

**Tenth session**

New York, 12-21 December 2011

**Report of the Bureau on victims and affected communities
and Trust Fund for Victims****Note by the Secretariat**

Pursuant to paragraph 49 of resolution ICC-ASP/9/Res.3, of 10 December 2010, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on victims and affected communities and Trust Fund for Victims. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court.

I. Background and mandate for facilitation

1. The Review Conference on agenda item “Stock-taking of international criminal justice” adopted a resolution entitled “The impact of the Rome Statute system on victims and affected communities”¹, which, among other, recognized that victims’ rights to equal and effective access to justice; protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms are essential components of justice. It also emphasized the importance of outreach to victims and affected communities in order to give effect to the unique mandate of the International Criminal Court (the “Court”) towards victims. The Review Conference panel on stock-taking of “Impact of the Rome statute system on victims and affected communities”, through its chairs conclusions, proposed the following actions²:

- (a) The Court needs to find creative ways to strengthen its two-way dialogue with victims and affected communities;
- (b) The Court’s outreach activities need to be further optimized and adapted to the needs of victims;
- (c) A specific policy needs to be developed for addressing the needs of women and children;
- (d) More protective measures are needed for victims and witnesses;
- (e) A comprehensive policy towards intermediaries should be finalized by the Court and implemented;
- (f) Field operations should be reinforced and linked to strategic planning and the allocation of resources;

¹ *Official Records ... Review Conference ... 2010 (RC/11)*, part II, RC/Res.2.

² *Official Records ... Review Conference ... 2010 (RC/11)*, part III.A, para. 14.

(g) The Trust Fund (for Victims) should be encouraged, where prudent, to increase its visibility; and

(h) The Court needs the State Parties to continue their commitment, support and leadership.

2. The Assembly of States Parties (the “Assembly”) at its ninth session in the so-called omnibus resolution³ welcomed the focal points’ report including the panel recommendations and, inter alia:

(a) requested the Court to review its strategy in relation to victims and to consider all aspects of the recommendations of the panel, including budgetary implications contained in the final report, and to report on the progress to the Assembly at its tenth session;

(b) encouraged States and civil society to take action to implement the resolution also with regard to victims’ reparations and to consider carrying forward the recommendations in the final report; noted that, in light of the Court’s forecast, the first reparations order could be issued in the course of 2011. In this respect, the Assembly of States Parties underlined the usefulness of a timely and informative dialogue between States Parties and the Court on victims-related issues of common interest and requested the Bureau to report on the developments in the victims-related issues to the Assembly at its tenth session.

(c) called upon States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims, in order to substantively increase the volume of the Trust Fund, broaden the resource base and improve the predictability of funding.

(d) encouraged the Secretariat of the Trust Fund to continue strengthening its dialogue with the Registry, States Parties and the international community, including donors as well as civil society, to ensure increased strategic and operational visibility, including transparent and quality driven activities;

(e) encouraged the Board of Directors and the Secretariat of the Trust Fund to anticipate the activation of the reparations mandate of the Trust Fund in the coming year, requiring pro-active engagement with stakeholders and the assurance of appropriate reservations for reparations while respecting existing commitments, and called upon States to consider their contributions to the Trust Fund in view of imminent reparations.

3. The Assembly at its ninth session also reiterated the need to continue to improve and adapt outreach activities and encouraged the Court to further develop and implement the Strategic Plan for Outreach in affected countries, including, where appropriate, by early outreach from the outset of the Court’s involvement, including during the preliminary examination stage.⁴

4. The Bureau at its meeting on 1 February 2011 appointed Ms. Miia Aro-Sánchez (Finland) as facilitator within The Hague Working Group on the topic of Victims and affected communities and Trust Fund for Victims.

