

**Twelfth session**

The Hague, 20-28 November 2013

**Report of the Court on the implementation in 2013 of the revised strategy in relation to victims****I. Introduction and Background**

1. During its tenth session, the Assembly of States Parties (“the Assembly”) recognised that victims’ rights to equal and effective access to justice; protection and support; adequate and prompt reparations for harm suffered; and access to relevant information concerning violations and redress mechanisms, are essential components of justice.<sup>1</sup> During that session, the Assembly requested the International Criminal Court (“the Court”) to continue to revise its Strategy in relation to victims and to report thereon at the following eleventh session.<sup>2</sup> The Court subsequently engaged in consultation and revised its Strategy focusing on realising and actualising the rights of victims as contained in the Court’s legal framework.<sup>3</sup> The Court completed its review of the Strategy in 2012, on the basis of the results of the stocktaking exercise at the Review Conference, best practices from the field, as well as consultation with NGOs, civil society and other stakeholders.

2. The Court submitted its Revised Strategy in relation to victims (Revised Strategy) and a separate report thereon to the eleventh session of the Assembly.<sup>4</sup> That report detailed the Court’s experience in implementing the Strategy in relation to victims and the lessons the Court had learnt. It also examined the Court’s plans for implementing the Revised Strategy, which derive from the common vision of all of the relevant elements of the Court system, and include metrics for measuring the Strategy’s achievement. Both the report and the Revised Strategy reiterate the key role played by victims before the Court and the importance of the Court’s restorative as well as punitive function. The Assembly took note of these documents in the stand-alone resolution during its eleventh session.<sup>5</sup> At the same session, in the omnibus resolution, States requested the Court to finalise the review of the Strategy and to report thereon in advance of the Assembly at its twelfth session.<sup>6</sup> The Court therefore presents this report as requested on the implementation of its Revised Strategy in relation to victims.

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

<sup>2</sup> *Ibid.*, para. 48.

<sup>3</sup> Court’s Revised Strategy in Relation to Victims (ICC-ASP/11/38), 5 November 2012, paras. 2 – 9.

<sup>4</sup> Court’s Revised Strategy in Relation to Victims (ICC-ASP/11/38) and Report of the Court on the Revised strategy in relation to victims: Past, present and future, (ICC-ASP/11/40), 5 November 2012.

<sup>5</sup> Resolution on Victims and Reparations (ICC-ASP/11/Res.7), adopted at the 8<sup>th</sup> plenary meeting, on 21 November 2012, by consensus, para. 1.

<sup>6</sup> Resolution on Strengthening the International Criminal Court and the Assembly of States Parties (ICC-ASP/11/Res.8), adopted at the 8<sup>th</sup> plenary meeting, on 21 November 2012, by consensus, para. 57.

## II. Implementation of the Revised Strategy

3. This report provides an update to the Assembly on the measures implemented by the Court in 2013 in relation to four Objectives set out in the Revised Strategy: 1) Communication; 2) Protection and Support; 3) Participation and Representation; and 4) Reparations and Assistance.<sup>7</sup>

4. The realisation of the rights of victims - both as set out in the annex to the Revised Strategy as well as subsequently ruled upon by Chambers – is at the centre of the Court's Revised Strategy. It is important to note that certain aspects of the Court's legal framework, especially in relation to victims, still await judicial determination or interpretation. In implementing the Revised Strategy and reporting on it, the Court refrains from impinging in any way on the powers and discretion of Chambers and remains flexible to incorporate the relevant judicial rulings as they arise. Furthermore, the four Objectives identified in the Revised Strategy are phrased, in part, as aspirations. While it is not always possible to achieve these ambitious goals, 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 its operating environment.

### A. Gender: An issue cross-cutting all four Strategic Objectives

5. Gender was identified in the Revised Strategy as an issue cross-cutting all of the Strategic Objectives and with significant impact on victims, affected communities and the work of the Court system. It was noted that victims have a right as set out in the Court's legal framework to have gender and its impact taken into consideration in certain circumstances.<sup>8</sup> In the Revised Strategy, the Court committed to continuing to do its utmost, in accordance with its legal framework, 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. Gender is reported on below in relation to the four Strategic Objectives.

#### 1. Strategic Objective 1: Communication

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

6. While an Objective on its own, communication is also cross-cutting as it relates to the other three Objectives. The Court has undertaken various activities for the implementation of the communication Objective in 2013 to ensure that victims have clear information about the Court, its mandate and operations as well as their rights. These activities relate to outreach programmes and tools, undergoing training and developing strategic plans.

