



UNETCHAC Lecture
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The innovative features of the Rome Statute on victims' participation in ICC proceedings and victims' access to the ICC

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I. Victim participation – general premise

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

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
 - *Think of hybrid courts!*

ICC - regulatory framework for victim participation

ICC framework: autonomous role of victims in criminal proceedings

Arts. 15, 18, 68(3) ICCSt: Participation of victims in judicial proceedings

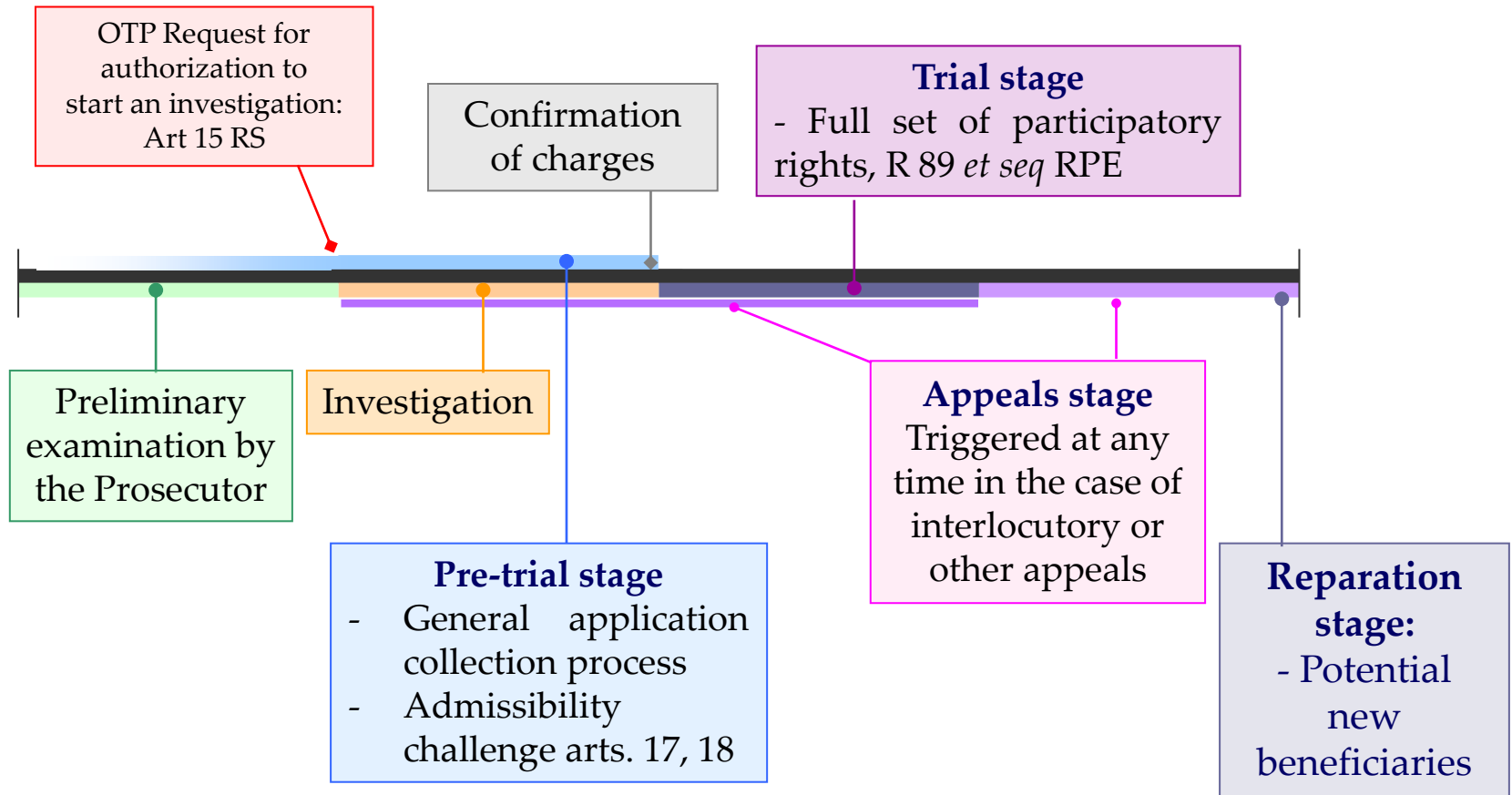
- Rule 85 RPE – definition of victims
- **Victims Participation and Reparations Section** - informs and assists victims regarding participation and reparations
- **Legal representation** for victims (internal and external counsel)
- *Prosecutor also takes interests of victims into account*

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

WHO is a victim?

- **ICC: Rule 85 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)*

“When?” – victims’ access to ICC proceedings



What? - victims' „views and concerns“

Arts. 15 / 18 „victim representations“

Art. 68(3) „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“

- ICC: distinction between presentation of *evidence* by victims and their expression of *views and concerns*
- CPS CAR: *partie civile* with party-like rights

How? – admission / victims' access

- Victims Participation and Reparation Section reaches out to victims in the field
 - Art 15 / 18 process – consultation forms (*ex.* [VEN](#))
 - Information collection through [application forms](#)
 - Data assessment and reporting
 - Confidentiality
- Field presences; intermediaries
- Continuous interaction with victims