II. Discussion at The Hague Working Group

5. The facilitator held five rounds of informal consultations on 10 March, 19 April, 10 May, 19 October and 3 November 2011. The topics that were discussed during those consultations can be divided in three main areas: 1) Revision of the Court’s Strategy on victims; 2) Reparations; and 3) Trust Fund for Victims. The facilitator had initially planned also to organise a session dedicated to activities and initiatives by States Parties, civil society and others (as recommended in the ninth session of the Assembly above), but due to time and other constraints this did not take place. These issues however, to some extent, were discussed under other facilitations, such as cooperation and complementarity (including implementing legislation, measures to track and freeze assets, victim/witness relocation).

³ *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.3.

⁴ *Ibid.*, para 38. This issue has been discussed under the facilitation on The Strategic Planning Process of the Court.

A. Revised Court's Strategy in relation to Victims and report thereon

6. The discussion on Court's Strategy on Victims took place in two phases. The first phase was on 19 April 2011 in order to provide the Court an opportunity to explain the situation with regard to Court's current Strategy in relation to victims (ICC-ASP/8/45), and to receive input from States Parties for the review process that was ongoing. The second phase took place on 19 October 2011 and 3 November 2011, after the Court had presented its draft revised Strategy and Report thereon (both dated 12 October 2011). The presentation of the revised Strategy was significantly delayed from the initial agreed objective, which was during July 2011. Accordingly, The Hague Working Group was not in a position to go into detailed discussion on the draft revised Strategy, but rather provided its initial views and concerns outlining the further discussion, to be continued in 2012.

7. The Court's draft revised Strategy contained four key objectives (reduced from six of the previous Strategy) relating to: communication; protection and support; participation and representation; reparations and assistance; as well as gender as a cross-cutting element. The comments and concerns from The Hague Working Group will be presented along these lines, preceded by general remarks.

1. General remarks

8. In their presentations on 19 April 2011,⁵ all Court officials commonly cited limited resources as a key challenge in the implementation of the Strategy, since the workload had increased⁶ without a corresponding increase in human resources. In particular it was noted that involvement of victims in the proceedings, their protection and support or communication with them require taking into account the realities of each specific country situation, as well as factors such as the prosecution of complex and lengthy trials, likely involving hundreds or thousands of victims, in locations far from where the relevant crimes have occurred; the need of keeping victims regularly informed in a language they can understand; the logistical difficulties in reaching victims and affected communities, in order to be able to present their views and concerns and therefore represent their interests in the proceedings; as well as the need to conduct individual psychosocial and risk assessments to determine the validity of victims' requests for protection and/or support and assistance. While recognizing the importance of efficiency measures to ensure meeting and managing victims' expectations, as well as better coordination and synergies amongst different units of the Court dealing with victims, it was underlined that given the increase in numbers, effective participation of victims and outreach ultimately requires also more resources.

9. With regard to the revision process of the Strategy, the Court indicated that inter-organ coordination is conducted through Court-wide working group on Victims issues, with due respect for the independence of the respective offices. On how the Court's working group assessed the development of the Court's jurisprudence, the Court indicated that representatives of the Presidency participated in the working group that developed the Strategy, and that representatives from Chambers will be participating as observers in the revision of the upcoming revision of the Strategy, with their remarks being taken into account. The Court highlighted that the case law had to influence the Strategy, and not the converse.

10. As regards the draft revised Strategy and the report thereon (dated 12 October 2011), a general concern of The Hague Working Group at the outset was the length of the draft report (45 pages). It was agreed that the Court will significantly reduce the length of the next draft in order to meet the recommendation of the Secretariat of the Assembly on the maximum length of the documents (16 pages), and will circulate a new revised version. At

⁵ On 19 April 2011 representatives of the Court's Public Information and Documentation Section (PIDS), Victims and Witnesses Unit (VWU), the Victims Participation and Reparations Section (VPRS), Office of Public Counsel for Victims (OPCV) briefed the Working Group on the questions posed by the facilitator in advance regarding the current strategy, including challenges in implementation, as well as in measuring progress. A representative of the Gender and Children Unit of the Office of the Prosecutor (OTP) also provided information and clarifications to the meeting.

