The Victim Rights Working Group Welcomes the Establishment of the Trust Fund for Victims

Suggested principles on the establishment and effective functioning of the Trust Fund for Victims

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Suggested Principles on the Establishment and Effective Functioning of the Trust Fund for Victims

The Victims Rights Working Group celebrates the creation of the International Criminal Court’s Trust Fund for Victims, a historic institution, essential for the realisation of the Court’s progressive reparative mandate, and a crucial complement to the Court’s penal processes.

The individual and combined histories, integrity and stature of members of the Board of Directors lends further significance to the cause of this Trust Fund. Their election also attests to the importance with which States parties view the Trust Fund in particular and the Court’s mandate towards victims in general. The eminence of the Board will also help to raise public interest and awareness of the plight of victims of the worst crimes and to lend moral authority to the Court as a whole.

We welcome the first meeting of the Board of Directors of the Trust Fund, when the policies and operating criteria of the Trust Fund will be discussed in detail. Our members strongly advocated for the Preparatory Commission to adopt transparent management criteria for the Trust Fund and were very supportive of the creation of the Board to establish and direct the activities and projects of the Trust Fund. Board members’ considerable experience and expertise with victims issues in a variety of contexts makes them particularly suited to the task of identification of the Trust Fund’s policies and priorities.

In this spirit, we, together with members of civil society from around the world, are committed to working in partnership with the Board in order to fulfil the Trust Fund’s full potential. Civil society will have an important role to play in ensuring the success of the Trust Fund. We encourage the Board and its staff to communicate with relevant national and international organisations and experts and to engage them in its work. We also encourage the Board to enable members of civil society to make representations to the Board as appropriate.

We offer the following comments and recommendations on the overall vision of the Trust Fund and on further criteria for its effective functioning.

I. The Trust Fund is central to the fulfilment of the Court’s reparative mandate

The Trust Fund may be one of the principal vehicles by which victims of crimes within the jurisdiction of the Court can in practice obtain effective and enforceable remedies. The Court’s Statute foresees close collaboration between the Court and the Board of Directors of the Trust Fund, in particular, in the implementation of the Court’s orders for reparations, where the Court so directs.

It is difficult to assess in advance each situation that the Board may be confronted with. Therefore, in designing its procedures, the Board may wish to retain sufficient flexibility to enable it to respond most effectively to the particular needs of victims and their families as they arise.

II. Consultation with victims

In order for the Board of Directors to decide on the most effective and needed forms of redress for victims in such a way that accords dignity to victims, the Board is encouraged to
maintain full consultation with victims’ representatives and victims organisations to assist their decision-making.¹

For example, it would be beneficial for the Board of Directors to undertake regular needs assessments in victim communities to assist it in the formulation of projects and activities and in the development of funding priorities. It may also be advisable for the Board to seek input from individuals and organisations with specialised knowledge to guide its programmes in specific countries and regions and its initiatives relating to particularly vulnerable groups such as victims of sexual violence, children and the disabled.

III. Current facilities within the Registry

The Registrar of the Court is responsible for providing such assistance as is necessary for the proper functioning of the Board in carrying out its tasks and shall also participate in meetings of the Board in an advisory capacity.² Furthermore, the overall responsibility of the Registrar for the non-judicial aspects of the administration and servicing of the Court and its particular duties in relation to victims underscores the importance of close coordination and cooperation between the Board of Directors and the Registry. The responsibilities of the Registrar in relation to victims include the duties to provide, inter alia, protective measures and security arrangements, counselling and other appropriate assistance for victims who appear before the Court and responsibility to organise victims’ applications to participate in proceedings before the Court and their claims for reparations.

A Trust Fund Unit has been established within the Registry to support the work of the Board of Directors. The Assembly of States Parties has noted that as the workload of the Trust Fund increases, it may consider the creation of an expanded capacity, including the appointment of an Executive Director, either within or outside of the Registry as appropriate, to provide further assistance with the proper and effective functioning of the Trust Fund.³ The Board of Directors is encouraged to consider what might be the ideal location of the Secretariat as the workload increases, and in particular, whether it might more suitably be placed outside the Registry, having regard to its distinct mandate and the need to preserve the independence of the judicial functions of the Court.

