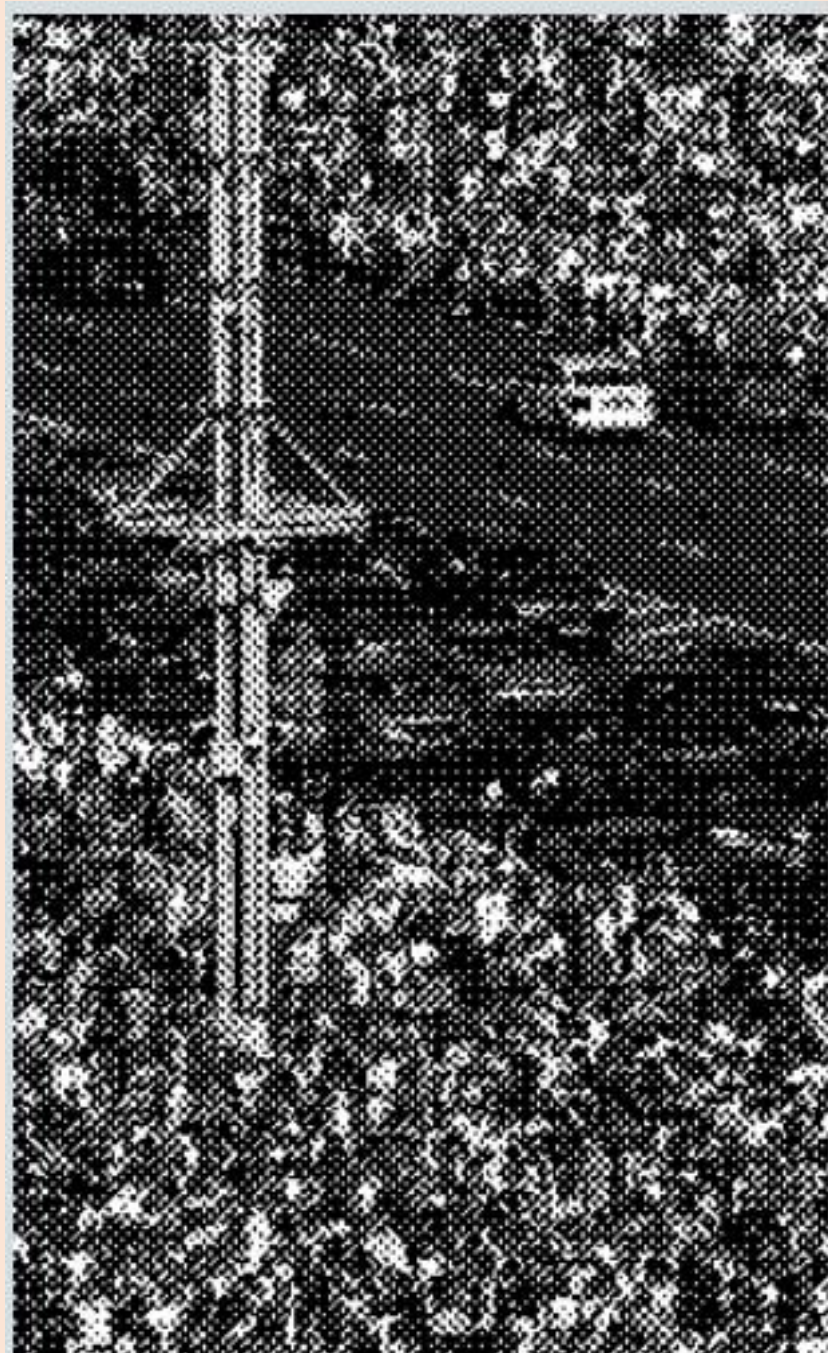


## QUESTIONS & ANSWERS

**Relating to the Investigation of the Situation in Lithuania/ Belarus  
by the Prosecutor of the International Criminal Court**



I. BACKGROUND AND PURPOSE .....	3
II. QUESTIONS & ANSWERS .....	4
Question 1 – What does the OTP’s decision to open an investigation mean? .....	4
Question 2 – What is the scope of the OTP’s investigation? .....	5
Question 3 – What happened and will happen after the OTP’s decision? .....	6
Notification .....	6
Outreach .....	6
Investigations .....	6
Immunities .....	8
Arrests warrants and court proceedings .....	8
Question 4 – Can the scope of the investigation in the Situation in Lithuania/Belarus be expanded? .....	10
Question 5 – Why does the scope of the Situation in Lithuania/Belarus matter? .....	10
Question 6 – Can Belarus challenge the opening of the OTP’s investigation in the Lithuania/Belarus Situation? .....	11
Deferral of investigation .....	11
Challenges to admissibility and jurisdiction .....	12
Question 7 – How can Civil Society Organisations (CSOs) contribute to the OTP’s Investigation? .....	12
Engagement with the OTP .....	12
Intermediary between witnesses and OTP .....	13
Question 8 – What is the role of victims during the OTP’s investigation? .....	13
Question 8(a) – Who is a victim for the purpose of ICC proceedings? .....	13
Question 8(b) – How do victims participate before the Court? .....	14
Question 8(d) – Who at the ICC engages with victims and witnesses? .....	19
Question 8(e) – What does it mean in practice for victims in the Situation in Lithuania/Belarus? .....	21
Question 9 – Who can be a witness, and how does it work? .....	23
Question 10 – What risks arise in the context of the opening of the OTP’s investigation? .....	24
Question 11 – Beyond the OTP’s investigation in the Situation in Lithuania/Belarus, what else can CSOs do? .....	25

## Acknowledgements

We wish to express our sincere gratitude to Adelaide Figueiras, Senior Legal Advisor at DIGNITY – Danish Institute Against Torture, for her excellent work in preparing this Questions and Answers document. We are also grateful to Megan Hirst, Barrister at Doughty Street Chambers for their invaluable review and thoughtful recommendations.

We further extend our deep appreciation to the countries and entities that support the IAPB in its mission to document and analyse violations of human rights and international criminal law in order to support investigations by national and international accountability mechanisms. Their continued support is essential to the IAPB’s work, including the development of this publication.

To this end, we acknowledge the invaluable support from the following countries (listed in alphabetical order): Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, Germany, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, the Netherlands, Norway, Poland, Romania, Slovakia, Switzerland, the United Kingdom, and the United States of America, as well as the European Union. We also recognize with gratitude the essential support from the European Endowment for Democracy.

## I. BACKGROUND AND PURPOSE

1. On 30 September 2024, the Republic of Lithuania (Lithuania) referred a situation to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC or Court) pursuant to articles 13(a) and 14(1) of the [Rome Statute](#),<sup>1</sup> requesting an investigation into alleged crimes against humanity, including deportation,<sup>2</sup> persecution,<sup>3</sup> and other inhumane acts,<sup>4</sup> committed against the civilian population of the Republic of Belarus (Belarus) (Referral).<sup>5</sup> More specifically, Lithuania submitted that there are reasonable grounds to believe that, beginning in April 2020, and from at least 1 May 2020, partly ongoing to the date of the Referral, and continuing, crimes against humanity – including deportation, persecution and other inhumane acts – have been carried out against the civilian population of Belarus, at the behest of senior Belarusian political, law enforcement and military leaders. It argued that part of the element of these crimes was committed on the territory of Lithuania, bringing such crimes temporally, territorially, and materially within the jurisdiction of the Court.<sup>6</sup> Lithuania further submitted that it is reasonable to believe that part of the elements of these

---

<sup>1</sup> ICC, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

<sup>2</sup> The Rome Statute defines deportation or forcible transfer of a population as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law” (Art. 7(2)(d)).

<sup>3</sup> Persecution is defined in the Rome Statute as “the international and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectively” (Art. 7(2)(g)).

<sup>4</sup> The Rome Statute defines other inhumane acts as “inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” (Art. 7(1)(k)).

<sup>5</sup> State Party Referral of the Situation in Lithuania/Belarus to the Prosecutor of the International Criminal Court, Minister of Justice of the Republic of Lithuania, 30-Sep-2024, <https://www.icc-cpi.int/sites/default/files/2024-09/2024-09-30-state-party-referral-lithuania.pdf>.

<sup>6</sup> The OTP can only exercise its investigative functions in the territory of State Parties to the Rome Statute (States who have ratified it), non-State Parties that consent to the Court’s jurisdiction, or non-State Parties that are referred by the UN Security Council to the Court. See more details on the ICC’s jurisdiction in the IAPB Briefing, [The International Criminal Court and Belarus: Understanding Lithuania’s Referral and Why the ICC Member States Must Act to Bring Justice to Belarusian Victims](#), Feb-2025.

crimes were committed, and continued to be committed on the territory of other States Parties to the Rome Statute.