⁶ Updated Registry and Trust Fund fact sheet, first issued on 1 June 2010 ahead of the Review Conference under the symbol RC/ST/INF.3, indicating since then a large increase, among other, in the numbers of victims' applications for participation and for reparations.

the same time, the Court will take into account the initial comments received and will also edit the revised strategic objectives. Given the late stage of the preparations for the Assembly, neither of the documents will be available before the tenth session. This was acceptable to the Working Group, as in any event the discussion on the topic should continue in 2012, and the final revised Strategy and report thereon should be presented rather to the eleventh session of the Assembly.

11. A general feeling was expressed that the Strategy was considered as too ambitious and unrealistic, including because it would not be sustainable within available resources. Caution was expressed towards the usefulness of having aspirational objectives, as explained in the Strategy, which might raise false expectations on the Court's capacity to deliver on them. Moreover, the "rights-based approach" that was adopted as a basis for Strategy, was questioned from this same perspective and it was also noted that as regards the rights of victims, there appeared to be a sense of equivalency between those of victims and of the defence. Consequently, the need for clarification of the legal basis of the rights and obligations referred to was stressed. Furthermore, strong support was expressed that the "quantity-based approach" whereby the successful Court operations were measured by numbers of victims participating or receiving assistance, needed to come to an end, and instead the Court should think of a more "quality-based approach" or even a more representational rather than individualistic way of ensuring victims' role within the Rome Statute system.

12. The Court explained that the rights referred to in the draft revised Strategy reflected the rights already contained in the Statute, i.e. the right to support, protection, participation, information, reparations. The obligations referred not only to the Court but also to States since, without States, the Court could not meet most of its obligations. Furthermore, the concept of rights was evolving, based on decisions of Chambers. As regards the request to focus on quality rather than quantity, the Court noted that it was impossible for the organs to choose who would be the most representative victims allowed to participate. Furthermore, the quantity was not the driving factor for the Court, but it was concerned to ensure within the legal framework the involvement of victims and the implementation of all their rights, including to be informed.

13. As regards financial resources required for the implementation of the revised Strategy, it was stated that the allocation of resources required a comprehensive analysis and it was difficult for States to consider any requests for additional resources. It was therefore suggested that the Strategy be considered in the light of the limited resources available. It was noted that the Court had indicated that the Strategy would bear no budgetary implications for 2012, that it was aware of the financial sensitivities and that any requests for additional resources would be included in the 2013 proposed programme budget with the appropriate justifications to be considered by the Committee on Budget and Finance. As an additional clarification the Court explained that the increase of resources in the proposed budget for 2012 in areas relating to victims were due to the situation in Libya, and the assumptions that follow from that new situation.

2. Communication

14. The Court indicated that the aim of objective 1 "Communication" was to provide to victims and affected communities all information necessary to make them aware of their rights. A rights-based approach was a main element of the Strategy; therefore, in order to enable victims to know that they could approach the Office of the Prosecutor ("OTP"), it was important to have some communication activities. The OTP explained that it was important to include preliminary examinations under objective 1 to highlight what the OTP does at this stage, showing that the OTP reaches out to victims of alleged Court's crimes when assessing their interests or when inviting them to send their views on an article 15 of the Rome Statute request to open an investigation. The purpose of the preliminary examination is to enable the Prosecutor to receive and consider information from different sources, including from victims, to enable him to make a determination on whether there is a reasonable basis to proceed with an investigation.

15. Many States expressed concern that the current formulation of the objective referring to communication to all victims including in situations under preliminary examination was too far-reaching and not realistic. Views were expressed that the communication should primarily serve the information needs victims have so that they can participate in the proceedings or otherwise exercise their rights under the Rome Statute. The Court explained that also during preliminary examinations, there would be, in practice, a need to provide information to victims seeking it, also in order to manage their expectations. However, contrary to a view expressed, the Court was not seeking proactive communication in the preliminary examination phase, but rather reactive responses to the inquiring victims. A representative of a nongovernmental organization (“NGO”) reminded of the importance of effective communication to victims, which was also a conclusion of the Review Conference Stocktaking exercise.

