

# Victims' central role in fulfilling the ICC's mandate

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This paper sets out REDRESS' key concerns regarding the meaningful exercise of victims' rights before the ICC, and evaluates the progress made in key areas:

- The ICC's Victims' Strategy
- The Draft 2009-12 Prosecutorial Strategy
- Timely and specific information to affected communities
- Meaningful participation in ICC proceedings
- Effective legal representation
- Protection & support for victims and intermediaries
- Effective reparations

## 1. The *Court's Strategy in Relation to Victims*: a welcome basis for developing specific objectives

For victims, justice is an experience, and is as much about their relationship with the judicial process, as it is about resulting substantive remedies.<sup>1</sup> Thus, the *Court's Strategy in Relation to Victims*<sup>2</sup> is an important working document because it symbolically establishes the Court's vision of its relationships with victims.

The *Court's Strategy in Relation to Victims* is long awaited and highlights significant progress in how the Court approaches victims in the different areas of its work. The document aims to 'provide a framework and serve as a guide for the development of specific objectives and work plans' and should not therefore be seen as a final strategy, but as a work in progress. For the document to be operationalised, specific and measurable objectives should be provided for given periods of time in order to allow for transparent monitoring.<sup>3</sup> For instance, the Prosecutorial Strategy for 2009-12 provides specific, measurable and time-bound objectives.

While the 'the importance of victims' and promising broad principles and objectives are expressed, the major concern that the document generates lies in its failure to recognise the importance of victims in relation to a shared objective. Victims' role as stakeholders in obtaining justice is down-played. The result is the appearance of a Strategy that aims to 'manage' victims as oppose to share a vision of their role in seeking effective remedies and reparation.

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<sup>1</sup> See REDRESS, *Collective Reparations, Best Practices on Implementation*, March 2007, available at: <http://www.redress.org/peacepalace/CollectiveReparationsMG.pdf>. See also "A Strategy on the role of Victims", November 2007, [http://www.vrwg.org/Publications/01/VRWG\\_Victims\\_strategy\\_Nov07.pdf](http://www.vrwg.org/Publications/01/VRWG_Victims_strategy_Nov07.pdf); Comments and Recommendations on the "Draft ICC Strategy in Relation to Victims of 18 August 2008", November 2008, [http://www.vrwg.org/Publications/05/VRWG\\_Victims\\_strategy\\_NOV%2008\\_FINAL.pdf](http://www.vrwg.org/Publications/05/VRWG_Victims_strategy_NOV%2008_FINAL.pdf)

<sup>2</sup> *Report of the Court on the Strategy in Relation to Victims*, 10 November 2009, ICC-ASP/8/45.

<sup>3</sup> SMART objectives are required by major donors, including the EC, DFID, USAID, as being: Specific, Measurable, Attainable, Relevant and Time-bound. E.g. where the Court's first objective is to provide clear information on its activities and situations to victims, this would need to be more specific, measurable and time-bound, with a focus on the what the beneficiaries obtain: eg. 'Victims receive x number/type of information at x phases of the proceedings in all situation countries'. 1

Finally, in the context of genocide, war crimes and crimes against humanity, large numbers of victims should be the starting point for developing all strategies and systems. The challenge and corresponding strategies to efficiently provide large numbers of victims with an effective role is not discussed. The *Strategy in Relation to Victims* needs to address this challenge head-on in order to reflect the Court's mandate.

It is recommended that the Assembly of States Parties:

- Welcome the *Court's Strategy in Relation to Victims* and adopt language in the omnibus resolution that recognises the need to operationalise the document into a working 'Strategy' with specific, measurable and time-bound objectives. Suggested language would include: *recommends* that the Court continues the constructive dialogue with the Bureau on the strategic planning process, including the victims' strategy and in **particular the further identification of concrete targets to enhance victim participation**, and its different priority dimensions, and *requests* the Court to submit to the ninth session of the Assembly an update on all activities related to the strategic planning process and its components, including **an updated victim strategy and a public information strategy**;
- Consider how the principles reflected in the Court's Strategy in relation to Victims, as well as the UN Basic Principles and Guidelines of Victims Rights to a Remedy and Reparation can be given effect in relation to domestic initiatives to end impunity.

