

**VRWG BRIEFING PAPER**

# **TURNING RHETORIC INTO REFORM**

**Strengthening Outreach and Victim Participation at the ICC**

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## **ABBREVIATIONS**

**ASP** – Assembly of States Parties

**CLR** – Common Legal Representation

**CLRV** – Common Legal Representative of Victims

**ICC/the Court** – International Criminal Court

**IER** – Independent Expert Review

**LAP** – Legal Aid Policy

**LRV** – Legal Representative of Victims

**OPCV** – Office of Public Counsel for Victims

**OTP** – Office of the Prosecutor

**PE** – Preliminary Examination

**PIOS** – Public Information and Outreach Section

**PTC** – Pre-Trial Chamber

**RoC** – Regulations of the Court

**RoR** – Regulations of the Registry

**RPE** – Rules of Procedure and Evidence

**RS** – Rome Statute

**TC** – Trial Chamber

**TFV** – Trust Fund for Victims

**VRWG** – Victims' Rights Working Group

## INTRODUCTION

The International Criminal Court (ICC, Court) stands as a beacon of hope for victims, not only because of its mandate to advance accountability for Rome Statute crimes, but also because it shapes international criminal law and practice. The ICC influences how justice is pursued for these grave crimes through domestic proceedings, including under universal jurisdiction, as well as through diverse regional, hybrid, and international accountability mechanisms. The Court is staffed by individuals dedicated to upholding its mandate and commitment to meaningful, rights-based justice. Uniquely positioned among international tribunals, the ICC embeds victims' rights to participate and seek reparations in its founding framework. In the face of rising threats—whether sanctions, arrest warrants against its officials, and a broader retreat from multilateralism—the Court must be protected with utmost urgency and commitment.

Part of protecting the ICC means recognising areas for improvement and a genuine acknowledgement that victims of Rome Statute (RS) crimes are not passive recipients of justice, but active rights-holders entitled to information, legal representation, participation, and reparations. These rights are central to the legitimacy and effectiveness of the ICC. Yet, over two decades since the Court began its work, victims continue to face a system that is fragmented and unresponsive to their needs.

This paper focuses on three urgent priorities: early outreach, consistent and inclusive Chamber approaches to victim participation, and removing operational barriers to participation. While other areas such as protection remain critical, the areas of focus are foundational to victims' engagement from the outset.

Drawing on a series of consultations with civil society, legal representatives of victims (LRVs), and victims, this paper highlights three areas where the Court is falling short. First, early outreach remains underfunded and inconsistently delivered. Narrow interpretations of “situation” and “outreach” have delayed communication with affected communities, particularly during preliminary examinations (PEs) when earning victims' trust in the ICC is crucial. Second, judicial approaches to participation have become restrictive and inconsistent, limiting victims' ability to be heard and to choose their legal representatives. Third, operational and procedural barriers, including delayed or inaccessible legal aid, rigid timelines and administrative inefficiencies, continue to obstruct meaningful participation.

The Court's ongoing review of its strategy on victims (Victim Strategy or Strategy) presents an opportunity to change course. However, language alone is not enough. A genuinely victim-centred approach must shape both the Strategy's content and its implementation. This requires coordination across ICC organs, a shared vision for action, and clearly defined steps and goals to ensure the Strategy is operational. It also requires adequate funding and sustained support from States Parties.

The Victims' Rights Working Group (VRWG), a network of 179 national and international civil society organisations promoting the rights and interests of victims before the ICC, has consistently called for direct consultations with victims and survivors during the Strategy revision. Yet, to date, the Court has failed to meaningfully engage with those most directly affected. This lack of follow-through on stated commitments undermines the Strategy's legitimacy. Moving forward, the Court must re-evaluate its approach and conduct the consultations that have been long recommended.

This paper offers concrete recommendations to support effective outreach and meaningful victim participation. The Court must adopt a broader, consistent understanding of 'situation' and 'outreach' that enables engagement from the PE stage. Outreach should be reciprocal, developed in consultation with civil society and delivered through local languages and inclusive formats. Coordination across organs must improve, and regular updates must manage expectations and counter misinformation. Chambers must ensure legal consistency in participation and representation, including respect for victims' choice of counsel. Operational barriers must also be addressed through full implementation of the 2024 Legal Aid Policy (LAP), flexible budgeting, streamlined procedures, and standardised and extended participation timeframes with timely feedback.

The implementation of these recommendations must be practical, include achievable goals, and be adequately resourced. This includes building internal capacity, supporting staff, and setting benchmarks for progress and adequate monitoring tools. If the Court is to rebuild trust and public confidence, it must treat victims' rights as core obligations, not aspirations.

## 1. ENSURE EARLY OUTREACH FROM THE SITUATION STAGE

**“For the Court to be able to properly fulfil its mandate, it is imperative that its role and activities are properly understood and accessible [...]. Outreach and public information activities in situation countries are quintessential to foster support, public understanding and confidence in the work of the Court.”**

–Pre-Trial Chamber (PTC) I, Decision on Information and Outreach [...], 13 July 2018, Situation in the State of Palestine.

Early outreach is essential to ensuring that victims can exercise their rights meaningfully under the RS. The IER has noted that the ASP has repeatedly called for its timely delivery, recognising that transparent communication affirms victims’ sense of recognition and justice.

### **Victims’ Right to Information and Outreach**

Victims have a right to be properly informed about matters that affect their interests under the RS framework.

Arts 21 and 68(3) RS, Rules 13.1 ,16(1)(a)-(b) and (2), 50(1), 92, and 96 Rules of Procedure and Evidence (RPE); Reg 87 Regulations of the Court (RoC); and Regs 5 bis, 6, 8, and 103(1) and (2) of the Regulations of the Registry (RoR).

Victims’ right to receive information from and communicate with the ICC has been developed by the Court’s jurisprudence in the Palestine and Myanmar situations. The Court’s strategic plans and Assembly of States Parties (ASP) resolutions have recognised the importance of early outreach, which is also highlighted in the Independent Expert Review (IER) report and by civil society, including FIDH and REDRESS.

