Why a new bulletin?

This bulletin was created within the context of the activities of the “Victims’ Rights Working Group”, an informal network of non-governmental organisations working to promote the rights and needs of victims at the International Criminal Court.

It aims to facilitate the sharing of information and communication between victims and their representatives, the International Criminal Court, non-governmental organisations, and others interested in international criminal justice.

By providing a dedicated space to take into account victims’ rights, needs and interests, the bulletin will help victims and those who work with them to access clear and reliable information about the Court, and will provide a forum for victims to express their concerns.

The bulletin will be published every four months, in five languages (Arabic, English, French, Russian, Spanish). It is available on paper as well as on the web, at the following address: http://www.vrwg.org.

Please contact us to get on our mailing list or with any comment or suggestions: this is just a first issue, and it will evolve to fit your needs! [See address information on back cover]

Clémentine Olivier
REDRESS

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“If we never look at the reactions of victims, how can we discover whether suffering is alleviated, expenses or losses recompensed, moral status restored, or cooperation with the justice system increased?”
J. Shapland. 1984
1) **What is the role of the Deputy Prosecutor in charge of investigations at the International Criminal Court?**

The Deputy Prosecutor in charge of investigations plays an important role in the Prosecutor’s primary statutory obligation: to establish the truth and to investigate all sides of the matter. This duty of objectivity requires the Prosecutor to be an impartial actor to better defend the interests of the international community in the search for the truth. The investigation is therefore not directed *a priori* against any particular individual but must instead allow for an objective analysis of the situation in its entirety in order to identify the persons that bear the greatest responsibility for the crimes. I believe - without a doubt - that this is a fundamental obligation of the Deputy Prosecutor in charge of investigations, in the exercise of his daily functions: this duty of impartiality and objectivity is necessary for the authority of this new institution.

In order to carry out investigations, I shall have at my disposal a multidisciplinary team composed of analysts and investigators with a variety of backgrounds. For each situation, a specific team of investigators and analysts with an understanding of the situation and the most commonly used local language is established. This team works in The Hague (The Netherlands) and in the field during missions undertaken to collect evidence. This team will assist the team in charge of prosecutions once the matter is presented to the Pre-Trial Chamber and then the Trial Chamber.

2) **What principles will you employ to guard against placing victims in physical or psychological danger?**

Victims are a constant concern for the Office of the Prosecutor in general and the Investigations Division which I manage, in particular. A team of experts has been especially established to deal with particularly vulnerable victims, such as victims of sexual violence and children. This team will be in charge of advising the investigative teams on the manner of addressing these especially vulnerable victims and how to record their statements in a manner that avoids re-traumatisation. We carefully evaluate the need for contacts with witnesses and victims as well as the possibility to have those contacts in ways that don’t expose them. Finally, if necessary a limited number of supplementary protective measures of various natures can be taken. In order to avoid the risk of reprisals, I shall severely restrict the number of victims that the investigative teams will contact.

3) **Regarding the investigations, what are the specificities of the situation in Democratic Republic of Congo, that differs from other situations such as Rwanda or the former Yugoslavia?**

The Democratic Republic of Congo is a very large country (equivalent to the entire territory of the European Union) and each region has its own unique features in respect of the conduct of investigations. The lack of infrastructure in certain regions may inhibit the easy access of investigators and the United Nations is present in only limited parts of the territory.

4) **How long will investigations take? When do you think the first matter will be tried before the International Criminal Court?**

It is hard to predict how long investigations will take given that the International Criminal Court depends in large part on the cooperation of states and international organisations such as the United Nations. Our goal is to proceed with targeted investigations and to focus our efforts on those who bear the greatest responsibility; for the others, we wish to encourage national authorities to proceed themselves with investigations. Without being able to commit myself, but being a natural optimist, I hope that the first proceedings will take place next year.
The first event on the International Criminal Court (ICC) involving victims of serious human rights violations in the Asian region, their representatives, advocates and lawyers was held in a two-day seminar in Quezon City, Philippines. It was organised by the Coalition for the International Criminal Court (CICC), the Asia Forum for Human Rights and Development (Forum Asia), the Asian Federation Against Disappearances (AFAD), and hosted locally by the Philippine Coalition for the International Criminal Court (PCICC).