Recommendations to the Court:

- Further operationalise the *Court's Strategy in Relation to Victims*, identifying specific objectives and work plans, to be presented to the 9th Session of the ASP;
- Continue the dialogue of the Court's Working Group on Victims, in order to generate a common vision and acknowledgement of the role of victims in obtaining victim sensitive, reparative justice.

## 2. Prosecutorial Strategies should recognise the role of victims in obtaining justice

The Prosecutor's Draft Strategy for 2009-12 provides objectives on areas that directly impact on victims' rights and interests.<sup>4</sup> Unfortunately, this new Strategy no longer contains a specific objective with regard to 'continuously improving the way that the Office interacts with victims and to address their interests' as it did in its previous Strategy.

The Strategy mentions its aim to work with a variety of actors including victims and their representatives. However, there is little regard for the role of victims in obtaining its objectives, less still that giving effect to *victims' right to a remedy and reparation* might constitute one of the bases for its objectives. REDRESS suggests that in reviewing his Draft Strategy, the Prosecutor should consider his role in implementing the Court's reparative mandate and ensure that the principles and objectives in the *Court's Strategy in Relation to Victims*,<sup>5</sup> are integrated into the Prosecutorial Strategy.

With respect to investigations, the Prosecutor emphasises the number of investigations in a given period, reiterating the principle of 'focused investigations and prosecutions'. However, there continues to be a lack of emphasis on the *quality* of investigations and the need for explicit strategies to uncover evidence of gender violence, too often shrouded in silence. While there is mention of particular attention to crimes against children and gender violence, the continued

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<sup>4</sup> *Draft Prosecutorial Strategy 2009-12*, 18 August 2009. In summary, the Objectives are: 1) to improve the quality of prosecutions, complete 3 ongoing trials and commence at least one new trial ; 2) to continue 7 existing and open 4 new investigations; 3) to conduct 10 preliminary examinations; 4) to improve cooperation with states and relevant actors; and 5) to maximise impact on the fight against impunity.

<sup>5</sup> *Report of the Court on the Strategy in Relation to Victims*, *Op.cit.*

emphasis on ‘short investigations’ appears to undermine the ability of the office to reflect the range, extent and gravity of victimisation.

REDRESS agrees that ‘the Court’s action on reparation will depend on the availability of assets’.<sup>6</sup> The Prosecutor has a key role in investigating the assets of suspects, but also in tracing those who support and fund violence. While the Prosecutor considers that those who finance crime are potentially within the higher echelons of responsibility, little evidence has been presented on those who are funding mass violence. A specialised financial investigation unit should be envisaged within the Investigation Division.

In order to support the Prosecutor’s challenging role, States Parties need to provide swift and effective responses to its requests for cooperation, particularly with respect to executing arrest warrants, relocating witnesses and tracing and seizing assets.

It is recommended that the Assembly of States Parties:

- Encourage the Prosecutor to incorporate the ‘ICC Strategy in Relation to Victims’ into his 2009-12 Prosecutorial Strategy;
- Renew their commitments to ending impunity by responding to the Prosecutor’s cooperation requests, particularly with respect to executing arrest warrants, relocation of witnesses and tracing and seizing assets.

Recommendations to the Prosecutor:

- Ensure that the Office’s vision of justice is one that reflects victims’ rights to obtain a remedy and reparation;
- Incorporate the *Court’s Strategy in Relation to Victims* into the Prosecutorial Strategy for 2009-12.

### **3. Timely and specific information to affected communities**

A new and much appreciated development is the increased use and circulation of DVD footage of the Court’s proceedings, produced by the ICC Public Information Section, and screened as part of ICC outreach initiatives as well as by NGOs that have available equipment. As equipment is only rarely available, continued efforts need to be channelled into ensuring that radio programmes that are produced by the ICC are physically available to local radio stations.

