A Strategy on the Role of Victims before the ICC
November 2007

I. Introduction

The Victims’ Rights Working Group (VRWG) welcomes the Court’s initiative to develop a court wide strategy on victims, in response to Resolution ASP/5/Res.2 adopted by the 2006 Assembly of States Parties. The Resolution encouraged the Court to further develop its dialogue with the Bureau on its Strategic Plan and in so doing, to focus on concrete implementation of issues such as the role of victims in the Court’s proceedings. At the biannual meetings between the ICC and NGOs held at the Court in September 2007, input from NGOs on the role of victims before the ICC was welcomed by the Registry focal point. The VRWG therefore presents these recommendations as a means of contributing to this dialogue, having collated the views from field-based and international NGOs as well as lawyers working with victims or on victim issues. The VRWG looks forward to continuing dialogue with the Court on this issue, and in particular, stands ready to provide comments on the document that the Court will prepare. The VRWG regrets that the Court will not be ready to present the final document on the Court wide strategy on victims at the upcoming session of the Assembly of States Parties. However, it appreciates the efforts that the Court is making to develop the strategy, including efforts to consult with civil society groups. The VRWG encourages the Court to finalise the strategy early in 2008.

The VRWG believes that a court wide strategy should provide a vision on all aspects of the work of the Court that relate to victims (including independent bodies such as the Offices for Public Counsel, the Trust Fund for Victims and counsel). The strategy should provide a global framework and remain flexible so that it can be adapted to the different situations where the Court operates, and to new challenges that the Court will face in years to come.

This document provides ideas on the general framework of a victims’ strategy. It also includes specific recommendations as to how the Court could achieve the results that have been set. Such recommendations are mere examples and do not exclude other actions that the Court could plan and undertake. There are also some recommendations on possible indicators or evaluation tools that the Court could use to evaluate its performance with respect to its victim-specific mandate. Again, these are not intended to be exhaustive or conclusive. Indeed, the VRWG wishes to emphasise its appreciation of the Court’s initiative to develop its own objectives, results, targets and indicators, and its conviction that these should be developed in consultation with victims as possible.

II. Overarching Principles

The preamble of the Court’s Statute recognises the plight of victims as a fundamental raison d’être of the Court, being “mindful that during this century millions of children, women and men have been victims of unimaginable atrocities”. The privileged place that these concerns are given in the preamble is reflected in the Court’s Statute and Rules. These give effect to victims’ rights in numerous innovative ways, such as granting victims the right to be

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While the Resolution refers to the “position” of victims, we prefer to use the “role” of victims, as this language better reflects the active roles accorded to victims in the Rome Statute.
informed of certain decisions, granting victims legal standing, protective measures and the ability to claim reparation.

These innovative provisions mirror the spirit and vision of the Basic Principles and Guidelines on a Right to a Remedy and Reparation, which were drafted in parallel to the ICC’s Statute and the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The Court’s Rules define victims as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the court”. Our paper focuses on victims within this definition, including victims who may also appear as witnesses.

While the Court may have all the ingredients to fulfil its victim-related mandate, its capacity to implement this vision will be the measure of success that victim communities and supporters of effective international justice will use to judge the Court. During the consultation process that led to this paper, organisations emphasised how previous processes had treated victims of mass criminality as passive observers, exacerbating their disempowerment. Typical consequences of trauma include anxiety, loss of self-esteem, confidence in oneself, trust in others and hope. It is therefore vital that the justice process does not reinforce victims’ trauma, thus revictimising the victims. The justice process should rather empower and value victims as active participants in the quest for justice. Victims must therefore be valued in their many roles as key stakeholders, partners, witnesses, clients and beneficiaries.

It was also highlighted that there is no “one size fits all” approach that should be applicable to all victims everywhere, as victims and communities are all different. Thus it is suggested that the Court-wide “victims’ strategy” should emphasise a “people to people” over a “people to document” approach. As such, it is intimated that what matters most about the development of a victims’ strategy is enabling victims to embrace it as opposed to its development as a document.