The seminar aimed to introduce the International Criminal Court to its most obvious stakeholders: the victims of serious crimes currently coming within the remit of the Statute; genocide, crimes against humanity and war crimes. Twenty six participants from Afghanistan, Bangladesh, Burma, East Timor, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka and Thailand, representing victims’ groups and organisations in these countries, attended the seminar. Experts from Amnesty International, REDRESS and the International Committee of the Red Cross also participated in the seminar.

The Honourable Judge Erkki Kourula of the International Criminal Court joined the seminar and discussed the Statute of the Court, in particular the provisions dealing with the protection, assistance, and participation of victims and witnesses. Judge Erkki Kourula presented four issues: the development of the Court itself; the Jurisdiction of the Court (that is what kind of crimes may be prosecuted); victims’ rights and the standards provided in the Statute of the Court; and he emphasised the need for ratification and implementation of the Statute. It is indeed important to work for a greater number of ratifications, especially in under-represented regions such as Asia. He also stressed that victims will be able to participate at all stages of the Court’s proceedings as considered appropriate. This will be accomplished in a manner that is not prejudicial or inconsistent with the rights of the accused, and respects the right to a fair and impartial trial.

His Excellency Teofisto Guingona Jr., Vice President of the Republic of the Philippines also presented a keynote address. The Vice President assured the participants of his highest regards to their efforts at ending impunity worldwide. He committed to raise victims’ interests in all his endeavours by working with governments toward eventual ratification of the Rome Statute, creating a truly universal International Criminal Court.

* Niza Concepcion is the coordinator of Forum Asia’s Project to strengthen support for the International Criminal Court in Asia. Forum Asia is a regional network of human rights organizations in nineteen Asian countries.
The role of the Victims Trust Fund
by Carla Ferstman, REDRESS

The Victims Trust Fund was established by the Assembly of States Parties to complement the work of the International Criminal Court in bringing justice and reparation to victims. It will help to concretise the Court’s jurisdiction. The Trust Fund will serve as a useful vehicle to implement the Court’s reparations awards and its capacity to receive voluntary contributions from a range of sources will provide the Fund with the means to further assist victims in need.

The Board of Directors of the Victims Trust Fund was elected by the Assembly of States Parties at its second session in September 2003. The Board held its inaugural meeting in The Hague in April 2004, where a range of policy and operational issues were discussed. In particular, the Board was confronted with the immense challenge of trying to determine how it will take decisions on the use of its limited resources. For example: What factors should be taken into account in deciding how to allocate resources? How will it determine who may benefit from its resources?

The Board of Directors will present its conclusions and recommendations to the Assembly of States Parties in September. This follows on from the Assembly’s initial resolution, in which it requested the Board of Directors to develop suggestions for further management criteria for consideration and adoption by the Assembly of States Parties. It is expected that the Board’s recommendations will include criteria for the receipt of voluntary contributions. This will be vital as it will pave the way for efforts to begin in earnest to raise much needed funds. The Board’s report is also likely to include recommendations on its management structure – e.g., how often it will convene meetings, how decisions are to be taken, and how it proposes to interact with the Registry and other organs of the Court, as well as recommendations on the procedures it would employ to implement the Court’s reparations orders and on the criteria it would apply to the usage of voluntary contributions.