While local actors are now getting information about the Court itself, the reach needs to be extended to rural areas to ensure that the information is actually getting through to victims themselves. The majority of victims of the crimes being prosecuted by the Court, particularly women and girls, are still unaware of the Court’s proceedings. Again we are reminded of an early report before the Yugoslav Tribunal: *Justice Unknown, Justice Unsatisfied*.<sup>7</sup> Existing outreach needs to be supplemented by sufficiently detailed and specific explanations about how victims can interact with the Court. Too many victims are still reporting that they do not know how to get in touch with the Court, or that the representatives that conduct outreach are unable to respond to more specific questions about victim participation or the Prosecutor’s strategy. In order to allow victims to understand their potential role in obtaining justice, they need both general sensitisation about the Court’s mandate, its situations and decisions, as well as more specific information, training and support on victim participation, reparations and how to safely interact with the Prosecutor’s office.

The Court’s field offices continue to be inaccessible to potential actors, often cited as a barrier for local organisations or individuals who may have valuable information from making contact

<sup>6</sup> ICC’s Strategy in Relation to Victims, Objective 5: “To ensure that as many victims as possible are able to exercise their rights as regards reparation and to benefit from assistance”.

<sup>7</sup> Cibellii & Guerek, *Justice Unknown, Justice Unsatisfied? Bosnians speak about the International Criminal Tribunal for the Former Yugoslavia*, Tufts University, 2000. Available at: [www.hrdag.org/resources/publications/justicereport.pdf](http://www.hrdag.org/resources/publications/justicereport.pdf)

with the Court. A more accessible public information and support- oriented ‘front offices’ should be envisioned in order to maximise field presence. Field offices should facilitate access to information and allow potential court users to obtain relevant forms and have questions answered. Currently there is no safe place for Court staff to interact with those interested in petitioning the Court, as they are not allowed onto ICC field premises for security reasons. It is appreciated that there are security challenges to a more outward looking field presence, but it is believed that these can be sensibly overcome with minimal costs.

*In situ* proceedings are still talked about, with little understanding as to why these are not already happening. In this regards, the Prosecutor’s submission to the Chamber on the possibility of holding part of *Jean Pierre Bemba’s* Trial in Central African Republic, is very welcome.<sup>8</sup> The current suspension of proceedings in the *Lubanga* case, imposed while the Appeals Chamber decides on the issue of re-characterisation of the facts to include sexual slavery and inhuman treatment, has not been sufficiently explained to affected populations. Explaining such delays would enhance their appreciation that justice is being done. In addition, there is little outreach explaining the perspectives of the Accused, and fair trial rights. This is a missed opportunity to moderate expectations on time frames, and promote understanding of fair trial standards as might be expected nationally under the principle of complementarity.

It is recommended that the Assembly of States Parties:

- Continue to stress the importance of outreach in public statements, particularly to extend the reach to rural areas and ensure that information is getting to victims;
- Encourage the Registry and Prosecutor to ensure more specific and timely information to victims about how to participate or petition the prosecutor;
- Support more outward focused field offices;
- Ensure sufficient resources to support *in situ* hearings.

Recommendation to the Court:

- Further reach affected populations in rural areas; and identify means to do so within the given security contexts;
- Ensure sufficiently specific information on how to participate in proceedings or petition the Prosecutor;
- Ensure that field offices are accessible by establishing outward ‘front offices’;
- Implement *in situ* hearings engaging local populations and making justice tangible.

## 4. Meaningful victim participation in proceedings

As recognised in the *Court’s Strategy in Relation to Victims*, victim participation is a right, not a privilege.<sup>9</sup> Clearly, genocide, war crimes or crimes against humanity will entail large scale victimisation, and procedures should be reviewed to facilitate large scale participation and reparation claims.

However, the status of undecided applications gives rise to concerns about efficiency and purpose. Many hundreds of victims who have applied to participate in the Situations have been waiting for a response; over two hundred applicants in the DRC situation alone have been waiting since 2006.<sup>10</sup> To date, the Court has received 1,877 applications by victims to participate in ICC proceedings from all situations. Of these applications, 743 have been admitted in proceedings. Of these 196 victims are admitted to participate in the DRC situation, 21 in the Uganda situation and 11 in the Darfur Situation and 54 in the Situation in Central African Republic. 105 are participating in the *Lubanga* case; 354 are now participating in the *Katanga/Chui* case, and 41 in the *Kony et al.* case. Considering the Court’s jurisdiction for genocide, war crime and crimes against humanity, and the scale of victimisation in the Situation Countries, these figures are still relatively low.

