

# Draft Proposed Policy on the Provision of Registry Services to Situation Victims' Legal Teams

## A. GENERAL PROVISIONS

### I. Purpose and scope

1. Subject to paragraphs 2 and 3, this Policy is intended to codify the services provided by the ICC Registry to Situation Victims' Legal Teams.
2. This Policy does not concern the provision of financial resources to Situation Victims' Legal Teams or their members, which is dealt with separately under the Registry's policies regarding legal aid. Provision of services under this Policy does not imply an entitlement to legal aid.
3. This Policy is without prejudice to any services that might be made available by the Registry – on a case-by-case basis – to counsel who are not yet formally appointed by victims, but who are engaging or seeking to engage with victims for the purpose of discussing such appointment.
4. Part II of this Policy identifies who is entitled to benefit from Registry services under this Policy. Part III identifies the services which are provided.

### II. Definitions

5. In this Policy, the following terms shall mean:

CSS	Counsel Support Section
LRV	Legal Representative of Victims
RPE	Rules of Procedure and Evidence
Relevant Situation	The situation in which crimes against the Recognised Situation Victim occurred
Recognised Situation Victim	<i>As defined in paragraph 13</i>
Situation LRV	<i>As defined in paragraph 7</i>
Situation Victims' Legal Team	<i>As defined in paragraph 29</i>
VPRS	Victims Participation and Reparations Section
VWS	Victims and Witnesses Section

### III. Amendments

6. Prior to amending this Policy, the Registry shall consult with the legal profession through the International Criminal Court Bar Association.

## **B. RECIPIENTS OF SERVICES**

### **I. Overview**

7. Services are provided under this Policy to Situation LRVs and other members of Situation Victims' Legal Teams. A Situation LRV is a counsel listed on the List of Counsel before the ICC, who is recognised by the VPRS as representing a Recognised Situation Victim.
8. Section II of this Part describes who is considered as a Recognised Situation Victim for the purpose of this Policy.
9. Section III of this Part describes when there is considered to be a relationship of representation between the Situation Victim and counsel for the purpose of this Policy.
10. Section IV of this Part describes who is considered to be a member of a Situation Victims' Legal Team.

### **II. Assessments of Recognised Situation Victims**

11. The services provided under this Policy are based on work connected with counsel's representation of a victim who is able to participate in proceedings before the ICC. As a result, these services are contingent on an assessment that counsel's clients fulfil the definition of "victim" within Rule 85 of the RPE.
12. Because victim status is rarely judicially determined outside of a case, in order to implement the present policy and solely for that purpose, the Registry shall undertake its own assessment under Rule 85.
13. In this policy, the term Recognised Situation Victim is used to refer to persons who have been assessed by the VPRS as meeting the requirements of Rule 85 of the RPE.
14. Whenever requested to do so, the VPRS shall decide whether a person meets the requirements of Rule 85 of the RPE. This assessment shall be carried out by the VPRS based on information provided in writing by the Situation LRV. Information provided by the Situation LRV for this purpose:
  - (a) need not be provided using individual application forms (and the collection of such forms at the situation stage, especially in large numbers, is generally discouraged);
  - (b) does not require the signature or thumbprint of the victims; and
  - (c) may be provided in a collective way, with a single document describing a group of victims.
15. The outcome of a VPRS assessment shall be notified in writing to counsel within 14 days of the receipt of a request from counsel. Where the VPRS considers that a person represented by counsel does not meet the definition of victim within rule 85, VPRS shall provide reasons.

16. Counsel may seek review of the VPRS's assessment under Rule 85 by the Registrar. Review must be requested by counsel within 14 days of receiving the VPRS's decision.
17. Assessments made by the VPRS under this Policy are made only for the purpose of ascertaining whether the services detailed in this Policy are applicable to the victim's legal representative and not for the purpose of determining the victim's participation and standing before the Court. It remains possible for a Chamber to require that additional material be provided in order to permit participation in judicial proceedings at the situation stage, should that be considered appropriate. The assessment would also be without prejudice to eventual determination of victim status under Rule 89 of the RPE by a Pre-Trial Chamber or Trial Chamber. Where a decision is issued by a Chamber, that decision will override any previous assessment made by the VPRS under this Policy regarding the victim in question, and will thereafter be taken as the current VPRS assessment for the purpose of this Policy.

### **III. Counsel's status as representative of Recognised Situation Victims**

18. Only counsel who are included in the List of Counsel before the ICC can be recognised as representing Recognised Situation Victims.
19. Counsel may be recognised as a Situation LRV representing Recognised Situation Victims where:
  - (a) counsel has been appointed by a Recognised Situation Victim: as set out in paragraphs 20 to 24; or
  - (b) counsel has been chosen as a Common Legal Representative for Recognised Situation Victims or appointed by a Chamber: as set out in paragraphs 27 to 28.
20. In compliance with Rule 90(1) of the RPE, the Registry recognises counsel as Situation LRV when counsel has been appointed by a Recognised Situation Victim, as demonstrated by a valid power of attorney.
21. In order to be considered valid, a power of attorney must clearly identify and be signed or marked by the Recognised Situation Victim, and identify counsel as the person appointed to represent the Recognised Situation Victim. Counsel must provide the power of attorney to the VPRS in hard copy or electronic form. The VPRS may request additional information or clarification regarding the identity of the Recognised Situation Victim.
22. On receiving one or more powers of attorney from counsel on the List of Counsel before the ICC, the VPRS shall assess the validity of the power of attorney, and consider whether there is any reason not to recognise the counsel as representing the Recognised Situation Victims. Such reasons could include, for example: where the VPRS is in receipt of information indicating that the same Recognised Situation Victims might be represented by different counsel.
23. Within 14 days of receiving one or more powers of attorney from counsel, the VPRS shall notify counsel in writing of whether or not the Registry recognises counsel as a Situation

