

LAW Recommendations for ICC Revised Victims Strategy February 2025

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Robust victim-centric policies are essential for the International Criminal Court’s success and integrity. It is crucial that a variety of stakeholders have a say in shaping these policies. To this end, Legal Action Worldwide (“LAW”) recently provided extensive input on the Court’s existing Victims Strategy, which dates to 2012. This document summarizes the recommendations LAW submitted via the Court’s feedback survey, which was open between 15 August and 30 September 2024.¹

LAW is an independent non-profit organisation that uses victim-centred,² gender-sensitive approaches to achieve justice for vulnerable communities in conflict-affected and fragile regions.³ LAW believes that victim-centred approaches should seek to empower individuals by prioritising their needs, wishes and interests. LAW has achieved this in practice by ensuring victims have appropriate information about all stages of proceedings as well as access to appropriate, gender-competent, and trauma-informed legal, medical, and psychosocial services.

LAW’s experience representing victims before the Court and its various organs has made clear that when victims feel supported and understood, they tend to be more open and provide the Court with more precise and thorough information, which in turn improves the quality of the proceedings. A victim-centred approach thus requires meaningful engagement by the Court to assess survivors’

¹ International Criminal Court, *ICC Publishes Questionnaire on Revised Victims Strategy*, <https://www.icc-cpi.int/news/icc-publishes-questionnaire-revised-victims-strategy>.

² In international legal instruments, including the Rome Statute, the term “victim” is often used instead of “survivor,” with particular legal rights attaching to the term. As this document relates to ICC policies, the term “victim” is use in places where “survivor” might also be appropriate.³ Legal Action Worldwide, *A Decade of Working with Victims and Survivors of Human Rights Violations and International Crimes*, https://www.legalactionworldwide.org/wp-content/uploads/LAW-10YR-Report_Web.pdf.

³ Legal Action Worldwide, *A Decade of Working with Victims and Survivors of Human Rights Violations and International Crimes*, https://www.legalactionworldwide.org/wp-content/uploads/LAW-10YR-Report_Web.pdf.

views and ensure their interests are embedded within relevant practices across all key stages of proceedings. This is often especially important in situations where the victims are living in displacement and/or fragile contexts where the conflict and security landscape continually evolves.

LAW's proposals for the revised Victims Strategy fall in four main categories: improved victim representation, trauma-informed engagement, gender competency, and implementation. This document first discusses how lengthening representation timelines, rethinking interactions with legal representatives of victims ("LRVs"), and further developing safety and security protocols can bring victim representation more in line with the Court's ideals. Second, it suggests concrete steps the Court can take when engaging with victims who may be traumatized. Third, this document advises how the Court can incorporate contemporary understandings of gender into the revised Victims Strategy. Finally, it discusses LAW's response to the outreach and oversight suggestions mentioned in the feedback survey.

I. Improving Victim Representation

Victim-centred representation must prioritize the needs, rights, and voices of the victims. This involves actively listening to their experiences, concerns, and preferences, and ensuring that their perspectives are central to all legal strategies and decisions. Legal representatives should advocate vigorously on behalf of victims, ensuring their voices are heard and their interests are represented. This includes fighting for justice and accountability, and empowering victims to participate meaningfully in the process.

Revision of the Victims Strategy creates an opportunity for the Court to support more inclusive representation. Adjustments to Court policies surrounding the timing of representation, relationships with LRVs, and safety and security measures would all strengthen the Court's commitments to victims.

A. Timing

Legal representation of victims should be accepted early in the procedural stages to ensure that victims' interests and rights are considered from the outset. Early involvement can help shape the investigative lines of inquiry and prosecution strategies to better reflect the needs and perspectives of the victims and produce better quality evidence.

For the investigation phase, ensuring that victims have access to legal representation can help them navigate the complexities of the legal process and ensure their rights are protected. Counsel can advise victims, for example, on applying for status as a recognized victim in proceedings with the Registry as well as applying for reparations. Furthermore, Counsel can assist victims in engaging with the Office of the Prosecutor to ensure they are prepared to provide fulsome and accurate evidence, and that their rights are respected during any screenings or interviews.

