INTRODUCTION

Since the negotiations on the International Criminal Court Statute, FIDH and REDRESS, together with many other civil society organisations have continued to promote and defend the rights of victims before the ICC, including their right to be legally represented in proceedings before the Court. The ability for victims to be legally represented will help to ensure that their interests are safeguarded before the Court, that their views and concerns can be taken into account at appropriate stages of proceedings and that they are treated at all times with dignity and respect and protected against re-traumatisation. It also reflects the Statute’s clear recognition that victims are participants in justice before the ICC; not merely the objects of the prosecution’s case or the silent bystanders.

We welcome the important work of the Registrar in producing this draft code of professional conduct for counsel and are grateful to the Working Group for providing us with the opportunity to comment on the draft text.

We would like to underscore that this Code will apply to both counsel for the defence and legal representatives for victims as defined in regulation 2 of the Regulations of the Court. The applicability of this Code to legal representatives for victims necessitates careful consideration of the distinct characteristics of this group of counsel:

- they will most often be representing groups of victims as opposed to single clients;
- their clients may be dispersed in remote parts of conflict areas, and/or at times in refugee or displaced persons communities;
- their clients will have a variety of needs and diverse perspectives in relation to proceedings before the Court.
ACCORDINGLY, WE SUBMIT THE FOLLOWING RECOMMENDATIONS:

- The preambular paragraph should explicitly refer to regulation 2 of the Regulations of the Court.

- **ARTICLE 2:** Use of terms

  This provision should take into account that pursuant to rule 90 of the Rules of Procedure and Evidence victims or groups of victims may be represented by common legal representatives. Article 10 of the Code, which refers to « client » should therefore incorporate both individual and group representation. Accordingly, it is suggested that the definition of « client » be amended as follows:

  « client » refers to a person or group of persons assisted or represented by counsel, whether receiving legal assistance or not.

  The phrase « defence team » does not clearly encompass those teams providing legal representation to victims. It is therefore recommended that either a more neutral language is used, e.g., « legal team », or that specific reference in the definition of defence team is made to the fact that the term includes teams representing victims.

- **ARTICLE 3:** Amendment procedure

  In order to facilitate proposals for amendments to the Code, it is suggested that para. 1 of this Article be amended to read:

  Any proposal for amendments to this Code shall be submitted to the Registrar, together with explanatory material, in one of the working languages of the Court.

- **ARTICLE 15:** Conflict of interest

  Some element of conflict of interest is inherent to common legal representation. Legal representatives for victims will regularly face potential conflicts of interest between individuals and groups of victims. Article 15 does not adequately address this situation and it is therefore suggested that the following language is considered for a 3rd additional paragraph:

  « Notwithstanding paragraph 2 above, where counsel is retained by multiple victims or is appointed as common legal representative, he/she shall advise his/her clients at the outset about the nature of the representation and the potential for a conflict of interest and shall organise the representation in such a way so as to ensure a fair representation of the different yet consistent positions of his/her clients. Where however a conflict of interest prevents a fair common representation of victims, the counsel shall inform at once all potentially affected clients of the existence of a conflict; and either:
  (a) Withdraw with the prior consent of the Chamber; or
  (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation. »

- **ARTICLE 20:** Prohibitions

  Unlike what has been proposed by some other organisations, it is suggested that the wording of para. 2 remain unchanged, for the following reasons:

  i. Participation and reparation are two distinct phases of the procedure before the ICC, both of which require legal representation. According to articles 68.3 and 75 of the Statute, victims may participate in proceedings without necessarily taking part in the
reparations phase. In this respect, it would be inappropriate to condition the payment of legal fees upon the reception of financial reparation as this would predicate legal representation on the likelihood of successful recovery of fees.

ii. The justification for resort to contingency fee arrangements should not be based on the lack of financial resources for legal representation for victims. On the contrary, to do so may have a chilling effect on voluntary contributions to the Victims Trust Fund, since these contributions could be used to pay counsels’ fees rather than meeting victims’ actual needs for reparation.

iii. Furthermore, for counsel to receive fees taken from the amount of financial reparation allocated to victims of crimes under the jurisdiction of the Court would give rise to several other practical and ethical concerns, particularly given that reparation to victims is likely to often take the form of collective reparations (due to the paucity of funds from the perpetrator). To allow contingency fees is to presume that individual payments would be made to victims in all or most cases. As such individual payments, if and when they are used, are only likely to be symbolic amounts based on the total available amounts, the need to take into account legal fees will negatively impact upon the awards of not only those victims that have hired the lawyers on a contingency basis, but also on other victims that may be involved in the case (with pro-bono or court-funded counsel).

- **ARTICLE 29**: Relations with witnesses and victims

Para 1: We agree with the suggestion put forward by other organisations that the meaning of the word « pressure » should be clarified, as the Court process can be said to be inherently stressful to victims. It is therefore suggested that the article be amended to read: « Counsel shall refrain from intimidating, harassing, or humiliating witnesses or victims or from subjecting them to inappropriate pressure in any manner or form within or outside of the courtroom. »

- **ARTICLE 30**: Publicity

While we agree that it is extremely important to guard against inappropriate solicitation by lawyers, be they defence counsel or legal representatives for victims, it is important to consider that victims will have very little access to counsel in any circumstance. Article 30 should not prevent potential common legal representatives from approaching and working with victims.