7. Reaching out to affected communities and publicising on-going trials remain priorities for the Public Information and Documentation Section (PIDS) in the Registry. PIDS is currently improving the quality of the two-way communication process or dialogue between outreach practitioners and affected communities. Through the Outreach Unit's internal reports, views and concerns of those engaged during outreach sessions are being channelled back to the relevant offices within the Court. Overall, from January to September 2013 some 13,530 people (2,956 women) participated in 242 outreach sessions.<sup>9</sup>

8. In relation to communication outreach tools, in conjunction with the Victims Participation and Reparation Section (VPRS) and other relevant sections within the Court, a series of programmes related to victims' participation in Court proceedings were produced. The aim of the series of television and radio programmes is to inform affected

<sup>7</sup> Court's Revised Strategy in Relation to Victims (ICC-ASP/11/38), 5 November 2012.

<sup>8</sup> *Ibid.*, para. 17.

<sup>9</sup> Number of participants in outreach sessions per country: Uganda, 1288 (860 women); DRC 11,105 (1877 women); Darfur (Sudan), 330 (94 women); Kenya 755 (112 women) and Côte d'Ivoire 52 (13 women).

communities about their rights regarding participation. These programmes answer frequently asked questions by victims in the situations countries.<sup>10</sup> An introductory programme was produced in May 2013.<sup>11</sup>

9. Through these programmes, during face to face meetings the concerned groups targeted were able to better understand the provisions of the Rome Statute regarding the rights of victims to apply for participation and reparation. PIDS also produced special videos tailored to the target groups in Abidjan, Côte d'Ivoire, and Ituri in the DRC. Initial testing of the videos was very successful. Similar videos focusing on the modalities of victim's participation according to the decisions by judges in the two Kenya cases and in the *Bosco Ntaganda* case are under production. The videos are tools that Court officials as well as intermediaries could use to promote understanding of the modalities of participation before the Court.<sup>12</sup>

10. In 2013, local security conditions in Central African Republic (CAR), Sudan and Libya became significant obstacles preventing the Court from conducting outreach activities in those situation countries. To fill the information gap, PIDS has used radio and, whenever possible, disseminated information through their partners in the field.

11. The Outreach Unit of PIDS has been assessing its experience in order to prepare an updated version of the Court's Strategic Plan for Outreach. Internal and external consultations are being conducted and relevant elements of the Revised Strategy for Victims and the draft Guidelines Governing the Relationship with Intermediaries will be included.

12. The Office of the Prosecutor (OTP) continued to communicate with victims and affected communities, including following the receipt of article 15 of the Rome Statute communications during its preliminary examinations. The Office used media and public information activities as well as direct contact with NGOs and victims' associations to provide information and updates about the process and scope of preliminary examinations, including requirements for the assessment of the interests of victims before deciding whether or not to open an investigation. During the investigations, OTP staff continued to brief witnesses about the Court and the mandate of the OTP. In most instances, the OTP is the first Organ of the Court to interact with victims who are potential witnesses. In this regard, the OTP has developed a child-friendly introduction to the Court as a tool to be used by investigators when explaining the mandate of the Court.

13. In the interests of promoting transparency, clarity, and predictability, the OTP is finalizing its policy paper on sexual and gender-based violence, which will also provide guidance to staff on the application of the legal framework.

14. The Trust Fund does not have its own outreach unit and relies mainly on PIDS and VPRS for communication. The Trust Fund continues to work with these Registry Sections to deliver accurate and comprehensive messages on the Funds' reparations and assistance mandate. However, the outreach activities that are sometimes performed through intermediaries are beyond the TFV's control.

15. With regard to the objective to consult with eligible victims and their families in order to develop an implementation plan for reparations,<sup>13</sup> the TFV is not yet in a position to begin any activities in the *Lubanga* case in the DRC situation as the Trial Chamber's decision on reparations<sup>14</sup> as well as the judgment convicting Mr. Lubanga are currently under appeal. The Trust Fund notes that there are no resources available to perform such

<sup>10</sup> Frequently asked questions include: What does it mean to participate as a victim in the Court proceedings? How does the process work? When and how are victims of ICC crimes entitled to reparations? What challenges does the Court face in making effective and meaningful participation of victims?