16. It was agreed that the Court will reflect a new formulation for that objective, which would set out more realistic objectives that reflect in more detail the legal mandate of the Court.

3. Protection and Support

17. In the meeting of 19 April 2011 the Court explained the coordination of the different units in the area of protection and support in defining their respective policies. Such coordination was conducted with due respect for the independence of the respective offices. Furthermore, in the coordination between the Registry and the OTP in the field, there was a limit to the flexibility and the pooling of resources, given the neutrality of the Registry and the independence of the OTP. There was, nevertheless, a high degree of coordination between, e.g. the VWU and the Gender and Children Unit of the OTP, and a Protocol on protection had recently been concluded between the OTP and the Registry. The Gender and Children Unit was one of VWU’s partners and there was some exchange of information on psychological assessments. Furthermore, the OTP had established a Protection Strategies Unit, which served, inter alia, as a focal point for VWU to discuss protection issues and to update the protection strategy throughout the development of a case, after referral of a case by the OTP to the VWU.

18. As regards the draft revised Strategy objective 3 “protection and support”, a concern was expressed that the formulation was too broad and generic, as it engages the Court to provide protection, support and assistance to “victims”, without specifying further to which victims (such as those interacting with the Court). The Court agreed to reconsider this formulation. A request was also made to the Court that it would include in its Report the recently established voluntary fund for relocations, and consider its use in a strategic way – something that was not included in the current version.

4. Victim Participation and representation

19. The Hague Working Group was informed during 19 April 2011 meeting by the representative of the VPRS that until recently separate application forms for participation and reparation had been used, on the basis of early consultations in the field, in order to avoid raising expectations of reparations in the early phase of a situation. However since October 2010 when a joint application form had been instituted, an applicant could now indicate whether his/her application related to participation, reparations or both, which means that while making the procedure simpler for the victims, in future, more applicants are likely to apply for both at the same time. The representative of the VPRS also explained that as a result of recent decisions of the Pre-Trial Chamber clarifying the status of victims of a situation not linked to a case, it was likely that in future, a greater proportion of applications received will be linked to a case, thus reducing the scope of eligible victims.

20. In response to a question regarding whether there could be a more collective approach to victim participation, since victimization in the Rome Statute crimes tended to be on a collective basis, the representative of VPRS noted that this could be looked into further but that the Rules of Procedure and Evidence⁷ provide for individual applications to be made for participation in proceedings, though legal representation can be more collective

⁷ *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

(rule 90). She noted however that when it comes to the provision for victims to make representations to a Pre-Trial Chamber on whether to authorize an investigation under article 15 of the Rome Statute (which must be distinguished from participation in proceedings under article 68, paragraph 3), in the situation of Kenya the Pre-Trial Chamber had authorized representations to be made by community leaders on behalf of communities of victims. The question therefore arose whether the legal framework permitted any more move towards collective representation.

21. In the same meeting, a representative of the OPCV indicated that it was possible to assess the level of participation, and that, it can be generally said that victims are currently able to participate at the different stages of the proceedings. In particular victims can present their views and concerns, intervene on matters of fact and law, and also appear in person before Chambers. Participation seems to be more effective at the trial stage where victims have been granted by Chambers with extensive rights if compared with the modalities of participation granted at the pre-trial phase. The OPCV also noted that victims are able to participate in specific proceedings, i.e. articles 17 and 19 of the Rome Statute, and rule 50 of the Rules of Procedure and Evidence. As a response to a query on the long-term sustainability of the current strategic objectives, and what could be delivered within existing resources, a representative of the OPCV indicated that, with the two new Kenya cases, the OPCV had reached the limit of the workload its members can manage. The question of what can be accomplished within existing resources is a function of the larger picture of the number of proceedings in which the Office is involved and the phases of those proceedings.