Despite this, early outreach remains chronically underfunded and inconsistently applied. VRWG consultations with Court staff and victim representatives confirm that meaningful outreach often begins only once OTP has started an investigation, if at all. This undermines the ICC’s repeated claims of commitment to victim-centred justice.

A central cause of this failure lies in the Court’s inconsistent use of the terms “outreach” and “situation” across and within its organs. This lack of clarity delays planning, reduces resources, and leaves victims uninformed and disconnected at key stages, particularly during PEs.

Properly defined, outreach is a reciprocal exchange between the Court and affected populations, including civil society, from countries under PE, investigation, prosecution, or where reparations are being implemented. This requires the Court to disseminate

information, and to listen to the needs and concerns of victims and revise its messaging, while remaining sensitive to local conditions, cultural sensitivities, and language.

If the ICC were to consistently interpret outreach as a sustained reciprocal exchange between the Court and affected communities, including during PEs, and treat it as an institutional obligation rather than a discretionary activity, this would:

- Clarify victims' expectations and address misinformation early;
- Bolster victims' sustained engagement, understanding, and support to the work of the Court;
- Strengthen the evidentiary and participatory basis of proceedings; and
- Support earlier engagement with reparations processes and manage expectations throughout.

Effective outreach is reciprocal and enables victims, survivors, and affected communities to access, follow, and understand judicial proceedings. It helps clarify misperceptions and misunderstandings, builds trust in the Court's work, and enhances broader public confidence at a time when the institution faces mounting scrutiny.

## **THE COST OF DELAYED OUTREACH TO VICTIMS**

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Civil society has consistently emphasised that without early outreach, victims will form unrealistic expectations of the Court. This has led to disappointment, frustration, and even animosity in many situations, both among victim communities and within the broader public, affecting the Court's credibility and legitimacy — all the more vital at a time when the Court faces mounting political pressure, sanctions, and non-cooperation by States Parties.

A lack of early ICC outreach and communication has led to CSOs taking on this burden. While the Court may welcome this support from CSOs, overreliance on them to fulfil the Court's outreach mandate risks deepening victims' sense of disconnection. It undermines the Court's ability to effectively and consistently engage directly with affected communities, reinforcing the concern that the Court is not truly committed to serving their interests.

The absence of timely and accessible outreach creates an information vacuum that misinformation can quickly fill. ICC detractors have long exploited this gap to fuel distrust and resentment. Victims are then left vulnerable to distorted narratives about the Court's role and actions. It also has concrete legal consequences: victims may miss deadlines or fail to apply for participation altogether, undermining the exercise of their rights under the RS, including the right to benefit from adequate reparations, particularly where, due to lack of timely outreach, victims do not engage, and ultimately see the crimes they suffered excluded from the confirmed charges.

When victims are unable to engage meaningfully, they may feel abandoned, eroding their confidence in the Court. Early and effective outreach cannot remain a rhetorical commitment or mere formality; it is essential to safeguarding the Court's legitimacy and sustaining international support.

## THE LACK OF EFFECTIVE OUTREACH AT THE ICC: A DEFINITION PROBLEM

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The ICC's outreach shortcomings stem from a twofold definitional problem. First, the Registry interprets the term 'situation' restrictively, delaying outreach efforts until a situation advances significantly, often too late to effectively engage affected communities. Second, there is institutional confusion about what outreach entails. The term is often conflated with broader public information efforts, diluting its specific role in fostering direct, two-way communication with victims.

The Registry has routinely overlooked the need for early-stage outreach. Without strategic planning before a PE is opened, the Registry fails to request and allocate adequate funding and resources to support and protect victims from the outset. In this context, we are concerned that the current review of the Victims' Strategy might offer ambitious promises without ensuring the necessary budgetary allocations required for meaningful implementation.

The definitional problems identified above lead to multiple challenges with outreach, including delays or outright absence of outreach efforts, a failure to develop accessible outreach materials, non-compliance with Chambers' orders, and chronic underfunding.

### No Formal Outreach Until the Investigation Stage. And Even Then, a "Gaping Hole"

**"In Sudan, victims are located in villages and camps. There is no outreach: The ICC is not reaching the victims to tell them what is going on."**

– VRWG member.

The IER acknowledged that the current legal framework restricts outreach to a formal 'situation', and recommended amending Reg 5 bis RoR, which covers "Public information and outreach", to explicitly refer to the PE stage. However, the root of the problem lies not in the regulation itself but in how the Registry interprets 'situation', namely, as beginning only once the Prosecutor has opened an investigation. This reading conflicts with victims' right to be informed: the PE is when it is decided whether an investigation will occur, what it will focus on, and how alleged crimes will be characterised, which ultimately determines which victims will participate in proceedings and receive reparations in the event of a conviction. It is also consistently contradicted by PTC decisions (e.g. "situation in the Republic of Lithuania/ Republic of Belarus"), and the ICC's own website, which explains that a PE may be initiated in relation to a 'situation', supporting a broader interpretation.

Even after investigations begin, outreach remains inadequate. Both VRWG members and ICC staff have described outreach at this stage as a "gaping hole". Victims and affected communities still do not know what is happening. In the Palestine Situation, LRVs noted that victims had "overwhelmingly articulated a wish for reassurance that the ICC investigation is progressing and an expectation to see the Court on the ground." Victims noted that outreach

was focused primarily on civil society and “did not specifically allow for direct engagement or outreach to victims themselves and affected communities.”

These concerns are not isolated. Similar feedback was received in the Bangladesh/Myanmar Situation where LRVs reported to VPRS that their clients’ “enthusiasm for the ICC’s investigation appears to be at an all-time low.” The LRVs outlined activities they had taken upon themselves, “not only to provide concrete information from the justice mechanisms to the Rohingya community in the camps, but to try to sustain confidence and collaboration on the part of Rohingya with those seeking justice on their behalf.” Even in countries with ICC field offices, such as Ukraine, members report no engagement, despite heightened expectations.

Insufficient outreach also persists during the reparations stage. When expectations around reparations go unmanaged, mistrust and tension build among victims. Additionally, the lack of timely information can result in lack of participation and unexpected exclusion from reparations programmes, which cause re-traumatisation and backlash, further damaging victims’ trust in the process and in the institution itself.

