

BUREAU OF THE ASSEMBLY OF STATES PARTIES THE HAGUE WORKING GROUP

Report of The Hague Working Group on the informal consultations regarding the stocktaking exercise of the Review Conference: The impact of the Rome Statute system on victims and affected communities, submitted by the focal points, Chile and Finland

A. Introduction

1. Following a proposal by Chile and Finland, which received strong support from various States Parties and NGOs, the eighth session of the Assembly decided that the topic “The impact of the Rome Statute system on victims and affected communities” would be one of the four sub-items to be discussed in the context of the Review Conference agenda item “Stocktaking of international criminal justice”.¹ The respective countries were appointed as focal points by the Bureau at its eighteenth meeting, on 15 December 2009, with a view to preparing the topic for the Review Conference.

2. As put forward in the proposal, the implementation of the Court’s unique mandate is now underway, already involving local communities both directly as a result of the Court’s proceedings and indirectly at the national level as a result of the principle of complementarity. The stocktaking exercise of the Review Conference will provide an ideal opportunity to consider how victims and affected communities experience and perceive justice 12 years after the adoption of the Rome Statute and eight years after the initiation of the Court’s activities, while bearing in mind the early phase of the Court’s functioning.

3. The focal points wish to propose that the overarching goal of the stocktaking exercise with regard to this topic be, through an inclusive approach, to engage victims and affected communities in the Review Conference and to recall the importance of the Rome Statute system and the Court for victims and affected communities. The stocktaking exercise should also contribute to identifying areas in which the Court’s positive impact can be strengthened, including any action that States and non-State actors can take to further enhance these processes nationally.

B. Informal consultations of The Hague Working Group on 3 February 2010

1. Briefing on the state of play by the NGOs and the Court

4. The Working Group heard presentations by two NGOs on the impact of the Rome Statute system on victims and affected communities and their experiences in this regard.

5. The NGO No Peace Without Justice (NPWJ) indicated that the first of a series of missions to Uganda to meet with victims and government officials and to visit affected communities had taken place at the end of January with the participation of the President of the Assembly and other interested delegations. The visit had demonstrated that the four issues that are to be considered under the stocktaking exercise, i.e. complementarity, cooperation, the impact of the Rome Statute on victims and affected communities and peace and justice, were closely intertwined.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.6, para. 5 and annex IV.

6. The NGO Redress referred to the importance of conducting a stocktaking exercise in relation to the impact of the Rome Statute system on victims and affected communities. Such exercise would reinforce the position of victims as the stakeholders and beneficiaries of the Rome Statute. As such, the experiences and views of victims could contribute to the further development of the Rome Statute system, for example in the field of strategic planning. Through the Victims' Rights Working Group, which a high number of national and international NGOs had already joined, the organization aimed at facilitating an exchange of views on the issue in advance of the Review Conference. By circulating a questionnaire, the Victims' Rights Working Group was collecting information relevant in the evaluation of the impact of the Rome Statute system on victims and affected communities. Furthermore, the questionnaire facilitated the dialogue between NGOs and victims' groups.

7. The Working Group also heard a presentation by the Deputy Registrar of the Court, who referred to the four parts of the Court directly involved in issues related to victims. The Victims Participation and Reparations Section of the Registry facilitated the participation of victims in proceedings before the Court, inter alia, by informing victims of their rights, assisting in the application for participation and by organizing legal representation. Together with the Registry's Outreach Unit, the Section aimed at improving awareness about the Court's work and at educating affected communities about their rights. Experiences thus far had demonstrated that face-to-face meetings and engaging the local media were the most effective in reaching victims and affected communities.

8. The Deputy Registrar further indicated that the protection and support of victims and witnesses was in the hands of the Victims and Witnesses Unit, which was also responsible for providing counseling and for making logistical arrangements for victims and witnesses appearing before Court. As regards the Office of Public Counsel for Victims, the Deputy Registrar indicated that its mandate was to provide support and assistance to victims and legal representatives of victims. There had been a steady increase in the workload of the Office in light of the decisions of the Chambers to entrust the Office with the task of providing legal assistance and representation to victims until such time as a common legal representative was chosen.