2. Following the Referral, the OTP [opened](#) a preliminary examination to determine whether there is a reasonable basis to open an investigation, in line with article 53(1) of the Rome Statute. This involved assessing jurisdiction, admissibility, and the interests of justice, and considering all available information.
3. On 12 March 2026, the OTP [announced](#) its decision to open an investigation in the situation concerning the “Republic of Lithuania/Republic of Belarus” (Situation in Lithuania/Belarus).
4. The purpose of this Q&A document is to explain what the OTP’s decision means, outline its implications, highlight what potential actions Civil Society Organisations (CSOs) can take, and guide preparation for the next steps.
5. In this regard, the IABP previously issued a briefing on the Referral to support understanding of the process and promote accountability before the ICC.<sup>7</sup> It also published a report capturing accountability mechanisms applicable to Belarus, including a chapter on the ICC with information on the process.<sup>8</sup>

## II. QUESTIONS & ANSWERS

### Question 1 – What does the OTP’s decision to open an investigation mean?

6. It means that the OTP concluded that:
  - there is a reasonable basis to believe that Rome Statute crimes were committed, at least in part, on the territory of Lithuania (article 53(1)(a) of the Rome Statute);
  - potential cases likely to arise from the OTP’s investigation would be admissible before the ICC pursuant to article 17 of the Rome Statute (article 53(1)(b) of the Rome Statute). More specifically, with respect to complementarity – the principle under which State authorities have the primary responsibility to investigate and prosecute crimes<sup>9</sup> – the OTP determined that there is inactivity by States with jurisdiction over the crimes (including by Belarus). With respect to gravity, it found that the potential cases it identified are of sufficient gravity; and
  - there are no substantial reasons to believe that an investigation would not serve the interests of justice (article 53(1)(c) of the Rome Statute).
7. While the opening of the investigation represents a significant milestone, investigations will take time, and arrest warrants for suspects should not be expected too soon. Such warrants are only issued when there is enough evidence to support them, and upon approval by a Pre-Trial Chamber of the Court, composed of three judges. In the Situation in Lithuania/Belarus this would be Pre-Trial Chamber I. It is also important to note that the filing of a request for an arrest warrant by the OTP, and – if approved by the judges of Pre-

---

<sup>7</sup> IABP, Briefing, [The International Criminal Court and Belarus: Understanding Lithuania’s Referral and Why the ICC Member States Must Act to Bring Justice to Belarusian Victims](#), Feb-2025.

<sup>8</sup> IABP, [Paths to Accountability for Belarus: Mechanisms to Address Human Rights and International Criminal Law Violations](#) (IABP Paths to Accountability), Sep-2025.

<sup>9</sup> See [IABP Paths to Accountability](#), pp 34, 38.

Trial Chamber I – the issuance of the warrant, is not always made public and often becomes public only once the suspect has been arrested.

8. Moreover, as set out below,<sup>10</sup> the Situation in Lithuania/Belarus addresses only part of the broader pattern of crimes allegedly committed by Belarusian officials since the Court’s jurisdiction is limited to crimes against humanity which were committed, at least in part in Lithuania. This is because Belarus is not a State Party to the Rome Statute.<sup>11</sup>

## Question 2 – What is the scope of the OTP’s investigation?

9. The scope of the investigation is determined by the “situation”, as informed by the findings of the preliminary examination.<sup>12</sup>
10. As outlined in paragraph 15 of the [summary](#) of the OTP’s findings from the preliminary examination, the scope of the Situation in Lithuania/Belarus encompasses:
  - any past and present allegations of crimes committed since 1 May 2020 by Belarusian officials, where at least one part of the crime has been committed on the territory of Lithuania; and
  - any new and ongoing alleged crimes falling within the jurisdiction of the Court.
11. This means that in practice the scope of the OTP’s investigation covers transboundary crimes only, namely deportation and persecution by means of deportation pursuant to article 7(1)(d) and article 7(1)(h) of the Rome Statute respectively. In its summarised findings, the OTP did not include reference to the crime of “other inhumane acts” which Lithuania had included in their Referral. However, the OTP is not required to provide an exhaustive list of crimes at the “situation” stage and any legal characterisation is provisional. Still, the omission of “other inhuman acts” suggests that this crime might not be pursued by the OTP.<sup>13</sup>
12. The investigation will focus on conduct by members of the Belarusian authorities since 1 May 2020 that has led, or may lead, to the forced removal or departure of actual or perceived opponents of the Belarusian Government to Lithuania. In this context, the OTP may examine coercive acts, including arbitrary arrests and detention, judicial proceedings lacking fairness and due process, physical and psychological ill-treatment, threats, intimidation, harassment, and any measures aimed at suppressing dissent that result in the forced

---

<sup>10</sup> See below “Question 2 – What is the scope of the OTP’s investigation?”.

<sup>11</sup> See above para. 1.

<sup>12</sup> The OTP conducted its preliminary examination on the basis of the parameters set out in the Referral and in accordance with the applicable jurisdictional framework.

<sup>13</sup> This appears to be the case in the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (Situation in Bangladesh/Myanmar), where the jurisdictional parameters are broadly similar to those in the Situation in Lithuania/Belarus, in that only crimes committed, at least in part, on the territory of Bangladesh fall within the scope of the investigation, including the crimes against humanity of deportation and persecution. The territorial jurisdiction in the Situation in Bangladesh/Myanmar is somewhat broader since it also extends to crimes committed at least in part on the territory of any other States Parties. In any event, the Pre-Trial Chamber authorising the investigation in the Situation in Bangladesh/Myanmar left open the question of whether facts concerning the crime of “other inhumane acts” would fall within its scope (see, Situation in Bangladesh/Myanmar, Pre-Trial Chamber II (ICC), ICC-01/19-27, [Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar](#), 14 November 2019, para. 111). Notably, the subsequent [application for an arrest warrant](#) requested by the OTP in November 2024 addresses deportation and persecution only.

removal or departure. The investigation covers all such conduct from 1 May 2020 onward, including acts that are still happening today and any that may occur in the future.

13. It will further focus primarily on those bearing the highest responsibility within the Belarusian Government.<sup>14</sup>

### Question 3 – What happened and will happen after the OTP’s decision?

#### **Notification**

14. First, the OTP notified all States Parties, but also any States that would normally have jurisdiction over the crimes concerned – including Belarus – of its decision to open the investigation, in accordance with article 18(1) of the Rome Statute.
15. The OTP also publicly [announced](#) its decision to initiate an investigation and made available a [summary](#) of its preliminary examination findings.

#### **Outreach**

16. Second, some outreach activities will begin, to provide information about the work of the Court. Two sections within the [Registry of the ICC](#)<sup>15</sup> (Registry) are responsible for providing neutral information about the Court’s work. The Public Information and Outreach Section (PIOS)<sup>16</sup> conducts [outreach activities](#) to inform victims and affected communities about the Court’s work and its processes. The Victims’ Participation and Reparations Section (VPRS)<sup>17</sup> provides information to victims about how they can potentially participate in court proceedings, and on related questions such as legal representation. These two sections often work together, and due to resource constraints they may also rely on partnerships with CSOs, particularly at early stages of the Court’s work, before a suspect has been arrested.
17. In addition, the OTP may also do its own outreach to victims and affected communities in order to explain its mandate and work in general terms. This may include general public communication on its role, briefings and meetings with national authorities and CSOs, and, where appropriate, engagement with affected communities during missions to Lithuania and other relevant states as part of its investigative presence. However, such engagement is constrained by the confidentiality of ongoing investigations.

#### **Investigations**

18. Third, the OTP will initiate formal investigations (article 54 of the Rome Statute). To ensure an impartial investigation and establish the relevant facts, the OTP is required to give equal consideration to incriminating and exonerating circumstances. This means that the OTP examines evidence that may show that a person is responsible, as well as evidence that may show that they are not. In this context, the OTP may request information or access to

---

<sup>14</sup> See above para. 24.

<sup>15</sup> The Registry is a *neutral* organ of the ICC that provides services to all other organs of the Court (such as the Presidency, the Judicial Divisions, and the OTP) so the ICC can function and conduct fair and effective public proceedings. Certain units/sections within the Registry are dedicated to assisting victims and witnesses (see below “Question 8(d) – Who at the ICC engages with victims and witnesses?”).

<sup>16</sup> See below “Question 8(d) – Who at the ICC engages with victims and witnesses?”.

<sup>17</sup> See below “Question 8(d) – Who at the ICC engages with victims and witnesses?”.

relevant records, locations, or individuals from the Belarusian authorities. The Belarusian authorities may refuse such requests. While this could pose certain challenges to the investigation, it does not prevent the OTP from continuing its work. The OTP can rely on a wide range of evidence to build its cases, including witness testimony and open-source intelligence.