<sup>11</sup> This programme can be viewed at: English version <<http://www.youtube.com/watch?v=chymGL8teX4>> and French version <<http://www.youtube.com/watch?v=oudIz-RhO00>>.

<sup>12</sup> Impact of outreach is enhanced by publishing Court videos on the internet and through local media broadcast. During the reporting period, the English version of the video *Victims' participation before the ICC* published on the Court's YouTube channel has received 1,766 views and the French 549 views. The video *La participation des victimes devant la CPI – Côte d'Ivoire* received 503 views. Also, these video and audio programmes were distributed directly to media reaching potential audiences of 30 million in Kenya, 25 million in the DRC, 19 million in Uganda, 800,000 in CAR and unknown potential audience in Cote d'Ivoire.

<sup>13</sup> Report of the Court on the Revised strategy in relation to victims: Past, present and future, (ICC-ASP/11/40), para. 15. In the case against Mr. Lubanga, Trial Chamber I included affected communities.

<sup>14</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, No. ICC-01/04-01/06, "Decision Establishing the Principles and Procedures to be Applied to Reparations", 7 August 2012.

consultations through the Trust Fund, and that it is unclear to what extent the Registry will be able to resource the assistance of PIDS and VPRS.

16. With regard to the assistance mandate, the Trust Fund provided PIDS and VPRS with audio messages giving some examples about the assistance mandate to be used during outreach sessions. However, it needs to be explained that eligibility for participation in assistance programs is subject to available resources.

17. The Trust Fund is planning to include the development of its own outreach strategy in its upcoming Strategic Plan for 2014-2017. This will also encompass outreach strategies of the Trust Fund's partner organisations that provide services under the assistant mandate for eligible individuals and communities.

18. Finally, a number of Registry Sections, Offices and a representative of the TFV participated in two and a half days of training on communication with victims, including a focus on culture and communicating with vulnerable people. Staff from the VPRS, VWU, OPCV, OPCI and OTP also undertook five days training on interviewing victims and witnesses. These training courses were sponsored and facilitated by Justice Rapid Response.

## **2. Strategic Objective 2: Protection and Support**

*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.*

19. In order to facilitate victims' rights to participate, the Court provides protection and support to alleviate situations that may hamper a victim's ability to participate in the proceedings. In 2013, the Court undertook various activities implementing this Objective regarding protection and support to victims (both those participating in the proceedings and those appearing as witnesses), including performing security assessments, providing psycho-social care and applying protective measures. This was due largely to the work of the Victims and Witnesses Unit (VWU) in conjunction with Chambers and the parties and participants in the proceedings.

20. As per article 43(6) of the Rome Statute, the VWU in the Registry provides protective measures and security arrangements, counselling and other appropriate assistance for victims and witnesses appearing before the Court and those who might be at risk because of their interaction with the Court. Psychologists in the Unit have expertise in trauma, including trauma related to sexual and gender-based violence. Furthermore, the OTP Gender and Children's Unit (GCU) makes referrals to the VWU, and witnesses referred by this mechanisms have already received specialised care concerning gender from their initial interactions with the Court. The GCU also conducts pre-interview assessments to ensure the fitness of victim-witnesses to be interviewed and provides psychological support during the interview process. In addition, the OTP's Protection Strategy Unit liaises with VWU regarding protective measures. In 2013, the VWU recruited an additional psychologist (P2) to the team in order to support victims and witnesses. The VWU's capacity for psycho-social assessments will need reinforcement as the demand for this service grows,<sup>15</sup> and an internal review of VWU has recommended further increasing the number of staff psychologists in 2014.

21. As per article 68(4) of the Rome Statute the VWU may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance. The Chambers have continued to seek the specialised advice of VWU regarding protection measures for victims and witnesses in proceedings. In order to meet these requests, the VWU bolstered its legal capacity to ensure that the Court can meet its obligations to protect and support victims.<sup>16</sup> In 2013, the VWU doubled its legal capacity as a matter of priority. The VWU was able to achieve this within the approved programme budget by not renewing contracts, terminating other contracts and by redeploying posts. For example, there were five posts in Central African Republic (CAR) that were redeployed to more active situations.

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<sup>15</sup> ICC-ASP/11/40, para. 71.