9. As regards the Trust Fund for Victims, the Deputy Registrar indicated that so far the Fund had received €4.9 million from 24 States. Approximately €2.7 million had been made available to projects in northern Uganda and the Democratic Republic of the Congo. It was estimated that these projects had reached 39,000 victims directly and 187,000 victims indirectly. In order to discharge its mandate effectively, the Secretariat of the Trust Fund had developed an extensive operational presence in the field, as well as a network of implementing partners. The Trust Fund for Victims also announced that they were conducting an impact evaluation with 2000 beneficiaries from a selection of the Trust Fund's 34 projects in northern Uganda and the eastern Democratic Republic of the Congo. Information will be collected on the Trust Fund's three core activities – physical rehabilitation, psychological rehabilitation, and material support; and how victims perceive the effectiveness of the Funds' support and the perceived link between the Trust Fund and the Court. Preliminary findings of this study would be presented at the Review Conference and the questionnaire circulated.

10. For its part, the Office of the Prosecutor referred to the ICC Court-wide Strategy in Relation to Victims². The Strategy describes what the specificity of the Court – its permanent nature, its potentially worldwide scope, and its introduction of new substantive law in relation to victims' participation – means for victims, and how the first cases before the Court have provided examples of concrete victims' participation, fully respecting the conduct of fair and expeditious proceedings. The Strategy emphasizes that participation may take many forms, from petitioning the Court or volunteering information to applying for participant's status or participating as witnesses, and recognizes the need to implement those provisions in a clear and

² Report of the Court on the strategy in relation to victims" ("ICC Strategy in Relation to Victims"), ICC-ASP/8/45.

consistent manner. The Office of the Prosecutor further stressed that, since it was the first organ to interact with victims, it had collected a vast amount of information detailing the impact of the Rome Statute system on victims and affected communities. Victims may send information under article 15 of the Statute to the Prosecutor, as well as present their views when the Prosecutor seeks authorization from the Pre-Trial Chamber to initiate an investigation *proprio motu*. In this context, the Office received an average of 122 communications under article 15 each month.³

2. Exchange of views based on the discussion paper by the focal points

11. The focal points introduced the discussion paper, dated 28 January 2010, entitled “Discussion paper on the stocktaking exercise of the Review Conference - The impact of the Rome Statute system on victims and affected communities” and sought the views of delegations on the proposed approach (modalities for the pre-Review Conference preparations; for the consideration of the topic; and on the expected outcome at the Review Conference) as well as on the substantive areas for discussion.

a) Proposed approach

12. The focal points noted that it is understood that, as regards the topic of the stocktaking exercise of the Review Conference, at the resumed eighth session of the Assembly, to be held from 22 to 25 March 2010, the Assembly would decide and approve the modalities for:

- a) The preparations in the lead-up to Kampala;
- b) The consideration of the topic; and
- c) The expected outcome at the Review Conference.

13. The focal points proposed that The Hague Working Group, in consultations with the New York Working Group, as appropriate, would consider such modalities, and submit the results of those considerations by early March 2010, with a view to the resumed session of the Assembly.

14. For the purpose of discussion, the focal points presented three modalities and the ideas reflected therein, which were not intended to be exhaustive.

b) Modalities for the preparations in the lead-up to Kampala

15. The focal points proposed that the preparation process should consist of two stages:

- a) In the first stage currently at hand, a decision by the resumed session of the Assembly on the modalities for the consideration of this topic at the Review Conference should be prepared; and
- b) In the second stage, following guidance from the resumed session of the Assembly, the *substantive preparations* should continue and be finalized through various events organized by stakeholders, as well as through formal meetings of The Hague or the New York Working Groups, as appropriate.

16. While the first stage focuses on the modalities, for reasons of time it is necessary, however, that the substantive discussions should already begin ahead of the resumed session, even if they are not expected to be finalized at this stage.