Article 68(3) of the Rome Statute requires the Court permit victims to present their views and concerns to the Court at any stage of proceedings it deems appropriate. Under the Court's current policies, victims from a situation risk being excluded from the investigation stage if the Pre-Trial Chamber ("PTC") does not proactively seek their views on a particular topic. Instead, once victims

are granted the right to participate in proceedings during the investigative phase, their voices should be heard on issues that affect their personal interests, with assistance from counsel.

Article 56 of the Rome Statute allows the Office of the Prosecutor (“OTP”) to interview victims if there is a unique investigative opportunity to do so and their testimony might subsequently be unavailable. The PTC can allow victim testimony in such circumstances, under the existing legal framework, during a preliminary examination or an investigation. Accordingly, it is imperative that victims who might testify in a proceeding have their own Counsel, especially if they may be subject to cross-examination by a Counsel who the Registry assigns to represent the interests of the Defence. This representation is critical to protect victims’ interests.

Continuous, early legal representation serves the interests of both victims and the Court, providing consistency throughout the process. By accepting legal representation of victims from as early as possible, the Court can ensure that victims are fully supported and their rights are upheld throughout the justice process. Early representation can also provide, *inter alia*, immediate access to protection and support services crucial for safeguarding victim wellbeing and thorough information about the proceedings and their rights, allowing them to make informed decisions about their participation. Simultaneously, early representation may assist the Court with evidence collection and preservation, ensuring victims’ testimonies are accurately recorded and presented.

B. Interactions with LRVs

One of the easiest ways for the Court to improve victims’ experiences is by allowing their lawyers to be present during OTP or Defence interviews with their clients. For example, the OTP has repeatedly excluded LRVs from witness interviews despite the victim’s request for their counsel to be present. The OTP should instead develop clear, consistent, and more inclusive policy on this matter, as international standards and a victim-centred approach support the presence of a legal representative.⁴

As with early representation, allowing LRVs to be present during interviews will benefit both the victim and the Court. Participation by a third party can help enhance the victim’s comfort, prevent miscommunication, ensure fairness and accuracy in evidence collection, aligning with best practices and the Court’s trial-stage protocols.

Additionally, the OTP should readily provide LRVs with materials related to their clients, such as copies of their witness statements. LRVs cannot fully represent LRVs without these materials, and forcing victims to recall their interactions with the OTP from memory may add further stress to an already challenging situation. Providing these materials to LRVs upon request aligns with the Court’s Article 68(1) obligations and would ensure fairness in the proceedings without compromising confidentiality.

C. Protocol on Victim Interaction

⁴ Principles on Effective Interviewing for Investigators and Information Gathering (the “Mendez Principles”), ¶ 108 (May 2021), <https://interviewingprinciples.com/#comp-179e548ce41>.

Although the Court has protocol annexed to the Chambers Practice Manual to regulate contact with represented victims and the handling of confidential information,⁵ in practice this has only been applied after the initial appearance of a defendant. LAW represents several victims in the years-long investigation phase of situations whose needs are not being met and who would benefit from such a protocol. This gap leads to difficulties for victims in the safe sharing of confidential information, effective participation in interviews, and access to relevant materials. A protocol should be introduced at the investigation stage, given the prolonged duration of investigations and the active involvement of various participants, including victims' counsel, states, and the OTP. This would serve to ensure good practice and protect integrity of the investigation.

Absence of a clear protocol to govern the confidentiality of victims' information during an investigation, and how it should be managed, presents significant concerns. This lack of regulation, particularly for external counsel not bound by the Court's Code of Professional Conduct, increases the risk of inadvertent disclosure of victims' identities. Ideally, a protocol would include provisions for handling confidential documents; clarify the presumption of anonymity for victims; require parties or participants to enquire whether a victim has representation before meeting that person; and address challenges that might arise when a victim is fearful of disclosing their representation or participation in proceedings.