<sup>8</sup> In *The Prosecutor v. Jean Pierre Bemba*, The Prosecutor’s Submission to Conduct Part of the Trial In Situ, 12 October 2009, ICC-01/05-01/08-555.

<sup>9</sup> *Report of the Court on the Strategy in Relation to Victims*, *op.cit.*, paragraph 45.

<sup>10</sup> There have been no decisions taken on victim participation in the DRC Situation since October 2006.

In order to address these challenges REDRESS believes that the Court should critically review the modalities of participation. The Court should draw more on the extensive experience and practice in both domestic and internationalised proceedings on efficient methods to process large numbers of applicants.<sup>11</sup>

**REDRESS reiterates that further efforts need to be made to streamline procedures:**

**a) The application forms:** a new, simplified and shorter application form, which combines the existing 17 page participation form and 17 page reparation form into six pages, has been under discussion during 2009. NGOs were extensively consulted on the new form in June 2009, but the drafts still need approval. Once new forms are in circulation, special efforts should be made to ensure adequate training, so that intermediaries on the ground are familiarised with the new format and questions.

**b) Facilitating the completion of applications:** The role of the Victim Participation and Reparations' Section (VPRS) of the Registry in facilitating the completion of the application forms should be reviewed, placing more emphasis on facilitation at field level in order to avoid current inefficient requests for supplementary information made from either the Registry or Chambers in The Hague. In addition, consideration should be given to the cost of obtaining evidence to support applications, at a phase when victims are denied financial support. An increased role for VPRS at this early stage could also counter the burden of obtaining documentation at this stage.

**c) Evidentiary materials required to support applications:** these should reflect the types of evidence available in the local context, as well as the cost of obtaining evidence. Some Chambers have begun to revise evidentiary requirements in light of local realities. However, it is recommended that the Court consider the use of presumptions or judicial notice as well as the role of VPRS in positively assisting victims.

**d) Transmission of applications to Chambers and Chambers' review:** a greater role should be given to VPRS in transmitting applications to Chambers and parties for observations, in view of streamlining the review process and avoiding duplication with Chambers. In addition, streamlining the process should also tackle the severe backlog with victims' applications to participate in proceedings (hundreds are outstanding since 2006).

**e) Collective applications for collective participation and reparations:** Where victims are not seeking to provide evidence of their individualised harm, consideration should be given to the possibility for victims to apply to participate collectively, as well as to make collective claims for reparation e.g., to be accorded group rights to make general submissions before the Court which relate to their collective interests. This type of possibility might significantly reduce the administrative burden of the Court in reviewing individual applications from victims, the majority of whom are seeking only general rights to be heard during the pre-trial and trial phase.

It is recommended that the Assembly of States Parties:

- Stress the importance that backlogs in victims applications are dealt with as a matter of priority;
- Encourage the Court to consider the possibility of collective participation and reparation where victims do not seek to evidence individualised harm.

Recommendation to the Court:

- The new, shorter combined application form should be approved and put into circulation as a matter of priority; ensuring adequate training;

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<sup>11</sup> See, REDRESS and Clemens Nathan Research Centre: Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making, Report of Proceedings of a Conference at The Peace Palace, The Hague, The Netherlands, 1-2 March 2007, available at: [www.redress.org/reports/ReparationsVictimsGenocideSept07.pdf](http://www.redress.org/reports/ReparationsVictimsGenocideSept07.pdf)

- The Registry should review its processes in order to streamline the application process and further assist victims;
- The Court should consider the possibility of collective participation and reparation where victims do not seek to evidence individualised harm.

