


**Eleventh session**

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**Report of the Court on the Revised strategy in relation to victims:  
Past, present and future**

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## *List of Abbreviations and Acronyms*

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 (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
WG	Working Group

## I. Introduction

1. At the Review Conference in Kampala, the Court was requested to revise its Strategy in Relation to Victims in light of the recommendations that emerged at the Conference<sup>1</sup>. 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>2</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>3</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<sup>4</sup> and requested the Court to finalize the review in consultation with States Parties and other relevant stakeholders and report in advance of the Assembly at its eleventh session<sup>5</sup>. That Revised Strategy is attached to this Report.

2. This Report details the Court's experience in implementing the Strategy in Relations to Victims and the lessons the Court has learned. It also examines the Court's plans for implementing the Revised Strategy, which derive from the common vision of all of the relevant elements of the ICC system<sup>6</sup>, and include metrics for measuring the Strategy's achievement. In the initial report of the Court on the Strategy in Relation to Victims<sup>7</sup>, the Strategy was fully integrated into the report. However, the Revised Strategy is an independent document from this report.

3. The Court has developed and revised its Strategy to make it as effective and cost-efficient as possible. Only a very limited number of cases are foreseen that would require additional resources to carry out the mandated activities described in this Report. The Revised Strategy will translate to an increase in workload and activities that would require additional resources to carry it out. For the sake of clarity, these additional resources will be specified and discussed as part of the 2013 budget process.

4. Based on the findings of the Review Conference and observations of States, Non-Governmental Organisations (NGOs), civil society members and other stakeholders, two issues – gender and communications – were identified that cut across all of the Strategic Objectives. Because communication is also a victim's right, it is included among the specific Objectives of the Strategy. Both gender and communication, however, are integral to the successful implementation of each Objective.

## II. Implementation

### A. Gender: a Cross-Cutting Issue

5. Gender<sup>8</sup> is a cross-cutting issue and its impact must be accounted for in all aspects of the Court's work. Since gender roles differ from culture to culture, the Court's activities need to be adapted accordingly so as to be optimally effective.

<sup>1</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>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> *Ibid.*

<sup>4</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, Eighth session, The Hague*, (International Criminal Court publication ICC-ASP/8/45).

<sup>5</sup> See *Official Records, Tenth session, 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/20/Res.5, para. 48.

<sup>6</sup> Those participating in the formulation of this strategy include: elements 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). The Presidency participated in the drafting process as an observer.

<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, Eighth session, The Hague*, (International Criminal Court publication ICC-ASP/8/45).

<sup>8</sup> *Rome Statute* article 7(3) defines gender as the two sexes, male and female, within the context of society.

6. In the process of reaching out to victims, the ICC system must pay special attention to women and girls in a way that minimises barriers, reduces potential negative repercussion and enables them to access their rights in the cultural contexts in which they are located. Not only must the ICC system focus more on women and girls, as they are generally affected by crimes differently from men, boys and from the community as a whole, but it must also speak to the men and boys about the principle of the rights of women and girls and the importance of female participation. Concentrating on only one side of the gender equation will not lead to a healthy or sustainable result. The ICC system must also ensure that it takes into account the specific gender dynamics in which the survivors of gender crimes live in order to ensure that engagement with the Court does not cause further harm or retraumatisation, be it from within their own communities or from the outside. In addition, more needs to be done to enable the ICC system's staff to interact with victims and affected communities with an awareness of gender and its impact on both females and males of all ages.

## 1. Existing Situation/Implementation

7. Much of the Court's outreach efforts have focused on victims generally, both males and females, with minimal attention to the impact of gender. The ICC system and the units that interact with victims understand that even though some progress has been made to ensure inclusion of those disadvantaged and/or rendered less accessible by gender roles – most often women and girls – more needs to be done.

8. In general, the Court has recognised that it must do more to make its personnel increasingly gender sensitive. The different organs and units dealing with particularly vulnerable groups<sup>9</sup>, e.g. women victims, children and survivors of Sexual and Gender Based Violence (SGBV), are developing policies on gender and guidelines for relevant personnel. When possible, these organs and units also provide personnel with additional training, take appropriate measures when meeting victims in the field, develop special activities for particularly sensitive groups to ensure that these groups have proper access to relevant and timely information, and establish networks with them using local and international organisations in the field that already have relations with the victims to facilitate their work.

9. The ICC system considers women's and girls' empowerment a key step toward ending impunity for perpetrators, establishing durable peace and reconciliation, and successfully implementing relevant U.N. Security Council Resolutions<sup>10</sup>. The TFV utilises a conflict-sensitive programme approach that involves victims and affected communities in a participatory programme design and management process to ensure that the assistance provided to them is attuned to local cultural, social and political realities.

10. In 2008, the TFV Board of Directors issued an appeal for funds to benefit victims of SGBV. Ongoing voluntary contributions currently fund SGBV programmes in northern Uganda, the Democratic Republic of the Congo (DRC) and the Central African Republic (CAR).

## 2. Future Plans

11. As duty bearer under the Rome Statute system, the ICC system will do its utmost to communicate with victims of gender crimes in a manner that facilitates their ability to take up their rights within that system. All of the organs and units of the ICC system will review their respective strategies and implementation plans to reinforce their focus on addressing gender issues, paying special attention to facilitating and increasing women and girl victims' access to their rights within the Rome Statute system.

<sup>9</sup> These include the OTP, the Victims and Witnesses Unit (VWU), the OPCV, the Public Information and Documentation Section (PIDS), the Victims Participation and Reparations Section (VPRS), the TFV, the OPCD and the Defence.

<sup>10</sup> The relevant resolutions include: 1325, 1820, 1888 and 1889.

12. Within the constraints of available funds, the ICC system undertakes to identify relevant training needs and to provide training to all pertinent staff on gender and, where relevant, on working with populations where one gender group has been disadvantaged. In coordination with the Court-wide training plan, the PIDS, the OTP, the OPCV, the OPCD, the VPRS, the Counsel Support Section (CSS), the VWU, the Court Management System (CMS), Chambers, the legal function within the Presidency, and those staff members in Interpretation, Field Offices and Defence, will receive specialised training. There are also plans to train intermediaries and Legal Representatives of Victims (LRVs) who assist victims in relation to their applications for participation. Such training could be provided by the Sections with relevant expertise or by external experts and would convey best practices.

13. The TFV will continue incorporating gender in its ongoing development of programmes, working with partners to incorporate gender sensitive approaches in all general assistance activities. In addition, the TFV will ensure that gender dimensions are addressed in any reparation processes they implement.

## B. Strategic Objectives

### 1. Objective 1: Communications

14. Communications from the preliminary examination stage<sup>11</sup> through all steps of the judicial process is the key to victims accessing their rights within the Rome Statute system<sup>12</sup>. With effective access to relevant information<sup>13</sup>, victims are able to make informed decisions on whether to exercise their rights. Communications also make proceedings public<sup>14</sup> and play a crucial role in ensuring that victims have realistic expectations of the criminal law process and reparations. Communications provide context to the activities of the Court, the ICC system and the Rome Statute system as a whole. Beneficial communications cast the activities of the Court and the elements of the system in terms of the spirit of the Rome Statute and the vision laid out in its Preamble<sup>15</sup>. Appropriate communications and positive engagement can help to fight impunity and to address the wide and lasting impact of crimes within the jurisdiction of the Court. All of the organs and units of the ICC system that interact with victims provide them with information. Moreover, as recognised by the Review Conference, it is particularly important that effective communication begin from the earliest possible moment.<sup>16</sup> This was also emphasized by the ASP during its tenth session<sup>17</sup>.