<sup>16</sup> *Ibid.*

22. The Trial Chamber has granted protective measures to victims participating in the *Bemba* case. Identifying information contained in both the confidential redacted and public redacted versions of the annexes to victims' decisions is redacted to protect the victims. The publication of the identity of victims who appeared as witnesses before the Court or appeared to present their views and concerns in person was subject to the victims' consent. Victims who appeared as witnesses or presented their views and concerns in person were granted special measures, including the presence of a support person, monitoring by a psychologist and an adapted mode of questioning by the parties. Although only one trial has started and the other commences in November, the Chamber has already confronted issues of protection and support for victims in the Kenya cases, with the first protective measure decision being issued by Trial Chamber V(A).<sup>17</sup>

23. VWU have continued in 2013 to undertake security assessments and to provide protection and support to victims participating in proceedings and witnesses both in the field and at the seat of the Court. This includes not only those who actually give evidence, but also those who may be at risk due to their interaction with the Court. Since the 2012 Report of the Court on the Revised Strategy in Relation to Victims, the VWU has submitted in the *Bemba* case a report on any potential requests for protective and special measures for the 1708 victims who had been granted status to participate, and is currently working on a new report about 777 victims who have been granted status to participate. The VWU is currently providing protective measures to more than 10 victims in the Kenya, DRC and Ivory Coast cases.

24. There has been a very large growth in the number of people entering the Court's Protection Program. This represents a significant demand on the Court's resources. In light of the two Kenya cases, the Court will face new and unprecedented challenges regarding witness protection, especially due to the large size of families requiring protection. A review is being undertaken of those who have not yet been exited from the Program and VWU's care. The VWU Protection sub-unit would have to account for any additional workload that may emanate from this Strategy, and where required increase its staffing capacity to efficiently address the protection of victims.

25. The VWU's Familiarization Protocol has continued to be implemented in 2013 and is an effective tool for victims and witnesses appearing before the Court. In 2013 the VWU has been implementing the Protocol on protection with the OTP. The Protocol, while developed between the Registry and OTP, may be extended to apply equally to the Defence and Legal Representatives of victims if required by Chambers. The Protocol is currently the subject of review by the Organs of the Court and parties and participants to proceedings to define the division of labour and responsibilities between the Organs. The Court has also improved its procedures to ensure that victims are not harmed due to their interaction with the Court, including harmed by staff of the Court.

26. The VWU's Immediate Response System (IRS) applies to victims and witnesses in the field and aims to provide protection services both by the Court and/or by local or State authorities. Some challenges to implementing the IRS have arisen in the CAR as well as the DRC, where the conflict is on-going and the security situation is so volatile. Where possible, the VWU has formed partnerships with local authorities and UN agencies in order to strengthen local capacity to support and assist victims participating in the proceedings. However, the Court needs to enter into additional relocation agreements with States in order to be able to fulfil their mandate regarding victims/witness protection. To date, the Court has 13 such agreements in place, with three agreements concluded in 2013. The VWU have developed a strategy to increase the number of relocation agreements and have identified priority States.

27. The VWU has identified the need for 11 additional posts in the Proposed Programme Budget for 2014. These posts are necessary for VWU to increase its services to meet demand and to reduce the risks to victims and witnesses, as well as the institutional risks to the Court. Finally, a number of reviews - both internal and external - of VWU were undertaken in 2013 and their recommendations will be considered and implemented in the course of 2014. The focus on protection and support of victims and witnesses will continue to be a high priority for the Court.

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<sup>17</sup> ICC-01/09-01/11-902-Red2.

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

*Ensure that victims are able to fully exercise their right to effectively participate in the Court's 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.*

28. The Court was created with both a punitive and a restorative function, with the Rome Statute giving victims a right to directly participate in proceedings. Enabling victims to realise their rights to participation and representation primarily falls to the VPRS, CSS and OPCV,<sup>18</sup> and is guaranteed by Chambers. In 2013, improvements were made to the Court's database system for applications, information sheets were provided for participating victims, and the Manual for Legal Representatives was updated. In addition, the Court has also continued to develop the modalities of victim participation and representation in an effort to ensure that these rights are effective and meaningful.

29. The Court has continued to make efforts to explore options aimed at making the victim application system as efficient as possible. The application system is the mechanism by which victims may apply to participate in proceedings or for reparations. These developments, some of which were envisaged in the Court's report to the Assembly in November 2012,<sup>19</sup> are enabling lessons to be learnt as regards the most efficient and effective system for enabling victims to seek to participate in the proceedings. The Court has also engaged in detailed discussions on this topic with civil society<sup>20</sup> and the States Parties through the Hague Working Group facilitation on Victims, Affected Communities, Trust Fund for Victims, including Reparations and Intermediaries.

