



## Recommendations to the 13<sup>th</sup> Session of the Assembly of States Parties 8-17 December 2014, New York

The Victims' Rights Working Group (VRWG) is an informal network of national and international civil society groups and experts created in 1997 under the auspices of the NGO Coalition for the International Criminal Court (CICC). Its membership includes international as well as local NGOs and experts from a wide array of countries, in particular those affected by ICC investigations and prosecutions.

The last year has seen a number of review processes start and other ones continue, aimed at 'improving the efficiency' of the ICC. The Judges' Working Group on Lessons learnt and the Study Group on Governance have ongoing reviews aimed at increasing the efficiency of proceedings, and as part of their work are considering the victim application process. The Registrar has started a comprehensive review of the Registry's structure which will also impact on the way in which the Registry's work on victims' issues is structured. These reviews will continue in 2015, while new initiatives are planned, including another review of the Court's Strategy on Victims.

The VRWG supports the Court's efforts to reflect on its past work and any re-orientations which may result from such reviews which will have the effect of strengthening the Court's support and assistance to victims so that they may engage meaningfully with the Court as the ICC Statute envisions. Ultimately, the goal of these reviews insofar as they relate to the Court's work with victims should be to deliver effective, meaningful and reparative justice to victims of the crimes within the jurisdiction of the ICC. Almost 10,000 victims have participated in proceedings at the ICC thus far. Additionally, many more thousands have reached out to the Court. The VRWG and its members have themselves highlighted areas where the Court's systems and procedures could be improved. We call on States Parties and the different organs of the Court to ensure that the aim of the review processes is ***effective and meaningful reparative justice***.

Last year's ASP included a dedicated Plenary session on Victims. The VRWG welcomes this as a clear indication of States Parties' wish to keep victims' rights and concerns at the centre of discussions regarding the ICC. Moreover the VRWG welcomes as well the initiative by the New York Group of Friends of the ICC to launch the first annual high level meeting on the prevention of and ending impunity for genocide, crimes against humanity and war crimes: the role of the ICC in fulfilling victims' rights and delivering reparative justice – to be held every April.<sup>1</sup> The VRWG encourages all States Parties to continue to build on these discussions and initiatives, with a view to ensuring the full and effective realisation of the Court's victims' mandate. The VRWG also calls on States Parties to consider how the rights of victims recognised in the Rome Statute can be replicated as part of domestic complementary efforts to prosecute ICC crimes.

Ahead of the 13<sup>th</sup> Session of Assembly of States Parties, the VRWG is pleased to share the following remarks and recommendations.

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<sup>1</sup> First high level meeting of the Group of Friends of the ICC on the prevention of and ending impunity for genocide, crimes against humanity and war crimes:" held on 17 April, 2014 at United Nations Headquarters in New York.

## 1. The Victims' Strategy

The VRWG notes that a detailed review of the ICC Strategy in Relation to Victims (Strategy) was due to take place in June 2014. The Court has indicated that "due to various unforeseen circumstances [...] it was preferable to postpone such a detailed review by one year."<sup>2</sup> The Court nevertheless submitted an integrated report which provides updates on the implementation of the victims' strategy.<sup>3</sup>

The VRWG maintains its position that a clear strategy with baseline data and performance indicators for measuring progress towards achieving set objectives is essential to meeting the statutory obligations related to victims and to adopt adequate policies. The VRWG thus reiterates its calls for the Court's reports on the implementation of the Strategy to include performance indicators and clear methods of evaluation. The VRWG also remains concerned that the objectives identified in the current Strategy - most relating to Statutory obligations - are "phrased, in part, as aspirations", and that the Strategy states that "it is not always possible to achieve these ambitious goals." While we agree that constraints (internal and external) will impact the full delivery of the Strategy, individual objectives must be Specific, Measurable, Achievable, Relevant and Time-bound (or "SMART"). The Court should also commit to their implementation.

The VRWG calls on the Court to ensure that external stakeholders – including victims, victims' legal representatives, victims' groups and experts and NGOs working on victims issues – are fully consulted in the process of reviewing the Strategy.

## 2. The Court's Guidelines on Intermediaries

The VRWG welcomes the Court's adoption of the *Guidelines Governing the Relationship between the Court and Intermediaries (Guidelines)*.<sup>4</sup> The Guidelines benefited from extensive consultations, including with members of the VRWG and reflect many of the concerns expressed by the VRWG and its members over the years.

