

**Seventh session**

The Hague

14-22 November 2008

**Report of the Bureau on the assessment of the  
Regulations of the Trust Fund for Victims**

**Note by the Secretariat**

Pursuant to paragraph 2 of resolution ICC-ASP/4/Res.3 of 3 December 2005, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly its report on the assessment of the Regulations of the Trust Fund for Victims. The report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau.

## **Report of the Bureau on the assessment of the Regulations of the Trust Fund for Victims**

1. In its resolution ICC-ASP/4/Res.3 on the Regulations of the Trust Fund for Victims (“the Regulations”) adopted on 3 December 2005, the Assembly of States Parties (“the Assembly”) decided “to assess the implementation of the Regulations no later than at its seventh regular session.”<sup>1</sup>
2. At its 11th meeting, on 9 September 2008, the Bureau of the Assembly designated Ms. Michèle Dubrocard (France) as the facilitator for the assessment of the implementation of the Regulations.
3. In order to enable the States Parties to make such an assessment, the Secretariat of the Trust Fund for Victims (“the Secretariat”) was asked, in July 2008, to prepare jointly with the Registry a report on its own appreciation, to date, of the implementation of the Regulations.
4. On 15 October 2008, the Secretariat transmitted to the Secretariat of the Assembly of States Parties a report, which was disseminated to the participants of The Hague Working Group (“the Working Group”). This report had previously been submitted to the Registry of the International Criminal Court (“the Court”).
5. At the 16<sup>th</sup> meeting of the Working Group, on 17 October 2008, the Executive Director of the Trust Fund for Victims made a presentation in the presence of the Registrar to the Working Group on the assessment of the implementation of the Regulations. Delegations also had before them the report to the Assembly on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2007 to 30 June 2008.<sup>2</sup> After the presentation, all participants were invited to express their views.

### **A. Assessment of the implementation of the Regulations**

6. From the presentation and the discussion at the 16<sup>th</sup> meeting of the Working Group, the following points were identified:
  1. **No proposal of any change of the Regulations will be requested this year**
7. The Secretariat indicated that, since it had recently begun to implement the Regulations, it did not intend to propose amendments thereto. No major problems had been encountered in their implementation, and the Registry had provided clarifications when necessary. The Secretariat would assess the Regulations in a more comprehensive manner only after one full year of project implementation.
8. Nevertheless, the Secretariat expressed its intention to adopt by-laws in respect of areas that seemed unclear or not covered in the Regulations, for example, the indistinct use in the Regulations of the words “Board” or “Secretariat”: the description of the respective responsibilities of the Board and the Secretariat do not always seem very clear.
9. The Secretariat stated that it had begun drafting the by-laws and would submit a comprehensive draft to the Registry before presenting them to the Board. The Secretariat

---

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November – 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32) part III, resolution ICC-ASP/4/Res.3, paragraph 2.

<sup>2</sup> Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2007 to 30 June 2008 (ICC-ASP/7/13).

clarified that the by-laws, which were norms to be applied internally by the Board and the Secretariat, would not interpret the Regulations but would fill in any identifiable gaps. Any new elements would be in line with the Regulations.

10. The Registrar explained that in her view, the Regulations established a clear distinction between the respective roles of the Board, the Registry and the Secretariat. There existed no ambiguity on the responsibility of each of these organs; as regards the budgetary and the administrative aspects of the Secretariat, the Registrar was accountable. Therefore there was no need for a discussion on the texts applicable to the Trust Fund for Victims.

11. The Registrar added that there was no conflict of any kind between the Secretariat and the Registry, but rather the Financial Regulations and Rules should be applied with no exception. All contracts presented by the Secretariat must be implemented according to these Regulations and Rules.

12. With respect to the proposal to amend regulation 19, which had been formulated at the sixth session of the Assembly, the Secretariat indicated that it did not intend to propose an amendment to that regulation in the future.

## **2. The issue of reparations**

13. The Secretariat felt the need to start considering the implementation of provisions of the Regulations that it had not yet implemented, such as those relating to reparations. It was noted that a policy on reparations had not yet been developed and that the Court was preparing a comprehensive policy on reparations, and had invited the Secretariat to share with it the perspective of the victims.

14. As regards the decision of the Pre-Trial Chamber, namely, that the responsibility of the Trust Fund was, first and foremost, to ensure that sufficient funds are available for any reparation order the Court may make, the Secretariat expressed its fear that this would create two categories of victims, those benefiting from reparations and those seeking assistance.

15. The Secretariat clarified that the Board had considered setting aside a percentage of funds for reparation orders, but had realized that some difficulties would arise, for example, uncertainty as to when the Court might make such an order, the quantum of the order, and the beneficiaries of the order.

