The Victims’ Rights Working Group (VRWG) was established in December 1997 by organisations that have promoted the interests and needs of victims in criminal justice and human rights bodies. Its main objective has been to raise the awareness of governments and others (e.g., the press, other NGOs and the public), in all relevant fora, about victims’ issues, to ensure that the Statute and the Rules of Procedure and Evidence adequately provided for victims’ rights to be protected and respected, and their needs and concerns to be met throughout the judicial process of the ICC. Particular attention has been paid to the need to ensure that the Court will render not only retributive, but also reparative justice, with the aim, inter alia, of preventing re-victimization, breaking cycles of violence and war, and providing reparations and rehabilitation for victims.

Member organisations of the Working Group issued numerous position and background papers, participated in all meetings, and proposed texts for [re]drafting the Statute and the Rules. The VRWG continues to be represented at meetings of the Assembly of States Parties, is actively promoting the development of sound operational structures for victims at the Court and will continue to advocate for the rights of victims to be respected by participants in proceedings before the Court. For further information please see: http://www.vrwg.org.

The possibility of achieving completeness to all victims - is related to the programme's comprehensiveness, that is, to the breadth of categories of crimes for which the programme provides redress. Focussing on a narrow set of offences would unfairly exclude large numbers of victims - and would likely ensure that the excluded victims' claims remain on the political agenda for a long time to come.¹

1. **What is the Trust Fund for Victims?**

The Trust Fund for Victims (or “Trust Fund”) was created by the Statute of the International Criminal Court as a funding resource to complement the Court’s reparative mandate, to benefit victims of crimes within the jurisdiction of the Court and their families. The Trust Fund is part of a series of unprecedented aspects within the Statute that fully acknowledge the central importance of victims’ rights and needs.

The Trust Fund has three main functions, they are to:

- Actively seek out voluntary contributions and establish transparent procedures for the receipt and management of these and other resources transferred to it, including fines and forfeitures and funds from reparations orders;
- Implement reparation orders that the Court decides to transfer to it; and
- Determine appropriate uses for voluntary contributions to provide assistance to victims and their families.

2. **What is the mandate of the Trust Fund for Victims?**

The mandate of the Trust Fund is derived directly from Article 79 of the Statute of the International Criminal Court and Rule 98 of the Rules of Procedure and Evidence. Article 79 provides for the establishment of a Trust Fund “for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims”. Rule 98(5) stipulates that, beyond the Trust Fund's mandate to implement reparations orders as envisaged in Rule 98(1) to (4) of the Rules of Procedure and Evidence, “other resources of the Trust Fund may be used for the benefit of victims subject to Article 79”.

Consequently, the Trust Fund has two principal tasks:

1. To implement the reparations orders that the Court decides to transfer to it; and
2. To use voluntary contributions to assist victims and their families.

3. **What are the draft Regulations?**

The draft Regulations were prepared by the expert Board of Directors, pursuant to Assembly of States Parties Resolution 6, adopted in September 2002. They set out in detail provisions regarding the management and oversight of the Trust Fund, the receipt of funds, and the activities and projects of the Trust Fund. By doing so they develop further the basic framework provided for in Article 79(1) of the


### 4. In what situations will the Trust Fund for Victims take action?

According to the draft Regulations, the Trust Fund will act:

- When the Court has made an order for reparations to be implemented through the Trust Fund,
- In respect of the voluntary contributions collected by the Trust Fund,
  - (i) Only after the commencement of an investigation, and
  - (ii) In exceptional cases and with the approval of the Pre-Trial Chamber, when the Court has decided not to investigate or prosecute because a State is dealing with the situation or because it will not serve the interests of justice, and where there are no national or international programmes for the benefit of victims and their family members.

### 5. Who are the victims that can benefit from the Trust Fund?

The draft Regulations reiterate that the Trust Fund is for “victims of crimes within the jurisdiction of the Court and the families of such victims” as set out in Article 79(1) of the Statute. These draft Regulations recognise that aside from implementing reparations orders, it is important that the Trust Fund is able to assist victims regardless of whether their specific case has been prosecuted before the Court, provided that there is a clear link to the jurisdiction of the Court. This link can be constituted either by a decision of the Court to initiate an investigation, or a decision not to prosecute because of the principle of complementarity or in the interests of justice.

### 6. Is the scope of beneficiaries too broad?

No. The scope of beneficiaries is consistent with the Statute of the International Criminal Court and Rules of Procedure and Evidence. The broad terminology used in Article 79 makes no reference to Article 75 which deals with reparations. It also shows the intention on the part of the drafters not to limit the activities of the Trust Fund solely to victims of crimes prosecuted before the Court. Moreover, a narrower approach in the context of the focused prosecution strategy adopted by the Prosecutor would excessively limit the victims that the Trust Fund could assist. Furthermore, such an approach would tie the hands of the Trust Fund to the choices of the Prosecutor and put the mandate of the Trust Fund, including voluntary contributions, completely under the control of the Court.