15. The Court's outreach activities currently provide victims and affected communities with information about the Court's mandate, the Court's judicial proceedings, and victims' rights to participate in proceedings and to request reparations. But effective communication is an inclusive dialogue in which the ICC system and the victims must engage each other, both sharing and both receiving information. As duty bearer, the ICC system must listen to victims in order to best fulfil its responsibilities to take into account the various needs and interests of victims and to understand what information is more important for which victims and in what manner information can be most effectively and efficiently communicated. A specific form of inclusive communications may occur in the phase of reparations, during which the TFV may engage in consultations with eligible victims and their families, in order to develop a reparation implementation plan that legitimately reflects those victims' rights and interests.

<sup>11</sup> At this stage of the process, the OTP is the lead 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>12</sup> *Regulations of the Court*, regulations 86-88; *Rules of Procedure and Evidence*, rules 89-99.

<sup>13</sup> *Rules of Procedure and Evidence*, rules 16 and 92; see also *Situation in the DRC*, ICC-01/04-101, para. 76.

<sup>14</sup> *Rome Statute*, article 67.

<sup>15</sup> That vision is of justice in the broadest sense, an end to impunity for the perpetrators of mass atrocities, and the notion that justice is not just punitive but restorative – and hopefully preventative.

<sup>16</sup> See *Official Records, Ninth session 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.3, para. 38.

<sup>17</sup> See *Official Records, Tenth session, 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/20/Res.5, para. 39.

**(a) Existing Situation/ Implementation**

16. In general, different elements of the ICC system are responsible for communicating with victims on different topics and in relation to different parts of the proceedings. The units of the ICC system work closely with the PIDS, the section responsible for the majority of the ICC system's outreach to affected communities<sup>18</sup>, in order to ensure that victims and affected communities receive timely, accurate, consistent and relevant information regarding participation in the proceedings, ongoing judicial proceedings and reparations. Outreach activities also include appeals to communities not to stigmatise victims as a result of the crimes from which they have suffered. The victim-related units of the ICC system coordinate with the PIDS and at times conduct activities jointly. Coordination enhances efficiency and increases the safety of all involved. Legal units, such as the OTP, the OPCD and the OPCV, also coordinate with the PIDS regarding content related to their spheres of competence and wherever possible participate in outreach activities – organised by the Court or by external partners, such as NGOs and legal societies – targeting affected communities to ensure that community members understand their rights under the Rome Statute and can take an informed decision about whether to engage with the Court.

17. In the past, the Court has found it exceedingly difficult to communicate effectively with victims in remote and/or hard to reach locations. In other areas, security or lack of resources – both human and financial – have made it challenging to reach out to victims living in certain regions of situation countries. To address these issues in an effective and efficient manner, victim-related units of the ICC system use local organisations as intermediaries<sup>19</sup> both to facilitate outreach activities and to share information with affected communities and victims<sup>20</sup>. Broadcast media, and particularly community radio stations, are another mean of enhancing the impact of the outreach activities and informing broader audiences in a cost-effective way, particularly in remote areas<sup>21</sup>. The PIDS produces audio-visual programmes<sup>22</sup> that are broadcast by local radio and television stations and provide summaries of the hearings while also clarifying various aspects of the ICC's mandate. These programmes are also used to introduce discussions during outreach sessions. As a supplement to these efforts and to overcome the challenge of reaching groups that cannot afford to own a radio, the PIDS has successfully established ICC radio listening clubs throughout the situation countries. Facilitated by an ICC trained member of the community, the 60-80 members of each group follows the ICC radio programmes and can send in questions to which they receive responses. On occasion, the OPCV has also used radio programmes or published information sheets in newspapers to update clients and explain the most recent developments in the relevant situation or case. However, where possible and appropriate, the OPCV prefers to communicate directly with victims in the context of their legal representation. All units of the ICC system address the challenge of ensuring that victims comprehend the nature of the proceedings throughout their duration.

18. The OTP is the first organ of the Court to be in contact with victims and affected communities<sup>23</sup> when the Office receives Article 15 communications<sup>24</sup> and during preliminary examination. The Prosecutor uses media and public information activities as well as direct staff contact to provide information on a regular basis to victims about the

<sup>18</sup> For example, the PIDS serves the communications needs of the VPRS as well as some of those of the Secretariat of the TFV.

<sup>19</sup> The synergies created by working with intermediaries has a number of positive affects which include: 1) it limits victims exposure to danger which might result due to their direct interaction with the Court; 2) intermediaries are often able to access locations that are inaccessible to Court staff ; 3) The ICC system would be unable to field the number of staff required to reach out to all the victims and affected communities with which the Court currently communicates. The expenses involved would be insupportable, and would only rise exponentially as the number of potential victim participants increase with each new case and the relevant charges brought by the Prosecutor and confirmed by the Pre-Trial Chamber.

<sup>20</sup> An exception to this approach occurred during the Kenya proceedings in December 2009, when the Pre-Trial Chamber ordered the VPRS to identify and contact community leaders of affected groups who could act on behalf of victims who wished to make representations on the question of whether or not the Chamber should authorise the opening of an investigation as requested by the Prosecutor, and to receive any such representations made.

<sup>21</sup> In most current situation countries, literacy rates are low and radio is the media of choice for most inhabitants.

<sup>22</sup> They are produced in French, English, Arabic and local languages.

<sup>23</sup> By definition, affected communities are communities containing or made up of victims that have survived the commission of war crime and crimes against humanity under the jurisdiction of the ICC.

<sup>24</sup> *Rome Statute*, article 15(2).

preliminary examination's scope and process. Contact at that point enables the OTP to assess the interests of victims before deciding whether to open an investigation<sup>25</sup>. When meeting with victims during investigations, and before an interview commences, the OTP staff brief the potential witness (potentially also a victim) about the ICC and the mandate of the OTP, and informs her/him that cooperation with the Court is voluntary. The OPCV also communicates with victims within the framework of its specific mandate of providing support and assistance to victims<sup>26</sup> and when appointed as an LRV<sup>27</sup>. The OPCV undertakes missions in the field in order to meet with its clients, to understand their views and concerns, to collect evidence and material to be used in the proceedings and to keep clients updated on the proceedings before the Court.

19. Reaching out to affected communities and publicising ongoing trials remain priorities for the PIDS. The focus of its efforts<sup>28</sup> is to raise awareness about and increase the understanding of the ICC amongst affected communities, specific target groups<sup>29</sup> and the general public. All units will ensure coordination and cooperation with PIDS to ensure that it has the most relevant and recent information as it prepares materials for its own work and supports the work of other units that interact with victims.

**(b) Future Plans**

20. More victims than ever are participating in the judicial process and outreach activities have been intensified. To strengthen its two-way dialogue with victims and affected communities and to further optimise and adapt outreach activities to the needs of victims<sup>30</sup>, the Court will continue to assess and refine its current outreach/communication tools<sup>31</sup> - including its application forms and directions - to ensure that they succeed in providing audiences of all educational levels with the basic information necessary to understand how the Court and its proceedings work.

21. As the first step in this process, the ICC system will develop and employ a communications checklist so that all victims will be presented with a standardised minimum set of inclusive information about the mandate and activities of the Court, the TFV and their rights as victims under the Statute, including the right to participate and the right to file claims for reparation<sup>32</sup>. All victims coming into contact with the ICC system will thus receive common, mutually reinforcing, coherent messages and information, which should minimise confusion on the part of victims. All information contained in the checklist will also be incorporated into the standard set of information provided to intermediaries.