III. Logical Framework and Terminology

A log frame for the victims’ strategy is provided as a tool intended to assist the Court in developing, implementing and evaluating the objectives set out in the Court’s Strategic Plan from a victims’ standpoint. For the purposes of this paper, we use the European Commission’s approach to strategic planning and log frames as a basis for interpreting the terminology of the ICC’s Strategic Plan. The log frames’ four levels of intervention as recommended by the VRWG are described below.

- The Overall Objective is to ensure that victims are recognised by the ICC as critical stakeholders and that their rights are effectively realised as integral to the Court’s mandate as well as the overall success of the Court. NB: The Overall Objective cannot be achieved by the victim’s strategy on its own. Rather the victims’ strategy contributes to achieving the ICC’s goals.

- The Purpose or Specific Objective is to provide justice to victims in a manner that is sensitive to their rights and interests. NB: The purpose should constitute direct benefits to the “target group”, in our case victims.

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4Rule 85 of the Rules of Procedure and Evidence. This rule also outlines that victims may also include organisations or institutions that have sustained direct harm.
The Results. Grouped under the 3 GOALS in the Court’s Strategic Plan, the results are:

GOAL 1) the Quality of Justice
Result 1: Victims are able to participate effectively
Result 2: Victims are able to participate safely
Result 3: Victims are well represented
Result 4: Victims are awarded adequate reparations and receive effective assistance

GOAL 2) A Well Recognised and Supported Institution
Result 5: Victims know about and understand the mandate of the Court, in particular its mandate in respect of victims and victims’ rights under the Statute
Result 6: Victims are informed of decisions that concern them

GOAL 3) A Model Administration
Result 7: The application process is clear, efficient, timely and victim-sensitive (not costly or cumbersome)
Result 8: Victims are treated with dignity and respect

Activities: Tasks that have to be undertaken to deliver the desired Results. The activities listed include specific recommendations as to how the Court could implement the strategy. These recommendations are examples and do not exclude other actions that the Court can undertake.

IV. The Court’s strategic Plan

The 3 Goals of the Strategic Plan are reformulated here from a victims’ standpoint, and broken down into suggested activities. Some suggestions are made with respect to sources of verification, targets and indicators, but the VRWG recommends that the Court identify its own evaluation methodology.

Goal 1: Quality of Justice

For victims, key features for the quality of justice include the Court’s capacity to provide a fair, safe, accessible, inclusive and responsive process that is able to adequately and effectively respond to their need for reparative justice.

Result 1: Victims are able to participate effectively

In order to fully determine what effective participation means for victims, it is recommended that the relevant sections consult with victims or their intermediaries directly. In considering what should constitute “effective” participation, the Court could consider both the substantive and procedural aspects of victims’ access to justice, i.e.:
- victims’ substantive capacity to participate (e.g. scope and representativeness of crimes);
- victims’ procedural, technical, logistical capacity to participate (e.g. outreach, training, assistance and responsiveness in handling applications, timely decisions on requests for participation, legal representation, security issues).

Activity 1.1 Take victims’ views into account in the selection of situations and cases

The Prosecutor should participate in outreach activities undertaken with affected populations in order to listen to views, fears and questions in view of ensuring that the prosecutorial strategy reflects a balanced local understanding of who was most responsible
and the scope of victimisation. Evaluation tools could include sampling views from victims themselves. Systematic analysis of press releases following an arrest might also provide useful insight on local reactions to arrest warrants. However, the VRWG recommends that the Office of the Prosecutor, in collaboration with victims themselves, develop sources of verification and indicators for evaluating whether affected populations thought that arrest warrants reflected victimisation.

- **Activity 1.2 Ensure a streamlined and responsive handling of applications**

Streamlined and supportive procedures need to be established to ensure timely, clear and accurate information from the field to the Court and back. It is recommended that in order to be more efficient, the Court may need to adopt more practices more akin to claims bodies, and review the current application forms accordingly. Victims require assistance in understanding and formulating the information required of them. They also need feedback on administrative as well as judicial decisions that concern them within a reasonable time. Decisions on applications should be granted within a reasonable time - i.e. allowing victims to participate in all debates affecting their rights. It is suggested that the Court consult with victims and organisations working with victims to help identify what a “reasonable time” would be both to notify victims of the decisions and to maintain contact with them to possibly explain delays. Decisions should be translated into a language understood by the intermediaries, and decisions that require a response within a specific date should be timed from the notification of the translation. Evaluation tools could include a Feedback Form completed by victims or intermediaries, and statistics on time delays for both parties. However, the VRWG recommends that the Court should develop its own sources of verification and indicators for evaluating streamlined and responsive handling of applications.