22. In the Court's draft report on draft revised Strategy the situation of increased workload and lack of sufficient resources, especially in the VPRS, is also expressed clearly.⁸ The Working Group shared the view that this situation is a source of concern. The facilitator questioned the Court, whether it had had internal discussion on the matter and how to improve the situation. A point was made that it would not be possible to continue the current way of operation given the continuous rise in the numbers of victims participating and existing resources, and that a systemic change was required. A representative of the NGO underlined that the number of victims participating was not a problem, as that should be considered rather as a success of the Court, but it was rather the way participation was processed. The NGO was also supportive of the review of the participation processes from this perspective. A question was raised whether there is also some short-term measures the Court can take to alleviate the situation.

23. The Court informed the Working Group that internal discussions on the need for revision had taken place, but it was still very preliminary phase to comment in detail. It is a complex issue including also a possible need to revise Court's legal framework, and aspects such as the rights of the defence as concerns the application process. It should therefore be conducted carefully and analytically, in full consultation. The Court expressed the wish to receive guidance on this matter from the Assembly at its tenth session, and to engage with the Assembly on the review from early on in the process.

24. A concern was expressed that the draft revised Strategy presented Court as responsible for soliciting and encouraging victims to participate. It was pointed out that while victims participate in proceedings, this was an initiative of the party concerned. It was stated that the Court should be fair and impartial and should not encourage one party to participate. In response, a representative of the Court indicated that this was not the aim.

⁸ Paragraphs 103-104 of the draft report:

"103. At headquarters in The Hague, the Section supports Chambers by managing applications and other documents received from victims, and preparing reports on individual applications. The last two years have seen a huge increase in the workload of the Section in this regard. The average monthly number of applications for participation received has increased over 207% just in the first five months of 2011 in comparison with the monthly average over the whole of 2010.

104. The proliferation is due to the increase in the number of situations and cases, and also to the scope of the charges in each case. During the last two years the Section has not had sufficient staff to process all the applications received, so has had to prioritise the processing of applications linked to the cases (rather than the situation) and to the immediate proceedings (particularly confirmation hearings or trial), in order to avoid causing delays in the proceedings or preventing victims from exercising their rights. Additional staff have been hired on a temporary basis, which is neither efficient nor sustainable. Nevertheless, several times during 2011 the Registry was obliged to inform Chambers that it is not in a position to comply with orders to process applications or conduct activities by the deadlines imposed due to a lack of resources."

The Court did not put in place mechanisms to encourage victims' participation, but it did have mechanisms to enable all victims and affected communities to be fully aware of their rights, and it did so in an impartial manner. Each organ that interacted with victims would do so with this in mind.

25. The formulation of the objective as referring to victims' right to high-quality legal representation was questioned, as there was already a definition in the Rules of Procedure and evidence of the criteria that the counsel needs to meet. The Court agreed to look also the formulation of this objective.

5. Reparations and assistance

26. In the meeting of 10 May 2011, the issue of reparations was discussed from the point of view of the Strategy, as well the situation on implementing article 75, paragraph 1, of the Rome Statute on reparation principles by the Chambers, and also from the perspective of the Trust Fund for Victims and how it is preparing to implement the possible first reparations order. This discussion is reported in a later segment of the report entitled "Reparations".

27. As regards objective 4 of the draft revised Strategy, "Reparations and assistance", it refers to ensuring that as many victims as possible are able to exercise their right as regards reparation. A concern was expressed with regard to the numeric goal "as many as possible". A proposal was made that the Court, instead of referring to "all" or "as many as possible" or other numeric terms in the Strategy, should just keep to the term "victim", within the meaning of the Rome Statute. The Court agreed to revise also this objective.

28. A concern was expressed of the shallow content of this objective, on the grounds that the Court had not yet issued a decision on the reparations. It was important to do scenario planning and to manage expectations. The Court indicated that it was difficult to plan in the current situation without knowing what to expect as regards the reparations orders, but it was already managing expectations through, e.g. communication with victims' communities regarding possible outcomes.