22. The units and elements of the ICC system that interact with victims will work to further improve and routinise internal coordination not only with the PIDS/Outreach, but also among themselves, in the interest of ensuring that victims receive clear, consistent, relevant and up to date information, whether directly from the Court or via intermediaries. The PIDS and the other units of the system which communicate with victims will revise and improve their messages regarding participation and reparation. These will be included from the very beginning of their communications efforts to enable victims to make informed decisions about their participation and relationship with the ICC system. Following any decision by Chamber's on reparations, messages will be adjusted where necessary.

<sup>25</sup> *Rome Statute*, article 53(1).

<sup>26</sup> *Regulations of the Court*, regulation 81(4).

<sup>27</sup> *Regulations of the Court*, regulation 80(2).

<sup>28</sup> As described in the Strategic Plan for Outreach, ASP/ICC/5/12.

<sup>29</sup> These include, particularly in situation countries: the national and local media, the legal community, as well as students and the academic community. For more information see the Strategic Plan for Outreach of the ICC (ICC/ASP/5/12) and the Integrated Strategy on External Relations, Public Information and Outreach.

<sup>30</sup> RC/11, 8 June 2010, Annex V, p. 80.

<sup>31</sup> Currently as a means of checking its communications vehicles, PIDS identifies representative populations and pre-tests their messages and materials prior to launching a communications campaign.

<sup>32</sup> RC/11, RC/Res.2, *The Impact of the Rome Statute System on Victims and Affected Communities*. In addition, elements of the system will add their individual information relevant to their specific purposes.

## 2. Objective 2: Protection and Support

23. Protection, as it is used in the ICC system, refers mainly to physical safety, security and well-being<sup>33</sup>. Support is a broader and, in some sense, more inclusive term, covering the mitigation of any harm that victims may suffer as a result of their interaction with the Court<sup>34</sup>. In order to facilitate victims' rights to participation, the Court also provides protection and support to alleviate situations that hamper a victim's ability to participate. In addition, the Court has made psycho-social care available to help ICC system personnel who regularly interact with and care for victims, and, in so doing, fulfil the system's obligations as a duty-bearer. Both objectives encompass protection against and support in the face of any hardship arising from the judicial proceedings<sup>35</sup>.

24. With the evolution of the jurisprudence regarding victims and their rights, it is now possible to identify categories of victims entitled to protection and support<sup>36</sup>. Members of these different categories may have different rights under the Court's legal framework and the decisions of various Chambers. For example, individuals who apply for participation in the proceedings are considered victims who appear before the Court from the moment they apply, and are entitled to protection in addition to their right to participate<sup>37</sup>. When individuals are recognised as participating victims by the relevant Chamber, they are accorded legal representation and may present views and concerns to the Chambers at the relevant stages in the proceedings. Finally, there are victims-witnesses and dual status witnesses, both of whom physically appear before the Court where it is sitting.

### (a) Protection: Existing Situation/ Implementation

25. All elements of the ICC system have a duty to ensure the protection of victims and witnesses<sup>38</sup>. The primary units and/or organs of the ICC system that fulfil this obligation are the VWU, the OTP, and the judiciary, which is the ultimate arbiter of protection-related issues. The VWU is mandated to provide protective measures, security arrangements, counselling and other appropriate assistance to victims who appear before the Court and to others who are at risk on account of testimony given<sup>39</sup>. The Prosecutor is responsible for taking appropriate measures to protect persons with whom the Office interacts, particularly during the investigation and prosecution phase. The recently established protocol between the OTP and the VWU on protection of persons at risk because of their interaction with the Court facilitates the cooperation and interaction between the two units and streamlines working practices. The Registry is currently working with both the Defence and LRVs to adapt the protocol to their needs.

26. While working with intermediaries in the field to access victims and collect their applications, the VPRS implements the model developed in the new Court-wide *Guidelines Governing the Relations Between the Court and Intermediaries*<sup>40</sup>. This model involves the provision of passive protection capacity, e.g. encrypted USB sticks and lockable safes, to certain selected intermediaries in order to equip them to secure information and conduct their activities safely if they do not already have the means to do so. In general, the VPRS and the OPCV use best practices on managing contact with victims and intermediaries, developed with the assistance of the VWU, to ensure both that people are not put at risk when interacting with the ICC system, and that the confidentiality of information is protected. In addition, the Security and Safety Section (SSS) conducts security assessments

<sup>33</sup> *Rome Statute*, article 68(1); *Rules of Procedure and Evidence*, rules 87 and 88.

<sup>34</sup> *Rome Statute*, articles 43 and 68; *Rules of Procedure and Evidence*, rule 18(d).

<sup>35</sup> *Rome Statute*, articles 43(6) and 68(1); *Rules of Procedure and Evidence*, rules 16-19.

<sup>36</sup> Affected communities do not have standing before the Court and communities do not have any rights *per se* under the Rome Statute.

<sup>37</sup> According to the decision of Trial Chamber I in the Situation in the Democratic Republic of Congo, in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on victims' participation, ICC-01/04-01/06-1119.

<sup>38</sup> *Rome Statute*, article 68(1): "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses".

<sup>39</sup> *Rome Statute*, article 43(6).

<sup>40</sup> *Draft Guidelines Governing the Relations Between the Court and Intermediaries*, International Criminal Court, Draft of April 2012.

before the Registry and other Organs and units begin their activities where work in a new situation involves direct engagement with victims or intermediaries *in situ*<sup>41</sup>.

27. During the judicial process, in order to protect victim applicants' identities, their names are normally redacted. The identity of victims authorised to participate in the proceedings can be disclosed to the parties only if the victims consent or upon an order of the relevant Chamber, in light of the protection needs evaluated at the time, often following advice from the VWU<sup>42</sup>.

28. International relocation, a specific last resort means of protection, is based on Framework Agreements between the ICC and States. In cooperation with States Parties, the ICC system has established a Special Fund for Relocation as a complement to the process of signing Framework Agreements. The Special Fund is designed to assist States Parties that are willing to host individuals who are in need of relocation but who are not in a position to finance such relocation. It also aims to foster regional solutions for the relocation of those at risk, thereby minimising the personal impact of relocation. Lastly, the Fund uses the opportunity of relocations to encourage Court partners (e.g., the U.N. or E.U.) to assist in strengthening the capacity of States from the respective region to protect those at risk. While strategically important, this complementary Fund does not replace the still necessary traditional Framework Agreements on Relocations.

**(b) Support: Existing Situation/ Implementation**

29. All victims appearing before the Court have a right to benefit from support services offered by the various elements of the ICC system, of which the VWU is the primary provider of those services. The presence of individuals the victim trusts (be it someone from the VWU, the OPCV or from an external counsel) can amount to support and stress relief when appearing before the Court, which is a further supplement to the active support and protection provided by the Court's one psychologist both in the courtroom and in the field. During the investigation phase, the OTP takes appropriate measures to provide support and address the individual needs of the witnesses with whom they interact. The TFV, through the network of partners it has built, has also developed support capacity. Through this network, the Secretariat of the TFV can refer victims with whom they are working to appropriate support services when necessary.