- **Activity 1.3 Facilitate victims’ right to legal representation**

Appropriate legal aid for victims should be available from the earliest stages of proceedings (including the application stage). Victims should receive all necessary information in order to allow them to choose their legal representative. A strategy on common legal representation for victims should be developed by the Court and take into consideration the views of victims’ organisations and victims’ counsel.

Tools for evaluation could include feedback from victims, their intermediaries or legal representatives.

- **Activity 1.4 Develop modalities of participation that allow victims to participate both effectively and safely**

Once the status of participant is granted to victims, the modalities of participation should be established in a way that considers the balance between the need for victims to participate safely on the one hand, and to participate effectively on the other hand, i.e. without undermining the scope of participation because of security measures.

- **Activity 1.5 Hold trials or hearings in situ, recognising victims as partners and key stakeholders**

In order to provide meaningful access to justice, where possible the Court should relocate trials or key hearings to situation countries or neighbouring countries as appropriate.

- **Activity 1.6 Establish situation-specific targets for ensuring quantitatively adequate victim participation**

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6 The VRWG recognises that the Prosecutor has been involved in many outreach activities. The suggestion here is that this should be systematised as part of the strategy.
To ensure adequate victim participation, outreach, training and assistance in completing application forms need to be provided systematically and include regular follow up. If higher targets are to be reached then it is suggested that relevant sections be relocated closer to affected populations in order to be permanently present on the ground. Outreach staff in the field should be sufficiently independent and empowered with decision-making.

In addition to training field personnel in issues concerning trauma, gender, children and the particularly vulnerable victims such as the elderly and the disabled, training in preventive security (physical and psychosocial of both the victims and personnel) should also be ensured. Training in assisting victims to complete application forms is also vital for both outreach and VPRS staff. These trainings should be extended to a core group of local partners in each situation country to act as multipliers. Information and training materials should be translated into local languages and need to be provided from the earliest meetings.

In order to facilitate effective planning, evaluation and reformulation of field strategy, workshops with key stakeholders (core partners) should be organised. A feedback form could be developed through these local workshops as an easily obtainable means of monitoring the Court’s work from the victims / stakeholders' perspective. This could be supplemented by other evaluation techniques such as focus groups and other interviews; however the VRWG recommends that the Court should develop its own sources of verification and indicators for evaluating performance.

- **Activity 1.7 Utilise amicus curiae and filings from other interveners constructively in view of assisting in the development of policies and principles**

In order to create effective and consistent policy regarding victims' participation and representation, the Court should utilise the available amicus curiae procedures to request or receive observations from non participant legal representatives and victims as well as NGOs with relevant expertise in the formulation of policies and principles concerning victims’ roles in the proceedings.

- **Activity 1.8 Assist participating victims who want to attend hearings, even if non in situ**

Victims who have been granted the status of participants and who would like to physically attend the hearings should be assisted to do so (financially and logistically, including security). Such physical attendance at hearings will be very important for the feedback within affected communities and to other victims.

**Result 2: Victims are able to participate safely**

- **Activity 2.1 Take measures to minimise all risks for participating victims**

The Court should take measures to avoid that victims’ are exposed to risks on account of their participation in the proceedings. Such measures should include the possibility of confidential handling of applications and non-disclosure of victims’ identities to individuals other than strictly necessary.

Relocation as appropriate and informed by victims concerned should also be facilitated. Other measures should include appropriate training and the development of clear security policies regarding intermediaries who work with victims.