## Outreach Remains Out of Reach for Affected Communities

**“Communication with victims cannot have a one-format-fits-all approach but must be specifically tailored to each country situation.”**

**– VRWG Member.**

Outreach must be accessible, culturally sensitive, and in languages victims understand, from the earliest opportunity. In Libya, VRWG members report that the absence of Arabic-language materials prevents the Court from reaching affected communities. The Registry has cited limited resources and the challenge of covering multiple languages, yet its reliance on English and French, even where neither is spoken in the affected country, is ineffective. As one Libyan member noted, Arabic communication would “help build more trust from the victims and make them more at ease to communicate with the Court.”

While the Registry leads ICC outreach efforts, the Office of the Prosecutor (**OTP**) and the Trust Fund for Victims (**TFV**) also conduct outreach activities relative to their respective mandates. Unfortunately, the involvement of multiple actors often causes confusion - internally and externally - as to which organ is responsible for which aspect of outreach. The OTP has acknowledged that outreach is essential to securing cooperation and complementarity in its Policy on Complementarity and Cooperation. However, the IER found that outreach remains wholly inadequate or entirely absent, particularly during pre-investigation phases. These shortcomings include minimal communication, insufficient information sharing with local stakeholders, weak engagement with community-based CSOs, and unclear communication channels.

Members report that the OTP often withholds PE, investigation, and case updates, citing confidentiality. While confidentiality should be respected when required, as one Ukrainian member noted, “we are lawyers and we understand that not all information can be provided

on the ongoing investigation, but more could still be provided.” There is often a feeling that confidentiality is overly used as an excuse not to share information, especially because sharing information usually requires staff resources to make a proper assessment of what will be shared. Failure to provide general information and situation-specific updates without breaching confidentiality creates space for disinformation and negative narratives. The OTP could reduce this risk by actively assessing what information can be safely shared from what must remain confidential.

Logistical challenges also impede access to victims in remote or insecure areas. Members highlighted the need for stronger collaboration with local CSOs, including through capacity-building initiatives and innovative approaches to improve access. Members also flagged cultural insensitivity and weak context awareness in communications. The Court should develop context-specific guides to ensure messaging meets victims’ norms and expectations.

## **Eroding Victims’ Rights: The Impact of the Registry’s Non-Compliance with Chambers’ Orders**

The Registry’s restrictive interpretation of “situation” has constrained its own outreach efforts but has also contributed to its failure to comply with Chambers’ orders in the Palestine and Bangladesh/Myanmar situations. In both cases, Chambers exercised their authority under Rule 92(8) of the Rules of Procedure and Evidence to direct the Registrar to ensure adequate publicity of the proceedings at all times.

In the Palestine situation, LRVs reported in 2023 that outreach ordered in 2018 had “not yet satisfactorily materialised” and had not reached their clients. Victims in Palestine expect the Court to “make itself known, felt and present” especially as confidence in international justice dwindles. They emphasised that “justice must be both done and seen to be done.” Timely Court communication is key to managing expectations and countering misinformation. In the Bangladesh/Myanmar situation, the Registry itself acknowledged gaps in outreach that LRVs had to fill. This fragmented approach shifts the burden onto others and weakens coordination.

The Registry’s failure to initiate outreach at early stages due to its own regulatory interpretation is concerning. However, its apparent disregard for direct orders from Chambers raises deeper concerns about whether it truly upholds its responsibility to victims. When victims and LRVs perceive the Registry as failing to comply with binding orders, it erodes trust in the Court and reinforces criticism from those who question the ICC’s credibility and commitment to justice.

## Outreach Without Resources: A Promise the ICC Cannot Keep

**“Outreach activity should be recognised by the OTP, the Court, the CBF and the ASP as an integral part of any investigation, and therefore funded appropriately.”**

– IER.

The Registry frequently cites resource constraints to explain gaps in outreach. In the Bangladesh/Myanmar situation, for example, it noted that “[w]hen and if conditions permit (including budgetary and security conditions), the Public Information and Outreach Section (PIOS) plans to conduct a mission [Redacted], in order to meet [Redacted] for the purpose of developing outreach projects and providing ICC-related trainings, including in the Rohingya camps.” The Registry also cites staffing and resource shortages to justify its failure to translate documents and address geographic and security challenges to outreach.

The Registry’s restrictive interpretation of “situation” also impacts the Court’s funding model, which links Key Performance Indicators (**KPIs**) to hearings and trials leading to the undervaluation - and under-resourcing - of outreach during PEs. Consequently, victims are often left uninformed and feeling disconnected from the outset.

Despite the Court’s repeated outward support for early outreach, funding has not matched the rhetoric. The IER confirms that funding for outreach in situation countries is “miniscule (around €50,000 per annum)”. Moreover, the Court now has significantly more work than when it originally opened its doors, with 17 active situations and 16,000 victims participating in cases before the Court, compared with just two situations and four participating victims in only one case in the Court’s early years. Yet neither the Registry’s budget requests, nor actual funding have grown in proportion to these increases.

Part of the issue lies in how funding is tied to hearings and KPIs. This approach overlooks victims’ rights, which requires the provision of information, support, and safe engagement at every stage, not only during hearings. Without sufficient and properly structured funding, outreach remains a promise the Court cannot fulfil.

## RECOMMENDATIONS

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### *To the Registry*

- 1. Request sufficient and adequate funding to fulfil the revised Victim Strategy**, despite the sentiment that States will not increase the Court’s budget this year by:
  - Bringing to the fore the rights of victims as the Court’s primary stakeholders;
  - Accurately budgeting the costs of effective implementation of all victims’ rights including the right to information; and
  - Should such budget increases not happen, communicate to States the adverse impact

this is likely to have on implementing victims' rights.

- 2. Ensure timely compliance with Chamber's orders on outreach.**
- 3. Develop tailored outreach strategies informed by victims, CSOs, and LRVs, and include them in the Victim Strategy, including:**
  - Early outreach from PE stage explaining what the ICC is; the rights of victims in ICC proceedings; how to engage with the Court at every stage; how to participate at every stage; and the different stages of proceedings and reparations processes;
  - Gender-, age-, culture- and trauma-sensitive methods;
  - Use of local languages and context-appropriate communication tools;
  - Efficient responses to misinformation;
  - Developing the tools to relay information, messages and concerns of victims to other ICC organs; and
  - Regular updates to strategy adapted to stakeholder feedback.

