access to the Prosecution’s “summary of presentation of evidence” in public redacted form if they are a victim applying to participate or a participating victim   |
| Article 68(3) RS (see No ICC-01/04-01/06-1119, para 118).  | Possibility to submit applications or requests when their personal interests are concerned   |
| Article 68(3) RS (see No ICC-01/04-01/06-1119, para 111).  | Possibility to be provided with confidential material in the possession of the Prosecution subject to a demonstration of its material relevance to the personal interests of the participating victim concerned  |
| Article 68(3) RS (see No ICC-01/04-01/06-1119, paras 113 and 114.)   | Possibility, subject to the authorisation of the Trial Chamber concerned*, to participate in closed and <i>ex parte</i> hearings and to submit confidential or <i>ex parte</i> written submissions   |
| Rule 89(1) RPE (see No ICC-01/04-01/06-1119, para 117)   | Possibility, subject to the authorisation of the Trial Chamber concerned*, to make opening and closing statements at the beginning and at the end of the trial   |
| Article 68(3), 64(6)(b) and (d) and 69(3) RS (see No ICC-01/04-01/07-1665-Corr, paras 19-32, 45 - 48)                                    | Possibility, subject to the authorisation of the Trial Chamber concerned*, to appear in person   |
| Articles 64(6)(b),(d) and 69(3) RS (see No ICC-01/04-01/07-1665-Corr, paras 45-48).  | Possibility to request the Trial Chamber concerned to call witnesses   |
| Articles 69(3) and (4), 66(3), 68(3) and 64(6)(d) and (9) and Rules 89 and 91 RPE (see No ICC-01/04-01/06-1432 OA9, paras 93-97 and 101) | Possibility, subject to the authorisation of the Trial Chamber concerned*, to present evidence and to challenge admissibility and probative value of evidence presented by the parties, including evidence on the accused’s guilt or innocence   |
| Reg 56 RoC (see No ICC-01/04-01/06-1119, paras 120-122).   | Possibility, subject to the authorisation of the Trial Chamber concerned, to give evidence relating to reparations simultaneously with evidence relating to the charges, where doing so, in the estimation of the Trial Chamber, would avoid unnecessary hardship and or unfairness to the witness and/or would guarantee the preservation of evidence that may not be available later in the proceedings and/or would assist with the efficient disposal of issues that may arise for determination |