19. Investigative priorities will be determined internally, assessing which cases or leads to focus on first. In making these decisions, the OTP takes into account practical challenges that may affect the investigation, including access to Belarus or to insider witnesses. It also considers available resources, including staff, budget, and technical capacity, as well as its overall workload across ongoing investigations.<sup>18</sup> The OTP will generally not publicly communicate the specific details or priorities of its investigation to the public, including to CSOs.
20. The OTP's investigative activities may include:
  - Collecting and preserving evidence, including interviewing persons of interest,<sup>19</sup> potential perpetrators, victims, and witnesses.
  - Seeking cooperation from States Parties to secure access and obtain information on alleged incidents (crimes) and perpetrators (can also include other cooperative third states).
  - Requesting documentation from CSOs and international bodies, including witness testimony and other materials that may help document alleged incidents (crimes) and identify or corroborate evidence relating to potential perpetrators.
  - Seeking leads from CSOs and international bodies, including assistance in identifying potential witnesses, perpetrators, or other relevant sources of information.
  - Conducting evidence and forensic analysis or seeking cooperation from relevant experts to undertake such analysis.
  - Identifying potential suspects.
  - Building prosecutable cases.
21. The investigation process can take years before leading to requests for arrest warrants.<sup>20</sup> Even after a warrant is issued, the OTP continues investigating the suspect in question, up to the start of trial proceedings, as well as the broader situation.

---

<sup>18</sup> For more information, see for instance ICC, OTP, [Policy paper on case selection and prioritisation](#), 15-Sep-2016.

<sup>19</sup> *Persons of interest* are individuals who may have information relevant to an investigation or may be connected to alleged crimes, but who are not formally under investigation or charged. They are interviewed or assessed to assist in establishing the facts of a case.

<sup>20</sup> As noted in the IAPB Paths to Accountability report, the investigation into the situation in Libya, initiated in 2011, is projected to conclude by the end of 2025. In the context of Sudan, investigations began in 2005 and arrest warrants for senior officials, including former President Omar al-Bashir, were issued in 2009 and 2010, but enforcement remains pending as of 2025 (see [IAPB Paths to Accountability](#), p. 39 and references therein).

## **Immunities**

22. An important feature of the ICC is that it does not apply any form of immunity, functional<sup>21</sup> or personal,<sup>22</sup> for individuals brought before the Court (article 27 of the Rome Statute). This means that even *sitting* Heads of State, Heads of Government, or Ministers of Foreign Affairs can be investigated, arrested, prosecuted, and, if found responsible, convicted for crimes within the Court's jurisdiction.

## **Arrests warrants and court proceedings**

23. Fourth, if there is sufficient evidence, the OTP may request that Pre-Trial Chamber I issue an arrest warrant for a person to appear before the ICC pursuant to article 58 of the Rome Statute. Pre-Trial Chamber I will issue the warrant if there are reasonable grounds to believe that the person has committed crimes within the Court's jurisdiction and if the warrant is necessary to ensure the person appears in court, does not interfere with the investigation, or does not commit further related crimes.<sup>23</sup> Requests for an arrest warrant are filed as confidential (secret or under seal), unless otherwise authorised by a Pre-Trial Chamber. Likewise, the existence and/or content of such a request may not be made public unless the relevant Chamber has authorised its publication.<sup>24</sup> Accordingly, as indicated above, the filing of a request for an arrest warrant, and – if the warrant is approved by Pre-Trial Chamber I, the issuance of a warrant, is not always made public, but often becomes public once the suspect has been arrested.
24. The Court focuses on individual responsibility; therefore, it is the individual, not the state of Belarus, who stands before the ICC. Warrants typically target senior officials, commanders, and other individuals in leadership roles, namely those who planned, ordered, or oversaw the commission of crimes. It is important to note that the OTP will request arrest warrants for only a limited number of individuals. This is because the Court prioritises those most responsible for the crimes under investigation, focusing its resources on individuals whose prosecution will have the greatest impact on justice and accountability. Moreover, the

---

<sup>21</sup> Functional immunity protects officials of a foreign state from being investigated by the courts of another state for acts performed in the exercise of their official functions. The protection continues even after leaving office. However, international law has evolved, and this immunity no longer shields officials – even while in office – when the alleged acts constitute genocide, war crimes, or crimes against humanity. Likewise, the Statute of the Council of Europe Special Tribunal for the Crime of Aggression against Ukraine (Special Tribunal) explicitly excludes the application of functional immunity (see [IAPB Paths to Accountability](#), p. 62 and references therein).

<sup>22</sup> Personal immunity protects *sitting* Heads of State, Heads of Government, and Foreign Ministers from being arrested or prosecuted by the courts of another state. This immunity covers all acts, whether performed in an official or private capacity. The purpose of this immunity is to allow these officials to carry out their duties on behalf of the state they represent. There are no exceptions to personal immunity vis-à-vis foreign courts during the period in office, even for alleged genocide, war crimes, or crimes against humanity. Still, such officials – even while in office – may be prosecuted by their own state or by the ICC. Importantly, personal immunity is temporary and, once their term ends, Heads of State, Heads of Government, and Foreign Ministers lose personal immunity but retain functional immunity. International law has evolved such that functional immunity does not bar former Heads of State, Heads of Government, and Foreign Ministers from being prosecuted by foreign courts for core international crimes. Similarly, before the Special Tribunal, such officials can be brought to justice once they leave office (or their immunity is waived). Investigations, evidence collection, and indictment preparation can nonetheless proceed beforehand to enable prosecution and trial when circumstances allow (see [IAPB Paths to Accountability](#), p. 62 and references therein).

<sup>23</sup> As an alternative to seeking a warrant of arrest, the OTP can request that the Pre-Trial Chamber issue a summons for the person to appear. The Pre-Trial Chamber will issue the summon, if satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance (article 58(7) of the Rome Statute).

<sup>24</sup> See Regulation 23<sup>ter</sup> of the [Regulations of the Court](#).

charges brought may also appear limited in scope, in that they can cover only selected incidents, time periods, or geographic areas within a broader pattern of alleged criminal conduct. This reflects evidentiary and strategic considerations, including the need to present cases that are legally and factually sustainable within the available evidence, the profile of the persons charged, and the feasibility of bringing proceedings in a timely manner.

25. If Pre-Trial Chamber I approves an arrest warrant, the person becomes a suspect and must be arrested and brought before the ICC. The ICC does not have its own police force and relies on States Parties to execute the warrant, which can lead to practical delays. Nevertheless, all 125 States Parties are legally obliged to comply with any request to arrest and surrender the suspect if they enter their territory (article 89 of the Rome Statute).<sup>25</sup> States that are not parties to the Rome Statute, such as Belarus, are not subject to this obligation. Moreover, Pre-Trial Chamber I can ask States Parties to identify, track, freeze, and seize the property and assets of suspects (articles 57(3)(e) and 93(1)(k) of the Rome Statute). The purpose of these measures is to ensure that, if a person is convicted by the Court, there are assets available for the payment of fines and reparations to victims.
26. Once the suspect is brought before the Court, pre-trial proceedings begin. These proceedings serve to determine whether the charges brought by the Prosecutor can be confirmed and to address procedural matters (articles 60-61 of the Rome Statute).<sup>26</sup> If Pre-Trial Chamber I confirms the charges, the case proceeds to trial,<sup>27</sup> and the suspect becomes an accused. The accused is presumed innocent, and the burden lies on the prosecution (OTP) to prove their guilt (article 66 of the Rome Statute). It should be noted that a single case in pre-trial and trial proceedings may involve multiple suspects or accused persons.
27. The suspect/accused is represented by a [defence counsel](#) of their choosing, as part of the rights of the accused (article 67 of the Rome Statute). If the suspect cannot afford counsel, the ICC will provide legal aid following an assessment of their means by the Registrar.<sup>28</sup> The defence counsel must meet a [set of criteria](#) and be included on the ICC's list of qualified counsel.
28. At trial, the accused appears before three judges in the Trial Chamber. During the hearings, both prosecution (OTP) and the defence (the defence counsel and the legal team representing the accused) present evidence, which can include documents, witness testimony, forensic material, audio-visual items, and expert reports. Victims may also participate through their legal representatives, who can submit evidence, question witnesses, and make arguments to ensure that the views and interests of the victims are heard.<sup>29</sup> Once the trial concludes, the judges decide whether the person is guilty or not guilty

---

<sup>25</sup> See also [IAPB Paths to Accountability](#), p. 40. Where a State Party fails to comply with a request to cooperate (for example, by declining to arrest or surrender a suspect), thereby preventing the Court from exercising its functions and powers, the relevant Chamber may make a formal finding of non-compliance under article 87(7) of the Rome Statute and refer the matter to the Assembly of States Parties or, where the situation was referred to the Court by the UN Security Council, to the Security Council (see, for instance, Situation in Libya, Pre-Trial Chamber I (ICC), ICC-01/11-209, [Decision on Italy's non-compliance with a request for cooperation, ICC-01/11-209](#), 17 October 2025, 17 October 2025).

<sup>26</sup> A suspect may also decide to admit guilt, and, should the plea be accepted by the judges of the Trial Chamber, said judges may proceed to determine the appropriate sentence without conducting a full trial on the charges (article 65 of the Rome Statute).

<sup>27</sup> See also [IAPB Paths to Accountability](#), p. 40.

<sup>28</sup> See ICC, Assembly of State Parties, [Draft Legal aid policy of the International Criminal Court](#), 22 November 2023, ICC-ASP/22/9 ([ICC Legal Aid Policy](#)).