In October 2023, LAW, with other LRVs in the Myanmar/Bangladesh situation Megan Hirst and Kate Gibson, requested PTC I establish such a protocol modelled largely off one annexed to the Chambers Practice Manual.⁶ While the Office of Public Counsel for Victims ("OPCV")⁷ and Office of Public Counsel for Defence ("OPCD")⁸ were supportive of such a protocol, the OTP was opposed it.⁹ PTC I unfortunately denied the request without addressing the merits.¹⁰

D. Safety and Security

The Court should allocate more resources to victim safety, and in particular, establishing safe houses, providing protective escorts, ensuring secure communication channels, and providing opportunities for relocation and/or admission into the Witness Protection Program as per the requirements of a given context. The Court needs to do so through greater dialogue with the relevant stakeholders (including states, UN agencies, and the host state, in displacement contexts). These measures are crucial for safeguarding victims from potential threats and ensuring their safety throughout the judicial process.

Additionally, there is a need for developing protocols for risk assessment and management, as well as establishing partnerships with local and international organizations that can offer additional support and protection.

⁵ ICC Chambers Practice Manual (2023), <https://www.icc-cpi.int/sites/default/files/2023-07/230707-chambers-manual-eng.pdf>.

⁶ See ICC-01/19-52-Anx1-Red (filing); ICC-01/19-52-Anx2 (proposed protocol); ICC-01/19-52-Anx3 (explanatory guide). Compare to Annex A of Chambers Practice Manual, <https://www.icc-cpi.int/sites/default/files/2023-07/230707-chambers-manual-eng.pdf>.

⁷ ICC-01/19-55-Corr

⁸ ICC-01/19-56

⁹ ICC-01/19-57

¹⁰ ICC-01/19-58.

The Court should leverage partnerships with NGOs and other entities that specialize in victim protection to address the resource needs for enhancing its security and safety framework. By addressing these gaps and securing the necessary resources, it can create a safer environment for victims, ensuring their well-being and encouraging their participation in the judicial process.

The Court should also keep in mind victims who are not OTP witnesses when considering the scope of its security protocols and frameworks. LRVs need specific support from the Court in ensuring the safety of the victims and witnesses they represent. Further, the potential security and other risks need to be explained in context-specific terms when onboarding witnesses and victims to ensure that there is informed consent from them before their participation.

II. Trauma-Informed Engagement

The Court has repeatedly expressed its intent to improve engagement with victim communities. The revised Victims Strategy offers an opportunity to develop guidelines for this engagement, following the most up-to-date best practices for working with individuals who are traumatized.

A key lesson from LAW's work with a range of mental health and psychosocial ("MHPSS") professionals, anthropologists, and psychiatrists is that providing a safe space to the victims and survivors to verbalise their ordeal can be empowering (subject to key tenets, such as informed consent and Do No Harm, being followed during engagement). This is particularly true for survivors of sexual violence.

Although the risks of re-traumatization are well-known, those engaging with victims must avoid assuming that vulnerable witnesses will be harmed due to their involvement with legal proceedings. In other words, it is important to ensure that particularly vulnerable sub-populations are not left outside the ambit of investigation or any other form of engagement in the legal proceedings on account of blanket assumptions regarding the negative impact on those individuals.

The Court can counteract these assumptions with increased focus on cultural competency. The Court should communicate collaboratively with youth, contextual experts, and community leaders who understand the unique cultural and social dynamics of victims. This collaboration can help tailor support services to be culturally sensitive and appropriate. It is also crucial to provide Court staff and support personnel with cultural sensitivity training addressing historical context, cultural practices, and specific trauma experienced by the respective community.

The Court can further improve its trauma-informed engagement with victims by providing better psychological support. For this, the Court may engage local MHPSS experts or empanel a roster to offer support to victims throughout the course of the proceedings. If existing MHPSS experts do not have the relevant skills to treat victims individually regarding their specific needs based of their gender, age, religion, culture, ability, or sexual orientation, then another option (even using remote technology for such an expert) should be considered.

As ICC proceedings take many years, to ensure that victims have access to ongoing mental health support and resources post-trial, the Court should also establish long-term partnerships with local

and international mental health organizations. These collaborations can create a robust network of professionals who can provide continuous counselling and therapy, perhaps with support from the Court's Trust Fund for Victims ("TFV"). The Court can dedicate a portion of this fund to mental health services, covering the costs of therapy, counselling, and other essential resources. This financial backing can significantly enhance the availability and quality of mental health support for victims.

Additionally, the Court should establish safe spaces for interviews where victims can share their experiences without fear of retribution or stigma. Ensuring confidentiality is paramount to fostering a secure trauma-informed environment.