Other States regional group on the Board of Directors of the Trust Fund for Victims of the International Criminal Court. Madame Minister Simone Veil from France was elected to serve as the representative from Western Europe and Other States regional group on the Board of Directors of the Trust Fund for Victims of the International Criminal Court. Madame Veil was elected as first President of the European Parliament by universal suffrage in 1979 and has served as President of the Judicial Commission for the European Parliament. In France, she has held prominent positions with the Ministries of Health and Social Security. She was appointed as State Minister, Minister of Social Affairs, Health and Urban Affairs in 1993. As an Auschwitz survivor, she is currently President of the Foundation for the Memory of the Shoah and she has been a Member of the French Constitutional Council since 1998. She is widely recognised as a defendant and campaigner of human rights and particularly of women’s rights and has received honours from governments and organisations in Europe, Africa and the Americas.

His Excellency Dr. Oscar Arias Sánchez from Costa Rica was elected to serve as the representative of the Latin American and Caribbean Region on the Board of Directors of the Trust Fund for Victims of the International Criminal Court. Despite the fact that he has closely been involved in the work, he could unfortunately not attend the meetings of this week in person due to the fact that his presence was urgently required in his home country Costa Rica. Dr. Arias Sánchez won the Nobel Peace Prize for his efforts to end the cycle of violence in Central America. He earned a doctorate in political science at the University of Essex and, following the adoption of what is widely known as the “Arias Peace Plan,” earned some fifty honorary doctorate degrees. He is the author of several books about peace and politics, and founded the Foundation for Peace and Human Progress with the monetary award from the Nobel Prize.

His Excellency Mr. Tadeusz Mazowiecki from Poland was elected to serve as the representative from Eastern Europe on the Board of Directors of the Trust Fund for Victims of the International Criminal Court. He was one of the founders of the Solidarity Movement and served as the first Prime Minister of Poland in the post-communist era. He was the founder and the chairperson of The Democratic Union which later became the Union for Freedom. He has served in various positions in the Polish Parliament, including member of the Parliamentary Constitutional Committee, member of the Parliamentary Defence Committee, and Chairman of the EU-Poland Joint Parliamentary Committee. In the international arena he has served as a UN Special Rapporteur on the Situation of Human Rights for the Former Yugoslavia. At present he is the Chairman of the Polish Robert Schuman Foundation. His Excellency has received several prizes and honorary doctorates in recognition to his activities in the field of human rights.
All the organs of the International Criminal Court ("ICC") share a mandate with respect to victims. According to Article 68 of the Rome Statute of the ICC, "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses." Beyond these considerations, however, victims before the ICC have an additional role. Victims will not only serve as witnesses to a prosecution, they will also be able to participate in the proceedings of the Court and to seek reparation.

Victims before the ICC will normally be individual persons, but under certain circumstances they may be organizations or institutions, who suffer harm as a result of crimes within the jurisdiction of the Court. Whether persons, organizations or institutions are considered as victims for the purposes of participation will be determined based upon applications they provide to the Court. It will be up to the relevant Chamber to determine whether an applicant is in fact a victim as defined by the Court.

At certain points in the proceedings, the Statute gives victims a right to make representations. Victims will also be able to participate in stages of the Court's proceedings determined by the Court, in a manner which is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial. In most circumstances, victims' participation will take place through a legal representative. The ICC may provide financial assistance to assist victims in securing this representation. Where there is a large number of victims in a particular case, the Court may order that common legal representatives speak on behalf of groups of victims.

Participation before the Court may occur at various stages and take diverse forms. For instance, a victim may submit observations to the Court where the admissibility of the case is challenged; provide observations upon the Prosecutor's request for the authorization of the Pre-Trial Chamber to initiate an investigation; provide observations where the Prosecutor decides not to investigate or prosecute following a State referral; provide observations where the Pre-Trial Chamber confirms the charges being brought against an accused; participate in the trial and question witnesses, the accused and experts; appeal against an order for reparations; present views and concerns where the victim's personal interests are affected; and/or ask the Court to take special gender-sensitive measures.