³ Since April 2004.

17. There was general support at The Hague Working Group for the proposed approach outlined by the focal points, i.e. that the preparatory process should consist of two stages and that at its resumed eighth session the Assembly would decide and approve the modalities for the preparations in the lead-up to the Review Conference, while the substantive preparations would continue to be finalized at a later stage.

c) Modalities for the consideration of the topic

18. Firstly, the focal points proposed that the subject would be presented at the Review Conference on the basis of papers prepared in advance summarizing, inter alia, the experiences and perceptions of victims on the impact of the Rome Statute system.

19. Secondly, the discussion at the Review Conference should take place in the format of a (high-level) panel, with participation by the relevant stakeholders.

20. Thirdly, possible side-events, organized together with the relevant stakeholders, should be an integral part of the handling of the topic at the Review Conference.

21. There was general agreement in The Hague Working Group that a panel discussion would be the most appropriate format. It was noted that the areas to be discussed would influence the decision on whether one or two panels would be held.

22. Clarification was sought on the preparation of papers that would form the basis for the deliberations at the Review Conference. There was broad support for one preparatory document, which would contain the specific topics to be discussed. It was also suggested that the focal points prepare a compilation of the different papers prepared by experts, NGOs and other stakeholders, retaining always the general focus of the topic.

23. It was noted that the three hours envisaged for the panel discussion at the Review Conference would not be adequate to cover all aspects of the topic in the necessary detail and, in this regard, it was suggested that the side events on the issue should be closely linked to the formal programme, so as to ensure consideration of those issues that the panel could not address. The focal points indicated that they were considering the appointment of a rapporteur for the topic, who would keep an overview of the events taking place and report to the panel.

24. As regards participants in the panel, it was understood that they would be high level individuals, yet to be identified. It was suggested that a member of the Board of Directors of the Trust Fund for Victims be invited. Furthermore, it was agreed that victims' representative be included in the panel, so as to bring their own perspective to the discussions. The importance of their perspective was noted as such focus could help to engage victims in the Review Conference.

d) Modalities of the expected outcome at the Review Conference

25. The focal points proposed that a specific outcome be defined for this stocktaking topic, which could include the following elements:

- a) A final document including the conclusions of the panel and related events, as well as, possibly, a resolution;
- b) In addition to the topic-specific outcome above there could be a high-level declaration, possibly as a part of a wider declaration, reaffirming broad principles and States Parties' commitment to the Rome Statute system with regard to victims and affected communities.

- c) The results of the stocktaking exercise should also be incorporated into the Review Conference communications strategy in order to inform the broader public about the Court's work on behalf of the affected communities. Suggestions might include materials, such as fact-sheets prepared by the Court provided to journalists, particularly those from situation countries, in advance of the Review Conference on the involvement of victims in the Rome Statute system and updates from Kampala as discussions proceed.

26. The preparation process should be inclusive and open to all interested stakeholders. The aim is to engage victims and affected communities in the Review Conference.

27. Where possible, different stakeholders should aim to coordinate their positions through established bodies, e.g. for victims and affected communities, through national and international NGOs, facilitated by the Victims' Rights Working Group, to the extent feasible,⁴ and for the Court, through its Working Group on Victims, which is open to all relevant Court stakeholders. In the interest of expeditious preparations, informal sessions and meetings can be used in addition to official meetings of The Hague or the New York Working Groups.

28. In The Hague Working Group views were expressed to support both a declaration and a resolution, and it was agreed that the outcome should be concrete and action-oriented. Eventually, both outcomes could be envisaged as complementing each other. It was noted that a resolution would be more operational while a declaration could possibly constitute an incentive for the attendance of high-level participants. In this regard, a representative of an NGO expressed the view that a ministerial declaration would be an incentive for Ministers to participate if there was a role for them at the Conference.

