



ADVOCATING FOR THE RIGHTS OF VICTIMS AT THE INTERNATIONAL CRIMINAL COURT

Victims and Affected Communities: Incorporating the Review Conference 'stocktaking' Recommendations into the ICC's Strategies

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The Victims' Rights Working Group (VRWG) is a 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. 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 VRWG provides these recommendations to the International Criminal Court (ICC) in the spirit of ensuring that the extensive 'stocktaking' undertaken at the ICC Review Conference in Kampala on the issue *impact on victims and affected communities* are translated into concrete measures and policies by the ICC. The VRWG welcomes the appointment of Miia Aro-Sanchez of Finland and Elena Bornand of Chile as facilitators for the follow-up to the Review Conference for this topic. This will be a means of ensuring that the outcomes of the stocktaking exercise are now used as a basis for facilitating a process of strengthening and implementing policies by the Court. It is the view of the VRWG that an effective way to incorporate the results of the stocktaking process into the Court's plans and policies would be to include specific, measurable and time-bound targets into an updated version of the ICC's Strategy in Relation to Victims¹ in order to render it operational. This would facilitate implementation of targets as well as enable monitoring and evaluation of the Strategy by stakeholders such as victims, civil society and States. This recommendation follows a detailed paper presented to the Court in 2007, providing numerous examples of measurable strategic results with corresponding indicators and means of verification in the form of a log frame.²

The Victims' Rights Working Group played a significant role in shaping the stocktaking discussions on the impact of the ICC on victims and affected communities at the ICC Review Conference in Kampala from 31 May to 6 June 2010. It worked along side and supported the efforts of the focal points from Finland and Chile, appointed to facilitate stocktaking on this topic. Amongst numerous side events organised by civil society groups, the VRWG co-organised with the CICC the *Civil Society Takes Stock* event on 1 June 2010, the day before the Conference's formal session on this topic. A paper identifying [Outcome Recommendations \(linked\)](#) for the attention of States Parties was issued by the group as a result of the stocktaking exercise.³ The following recommendations are provided to the Court as a means of capitalising on the stocktaking exercise with regard to its mandate in relation to victims.

The VRWG welcomes the opportunity to exchange on the content of these recommendations with the relevant organs of the Court as part of the session on the Follow Up of the Review Conference to be held at the ICC-NGO biannual meetings scheduled for mid-October.

¹The ICC Strategy in Relation to Victims, November 2009, ICC-ASP/8/45, http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf

²VRWG paper Victims' Strategy document, November 2007:

<http://www.vrwg.org/downloads/publications/01/VRWG%20Victims%20strategy%20Nov07.pdf>

VRWG sample Victims' Strategy logframe, November 2007:

<http://www.vrwg.org/downloads/publications/01/VRWG%20Victims%20strategy%20log%20frame.pdf>

³ VRWG Review Conference Outcome Recommendations, 2 June 2010 :

<http://www.vrwg.org/downloads/publications/Victims%20Stocktaking%20Outcome%20Recommendations.pdf>

Specific, measurable and time-bound strategies

The ICC's *Strategy in Relation to Victims* provides excellent policy orientation on key areas that relate to the Court's operations in relation to victims. However, in order to operationalise the strategy and enable monitoring and evaluation of progress in achieving the strategic goals and objectives, it is necessary to first identify a specific time period for the Strategy. For instance, the Prosecutorial Strategy is issued for the period 2009-12, with specific aims to be achieved within this period.⁴ In the same manner, the *Strategy in Relation to Victims* needs to be defined within specific time periods. A three year time period, as chosen by the Prosecutor's office for its Strategy appears to be a suitable time frame. Alternatively, it is possible to identify time periods for different objectives or groups of objectives.

In addition, the different six "objectives" within the Court's strategy must incorporate specific and measurable aims and targets. Indeed, the Strategy document itself notes that:

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

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

A complete Strategy should necessarily include more details on the concrete actions planned and methodology.

In addition to monitoring and evaluating performance in the specific areas of the Strategy, consideration could be given to developing indicators to assess the overall impact of the ICC on affected communities. This could help to capture the need for improvements in areas which span a range of court activities, for example, support to intermediaries (as also discussed below), the incorporation of positive complementarity initiatives into the Court's work with an eye on the ICC's legacy in situation countries, and the continued enhancement of the Court's field presence and the role of field-based staff in policymaking. Optimization of the Court's field presence was a key recommendation during discussions at the Review Conference on improving its impact.