<sup>29</sup> See below "Question 8(b) – How do victims participate before the Court?".

and deliver a judgment (article 74 of the Rome Statute). If convicted, the Judges determine the sentence.<sup>30</sup>

29. The Judges may also hold the convicted person liable for reparations (article 75 of the Rome Statute). Reparations must be paid by the convicted person unless they lack the financial means. The Trust Fund for Victims (TFV) – a separate entity from the ICC – raises funds which can be used when the convicted person cannot pay for the implementation of the reparations awarded by the judges.<sup>31</sup> Reparations can take the form of collective services, such as healthcare, educational, and support projects for affected communities – or symbolic measures – such as a monetary sum intended to recognise the harm – along with other measures to repair the harm suffered.<sup>32</sup>
30. Appeal proceedings may follow. Parties may appeal decisions on convictions, acquittals, or reparations.<sup>33</sup>

#### **Question 4 – Can the scope of the investigation in the Situation in Lithuania/Belarus be expanded?**

31. The investigation is framed by the “situation” (its territory, time period, and the types of incidents (crimes)). While the OTP cannot just expand it freely beyond those limits, there are two possible avenues, even though neither has been used to date to expand the scope of an existing situation under investigation. First, another State Party could refer a situation, arguing that some of the crimes allegedly committed in Belarus, since 1 May 2020, also occurred at least in part on its territory, under article 14(1) of the Rome Statute, similar to Lithuania’s Referral. Second, based on communications submitted under article 15 of the Rome Statute, the OTP may request authorisation from a Pre-Trial Chamber to investigate crimes that allegedly occurred at least in part on the territory of other States Parties.<sup>34</sup>

#### **Question 5 – Why does the scope of the Situation in Lithuania/Belarus matter?**

32. The scope of the situation matters because it determines what incidents (crimes) and conduct the OTP can investigate.
33. It further determines who may participate as a victim in the Court’s proceedings. To support the contextual elements of crimes against humanity,<sup>35</sup> the OTP may consider evidence beyond the underlying crimes of deportation and persecution by means of deportation. However, only individuals who suffered harm as a result of a crime that falls within this defined scope of the Situation in Lithuania/Belarus (deportation and persecution by means of deportation), and, at a later stage, within cases arising from this situation, are eligible to

---

<sup>30</sup> See also [IAPB Paths to Accountability](#), p. 41.

<sup>31</sup> See ICC, Trust Fund for Victims, [Reparations Mandate](#). See also below para. 86.

<sup>32</sup> See also [IAPB Paths to Accountability](#), p. 42.

<sup>33</sup> See also [IAPB Paths to Accountability](#), p. 42.

<sup>34</sup> A third avenue exists, namely referral by the Security Council acting under Chapter VII of the Charter of the United Nations pursuant to Article 13(b) of the Rome Statute. However, this is unlikely due to current divisions within the Security Council.

<sup>35</sup> Crimes against humanity require proof of contextual elements, namely that the underlying acts were committed as part of a widespread or systematic attack directed against any civilian population, pursuant to or in furtherance of a State or organisational policy, and with knowledge of the attack (see article 7(2)(a) of the Rome Statute).

participate as victims before the Court, and, if a conviction is secured, to request reparations.<sup>36</sup>

## Question 6 – Can Belarus challenge the opening of the OTP’s investigation in the Lithuania/Belarus Situation?

### **Deferral of investigation**

34. Belarus cannot prevent the OTP from opening its investigation in the Situation Lithuania/Belarus, but it may request that the investigation be deferred under article 18(2) of the Rome Statute, which would put the investigation on hold.<sup>37</sup>
35. The OTP has notified States of its intention to begin an investigation pursuant to article 18(1) of the Rome Statute. Belarus could, within one month, respond to the OTP and claim that it is already investigating – or has investigated – the same conduct involving its nationals or others within its jurisdiction. In turn, the OTP would notify Pre-Trial Chamber I of the request to suspend its investigation. While the OTP has already assessed complementarity – the principle under which national authorities have the primary responsibility to investigate and prosecute crimes – prior to deciding to open an investigation, the procedure pursuant to Article 18(2) of the Rome Statute nonetheless allows a State to raise this issue formally after notification. As such, Belarus could argue that its domestic investigative or prosecutorial efforts render the Court’s intervention unnecessary, thereby asking the OTP to suspend its investigation in favour of domestic proceedings.
36. Any request to suspend the OTP’s investigation must be fully supported by information and evidence showing that domestic proceedings are genuinely underway. If Belarus were to submit such a request and the OTP deems it sufficient, it would have to suspend its investigation. However, if the OTP considers that Belarus is not genuinely conducting investigations and prosecutions, it would apply to Pre-Trial Chamber I for authorisation to continue its investigation. The Pre-Trial Chamber would then decide whether the OTP can continue.
37. In any event, a suspension of the investigation is not permanent. The OTP may review the situation six months after the suspension, or earlier if there is a significant change in circumstances — particularly if the State fails to show any genuine progress.
38. Should such proceedings arise, Pre-Trial Chamber I may allow victims to present their “views and concerns” pursuant to article 68(3) of the Rome Statute. This is the opportunity for victims to express their perspectives, interests, and worries about the proceedings and the issues being considered by the Court.<sup>38</sup> In practice, where such proceedings have

---

<sup>36</sup> See below “Question 8 – What is the role of victims during the OTP’s investigation?”.

<sup>37</sup> This has happened in certain situations before the Court, see Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber II (ICC), ICC-02/17-139, [Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan’s letter concerning article 18\(2\) of the Statute](#), 15 April 2020 (this investigation was suspended for approximately 30 months); Situation in the Republic of the Philippines, Pre-Trial Chamber I (ICC), ICC-01/21-14, [Notification of the Republic of the Philippines’ deferral request under article 18\(2\)](#), 18 November 2021 (this investigation was suspended for approximately 12 months); Situation in the Bolivarian Republic of Venezuela I, Pre-Trial Chamber I (ICC), ICC-02/18-17, [Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18\(2\) of the Rome Statute](#), 21 April 2022 (this investigation was suspended as a result for approximately 14 months).

<sup>38</sup> See, among others, Situation in the Republic of the Philippines, Pre-Trial Chamber I (ICC), ICC-01/21-01/25-56-Red, [Public Redacted Version of “Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation”](#), 26 January 2023, paras 8-9.

occurred to date, the Pre-Trial Chamber issued an order instructing the VPRS to liaise with victims and their legal representatives, in order to receive such views and concerns.<sup>39</sup>

39. Where a State, organisation (such as the IAPB), or person has relevant information or expertise, it may also ask Pre-Trial Chamber I for authorisation to make submissions under rule 103 of the [Rules of Procedure and Evidence](#) (Rules).<sup>40</sup> The relevant Chamber would then determine whether such submissions are necessary for the resolution of the issue before it.

### **Challenges to admissibility and jurisdiction**

40. Belarus could also challenge the Court's jurisdiction or the admissibility of a case (article 19 of the Rome Statute).<sup>41</sup> However, such challenge can only be brought later on in the procedure, in connection with a specific case, that is, once an arrest warrant or summons has been requested or issued against an individual. At that stage, Belarus could argue, for example, that the Court lacks territorial or personal jurisdiction, or that the case is inadmissible because national authorities are genuinely investigating or prosecuting the same conduct. The Pre-Trial Chamber or Trial Chamber would then determine whether the Court may proceed with the case.
41. Affected victims may also be permitted to present their "views and concerns" in these proceedings through their legal representatives (article 68(3) of the Rome Statute).<sup>42</sup> Where they have relevant information or expertise, a State, organisation (such as the IAPB), or person may likewise ask the Pre-Trial Chamber or the Trial Chamber for authorisation to make submissions under rule 103 of the Rules.<sup>43</sup> The relevant Chamber would then determine whether such submissions are necessary for the resolution of the issue before it.

## **Question 7 – How can Civil Society Organisations (CSOs) contribute to the OTP's Investigation?**

### **Engagement with the OTP**

42. As the OTP is now conducting its own investigation, the role of CSOs, including the IAPB, must adapt to this new phase. While their role is primarily responsive to requests for information and evidence from the OTP, CSOs can still proactively provide leads – including information on potential witnesses, perpetrators, or relevant sources of information – and seek to shape the focus of the investigation.
43. Moreover, CSOs can provide on their own initiative contextual information. This may include background information on the security, political, social, religious, and cultural context in which alleged crimes have occurred, as well as patterns of (emerging) victimisation and

---

<sup>39</sup> For information on the VPRS, see *below* "Question 8(d) – Who at the ICC engages with victims and witnesses?"

<sup>40</sup> Rule 103 of the Rules allows a Chamber to invite or grant leave to a State, organisation, or person to submit written or oral observations on any issue that the Chamber considers appropriate. These submissions, commonly referred to as *amicus curiae* briefs, are intended to assist the Chamber by providing relevant legal, factual, or policy expertise. They are made only with the leave of the Chamber, which has full discretion to accept or reject them (see, among others, Situation in the State of Palestine, Pre-Trial Chamber I (ICC), ICC-01/18-249, [Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence](#), 22 July 2024).