| <i>Source</i>  | <i>Right or possibility</i>  |
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| <b>E. Rights and prerogatives of victims at the stage of delivery of a Trial Chamber's decision</b>  |  |
| Rule 144 RPE   | Right to be notified of and, wherever possible, to be present for the pronouncement of the decisions of the Trial Chamber concerned regarding admissibility of a case, jurisdiction of the Court, criminal responsibility of the accused, sentence and reparations |
| Rule 143 RPE   | Right to submit a motion to postpone a hearing on matters related to sentence  |
| Rule 145(1)(c) RPE   | Possibility to be requested by the Trial Chamber concerned to submit views on the harm caused to the victims within the proceedings on matters related to sentence <sup>2</sup>  |
| <b>F. Rights and prerogatives of victims in the reparation proceedings stage under Article 75 RS</b> |  |
| Article 75 RS and Rules 94 and 97(1) RPE and RTFV  | Right to seek reparations, collective or individual or both, including restitution, compensation and rehabilitation  |
| Rule 97(2) RPE   | Right to request the Trial Chamber concerned to appoint experts to determine the scope, extent of any damage, loss and injury to or in respect of victims, and to suggest various options concerning the appropriate types and modalities of reparations           |
| Rule 99(1) RPE   | Right for victims who have made a request for reparations or who have given a written undertaking to do so, to request the Trial Chamber concerned for certain measures for the purpose of forfeiture of property and assets by States concerned                   |
| Rule 143 RPE   | Right to submit a motion to postpone a hearing on matters related to reparations   |
| Reg 48 RTFV  | Right to benefit from other resources of the Trust Fund as defined under Rule 85 RPE   |
| Article 75(3) RS, Rule 95 RPE  | Possibility to be invited by the Trial Chamber concerned to make representations for the purpose of making an order for reparations  |
| Rule 97(2) RPE   | Possibility to make observations on the reports of the experts regarding assessment of reparations   |
| Rule 91(4) RPE   | Right to question, subject to the authorisation of the Trial Chamber concerned*, witnesses, experts and the accused within the reparation proceedings, when the restrictions set forth in Rule 91(3) RPE are not applicable  |
| Rule 221(1) RPE  | Possibility to be requested, at the Presidency's discretion, to submit views "on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court"   |
| <b>G. Rights and prerogatives of the victims at the appeal stage</b>                                 |  |
| <b>With regard to reparations</b>  |  |
| Article 82(4) RS, Rule 150(1) RPE and Reg 58 RoC   | Right to appeal against an order for reparations   |
| Rule 151(2) RPE  | Right to be notified of the filing of an appeal against an order for reparations   |
| Reg 59(1) RoC  | Right to participate in an appeal against an order for reparations by submitting a response to the document in support of the appeal   |
| Reg 60 RoC   | Possibility, subject to the authorisation of the Appeals Chamber, to submit a reply within her/his appeal against an order for reparations   |
| <b>With regard to other types of appeals</b>   |  |
| Articles 81(1) and (2) RS, Rule 150 RPE and Reg 59(1) RoC  | Right to participate in an appeal against a decision of conviction or against a sentence by submitting a response to an appeal brought by a party  |
| Article 81(3)(c)(ii) RS, Rule 154(1) RPE and Reg 64(4) RoC   | Right to participate in an appeal against a decision of acquittal by submitting a response to the document in support of the appeal  |

<sup>2</sup> In the *Lubanga* case, the Trial Chamber instructed the Legal Representatives to file submissions "on the relevant evidence presented during trial that may be applicable to sentence along with their views as to the sentence to be imposed on the convicted person, taking into consideration, *inter alia*, any specific aggravating and mitigating factors" (ICC-01/04-01/06-2871, para 5).