The ICC's Victims' Participation and Reparations Section ("VPRS"), within the Registry, facilitates the ability of victims to participate in Court proceedings. Among other responsibilities, the VPRS is tasked with outreach to victims regarding the possibility of participating in the process; soliciting their applications for participation through the provision of standard application forms; and providing notification to victims as the case proceeds.

The Rome Statute's victim-based provisions are a strong complement to efforts undertaken by the ICC to bring perpetrators to justice, allowing victims to have their voices heard and to obtain some form of reparation for their suffering. This balance between retributive and restorative justice provides the ICC with the potential to affect the future of war-torn societies by addressing not just the cause of crime but its outcomes.
The Statute of the International Criminal Court and its rules recognise the potential impact of the Court’s procedures on victims. They set out a number of key protections against re-traumatisation and actively require that the Court establish programmes of protection and support. At the same time, the Court’s procedures allow for an active role for victims, more so than any other international criminal tribunals. In this respect, the procedures of the Court are designed firstly, to guard against re-victimisation and secondly, to facilitate victims’ active participation so that they feel a part of a process that directly affects their interests.

The Court’s positive treatment of, and involvement with, victims is indispensable for its constructive engagement of victims in the Court’s processes. It is therefore crucial that judges, court officials, investigators and others coming into contact with victims appreciate fully the psychological impact of traumatic events and their aftermath, and interact with victims with due understanding, patience and sensitivity.

Helplessness, isolation and loss are core experiences of the psychological trauma caused by serious international crimes such as genocide, crimes against humanity and war crimes. These massive traumata and losses necessarily impact upon the victims’ identity and sense of self. Factors that may impede the recovery process include continued exposure to further trauma such as in situations of civil or political unrest; and a conspiracy of silence between society and survivors that society often imposes following victimisation. An example of societal attitudes and responses to victims’ accounts of their experiences that contributes to the conspiracy of silence is blaming the victims for their victimisation and creating myths, for example, that they had actively or passively participated in their own tragic destiny. Not acknowledging the ‘wrong’ is another compounding factor. Victims find it considerably more difficult to begin the healing process when the responsible individuals are not or cannot be identified and punished for their crimes.

The Role of the Court in Victims’ Recovery

The International Criminal Court has the potential to play a vital role in victims’ recovery, as well as in the healing of their families, societies and nations.

The ability to testify in a criminal trial may in and of itself contribute to breaking the conspiracy of silence and its detrimental effects by re-establishing the victim’s value, power and dignity, and relieving his or her stigmatisation and separation from society. The criminal process can have the important effect of validating for the victim that what was done to them was wrong and is unacceptable to the international community. On an individual level, acknowledgement at least begins to heal psychic wounds. Its psychological importance is in that it vindicates the victim by, inter alia, signifying the transfer of the responsibility to the wrongdoers. The victim is no longer the lone bearer of the awful knowledge, and the pain is shared as well. Further, the ability to participate actively in the proceedings, as is provided for in the Court’s procedures, may assist victims to take back control of their lives and to ensure that their voices are heard, respected, and understood.

The possibility of receiving an award of restitution, compensation and/or rehabilitation may provide both tangible and symbolic relief to victims seeking to move forward with their lives. In itself, it is an element of the international community’s acknowledgement of the victim’s losses and trauma, and of its solidarity with the victim. Rehabilitation may also serve a preventive function in that healing may avert the life-long and intergenerational effects so common with these massive traumata, as well as break the potential generational and intergenerational cycles of violence.

But, just as the process may be positive, it is equally possible that Court processes will produce harmful or negative reactions in victims. Victims may feel re-victimised by brute or insensitive interrogations and unchecked cross-examinations. They may feel alienated by a process which has not been properly explained to them and mistrustful of even the most well-intentioned officials, and disillusioned by lengthy procedures which are not fully understood. The Court must do all it can to guard against such negative eventualities.

"Justice is also in the process, not only in the outcome."
Judge Albie Sacks of South Africa

1. **Mr. Kambale Mbaye**, you are a member of the Association of Victims of the War in Ituri (Association des Victimes de la Guerre de l’Ituri, AVIGUITURI), in the Democratic Republic of Congo. What expectations do you have following the establishment of the International Criminal Court?