<sup>41</sup> Challenges under article 19 of the Rome Statute are also available – at the case stage – to an accused or a person subject to a warrant of arrest under article 58 of the Rome Statute.

<sup>42</sup> See *above* para. 38.

<sup>43</sup> See *above* footnote 40.

harm. They can also make observations about local perceptions of the OTP's work, witness well-being, or other relevant conditions on the ground.

44. CSOs can further request prioritisation of investigations into a certain category of alleged crimes falling within the scope of the situation. The OTP retains ultimate discretion in determining the priorities of its investigation, but it may be informed and assisted by input of this kind.
45. There is no fixed format for such inputs. They can be made in writing (often referred to as "[article 15 communications](#)"), sent by post or digitally through the [OTP's dedicated portal](#), without prior invitation from the OTP, or provided more informally through meetings with OTP staff.

#### **Intermediary between witnesses and OTP**

46. Certain individuals interviewed by CSOs, including the IAPB, provided information relevant to the preliminary investigation of the Situation in Lithuania/Belarus. The OTP may wish to interview these individuals, as well as others not yet been interviewed, and may eventually call some of them to testify as witnesses in court proceedings.<sup>44</sup> CSOs could assist by facilitating safe and informed communication between potential witnesses and the OTP, and by explaining OTP processes, particularly for victims who do not yet have a legal representative. In doing so, it is essential that CSOs inform these individuals, prior to any contact with the OTP, that testifying as a prosecution (OTP) witness entails disclosure of their identity to the defence (the accused and their legal team), which may carry significant personal and security risks.
47. For example, the IAPB has to date shared summaries of transcripts from interviews with potential witnesses with the OTP but has not disclosed their identities or contact details. If the OTP wishes to interview any of these individuals, it can request this information from the IAPB, which will share it only with the individuals' informed consent – including ensuring that they understand the implications of direct engagement with the OTP.

### **Question 8 – What is the role of victims during the OTP's investigation?<sup>45</sup>**

#### **Question 8(a) – Who is a victim for the purpose of ICC proceedings?**

48. A victim is a natural person, i.e. a human being, who has suffered harm as a result of a crime within the jurisdiction of the Court (rule 85(a) of the Rules).<sup>46</sup> The harm suffered can be physical (such as an injury or illness); psychological (such as depression, anxiety, PTSD, or emotional suffering); material (such as loss or damage to property); or other types of harm (such as lost opportunities relating to employment or education). A victim can be a person

---

<sup>44</sup> See below “

Question 9 – Who can be a witness, and how does it work?”.

<sup>45</sup> For more detailed information on the role of victims before the ICC, the participation process, and the entities that assist victims with applications to participate and requests for reparations, see ICC, VPRS, Victim's booklet, [Victims before the International Criminal Court A guide for the participation of victims in the proceedings of the ICC](#).

<sup>46</sup> In certain circumstances, organisations or institutions may also qualify as victims if their property dedicated to religion, education, art, science, or charitable purposes has been directly harmed (rule 85(b) of the Rules).

who suffers harm indirectly as a result of a crime targeted at another person, such as a family member of someone who has been seriously harmed or killed (indirect victim).

49. In the context of the Situation in Lithuania/Belarus, this may include individuals who have suffered harm (directly or indirectly) as a result of transboundary crimes committed since 1 May 2020, i.e. the crime against humanity of deportation or persecution by means of deportation to Lithuania.<sup>47</sup> Accordingly, many of the individuals interviewed by the IAPB or other organisations may meet these criteria, be therefore considered victims in the Situation in Lithuania/Belarus and hence be able to participate in proceedings arising from this situation.

### **Question 8(b) – How do victims participate before the Court?**

#### *Overview*

50. *Application.* Victims must apply in writing to be recognised as victim participants in proceedings in a specific case. They do so by completing and submitting a form to the VPRS.<sup>48</sup> The form allows victims to provide the information the Court needs to determine whether they qualify to participate in the proceedings or to request reparations. The VPRS reviews the form and prepares reports for the judges, who then decide whether the applicant meets the criteria for participation. Victims are advised to seek assistance from the VPRS, a lawyer, or a CSO familiar with the process. Such facilitators can help victims fill in the form correctly, make informed decisions about the disclosure of personal information, and advise on whether it is the appropriate time to submit an application.
51. *Views and Concerns.* Victims also have the possibility to take part in court proceedings by presenting their views and concerns (article 68(3) of the Rome Statute). This is different from testifying as a witness in a court proceeding.<sup>49</sup> Victims can make submissions on legal or procedural matters but can also share their concerns about the investigation or a case with the Court. They can describe the impact of the crimes, what they hope to see from the investigation or trial – including reparations – and any problems or risks they face. This helps the judges to hear their perspective, obtain a clear picture of what happened to them and how they suffered, and take protective measures in the course of their participation in the proceedings (article 68(1) of the Rome Statute). It also gives victims a voice that is independent of the OTP. Victims have a distinct role from the OTP. For example, they cannot ask the Court to arrest someone, initiate charges or amend existing charges.<sup>50</sup> These powers belong exclusively to the OTP.
52. Presenting views and concerns does not however guarantee that the Court will follow the wishes of the victims, as the judges must also consider other interests, including the rights of the defence and the overall fairness of the trial.

---

<sup>47</sup> See above “Question 2 – What is the scope of the OTP’s investigation?”.

<sup>48</sup> For more information on the VPRS, see below “Question 8(d) – Who at the ICC engages with victims and witnesses?”. For more information on the application process, see below para. 64.

<sup>49</sup> See below “

Question 9 – Who can be a witness, and how does it work?”.

<sup>50</sup> See articles 58 and 60 of the Rome Statute.

53. The extent of such participation requires authorisation of the relevant Chamber, which also decides how, when, and, to what extent they may participate. This can vary significantly depending on the stage of the proceedings.
54. *Legal representation.* In general, victims participate through a legal representative. Legal representatives inform victims about the Court and its proceedings, advise them about their participation, appear in court hearings to represent them, and make written submissions for them.
55. Individuals wishing to represent victims must meet a [set of criteria](#) and be admitted to the ICC’s list of qualified counsel.<sup>51</sup> A legal representative may be assisted by a small team including field assistants, with the composition of the team varying according to the stage of the proceedings. Victims may choose their lawyer until a suspect is brought before the court. At that point, the Court will arrange “common legal representation” so that usually all victims in a case will be represented by a single team of two or three legal representatives and their legal staff.<sup>52</sup>
56. In practice, most victims lack the financial means to pay for legal representation. Legal aid may be provided for the payment and resourcing of victims’ legal representatives and their teams. However, the amount of legal aid available is limited, and its scope depends on the stage of the proceedings.<sup>53</sup> A recent amendment of the Court’s legal aid policy means that in future a fixed sum will be allocated for victims’ legal aid in each situation during the investigation stage (before a case is proceeding). The implementation of this new policy in practice has yet to be seen.
57. Victims who are not yet legally represented can contact the Court through the VPRS (directly, or through the assistance of a CSO). The Court has a duty to inform victims about the Court’s work, the possibility to participate in proceedings, and the modalities for such participation, as well as provide updates on case developments and relevant judicial processes. These responsibilities fall within the mandate of the Registry, and are led by the VPRS. The VPRS also supports victims to complete application forms for participation where this is required, and can assist victims in finding legal representation (rule 90 of the Rules).<sup>54</sup>
58. Where they have not yet chosen their own legal representative, the judges of the relevant Chamber may instruct the Office of Public Counsel for Victims (OPCV) to represent them.<sup>55</sup> Although the OPCV sits within the Registry, it operates independently and acts in the interests of the victims it represents.
59. In addition to participation in court proceedings, victims may also play a part in ICC proceedings in other ways – for example by sending information to the OTP about crimes

---

<sup>51</sup> More specifically, to represent victims before the ICC, an individual must have proven competence in international or criminal law and procedure, relevant experience in criminal proceedings (for example, as a judge, prosecutor, or lawyer), at least ten years of experience for Lead Counsel or eight years for Associate Counsel, excellent knowledge and fluency in at least one of the Court’s working languages (English or French), and no convictions for serious criminal or disciplinary offences that would make them unsuitable to act as counsel before the Court (Rule 22 of the [Rules](#) and Regulation 67 of the [Regulations of the Court](#)). For more information on how to apply to be included in the ICC’s list of counsel, see the [ICC website](#) and [Guide for applications to the ICC list of counsel and Assistance to Counsel](#)).

<sup>52</sup> See *below* para. 64.

<sup>53</sup> See [ICC Legal Aid Policy](#).

<sup>54</sup> For information on the VPRS, see *below* “Question 8(d) – Who at the ICC engages with victims and witnesses?”.