Recommendations in Key Areas:

1. Outreach

While the Victims' Strategy provides very promising descriptions and features regarding its communications, these need to be broken down into specific, measurable and time-bound activities. For instance, the VRWG would suggest that targets should be identified for the number of persons to be reached per year by region (eg 2 outreach events per year for each of Uganda's 14 affected northern districts. Each meeting to reach 50-100 people). In particular, specific targets for outreach involving women and girl participants need to be enumerated.

Discussions during the Review Conference highlighted the importance of outreach and the achievements made over the last few years. It was also mentioned, however, that more efforts (and further financial resources) need to be deployed on this front. In particular, it was highlighted that victims living in remote areas are not or are less targeted by outreach activities.

⁴Prosecutorial Strategy 2009-12, available at : <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Policies+and+Strategies/Report+on+Prosecutorial+Strategy.htm>

It was also pointed out that concerns among victims and affected populations do not necessarily follow the pace of judicial proceedings; for example, in Uganda, victims and affected populations have great information needs despite the non-execution of arrest warrants. Additionally, it was pointed out that outreach activities should include information on reparations and the mandate and activities of the Trust Fund for Victims. The Victims' Strategy should take these and other recommendations into consideration.

The VRWG is aware that a specific Outreach Strategy has been prepared by the Court and consideration should be given to continued updating of the Outreach Strategy and country-specific strategies including in order to take into account the Review Conference recommendations. The VRWG submits that the Victims' Strategy should clearly indicate which specific activities are planned and which targets are set to reach out to victims, i.e. for the purpose of informing them of their rights.

Continued efforts from the Court to ensure a robust field presence with well-resourced and well-staffed field offices are a crucial factor to facilitate efficient outreach and communications on the ground.

2. Investigation and Prosecution

A key recommendation made to States at the Review Conference was the need to ensure effective investigation and prosecution of gender-based crimes and avoid perceptions of bias. The VRWG recommends that gender specific targets be set for ICC investigations and prosecutions. Given the widespread use of rape as a weapon of war, we know that gender-based violence is committed on a massive scale in conflicts. While there are clear challenges in obtaining evidence for these crimes as well as for prosecuting charges of gender-based violence, clear targets could help the Office of the Prosecutor identify how best to overcome these challenges so that it includes gender-related charges in every relevant case. Specific actions and plans to attain those targets should also be spelled out.

Overall, it was also felt that investigations and prosecutions needed to be representative of the range of criminality registered in a given conflict, as well as bringing those “most responsible” to account for alleged crimes. The Prosecutorial Strategy states that “incidents [selected for investigation] provide a sample that is reflective of the gravest incidents and the main types of victimisation.”⁵ The VRWG has noted in the past that some of the cases selected for prosecution fail to take into consideration some of the gravest crimes and incidents allegedly perpetrated by the relevant group or militia or have not targeted other individuals most responsible for these crimes. The VRWG recommends that indicators be developed to ensure that due attention be given to this matter in the future when selecting charges and incidents. Similarly, in order to provide justice for victims and avoid perceptions of bias, it is recommended that all parties to the conflict who have committed serious crimes within ICC jurisdiction, be investigated and, when the relevant conditions are met, be subject to prosecution. In cases where the investigation does not lead to prosecutions, the OTP should provide explanations on its decision not to prosecute, to avoid perception of bias.

3. Protection

The protection of victims and witnesses on the ground remains an area where measures can continue to be improved. For instance, the time frame for responding to a request for a risk assessment could be identified and monitored so that improvements can be evaluated. Victims and witnesses who are in-country and who may experience anxiety and fears in relation to their collaboration with organs of the Court need to be contacted sufficiently often and regularly by the Court. Clear parameters for such contacts could be included in the strategy so that they can be monitored and evaluated. Indicators with respect of especially vulnerable victims such as

⁵Prosecutorial Strategy 2009-2012, 1 February 2009, § 20

women; victims of gender-based crimes, and children should be identified to ensure their protection needs are met in a timely and respectful manner.

The Court's *Strategy in relation to Victims* presents very laudable objectives concerning psychosocial protection. For instance, it is stated that training in "victim awareness will be provided to all staff in contact with victims to ensure high standards, and efforts will be made to pass on good practices to legal representatives, intermediaries and others interacting with victims in relation to Court proceedings." Targets should be provided for achieving this objective, specifying which categories of staff are to be trained by date. Furthermore, the types of issues to be covered in training should be identified, for instance training regarding trauma, and in particular trauma relating to gender-based violence should be key elements covered.