## 5. Effective representation of victims

The ICC Statute and Rules allow victims to be represented by a legal representative of their choice, which may be funded by the Court if victims are indigent. REDRESS agrees with the Court and The Hague Working Group, that legal representation for indigent victims must be funded; otherwise victim participation would be prohibited in practice.<sup>12</sup>

Currently the process of having to declare and prove indigence defies any appreciation of the reality of victims. While minors are considered indigent for legal aid purposes, all other victims may have to satisfy an inquiry into their financial situation, completing the same 12-page questionnaire as the Accused, including queries relating to gross and net income, assets, bank accounts, vehicles, etc. Victims of genocide, war crimes and crimes against humanity based in the situation countries will not be able to afford legal representation before the Court in The Hague, and should be presumed indigent, without having to fill out forms or undertake a sworn declarations to this effect.<sup>13</sup> The perception of victims is that the Court is out of touch and overly bureaucratic with its numerous lengthy forms and requirements. These forms all require significant amounts of time to complete, in circumstances where victims are eking a living and intermediaries are not supported for their work.

The Registrar currently makes a temporary determination on indigence, on the basis of lengthy sworn declarations, pending investigation into their financial situation. The Registry has claimed that such a process amounts to ‘presuming’ indigence. However, REDRESS argues that a presumption would avoid the need for sworn declarations as well as the 12-page questionnaire, unless there are suspicions of significant assets, in which case the legal representative could be required to disclose these to the Court.

Processing sworn declarations and indigence questionnaires, is time consuming for both intermediaries and the Court, and is considered unnecessary and disproportionate to the remote possibility of any victim having sufficient assets to fund a counsel, over a period of years, before the ICC. Establishing a presumption and thereby, less bureaucratic processes, would save costs and would avoid current humiliation for victims and intermediaries who assist them. The victims’ financial status is of no consequence to the accused and thus does not impinge on fair trial rights.<sup>14</sup>

A further concern is that legal aid is not granted during the application phase. As the forms are complicated and require legal understanding, these often arrive incomplete, ultimately resulting in delays and extra work for the Court. Providing assistance to victims in the application phase would ensure applications are complete from the start, avoiding extra work, delays and backlogs. Consideration of a more pro-active field role for the Victims Participation and Reparations Section in this regard is also recommended.

### ***Budgetary concerns regarding legal aid***

The Court’s budget for legal aid should reflect that victims’ counsel need to adopt more onerous working structures in order to maintain contact with their clients, as compared to defence

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<sup>12</sup> REDRESS is an active member of the Coalition for the International Criminal Court (CICC) Team on Legal Representation and participated in the drafting of the Team paper for this ASP. REDRESS fully supports all recommendations made therein. See: <http://www.iccnw.org/?mod=asp8>

<sup>13</sup> The Sworn Declaration is a 2-page document, the language of which is difficult for victims to understand.

<sup>14</sup> In February 2009, The Presidency found that the Registry had still to finalize its review of the legal assistance scheme to victims, and requested that the Registry consider the viability of a ‘presumption of indigence’ scheme in its report to the Assembly of States Parties. Decision of the Presidency, 19 February 2009, in the *Situation in the Democratic Republic of Congo*

counsel who can take instructions from the accused in The Hague. Victims are dispersed in remote areas and consulting them at regular intervals requires logistical support and means.

Some inroads have been made in providing a more appropriate structure supporting common legal representatives for victims. A decision in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo* in July 2009, established a more realistic team structure to allow counsel to maintain contact with his clients in the field<sup>15</sup>

### ***The need to emphasise list counsel and OPCV's support to list counsel***

REDRESS has contributed to the CICC Team paper on Legal Representation,<sup>16</sup> which sets out the issue raised before the CBF in relation to the advantages and disadvantages of 'external' or 'internal' counsel representing victims. The notion of 'external' counsel refers to independent advocates on the Court's approved list of counsel. The notion of 'internal' counsel is based on members of the Office of Public Counsel for Victims (OPCV) directly representing victims.

REDRESS submits that OPCV plays an important role in supporting 'external' counsel, given their lack of permanent presence at the Court. OPCV has a role in supporting victims' counsel in the same manner that the Office of Public Counsel for the Defence (OPCD) assists defence counsel. In addition this office provides a useful function in representing the interests of victims where they are unrepresented. However, it is maintained that such representation should be temporary, as 'duty counsel' pending the assignment of permanent counsel from the list, and should not compete with counsel from the list of counsel representing victims.