### 7. Should the Trust Fund offer assistance to victims during an investigation by the Court?

Yes. The Prosecutor's thorough analysis of admissibility and the commencement of an investigation following a referral or an authorisation by the Pre-Trial Chamber establish a sufficient guarantee of the gravity and factual basis of the crimes and a sufficient legal basis for the Trust Fund to offer assistance to victims in accordance with Article 79(1). 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, as was clearly demonstrated by the plight of HIV infected victims before the International Criminal Tribunal for Rwanda.
8. Will the activities of the Trust Fund undermine investigations?

No. The activities of the Trust Fund will not undermine any investigation. When the Trust Fund is operating independently of the Court in providing assistance to victims during an investigation, it will only have the capacity to provide collective assistance to the communities of victims requiring urgent assistance. By restricting the activities here to collective assistance, the Trust Fund will never be taking a decision on the merits of individualised cases and it will not take part in any determination of the investigation or prosecution strategy of the Court.

9. Should the Trust Fund provide assistance to victims before a final decision of the Court?

Yes. Article 79(1) of the Statute does not include any requirement of a final decision by the Court. It is only when the Court orders that funds it has collected, through fines and forfeitures or reparations orders, are transferred to the Trust Fund for implementation, that the Trust Fund is obviously limited to take measures after the final decision of the Court. The Trust Fund has more flexibility with the use of its voluntary contributions which it collects independently. Rule 98(5) of the Rules of Procedure and Evidence enables the Trust Fund to provide assistance to victims of crimes within the jurisdiction of the Court, regardless of whether their specific case leads to a conviction and reparations order. The focused prosecution and indictment strategy adopted by the Office of the Prosecutor makes it unlikely that all crimes committed in a situation will be subject to investigation let alone prosecution and judgment.

10. Does the Trust Fund for Victims make independent decisions on reparations orders?

No. Article 75(1) of the Statute provides that the Court “shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.” The Board’s plans for the implementation of reparations orders must comply with the reparations orders themselves and as has been specified in the draft Regulations, the Board must submit its implementation plan to the Court for approval.

11. In which other circumstances can the Trust Fund act?

Draft Regulation 51(c) addresses the question of implementation of the principle of complementarity in respect of providing assistance to victims of crimes under the jurisdiction of the Court. In accordance with Article 17 of the Statute, the Court can decide not to investigate or prosecute a case where a State is taking genuine action. If there are no national or international programmes for the benefit of victims and their families, the Trust Fund may, in exceptional circumstances, have the power to complement States actions and provide assistance to victims. Similarly, where the Prosecutor decides not to investigate or prosecute crimes because it will not serve the interests of justice, in accordance with Article 53 of the Statute, the Trust Fund may provide assistance to victims. In both such exceptional cases, the Board is required to seek prior approval of the Court.

12. Will the Trust Fund decide whether a crime has been committed under the Statute of the International Criminal Court?
No. The Trust Fund will not make a determination as to whether crimes under the Statute have been committed. The Board’s decision to provide assistance to victims prior to a reparations order by the Court is in fact triggered by the commencement of an investigation. Even though the Board will in this way acknowledge that there are indeed victims during the pre-conviction phase, this in no way impacts upon the criminal process against individual accused persons. The classification of victims as such does not depend on a criminal conviction of perpetrators – to say otherwise would be to suggest that victims of crimes for which there was never a prosecution (e.g., in cases when the alleged perpetrator died before trial, or when the sheer number of crimes made it impossible to prosecute each accused person) did not suffer.

13. Should donors be allowed to earmark some of their contributions?

Yes. A complete prohibition on earmarking would seriously affect the amount of contributions to the Fund. The policies and practices of donor agencies indicate that generally donors want some level of control over how their money is used. It is also consistent with Resolution 6 (§10) of the Assembly of States Parties which provides for the possibility of limited and regulated earmarking.

14. Will earmarking lead to discrimination?

Not necessarily. The draft Regulations provide that the Trust Fund may refuse voluntary contributions which are deemed to be in anyway inconsistent with the goals and activities of the Trust Fund. Furthermore, the Trust Fund will regularly review the nature and level of voluntary contributions in order to prevent allocation which would result in a manifestly inequitable distribution of resources among different groups of victims.

15. Who has the power to amend the Regulations?

The Assembly of States Parties should have the responsibility for any amendment to the Regulations, as the body which adopted them. However, according to the draft Regulations the Board of Directors may propose such amendments and apply them provisionally until their consideration by the Assembly of States Parties. Furthermore, the Board of Directors are best positioned to adopt further operating guidelines, to the extent that they are consistent with the Regulations, once adopted.