30. Improvements have been made by VPRS to the electronic management system used for victims' applications, for instance enabling victims' applications to be registered in a much shorter time. In response to instructions from Chambers, and in an effort to explore more effective ways to deal with large numbers of applications, the VPRS has implemented several different victims' application systems in the course of the last year that mark a departure from the system implemented to date. In the *Gbagbo* case, in order to enable victims to apply to participate in the confirmation of charges hearing, a partly collective application process was adopted during the first half of 2012.

31. In the two Kenya cases, Trial Chamber V<sup>21</sup> decided on 3 October 2012 that the victim applications pursuant to Rule 89 of the Rules of Procedure and Evidence would only need to be submitted for review by victims who wish to participate individually by appearing directly before the Chamber. All other victims who wish to participate without appearing before the Chamber: (i) are permitted by Trial Chamber V to present their views and concerns through a common legal representative and (ii) do not need to go through an application procedure. A simplified registration procedure applies to this latter group. The common legal representatives, working with the Registry, are responsible for identifying victims within the scope of the case. The VPRS reported in January 2013 that a majority of the victim communities consulted supported the new system.<sup>22</sup> The VPRS has been in regular contact with the victim communities in both Kenya cases and in 2013 filed five reports to the Chamber about the general situation of victims.<sup>23</sup>

32. In the *Bosco Ntaganda* case,<sup>24</sup> the Pre-Trial Chamber, after consultation with the Registry, including a review of the lessons learnt in the *Gbagbo* case, ordered a simplified victim application process with a one-page application form, for VPRS to implement. In another development, the VPRS has in two cases notified its reports on victim applications

<sup>18</sup>The OPCV is normally appointed as legal representative of unrepresented applicants before a decision is taken by the relevant Chamber and sometimes as legal representative of participating victims in the proceedings.

<sup>19</sup> Report of the Court on the review of the system for victims to apply to participate in proceedings, 5 November 2012, ICC-ASP/11/22.

<sup>20</sup> See for example the *Independent Panel of Experts Report on Victim Participation at the ICC* (July 2013) produced by Amnesty International and Redress, which was based on the Panel's meeting and consultations held in The Hague on 24-27 April 2013.

<sup>21</sup> ICC-01/09-01/11-460; and ICC-01/09-02/11-498.

<sup>22</sup> ICC-01/09-01/11-566-Anx; and ICC-01/09-02/11-606-Anx.

<sup>23</sup> The latest report was filed 24 September 2013. See ICC-01/09-01/11-980-AnxA; ICC-01/09-02/11-810-AnxA

<sup>24</sup> Pre-Trial Chamber II, *Decision Establishing Principles on the Victims' Application Process*, ICC-01/04-02/06-67 of 28 May 2013.

to the parties.<sup>25</sup> Previously, these reports were prepared for the Chamber's benefit only, but have since been ordered to be disclosed to the parties as well to assist in their review and observations of the applications.

33. In the *Bemba* case, the Chamber established a system of common legal representation of victims authorised to participate in the proceedings.<sup>26</sup> Applicants whose applications were not yet ruled upon by the Chamber were provisionally represented by the OPCV.<sup>27</sup> Following the legal representatives' applications, the Chamber authorised two victims to present evidence and three victims to present their views and concerns in person before the Chamber.<sup>28</sup> In the *Bemba* case, the Chamber is closely monitoring the mode of questioning by the parties in relation to victims of sexual and gender-based violence. In the Kenya cases, the Chamber will endeavour to do the same when any such victims are called.

34. In relation to the representation of victims in the proceedings before the Court, the OPCV has further developed its capacity for keeping victims informed of the proceedings in a timely manner, namely by producing information sheets to be distributed in the relevant country, and using Skype to communicate with its clients when possible. Moreover, the Court is experimenting with two models for common legal representation: firstly in the *Gbagbo* case where the OPCV is appointed as common legal representation (CLR) and assisted by a legal assistant in Cote d'Ivoire; and secondly in the two Kenyan cases in which an external CLR is appointed and a staff member of the OPCV is seconded to his team and he/she will appear in the courtroom on the CLR's behalf. While it is too early to assess the efficiency of both options, the OPCV submits that the first option seems more feasible in terms of efficiency, effectiveness and cost savings; particularly considering that the second option implies that two OPCV staff are permanently assigned to the team of an external counsel, making it impossible for them to work on other assignments and creating an increase in the workload of other staff.