29. The point was made that it would be necessary to decide how the outcome document should be drafted and when it should be negotiated. The focal points indicated that the outcome document should be prepared in advance and that the drafting would begin during or after the resumed session and be finalized at the Review Conference, taking into account developments in the discussions.

30. It was proposed that other possible outcomes should include:

- a) Commitments to contribute to the Trust Fund for Victims;
- b) Commitments to adopt national implementing legislation relevant to Victims and affected communities, such as for the protection of victims as well as for the achievement of truth, justice and reparations;
- c) Commitments to conclude ad hoc agreements with the Court with regard to the victims and affected communities.

31. It is understood that the latter two options are also linked to the topics of cooperation and complementarity, respectively. The point was made that the communications strategy should reflect the outcome of the discussion. The focal points indicated that they would maintain contact with other focal points for the stocktaking exercise, given the possible synergies among the topics.

⁴ The Victims' Rights Working Group (VRWG) is a network of over 300 civil society groups and individual experts created in 1997 under the auspices of the Coalition for the International Criminal Court (CICC). Affiliated organisations include NGOs from Uganda, DRC and Sudan as well as international NGOs. See the website <http://www.vrwg.org>.

3. Substantive areas for discussion

32. In approaching the issue “The impact of the Rome Statute system on victims and affected communities”, the focal points proposed that, as an overall focus, the discussions should address victims’ expectations in relation to the Court and the international justice system, as well as experiences and perceptions of the Court’s work among victims and affected communities in the Rome Statute system.

33. It will be of a key importance to maintain a cross-cutting gender perspective throughout the exercise. The focal points proposed that the substantive discussion could focus on the following specific areas, where the aim would be to define the ways in which the Court’s on-going work and its justice processes have an impact or influence upon:

- a) Victims’ experiences and expectations of obtaining justice, including those directly involved with the Court, those in situations but not cases under trial, situations under analysis and victims in unrelated situations;
- b) Individual dignity, healing, rehabilitation, and empowerment;
- c) Victims’ exposure to and enhanced knowledge of their legal rights, of human rights and the rule of law in general; and
- d) Especially in situation countries, national recognition of victims’ rights to justice and reparation, particularly for specific groups of victims, e.g. women and children.

34. The aim of the discussion would be to identify, through dialogue, those areas in which the positive impact of the Rome Statute system and the way it is experienced by victims and affected communities could be enhanced, always bearing in mind the limited experience attained thus far and the fact that a full judicial cycle at the Court has not yet been completed.

35. Impact and influence could be understood to mean either direct impact or more indirect influence on changing perceptions and expectations of justice processes.

36. The discussion would need to encompass:

- a) The different ways in which victims interact with the Court, including as beneficiaries of the Trust Fund for Victims, through outreach or direct involvement in proceedings, whether as witnesses or participants, as well as through other channels where victims’ views and concerns are being heard;
- b) The differentiation of specific types of harm on the ground, such as for children formerly associated with armed groups, victims of gender-based violence, victims of attacks;
- c) Specific aspects of gender-based violence, for instance, on breaking the silence around gender violence, deterring gender-based violence, or finding justice for victims of gender-based crimes; and
- d) Lessons learned from other international criminal tribunals, in particular in relation to their experiences of outreach and reparations within their respective statutes.

37. The Hague Working Group agreed with the focal points on the proposed areas for discussion. However, it was suggested that the scope of the exercise would be more focused, such as including only the situation countries, or, in addition, situations under analysis. It was noted that the objective would not be to seek to limit the scope of the discussion to certain groups of victims but acknowledge that, given the limitations of time, it would very likely be difficult to consider all categories of victims, i.e. those in cases that are not directly related. Furthermore, in light of the limited time available for the topic at the Review Conference, it would be important to take advantage of the synergies existing among the topics.

38. Delegations proposed the following additional areas for inclusion:
- a) A review of the work and functioning of the Trust Fund for Victims, including its potential for interaction with and strengthening of national systems for reparations and its relation with NGO's working in the field;
 - b) Further commitment of the States Parties in recognizing the rights of victims with the aim of obtaining truth, justice and reparation.