LRV in respect of the Recognised Situation Victims. Where the VPRS considers that the relationship of representation cannot be sufficiently established, it shall provide reasons in writing at that time. Counsel may seek review of VPRS's assessment concerning representation by the Registrar. Review must be requested by counsel within 14 days of notification by the VPRS.

24. The VPRS shall maintain contact with Situation LRVs on at least a yearly basis, and may contact Situation LRVs to ask for information about any changes in their representation. Where counsel does not respond to VPRS communications over an extended period (more than two years), the VPRS may consider whether in all the circumstances this constitutes information suggesting that counsel is no longer representing the Recognised Situation Victims.
25. Counsel recognised by the VPRS as having been appointed by power of attorney continue to be considered as representing a Recognised Situation Victim until:
  - (a) The VPRS is informed by counsel that the representation relationship has been ended;
  - (b) The VPRS is informed by the Recognised Situation Victim that the representation relationship has been ended;
  - (c) The VPRS receives new information which leads it to reverse its assessment made under paragraph 22;
  - (a) The Recognised Situation Victim's participation in the situation is ended, by withdrawal, death, or closure of the Relevant Situation;
  - (b) Counsel is no longer included on the List of Counsel before the ICC; or
  - (c) Common legal representation is organised pursuant to Rule 90(2) or Rule 90(3) of the RPE.
26. Where counsel is no longer recognised as representing a Recognised Situation Victim pursuant to paragraph 24(b), (c), (e) or (f), the VPRS shall immediately inform the counsel in writing. Counsel may seek review by the Registrar within 14 days.
27. The Registry also recognises counsel as Situation LRV where counsel has been chosen as a common legal representative of Recognised Situation Victims pursuant to Rule 90(2) or Rule 90(3) of the RPE, or who has been appointed by a Chamber to represent Recognised Situation Victims pursuant to Regulation 80 of the Regulations of the Court.
28. Counsel chosen as common legal representative or appointed by a Chamber to represent Recognised Situation Victims continue to be considered as representing each Recognised Situation Victim until:
  - (a) The Recognised Situation Victim's participation in the situation is ended, by withdrawal, death, or closure of the Situation;
  - (b) Counsel is no longer included on the List of Counsel before the ICC; or

- (c) Common legal representation is organised pursuant to Rule 90(2) or Rule 90(3) of the RPE.

#### **IV. Members of Situation Victims' Legal Teams**

- 29. A Situation Victim's Legal Team is composed of a Situation LRV and any legal team members supervised by him or her (including associate counsel, legal assistants, case managers, field assistants, visiting professionals and/or interns) who have been registered with the Registry.
- 30. Situation LRVS shall inform the CSS of their legal team members and provide their relevant personal details in order to facilitate registration. CSS shall register legal team members within 30 days of receiving relevant information from the Situation LRV, unless CSS has reasonable reasons to believe that registering a legal team member would give rise to security or privacy concerns. If the Registry has reason to contest recording the registration of a legal team member it must provide reasons in writing to the Situation LRV within 30 days. The Situation LRV may seek review from the Registrar within 14 days of being notified of the reasons.

### **C. SERVICES PROVIDED**

#### **I. Overview**

- 31. Situation Victims' Legal Teams shall be presumptively entitled to the same services which are provided by the Registry to defence counsel and victims' counsel in active cases. The list of services detailed in this Part is non-exhaustive.
- 32. Where the CSS considers that Situation Victims' Legal Teams are not entitled to a requested service, reasons shall be provided in writing within 14 days of a request. A Situation LRV may seek review of such a decision by the Registrar within 14 days of being notified of it.
- 33. Where services are available under this part on request, such a request may be made by a Situation LRV, or may be made on behalf of the Situation LRV by a member of the Situation Victims' Legal Team. The Registry may establish forms for use in making such requests; in other instances requests may be made by email. In the first instance requests shall be sent to the CSS. Follow-up in respect of a particular issue may be undertaken by the Situation Victims' Legal Team directly with the relevant Registry section once contact has been established.

