



Victims' participation before the ICC

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I. Victim participation – general premise

- Victim participation in criminal proceedings exists in many domestic systems
- Participation often as witnesses (“victim-witnesses”) – and therefore in the interest of one of the parties
- Victims had no genuine own procedural role in “traditional” international criminal justice
- Truth commissions – no *justice* component



1. Purpose of victim participation

- Shifts justice focus from retributive to restorative justice
 - Traditionally, victims were ‘objects’ in criminal trials
 - Now they have an active role participating in the justice process = recognition of victims = ‘subjects’

- Victims’ empowerment facilitates satisfaction, ownership and thus reconciliation, leading to
 1. a more meaningful criminal process for the victims;
 2. stronger focus on impact of crimes; and
 3. *potentially* a more stable and durable peace.

- Legitimizes the criminal process



2. ICC - Regulatory framework for victim participation

ICC framework: autonomous role of victims in criminal proceedings

Art. 68(3) RS - Participation of victims

Rule 85 RPE – Definition of victims

- **Victim Offices** Inform and assist victims regarding participation and reparations
- **Legal representation** for victims and support to victims' lawyers
- **Prosecutor** also takes interests of victims into account

Comparable regimes for STL, ECCC, Kosovo Specialist Chambers, Cour Spéciale CAR, Extraordinary African Chambers (Habré)



3. Article 68(3) ICCSt / Article 17 STLSt

Where the personal interests of the victims are affected, the [relevant court] shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the [relevant chamber] and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

Such views and concerns **may be presented by the legal representatives of the victims** where the [relevant chamber] considers it appropriate

Comparable to

- ECCC (art. 12 of the law) and
- Kosovo Specialist Chambers (art. 22 of the statute)



a. WHO is a victim?

- **Rule 85(a) of the RPE** gives a general definition for 'victims' participating in Court proceedings:
 - natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court
 - *Lubanga* 4-prong test:
 - 1. *victim applicant natural person [or organisation (R85(b) – ex. Al Mahdi case)]*
 - 2. *crime within jurisdiction of Court committed*
 - 3. *victim applicant suffered **personal** harm*
 - 4. *harm was ,the result of the crime' (causality)*