| <i>Source</i>  | <i>Right or possibility</i>   |
|--|---|
| Article 19(3) RS and Rule 59(3) RPE (see No ICC-01/04-01/07-1295).   | Right to participate in an appeal against a decision with respect to the jurisdiction of the Court or the admissibility of a case by submitting a response to a document in support of the appeal   |
| Articles 82(1)(b) and (c) RS, Rules 154(1) and (2) RPE and Reg 64(4), (5) and (6) RoC  | Possibility, subject to the authorisation of the Appeals Chamber**, to participate in an appeal against a decision granting or denying release of the person concerned and against a decision to act on its own initiative, by submitting observations to the document in support of the appeal   |
| Articles 82(1)(d) and (2) RS, Rule 155(1) RPE and Reg 65(3), (4) and (5) RoC   | Possibility, subject to the authorisation of the Appeals Chamber**, to participate in an appeal against a decision involving an issue that would significantly affect the fair and expeditious conduct of the proceedings and against a decision granting the Prosecutor to take specific investigative steps, by submitting a observations to the document in support of the appeal  |
| <b>With regard to proceedings for variation of grounds of appeal</b>   |   |
| Reg 61 RoC   | Right to submit an application for variation of grounds of appeal against an order for reparations and, if granted, to submit a document setting out the grounds of appeal as varied  |
| Reg 62(1) RoC  | Right to submit an application for leave to present additional evidence within an appeal against an order for reparations   |
| Reg 61 RoC   | Possibility, subject to the authorisation of the Appeals Chamber, to participate in the proceedings for variation of grounds of appeal by submitting a response to an application for variation of grounds of appeal  |
| Reg 62(2) and (3) RoC  | Possibility, subject to the authorisation of the Appeals Chamber, to participate, in the proceedings for presenting additional evidence within appeals, by submitting a response to an application for leave to present additional evidence   |
| <b>H. Rights and prerogatives of victims in proceedings leading to the determination on revision of a decision of conviction or a sentence under Article 84 RS</b> |   |
| Reg 66(2) RoC  | Possibility to be notified “as far as possible” of an application for revision  |
| Reg 66(2) RoC  | Possibility for victims who were notified of an application for revision, subject to the authorisation of the Appeals Chamber, to respond to that application   |
| Articles 68(3) and 84(2)(c) RS   | Possibility to be invited by the Appeals Chamber to present views in the proceedings leading to the determination on revision of a decision of conviction or a sentence   |
| Rule 159(3) RPE  | Possibility to be notified, at the Appeals Chamber’s discretion, of a decision on whether an application for revision is meritorious  |
| Rule 161(1) RPE  | Possibility to participate, for victims who were notified of a decision on whether an application for revision is meritorious, in a hearing to determine whether a conviction or a sentence should be revised   |
| <b>With regard to proceedings for review concerning reduction of sentence pursuant to Article 110 RS</b>   |   |
| Article 110 RS and Rule 224 RPE  | Possibility to be invited, “to the extent possible”, to participate in a hearing or to submit written representations within the proceedings for review concerning reduction of sentence  |
| <b>I. Obligations of States Parties toward victims in the Rome Statute system</b>  |   |
| Articles 86 RS   | States Parties shall “cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court”. It follows that States Parties shall cooperate fully with the Court, <i>inter alia</i> , in respect of investigations conducted by legal representatives of victims for the taking of evidence   |
| Article 86 RS  | States Parties shall contribute to and/or facilitate any of the victims’ steps for the purpose of reparations proceedings, in the event they are notified of the filing of a request for reparations under Rule 94(2) RPE. This is related to the right of victims to request reparations for harm suffered as a result of the commission of crimes within the Court’s jurisdiction and to the right to appeal against an order for reparations |

\*\* In order to participate in an interlocutory appeal, a victim has to seek the Appeals Chamber’s leave and in particular is required to demonstrate that her/his personal interests are concerned and that her/his participation is appropriate and not prejudicial to the interests of the defence and is not inconsistent with the requirements of a fair trial (No ICC-01/04-01/06-824 OA7, paragraphs 38-45).

| <i>Source</i>                                   | <i>Right or possibility</i>   |
|---|---|
| Articles 93(1)(d) and (l) RS and Rule 92(7) RPE | State Parties shall, at the request of the Court, assist with service of documents, including judicial documents, to victims or their legal representatives. This relates, <i>inter alia</i> , to the possibility of victims to be notified of all filings and decisions contained in the record of the case, including the confidential ones, excluding any <i>ex parte</i> materials, subject to limitation under certain conditions. |
| Article 93(1)(j) RS                             | States Parties shall, at the request of the Court, assist with the protection of victims and preservation of evidence, including evidence related to victims' personal interests. This relates to the right of victims to request the Chamber concerned to order protective measures and special measures to protect them and facilitate their testimony  |
| Article 93(1)(k) RS                             | States Parties shall, at the request of the Court, assist with the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture to the Court   |
| Articles 57(3)(e) and 75(4) RS and Rule 99 RPE  | States Parties shall, at the request of the Pre-Trial Chamber concerned, assist with implementation of "protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims"   |
| Article 75(5) RS and Rule 217 RPE               | States Parties shall give effect to enforcement orders for reparations  |
| Article 109 RS, Rules 99(1) and 217 RPE         | States Parties shall give effect to enforcement of fines and forfeiture orders which is related to the right of victims to request the Trial Chamber concerned for certain measures for the purpose of forfeiture of property and assets by States concerned  |
| Rule 96(2) RPE                                  | States Parties shall, at the request of the Court, cooperate to give publicity, as widely as possible and by all possible means, to the reparations proceedings before the Court  |