The VRWG calls for their full implementation and for sufficient resources to ensure their implementation. In that regard, the VRWG recalls the Court's statement that "[w]hile there are unavoidable costs for the Court in implementing the draft Intermediaries Guidelines, [...] the use of intermediaries is ultimately cost effective for the Court [as they] undertake work that would be extremely costly for the Court to perform."<sup>5</sup> In addition, while the VRWG welcomes the fact that the Guidelines are now available on the Court's website, we continue to encourage the Court to ensure that they are made available in languages understood by intermediaries and widely disseminated to relevant actors, including local civil society, who must be trained and sensitized on the Guidelines. This is essential in order to help the Court promote efficiency and consistency of policy.

In addition, it is imperative that the ICC continue to recognize and enforce its obligation to protect intermediaries, victims and witnesses who are often placed in great danger due to their work and collaboration with the Court.

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<sup>2</sup> Integrated report of the Court concerning victims and reparations, Draft, 19 sept 2014, on file. The reasons stated to justify the postponement include: 1) the on-going *ReVision* Project within the Registry, which is likely to provide elements for evaluating the Revised Strategy and its implementation, but which is not due to be finalised until mid-2015; 2) the absence of a first final judicial decision on reparations, and therefore the lack of experience in implementation of that strategic goal; 3) the evolving jurisprudence regarding victim participation and the intention of the Working Group on Lessons Learned to address this identified cluster as its next priority, also in 2015; and 4) the ongoing landmark study by the Human Rights Center at the University of California, Berkeley School of Law in four situation countries researching the views and experiences of victims who have interacted with the Court, and which will not be available until July 2015.

<sup>3</sup> *Ibid.*

<sup>4</sup> Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries, March 2014, available at [http://www.icc-cpi.int/en\\_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf](http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf)

<sup>5</sup> Second Report of the Court on the financial implications of the draft Guidelines governing the relations between the Court and Intermediaries, 30 October 2013, ICC-ASP/12/53, at para 19.

Finally, we note that “in order to ensure effective monitoring of the Guidelines, the Court has established a monitoring mechanism.”<sup>6</sup> We also note that a detailed review of the Guidelines will take place in September 2015. The VRWG stresses that the review should seek and incorporate timely input from relevant stakeholders including civil society and, in particular, from the intermediaries themselves.

### 3. Victim Participation

#### *Application process*

Over the last few years, the VRWG has echoed States Parties’ concerns relating to the Court’s challenges to process victims’ applications for participation in a timely manner. We welcome the Court’s indication in 2014 that it has in practice already addressed some of the lessons learned regarding the victim application system and that “[a]s a result of that development, and other measures taken, such as a centralised database for managing victims’ applications, the Court no longer faces serious backlogs in processing the applications of victims to participate...”.<sup>7</sup>

The VRWG notes that various approaches have been implemented by Chambers with regards to the way victims apply to participate in the proceedings.<sup>8</sup> The VRWG notes that the Court’s Working Group on Lessons Learnt has started working on increasing the efficiency of the application process and is due to present a report on this issue in 2015.<sup>9</sup> The output of such discussions will then be discussed within the Study Group on Governance. We also note that Trial Chambers are currently considering the way victims will apply to participate in the trials of Bosco Ntaganda and Laurent Gbagbo. In both cases the Registry is suggesting the implementation of a tiered application process, similar to that implemented in the Kenya cases<sup>10</sup> arguing, for the most part, that it lacks the capacity under its current resources to implement alternative approaches.<sup>11</sup>

While the VRWG supports harmonising the application processes, we call on the Court to ensure that resource considerations do not underpin, and thereby undermine, the process. The VRWG encourages the Court to provide more information on lessons learnt from the implementation of the various approaches so far, and to seek, where appropriate, input from civil society, victim representatives, and those regularly engaged with victims on the ground of situation countries. We continue to encourage future discussions in The Hague Working Group to consider how to render the participation of victims before the ICC as reparative, meaningful, efficient and effective for all.

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<sup>6</sup> Draft Report of the Study Group on Governance, 28 October 2014, on file. During the first two years of implementation, the monitoring will be conducted through meetings of the Working Group on Intermediaries, which is to convene on a biannual basis. It has been decided that the Immediate Office of the Registrar would act as the focal point for the permanent observation mechanism, consisting of all organs of the Court and relevant sections within them, with its first meeting held in September 2014.