**(c) Future Plans**

30. The Court is committed to providing improved and compulsory training on good practices for staff, intermediaries, counsel and any other persons who interact with victims on behalf of the Court, subject to the availability of resources. The Court plans to establish mechanisms for monitoring compliance and periodically evaluating the programme's effectiveness. In addition, Counsel and the organs and units of the ICC system working with intermediaries and other partners will likely need further capacity to provide training and technical assistance to strengthen the expertise and capacity of the intermediaries undertaking Court or Counsel-related activities to protect and support victims as relevant and appropriate. Training should be offered, where suitable, by the concerned organs and units of the Court and Counsel with internal coordination and assistance provided by the SSS (in relation to advising on best security practices), the Counsel Support Section (CSS) and the VWU<sup>43</sup>.

31. Further to the system-wide efforts, the individual organs and elements of the system will review their procedures and policies to achieve further increases in efficiency where possible. To the degree possible under existing resources, the Court will continue to work systematically to prevent leakage of confidential information, while also recommending measures aimed at protecting victims' identities. The OPCD is exploring ways to ensure

<sup>41</sup> At times, assessments must be conducted under tight time pressure reflecting the pace of the judicial proceedings. If adequate assessments cannot be conducted in a timely manner, the VPRS and/or other units may be unable to conduct activities which can lead to delays in the proceedings.

<sup>42</sup> Where there is a causal link between association with the Court and a potential threat to a victim, the VWU assesses the situation and decides what, if any, protective measures to take on a case by case basis.

<sup>43</sup> This approach is based on provisions in the *Draft Guidelines Governing the Relations Between the Court and Intermediaries*, section 4.4.

that Defence victims/witnesses enjoy the same opportunities as provided to Prosecution victims/witnesses by virtue of their access to the specialized services of the Prosecution relating to protective matters.

32. More generally, the SSS will need to focus capacity on providing timely security assessments over a more widely spread area, in order to make it possible for staff to work in safety and to ensure that the intermediaries with whom staff work are vetted and have their own security arrangements in order. Likewise, the VWU will need to maintain sufficient capacity to ensure the ongoing quality of security assessments of victims participating in the proceedings from the increasing number of situations. This includes security analysis and assessments both at the seat of the Court and in the field. The VWU plans to strengthen local capacities to provide protection and initial response system (IRS)<sup>44</sup> capabilities to victims at risk. Where possible, the Unit will also continue reinforcing partnerships and local networks to strengthen local capacity to offer support and assistance to victims who participate in the proceedings. In consideration of the right to protection, including protection from hardship during the judicial process, the VWU will continue to present, for the consideration of the Chambers, special measures to facilitate the testimony of vulnerable individuals.

33. The ICC system intends to fulfil its obligations as a duty bearer to victims in all of the situation countries and cases in which the ICC system is involved. Doing so will require the system to extend services appropriate to the needs, situation and stage of the judicial proceedings to Libya and Côte d'Ivoire in 2012, as well as to other situations and cases that develop during the current implementation period of the Revised Strategy.

### 3. Objective 3: Participation and Representation

34. Based on previous international criminal justice experience, the ICC was created with both a punitive and a restorative function, with the Rome Statute giving victims a right to directly participate in the ICC justice process<sup>45</sup>.

35. Though the Court aims to provide victims with the best possible representation, it recognises that representation is still an area of concern. In many cases, victims are provided with an external counsel who is either from the country where the alleged crimes were committed or from the country where the victims reside, who knows the context, culture and language of the victims and who, therefore, is able to communicate with them more efficiently and effectively<sup>46</sup>. Unfortunately, those counsel also face challenges because, for the most part, they are not familiar with the Court's judicial practices, case law or with the rights of victims as a class of participants in the proceedings. Though counsel for victims must satisfy certain criteria<sup>47</sup>, they are generally from a very different legal context from the ICC and may not have the background or training that enables them to work optimally in a multicultural setting with different norms and modes of interaction. To help external legal representatives adapt to the ICC system, the OPCV published a Manual which provides guidance on the main issues related to victims' participation in the Court's proceedings and which is freely available on the Internet and updated regularly.

#### (a) Existing Situation/Implementation

36. Enabling victims to realise their rights to participation and representation primarily falls to the VPRS and the OPCV, and is guaranteed by Chambers. At certain points in the process, the OTP also informs victims of these rights, and the CSS works to support the efforts of both the Defence and LRVs<sup>48</sup>.

<sup>44</sup> This is a rapid response programme to assist victims covered by this VWU scheme who are in immediate danger.

<sup>45</sup> *Rome Statute*, article 68(3); *Rules of Procedure and Evidence*, rules 89-99.

<sup>46</sup> An additional side benefit of such an approach is that external counsel who have appeared before the ICC may be able to have a positive impact on their national jurisdictions.

<sup>47</sup> *Rules of Procedure and Evidence*, rule 90(6).

<sup>48</sup> The CSS is working to employ new software solutions that will facilitate the representatives' and counsels' work with the most appropriate and relevant capabilities.

37. Though its role has been evolving, the VPRS remains the entry point for victims applying to participate. Once judicial proceedings are under way, the Section implements a variety of Court orders that involve activities in the situation countries, often requiring direct contact with victims. The OPCV may also play a role in representing and supporting the participation of victims where its mandate<sup>49</sup> is triggered by a decision of Chambers. Together with the CSS, the VPRS plays a central role in ensuring adequate legal representation for victims to enable them to exercise their rights before the Court.

38. At the seat of the Court, the VPRS and the OPCV both play central roles related to victims' participation and representation in proceedings. The VPRS supports Chambers by managing applications and other documents received from victims and by preparing reports on individual applications, including those related to new capabilities Chambers have requested from the Section and specific judicial orders to make available different documents, or differently redacted versions of documents, to the parties and participants in a timely manner. OPCV will directly represent victims in the proceedings and/or will provide support to LRVs appointed by the Chambers. This support includes research and advice on substantive victim-related legal issues, as well as, where appropriate, representing external counsel on an *ad hoc* basis or appearing before Chambers to make submissions regarding specific topics. The OPCV database designed to facilitate its work including managing the provision of legal assistance and representation to victims as well as the legal assistance to external LRVs, and makes the OPCV more efficient.

39. In the field, where it assists in enabling victims to make their applications and participate effectively, the VPRS works primarily with intermediaries to most efficiently reach wide-spread and often hard to access victims<sup>50</sup>. For the most part, local intermediaries (rather than Court staff or a lawyer) assist victims in completing their applications for participation. In general, while intermediaries do an exceptional job in helping the ICC system to fulfil its obligations, having staff *in situ* leads to greater efficiency and protects against abuse<sup>51</sup>. When acting as legal representative, OPCV staff meet directly with victims in the field to gather their views and concerns and represent victims' interests in the proceedings.

40. Over the past two years, the VPRS's workload has dramatically increased<sup>52</sup>. The VPRS has attempted to meet this demand by hiring additional temporary staff, which is neither efficient nor sustainable, and by prioritising the processing of applications linked to cases (rather than situations) and to immediate proceedings (particularly confirmation hearings or trial). Despite having done its utmost to avoid causing delays in the proceedings or preventing victims from exercising their rights, several times during 2011 the Registry was obliged to inform Chambers that it was not in a position to comply with orders by the deadlines imposed due to a lack of resources. The VPRS has worked with Chambers to develop selection criteria and a methodology for the organisation of common legal representation with the aim of ensuring high quality legal representation for victims before the Court in a sustainable and cost effective manner.

<sup>49</sup> *Regulations of the Court*, regulations 80 and 81(4).