#### ***To the Chambers***

- 1. Clarify responsibilities of PIOS, VPRS, TFV, and LRVs in outreach-related orders.**
- 2. Use Rule 92(8) of the RPE to:**
  - Order publicity of proceedings where appropriate; and
  - Monitor and hold Registry accountable.
- 3. Develop principles in its orders for early-stage outreach, to ensure consistency in approaches, reflecting those developed in the Palestine and Myanmar situations.**

#### ***To the OTP***

- 1. Strengthen genuine engagement with CSOs and LRVs, including through:**
  - Regular updates on the progress of PEs and investigations and usefulness of documentation submitted by CSOs and victim groups consistent with thoughtful confidentiality assessments. The OTP could adopt a policy setting reporting benchmarks;
  - Situation-specific reporting on every stage of proceedings and other contexts in which the OTP is engaged; and
  - Meeting with CSOs and national LRVs during country visits.

## **2. Improve coordination and cooperation with the Registry on outreach.**

### ***To States Parties***

#### **1. Adequately fund the Victim Strategy, including:**

- Translations and interpretation into local languages and hiring related staff;
- Development of digital tools (e.g. mobile and audiovisual formats); and
- Outreach staff, ICC field offices and travel costs for achievable visits.

#### **2. Adopt a victim-centred funding model:**

- Allocate budgets based on the full scope of victims' rights in all stages (not just hearings);
- Ensure KPIs reflect outreach needs across all situations; and
- Prioritise reforms that support inclusive, context-sensitive outreach.

#### **3. Encourage compliance:**

- Monitor the Registry's outreach implementation;
- Push for realistic performance indicators that reflect victims' rights; and
- Support structural reforms to ensure meaningful engagement.

## 2. ENSURING ROBUST AND MEANINGFUL VICTIM PARTICIPATION

“As a victim who has suffered harms during the war I think it was our decision to appoint the [two] lawyers. Therefore we feel it’s very important to continue with them in this case since the process that we founded on we have not changed.”

– A participating victim in *The Prosecutor v. Dominic Ongwen*.

“The system of victim participation before the Court, as it is now, resembles Titanic approaching its iceberg.”

– Office of Public Counsel for Victims (OPCV), Closing remarks in *The Prosecutor v. Yekatom and Ngaissona*.

### Victims’ Right to Participate in ICC Proceedings

“Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. [...]” Art 68(3) RS

This right is affirmed elsewhere under the RS framework: Art 15(3), 19(3), 21 and 53(3)(a) RS, Rules 16(1) and (2), 85, 86 and 89 to 93 RPE, Reg 86 RoC, and Regs 6, 8, 103(1), 104, 105 and 112(1) of the RoR.

Victims have the right to participate in proceedings by presenting their views and concerns to the judges at stages of the proceedings determined to be appropriate by the Court and where their personal interests are affected. Under the RS system, victims can participate through their LRVs or the OPCV. Legal representation provides a vital bridge between the victims and the Court, and the only channel – for the majority of victims – to make their voices heard and contribute to the establishment of truth and justice.

The Court’s Revised strategy in relation to victims (2012) identifies effective legal representation as a crucial element to ensure victims’ right to participate in ICC proceedings. Despite high-level endorsements, and numerous judgments recognising the critical importance of both effective participation and legal representation, victims in ICC situation countries continue to face multiple obstacles when trying to understand and make use of the system of legal representation before the Court. These obstacles include restrictive approaches to participation at the situation, trial and reparations stages, and obstacles related to legal representation including organising common legal representation (CLR) and legal and operational obstacles faced by LRVs.

Failure to address the deep frustration caused by these challenges risks making victims feel abandoned by the ICC, creating a disconnect between them and the Court, and preventing the Court from benefitting from their views and perspectives. The current review of the Strategy presents an opportunity for the Court to take strong measures to uphold victims' right to effectively participate in ICC proceedings.

## **RESTRICTIVE APPROACHES TO ICC PARTICIPATION AT THE SITUATION, TRIAL, AND REPARATIONS STAGES**

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Since the DRC investigation and the *Lubanga* case, marking the first time victims were able to exercise their right to participate in ICC proceedings, ICC judges have repeatedly specified the need to ensure victim participation is “as meaningful as possible as opposed to purely symbolic”. In recent years, decisions on participation have diverged from earlier Court jurisprudence, reflecting increasingly restrictive approaches towards victims' participatory rights, which has also created legal uncertainty.

### **Inconsistent approaches towards victim participation**

Under Rule 85 RPE, a victim is only required to demonstrate that they are a natural person who suffered harm as a result of incidents within the temporal, geographic, and material scope of the case.

Chambers have been inconsistent in applying this standard. In recent jurisprudence - for instance, in *Said*,- the Trial Chamber (TC) drastically limited participation to victims of specific incidents explicitly confirmed by the PTC. This occurred despite the PTC indicating that the specific criminal acts relating to the confirmed charges are not exhaustive and that the extent of the victimisation is likely much broader. This decision led to the reassessment of all victim applications, especially those previously admitted, resulting in a number of applications being reclassified by the Registry as not qualifying as victims.

This approach in *Said* contrasts with a more progressive approach taken by the same Chamber in previous cases, where a link between the victims and the confirmed charges was deemed sufficient for victim participation, for instance in the *Ntaganda* and *Bemba* cases.

### **Differing approaches to victims' selection of counsel**

Victim participation depends on accessible and high-quality legal representation. Under Rule 90(1) RPE, victims are entitled to choose their lawyer. Where different victim groups are represented by multiple lawyers, the Chamber may order that victims choose a common legal representative of victims (**CLRV**), and if victims cannot decide whom to select as CLRV, the Chamber can instruct the Registry to assist them per Rule 90(2) RPE. As a last resort, the Registry may choose a CLRV per Rule 90(3) RPE. The Court may also appoint the OPCV as CLRV per Reg 80 RoC.