<sup>55</sup> See *below* “Question 8(d) – Who at the ICC engages with victims and witnesses?”.

they believe have been committed. A victim may further be called to testify during trial as a witness. If a case proceeds to trial and an accused person is convicted by the ICC, victims may request reparations. All of these steps can be taken whether or not a victim chooses to “participate” in the ICC proceedings through a legal representative, and sometimes CSOs will assist victims to take these steps.

60. Anyone wishing to participate in proceedings before the Court or share information with the OTP is encouraged first to ask for guidance from someone who has already received training or explanations from the Court. This might be a CSO, a community leader, a lawyer, or other person. Victims can also contact the VPRS by email ([VPRS.information@icc-cpi.int](mailto:VPRS.information@icc-cpi.int)) for relevant help and more information.<sup>56</sup>

#### *Situation stage*

61. During the investigation into a situation, victim participation happens generally without having to complete an application form. While victims can already submit such a form at this stage, the Pre-Trial Chamber will not make a determination on whether any individual qualifies as a victim participant until a suspect has been brought before the Court and the scope of a particular case is known.<sup>57</sup> It is therefore advised to apply to participate as a victim only after a suspect has been arrested and has appeared before the Court.
62. As regards the communication of “views and concerns”, there are a few instances when a Chamber might consider it appropriate. This may occur, for example, if the OTP asks a Pre-Trial Chamber to resume an investigation after it was previously put on hold (article 18(2) of the Rome Statute).<sup>58</sup> In other instances, should the relevant chamber authorise it, legal representatives communicate the views and concerns of the victims. This is usually done in writing, by way of filing submissions, but in some rare cases a hearing might be held at this stage, where victims’ legal representatives present the victims’ views in person. As indicated above, victims may choose their own legal representative until a suspect is brought before the court.<sup>59</sup> Only very limited legal aid is provided for by the Court at this stage of the proceedings,<sup>60</sup> with the result that often victims can access legal representation only if it is provided *pro bono* or through funding of external donors or CSOs.

#### *Case stage*

63. Victims’ participation typically becomes more active once an arrest warrant is executed, i.e. when a suspect has been arrested and brought before the Court, and pre-trial proceedings begin. Once this occurs, the Court will open a formal application process, in which individuals can apply to be recognised as victims. Once they obtain victim status,

---

<sup>56</sup> See below “Question 8(d) – Who at the ICC engages with victims and witnesses?”.

<sup>57</sup> For more on the application process, see below para. 64.

<sup>58</sup> See below “Question 6 – Can Belarus challenge the opening of the OTP’s investigation in the Lithuania/Belarus Situation?”. Judges of the Pre-Trial Chamber may invite victims to submit what are referred to as “representations” - meaning their views and concerns – in proceedings pursuant to articles 15 (opening of an investigation) and 18 (deferment of an investigation) of the Rome Statute. This can be done directly by victims themselves, without the need for a legal representative, and is facilitated through the VPRS. For information on the VPRS, see below “Question 8(d) – Who at the ICC engages with victims and witnesses?”.

<sup>59</sup> See above para. 55.

<sup>60</sup> See [ICC Legal Aid Policy](#), paras 63-65.

they can participate at all stages of judicial proceedings, namely pre-trial, trial, and appeals proceedings. They may also request reparations if the proceedings result in a conviction.

64. As indicated above, victims must apply in writing. A Court-approved form is available on the [ICC website](#) as well as guidelines on how to fill it.<sup>61</sup> The form can be downloaded, completed [online](#), or requested from the VPRS by email ([VPRS.information@icc-cpi.int](mailto:VPRS.information@icc-cpi.int)). If not submitted using the online form, completed forms, along with supporting documents such as a copy of an identification document, can be submitted to the VPRS through email ([VPRS.information@icc-cpi.int](mailto:VPRS.information@icc-cpi.int)). The ICC will acknowledge receipt of the application. At the appropriate time, the Pre-Trial Chamber, or the Trial Chamber, will decide whether the applicant qualifies as a victim under the Court's jurisdiction and is entitled to participate, and the decision will be communicated promptly to the victim or their legal representative. The process may take some time before a decision is reached.
65. To ensure that applications contain all the required information, victims are usually advised to seek assistance in this process, whether from the VPRS, a lawyer or CSO familiar with the process. These facilitators can also help victims make an informed decision about the disclosure of personal information through this process, and can advise about whether or not it is an appropriate time to submit an application.
66. Victims' identities are protected in the proceedings by a pseudonym attributed to them by the Court (for example: a/0001/18) ensuring that their real names do not appear in publicly accessible court filings (rule 87 of the Rules). Any other information in public court filings that could reveal a victim's identity is also blacked out or redacted before publication. In general, this protection applies also to the versions of the court filings accessed by the parties, namely the prosecution (OTP) and the defence (the defence counsel and the legal team representing the accused). The VPRS systematically applies such redactions when a victim's application for participation or reparations is transmitted to the parties. Victims' identities may, however, be disclosed to the prosecution and/or the defence in certain circumstances. For instance, if a victim also serves as a witness in a particular case, they are assigned a witness pseudonym, and their identity will be shared with the prosecution and defence. A risk assessment is usually conducted by the Victims and Witnesses Section or VWS, an entity within the Registry,<sup>62</sup> which is then reviewed by the judges of the Pre-Trial and Trial Chamber, to ensure that this can be done safely and to determine whether protective measures are necessary. Importantly, if a victim applicant has an acute security concern as a result of engaging with the ICC, they should immediately contact their legal representative or the VPRS through email ([VPRS.information@icc-cpi.int](mailto:VPRS.information@icc-cpi.int)).
67. Because cases typically involve large numbers of victims, the judges of the Pre-Trial Chamber or Trial Chamber will usually organise "common legal representation", so that victims are all represented together in one large group (or sometimes two or three groups, if there is a conflict of interest among the participating victims). The usual process is that the Chamber first requests the VPRS to consult with victims and submit a report with recommendations on how legal representation could be organised for all participating victims. The Chamber will then rule on whether the victims can all be represented together

---

<sup>61</sup> As regards the submission of a participation form, victims' legal representatives may submit powers of attorney to the VPRS, enabling them to complete and submit the application form on behalf of their clients. However, no clear formal procedures exist.

<sup>62</sup> For more on the Victims and Witnesses Section, see *below* "Question 8(d) – Who at the ICC engages with victims and witnesses?".

in one group, and which lawyer will continue to represent them. At this stage, victims must accept the legal representation assigned by the Chamber: they do not have the possibility to appeal, or to appoint a different lawyer.

68. Once victims have been recognised and victims' legal representation has been organised, victims participate through their legal representative, by presenting views on charges, attending hearings, making opening and closing statements, submitting written observations on issues affecting their interests, asking questions to witnesses or the accused, challenging the relevance or admissibility of evidence, and presenting witnesses and other evidence on matters impacting the victims' interests. Victims' participation is key to understanding the effects of the crimes on their lives and communities, which is relevant both for assessing the responsibility of the accused and for determining reparations. At trial, some participating victims may also appear in person, by giving oral testimony, but usually this will only be the case for a relatively small number of victims.
69. Accordingly, once an arrest warrant is issued (or a summons to appear) and an individual has been arrested and brought before the Court (or agreed to appear) in the Situation in Lithuania/Belarus, individuals who wish to be recognised as victims in that specific case can submit an application form to participate in the proceedings. It is important to note that victims of a particular case are those who suffered as a result of the particular crimes with which the suspect or accused is charged.

#### *Reparations stage*

70. If an accused person is convicted by the ICC, they may be ordered to provide reparations to the victims for the harm they have suffered as a result of the crimes for which the person was convicted. When the convicted person has insufficient financial means, funding may be provided by the Trust Fund for Victims (TFV) which may request contributions from States or other donors. However, the TFV can only provide financial support where collective reparations are ordered by the judges and is constrained by limited financial resources. Victims can apply for reparations using the Court's forms, either alongside their application to participate in proceedings or separately during the reparations stage, including if they did not participate in the trial. Early participation allows victims to express their views and concerns regarding the types and overall amount of reparations to be awarded.
71. The judges of the Trial Chamber may review victims' applications and supporting documents to decide on eligibility, or review a representative sample, with the remaining applications assessed by the VPRS. Victims may challenge negative decisions before the Trial Chamber.
72. Reparations can take the form of collective services, such as healthcare, educational, and support projects for affected communities – or symbolic measures – such as a monetary sum intended to recognise the harm – along with other measures to repair the harm suffered.
73. Another important limitation on the scope of reparations is that they are only ordered within a case, and in respect of a specific conviction. Reparations are ordered only for those victims who suffered harm as a result of the crimes which are part of that conviction.
74. Some limited help for other victims can be made available by the TFV as part of its "assistance mandate". In this mandate, the TFV can establish programs in situation

countries for the benefit of victims, regardless of whether they participate in proceedings, and whether they fall within the scope case that is proceeding before the Court. However, this mandate also has some important limitations: it requires judicial authorisation and has not been activated in all situations. Moreover, it is constrained by the TFV's resource limitations.