<sup>50</sup> At present, the VPRS only has five established field staff posts to cover 7 situations and the judicial activities. Were VPRS to reach out to victims via its own staff, the cost to the Court would be substantially greater than it is using intermediaries, who in some instances can do the same job more effectively and without endangering those with whom they are meeting.

<sup>51</sup> First, it helps to manage the numbers and the quality of applications received since the field staff are able to provide accurate information regarding the criteria for being accepted and what participation in the proceedings actually involves. Second, where the field staff are able to provide information and training to intermediaries, a much higher proportion of applications received will, from past experience, be linked to the proceedings. It also leads to the receipt of more complete applications since they can be checked and followed up by field staff on site. Third, having staff on site, including local staff, who understand the local context, enables the Section to open more effective channels of communication with intermediaries. Fourth, having staff based in the field leads to less travel required to and from The Hague.

<sup>52</sup> The average monthly number of applications for participation received has increased over 300% in the last year (from 187 per month in 2010 to 564 per month in 2011). This increase is due both to the rising number of situations and cases, and to the scope of the charges in each case.

**(b) Future Plans**

41. The Court plans to revisit some of the framework of support for victims' representatives in order to increase its effectiveness and economy. In reviewing the scheme for legal aid to victims, the Court will focus on the different needs of Defence and victims' counsel, including those related to processing/reviewing victims applications, as well as on the potential inclusion of systems for quality control and the possibility to enhance the role of the OPCV<sup>53</sup>. The Court could dedicate some resources to the development of a structure that would allow LRVs to maintain regular contact with victims in the field/countries where they are located<sup>54</sup>.

42. From experience as noted above, external LRVs are constrained by issues of access as well as by process and capacity in taking up their responsibilities at the Court. To ease the transition, the Court could further develop and provide relevant training for LRVs, focusing on topics including judicial procedures, management procedures, interactions with Registry and its various work units and the evolving interest of victims within the framework of the Court. Within the limits of available resources and the technology infrastructure in situation and other countries, the Court is working to improve LRV access to Court documents and software systems and to ensure that LRVs can be compliant with the Court's e-court protocols. It must be noted, however, that some of these hindrances result from the Court's work to ensure the security of trial-related information and to protect evidence and other information gathered by specific units of the Court.

43. LRVs also face hurdles when they try to access documents both in the amount of time available to them during which they have access to the documents and in the kind of documents to which they are granted access. The timing of notification of and judicial decisions regarding the modalities of participation, as well as decisions on common legal representation, are frequently issued at a very late stage, and some of the Chambers, particularly Pre-Trial Chambers, have issued decisions making specific key documents unavailable to the LRVs or available only in a redacted form<sup>55</sup>. All of these factors influence victims' perceptions of their ability to fully realise their right to participation.

44. The VPRS has made and will continue to make every effort to find efficiencies and alternative options to the current victims participation-related processes wherever possible, including developing more sophisticated processing systems and streamlining operations between the field and The Hague. In response to the large numbers of potential victims in the *Gbagbo* case, a new partly collective approach to the application process is being tested at the confirmation of charges stage, which allows victims of the case to group together to apply to participate in the proceedings. Lessons will be learned from this experience in Cote d'Ivoire to determine whether such a model could be used in other cases if it proves to be efficient for the Court, satisfying for victims, and in compliance with Court's legal framework. In the field, intermediaries themselves face notable challenges, many of which are addressed in a new approach that is contained in the new *Guidelines Governing the Relations Between the Court and Intermediaries*. For the VPRS, the new approach mandates a greater level of engagement with, and provision of targeted support to, a smaller number of intermediaries who go through an enhanced selection process. The approach is designed to enable intermediaries to carry out their roles effectively while avoiding putting victims at risk, whether from security threats or the risk of retraumatisation, and to protect the interests of the victims and the confidentiality of information.

45. As already noted, the major challenge confronting the VPRS is the lack of staff to deal with the demands upon it arising from the increased number of situations and cases, victims' applications being received, as well as the increased level of judicial activity affecting the participation of victims and the rising number of decisions to be implemented by the Section. Over and above these concerns, the Section must prepare for the potential beginning of reparations proceedings. Even as the Court undertakes a review of the victim

<sup>53</sup> Decision of the Bureau of the ASP at its Ninth Meeting held on 23 March 2012, adopting the Report of The Hague Working Group on legal aid.

<sup>54</sup> International Federation for Human Rights (FIDH) – Recommendations to the Eighth Session of the Assembly of States Parties to the Rome Statute, p 9.

<sup>55</sup> See decision ICC-01/04-01/10 rendered by Pre-Trial Chamber I in the case of the *Prosecutor v. Callixte Mbarushimana* 18 August 2011.

participation process to ensure that it will enable victims to realise their rights while being sustainable and effective, the work of the VPRS will nevertheless need added support in the short term.

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

46. One of the unique features of the Rome Statute system is that victims have been granted the right to request reparations<sup>56</sup> and may benefit from support<sup>57</sup> by the TFV under its assistance mandate<sup>58</sup>. The further advantage presented by the reparations and assistance mandates is that positive and pro-active engagement with victims can have a significant effect on how they experience and perceive justice, thus contributing to their healing process and the rebuilding of peaceful societies.

47. The implementation of reparation orders will depend on the content of each order<sup>59</sup>. In accordance with the Statute the TFV shall implement Court-ordered reparations awards. The Statute and the Rules of Procedure and Evidence, place the overall responsibility for the enforcement of fines, forfeitures and reparation orders with the Presidency. Within the Registry, the precise role of the VPRS will be dependant on the approach a Chamber decides to take. The Section may be ordered to enable victims to make applications, to organise legal representation, to conduct specific activities in the field, to seek relevant experts, to make recommendations on different aspects and/or generally to support Chambers. It is envisaged that regardless of how the reparations phase proceeds, it will require intensive engagement by the Presidency, the TFV and the VPRS.

48. The overall situation is currently characterised by a high degree of uncertainty which makes planning for reparations very challenging, particularly as there are no precedents or framework on which to base future plans. In the coming years, as the situation develops further, this section will be revisited.

##### (a) Existing Situation/Implementation

49. Regarding assistance, the ICC system is only able to comment on the current forms of assistance being provided to affected communities, largely by the TFV. Other forms of assistance are linked more to cooperation and complementarity where the Court is engaging with States Parties, national and local governments and other actors to enhance capacity in victim-related matters.

50. In 2008, the TFV Board adopted a Global Strategic Plan and Performance Monitoring Plan (PMP) 2009-2012, which have been the basis for the TFV's programme activities to date. For its general assistance mandate, the TFV strategy identifies three objectives: physical rehabilitation<sup>60</sup>, psychological rehabilitation<sup>61</sup>, and material support<sup>62</sup>.

<sup>56</sup> *Rome Statute*, article 75(1); *Rules of Procedure and Evidence*, rules 98(2)-(4).

<sup>57</sup> *Rules of Procedure and Evidence*, rule 98(5).

<sup>58</sup> The TFV was established by the Rome Statute as the embodiment of the States Parties' commitment to the system's function of restorative justice, supporting activities that address the harm resulting from crimes under the jurisdiction of the Court. Under article 79 of the *Rome Statute*, the TFV fulfils two mandates for victims of such crimes. The first mandate relates to reparation. Under it, the TFV shall implement Court-ordered reparations awards. The second mandate (rule 98(5) of the *Rules of Procedure and Evidence* implemented in accordance with the TFV regulations 48 and 50(a)) provides the use of other resources for the benefit of victims in accordance with the provisions of article 79 of the *Rome Statute*. This general assistance function is supported by voluntary contributions from donors. While the reparations mandate reflects the fulfilment of a right of victims, the assistance mandate does not. For more information, please see <http://trustfundforvictims.org/legal-basis>.