The Court lacks consistent practice on how to implement this process and support victims in

choosing a CLRV. In early cases - *Lubanga*, *Katanga*, *Bemba*, and *Banda and Jerbo*, - Chambers followed a “sequential approach”, allowing victims to organise their own CLRV before the Registry and Chamber would intervene. Positive practice was followed in *Katanga*, where the CLRV appointment was finalised after (most) victims had been consulted.

More recently in *Al Mahdi* and *Ongwen*, the Registry did not follow the above process and merely sought victims’ general views on the qualities sought in a CLRV and subsequently recommended a candidate for appointment to the Chamber. This resulted in victims not knowing who was representing them, not having contact and rapport with their counsel, and feeling uninformed about the progress of the proceedings. This affected their participation. These shortcuts in selecting CLRVs are likely driven by a lack of resources allocated to the Registry, the OPCV, and LRVs, especially at early stages of proceedings.

Inconsistent approaches are also observed in relation to legal aid. In *Ongwen*, the PTC judge appointed the OPCV to act as CLRV. Another group of victims in the case chose two external LRVs before the confirmation of charges hearing, but the PTC denied them access to legal aid. The Registry, exercising its discretion, ultimately granted legal aid to these external LRVs due to extensive advocacy of CSOs and efforts of Registry staff. Earlier practice had allowed legal aid for victim-chosen LRVs, and in subsequent cases – e.g. *Mokom* - the PTC granted legal aid to external counsel. Approaches to legal aid should be consistently applied where victims choose their own counsel, even after the appointment of OPCV.

These fluctuations in approaches undermine victims’ right to choose their own counsel, create legal uncertainty as victims navigate legal representation, and leaves victims and LRVs confused on the process of appointment, and legal aid entitlement. This, in turn, affects victims’ confidence in the system. A clear, dependable, and transparent framework to enable and support victims’ choices, and a flexible legal aid policy are essential to effective victim participation.

## **Giving weight to victims’ preferred modalities of participation**

Victims participate in the proceedings “orally or in writing”, usually through their lawyers. These modalities of participation are normally judicially determined.

Recently, Chambers have made decisions on participation formats without providing justification to victims. For example, in the Venezuela situation, victims were permitted to submit written observations but were denied oral arguments through counsel in court in 2022 and 2023. This contrasts with the PTC approach in earlier cases, for instance in *Gbagbo* and in *Banda and Jerbo*, in which the judges considered that victims’ participatory rights include participation in hearings, unless decided otherwise by the Chamber. In both cases, LRVs were also permitted to present victims’ views orally during the hearing. The Court’s 2012 Revised Strategy in relation to victims recognises “the importance of victims’ participation in the trials and their right to have their distinct needs and interests taken into

account by the Court”. Rendering decisions on the modalities of victim participation without giving due weight to victims’ preferences undermines their confidence in the process. It also neglects LRVs’ critical role in bridging the gap between victims and the Court.

## **Restrictive jurisprudential trends on issues deemed relevant to victims**

Victims may only respond to submissions from other participants, express their views and concerns to the judges orally or in writing, be notified of public and confidential documents filed, present evidence, and question witnesses if judges are satisfied that victims’ personal interests are affected and participation in particular stages of proceedings is appropriate. The judges’ interpretation of what constitutes issues “affecting the personal interests of victims” is crucial, as it determines the scope of victims’ participatory rights.

While early ICC jurisprudence established foundational principles that clarify what constitutes issues “affecting the personal interests of victims”, in recent years the trend is for the PTC to increasingly restrict victims’ standing, particularly at the early stages of proceedings. Crucially, such issues do arise early on, when the Prosecutor is deciding whether to initiate investigations and during the pre-trial stage when victims apply to be recognised.

Recognising the importance of victims’ active participation in early phases, the IER report recommended extending legal representation to PEs and requests for authorisation to open investigations. Yet, in several recent cases, different Chambers have barred victims from filing submissions or receiving notifications of litigation, without sufficient reasoning or referencing earlier jurisprudence.

The PTC in the Bangladesh/Myanmar situation refused to recognise victims’ standing to request the adoption of a protocol on investigative activities, on the basis that they had not been formally admitted to participate in the situation, despite having previously submitted views, at the PTC’s request, on jurisdiction and the opening of an investigation. In the Libya situation, the PTC refused to allow victims to present views on the Prosecution’s request for a finding of non-compliance against Italy after it failed to surrender a suspect arrested on its territory, leaving victims frustrated with the process. This contrasts with a more progressive approach to standing taken by TCs in previous cases, such as in Kenyatta, where the TC permitted victims and other parties to make submissions on the issue of non-compliance.

This restrictive trend extends to the trial stage, where some Chambers have adopted a narrow approach to the role of LRVs, particularly in relation to questioning witnesses. In Yekatom, the TC prevented LRVs from asking general questions on the accused’s responsibility, limiting their focus to harms suffered by the victims and suggesting that allowing expanded questioning would permit them to act as a ‘prosecutor’. In Said, the TC further restricted LRVs to only questioning their own clients – victims with dual status as both witnesses and participating victims.

These approaches are in stark contrast with earlier jurisprudence established in Lubanga and Bemba, where the TCs allowed a wide range of questioning to witnesses by LRVs on any issue not already addressed by the prosecution. Specifically, in Bemba, the Chamber held

that victims' interests extended to the issue of responsibility of the accused, justifying their involvement in questioning witnesses.

The Court's increasingly restrictive interpretation of what constitutes "matters of personal interest" to the victims has led, in practice, to their exclusion from proceedings that directly affect their rights. It has also resulted in unjustified limitations on witness questioning.

Victim participation during the reparations phase is also limited primarily due to inconsistent approaches in identifying eligible beneficiaries of reparations and reduced access to legal representation due to recent LAP changes, as elaborated further below.

Inconsistencies in approaches to identification and eligibility of victims for reparations have undermined predictability and coherence in the Court's approach. In *Lubanga*, the Court accepted written applications for reparations at different stages of the proceedings collected by the VPRS, the LRVs and the TFV, then accepted additional beneficiaries during the implementation phase. In *Al Mahdi*, the TC also permitted beneficiaries to be identified during the implementation phase, but delegated identification to the TFV, whereas in *Ntaganda* and *Onghwen*, the Chamber delegated victim identification, eligibility assessment, and outreach to the Registry, and also permitted more beneficiaries to be identified during implementation. In *Katanga*, the TC used an application-based approach that did not allow additional victims to come forward during the implementation phase.