The VRWG also encourages the Court to continue to develop protection measures adapted to the particular situation of applicant and participating victims (as opposed to witness victims), including measures going beyond good practices but short of prolonged relocation.

In relation to protection, it is critical that the Court develop and adopt strategies to protect intermediaries, on whose work on the ground the Court depends. This should be part of a wider policy on intermediaries, touching also upon issues such reimbursement of expenses and compensation, confidentiality rules, code of ethics, and training among others. These once again need to include measurable activities so that progress can be monitored and evaluated, both for the benefit of stakeholders as well as for the Court to benefit from lessons learned. The VRWG welcomes the opportunity to address the forthcoming draft paper on intermediaries due to be made available to NGOs in advance of the bi-annual ICC-NGO meetings in mid October.

4. Victim Participation

The Court's Strategy document indicates that "victims' participation is a statutory right, not a privilege" and goes on to state that "[i]f the rights of victims are to be effective, victims must first be aware of their right to participate so that they can take informed decisions about whether and how to exercise it, and must be assisted to apply to participate if they wish to do so." In order to operationalise this statement, the VRWG would recommend that the Court identify indicators on victim participation in the aggregate. These should provide a way of monitoring a range of Court activities, from the effectiveness of outreach, training of intermediaries, and availability of protective measures and ensuring victims' right to an informed choice regarding participation or claiming reparation as well as timely processing of forms.

The Court's Strategy in relation to Victims specifies (in relation to its objective on participation) that "Specific strategies will be developed in relation to vulnerable or marginalised victims." This provision is welcomed, and the VRWG looks forward to seeing activities and indicators developed to put it into effect.

In order to meet the overall case targets, it is suggested that other targets be identified to ensure that applications to participate are processed by the Registry within a given time frame for instance. Eventually if Chambers were to deem it appropriate, internal time frames could be established for parties observations as well as decisions on applications. The VRWG would consider that the Court should endeavour to render a decision on an application to participate within 6 months of it being received, in its complete form, by the Registry.

Plans should also be made to measure the effectiveness of victim participation (valuable involvement of victims in proceedings, including through personal participation; assessment of the psycho-social impact on victims following their participation, effectiveness of legal representation; etc).

In situ proceedings were frequently raised during the stocktaking in Kampala as an important way to bridge the gap between The Hague and the affected communities in the situation countries. It is suggested that with simple targets per case, difficulties in achieving in situ hearings can be monitored, and

creative solutions found in order to achieve expected results while maintaining safety and safeguarding the rights of the accused.

5. Reparations & Assistance from the Trust Fund for Victims

An area that was raised with concern during the Civil Society Takes Stock meeting on 1 June 2010 in Kampala was the importance of outreach activities in relation to reparations. In order to manage expectations, it is critical that basic facts about the Court's jurisdiction and mandate be accurately and repeatedly clarified to affected populations. For instance, the start date of the Court's jurisdiction is an issue that is very difficult for victims and affected communities to understand or accept, and requires frequent reiteration. The dual mandate of the Trust Fund for Victims as well as the specificity of the prosecutor's cases, which are likely to limit judicial reparations, also need to be explained.

With regards to the Trust Fund's assistance mandate, a number of principles have been identified in the Court's Strategy document such as "[a]ssisting the victims to assist themselves", or "mobilising victims with the specific focus on the most vulnerable" and "working with the communities, insisting on a mixed participation of the families and communities alongside victims in community rehabilitation efforts." These are areas where indicators may already be in existence. Integrating such monitoring and evaluation tools into the Court wide Strategy would ensure that lessons can continue to be learned and shared with stakeholders.

States pledged some 377.000 EUR for the Trust Fund for Victims during the Review Conference in Kampala. This was a welcome contribution. But with a reparation phase potentially starting next year and the continued need for assistance projects in the Democratic Republic of Congo, Uganda, Central African Republic and Kenya, the Trust Fund Secretariat has to develop detailed fundraising strategies as a matter of urgency.

6. Legal Representation

There are a number of aspects of the Court's Strategy in relation to Victims which could be elaborated further. The different factors to take into consideration for the appointment of a common legal representative while avoiding conflict of interests, could be spelled out. Also, the specific activities put in place to ensure that all victims who participate in proceedings have access of a lawyer of their choice (within the limits of common legal representation) and benefit from legal aid where necessary. Also, the Court could elaborate on the specific measures taken to ensure that there are mechanisms be in place for lawyers to be in regular contact with their clients.