A trauma-informed approach requires constant assessment. It is therefore crucial to manage expectations at all stages of victim engagement, including as part of informed consent processes during investigative interviews, outreach to victim communities, and victim participation guidance, amongst others.

III. Gender Competency

Revising the Victims Strategy is a crucial opportunity for the Court to reemphasize its commitment to gender sensitivity. This is important not only for victims of sexual and gender-based violence ("SGBV") but also victims who have diverse sexual orientations, gender identities, expressions, and sexual characteristics ("SOGIESC"), as these individuals are frequently excluded from justice efforts across the board.

A gender-sensitive approach to the Court's Victim Strategy should be grounded in several key tenets. First, enhancing trauma-informed participation by victims and survivors is crucial. This involves recognizing the full spectrum of potential victims, including familial, inter-generational, and organizational victims, and ensuring their meaningful engagement in the Court's proceedings. The strategy must emphasize the importance of informed consent and the protection of victim-witnesses' physical and psychological safety through robust referral pathways and early-stage participation.

Second, the Victims Strategy should approach the concept of gender through an intersectional and SOGIESC-competent lens. This means incorporating contemporary understandings of gender, including issues of intersectionality and SOGIESC diversity. The strategy should provide clear guidance to practitioners on conducting gender analyses and ensure that discussions around gender are rooted in the Court's day-to-day work. Recent OTP policies on children, gender persecution, and gendered crimes have been a welcome step forward in this regard, and the same is to be expected in the upcoming slavery policy.

Victims with diverse SOGIESC backgrounds exist in many Situation countries, including Ukraine, Afghanistan, Palestine, Bangladesh/Myanmar, and Colombia, but are often not identified or included in investigative plans. Reasons for exclusion vary from investigators' implicit bias to an unsubstantiated belief that these witnesses are too complicated or too difficult to locate or engage given the overlapping layers of social stigma or isolation they experience. But if the Court is meant to employ a gender-sensitive approach to the civilian population affected by international crimes,

it must include these groups as well—not just to engage a representative sample of affected communities, but also to better understand perpetrators’ motives in targeting certain populations and sub-groups therein.

Finally, the strategy should reflect recent developments in the prosecution of sexual and gender-based crimes by incorporating new case law and advancements within the Court’s framework, such as the OTP policies mentioned above. Strengthening the analysis of the nexus between gender and the crime of genocide is also essential, including the reproductive violence and inter-generational harm that occurs because of crimes within the Court’s jurisdiction. By addressing these areas, the Court can ensure that its Victims Strategy is both gender-sensitive and aligned with contemporary legal and social understandings of gender.

IV. Implementation

In its feedback survey open in August and September 2024, the Court expressly sought comment on its existing outreach and oversight efforts, including by soliciting reactions to several options it is considering for improving these efforts. LAW welcomes the inclusion of these mechanisms in the revised Victims Strategy, particularly as they relate to the Court’s collaboration with NGOs.

A. Outreach

As the Court itself has acknowledged, there is a lack of clear and consistent communication with victims about their rights, the progress of cases, and the outcomes. Victims also face barriers in accessing the Court’s processes due to geographical, linguistic, and cultural differences. The reparations and assistance that the Court has provided have received criticism for being slow and insufficient. This negatively affects victims’ ability to participate meaningfully in proceedings. The Court is working on removing and reducing these gaps, and the revision of the Victims Strategy is another opportunity for improvement.

The ICC, through the TFV, Victims Participation and Reparations Section (“VPRS”), Public Information Outreach Section (“PIOS”), and other relevant organs responsible for outreach, must establish clear and consistent communication channels with victims, including in collaboration with legal aid and awareness organizations that are based in the field. The Court should collaborate with local NGOs, community organisations, and humanitarian agencies that have established trust and rapport with the respective communities. These organisations can assist in identifying victims and vulnerable groups more effectively.

Indeed, establishing strong connections with local communities and leaders is key to gaining insights into the specific needs and vulnerabilities of victims. Regular community meetings and consultations can help identify victims early and understand their unique circumstances. Information presented via outreach programming should be as accessible and inclusive as possible. Providing support in local languages and ensuring that interpreters are available is essential. Clear and respectful communication in the victims’ native language can help build trust and ensure that victims fully understand the support being offered.