These restrictions undermine the Court's commitment to ensuring that victim participation is effective, not merely symbolic. They also weaken the legitimacy of reparations and erode the broader promise of victim-centred justice.

## RECOMMENDATIONS

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### *To the Chambers*

#### **1. Ensure legal certainty and inclusivity in decisions on victim participation, including legal representation, and update the Chambers Practice Manual accordingly:**

- Identify and consolidate the ICC's practice and jurisprudence on these issues, including the Court's seminal jurisprudence on victim participation at early stages;
- Develop judicial guidelines on victims' substantive and procedural rights if this has not been done already;
- Establish a clear and predictable approach to ensure victims are supported in exercising their right to choose their counsel; and
- Consider adopting a sequential approach to Rule 90 RPE as best practice for ensuring victims' right to choose their legal representation.

#### **2. Judicial training and professional development:**

- Provide continuous mandatory training and professional development initiatives to all judges and Chambers' staff on the minimum international standards and best practices on victim participation at all stages of ICC proceedings and on related internal guidance they may still need to be developed as per the recommendations above.

### ***To the Registry***

#### **1. Request resources to ensure victim participation:**

- Encourage each section to base their budget requests and projections on real and actual needs; and
- Allocate sufficient resources to PIOS, VPRS, OPCV, and LRVs to ensure that activities to support victim participation are sufficiently funded.

#### **2. Establish a clear procedure on the Registry's role in legal representation:**

- Establish and implement a clear, written, and public procedure to regulate the Registry's role in victims' legal representation, covering (i) how the Registry supports victims to choose counsel; and (ii) what process the Registry applies to recommend a lawyer to serve as CLRV.

#### **3. Ensure VPRS follows a consistent methodology to identify and engage eligible victims by:**

- Establishing and implementing a consistent and coherent methodology for timely identification and engagement with eligible victims from the early stages, to facilitate victim participation; and
- Providing sufficient time and reasonable deadlines for submitting applications for participation after a suspect is arrested and surrendered to the Court.

### ***To States Parties***

#### **1. Promote consistency in victim participation before the Court:**

- Support a consistent approach across the Court to victim participation, ensuring victims' voices are heard and their rights respected according to the highest standards of international law at all stages of the proceedings.

#### **2. Promote and provide sufficient funding to ensure quality victim participation:**

- Increase funding to Court's activities related to victims' rights to ensure meaningful and efficient victim participation; and
- Be sensitive to the implications of each stage of the proceedings on victims' rights.

## **OPERATIONAL OBSTACLES TO PARTICIPATION**

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The participation of victims in international criminal proceedings is critical to justice, recognition, and redress. However, a number of systemic and operational barriers continue to undermine their ability to engage meaningfully. Some of these barriers are related to the LAP of 2024, including the continued delay in its implementation and the arbitrary caps it imposes; short and unrealistic time constraints for victims to make submissions to Chambers on areas impacting their interests; logistical limitations and lack of clarity in procedures impacting the daily work of LRVs; and lack of clarity and transparency from the Court. These issues collectively impede victims' participation rights, particularly during early stages and the reparations stage where their involvement is critical.

## Delayed Implementation of LAP

The ASP has repeatedly underscored the fundamental importance of the legal aid system in "ensuring the fairness of judicial proceedings as well as the right of the defendants and victims to appropriate legal representation." It has also frequently stressed the need for an efficient legal aid system that upholds the principles of "fair trial, objectivity, transparency, economy, continuity, and flexibility."

Despite these stated commitments, the ICC's LAP was long described by defence teams and civil society as 'not fit for purpose', with similar challenges affecting victims' teams and the meaningful participation of victims. The ASP has acknowledged the need for legal aid reform, having requested a review in 2012. After an assessment of the legal aid system at the ICC in 2015 and a related expert report containing recommendations in 2017, the ASP made continued calls for the Court to review its legal aid system from 2018 to 2022. A new LAP was finally adopted in 2023 – a reform that was long overdue and much anticipated.

Since coming into effect on 1 January 2024, the new early-stage legal aid allocation introduced under the 2023 LAP has not yet been disbursed. While this new provision represents a welcome improvement in addressing long-standing gaps in victim representation, the delay has severely compromised the capacity of victims' counsel to maintain consistent engagement and provide support to victims, undermining continuity and trust. The absence of transitional measures or temporary funding to bridge this gap during early-stage representation, is causing exactly the kind of harmful gaps in legal support that the legal aid system was established to avoid.

## Arbitrary Legal Aid Caps

During the process of reforming the legal aid system, the ASP repeatedly requested that proposed amendments be cost-sensitive and funded within existing resources. This approach has drawn criticism for approaching technical and operational matters impacting fundamental principles – fair trial, objectivity, transparency, continuity and flexibility – as purely budgetary concerns. It additionally misrepresents legal aid as a 'cost driver', a characterisation rejected by experts as inaccurate both for victims and defence teams. Finally, this approach contradicted the IER recommendation to work on reforming the LAP without confined limits, i.e. budgetary limitations.

As the IER reiterated, external LRVs must be adequately resourced, to enable them to represent victims in a way that will facilitate their meaningful participation in the proceedings, including during the reparations stage.” In reality, victims’ legal representation often takes place in or near situation countries, where victims are numerous, geographically dispersed, and have different capacities and needs. These realities require flexibility, a crucial principle for ensuring an efficient legal aid system.

While the 2023 LAP made several welcome improvements, it also introduced a fixed lump sum of €30,000 for early stages – per situation and for the full duration of the stage – without explaining how this figure was calculated nor how it will be divided. LRVs consulted by FIDH described this cap as arbitrary and insufficient, allowing only ‘minimal-level representation’ in the early stages which often span many years. Furthermore, despite requesting this amount in May 2024, LRVs consulted say they have not received a formal response, and no payment has been provided. They continue to work pro bono for their clients, a situation that is both unsustainable and inequitable. This is particularly concerning given that the €30,000 per situation was presumably allocated in the Court’s approved 2024 budget. It remains unclear how these funds have been used.