39. With respect to the first point, the acting Executive Director of the Secretariat of the Trust Fund for Victims indicated that the Secretariat was preparing a paper on the operational lessons learned and intended to host a side-event together with the Board and implementing partners.

40. Delegations welcomed the inclusion of the cross-cutting gender perspective.

C. Preliminary conclusions

41. In light of the consultations held in The Hague Working Group, as well as during the focal points' travel to Uganda from 11 to 17 February 2010, during which several stakeholders were met, the focal points submit the following preliminary conclusions for consideration by the Assembly at its resumed eighth session.

- a) The preparatory process should consist of two phases and that, at its resumed eighth session the Assembly decide and approve the modalities for the preparations in the lead-up to the Review Conference, while the substantive preparations would continue to be finalized at a later stage.
- b) A high-level panel discussion would be the most appropriate format, with a keynote speaker opening the event.
- c) There should be one preparatory document, which would contain the specific topics to be discussed.
- d) The focal points could prepare a compilation of the different papers prepared by experts, NGOs and other stakeholders, retaining the general focus of the topic.
- e) The side events on the issue should be closely linked to the formal programme, so as to ensure consideration of those issues that the panel could not address.
- f) A rapporteur for the topic should be appointed to have an overall view of the events taking place and report to the panel.
- g) A specific outcome for this stocktaking topic could include some or all of the following elements:
 - i) A high-level declaration, possibly as a part of a wider declaration, reaffirming broad principles and States Parties' commitment to the Rome Statute system with regard to victims and affected communities;
 - ii) A resolution specific for this topic;
 - iii) A final document including the conclusions of the panel and related events;
 - iv) Encouragement to States to consider further contributions to the Trust Fund for Victims;

- v) Encouragement to States to consider the adoption of measures, where applicable, relevant to victims/witnesses and affected communities, such as for the protection of victims as well as for the achievement of truth, justice and reparations;
- vi) Encouragement to States to conclude ad hoc agreements and arrangements with the Court with regard to victims and affected communities;
- vii) The results of the stocktaking exercise should also be incorporated into the Review Conference communications strategy.

The above outcomes should also contribute to the further development of the Rome Statute system, for example in the field of the Court's strategic planning process.

- h) The substantive discussion should concentrate on the following specific areas, with a focus on current situation countries or situations under analysis and taking into account lessons learned from other international criminal tribunals:
 - i) **The role of outreach in impacting victims' expectations of obtaining justice and their enhanced knowledge of their legal rights;**
 - ii) **Especially in situation countries, the importance of recognizing victims' rights to justice, participation and reparation, including nationally and particularly for specific groups of victims, e.g. women and children;**
 - iii) **A review of how the Trust Fund for Victims has contributed towards individual dignity, healing, rehabilitation, and empowerment and areas in which its work could be enhanced, including obtaining more funds. In this context, its potential for strengthening national systems for reparations could be analyzed.**

- i) The focal points propose an indicative draft programme for the stocktaking on this topic (see annex I). The focal points note that the details and speakers would still need to be identified. The focal points also note that an alternative, subject to delegations' views, would be to have two separate panels, although the time available might make this option challenging to manage and leave little time for discussion.

D. Further organization of work

42. The timetable for the substantive preparations after the resumed session of the Assembly and in the lead up to the Review Conference would need to be discussed later, in light of the outcome of the resumed session.

43. In order to facilitate the general coordination and substantive preparation, the focal points submit an indicative and preliminary list of events, activities and initiatives planned by various stakeholders for 2010, as well as written contributions or background papers already being prepared or to be requested (see annex II).