<sup>59</sup> The ICC system is anticipating the possible commencement of the first reparations proceedings in 2012 pending the verdicts issued by the Trial Chambers and potential Court-ordered reparations awards against a convicted person. The plenary of Judges which met in 2007 decided that the principle relating to reparations shall be decided upon by the individual Chambers and standardised through the process of appeals and adoption of common practice.

<sup>60</sup> To address the care and rehabilitation of those victims who have suffered physical injury in order to recover and resume their roles as productive and contributing members of their societies.

<sup>61</sup> To offer cost-effective psychological, social and other health benefits, and a means to educate local populations about the needs of victims and the resources available to assist in their recovery.

<sup>62</sup> To improve the economic status of the victims through education, economic development and rebuilding of community infrastructure, and creation of employment opportunities.

The TFV's programmes also focus primarily on cross-cutting issues<sup>63</sup>. The TFV employs a participatory programme management process to ensure that benefits provided under either the assistance or reparations mandates are attuned to local cultural, social and political realities.

51. Although there have not yet been any reparations proceedings nor any guiding decisions, there are ongoing discussions across the ICC system, and indeed within the entire Rome Statute system, about reparations. While, in the event of a conviction, the judicial determinations about the nature of reparations are the sole province of the judges, preparatory discussions about the non-judicial aspects of reparations and how the system's elements might prepare for them are taking place.

**(b) Future Plans**

52. From now until the conclusion of any potential reparations proceedings, the ICC system and its relevant units will be planning in a coordinated fashion for the most likely operational scenarios. An outgrowth of this process will be the development of policies, strategies and SOPs in order to be as prepared as possible to deal with activities that will be required to implement any reparation orders from Chambers.

53. Many organs and units will likely have a role to play with regard to reparations and assistance, including the TFV, which may be requested to take the lead in the implementation of Court-ordered reparations; the OTP; the OPCV; the PIDS; the VPRS and others. Both the TFV and the VPRS have been preparing for eventual reparation proceedings and for the foreseeable scenarios that might arise from potential reparations orders. It is part of the OTP's Prosecutorial Strategy for 2009-2012 and one of the Office's priorities to conduct financial investigations in order, *inter alia*, to potentially contribute to the reparations phase. The OPCV has been and will continue to be involved in providing assistance to its clients regarding this issue within the framework of the judicial proceedings. In anticipation of a potential reparations phase, the VPRS has prepared standard application forms for reparations and incorporated the issue of reparations in its field activities, remaining mindful of the dual needs both to manage expectations and to adapt strategies to different stages of the proceedings. As much as possible with the limited information available, the PIDS and the VPRS in wide consultation across the relevant elements of the Registry, Presidency and with the TFV have prepared messages on reparations to respond to questions raised by victims. Once a reparations phase begins, through a similarly consultative process, specific key messages relevant to that phase will be prepared for the field, as well as information for victim communities when Chambers issue their directions for the conduct of reparations proceedings.

54. At the same time, based on insights and experience drawn from its assistance mandate, the TFV aims to develop a new multi-year strategy to be presented to the TFV Board at its next annual meeting in 2013.

**C. Gap Analysis<sup>64</sup>**

55. The entire ICC system is very aware of the difficult economic circumstances facing the global community and present this section only after a careful, considered review of the circumstances, the legal framework and rights of victims, the resolutions and the current and foreseeable capacity of the Court, taking into account the likely evolution of the Court's caseload and activities. The ICC system does not make any request for additional support lightly, doing so only where it is not physically possible to do more with existing resources, and where not doing more would mean disabling victims' ability to realise their rights.

<sup>63</sup> Including promoting community reconciliation, acceptance, and rebuilding community safety nets; mainstreaming gender to include addressing impact of gender based violence and other sexual violence of women, men, and children; integrating and rehabilitating child soldiers and abductees into communities, including support of intergenerational responses; addressing issues of victims' stigma, discrimination and/or trauma.

<sup>64</sup>A Gap Analysis compares existing activities with what the full range of activities the Court would need to implement in order to achieve the goals set out in the Revised Strategy. The Analysis then highlights the existing gaps and the implications for the Court's ability to attain its goals.

56. This section is a roadmap for States on the possibilities and the impacts of resource decisions. The ASP must decide and provide guidance to the Court on the direction it would like the ICC system to take and about the tools the ICC system will have at its disposal to achieve the goals set for it. The very restricted resources outlined in general terms in this section and which will be specified and discussed in the 2013 budget process flow from and are justified by the discussions above. They are a rough indication of the constrained nature of the budgetary impact of the Revised Strategy.

57. In practice, the actual financial resources that the ICC system will require are very much a function of the degree to which it receives cooperation and support from relevant individual States<sup>65</sup>.

## 1. Gender: a Cross-Cutting Issue

58. There is general consensus within the ICC system that further strides can and must be taken to both raise awareness about and to train staff, counsel, intermediaries and others on gender and its implications for their work. This training will reinforce previous training, and will further establish a firm foundation for ongoing work with victims and affected communities. Within existing resources, the Court commits to identifying internal training needs both in The Hague and in the field, as well as the training needs of relevant external partners, to train all relevant staff and selected partners about gender and how it relates to work with victims, including victims of SGBV<sup>66</sup>. Once the needs are identified and training plans made, the Court requires funding to actualise the training program: to develop training materials, to hire a trainer and to cover the travel costs associated with training sessions.

59. In coordination with this general training, and while maximising opportunities and economies, individual victim-related units will also provide tailored training to their staff to strengthen their ability to fulfil their mandates in the most appropriate and respectful manner possible<sup>67</sup>. Relevant units will also work to build partners' and intermediaries' capacities as needed to ensure gender considerations are incorporated into the work of all involved in the ICC system.

60. The units of the ICC system will update and further develop existing policies and SOPs to reflect the commitment to take into account gender and gender-related issues. The Registry would like to develop guidelines, in consultation with Chambers, to ensure that when victims' representatives are appointed, especially common legal representation, the distinct interests and needs of particular groups of victims are met, including gender and SGBV.

## 2. Objective 1: Communications

61. The Court itself can facilitate improvements in the communications process by internally promoting regular ongoing communication between elements working with victims and related issues. Enhanced cooperation and internal communications/coordination will better enable the ICC system to meet its communications obligations as duty bearer to victims and affected communities. Within the budget, the ICC system will also develop and employ a communications strategy/checklist so all victims receive a basic standard set of inclusive information. Training is one way of maximising the impact the ICC system's staff can have. The better able staff are to communicate with those to whom they hold a duty, the more effectively the messages and information they convey will be assimilated. To the extent feasible and in the most efficient and effective manner possible, the Court will use

<sup>65</sup> The Way Forward section of the final report of the focal points on the stocktaking exercise stresses "... the States (both situation countries and other States) also have a fundamental role to play within the Rome Statute system from the point of view of complementarity." ICC-ASP/9/25 also RC/11 p. 86.

<sup>66</sup> In areas where capacity is already taxed to its fullest, such as in VWU, the VPRS, the OPCV and OPCD, this commitment will require the addition of outside experts.