- **Activity 2.2 Establish networks and strategies for victim safety from their initial contact with the court**
Responsible strategies need to be established to ensure victims’ physical and psychosocial safety from initial contact with the court. Training on preventive practices for local Court staff as well as core partners, intermediaries and counsel should be ensured for each situation country. Strategies for rapid response to incidents might include providing immediate advice to intermediaries, facilitating contacts and establishing agreements with relevant partners in the field. In order to evaluate performance and responsiveness, targets for maximum response times should be established. In all cases, the victims’ legal representatives should be consulted.

Due to the increased and ongoing risk once victims are recognised as participants, the Court should ensure that local focal points (i.e. Court staff, UN bodies or Court partners, and not victims’ intermediaries, who should not be burdened with victims’ security) are given means to rapidly respond to incidents or emergencies, and also be available to advise, assist and counsel victims as necessary on an ad hoc basis. The Court should establish means of evaluating victim safety, including psychosocial safety. Evaluation of response times could be relevant.

**Result 3: Victims are well represented**

- **Activity 3.1 Facilitate legal aid for applicant-victims’ as necessary**

In order to safeguard victims’ rights during the application phase as well as during proceedings, victims should be granted legal aid from the earliest phases. Providing legal aid during the application phase will also help ensure that applications are as complete as possible, contributing to expeditious proceedings. Legal aid needs to be available until enforcement of reparations. A tool for evaluation could be an analysis of eventual increased numbers of complete applications received by the Court, but other tools should be devised.

The Court should establish a threshold of automatic indigence. For instance a presumption of indigence for specific categories of victims, or for victims from specific situations should be established. In cases where indigence is presumed, the Court needs to facilitate as much as possible victims’ application for legal aid and attribution of a legal representative, ensuring that victims have all the available information.

- **Activity 3.2 Facilitate legal representation for indigent victims**

The Court should ensure that applicants and victims accepted to participate in the proceedings receive all relevant information in order to access appropriate to legal representation. This includes developments of effective mechanisms to group victims under common legal representations and to avoid conflicts of interests among different groups of victims represented by the same lawyer.

A strategy on common legal representation for victims should be developed by the Court, taking into consideration de views of victims’ organisations and victims’ counsel, and avoid any conflict of interest among different groups of victims represented by the same lawyer.

**Result 4: Victims are awarded adequate reparations and receive effective assistance**

- **Activity 4.1 Develop principles on reparations**

The Court should develop principles for adequate forms of reparations that are in line with the situation of victims of the crimes under the jurisdiction of the Court.

- **Activity 4.2 Provide effective assistance to victims**

The Court, including the Trust Fund, should ensure that victims receive adequate assistance. Mechanisms should be put in place to consult victims on their needs and to inform them of...
the possibility of submitting relevant proposals to the Trust Fund. Proposals should be handled in a transparent and timely manner.

**Goal 2: A well Recognised and Adequately Supported Institution**

For victims, as for many stakeholders, the Court will be well recognised and adequately supported if there is satisfaction about the substance of its work. In truth this goal could be reformulated as an indicator of the Court’s success. Nevertheless, if maintained as currently formulated, and if the Court is to be well recognised and adequately supported as an end in itself, then, from a victims’ perspective the corresponding results should include that victims can understand and use the Court’s processes where eligible.

**Result 5: That victims know about and understand the mandate of the Court, in particular its mandate in respect of victims and victims’ rights under the Statute**

- **Activity 5.1 Ensure that the Court has a participatory outreach strategy**

The Court should ensure participatory planning, implementation and monitoring of its outreach strategy at field level. For this purpose it is suggested that the Court could hold outreach strategy and review workshops with representatives of the affected populations and core local partners, including directly with victims where possible. Indeed this could ensure that each situation countries’ outreach strategy is adapted to local realities, and that ground level evaluation routinely feeds into the development of new activities, keeping outreach strategies current and relevant. Feedback at such workshops could be used as sources of verification and indicators for evaluating performance, particularly qualitative evaluation.

- **Activity 5.2 Conduct direct outreach & training to victim populations**

In order to ensure that victims know about, understand and are able to make use of the procedures offered by the Court, it is important that direct outreach to victim populations is undertaken by officers of the Court. Repetition and follow up are as important as initial meetings.