#### **II. Information Technology services**

- 34. On request, the Registry shall provide members of Situation Victims' Legal Teams IT access to enable secure communications with each other and the Court, to enable secure and streamlined filings, and to enable equal and effective access to legal resources for the representation of victims. The following IT accesses and resources shall be provided:
  - (a) Issuance of an EPN email address;

- (b) Issuance of account and login for ICC computer systems as well as remote access;
  - (c) Access to the External Counsel Portal;
  - (d) Access to the ICC's e-filing system;
  - (e) Access to the Court's document management system;
  - (f) Access to the Court's Visitor Management System and meeting room booking system;
  - (g) Issuance of an ICC telephone extension and login;
  - (h) Access to ICC printers;
  - (i) Library and legal research access and use.
35. The Registry may decide that accesses or resources provided under paragraph 34 are provided for a limited (but reasonable) period of time, after which time a new request must be made.
36. The Registry shall provide members of Situation Victims' Legal Teams with support from the Registry's IT section for setup and troubleshooting in respect of any of the services provided under paragraph 34.

### **III. Premises access and workspace**

37. On request from a Situation LRV, members of Situation Victims' Legal Teams shall be provided with a badge to access the ICC Headquarters. Situation Victims' Legal Teams shall be granted the same accesses granted to members of external Victims' legal teams appointed at the pre-trial, trial, appeals, and reparations phases of the proceedings. Where necessary for hearings, courtroom access will be provided.
38. Where an ICC Field Office is operational in the Relevant Situation, members of Situation Victims' Legal Teams shall be provided, on request, with access to the Field Office.
39. The Registry may decide that premises access provided under paragraphs 37 and/or 38 is for a limited (but reasonable) period of time, after which time a new request must be made.
40. The Registry shall maintain a communal workspace in the ICC Headquarters for use by Members of Situation Victims' Legal Teams, which shall include at least 3 desktop computers and 3 telephones, and access to printers. The workspace shall be separate from those used by other legal teams in order to ensure confidentiality.
41. Situation LRVs may request additional workspaces on a temporary basis, for example, in the event that their participation is required in a hearing.

### **IV. Mission support**

42. On request, members of Situation Victims' Legal Team shall be provided with the following support in respect of missions:
- (a) Support from the ICC Travel Unit to obtain visas;

- (b) Provision of letters recognising privileges and immunities;
  - (c) Support from the Registry's External Relations Section to ensure cooperation of state authorities. This includes but is not limited to support for the purpose of accessing clients or witnesses, free movement, and compliance with privileges and immunities.
43. The Registry may require that Situation Victims' Legal Teams submit mission request forms in advance of missions in order to obtain the services set out in paragraph 42.

## **V. Security services**

44. On request, members of a Situation Victims' Legal team shall be provided with advice from the Field Security Unit, the VWS, or other relevant Registry sections, before, during or after missions on matters relating to privacy or security for members of the Situation Victims' Legal Team, intermediaries, clients, witnesses, or others at risk on account of their interaction with the Court.
45. The Registry shall immediately inform a Situation LRV in the event that it becomes aware of:
- (a) a specific threat to the privacy, safety or security of the Situation LRV's clients, members of the Victims' Legal Team, or intermediaries known to be working with them, which appears to be related to their interaction with the Court; or
  - (b) a breach of confidentiality or information security breach (whether intentional or not) which affects, or might affect, information held by the ICC in respect of the Situation Victims, members of the Victims' Legal Team, or intermediaries known to be working with them.

## **VI. Situation LRV Filings**

46. Subject only to an order from a Chamber directing otherwise, filings submitted by Situation LRVs shall be received, processed, and notified by the Registry on the same basis as filings from parties and participants to ICC proceedings, including being recorded and notified in their own right, as a filing made by a LRV, rather than as an annex to a Registry transmission.
47. Where an order has been made by a Chamber requiring the Registry to deviate from the procedure in paragraph 46, the Registry shall immediately inform the Situation LRV by email.

## **VII. Notifications**

48. The Registry shall maintain and monitor lists of all members of Situation Victims' Legal Teams in each active situation, and their current email addresses, for the purpose of effective and timely notifications.
49. The Registry shall send email notifications to members of Situation Victims' Legal Teams of filings made in the Relevant Situation in the following circumstances:

- (a) Filings classified as public shall always be notified to all members of all Situation Victims' Legal Teams;
  - (b) Filings classified as confidential or *ex parte* shall only be notified to members of Situation Victims' Legal Teams where directed or authorised by a Chamber, or where filed by the Situation LRV him/herself.
50. The Registry shall promptly inform members of Situation Victims' Legal Teams by email of any policies, updates, or developments from the Registry or another organ of the Court which impacts the rights or participation of victims or representation by their instructed LRVs, in the same way as other counsel before the Court are informed of similar developments.

#### **D. OTHER RIGHTS AND OBLIGATIONS OF SITUATION VICTIMS' LEGAL TEAMS**

51. Situation LRVs and members of Situation Victims' Legal Teams shall ensure that the Registry has their current email addresses and phone numbers so that they can be contacted at all times.
52. Situation LRVs shall promptly inform the Registry if their representation of Recognised Situation Victims is ended or materially changed.
53. Where counsel on the List of Counsel before the ICC believes that he or she has been or is being wrongly denied recognition or services under this policy for any reason, the matter should first be raised with the Registrar. Where a decision of the Registrar does not resolve the matter, and if the denial is affecting counsel's ability to provide effective representation, the matter should be raised before the relevant Pre-Trial Chamber.