Similarly, the LAP divides the reparations stage into two phases: the litigation and implementation phases, with the latter capped at €60,000. Again, there is no transparency regarding how this amount was determined nor flexibility to address the varying needs in different cases. The Katanga reparations proceedings illustrate how LRVs play a crucial role in the implementation phase, since the Registry and TFV relied on the LRVs to communicate with victims about their views and preferences. The TFV also found there was “consensus” at the ICC among judges, and Registry and TFV staff, that the LRV’s efforts in this case “made the reparations process easier”. Without robust representation like this during the implementation phase, victims cannot meaningfully engage in the full reparation process or challenge restrictive criteria, or risk being excluded entirely due to procedural deficiencies.

Rigid and arbitrary financial caps do not reflect the complexity of individual cases and fail to accommodate varying needs specific to each case. As stated in the 2017 review of the ICC’s legal aid system: “the payment system must provide for mechanisms that are flexible enough to adapt to situations as they arise to preclude any paralysis prejudicial to the interests of the due administration of justice”.

## **Short and Unrealistic Timeframes with Article 15**

When the ICC Prosecutor seeks authorisation from a PTC to initiate a proprio motu investigation, victims can make representations to the Chamber per Article 15(3) RS and Rule 50, RPE. This allows victims to provide factual and legal information to assist the Chamber in evaluating the Prosecutor’s request.

The decision to open an investigation is critically important for victims many of whom have not received redress for the harm they have suffered. The Georgia situation demonstrates the impact of victim participation on reparations proceedings, as victims’ representations led to an expanded scope of the investigation to include crimes not mentioned in the request for

authorisation. Similarly in the Myanmar/Bangladesh situation, the PTC explicitly recognised the valuable information victims provided about the scope of the investigation, the gravity of the crimes, and the interests of justice.

Despite the acknowledged importance of victim participation at this stage, experience to date shows that one of the main challenges to effective and inclusive participation is short timeframes for submissions. In the Georgia situation, victims had 30 days to submit representations; in Afghanistan, the 60-day timeframe fell during the harshest winter months. The constraints left insufficient time for the Registry to conduct outreach and disseminate information, tasks which, until that point, had been minimal or absent. Even under optimal circumstances, such short timeframes would have the effect of limiting participation. These practices are particularly exclusionary in contexts where victims must navigate security challenges, a lack of internet access, illiteracy, language barriers and diversity, and working with intermediaries.

These short timeframes have impacted the number of participating victims and the geographical scope of engagement. They have also hindered efforts to promote gender-inclusive participation. In the Myanmar/Bangladesh situation, even with what was considered a 'generous' period of four months, the VPRS requested an extension outlining several 'major challenges', including its ability to engage directly with affected women and children.

In addition to impacting participation itself, these short timeframes cause significant frustration amongst victim groups who have waited years for the conclusion of PEs, only to then face unreasonably short deadlines for the filing of their submissions. While expeditiousness is in the interests of victims, it must not come at the cost of meaningful participation.

## **Lack of Access to Court Resources**

To enable LRVs to effectively carry out their duties, the Court must provide support beyond legal aid. Consultations with LRVs have highlighted a range of administrative and logistical challenges that obstruct their work, cause delays, and create unnecessary frustration. These include not receiving basic operational support, such as setting up email accounts, and "lengthy and bureaucratic approval processes for essential activities", such as trips to meet their clients, and a lack of timely notifications. LRVs also have limited access to essential Court materials, such as filings, evidentiary disclosures, and procedural guidance documents, and lack clear protocols for submitting materials in multiple languages. While the Court's Counsel Support Section (**CCSS**) is mandated to assist LRVs, the LRVs described their engagement with CCSS as "the most difficult, frustrating, and unnecessarily time-consuming aspect of their work representing victims." Left unaddressed, these challenges will create a perception of exclusion and reduce confidence in the Court's responsiveness to victims' meaningful participation and representation in proceedings.

## RECOMMENDATIONS

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To address these operational barriers and support victims' full and meaningful participation, the following reforms are recommended:

### *To the Registry*

#### **1. Urgently implement the 2024 LAP:**

- Ensure immediate disbursement of funds under the new policy; and
- Provide retroactive funding for LRVs who supported victims during the interim period since January 2024.

#### **2. Revise the LAP to Introduce legal aid caps based on case complexity:**

- Replace arbitrary caps with a needs-based legal aid framework that reflects case-specific factors such as the number of victims, geographic dispersion, and legal complexity;
- Move away from the fixed 'lump sum' approach to annual budgets that better reflect ongoing participation needs in lengthy situations/proceedings;
- Uphold the principle of flexibility underlying the Court's legal aid scheme by revising caps as a case evolves, especially when transitioning from trial to reparations phases; and
- Provide sufficient funds to maintain an LRV's presence during the reparations' implementation phase and formalise the role of LRVs in monitoring reparations implementation and in filing collective or individual appeals where necessary.

#### **3. Improve victim access to court materials and procedures:**

- Establish clear and accessible working methods for LRVs, particularly those who are not from OPCV and may be less familiar with court procedures, by developing and disseminating multilingual guidance on key procedures, including legal submissions, and logistical and administrative matters that impact their ability to meet with their clients, including access to court resources, premises, and reimbursements for field expenses;
- Provide LRVs with access to relevant court documents and legal databases and reduce bureaucracies around logistical set-ups including obtaining ICC e-mail and e-filing credentials, or access to Court premises;
- Create a system for acknowledging, tracking, and responding to filings made by or on behalf of victims; and

- Establish regular consultation forums between the Court, LRVs, and victim groups to review procedural barriers and assess effectiveness of participation support measures.

### ***To the Chambers***

#### **1. Extend timeframes for victim representations:**

- Standardise and lengthen Article 15 representation periods (to e.g., a minimum of 90 days) across Chambers such as through the Chambers Practice Manual; and
- Introduce rolling deadlines where appropriate and ensure timely notification to affected communities to allow consultation to begin earlier.

#### **2. Ensure meaningful access to justice:**

- Provide written reasons when victim submissions are rejected, to enhance transparency and allow for corrective action or, where permitted, appeal.