<sup>7</sup> Integrated report of the Court concerning victims and reparations, 19 September 2014, para 30, on file.

<sup>8</sup> As described by the Court, these approaches include 1) a partly collective system, whereby victims recorded their accounts in a group application and each also gave individual accounts of the harm suffered (case against Mr. Laurent Gbagbo, pre-trial stage); b) simplified application process, by which less information is collected from victims and there is more collective management and reporting (case against Mr. Bosco Ntaganda, pre-trial stage); c) a third model, by which a distinction is made between victims who will appear in person (who follow the standard procedure) and those who do not appear in person, who do not submit an application - but may choose to register with the Registry – and the Common Legal Representative must ensure that those whose views and concerns s/he conveys qualify as victims (Kenyan cases, trial stage). Draft report of the Bureau on victims and affected communities, Trust Fund for Victims and reparations, 28 October 2014, at para 20, on file.

<sup>9</sup> Draft Report of the Study Group on Governance, 28 October 2014, on file.

<sup>10</sup> The Prosecutor v. Bosco Ntaganda, “Registry submission pursuant to “Order Scheduling a Status Conference and Setting a provisional Agenda”, 14 August, 2014, ICC-01/04-02/06-350; The Prosecutor v. Laurent Gbagbo, « Registry’s Observations on the Order scheduling a status conference and setting a provisional agenda », 27 October 2014, ICC-02/11-01/11-705.

<sup>11</sup> In the *Ntaganda* filing, the Registry states that “such an approach would reduce the amount of resources required by the Registry for implementation » and that « If the Ntaganda Pre-Trial Approach were to be adopted at trial, the Registry expects that with the limited resources currently available, it would take as long as one year to process all applications that are currently in the Registry’s possession and transmit those that will be assessed as complete and falling within the new scope of the Case ». The Registry concludes that « the Registry proposes in option 2 a system that may be more sustainable in light of the current resources required to implement victim participation at trial ». In the *Gbagbo* filing, the Registry states that « The different options proposed have differing resource implications. For instance, Option 1 (Ntaganda Pre-Trial Approach) involves significant staff time for the Registry in preparing redactions, as well as preparing victims’ applications and individual assessment reports for filing, which Option 2 does not (the Kenya cases approach)” and that « [the tiered] approach would have the advantage of reducing the amount of resources required by the Chamber, the parties and the Registry, for dealing with victims’ applications to participate in the proceedings, and allowing the Registry to focus its limited resources on efficiently registering victims according to the Chamber’s pre-established criteria ».

## 4. The Trust Fund for Victims

The VRWG welcomes the Trust Fund for Victims (TFV) Board of Directors September 2014 adoption of the final draft of the TFV Strategic Plan (2014-2017).<sup>12</sup> The VRWG appreciate the fact that the new plan is based on consultations with external stakeholders, including States Parties and civil society organisations. The VRWG re-emphasises that the ability of the (TFV) to fulfil its reparation mandate is likely to have a dramatic impact on the credibility of the ICC as an institution. Now more than ever, the TFV must be given the resources it needs from the Assembly if the Court is to have the lasting reparative impact States Parties envisaged when they created it. Notwithstanding generous contributions by a limited number of States Parties, the VRWG calls on States and other organisations and individuals to generously donate to the Fund.

More resources are also needed to ensure that the Fund can implement its assistance mandate. The VRWG welcomes the approval in March 2014 of the Fund's Board for conducting assessments missions in Ivory Coast and Kenya. VRWG members in these two countries have long called for the Fund to start activities there. The VRWG encourages the Fund to ensure regular communication with affected communities in situation countries and to keep them abreast of its plan to start activities there. Groups in Kenya, for example, have deplored the fact that little information on the Fund's plans was publicly available.<sup>13</sup>

## 5. Impact of the Registrar's ReVision project on victims issues

The VRWG wishes to stress at the outset that it supports the efforts of the Registrar to review the structure of the Registry with a view to making it more efficient and to improve its delivery of services to the Court and victims. However, the VRWG calls for further consultation on the ReVision project and the impact it will have on victims' participation and legal representation. The VRWG is concerned at the lack of transparency surrounding the consultation process so far and that the time allotted to them is insufficient. We submit that a restructuring of the Registry that benefits from the views of those who support victims, as well as outside observers acquainted with the realities of victims in situation countries, is crucial.