<sup>67</sup> The Outreach Unit will train staff on working with victims of sexual crimes and on interacting with children, particularly child soldiers (focus on crimes charged in cases in proceedings). The VPRS needs further support for consultants to develop the improved tools or training it needs to impart both to intermediaries and LRVs on interacting with victims, including victims of gender crimes, using gender based approaches.

existing resources to train relevant staff about the rights of victims and how to manage the relevant issues when communicating with them so that it is an effective, positive exercise<sup>68</sup>.

62. The gap identified by the ICC system elements is largely related to capacity. As the number of situations and countries in which the ICC operates increases, the geographic spread, cultures and languages the Court must accommodate increase proportionately. While the ICC system continues to conduct its Outreach efforts in compliance with its obligations as a duty bearer, doing more with the same or fewer resources each situation has unique requirements that must be met by personnel with different skills.

63. However, the continued expansion of its responsibility as duty bearer without suitable support has required the Court to make choices that limit its ability to fulfil those responsibilities. The Court sits on the horns of a dilemma. On the one hand, in a number of resolutions, States have emphasised the importance of outreach to victims and affected communities and the need to implement the Strategic Plan for Outreach and to do so as close as possible to “the outset of the Court’s involvement”<sup>69</sup>. This was considered a means of giving “effect to the unique mandate of the Court towards victims”<sup>70</sup>. The Court is committed to moving in this direction.

64. Bearing in mind the current economic environment, the PIDS – the Section primarily responsible for the ICC system’s outreach and communications – has worked conscientiously to manage to expand operations into seven situations using the same level of human resources originally allocated for three situations. To manage more than double the number of situations within the relatively unchanging resource envelope, the Section has reduced the level of operations in situations with less judicial activities due to lack of arrests such as Sudan and Uganda, or where cases are at advanced stages such as in the Democratic Republic of the Congo and redeployed some positions to emerging situations. Where possible to amplify its impact, the Court’s Outreach Programme has sought partners to develop synergies. However, it should be noted that in many locations lack of local capacities and concerns about the security and safety of potential partners present major challenges and at times make forming collaborative partnerships not viable.

65. Field presence plays an important role in this regard. The systems’ field presence contributes to and facilitates increased collaboration with partners in the field, needed information exchange with the media and key local and regional interlocutors, maintaining relationships with affected communities and victims all of which lead to more efficient and increasingly effective outreach, and increased protection for witnesses and victims. Outreach field operations are overseen and supported by the Outreach Unit in The Hague that also develops plans and supervises their implementation. The PIDS must also constantly follow judicial developments to ensure field offices have accurate and timely information required.

66. On the other hand, the very limited number of field staff cover vast areas and are frequently hampered in their activities by issues related to local infrastructure, capacity and availability of the minimal necessities. To provide information on victims’ participation and specifically addressed to the wide range of victims and victim communities and to conduct the dialogue to which victims have a right in all the local languages, with respect for local custom and in the most effective manner possible is not attainable within the current constraints. Audio visual products have proven to be the most effective tool to make complex judicial processes understandable to all audiences. At the seat of the Court customized outreach communication tools are developed, including radio and television programs that are used during interactive sessions and broadcast by local media. Adequate resources are also required to mount an effective outreach campaign and produce such communication tools.

<sup>68</sup> Training required includes, among others: cultural sensitivity, gender, communications skills, dealing with traumatised and vulnerable witnesses, and avoiding secondary traumatisation or retraumatisation.

<sup>69</sup> See *Official Records, Ninth session 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.3, para. 38.

<sup>70</sup> See *Official Records, Ninth session 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.3.

67. The ICC system agrees with the report of the focal points, in the section entitled “Way forward after Kampala,” that highlights the vital role of communications: “[I]t could be argued that some expenses coupled with strategic goals represent more of an investment than a running cost”.<sup>71</sup> As a result of all of these factors, the ICC system and its relevant elements requires additional resources to enable it to most efficiently and effectively meet its obligations in relation to the victims’ right to communication.

68. Finally, complementarity remains a cornerstone of the Strategy, including outreach in particular. States should support the Court system domestically, providing access to media opportunities and spreading the ICC and Rome Statute system messages through their national justice and other domestic systems. Member States can also support the outreach efforts by incorporating Rome Statute and ICC messages where relevant in their development and rule of law programming and in their bilateral and multilateral engagement with situation countries in areas related to the work of the Rome Statute system. With this multi-faceted support from States—the required funding plus domestic and international support for outreach—the ICC system would be able to supplement its perforce limited outreach efforts so that victims rights will be met through suitable levels of quality and effective outreach activities.

### 3. Objective 2: Protection and Support

69. Under the Court’s legal framework and existing jurisprudence, the ICC system has a fundamental obligation to ensure that the victims’ right to protection and support is implemented and carried out in an appropriate and respectful manner<sup>72</sup>. The States will have to decide to what extent the ICC system will be able to provide the services that would be required for the Court system to fulfil its obligations.

70. As mentioned earlier, the jurisprudence around victims and their rights is evolving over the course of the Court’s proceedings. This evolution has had an impact on the duty to protect and support. In addition, the growing number of situations, as well as the unique nature and complexities of each, necessitate different responses and varying levels of resourcing. Regardless of the particular details of each case, the increase in cases, which will continue in the foreseeable future, affects both the headquarters and the field staff for all units involved with this mandate. Within the context of protection and support, this relates primarily to the VWU and, to a lesser degree, to the SSS and VPRS.

71. To protect the physical security of victim which can be compromised by revealing confidential information, the VPRS requires resources to provide situation-appropriate material for passive protection and information security. The VWU’s capacity for psycho-social assessments will need reinforcement as the demand for this service grows both in the courtroom and in the field. To adequately fulfil this obligation the VWU needs to supplement their current staff. The increasingly complex and rapidly changing circumstances in the current situation countries necessitate the analytical capacity to ensure the Court can continue to adequately fulfil its obligations as duty bearer for the right to protection. Finally, the demands of Chambers and other elements of the system related to legal and factual submissions to Chambers, protection and support issues and activities, operational matters and negotiations, as well as other legal activities, require the VWU to further bolster its existing legal capacity to ensure the Court can meet its obligations to protect and support victims. To meet all of these demands, the VWU would require additional resources, including to cover logistical costs and other expenses. These specific resources will be detailed as part of the 2013 budget process.

72. As before, training needs to be provided to staff from across the ICC system so that the Court can better fulfil its obligation to safeguard the wellbeing of victims. Staff and Counsel interacting with victims must be fully aware of victims’ rights, their psycho-social needs and the role of gender in this context. Where internal resources are available, the Court will absorb the cost, and will strive to achieve economies of scale by coordinating a general training programme on victim-related issues. Lastly, to protect the physical security

<sup>71</sup> RC/11 p. 85.

<sup>72</sup> *Rome Statute*, articles 43(6) and 68(1); *Rules of Procedure and Evidence*, rule 17.

of victim information, the VPRS requires resources to provide situation-appropriate material for passive protection and information security.

#### 4. Objective 3: Participation and Representation

73. Within its existing resources, the ICC system can further improve coordination between units dealing with victims so that accurate, well coordinated and timely messages about rights to participation and reparations reach victims. As part of its general review of the Legal Aid Scheme, the Registry will undertake a review of the resources provided both to Defence counsel and to LRVs to ensure they have adequate resources to assimilate and respond to the increased amount of information, filings and victim applications in the judicial proceedings.

74. The Registry will also continue to upgrade the software provided to the Defence and victims' representatives to further improve their functionality and to enable them to participate more fully in the e-court, of which the ICC is justly proud. The Court system will also review its court management processes to ensure that notification obligations continue to be met in a timely and accurate manner.