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Annex I

Indicative draft programme for stocktaking session on victims

Date: 3 June 2010 (TBC)

Time: 10:00-13:00 (TBC)

Event: Panel discussion on the impact of the Rome Statute system on victims and affected communities:

- **The role of outreach in creating the impact: challenges and solutions**
- **Victim's participation and reparations as elements of justice**

10:00-10:15 Introduction by keynote speaker (possibly a short film)

10:15-12:00 Panel discussion

Moderator

Panelist 1: Victims and affected communities' representative

Panelist 2: Civil society representative

Panelist 3: ICC representative

Panelist 4: Trust Fund for Victims representative

Panelist 5: Experience from other tribunals

Panelist 6: Gender perspective

Panelist 7: Impact on national level

Panelists would be asked to make max. 10 minute presentations, supplemented by a written submission that can be more comprehensive (yet concise), to be circulated in preference in advance of the discussion.

12:00-12:45 Discussion

12:45-13:00 Conclusions

13:15-15:00 **Lunch side-event on Trust Fund for Victims**

13:15-14:15 Round table discussion based on the TFV lessons learned, with comments from:

- TFV Board representative
- TFV Secretariat representative
- Victims and affected communities' representative
- Civil society representative/s
- Court representative

14:15-14:45 Discussion and conclusions

14:45-15:00 Opening of Pledges (opportunity to be continued throughout the Review Conference)

Annex II

List of side events, activities and publications

Events, activities, initiatives

- a) Possible side event by the Trust Fund for Victims on the role and impact of the Fund;
- b) On 15 January, a Victims' Rights Working Group's questionnaire was disseminated to the Victims Right Working Group (VRWG) listserv, comprising over 350 members, including organizations working with victims or focused on victims issues in situation countries;
- c) From 15 January to 20 February:

The questionnaire is being used as part of outreach and sensitization initiatives for the Review Conference by:

- Uganda Victims Foundation (UVF), with members in 14 districts of northern Uganda;
 - LIPADHO5 (an NGO based in the DRC, in Ituri and North Kivu); and
 - Womens' organizations in the eastern DRC;
- d) From January to May:
 - HURINET/UCICC⁶ and No Peace Without Justice (NPWJ), visits by delegates of States Parties to Uganda to meet with victims, affected communities and other relevant stakeholders. A briefing by both State and civil society participants in the project is planned as a side event at the Review Conference.
 - From 10 to 17 February, the focal points participated in this initiative.

- e) From 15 to 17 February:

A UVF/REDRESS Workshop was held in Gulu, northern Uganda, bringing members in 14 districts of the north to discuss inter alia, the questionnaire (with participation of NGOs from the DRC);

- f) From 19 to 21 April:

The Women's Initiatives for Gender Justice will convene, in cooperation with the Nobel Women's Initiative, an "International Gender Justice Dialogue" with 80-90 gender experts, feminist legal theorists and practitioners, peace mediators, jurists, women's rights advocates, political leaders, and other key actors. Participants will identify the strategic directions required for advancing gender justice through implementation and use of the Rome Statute and the Court in preparation for the Review Conference.

- g) The Women's Initiatives for Gender Justice will also hold side events during the Review Conference, bringing women's rights and peace activists from the situation countries;
- h) HURINET/UCICC "Pre"-Review Conference bringing civil society together, with working groups on each of the stocktaking topics, in the week before the Review Conference;

⁵ La Ligue pour la Paix et les Droits de l'Homme.

⁶ Human Rights Network/Uganda Coalition for the International Criminal Court.

i) May to June:

HURINET/UCICC and NPWJ- the People's Space, a forum at the Review Conference venue for civil society.

Written contributions/background papers

- a) Report of the Trust Fund for Victims;
- b) A possible report of the Court summarizing the last seven years;
- c) UVF report following the 15-17 February workshop on the Impact of the Court on victims and affected communities;
- d) VRWG substantive paper on the impact of the Court on victims and affected communities, following the results of the questionnaire;
- e) Eventual REDRESS/UVF paper on impact of the Court on the Ugandan peace process and corresponding legislation, e.g. International Crimes Bill, Reconciliation Bill; and
- f) LIPADHO report/paper on the impact of the Court on victims and affected communities in eastern DRC HURINET/UCICC and NPWJ: Report on visits by State delegates to Uganda.

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