In order to ensure that direct outreach and training is reaching the most vulnerable victims, field personnel and core local partners should receive training in issues concerning trauma, gender-based violence, child victims and other vulnerable groups such as minorities the disabled and the elderly. Preventive security (physical and psychosocial) of the victims and of the staff should be extended to all local personnel and core partners. Again it is suggested that the use of workshops with representatives of the affected population or core local partners can be a vehicle for evaluation of direct outreach and training. In addition, an indicator of direct outreach on victims’ rights might include measured increases of victim applications from a given area.

- **Activity 5.3 Facilitate adequate and appropriate media coverage of the activities of the Court**

It is vital that, in addition to direct outreach to victims, available media are used to inform the general public, including *inter alia* former combatants, armed forces and armed groups. As victims of mass violence generally live in hostile environments, providing regular and up-to-date information about the Court’s work to the broader community will reduce misinformation, misconceptions and fears potentially rendering the environment less hostile. Experience at other Courts and Tribunals indicates that opening and sustaining channels of communication with key stakeholder groups, including former armed groups or with the
armed forces can greatly contribute to an improved security situation for victims and the population at large.

In this respect, it is important for the Court’s outreach activities to include training for the media, including responsible and empathetic reporting, protection against vicarious victimisation. The media should be regularly provided with materials and updates on the Court’s decisions and activities.

Again, it is suggested that the Court identify sources of verification and indicators to evaluate the impact of media coverage. These could include simple, informal surveys or evaluations of, for instance, how many formal and informal area leaders in a given IDP camp have heard of the ICC or heard a given radio programme during a specific time period. Qualitative indicators should also be considered to evaluate to what extent messages are understood and the impact that outreach may be having.

**Result 6: Victims are informed of decisions that concern them**

- **Activity 6.1 Provide regular and up-to-date information about decisions that concern victims (generally & individually)**

Having already considered means to ensure that victims and other stakeholders know about and understand the ICC, measures must also be devised to ensure that victims know about decisions that concern them. Furthermore, victims must also be informed in a language they understand, about the procedures and stages of the procedures in which their requests will be addressed. If victims are to be able to use the Court’s procedures they must be informed generally about certain decisions, and sometimes individually about others. In all circumstances their security must be ensured, by for example, communicating through legal representatives or intermediaries as appropriate. In order to facilitate this, victim applicants should have legal representation.

Tools must be devised to measure the extent to which victims are receiving information about decisions that concern them.

**Goal 3: A model of Public Administration**

For victims, a model public administration is one that is accessible, streamlined and flexible that provides victim-sensitive structures and processes.

**Result 7: The application process is clear, accessible, efficient and victim-sensitive (not costly or cumbersome)**

- **Activity 7.1 Ensure clear, efficient, victim-sensitive application forms and processes (not costly or cumbersome)**

Costly or cumbersome procedures can result in violating victims’ fundamental right to access justice. Thus, applications should be as short as possible, minimising to the absolute necessary the number of pages to be photocopied or scanned by local actors. They should be translated into local languages. Applications should be clear and simple, recognising that local actors will invariably not be trained lawyers and will need training and assistance in completing the forms.

An effective tool for gauging this result could be the increase of complete forms received that provide relevant information, as well as measuring the delay until a decision is rendered. Feedback from victims, intermediaries or their lawyers would also be central for evaluating efficiency.
• **Activity 7.2 Ensure expeditious determination of victim applications (for participation, legal aid, reparation, motions, etc.)**

A key element for the ICC to be a model administration is its capacity to deal expeditiously and sensitively with applications, motions or queries. Victims often feel forgotten and stigmatised. When no feedback is provided for long periods after a victim has applied or contacted the Court, it may reinforce victims’ feelings of not being heard and of being neglected and discourage trust in legal remedies. It is crucial that a follow up is always provided within a reasonable amount of time. For instance, a victim application for legal status before the Court should be decided within three months of the complete application being received by the Court.