The creation of the International Criminal Court comes, for the Democratic Republic of Congo (DRC), after the Mobutu dictatorship and in the fervour of recurring wars since 1996. The establishment of the Court and its commitment to impartial justice instils, for Congolese people, a sense of hope that we will regain our dignity and that our wounds will be healed. We view the International Criminal Court as an instrument that can promote national and regional peace.

The atmosphere in the region is characterised by tension and uncertainty. The transitional period arising out of the Accord signed at Sun City (South Africa) on 4 April 2003 (l’Accord Global et Inclusif) set out to end the crisis of confidence. But, the armed engagement of neighbouring countries in the Congolese conflict makes the situation even more fragile. For example, as was signalled in the expert report of the United Nations, the Rwandan army had a role in the dramatic events in Bukavu of June 2004. (See in particular, the United Nations press communiqué on the Security Council’s study of this report, No. CS/2718 of 27 July 2004). These events seriously threatened the efficacy of the transitional period. The Secretary-General of the United Nations, Kofi Annan’s address to the intergovernmental conference on democracy, human rights and the role of the International Criminal Court in Sana’a (Yemen) from 10 to 12 January 2004 were very fitting in this regard. He noted that: “justice and accountability are essential for the rule of law to be upheld in democratic societies. At the international level, the creation of the International Criminal Court was an historic advance in efforts to support justice and prevent impunity.”

Congolese political leaders had developed the unfortunate habit of using human rights violations when assuming their functions and in aligning themselves with armed movements or countries engaged in the conflict.

From now on, they, together with their superiors, whatever their nationality, will answer for their actions in accordance with the Rome Statute. From now on, they will have to use solely democratic paths to take power.

2. **The Prosecutor of the International Criminal Court announced that he will begin to formally investigate the worst crimes committed in Congo since 2002 (from the date that the Court came into existence). What is the implication of this announcement on victims living in the areas concerned?**

The decision of the Prosecutor Luis Moreno Ocampo to open the first investigation in the Democratic Republic of Congo is an acknowledgement of the very seriousness of the massive and systematic violations of human rights that have taken place over the past years with complete impunity. The Special Representative of the Secretary-General of the United Nations in DRC, Mr. William Swing, has recently declared that more than 3,500,000 persons are victims of the recurring wars in the region.

The credibility of the International Criminal Court will depend on its capacity to investigate, in full independence, the rash of crimes perpetrated in DRC since 1 July 2002. In respect of the area covered by the Association of Victims of the War in Ituri, the following acts deserve special mention:

1. Acts of cannibalism, ethnic persecutions, summary executions, rape and other offences against dignity, mutilations, torture, forced labour, disappearances and pillage perpetrated in Ituri in the following areas: Mambasa (and the Mambasa-Makumu annex), Komanda, Difou, Nyakunde, Ngomata, Epulu, Nduye, Byakato, Holu, Lualu, Babimbila, Irumu, Eringeti, Bunia and Isiro;

2. War crimes and crimes against humanity perpetrated mainly in June and July 2003 in North Kivu, in the areas of Biambwe, Mabo ya, Mabalako, Butuhe, Buyanga, Mambabi, Muhangi, Luotu, Musyenene, Lukanga, Lubero, Mambasa, Ndoluma, Bikara, Alimbongo, Mbingi, Mohanga, Bunyatenge, Kirumba, Kayna, Kasando, Kanyabayonga, Miriki and Luofu. We have also noted the systematic pillage of cattle farms;