The Assembly of States Parties resolution establishing the Trust Fund provides that members of the Board serve in an individual capacity on a pro bono basis and requires the Board to meet once per year only. While facility should be made for the Board to meet more frequently, possibly in ad hoc or special sessions, as required, the impressive portfolios and multiple commitments of this Board would suggest that their limited time would be best spent on the development of policies and priorities and that the day to day administration of the Trust Fund be delegated to the Trust Fund Secretariat. It is recommended that the Board of Directors’ management criteria and operating procedures are designed with these constraints in mind in order to ensure that the Board can maintain sufficient control over substantive matters and adequate oversight of the administration of the Trust Fund. In particular, some of the responsibilities of the Trust Fund Unit might include:

¹ The Resolution of the Assembly of States Parties on the establishment of the Trust Fund provides that « Before establishing and directing the activities and projects of the Trust Fund, the Board shall consult as far as possible, victims and their families or their legal representatives and may consult any competent expert organisation. » ICC-ASP/1/Res.6 Annex, para. 7.

² ICC-ASP/1/Res.6 Annex, para. 5.

³ ICC-ASP/1/Res.6 Annex, para. 6.
- Servicing of the Board of Directors [organising meetings and protocol; preparing legal and other advice for the Board];
- Administering the day to day activities of the Trust Fund [developing and implementing fundraising programmes; maintaining all Trust Fund accounts and monitoring all voluntary contributions; establishing and servicing a network of external actors to assist and promote the Trust Fund’s work; developing contacts with victims groups, experts and organisations and proposing activities and projects; monitoring and evaluating ongoing initiatives of the Trust Fund; implementing any other directives of the Board in respect of matters within its jurisdiction];
- Reporting to the Board of Directors at regular intervals on the status of the Trust Fund and progress on activities and projects;
- Maintaining regular contact with the Registrar and other organs of the Court;
- Assisting the Board of Directors with its communications with the Office of the Internal Auditor, the External Auditor and the Committee on Budget and Finance.

IV. Relationship of the Trust Fund to other organs of the Court and to States Parties

The Trust Fund forms an integral part of the drafters of the Rome Statute’s vision for redress to victims of the most heinous crimes and the Board of Directors will need to collaborate closely with each organ of the Court to ensure that this shared vision is consistently reinforced and that the special mandate of the Trust Fund is fulfilled. In particular:

- The Court is responsible for establishing principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation and is the vehicle by which reparations orders against convicted persons will be made. The Board of Directors may be called upon to implement the Court’s orders when it is impossible or impracticable for the Court to make individual awards directly to each victim or where the numbers of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.

- The Prosecutor’s independent role in initiating investigations and pursuing prosecutions will significantly shape the course of justice before the Court. The Prosecutor will not have the means to investigate and prosecute each allegation of a crime coming within the jurisdiction of the Court and its policies on the range and scope of situations to be investigated may impact on the opportunities for victims to obtain redress from the Court. The Board of Directors will need to carefully consider how to approach its broader mandate towards victims, having regard to the more restricted role of the Court and taking into account the range of victims.

- Furthermore, the Board of Directors should bear in mind the important role that States Parties will play in facilitating the activities and projects of the Trust Fund. In particular, when the Board of Directors decides to implement a collective activity in a particular State, e.g., a memorial or rehabilitation centre, it may need to work closely with authorities of that State.

V. Resources for the Board of Directors and the Trust Fund Secretariat

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4 Article 75 of the Rome Statute.

The Board of Directors must receive adequate resources and facilities to meet when necessary or to otherwise communicate about the work of the Trust Fund.