• **Activity 7.3 Ensure creative solutions to evidential obstacles**

Experience with other processes dealing with mass violence, where it is difficult to obtain certain types of evidence, such as Holocaust reparations or cases before the Inter-American Court have shown that evidential obstacles will need to be overcome through creative solutions in order to satisfy the universal right to an “effective remedy by a competent tribunal for acts violating fundamental rights” [7].

To begin with, standards of proof concerning the facts alleged by the victims’ should not be set too high [8] and creative sources of evidence might be used to corroborate the victims’ testimony, such as media archives or NGO records.

Judges may need to use presumptions of different kinds, or judicial notice, in order to sidestep victims having to prove certain facts. [9] The Victims’ Participation and Reparations Section (Registry) might play a stronger role in facilitating review and processing of evidence, and where appropriate, evidence collection. Medical or psychosocial reports may prove useful both for the victim and for the reparations process, and facilitating these should fall within the Registry’s mandate to ‘assist’ victims in accordance with Regulation 86(9) of the Court’s Regulations.

Administrative or judicial solutions to certifying victims’ identity should also be considered, in consultation with victims’ legal representatives, particularly where infrastructures do not exist.

**Result 8: Victims are treated with dignity and respect**

**Activity 8.1 Ensure all relevant staff are trained in issues concerning trauma, gender and child victimisation**

All relevant staff should be trained in victims’ issues, including concerning trauma, gender violence and child victimisation. This should include Chambers staff as well as Prosecution and Registry staff. Specific training should be afforded to Defence Counsel and members of defence teams in order to ensure sensitive and appropriate victims and witness handling. Evaluation of this Result might be made through feedback from victims and witnesses themselves.

In order to facilitate that direct outreach and training reaches the most vulnerable victims, field personnel and core local partners should receive training in issues concerning trauma, gender based violence, child victims and other vulnerable groups such as minorities and the elderly. Preventive security and other training should be extended to all local personnel and

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[7] Article 8 of the Universal Declaration of Human Rights, 1948 reads: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by him by the constitution or by law.”

[8] For instance, a “standard of plausibility” could be applied as it was in the German Forced Labour Compensation Programme. The standard of credibility in this programme provides that if no relevant evidence is available, claimant eligibility can be made credible in some other way.

[9] Examples of creative approaches to evidential challenges include an interesting decision by the Commission on Illegal Detention and Torture in Chile, [9] that all persons who showed that they had spent time in certain detention centres were presumed to have been tortured.
core partners. Again it is suggested that the use of outreach workshops with representatives of the affected population or core partners can be a vehicle for evaluation of direct outreach and training.

**Activity 8.2 Ensure procedures to consult and obtain feedback from victims and those who assist them**

While specific activities to ensure that victims are treated with dignity and respect may be introduced, victim-sensitive, “people to people” treatment should be mainstreamed as part of the Court’s approach to victims generally. Thus, consulting with victims themselves, and enabling them to express their own evaluations of the Court’s work may be a useful mechanism to monitor the efficacy of the Court’s strategy on the role of victims.

Annex: Logframe

The attached logical framework puts the four levels of intervention (Global Objectives, Specific Objectives, Results and Activities) into a table format, and provides sample sources of verification as well as indicators. These are provided merely by way of example, as the VRWG recommends that the Court develop its own sources of verification and indicators through workshops with core partners at ground level or otherwise.

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The Victims’ Rights Working Group (VRWG) is a network of over 200 civil society groups and individual experts created in 1997 under the auspices of the NGO Coalition for an International Criminal Court. Affiliated organisations include NGOs from Uganda, DRC and Sudan as well as international NGOs. Affiliated organisations include:

- Amnesty International
- Avocats Sans Frontières
- Centre for Justice and Reconciliation
- CICC
- European Law Students Association
- Fédération Internationale des Droits de l’Homme
- Human Rights Watch
- International Centre for Transitional Justice
- International Society for Traumatic Stress Studies
- Justicia et Pax
- Medical Foundation for the Care of Victims of Torture
- Parliamentarians for Global Action
- REDRESS
- Women’s’ Initiatives for Gender Justice.

See [http://www.vrwg.org](http://www.vrwg.org)