There are numerous reasons for OPCV's role to be subsidiary and temporary, not least because the current 'competition' has distorted the client-adviser relationship that counsel should be able to rely on when requesting legal advice and support from OPCV. Furthermore, there are excellent reasons why counsel, both for the accused and for victims should be independent from the Court and its offices, not least because it makes the court insular and excludes counsel from around the world in gaining valuable experience with the Court, undermining the principle of complementarity.

From a victims' perspective, external counsel will often be chosen due to their knowledge of the specific context, national law and local languages. Bringing this knowledge to the proceedings is invaluable as was seen during the *Lubanga* Trial, where victims' representatives were the only ones able to explain to the chamber the particular use of names in the Democratic Republic of Congo, in relation to establishing the identity of witnesses called by the Prosecutor.

### **It is recommended that the Assembly of States Parties:**

- Ensure that the budget approved to cover meaningful legal aid for victims, is based on their entitlements to justice and not on financial expediency;
- Support the Chambers' emerging jurisprudence on effective victims' representation, which acknowledge the need to provide for maintaining contact with clients in the field;
- Urge the Court to complete its review of the legal assistance scheme to victims in a manner that is cost effective and avoids unnecessary and disproportionate bureaucracy.

### **Recommendations to the Court:**

- Complete the review of the legal assistance scheme to victims in a manner that is cost effective and avoids unnecessary and disproportionate bureaucracy;
- Adopt a presumption of indigence as appropriate;
- Foresee adequate budgets for victims' legal representatives to operate effectively in maintaining client contact and as a team.

<sup>15</sup> Decision on Legal Aid, *The Prosecutor v. Germain Katanga and Matheiu Ngudjolo*, 28 July 2009.

<sup>16</sup> *Op.cit.*

## 6. Protection and support for victims and intermediaries

### *The role of intermediaries*

Local ‘intermediaries’ play a critical role in outreach activities, sensitising victims and assisting them with participation, reparation and legal aid applications. Intermediaries are able to reach victims where Court staff are unable to go, either due to security, time or lack of resources. Coming from very poor and often devastated contexts intermediaries accomplish incredible work with very little means and take great risks for their own well being and safety, usually for no or little remuneration.

In spite of an Appeals Chamber ruling,<sup>17</sup> that the Rules of Procedure should be read to include the words "persons at risk on account of the activities of the Court," so as to reflect the intention of the States to protect that category of persons, there appears to be little change on the ground. The Court continues to rely on intermediaries without compensating their expenses or remunerating their work. Protection for such organisations continues to be problematic with insufficient support from the Court.

Despite the importance of intermediaries, the Court should not excessively rely on them to accomplish core tasks within its mandate. Numerous attempts have been made to engage the Court to clarify and systematise its relationship with intermediaries.

### *Protection for victim applicants and participants*

The Registry’s Victims & Witnesses Unit (VWU) has outlined three levels of protection:

- a) prevention;
- b) measures adopted by the Court to protect victims and witnesses during proceedings; and
- c) emergency hotline (the Initial Response System/IRS) and the Court’s Protection Programme, which includes the IRS and relocation of victims and witnesses that are at risk.

In interpreting that ‘victims and witnesses appearing before the Court’ are entitled to protection, Trial Chamber I found that victims would be ‘appearing before the Court’ in a legal sense from the moment a victim’s complete application was received by the Court<sup>18</sup>. Despite this decision in 2008, victims’ organisations still have no reliable information as to what they can request and expect from the Court.

The VWU has rightly placed high emphasis on the importance of ‘preventive’ measures, to ensure good practice when working with victims so as not to expose them or intermediaries. However, the VWU has had insufficient resources to strategically share good practice with intermediaries or victims’ legal representatives in order to reduce risks. It is recommended that the VWU develop a strategy to implement victims’ right to protection. Investing in preventive training for intermediaries and legal representatives could save the Court from having to take on emergencies in the future. An initiative has been piloted involving the Court in preventive training for intermediaries in one situation country and was very successful. However, VWU is under increasing pressure with ongoing trials and its Protection Programme. The VWU would need dedicated resources to implement an effective preventive strategy targeted at participating victims (as oppose to Prosecution witnesses).