35. In addition, the OPCV has published the Second Edition of its Manual for Legal Representatives in English and French, updated at December 2012, as well as the Spanish edition. The Manual contains a summary of all decisions issued by Chambers in relation to victims' participation per argument and in chronological order. The Manual is updated at least once a year and sent to the external legal representatives electronically. This electronic version is searchable. The Manual provides clear, complete information on the Court's practices on issues pertaining to the representation of victims' in the proceedings. As a result, it is a useful tool for members of the Office to deliver legal advice and research to external legal representatives in an efficient way since it renders the research of material much easier. Moreover, it provides a continuous update on decisions issued in all situations and cases pending before the Court, therefore helping members of the OPCV assigned to different situations/cases to better follow the jurisprudence in all proceedings, making it easier to re-allocate staff depending on the workload in the different situations/cases. Finally, it avoids requests by external legal representatives who could easily find an answer in the Manual, therefore enabling the OPCV to optimize its limited resources and to assign its staff to in depth research requiring legal analysis for external legal representatives.

36. In the last year the OPCV has also further strengthened its capacity to provide assistance to external counsel and to victims in an efficient and timely manner by refining its database. The database enables the Office to catalogue, analyse, retrieve and update data very quickly. The database also enables the Office to create reports to verify the workload by monitoring tasks and, consequently, to share the different tasks among the staff. In addition, the ICT Section has upgraded the basic software of TRIM, the Court's document management software, which is also utilised by external counsel.

37. Finally, the Annual Counsel Seminar and Training for external Counsel on the Court's list also includes training on topics relating to victim representation. This year, over 150 Counsel are participating.

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<sup>25</sup> In the *Bosco Ntaganda* (pre-trial stage) and *Lubanga* (appeal stage) cases.

<sup>26</sup> Decision ICC-01/05-01/08-1005 of 10 November 2010.

<sup>27</sup> Decision ICC-01/05-01/08-1020 of 19 November 2010.

<sup>28</sup> Decision ICC-01/05-01/08-2138 of 22 February 2012.

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

*Ensure that victims are able to exercise their rights as regards reparations consistent with the Rome Statute and the Court system's legal framework and to benefit from assistance.*

38. One of the unique features of the Rome Statute system is that victims have been granted the right to request reparations and may benefit from the support of the TFV under its assistance mandate. While noting that a final reparations decision is still awaited from the Appeals Chamber in the *Lubanga* case, the Court has undertaken activities in relation to this Objective in 2013. This task relates mainly to Chambers, the VPRS, OPCV and the TFV.

39. In the *Lubanga* decision on Reparations, Trial Chamber I established principles relating to reparations for victims in the *Lubanga* proceedings<sup>29</sup> and determined the approach to be taken for their implementation. This included principles relating to victims of sexual violence, noting that appropriate reparations awards should be provided to victims of sexual and gender-based violence; gender-sensitive measures shall be implemented to ensure that women and girls are enabled to participate in a significant and equal way in the design and implementation of reparations orders.<sup>30</sup> Following the *Lubanga* Decision, victims participating in the proceedings, as well as Mr. Lubanga, appealed the decision, with the Appeals Chamber's determining the admissibility of the appeals in December 2012. The outcome of the Appeals Chamber decision is forthcoming.

40. The *Lubanga* decision on Reparations established a number of principles applicable in the *Lubanga* reparation proceedings. Although some of these principles are currently subject to an on-going appeal,<sup>31</sup> the *Lubanga* Decision on Reparations nevertheless marks an important first step towards the establishment by the Court of a framework for principles relating to victims' reparations in accordance with article 75 of the Rome Statute. Discussions on the issue of principles regarding victims' reparations continued in the Court in 2013 within the Hague Working Group on Victims, Affected Communities and Trust Fund for Victims, including Reparations and Intermediaries, co-facilitated, as in 2012, by Ambassadors Ben Becher and Pizarro Leongómez. As a result, the Court provided its Informal Court Paper on the Question of Principles Relating to Reparations to The Hague Working Group,<sup>32</sup> and a report to the Assembly of States Parties at its Twelfth Session on Principles Relating to Victims' Reparations. While these reports indicate the Court's work to date regarding reparations, uncertainty persists until a reparations order becomes final.