#### *Other interactions with the OTP/ ICC*

75. Beyond participation in court proceedings, victims can also provide information to the Court in other ways. In particular, victims may submit information relevant to alleged crimes to assist the OTP in its investigations. These submissions also known as [article 15 communications](#) can be made through the [OTP's dedicated portal](#) or be sent by post.<sup>63</sup>
76. As already indicated, anyone wishing to share information with the OTP is encouraged to first seek guidance from someone with ICC knowledge and experience, such as CSOs, a community leader, or a lawyer.

#### **Question 8(d) – Who at the ICC engages with victims and witnesses?**

77. Several entities within the Court engage with victims and witnesses, each with their own mandate.

#### *The Victims Participation and Reparations Section (VPRS)*

78. The VPRS [informs](#) victims of their rights relating to participation and reparations (rules 16, 89-97 of the Rules), helps them submit [applications](#) to participate in court proceedings and to request reparations, and assists with the organisation of legal representation. The VPRS also reports to the Chambers as required on any matters relating to victim participation and/or reparations. The VPRS is a neutral unit of the Court. It can provide information to victims, but it cannot represent them or provide them with legal advice.

#### *The Public Information and Outreach Section (PIOS)*

79. The PIOS conducts [outreach activities](#) aimed at informing the public about the Court's work and its ongoing investigations and proceedings. Outreach activities can be for the benefit of all persons with an interest in learning about the Court, but priority is given to outreach for communities affected by the crimes which are under investigation. This includes, but is not limited to, victims. The PIOS uses various channels to communicate with affected communities, including the Court's website, written publications, videos, and social media. The PIOS further engages with specific groups such as academia, civil society, and the media to provide information and promote awareness about the judicial process.

#### *The Office of Public Counsel for Victims (OPCV)*

80. The OPCV works independently from the Registry and provides support and assistance to the external lawyers appointed to represent victims, also known as legal representatives of victims or LRVs, including legal research and advice. It may also intervene during

proceedings on broader issues affecting victims in general and can be appointed to represent victims in proceedings, in particular unrepresented victims.

#### *The Victims and Witnesses Section (VWS)*

81. The VWS is responsible for advising on and helping to ensure the well-being of witnesses (including dual status victims/witnesses), as well as family members who are at risk as a result of their testimony, for example because of threats of intimidation or retaliation. Typically, the party calling the witness applies to the judges for protective measures vis-à-vis the public (or the defence). The VWS discusses security concerns with the witnesses and makes an assessment whether protective measures are required before, during, or, after the testimony. It evaluates both security and vulnerability factors (age, health, psychological state, gender-based considerations).
82. Protective measures can include in-court measures during hearings, such as the use of pseudonyms, face or voice distortion technology, video-link testimony, closed sessions,<sup>64</sup> or delayed disclosure of a witness's identity, as well as security arrangements at the witness's place of residence or during travel to the Court, depending on the risk assessment conducted by the VWS. Relocation, either within the country of residence or abroad, is considered only as a last resort due to the significant burden it places on witnesses and their families. Implementation of protective measures may require cooperation with States.
83. The VWS also provides psychosocial care to witnesses assessed as vulnerable, including counselling, emotional support, and guidance to help them cope with the stress of testifying, and recommending measures to help them testify effectively.
84. It further provides administrative and logistical support to enable witnesses to go to the Court and testify in person (safe travel arrangements, accommodation, and coordination with local authorities if needed).
85. While the VWS is not limited to work with witnesses, it primarily focuses on those giving testimony. It may also advise victims on confidentiality and safeguards to ensure their safety and well-being during Court proceedings, however protective or support measures for non-testifying victims are extremely rare.

#### *The Trust Fund for Victims (TFV)*

86. The TFV – a separate entity from the ICC – has a two-fold mandate: (i) to implement ICC-ordered reparations and (ii) to provide physical, psychological, and material support to victims and their families (assistance mandate).
87. During the investigation stage, the TFV focuses on its assistance mandate by developing with partners support projects for victims in the countries under investigation. While the TFV may review the needs of victims in the Situation in Lithuania/Belarus following the opening of the investigation, it remains unclear whether it would initiate an assistance programme at this stage, given its limited funding.

---

<sup>64</sup> Hearings at the Court are, in principle, public. However, the Court may go into closed session when discussing confidential matters or to protect the safety and privacy of witnesses or victims. This means that people attending in the courtroom gallery cannot hear or see the hearing, as blinds are lowered and the sound is cut, and any related measures are also applied to the delayed online live feed to ensure confidentiality and protection.

*The Office of the Prosecutor (OTP)*

88. As discussed above, the OTP will also have contact with some victims during its investigation and at trial: it is usually interested in speaking with victims who have information about the crimes experienced. The OTP usually does not coordinate with the VPRS, the PIOS or the TFV about which victims it is contacting, but it should contact victims through their legal representative (including the OPCV) where they are represented. The OTP also carries out some of its own public information and outreach concerning its investigations, and this is also separate from outreach work undertaken by PIOS.

**Question 8(e) – What does it mean in practice for victims in the Situation in Lithuania/Belarus?**

89. Following the opening of the investigation in the Situation in Lithuania/Belarus, the Registry may begin conducting some outreach to inform victims and other interested persons about the ICC. As indicated above, the Registry uses various channels to communicate with affected communities,<sup>65</sup> however, at early stages of proceedings, the Registry's limited resources may limit the scope of this outreach.
90. In parallel, the OTP may carry out its own outreach activities, to inform victims and communities in general terms about its work. However, it is unlikely to disclose specifics regarding the focus of its investigation.
91. Victims can communicate with the Court in a number of ways. First, any individual, group or State can send information to the OTP regarding any alleged crimes in the Situation in Lithuania/Belarus falling under the jurisdiction of the Court. Persons with such information, including victims and the affected communities of the situation, can communicate to the OTP any relevant information for the purposes of the investigation, typically referred to as [article 15 communications](#), on the [OTP's dedicated portal](#).
92. Second, victims, namely those who have suffered harm as a result of transboundary crimes committed since 1 May 2020, i.e. the crime against humanity of deportation or persecution by means of deportation to Lithuania, may also choose to seek participation in any potential proceedings in the situation. Those include direct and indirect victims.<sup>66</sup> Direct victims are those who have been deported from Belarus to Lithuania, including through coercive acts such as arbitrary arrests and detention, physical and psychological ill-treatment, threats, intimidation, harassment, and any measures aimed at suppressing dissent. Indirect victims are those who have suffered harm as a result of that deportation, including family members or others with a close personal relationship to the direct victim, provided a sufficient causal link to the harm can be established.
93. The VPRS can help with organising legal representation, meaning to provide information as regards potential legal representatives admitted on the ICC's list of qualified counsel or legal aid.<sup>67</sup>