3. The serious crimes perpetrated in June 2004 in the province of South Kivu, particularly in Bukavu.

The victims of these acts would like to see the Prosecutor conduct a full investigation with a view to prosecution, having regard to the information provided to him by various sources. Further, we expect the Court to take appropriate measures of security to enable efficient cooperation, so that the truth may be established. Concerning the serious crimes committed in Ituri, we hope that the Prosecutor will make use of the conclusions of the two investigations diligently conducted by the United Nations Mission in Congo (MONUC) and the Office of the High Commissioner for Human Rights.
The International Criminal Court is not a new concept. There have been several attempts to create such a tribunal throughout the twentieth century. The need for such a Court is felt all the more with the images of hundreds of thousands of deaths and injured victims. Yet, the question must be asked: What is the purpose of a court that cannot bring back the dead? What can the International Criminal Court offer to victims of the most heinous crimes, so serious that they offend the entire international community?

Some of the objectives of the International Criminal Court may be summarised as follows:\footnote{Please note, this summary of objectives is the perspective of the author on the basis of the Rome Statute and is not meant to attribute views to others.}

\begin{itemize}
  \item According to the Court’s “complementarity” principle, to encourage States to carry out genuine investigations into the most serious crimes in international law and where sufficient evidence exists, to prosecute those responsible;
  \item To help ensure that such crimes do not go unpunished even where States are unwilling or unable to bring those responsible to justice;
  \item To help end impunity for such crimes and in this way to contribute to deterrence;
  \item To help to deter revisionism by establishing an objective record of the events;
  \item To help make it possible for present and next generations to remember and commemorate painful events that impact upon their shared history;
  \item To foster greater stability and security by allowing for the arrest of those responsible for the most heinous crimes;
  \item To help bring some solace to the victims and restore their dignity by acknowledging their suffering.
\end{itemize}

These are ambitious objectives, requiring considerable time, energy and resources. Yet, already, thanks to the establishment of the permanent International Criminal Court based in The Hague, these goals may be realised in practice.

\footnote{1 Please note, this summary of objectives is the perspective of the author on the basis of the Rome Statute and is not meant to attribute views to others.}

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**The 3rd session of the Assembly of States Parties to the Rome Statute - The Hague, 6-10 Sept. 2004.**

- **What is the Assembly of States Parties?**

The meeting will bring together all 94 States that have ratified the Statute of the International Criminal Court, under the chairmanship of His Excellency Prince Zeid Ra’ad Zeid Al-Hussein, Ambassador, Permanent Representative of Jordan to the United Nations. The Assembly of States Parties meets at least once a year to discuss the progress of the Court, adopt key policies and rules and appoint key staff persons.

- **How will this event impact on the consideration of victims’ rights and needs?**

At the September 2004 session of the Assembly, States Parties will consider and adopt the budget of the International Criminal Court for 2005. This budget will define what resources are available for the Court to fulfill its mandate, and will determine the means allocated for victims’ legal representation, for outreach, information and sensitisation regarding victims’ rights.

Mr. Cathala, the Registrar of the Court will submit a report on how the registry foresees that legal representation of victims will be organised, and another report on the organisation of victims’ participation and applications for reparation.

Also at this session, the Board of Directors of the Victims’ Trust Fund will submit their recommendations for the management of the Trust Fund, as well as their operating budget.

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**Organisations that have affiliated themselves with the Victims Rights Working Group:**

- Amnesty International - www.amnesty.org
- Avocats Sans Frontières - http://www.asfworld
- Coalition for the International Criminal Court - http://www.iccnw.org/
- European Law Student Association - http://www.elsa-online.org/
- International Centre for Transitional Justice - http://www.ictj.org/
- International Society for Traumatic Stress Studies - http://www.istss.org/
- Medical Foundation for the Care of Victims of Torture - http://www.torturecare.org.uk/
- Parliamentarians for Global Action - http://www.pgaction.org/
- REDRESS - http://www.redress.org
- Women's Initiatives for Gender Justice - http://www.iccwomen.org/

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The quote of J. Shapland (p.1) is taken from “Victims, the Criminal Justice System and Compensation” In British Journal of Criminology, 1984, Vol. 24, p. 273