41. In light of the pending appeals in the *Lubanga* case, activities of the VPRS have been limited to conveying key messages to victims in the field on the status of the proceedings. PIDS have also undertaken activities in the field and from the seat of the Court to communicate with victims and affected communities about the stage of proceedings in *Lubanga* and the potential reparations order(s). At this stage it is still unclear who might benefit from reparations, what kind of reparations are to be delivered, whether or not the accused is held liable for reparations, what role the Trust Fund might play and whether or not the Trial Chamber was correct in its ruling on the non-examination of the reparation applications before it. Therefore, messages on reparations to victims and affected communities in relation to the *Lubanga* case are necessarily general until the Appeals Chamber issues a decision in the matter.<sup>33</sup>

42. While it is not mandatory to hold hearings under the legal framework, in *Lubanga* the Trial Chamber did not hold reparations hearings, which the TFV notes disappointed many victims as they could not present their views/case for reparations. The TFV encourages the Court to work on a framework that gives victims and their families (legal) clarity on what reparation proceedings have to encompass as a minimum standard so that victims can better predict the process and the potential outcome when they file an application for reparations, what the limits are and how they can present their case for

<sup>29</sup> *Decision establishing the principles and procedures to be applied to reparations*, ICC-01/04-01/06-2904.

<sup>30</sup> *Ibid.*, paras. 207-209. This is subject to appeal by the Defence, which is pending before the Appeals Chamber.

<sup>31</sup> See also the Report of the Court on principles relating to victims' reparations (ICC-ASP/12/39), 8 October 2013.

<sup>32</sup> Dated 15 May 2013. The report was presented orally to The Hague Working Group on 28 May 2013 by a representative of the Presidency and was followed by a question-and-answer session.

<sup>33</sup> It is understood that the Appeals Chamber will only rule on the reparation appeals if it confirms the conviction of Mr. Lubanga in the appeals proceedings on the merits, which are currently pending before the Appeals Chamber.



reparations before the Court.<sup>34</sup> The TFV submits that the lack of General Principles related to reparations is one of several reasons behind the high level of uncertainty.<sup>35</sup> Regarding communication, in the future the messages on reparations<sup>36</sup> prepared by the relevant organs of the Court and the TFV shall be regularly monitored, reviewed and adjusted and include the feedback from victims and affected communities.

43. The Trust Fund anticipates increasing resource needs, which are also 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 particular operational costs for the TFV Secretariat related to the implementation of Court-ordered reparations awards cannot yet be considered for the 2014 budget. They will depend on the outcome of on-going judicial proceedings (i.e. the *Lubanga* case) and on the timing of this outcome, could be considered for a complementary budget or for the contingency budget. Costs may include - but are not limited to - additional field capacity (GTA), travel expenses, use of experts, outreach/consultations and the set-up and management of a verification mechanism.<sup>37</sup> The Trust Fund notes that its Board of Directors decided to extend their Strategic Plan throughout 2013 and that it will decide on the subsequent Strategic Plan (2014-2017) in March 2014.

### III. Guidelines governing the Relations between the Court and Intermediaries

44. Intermediaries play an important role in relation to victims and to achieving the four above Objectives. The Court's report on the Revised Strategy in Relation to Victims recognised this role and included the implementation of the Court draft *Guidelines Governing the Relations between the Court and Intermediaries* (Intermediaries Guidelines) as part of executing the Revised Strategy.<sup>38</sup> The Court prepared draft Guidelines in 2012 and they were noted by the Assembly at its 11<sup>th</sup> session.<sup>39</sup> These Guidelines and supporting documents were prepared in order to provide a framework with common standards and procedures to govern the Court's relationship with intermediaries. In 2013, the Court has been implementing the draft Guidelines to the extent possible within existing resources.

45. The Intermediaries Guidelines foresee a responsibility of the VWU to protect intermediaries at risk when they fall within the scope of the VWU's mandate under articles 43(6) and 68(4) of the Rome Statute. The draft Guidelines mandate the SSS to vet intermediaries and also to give training on relevant and appropriate security practices. While the VWU and SSS do not use intermediaries, they are implementing the Guidelines on Intermediaries to the extent necessary based on referrals, and within budgetary constraints. The VPRS have also been implementing the Guidelines to the extent possible, including applying the criteria for the selection of intermediaries and providing support to intermediaries (including reimbursing expenses when necessary). The VPRS have also provided training to intermediaries including on interacting with victims and ethical behaviour with victims. Due to resource limitations, VPRS have not been able to implement contractual relations with intermediaries of the type envisaged in the Guidelines (ie. the Model Contract).