B. Reparations

29. In its meeting on 10 May 2011 the Working Group had before it a document, entitled "ICC: Relevant provisions concerning reparations", submitted by the Registry on 9 May 2011. The main goal of the meeting was 1) to explain and understand the Rome Statute framework on reparations and the roles of different organs of the Court, the Trust Fund for Victims, the States and other stakeholders in the process, and 2) to get an update on the implementation of such framework so far.

1. Overview of the Rome Statute framework on reparations

30. As regards the legal framework of the Court on reparations, the Registrar explained that main legal provisions for the reparations to victims could be found in article 75 of the Rome Statute, as well as in article 79 under which a Trust Fund for Victims was established. In addition, rules 94 to 99 of the Rules of Procedure and Evidence outline the procedure for victims to request reparations. In this connection, the Registrar highlighted the importance of rule 95 according to which the Court can proceed on its own motion and initiate a request for reparations. With respect to provision of publicity of reparations proceedings, the Registrar emphasized the importance of rule 96 of the Rules of Procedure and Evidence, pursuant to which the Court may seek the cooperation of relevant States Parties in respect of the publication of reparation proceedings.

31. The Registrar also highlighted some of the key roles of the Registry in the practical phase of the reparations, such as management of expectations among affected communities; assistance in applications for the reparations proceedings and organization of legal representation; provision of publicity to judicial decisions regarding reparations; facilitation of a range of procedural activities; and more generally, the overall presence of the Registry in the field.

32. In addition, the Registrar informed the Working Group that in the Lubanga case, in order to avoid calling a witness twice, the Trial Chamber had decided to apply regulation 56 of the Regulations of the Court⁹ which would allow it to hear witnesses and examine the evidence for the purposes of a possible decision on reparations at the same time as hearing witnesses for the purpose of the trial.

2. Update on implementation of the reparations framework and the Court's Strategy in relation to victims

33. The representative of the Presidency briefed the Working Group on the current situation with regard to the article 75, paragraph 1, of the Rome Statute, indicating that two aspects were important: the meaning of the article and the procedural ways to establish principles for reparations. As regards the meaning of article 75, paragraph 1, he informed the Working Group that the judges had held plenary discussions on this issue in 2005 and 2007. As regards the procedures, he indicated that the practical effect of those discussions was that the establishment of principles by the Court would be achieved through its jurisprudence in specific cases, including any appeals. In the event that any of the three cases currently before the Court resulted in convictions, reparations would in practice be considered by the same judges as during the trial proceedings. He further added that given the innovative and complex nature of the subject, there was a strong interest in views of experts outside the Court. He welcomed any input from the States, as many national jurisdictions already had procedures in place for reparations, even though on a much smaller scale.

34. The Representative of the VPRS indicated that the role of the Registry and the VPRS in the reparations phase will depend on the kind of the proceedings that the Trial Chamber initiates in a particular case and in particular it will depend on what the respective Chamber will require the Registry to do. The VPRS indicated that the office has already started preparation for the reparations phase, including managing expectations of the affected communities and considering the need to explain clearly that reparations will be possible only after the end of a trial (if there was a conviction), that there might not be substantial assets and that not all people that consider themselves as being victims will qualify for the reparations. It was noted that the major challenge for the VPRS is how to communicate with the victims about reparations when it is still not known the system that will be adopted. As regards the potential role of the VPRS in the reparations phase, it was indicated that it will probably predominantly consist of collecting contextual information from the field, analysis of applications in accordance with the requirements provided by the Chambers, organization of legal representation and close cooperation with PIDS in order to create effective messages to be conveyed to the affected communities.

35. The representative of the Outreach Unit (OU) in the PIDS indicated two major challenges of the OU in respect of reparations: a) how to manage expectations of the affected communities; and b) how to ensure that the affected communities get accurate information on a timely basis. In relation to the second challenge she noted the issue of limited resources and emphasized the importance of rule 96 of the Rules of Procedure and Evidence, as mentioned above. The OU indicated that many of the mechanisms already in place will also be used in respect of reparations, as for example the use of air-time to broadcast proceedings by radio and TV.