#### **3. Ensure LRVs receive sufficient technical support:**

- Give instructions to the OPCV to provide sufficient and comprehensive legal advice and support to LRVs, including on the technicalities of making filings, communicating with the Court, and the Court's jurisprudence on victims' standing.

### ***To States Parties***

#### **1. Ensure sufficient funding:**

- Ensure that the Registry and legal aid system receives sufficient funding to operationalise these reforms.

#### **2. Ensure fair and timely legal aid implementation under existing LAP:**

- Urge the Registry to provide regular updates on legal aid payments under the existing LAP.

#### **3. Remove arbitrary legal aid caps under a fair and equitable funding system:**

- Advocate for the development of an equitable, evidence-based legal aid funding system to ensure adequate compensation and high-quality representation for victims.

### **3. IMPLEMENTATION OF THE RECOMMENDATIONS**

Realising victims' rights at the ICC requires more than policy statements or revised strategies. Implementation means translating commitments into concrete, everyday practices through planned behavioural change and operational follow-through. It demands sustained, coordinated reforms across all organs of the Court, guided by a shared commitment to meaningful victim participation from the earliest stages through to reparations. This includes everything from how staff are trained and supported, to the tools and guidance available, and how victims' voices are meaningfully integrated throughout proceedings.

This paper outlines a roadmap for achieving that goal. While many of the recommendations are specific to particular organs or phases of proceedings, several cross-cutting priorities must underpin their implementation to ensure that the ICC's approach to victims is not only coherent in theory, but also credible and effective in practice. Ultimately, implementation requires building institutional cultures and structures that enable and sustain these practices over time, with transparency and accountability for results.

#### **KEY CROSS-CUTTING RECOMMENDATIONS FOR ALL STAKEHOLDERS**

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##### **1. Institutionalise Early, Victim-Centred Outreach**

Outreach should be treated as a core obligation, not a discretionary activity. All Court organs must contribute to an inclusive outreach approach beginning at the PE stage, guided by consistent use and meaning of key terms such as outreach and situation, and strategies that are trauma-informed, gender- and age-sensitive, and responsive to local contexts.

##### **2. Ensure Coherence and Consistency in Victim Participation**

Chambers and the Registry must work collaboratively to consolidate jurisprudence and clarify internal procedures governing victims' standing, participation rights, and legal representation. Victims must be supported in choosing their own counsel, and judicial decisions must be accompanied by clear, reasoned explanations.

##### **3. Fully Implement 2024 Legal Aid Policy and Remove Arbitrary Legal Aid Caps under a Fair and Equitable Funding System**

The Registry must urgently disburse pending funds, provide retroactive payments for work already done, and move towards a flexible, needs-based budgeting model. Legal aid must support participation throughout proceedings, including during the reparations phase, and reflect the complexity and duration of individual cases.

#### **4. Reduce Procedural and Logistical Barriers to Participation**

LRVs must have access to essential Court systems and resources, including multilingual procedural guidance, relevant filings and databases, and a streamlined process for administrative needs. Consultation mechanisms must be established to enable regular feedback and ongoing improvement.

#### **5. Embed Accountability and Evaluation into the Strategy's Implementation**

The Victims' Strategy and related reforms must include measurable benchmarks, baseline data, and regular review mechanisms. Internal and external stakeholders, including victims; civil society; and States Parties, should have structured opportunities to monitor progress and assess whether victims' rights are being realised in practice.

## **PRIORITY ACTIONS FOR STATES PARTIES**

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### **1. Ensure Adequate and Targeted Funding for Victim Participation and Outreach**

States Parties should ensure that the Court receives sufficient, earmarked resources to implement its Victims' Strategy and the recommendations outlined in this paper. The Registry should be encouraged to submit budget proposals based on the actual needs to ensure victims' participation and outreach at all stages, and not only related to courtroom activity. Budget allocations should reflect the full lifecycle of victims' engagement, from PE through reparations, and be accompanied by meaningful KPIs.

Possible **victim-centred KPIs include:**

- Proportion of situations where outreach begins at the PE stage
- Number of victims, or victims' groups and CSOs reached through outreach activities
- Percentage of outreach materials available in relevant local languages
- Proportion of victims who report feeling meaningfully involved, i.e. having a sense of agency, in the proceedings
- Average time between legal aid approval and disbursement
- Average time from victim registration to assignment of legal representation at each stage
- LRV rate of satisfaction (from 1 to 9) with access to court systems, filings, and procedural guidance.

These indicators should form part of regular budget justifications and public reporting, helping States assess whether financial resources are being translated into effective, inclusive support for victims' rights.

## **2. Champion Judicial and Institutional Consistency on Victims' Rights**

States should advocate for coherent approaches to victim participation across the Court and encourage the development of judicial guidelines that consolidate relevant jurisprudence and best practices.

## **3. Push for Transparent Implementation of the Legal Aid Policy**

States must monitor the Registry's implementation of the new LAP, call for timely disbursements, and demand further reforms to shift toward an evidence-based, flexible legal aid model that reflects the realities of victim participation.

## **4. Support Structural Reforms that Enhance Inclusivity**

States should champion reforms that strengthen victims' access to information, ensure meaningful consultation, and integrate gender-sensitive and context-specific tools into outreach and legal engagement strategies.

## **5. Ensure Accountability in the Implementation of the Revised Strategy**

States should request regular reporting on the implementation of the Victims' Strategy and related reforms, with a focus on measurable benchmarks such as outreach frequency, legal aid disbursement timelines, victim participation rates, and access to court materials. Regular public reporting against these indicators will enhance transparency, enable assessment of impact, and support accountability to affected communities.

The recommendations in this paper reflect longstanding calls from victims, civil society, and practitioners to make the ICC's commitment to victim-centred justice meaningful in practice. If implemented, these reforms can address key structural and operational barriers, promote consistency in judicial approaches to participation, and ensure that outreach and legal representation are accessible, inclusive, and responsive to victims' needs. They also offer concrete guidance to States Parties and Court organs on how to support a system in which victims are informed, heard, and treated as rights-holders throughout the proceedings. In doing so, the Court can demonstrate its commitment to building trust and deliver more meaningfully on its founding promise of a justice process that recognises the dignity, voice, and agency of those most affected by Rome Statute crimes.