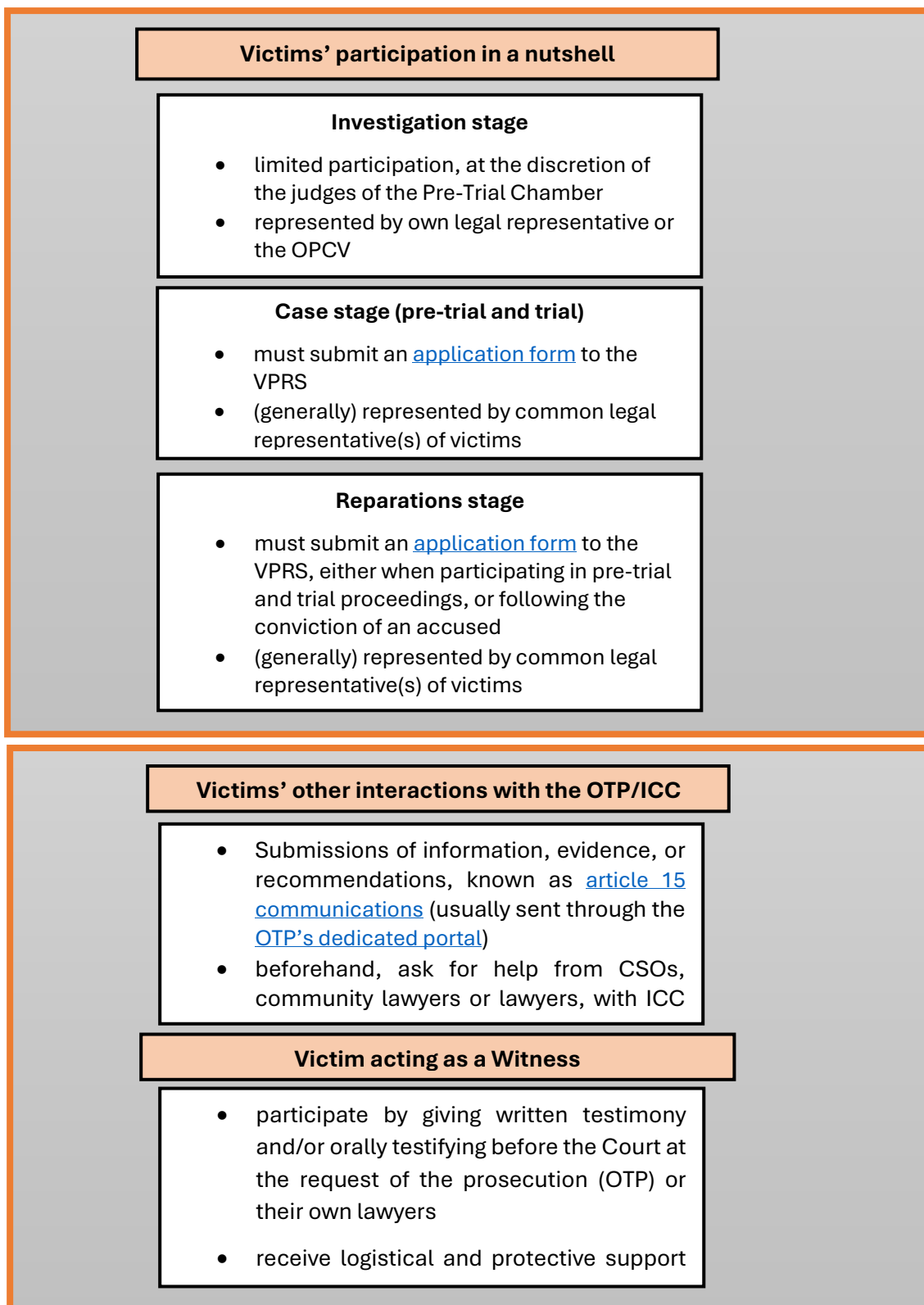
---

<sup>65</sup> See above para. 79.

<sup>66</sup> See above para. 48.

<sup>67</sup> See above para. 57.

94. Anyone wishing to participate in proceedings or share information with the OTP is encouraged to first seek guidance from those with ICC knowledge and experience, such as CSOs, community leaders, or a lawyers.
95. Importantly, if a victim applicant has an acute security concern as a result of engaging with the ICC, they should immediately contact their legal representative or the VPRS. The VPRS can be contacted directly at: [vprs.information@icc-cpi.int](mailto:vprs.information@icc-cpi.int).



## Question 9 – Who can be a witness, and how does it work?

96. Witnesses include those who experienced the crimes (victims), those who saw the crimes (eyewitnesses), experts, and other individuals with relevant knowledge of the alleged crimes under the Court’s jurisdiction (including so-called ‘insider witnesses’<sup>68</sup>). Witnesses can provide written or oral testimony that supports the cases of the prosecution or the defence. Victims’ legal representatives may also call witnesses to advance victims’ interests, as authorised by the Trial Chamber (and usually with the proviso that the evidence does not duplicate material already presented by the OTP). Judges of the Trial Chamber can also call witnesses (article 69(3) of the Rome Statute) although this is rarely done in practice.
97. At the investigation stage, the OTP can reach out to individuals, including victims, to interview them, and later on, request their appearance as witnesses in its case. Participation in interviews at the investigation stage is voluntary, but individuals may later be required to appear before the Court, if formally summoned. A summons to appear as a witness must be justified by specific reasons tied to the Court’s mandate to investigate and prosecute serious international crimes. This can happen, for example, when someone refuses to appear voluntarily, but possesses evidence critical to the case, or when their testimony is necessary to establish facts that cannot be obtained through other means. In practice, summons to appear are exceptional and usually issued to insider witnesses who possess evidence linking the suspect to the crimes, and who no longer want to testify voluntarily. The OTP may also request that the judges of the Pre-Trial Chamber hear a witness’s testimony before the trial if it is likely that the testimony will not be available later, such as due to health reasons (article 56 of the Rome Statute).
98. At the trial stage, certain witnesses will be asked by the prosecution, defence or legal representative of the victims to appear in court and testify directly before the judges. This means that they will provide their statements orally in real-time, under oath, and may be cross-examined by the non-calling party (article 69 of the Rome Statute). In certain instances, testimony may be recorded in advance (article 56 of the Rome Statute). For others, their testimony will be submitted in writing (rule 68 of the Rules).
99. If a victim becomes a witness for the OTP in a particular case, they assume “dual status”, which means that they are both a participating victim (represented by a legal representative) and a witness (who gives testimonial evidence orally or via submitted statements).
100. The OTP determines which individuals have the most relevant information for what needs to be proved as part of the OTP case, such as establishing the crime or the involvement of specific suspects. Other victims may be called to testify by the victims’ legal representatives. Usually, the number of witnesses is far smaller than the number of participating victims in an ICC case. The great majority of participating victims will usually not testify as witnesses.

---

<sup>68</sup> *Insider witnesses* are individuals who have direct access to information about the crimes or the perpetrators, usually because of their position, role, or proximity to the events or the suspect. They are called “insiders” because they are not just peripheral observers, but have knowledge that only someone closely connected to the situation could possess. They are often members of the same state agency or armed group as the suspect or accused, and may give evidence on the role of the accused and/or the way that the organization functioned.

101. Individuals who become witnesses in a particular case are assigned a witness pseudonym to protect their identity in public court filings and other documents prior to their testimony (rule 87 of the Rules). Their identity is, however, disclosed to the prosecution, defence (sometimes with a delay) and the legal representative of victims. The Court is responsible for ensuring the safety, physical and psychological well-being, dignity and privacy of victims and witnesses (article 68(1) of the Rome Statute). In this respect, upon a request from the prosecution (OTP), the defence (the defence counsel and the legal team representing the accused), the legal representative of victims, the Pre-trial or Trial Chamber can order protective measures where witnesses and dual status individuals (victims/witnesses) are deemed at risk as a result of security threats or are otherwise vulnerable (rule 87 of the Rules). Where no such risks are identified and no protective measures are requested or ordered, a witness may testify publicly with their identity disclosed in open court.
102. A special section within the Registry, the Victims and Witnesses Section - the VWS - is responsible for advising and implementing such measures. Typically, the VWS conducts risk assessments to evaluate the circumstances of the individuals concerned and, on that basis, recommends measures to mitigate any identified risks for approval by the judges. For instance, disclosure of a witness's identity to the defence may be delayed until a specific period before the witness appears in Court to testify. The VWS also provides logistical support to enable witnesses to appear and testify before the Court as well as psychosocial care to witnesses assessed as vulnerable.<sup>69</sup>
103. This means that certain individuals interviewed by CSOs, including by the IAPB (whether or not they participate as victims) may be requested for an interview by the OTP, and may later be called to testify as witnesses in a particular case. If the OTP requests information from the IAPB, only details or information for which informed consent has been obtained from the individual in question will be shared.

### **Question 10 – What risks arise in the context of the opening of the OTP's investigation?**

104. The opening of the investigation can increase political pressure, security risks for both documenters, witnesses, and victims, including the risk of digital surveillance. As a result, security protocols need to be strictly adhered to and be consistently reviewed and updated.
105. There may also be heightened media attention. While it can help raise awareness, it can also create risks, including exposure of sensitive information, increased pressure on victims and witnesses, and potential misrepresentation of the investigation. All communications – including on social media – should be carefully controlled, identities of victims and witnesses protected, and clear guidelines provided to journalists and staff to prevent exposure or misrepresentation.
106. An ICC process can take many years, or even decades. Decisions to release information to the public, or to take steps that might risk public release, need to bear this in mind. Risks may increase once a case is at trial, even if that occurs years into the future.

---

<sup>69</sup> For further information on the VWS and protective measures, see *below* “The Victims and Witnesses Section (VWS)”.

## Question 11 – Beyond the OTP’s investigation in the Situation in Lithuania/Belarus, what else can CSOs do?

107. CSOs could submit new [article 15 communications](#) (through the [OTP’s dedicated portal](#)) regarding transboundary crimes allegedly committed, in part, in the territory of other States Parties to the Rome Statute. However, if State Parties other than Lithuania were to issue separate referrals to the ICC advancing the argument that elements of the alleged crimes were committed, at least in part, on their territory, this would have more weight in supporting an expansion of the geographic scope of the investigation.
108. Importantly, since the OTP’s investigation addresses only part of the broader pattern of crimes allegedly committed in Belarus, CSOs, including the IAPB, will continue advocating for additional accountability avenues to be pursued. This includes investigations at national level through universal or extraterritorial jurisdiction, as well as other international mechanisms such as through the Group of Independent Experts on the Situation of Human Rights in Belarus, the Organisation for Security and Cooperation in Europe (OSCE) Moscow Mechanism and a potential complaint before the International Court of Justice under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>70</sup>
109. CSOs, including the IAPB, can continue documenting crimes, monitor ongoing violations, preserve information, and identify emerging patterns of crimes. In this context, potential witnesses who wish to share their experience, may reach out to CSOs, including the IAPB (ideally through the Belarusian co-lead organisations Viasna and International Committee for the Investigation of Torture in Belarus), to provide testimonies and supporting documentation. These organisations should also refer individuals who provide their statements to appropriate mental health and psychosocial support services, as needed.

---

<sup>70</sup> See [IAPB Paths to Accountability](#). OHCHR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984 by UN General Assembly resolution 39/46.