As the Trust Fund becomes increasingly active, its secretariat will need to be staffed with persons who have relevant experience and expertise, including in the following areas: victims and trauma issues, reparations, fundraising, accounting, data processing, outreach and liaison (to a range of actors including victims, their legal representatives, nongovernmental and intergovernmental organisations), project development and project monitoring and evaluation.

To obtain this level of resources, the Board may need to develop regular proposals for consideration by the Committee on Budget and Finance and the Assembly of States Parties that emphasise the benefits that further resources will bring in terms of the efficiency and effective functioning of the Trust Fund. It should consult regularly with the Registrar and the Secretariat of the Assembly of States Parties in the development of budget requests reflecting its requirements to be submitted to the Committee on Budget and Finance. As a body created by the Assembly of States Parties, it will be important for the Board to emphasise that its expenses should be specifically and adequately budgeted for by the Assembly.

It is essential that in the early years of its existence, the Trust Fund receives the full financial support of the Court and the Assembly to become fully operational. The Preparatory Commission decided that once the Trust Fund’s workload increases the Assembly, in consultation with the Board of Directors and the Registrar, may consider paying expenses of the Trust Fund from voluntary contributions. It will be important for the Board to stress that any possible future use of voluntary contributions for Trust Fund expenses should not exceed 5% of the annual voluntary contributions to the Fund. Such a message is important to communicate to donors from the inception, as a higher percentage adopted in future years would be a major disincentive to voluntary contributions from a wide range of sources.

**VI. Fundraising**

It is likely that voluntary contributions will be the primary source of income of the Trust Fund. Resources collected from fines or forfeitures transferred to the Trust Fund by the Court and through awards for reparations may be relatively small and insignificant, given that many convicted persons will be indigent and/or assets will be difficult to access. It will therefore be necessary for the Board of Directors to undertake an active role in raising voluntary contributions. Board members’ profile and unquestionable moral authority provides a unique opportunity to draw greater attention to the plight of victims and family members within the Court’s jurisdiction and should greatly enhance fundraising capabilities.

The Trust Fund should exemplify a collective and universal response to victims of the worst crimes. It is therefore essential that fundraising activities focus on potential contributors worldwide.

We encourage all members of the Trust Fund to work both individually and collectively, when possible in partnership with civil society, to fundraise for voluntary contributions from governments, international organizations, individuals, corporations and other entities.

**VII. Managing the Receipt of Funds**

**A. Criteria for voluntary contributions**
The Board should develop clear criteria for donors and develop procedures to ensure that all donations are consistent with the spirit and purpose of the Trust Fund. In developing these procedures, the Board should keep in mind that it is obligated to report to the Assembly of States Parties each year on all offered voluntary contributions regardless of whether they were accepted or refused, and therefore that a certain level of administrative tracking will be necessary in all cases. A careful balance needs to be found; procedures should not be too onerous to dissuade potential contributors yet they should be robust enough to alert the Board to contributions that have the potential to impact negatively on the spirit and purpose of the Fund or to be seen to do so.

In accordance with the practice and experience of other voluntary funds, the Board may wish to accept a certain level of donor-earmarked contributions. Criteria for the receipt of earmarked contributions should not discriminate against particular groups of victims (e.g., to focus on one ethnic group of a conflict) and would need to be carefully monitored in order to guard against adverse consequences for particular groups of victims, and reviewed on a regular basis. It is important to ensure that resources are shared among all classes of beneficiaries and too heavy a reliance on earmarking may lead to severe imbalances in the resources that may be applied to victims in different contexts. It is therefore suggested that the Board requires that a percentage of all contributions is attributed to the Trust Fund’s general resources.

**B. Managing fund balances**

Experience in fundraising demonstrates that a constant, steady stream of voluntary contributions can be difficult to achieve. The Board may receive large contributions one year, with fluctuating amounts in subsequent periods. Not only will it be important for the Board to adopt a variety of fundraising methods to guard against such cycles, but it is also recommended that a certain reserve be maintained for emergencies and/or unforeseen situations. This would also act as a safeguard to ensure the continuity of the Fund, given the difficulty to maintain a consistent level of voluntary contributions year after year.