A victim who participates is different from a witness

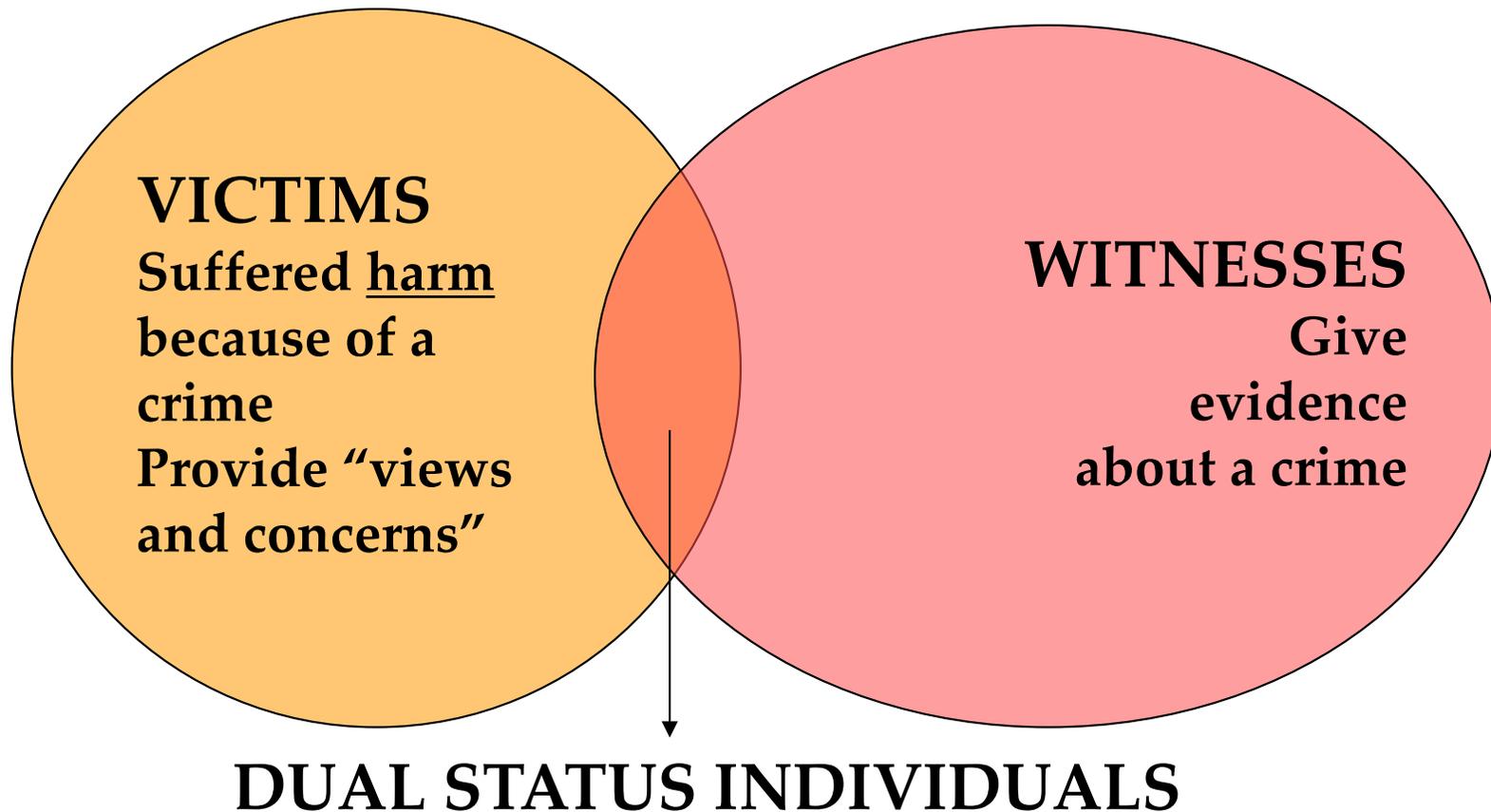
Victim

- Participation is voluntary
- Communicating to the Court their *own views and concerns*
- Can participate in all stages
- Need not to appear in person; rather represented before the court by a legal representative

Witness

- Serves the interests of the Court and the parties that call them
- Gives evidence by answering questions
- Called to testify at a specific time
- No legal representative but appears in person

Difference between a VICTIM and a WITNESS



A number of victims may also be called as witnesses by the Prosecution or the Defence to give evidence in the case



b. WHAT – „Views and concerns“

ICC jurisprudence: „victims’ right to participate in the proceedings is clearly distinguished from that of the parties, i.e. the Prosecution and the Defence“

- Distinction between presentation of *evidence* by victims and their expression of *views and concerns*
- *Lubanga*: Victims may tender evidence and challenge the admissibility of evidence introduced by the parties; but:
 - no *automatic* right to introduce evidence (ICC [App. Chamber](#) in *Lubanga*)
 - only if a “genuine contribution to the determination of the truth” in accordance with Article 69(3) of the Statute
 - **demonstration of personal interests that are affected by the specific proceedings**
- **No prosecutor *bis*!**



WHAT – Modalities of participation in the proceedings

Most common features through (common) legal representative:

- i) access to the record, documents and filings;
- ii) presence and participation in hearings and filing of written submissions;
- iii) oral submissions at critical junctures (incl. opening and closing statements);
- iv) submissions on the content, scope and mode of questioning of witnesses or the accused;
- v) presentation of evidence including own witnesses
- vi) challenge the admissibility of evidence