36. The Executive Director of the Secretariat of the Trust Fund for Victims, Mr. Pieter de Baan, reminded the Working Group of its two main mandates; implementation of Court-ordered reparations and providing general rehabilitation assistance (physical and psychological rehabilitation, material support) to victims within the Court's jurisdiction. He explained that the engagement of the Trust Fund for Victims under the first mandate would be triggered by a Court decision, as reparations award is to be deposited with, or implemented through the Trust Fund. In addition, the Board of Directors of the Trust Fund may consider complementing the award with other resources of the Trust Fund (in which case the collective forms of reparations are favoured by the Regulations of the Trust Fund for Victims¹⁰). The current reserve the Trust Fund has for reparations orders is at € 1

⁹ Regulations of the Court, ICC-BD/01-01-04.

¹⁰ *Official Records ... Fourth session ... 2005* (ICC-ASP/4/32), part III, ICC-ASP/4/Res.3.

million, following a decision by the Board of Directors. In addition, the Trust Fund is able to perform an advisory role for the Court in the design phase of any reparations order based on experiences and structures of its existing activities under the second mandate. Finally, the Trust Fund is able to monitor, evaluate and report on implementation of reparations. Some of the challenges that were identified by the Executive Director were the lack of precedent; managing expectations with potentially eligible beneficiaries; inclusion of vulnerable groups of victims in design and implementation of reparations; changing roles of Trust Fund under two mandates and perceptions in the field it might cause; need to ensure more increasing trend in contributions and resources. With regard the latter, the Board of Directors is considering launching a fundraising call in the event of a first decision on reparations.

37. The issue of identification and freezing of suspects' assets has also relevance for the reparations phase. The OTP and the Registry strongly emphasized the cooperation between the two organs on the issue, in accordance with the Rome Statute. The Registry's representative noted that it had a limited mandate and could act only upon instructions from the Chamber. The Registry's role was to facilitate the dialogue between the Court and the States, mostly by notifying the States identified by the Chamber in their request for cooperation in the freezing of assets, and doing follow-up through the respective embassies. He noted that the requests from the Chambers to States to freeze assets are often general and would require further investigative actions, and that the Registry had very limited resources to undertake these: it had no staff available to undertake financial investigations for the purposes of freezing assets, as the mandate of the financial investigator was for the purpose of establishing the indigence of detainees requesting legal aid. This one financial investigator work was limited to verification of the information provided by suspects and the States, and could not be used for financial investigations linked to the freezing of assets.

38. The OTP noted that in the course of its investigations the OTP, notably via its Financial Investigative Unit, gives particular attention to financial related information, addresses the need for identification of financial assets publicly, and where applicable sends requests to relevant States. Up to date, the OTP has sent 41 requests to 20 different States in relation to the financial aspects of the investigations. It was also clarified that in some instances a State may receive two similar requests for identification and freezing of assets from the Court, for example one from the Chambers and one from the OTP, as a result of different mandates and focus of required information. In such cases, States should not hesitate to request clarifications from the Court.

39. In respect of the question as to whether the Court cooperates with the United Nations network for tracking and freezing of assets, the Court responded that they are in contact with the United Nations and that the OTP and the Registry are members of a number of such networks. However, they also noted that this cooperation could be useful in terms of preliminary clarifications, but that the requests for cooperation still needed to be processed directly by the States. As regards the amount of assets that have been already identified and frozen, it was noted that the Court had had only limited success so far and that number of requests to the States was still pending.

C. Trust Fund for Victims

40. In addition to presentation of the Trust Fund for Victims preparations for the reparations phase, the Executive Director of the Secretariat of the Trust Fund for Victims, Mr. Pieter de Baan, briefed the Working Group on the status of activities on two occasions, on 15 March 2011 and 4 November 2011.