16. According to the Secretariat, it was financially unwise to set aside funds for a future order of reparations while there were victims in immediate need of physical or psychological rehabilitation or material support. Given the time that normally elapsed between the receipt of funds by the Trust Fund and the implementation of a project, it was noted that there would be sufficient funds to implement an order for reparations.

17. Some delegations supported ensuring that immediate assistance to victims was not jeopardized by putting funds on hold for future orders of reparation.

18. As regards the optimal target for the ratio of operational costs of the Secretariat to the funds available, the Secretariat indicated that, in 2007, it had set a target of 15 per cent, to be attained within three years. It was aiming to reach this target, but the ratio would be lowered if there were large contributions to the Trust Fund.

19. The Registrar stressed the importance of the principle of setting aside a portion of the funds for reparations, and suggested that this could be quantified by taking account of the number of victims permitted to participate in the proceedings.

### **3. Communication and confidentiality**

20. Information was requested on how the Secretariat reconciled the need to ensure confidentiality of both its intermediaries and victims, with the need to inform the donors and the public of the activities of the Trust Fund, and to respect the link between the Trust Fund and the Court.

21. The Secretariat admitted that this challenge was one of the most important for the Trust Fund. It indicated that it reported by providing to donors the number of beneficiaries, a description of the projects, and the result achieved. A plan for performance monitoring was being established, which would rely on a coding system to ensure confidentiality. In addition, the identity of a partner would not be made public without its consent.

22. The Secretariat added that, while caution had to be taken not to put victims at risk, the Secretariat had appeared jointly at meetings with the Victims Participation and Reparations Section of the Registry, and it had also held public meetings to explain its activities and projects.

23. The view was expressed that additional information on the projects of the Board was required. This included identifying the partners of the Trust Fund on the ground. It was also suggested that auditors could be present on the ground during implementation.

24. The Secretariat stated that, for non-earmarked funds, general information was already available, while for earmarked funds, the specific reporting system of each donor had to be respected. All projects contained performance monitoring/evaluation indicators, and were aligned with the Strategic Plan of the Court,<sup>3</sup> the Rome Statute and the Regulations of the Court. Further, it was noted that the Internal Auditor conducted field visits in implementing the audit function.

25. The Registrar further clarified that the Internal Auditor's audit related only to the areas falling under the responsibility of the Registry, i.e. financial and contractual, while the Board was responsible for its activities and projects.

### **4. Financial issues**

26. As regards the receipt of funds, the Secretariat indicated that a system had not yet been devised to account for the "in-kind" contributions that the Fund received.

27. The support of the Assembly was sought for the core funding of the Trust Fund to continue to be covered by the regular budget, so as to ensure the independence of the Board from conditions that might be imposed by donors.

28. With respect to whether any projects could qualify for Official Development Assistance (ODA), the Secretariat noted that a system of collective action had been developed for small projects, which increased the likelihood that they would be funded. Some of these could qualify for ODA funding, and the Secretariat intended to pursue this course of action in the future.

29. A concern was expressed as regards the ratio between the operational costs of the Secretariat and the resources available at present in the Fund (€1,347,000 proposed in the 2009 budget for the Secretariat and €3,000,000 available in the Fund today).

---

<sup>3</sup> Strategic Plan of the International Criminal Court (ICC-ASP/5/6).

**B. Proposal for text to be included in the omnibus resolution**

30. In light of the above mentioned elements, the text contained in the annex to the present report is proposed for inclusion in the resolution on “Strengthening the International Criminal Court and the Assembly of States Parties” of the seventh session of the Assembly.

**Annex**

**Recommendation for inclusion in the omnibus resolution**

*“The Assembly of States Parties*

*(...)*

*Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims, and *expresses its appreciation* to those that have done so;

*Welcomes*, in light of resolution ICC-ASP/4/Res.3<sup>4</sup> on the Regulations of the Trust Fund for Victims, the steps taken by the Court to assess the implementation of the Regulations, *notes* that there is currently no need to amend the Regulations, which still remain to be fully implemented, *and decides* to reassess such implementation in due course, for example, after the Court has made it first order of reparations;

*Expresses its appreciation to* the Board of Directors of the Trust Fund for Victims and the Secretariat of the Trust Fund for Victims for their continuing commitment towards easing the suffering of victims and *encourages* the Secretariat to continue to strengthen its on-going dialogue with the Registry and the international community, including donors, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure the highest standards of transparency and visibility in respect of the procedures and activities of the Trust Fund;”

--- 0 ---

---

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November – 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32) part III, resolution ICC-ASP/4/Res.3, paragraph 2.