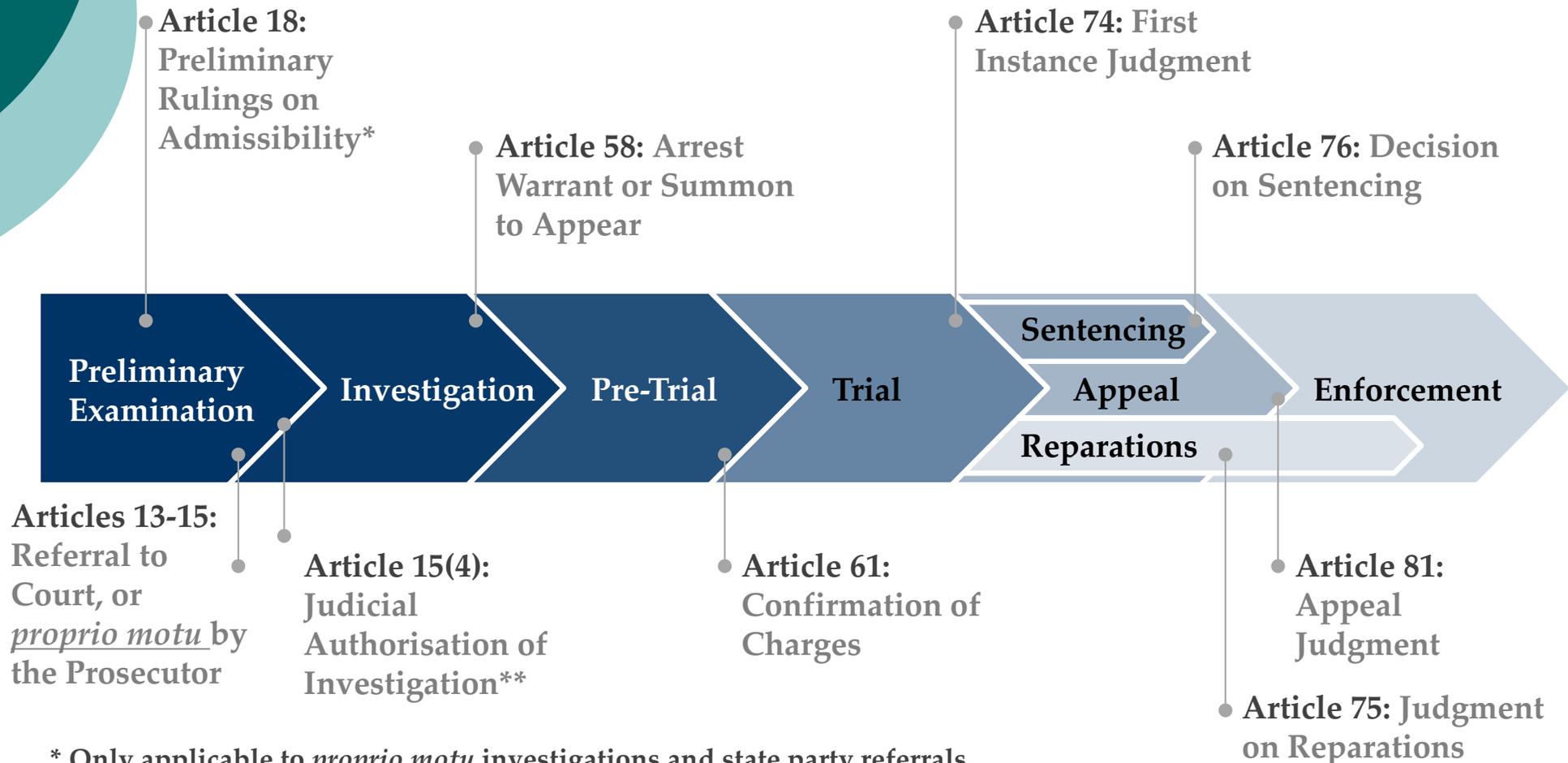
Absolute limit: NOT PREJUDICIAL TO THE RIGHTS OF THE ACCUSED [Art. 68(3) ICC / 27 STL / 22 KSC]



c. WHEN: Stages of proceedings where victim participation is permitted

- Generally during judicial proceedings:
- Rights and modalities of participation are determined by the Chamber: ICC rule 91(2) RPE
- Pre-trial and trial, incl. **sentencing** (“proceedings”)
 - *Example* R 114 KSC “during all stages of the proceedings”
 - ICC: at select instances during ‘situation’ stage
- appeals: separate case-by-case determination depending on charges in issue (interlocutory: leave to file submissions)
- *STL, ECCC, Kosovo: largely similar but diverging in detail*
- **Reparations** – victims become parties, *see Rule 91(4) RPE*

Timeline of Proceedings before the ICC



* Only applicable to *proprio motu* investigations and state party referrals.

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d. HOW - Participation and legal representation

Ways for victims to participate in the proceedings:

- **Participation through a legal representative (ICC Rule 90) – the general practice**
- **ICC: Appearing in person – very few**
- ICC: victims can choose their representative so long as they meet certain qualifications; **STL, KSC, ECCC (-)**
- Plurality of victims: **common legal representation**
- ICC: External counsel or the Office of Public Counsel for Victims (OPCV) can be appointed to represent victims
- Victims can apply for legal aid (under limited circumstances)



4. Admission / victims' access

- With issuance of arrest warrant / arrest, Registry activities commence
- Victims Participation and Reparation Section reaches out to victims in the field
 - Information collection through [application forms](#)
 - Also: Art. 15(3) process, eg [Bangladesh/Myanmar](#)
 - Field Offices
 - Data assessment and reporting
 - Confidentiality
- Selection of legal representative, Rule 90 RPE
- Continuous interaction with victims
 - Reparations



II. Challenges

→ **What is the objective of victim participation in the proceedings?**

→ How does it relate to the criminal proceedings?

→ Should victims influence OTP's charging?

→ **Is the system meaningful to victims?**

→ Numbers of victims vary; often hundreds/thousands are represented by one sole legal representative

→ Individual concerns of victims will often not be represented

→ Distance between victims in the field and counsel in The Hague (communication)

→ Different systems in place

→ Expectation-management regarding the content of victim participation



Thank you

Questions?