41. At the annual meeting of the Board of Directors of the Trust Fund on 21 and 22 March 2011, some key issues were anticipating the Trust Fund's reparations mandate including the legal, financial and operational aspects, fundraising approach and initiatives, and organization of the Secretariat of the Trust Fund, whereby the Board of Directors provided guidance to the Secretariat.

42. On 4 November 2011 the Executive Director noted that there was a positive rising trend in increasing voluntary contributions and donor-base, which was remarkable given the current economic climate. However, the resources of the Trust Fund needed still to

grow significantly in order to meet the expectations of victims and other stakeholders. The Secretariat of the Trust Fund has identified the opportunity to liaise with the international private donor community, but so far did not dispose of the required time and resources. The Executive Director noted that this is a very competitive market, entry to which required dedicated efforts and professional fundraising activities. Regarding the action that States Parties and NGOs could undertake to help raise the profile and increase the impact of the Trust Fund, the Executive Director invited States that might have information on any partners with which the Secretariat of the Trust Fund could work to so indicate to him. In seeking engagement with civil society, contributions other than funding would be welcomed, e.g. contributions in-kind and technical support.

43. As regards how the Assembly might strengthen the Secretariat of the Trust Fund legally and financially, the Executive Director indicated that the Secretariat was in need of core capacity in the form of legal and financial expertise. One State Party had assisted through the contribution of a legal officer, which position was now recommended by the Committee on Budget and Finance to be continued as a GTA position for 2012. As regards financial expertise, the financial management workload had been calculated at 295 work days, a function that had been absorbed by the team. He noted the importance of confidence regarding financial management of the Trust Fund, both internally as well as by external parties including the donors.

44. The Secretariat of the Trust Fund indicated that the office was reviewing the projects in the Democratic Republic of the Congo and Uganda to assess their impact on victims. The Secretariat of the Trust Fund had conducted a survey of 2,500 victims on the impact of the support provided by the Trust Fund, the meaning of the Trust Fund for victims, and whether they knew that it was linked to the Court. The results were to be presented at the tenth session of the Assembly. Sustainability plans were being incorporated, including an assessment of the areas from which the Trust Fund could transition, and those where it was more sustainable to transition to working with partners.

III. Conclusion

45. The Hague Working Group considers that the discussion under this item should continue as regards all the areas addressed in this report: 1) Revision of the Court's Strategy on victims; 2) Reparations; and 3) Trust Fund for Victims. In this context the Working Group wishes to propose the text in the annex for inclusion in the omnibus resolution.

Annex

Draft paragraphs for inclusion in the omnibus resolution

The Assembly of States Parties,

Notes the ongoing work of the Court in reviewing its Strategy in relation to victims and its report thereon and *requests* the Court to finalize the review in consultation with States Parties and other relevant stakeholders and report thereon in advance of the Assembly at its eleventh session;

Notes with concern reports from the Court on the continued backlogs the Court has had in processing applications from victims seeking to participate, a situation which might impact on effective implementation of the rights of victims under the Rome Statute, and *underlines*, in this regard, the need to consider reviewing the victim participation system with a view to ensuring its sustainability, effectiveness and efficiency ; *requests* the Court to conduct such a review in close consultation with the Bureau and relevant stakeholders and to report thereon to the Assembly at its eleventh session;

Calls upon States, international and intergovernmental organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims also in view of possible imminent reparations, in order to substantively increase the volume of the Trust Fund for Victims, broaden the resource base and improve the predictability of funding; and *expresses its appreciation* to those that have done so;

Expresses its appreciation to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims, and *encourages* the Board and the Secretariat to continue to strengthen its ongoing dialogue with the Court, States Parties and the wider international community, including donors as well as non governmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact;

Recalls the responsibility, under the Regulations of the Trust Fund for Victims, of the Board of Directors to endeavour to manage its resources originating from voluntary contributions in such a way as to ensure an adequate reserve to complement any Court-ordered reparations awards, without prejudice to its activities under the Trust Fund's assistance mandate including those funded by earmarked contributions;

Requests the Court and the Trust Fund for Victims to develop a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations.