**VIII. The Activities and Projects of the Trust Fund**

The Resolution of the Assembly of States Parties establishing the Trust Fund provides that the Board of Directors “shall, in accordance with the provisions of the Rome Statute, the Rules of Procedure and Evidence and this criteria, establish and direct the activities and projects of the Trust Fund and the allocation of the property and money available to it, bearing in mind available resources and subject to the decisions taken by the Court.”

When the Court transfers resources to the Trust Fund in support of its awards for reparations, the decisions of the Board of Directors on how to use these resources will be delineated by the terms of the Court’s assessment as to how such resources may be used. The role of the Board in such cases is to determine the modalities for the implementation of the Court’s orders, having regard to the particular circumstances of the beneficiary group.

In contrast, Rule 98(5) of the Rules of Procedure and Evidence envisions that the Board of Directors will have more flexibility to determine how best to use the ‘other resources of the

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6 ICC-ASP/1/Res.6 Annex, para. 9.
7 ICC-ASP/1/Res.6 Annex, para. 11.
8 ICC-ASP/1/Res.6 Annex, para. 10.
9 ICC-ASP/1/Res.6 Annex, para. 7.
Trust Fund’ (e.g., voluntary contributions; resources allocated by the Assembly of States Parties), which may “be used for the benefit of victims subject to the provisions of Article 79.”

In this respect, the Trust Fund’s mandate is slightly different and somehow independent from the individualised reparations process of the Court. It is suggested that this provides the Board of Directors with a unique opportunity to assess creatively how best to tackle the needs of victims within the jurisdiction of the Court and their families.

In determining how best to provide resources for the benefit of victims of crimes within the jurisdiction of the Court and their families, the Board should consider that the Court will in practice only prosecute a handful of those responsible for genocide, crimes against humanity and war crimes in any given situation. In accordance with Article 75(1) of the Rome Statute, the Court “shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.” At this time no principles have been established. It is therefore difficult to determine how broad such orders for reparations will be.

The Board should also take into account that the needs of victims are often immediate and pressing, and will not necessarily be met by other projects or programmes of the Court. Many victims will require treatment and other assistance as soon as possible and delay until the trial is concluded may result in further suffering. The Board should therefore maintain as much flexibility as possible to develop the most appropriate initiatives and activities as needed, according to Rule 98(5). For example, through established channels of assistance, and in consultation with the victims, voluntary contributions might usefully fund rehabilitation and educational programmes, memorials or commemoration of victims and other appropriate forms of satisfaction and guarantees of non-repetition. These contributions might assist broader communities affected by the crimes under the Statute or provide emergency rehabilitation programmes for vulnerable groups of victims who may have to wait years for the Court to determine their individualised claims. This should complement rather than duplicate the roles of the Registry’s Victims and Witnesses Unit and Victims Participation and Reparations Unit to provide assistance to victims and witnesses during trial.

Recognizing that the Trust Fund will not have the resources to assist all victims of genocide, crimes against humanity and war crimes everywhere in the world and the need for a connection with the Court’s work, it is recommended that the Trust Fund may implement projects for the benefit of victims and their families only once a connection to the Courts’ processes has been established; for example, after the Pre-Trial Chamber has approved an investigation or the Prosecutor commences an investigation pursuant to a referral by a state party or the United Nations Security Council.

As and when the resources of the Trust Fund increase, the Board of Directors may consider expanding the scope of the beneficiaries in accordance with the Rome Statute. In particular, the Board may consider whether to assist victims of genocide, crimes against humanity and war crimes and their families that fall under the jurisdiction of the Court, when national courts have investigated and/or prosecuted the crime under the Court’s complementarity regime, in those instances where national authorities have not provided reparations or implemented initiatives for the benefit of victims and their families.

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10 Rules of Procedure and Evidence 98(5).