46. The Court submitted the draft Guidelines to the Committee on Budget and Finance at both its April and September 2013 sessions for their consideration of the financial implications.<sup>40</sup> The Committee noted that their adoption would undoubtedly enhance the security of the Court's proceedings if intermediaries are utilized with prudence and in a way that is clearly understandable by the parties.<sup>41</sup> The Guidelines were also discussed in the Hague Working Group.

<sup>34</sup> Review of Article 76 (2) and (3) of the Rome Statute and, Rule 94 and 95 of the Rules of Procedure and Evidence would be necessary.

<sup>35</sup> ICC-ASP/11/40, para. 48.

<sup>36</sup> *Ibid.*, para. 53.

<sup>37</sup> *Ibid.*, para. 78.

<sup>38</sup> *Ibid.*, paras. 17, 26, 39, 44 and 81.

<sup>39</sup> ICC-ASP/11/Res.8, para. 50.

<sup>40</sup> Draft Guidelines Governing the Relations between the Court and Intermediaries: Summary of Financial Implications of Implementation, CBF20/01S05, 22 March 2013; and Second Report of the Court on the financial implications of the draft Guidelines governing the relations between the Court and Intermediaries, CBF/21/8, 2 August 2013.

<sup>41</sup> Report of the Committee on Budget and Finance on the work of its 21st session, ICC/ASP/12/15, 3 October 2013, para. 150.

47. As noted in section 6 of the Intermediaries Guidelines, the Court will continually monitor and evaluate their implementation and adapt the resources required as necessary. The Court has finalised the draft Intermediaries Guidelines and seeks their approval at the twelfth session of the Assembly.

#### **IV. Continued monitoring and evaluation of the Revised Strategy**

48. As stated in the Revised Strategy, during the first two years, the Court's inter-organ Working Group will monitor the implementation of the Strategy at bi-annual meetings. At these meetings, the Court assesses the level of implementation and identifies the obstacles and revisions needed to enable the most effective and efficient implementation of the Strategy. Particular attention will be paid at these meetings to the role the Court's resources played in implementing the Revised Strategy and if it was a barrier to implementation, and also to the evolution of victims' rights before the Court and whether the Strategy needs to be revised as a result.

49. The Working Group will also conduct periodic consultations with various knowledgeable stakeholders from both within and outside the Court system as necessary. Importantly, a study is being undertaken by the University of California Berkley into the experiences and perceptions of victims in the field regarding participation in proceedings before the Court. It is foreseen that this study will provide very useful information to the Court regarding the question of whether victims' participation is meaningful and how it can be improved.

50. A detailed review of the Revised Strategy will take place eighteen months after the adoption of the Strategy – in June 2014 - which will aim to assess its implementation and its overall effectiveness. The Strategy will be updated and suitable measures integrated based on the outcome and suggestions of these evaluations. 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.

#### **V. Conclusion**

51. Important progress has been made by the Court in realising the Objectives set out in the Revised Strategy. While it is not always possible to achieve these (partially) aspirational objectives, 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 its operating environment. However, it is clear that more can be done to fully implement the Revised Strategy. This will take time and also resources.

52. Furthermore, to fully address the rights of victims and to both empower them and to fulfil the system's duty to victims, the participation of all stakeholders in the Rome Statute system is necessary. In this way, the principle of complementarity is a keystone of the Revised Strategy.<sup>42</sup> Notably, the final table in annex I. of the Revised Strategy enumerates the obligations of States Parties regarding victims deriving from the Court's legal framework. The success of the Revised Strategy will be dependent upon all of the Rome Statute stakeholders, including the Court, TFV, States Parties, the Assembly, academia and civil society. The Court reiterates its invitation to 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 in realising victims' rights.<sup>43</sup>

53. Going forward, the Court will continue to work towards fully implementing its Revised Strategy in Relation to Victims and towards the meaningful realisation of victims' rights in the Rome Statute system. The Court welcomes the focus of the 12<sup>th</sup> session of the Assembly on victims' issues and looks forward to the continued dialogue and partnership with States Parties.

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<sup>42</sup> ICC-ASP/11/40, paras. 84 – 85.

<sup>43</sup> *Ibid.*, para. 86.