75. As noted above, the Court is aware of resource issues surrounding victim applications and is experimenting with different application methods. The size of the Court's workload is determined by factors such as the scope of the charges as defined by the Prosecutor and confirmed by the Pre-Trial Chamber, which in turn affects the number of victims potentially entitled to participate in proceedings or seek reparations; the security situation and other factors on the ground; actual number of victims that apply to participate; the complexity of the criteria established by the Chambers in assessing the applications; the number of representatives and the role the victims play in the proceedings. The Court has not yet reached a balance in terms of cases in and out, so the trend has been for increasing numbers of cases as well as increasing volume of victims applying to participate (though the later is not consistent and depends on the individual cases). This requires the Court to maintain flexibility in order to meet the fluctuating requirements arising from each individual case. The VPRS plans to retain flexibility through GTAs as required depending on duties imposed by Chambers. There has been and will continue to be development in the way victims, individually and in groups, are represented in proceedings. The role of LRVs in reparation proceedings remains uncertain, as does the process by which applications for reparations will be made. These decisions will have an impact on resource needs in headquarters as well as in the field, though it is too early to present an indication of what that impact might be.

76. Currently, the VPRS has only five established field staff posts to cover all situations and cases. This situation is simply unworkable. Therefore, specific resources to alleviate the situation will be detailed in the 2013 budget process. Even with the addition of limited resources, peak workload periods will remain a challenge that is met in part with flexible resources. Similarly, the OPCV has no staff dedicated in the field who could establish contact with victims as soon as the Office is appointed as legal representative, explain and keep them updated on the proceedings, and gather information and documentation necessary for their participation in the proceedings. Yet, Chambers have constantly recognised the importance of maintaining the ability of legal representatives in The Hague to contact victims in the field<sup>73</sup>. In order to fulfil this obligation, the OPCV would require further resources, which will be specified in the 2013 budget. As per today, senior staff of the OPCV travel in the field to perform the tasks outlined above. Indeed, said tasks require a certain level of seniority and expertise as they involve privileged communications and possible contacts with high level local interlocutors.

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<sup>73</sup> See, *inter alia*, in the *Bemba* case, Decision on common legal representation of victims for the purpose of trial, Trial Chamber III, 10 November 2010, para. 26; in the *Ruto et al.* case, Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, Pre-Trial Chamber II, 5 August 2011, para. 79.

## 5. Objective 4: Reparations and Assistance

77. At this point in the evolution of the judicial process, it is difficult to detail any gaps as it is unclear what the situation regarding reparations will be. The TFCV has gained valuable insight and operational knowledge implementing assistance projects that may enlighten the ICC when devising an award for reparations, especially if collective reparations are awarded. The ICC system is primarily learning from the experience of others and from academics and is engaged in internal consultations and planning.

78. The only clear gap at the moment is within the VPRS, which was established as the specialised unit within the Registry in relation to reparations. However, it does not as yet have any staff resources dedicated to reparations. Without prejudice to the presumption of innocence in any particular case, if the Court were to reach a final conviction, regardless of the direction or form of reparations, VPRS would need the capacity to fulfil its reparation related obligations. This is a significant gap, particularly at the crucial stage where the Court is undertaking preparations for its first reparations proceedings, which will most likely occur in 2012. The VPRS would therefore require additional staff resourcing. Furthermore, the Trust Fund anticipates increasing staffing needs, in particular in the area of financial management and communications/resource mobilization. These needs are related to the triggering of the reparations mandate as well as to the growing number of situations that will require activities under the Trust Fund's assistance mandate. The additional resources required will be specified as part of the 2013 budget process.

### D. Key Lessons Learned

79. Learning from past experiences, as well as from the wisdom of partners, be they victims, intermediaries, civil society, NGOs or States, makes it possible for all elements of the ICC and Rome Statute systems to refine and further improve their approach to victims, and to better realise their responsibilities as duty bearers in relation to victims who have rights under the Rome Statute system. The following section contains some of the foundations upon which the above implementation plans were developed.

80. Overall, the Court must adapt to the unique aspects of each case and situation. More generally, however, the ICC system must adapt to the insecurity in which most victims live and to the affect it has on them. This means accounting, and where possible compensating, for the huge influence this insecurity has on victims' engagement with the Court.

81. How the elements of the Rome Statute system communicate and what they say, all have an impact on the general public and more particularly on victims. Great care must be taken by all elements and units of the system regarding messaging and managing expectations. Appropriate coordination and cooperation is crucial. This is particularly true since victims and the general public may not distinguish between one part of the Court and another. Exchanges of information early in the process have proven both effective and beneficial in enabling victims to access their rights. New tools such as the *Draft Guidelines Governing the Relations Between the Court and Intermediaries*, the protocol on cooperation in relation to witnesses and victims, and other internal agreements ease communications between and with different elements of the ICC system. The fruits of these efforts are quickly apparent. Furthermore, the Court has established new IT systems which have also improved efficiency with regards to the transmission of information, especially between units that play a role in the proceedings. These measures have improved both the effectiveness of the participation of victims in the proceedings as well as the exchange of information between victims themselves.

82. Enhanced external communication, coordination and cooperation with external partners in the field is equally essential. Experience has proven that the Court's impact could be enhanced by working closely with other actors present in the field. However, when working with intermediaries, caution must be exercised, as it is not always easy to ascertain who really has access to and the trust and confidence of victims, or who can speak on their behalf. In each new location, special efforts must be made to ascertain this knowledge. Most units with a field presence have developed relations with external partners, be they civil society organisations, local national or international NGOs, U.N. agencies, legal and academic communities, and various media outlets. The ensuing dialogue has

made it possible for the field units to develop a better understanding of the cultural environment and challenges faced by countries, communities and individuals, thereby enabling them to plan more effective operations on the ground and to respond better to the needs of victims.

83. The Court must constantly monitor and adjust strategies and messages in order to respond not only to judicial developments but also to local dynamics. To do so requires from the entire Court system immense flexibility, creativity and, at times, speed. Coordinated public information campaigns targeted at appropriate audiences often clear up (mis)perceptions and set the record straight. The most successful of these are developed through cooperation and incorporate the most recent information in a consistent way.

## **E. Leadership and Support of States: Roles and Activities Outlined in the Review Conference**

84. A conclusions of the official segment of the Review Conference’s Stocktaking on international criminal justice focused on the impact of the Rome Statute system on victims and affected communities and noted that the “... Court and its staff cannot walk this road alone. They need the stewards of the Court – the States Parties – to continue their commitment, support and leadership”<sup>74</sup>.

85. The ICC system depends on the support and cooperation of States to fulfil its mandate, and this is particularly true for victim-related matters. Participation of victims and outreach to affected communities can only be meaningful if situation countries actively support the work of the Court. Similarly, the protection of victims cannot function without the willingness of States to enter into agreements which facilitate that protection.

86. In order to strengthen State cooperation and support, the Court invites States Parties to make proposals for how to foster the exchange of ideas and improve the mutual understanding of challenges faced by the Court and by the States themselves. The Court stands ready to receive and study these proposals.

## **F. Monitoring and Evaluation**

87. During the first two years, the Working Group (WG) on Victims will monitor the implementation of the 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.

88. 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 of both policy and 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 Revised 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>74</sup> ICC-ASP/9/25, paragraph 14.c.viii. The facilitator’s report included outcome recommendations following the “Civil society taking stock” panel. Those recommendations were adopted by the ASP as RC/11 also previously issued as ICC-ASP/9/25.