Regular updates on case progress and decisions are essential to keeping victims informed and engaged – particularly in contexts where communities, especially those disenfranchised on account of systemic state persecution, require dedicated outreach channels to understand the scope of the judicial processes. Similarly, these outreach channels should provide clarity about the limits of the Court’s processes to help manage participants’ expectations. This transparency can help build trust and ensure that victims feel valued and respected throughout the judicial process. By addressing these gaps, the Court can move toward a more victim-centred approach, ultimately enhancing the effectiveness and fairness of its proceedings.

Implementing mental health awareness and support initiatives within victims’ communities will allow the Court to foster a more supportive environment. This support should extend, as much as possible, to those survivors in the community who did not have the chance to participate in proceedings and thus gain access to MHPSS experts offered by parties during interviews and trial. These programs can include group therapy sessions, workshops, and community outreach efforts, all aimed at promoting mental well-being. Training local practitioners in trauma-informed care and culturally sensitive approaches is also crucial. This ensures that mental health professionals are well-equipped to address the specific needs of victims. Furthermore, incorporating feedback from victims through surveys, focus groups, and direct consultations can help the Court continuously improve its support services, ensuring they meet the evolving needs of victims.

Additionally, the ICC can facilitate training and capacity-building programs for existing peer-support network volunteers, equipping them with the knowledge and skills needed to provide trauma-informed care. This training can cover essential topics such as recognizing trauma symptoms, offering emotional support, and referring victims to professional services when necessary. By empowering community members, the Court can ensure that victims receive consistent and compassionate care from trusted sources. This includes involving community leaders in the planning and implementation of trauma-informed care programs. By allowing victims to share their experiences and support each other in a safe and understanding environment, peer support networks can be highly effective means for fostering the sense of community and belonging that is crucial for healing. And by supporting these initiatives, the Court can tailor its support to better address victims’ unique needs.

Finally, the Court can promote awareness and education about trauma and its effects within the community. By organizing workshops, seminars, and public awareness campaigns, the Court can help destigmatize mental health issues and encourage community members to support victims. This collective effort can create a more supportive and informed community, ultimately enhancing the overall wellbeing of victims.

B. Oversight

An oversight mechanism could effectively monitor the implementation and evaluate the effectiveness of the Court’s Victims Strategy. These mechanisms could include, *inter alia*, independent review panels; victim and stakeholder feedback; and external advisory committees. Implementing such mechanisms will help the Court strengthen its commitments to transparency, accountability, and continuous improvement.

Establishing independent review panels composed of experts in international law, human rights, and victim advocacy can provide unbiased assessments of the strategy's implementation. These panels can conduct periodic reviews and publish their findings, offering recommendations for improvements. Similarly, implementing robust feedback mechanisms that allow victims and other stakeholders to provide input on the strategy's effectiveness is crucial. This can include surveys, focus groups, and direct feedback channels. Advisory committees that include representatives from NGOs, victim advocacy groups, and other external stakeholders can also provide ongoing oversight and guidance. These committees can offer diverse perspectives and ensure that the strategy remains aligned with the needs of victims.

NGOs and external stakeholders play a crucial role in providing feedback and oversight in the implementation of the Victims Strategy. NGOs, unlike the Court in most situations, have been in the field serving and supporting these communities every day for years. Their insights can help the Court refine its approach, ensuring that it is both effective and sensitive to the diverse needs of victims. By providing regular feedback, these organizations can highlight areas where the Victims Strategy is working well and identify aspects that may require improvement. This continuous feedback loop is essential for the Court to adapt and evolve its practices in real-time. Ensuring that this feedback is systematically analysed and acted upon is essential for continuous improvement.

Additionally, the oversight role of NGOs and external stakeholders is vital for maintaining the credibility and legitimacy of the Court's efforts. Independent oversight helps ensure that the implementation of the Victims Strategy adheres to international standards and best practices. It also provides a check against potential biases or oversights within the Court's internal processes. By holding the Court accountable, these external actors help build trust among victims and the broader international community—and ensure that the Victims Strategy remains transparent and responsive to victims' needs.