In view of the above, it is recommended that the ASP:

- Urge the Court to harmonise and clarify support to intermediaries working with victims.
- Adopt the budget for protection, as approved by the CBF;
- Support the Court with cooperation requests in relation to its Protection Programme;

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<sup>17</sup> *The Prosecutor v. Germain Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", ICC-01-04-01-07-475-ENG, 13 May 2008.

<sup>18</sup> *Prosecutor v. Lubanga*, ICC, Case N° ICC-01/04-01/06-1119, Decision on victims’ participation, 18 January 2008, para. 137. 8

### Recommendations to the Court on Protection:

- Clarify the relationship with intermediaries and systematise best practice amongst organs of the court as appropriate;
- Consult and consider a strategy to implement victims' right to protection, including training on preventive best practices for intermediaries and victims' legal representatives;
- Ensure the protection of intermediaries under threat.

## **7. Effective reparation**

### ***Reparation***

Outreach, sensitisation and training on reparation claims is becoming critical, particularly in the Democratic Republic of Congo where the first case is already half complete. There is a lack of understanding about the need to complete a separate reparation claim form (currently an additional 17-pages), in addition to the participation form, which is more widely known. There has been much talk about the eventuality that reparations may be awarded collectively, benefiting a class of eligible victims. This notion differs greatly from legal concepts that exist at national level that are generally based on individual monetary compensation. In the Democratic Republic of Congo for instance, the notion of '*dommages et intérêts*' or 'damages' are the only form of reparation that are known. While local organisations are receptive to the idea of collective reparation awards, and often think these would be a good idea in order to ensure cohesion as oppose to more divisions in conflict ridden communities, there has been critically little outreach, sensitisation or training about the notion of collective reparations, which is provided for in the ICC's Rules. Focussed outreach should be undertaken as a matter of urgency in relation to the first cases in particular so as to prepare the ground and manage expectations.

As the reparations phase in the first case approaches, the Victims Participation and Reparations Section (VPRS) needs to prepare itself to undertake more specific outreach and training with intermediaries. Indications as to the principles on which reparations will be based will be instrumental in enabling the Registry to prepare the ground and manage expectations [repetition of this phrase needs looking at].

The possibility of the Court appointing experts to help it assess the scope and extent of any damage and loss<sup>19</sup> requires the availability of qualified experts able to undertake such tasks. It is critical that States and other bodies support VPRS in establishing a functioning roster of experts for the Court to be able to call upon in relation to reparations awards, so as not to incur delays. Finally, as the work of such experts may take time to complete thoroughly on the ground, due consideration should be given to timely appointments, or even preliminary assessments in order avoid delays during the reparations phase.

### Recommendations to States Parties:

- Continue to make regular contributions to the Trust Fund for Victims;
- Adopt language in the omnibus resolution to welcome and encourage the Board of Directors of the Trust Fund in its efforts to ensure that effective, efficient and transparent systems are in place to oversee its activities;
- Continue its assessment of the implementation of the Regulations of the Trust Fund as necessary;
- Share best practice with the Court on domestic reparations and mass claims processes;
- Work with the Court to develop collaborative strategies on asset tracing, freezing and seizure in view of reparations, as well as the enforcement of reparations awards;
- Respond to requests for Cooperation from the Court in respect of asset tracing, freezing and seizure.

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<sup>19</sup> See Rule 97 Assessment of Reparations, ICC Rules of Procedure and Evidence.

### Recommendations to the Registry and the Trust Fund for Victims:

- Urgently undertake outreach and training on reparations claims as well as the notion of collective reparations in order to manage expectations;
- Ensure adequate consultations with domestic and international reparations experts and claims adjudicators with a view to amassing best practice to prepare adequately and in a timely fashion for the up-coming reparations phase, as well as establishing a roster of experts on assessment;

### Recommendations to the Court:

- Continue dialogue on establishing reparations principles as required in Article 75 of the ICC Statute; taking existing principles on reparations into account,<sup>20</sup> with a view to determining aspects that can be clarified outside of specific cases, and exploring the range of options that may arise from the varied cases currently or likely to come in future before the Court.

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<sup>20</sup> For instance, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN GA 60/147, 16 December 2005; The Nairobi Declaration on Women and Girls' Right to a Remedy and Reparations, 21 March 2007, available at: [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php)