The VRWG notes that one proposal is the creation of a single victims' office which would combine the functions of the OPCV and VPRS. The VRWG does not oppose - in principle - the grouping of functions into a single office. In fact, members of the VRWG welcome the new structure as more conducive for a coherent reparative relationship with victims than the previous one.

However, it is our understanding that the proposal also suggests that the legal representation of victims be internalised, with victims' counsel being appointed from a pool of in-house ICC counsel. While it is envisaged that external counsel *may* play a role under the proposed system, it is unclear how such role will be decided, articulated, implemented or funded. The proposal also fails to elaborate on the specific structure that will be put in place to support victim participation throughout the proceedings and legal representation in the field. Prior to implementing changes, the VRWG calls for a thorough analysis of the various legal representation systems that have been put in place so far, and an evaluation of the benefits and disadvantages that each has offered. The VRWG wishes to highlight the importance of innovation and flexibility – backed by proper analysis – in designing a new framework of legal representation, and the need to consult with victims. We also encourage the Registrar to carefully consider the impact of the proposal on ensuring that victims receive quality legal representation of their own choosing.

The ReVision project also envisages that more of the Court's services will be based in the field. The VRWG fully supports this proposal. We have long called for the Court to have more field presence and

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<sup>12</sup> Trust Fund for Victims, *TFV Strategic Plan 2014-2017*, August 2014. Available on the website of the TFV: [http://trustfundforvictims.org/sites/default/files/media\\_library/documents/pdf/TFV\\_Strategic\\_Plan\\_2014\\_2017\\_approved.pdf](http://trustfundforvictims.org/sites/default/files/media_library/documents/pdf/TFV_Strategic_Plan_2014_2017_approved.pdf) Accessed on 20 October 2014.

<sup>13</sup> See *Interview with Fergal Gaynor*, VRWG ACCESS Bulletin, Winter 2014-Spring 2015, Issue 25, available at [www.vrwg.org](http://www.vrwg.org)

emphasised the need for the Court to be closer to victims and affected communities. In that regard, we suggest that expertise in trauma-related mental health issues be explicitly mentioned as part of the field's teams' composition.

The VRWG thus calls on the Registrar to ensure that those with relevant expertise, including external counsel for victims, victims, and NGOs working with victims are fully involved in the discussions on restructuring the Registry and adequately consulted on the proposals.

## 6. Key Recommendations

### The VRWG recommends that States Parties should:

- Encourage the Court to consult broadly in the process of reviewing the **Victims' Strategy** and to include performance indicators in the Strategy.
- Stress that the strategy should aim at fully implementing the rights of victims contained in the Rome Statute and should include a strong gender focus.
- Welcome the adoption of the **Guidelines on intermediaries**, request the Court to review the Guidelines in 2015 with broad consultation, and report at the next ASP session on their dissemination and implementation. Ensure that adequate resources are allocated for their dissemination and implementation.
- Recognise the benefits that **victims' participation has** on the proceedings both for the reparative impact on victims and their communities, as well as for upholding and preserving the Court's mandate and legitimacy.
- Continue to engage in constructive discussions with the Court, legal representatives of victims, international and local civil society experts on how to improve the current system **for victims' participation and legal representation** in order to render their participation before the Court reparative, meaningful, efficient and effective for all.
- Provide only general directions regarding any revision to the victim participation regime, requesting expert advice and delegating implementation to the Court.
- Seek clarification on the impact of the proposed changes to the Registry on the ability of victims to participate meaningfully in the procedures and be represented by counsel of their choice.
- Contribute to the Trust Fund for Victims.

### The VRWG recommends that the Court should:

- Ensure consultation with relevant stakeholders, including victims, victims' groups, experts, legal representatives of victims and international and local NGOs working on victims' issues, in the lead up to and during the 2015 review of the **Victims' Strategy**.
- Ensure that the adopted **Guidelines on Intermediaries** are widely disseminated and made available to intermediaries in a language they understand. Request and allocate necessary resources to implement them.
- Recognize, promote, and strengthen essential protective measures for victims and intermediaries to participate and carry out their work for the Court, respectively.
- Ensure that any **review of the Court's practices on victims-related issues** aims at ensuring reparative, effective and meaningful procedures, not merely less costly ones, and that such a review is based on a careful analysis of how the system has (and has not) worked to date.
- Adequately engage and continually consult with relevant stakeholders with regards to the Registry Revision project as it relates to the implementation of the Court's victims mandate.