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**Review Conference of the Rome Statute**

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Kampala  
31 May – 11 June 2010

**Stocktaking of international criminal justice**

**Impact of the Rome Statute system on victims and affected communities**

**Draft informal summary by the focal points**

**A. Introduction**

1. At its fifth plenary meeting, held on 2 June 2010, the Review Conference conducted a stocktaking exercise on the issue of Impact of the Rome Statute system on victims and affected communities on the basis of the template that had been adopted by the Assembly of States Parties at its resumed eighth session<sup>1</sup>, its updated version<sup>2</sup> and the discussion paper<sup>3</sup>.
2. The co-focal points Finland and Chile delivered the opening remarks expressing their gratitude to those who participated in the preparatory work in a constructive and result oriented manner.

**B. Keynote Speech by Ms. Radhika Coomaraswamy, Special Representative of the United Nation Secretary-General for Children and Armed Conflict**

3. Ms. Coomaraswamy underlined the important role of the International Criminal Court in helping break the silence of victims who have suffered the most serious crimes of concern to the international community. She further emphasized that breaking the silence was a first act of healing. She embraced the Rome Statute for having created a conceptual clarity by defining the details of war crimes, such as conscripting or enlisting child soldiers and having established provisions for rehabilitation and reparations.
4. She emphasized that the right of victims to participate in various stages of the proceedings before the Court was one of the more innovative aspects of the Rome Statute. She stressed that as long as the due process rights of the defendant are protected, and the Victims Participation and Reparation Section is allowed to assist victims with the organization of their legal representation before the Court, this was truly a positive step forward.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed eighth session, New York, 22-25 March 2010* (International Criminal Court publication ICC-ASP/8/20/Add.1), part II, resolution ICC-ASP/8/Res.9, annex I.

<sup>2</sup> RC/ST/V/INF.1.

<sup>3</sup> RC/ST/V/INF.4.

5. Ms. Coomaraswamy also referred to the difficult challenge of ensuring the safety of victims who testify as witnesses and victim participants; she noted with satisfaction different measures adopted by the Court in this respect.

6. Ms. Coomaraswamy underlined that justice must also mean reparation and rehabilitation of victims. In this respect, she referred to the Trust Fund for Victims, observing that its role was not only to provide Court ordered reparation, but also psychological and physical rehabilitation and financial support. She encouraged the strengthening of international efforts to develop its capacity and in this regard, she called upon all States Parties to support the Trust Fund to the fullest.

7. With regards to the situation of children in armed conflict in particular, she underlined that strengthening the community of a child victim is extremely important also in the post-conflict rehabilitation period. Reintegration of child soldiers back into their communities is essential for them to have a future, and she recommended that the Trust Fund for Victims focuses on this issue. In addition, she stressed the establishment of a gender sensitive programme was also a matter of urgency.

### **C. Panel discussion**

8. Panelists had been invited to address three of the Rome Statute's key precepts concerning victims and affected communities, along with their associated challenges:

- a) Victim participation and reparations, including protection of victims and witnesses;
- b) The role of outreach; and
- c) The role of the Trust Fund for Victims.

9. The panelists were:

- a) Ms. Justine Masika Bihamba, co-founder and coordinator of Synergie des Femmes pour les Victimes des Violences Sexuelles;
- b) Ms. Elisabeth Rehn, Chairperson of the Board of Directors of the Trust Fund for Victims;
- c) Ms. Carla Ferstman, Director of Redress;
- d) Mr. David Tolbert, President of the International Center for Transitional Justice;
- e) Ms. Binta Mansaray, Registrar of the Special Court for Sierra Leone
- f) Ms. Silvana Arbia, Registrar of the International Criminal Court

10. The panel was moderated by Mr. Eric Stover, Faculty Director of the Human Rights Center of the University of California, Berkeley.

#### **1. Victim participation and reparations, including protection of witnesses**

11. The moderator opened the discussion by asking each panelist why victims' participation is so important and what the Court has done to encourage it.

12. The panelists agreed on the importance of victims' participation and the need to reinforce the position of victims as the stakeholders and beneficiaries of the Rome Statute.

13. Ms. Arbia observed that the Rome Statute was a landmark in strengthening victims' rights by codifying their right to participation. She confirmed that this right is now a reality. To date 2.648 victims have submitted applications for participation and 770 have been authorized to participate in the proceedings. She indicated that the experience made victims feel that they can contribute to the establishment of the truth and that their suffering is acknowledged. She further indicated that in many national legal systems, the only role for victims in criminal proceedings is as witnesses, whereas the Rome Statute enables victims to participate in proceedings, meaning that they can present their views, as well as express their concerns directly to the judges where their interests are affected.

14. Ms. Ferstman pointed out that before the International Criminal Court victims of the most serious crimes have mainly been spoken about, however, now they can speak for themselves. She added that the development of the case law recognizes former child soldiers as victims instead of perpetrators and allows them to participate in the proceedings. She further underlined the importance of identifying specific groups, such as women's associations in situation countries, so that victims can be supported in their efforts to access legal representation at the ICC through people they know and can trust – and in that light, also highlighted the need to support intermediaries in terms of the services they provide to victims trying to participate.

15. Mr. Tolbert highlighted the fact that the Rome Statute has moved the victims from the periphery to the heart of proceedings which was a revolutionary development in international criminal justice should be celebrated. At the same time, however, this presented a number of challenges. He equally emphasized the importance of giving victims a voice in criminal proceedings, stressing that victims' participation was significant not only for the victims themselves but also for the historical record and legacy of the Court, as well as for the international criminal justice system, in general.

16. Ms. Rehn spoke about victims' expectations and highlighted specific problems faced by victims in their daily lives. In particular, she referred to women suffering from sexual violence as a tactic of war, as well as from stigma when returning back to their communities. She underlined the importance of encouraging women to participate and thereby ensuring outcomes that are beneficial to them.

17. Introduced by the moderator as the eyes and ears on the ground, Ms. Masika Bihamba expressed her concerns regarding the lengthy procedures, as well as the low number of victims admitted as participants in the proceedings compared to the number of victims who have applied. She indicated that traumatization resulting from the crimes committed against women was a serious problem and the fact that they often had to live aside by those who attacked them could worsen the traumatic situation. She added that the community expected that reparations should appropriately respond to these concerns.

18. It was highlighted that in order to strengthen the position of victims, and informing them of their rights, as well as to narrow the geographical distance between the Court and the victims, it was crucial that they were informed by the Court about their right to participate, including comprehensive information about the nature and scope of their rights under the Rome Statute and the Rules of Procedure and Evidence.

19. With regard to the access to legal representation, it was indicated that major challenges were the lack of sufficient financial means as well as communication problems, the latter resulting from the fact that legal representatives were usually not located in the same country as the Court and that they conducted their activities in cities, at a far distance from many victims living in remote areas. In this connection, it was observed that grassroots groups could play a more important role in assisting legal representatives to take instructions from clients, as well as helping victims understand more fully the Court's legal procedures.

20. Regarding the complex nature of the application process in submitting the required documents that prove the entitlement to victim status, it was suggested setting up a time-frame for the application process. It was also observed that avoiding frustration from the side of victims, who wished to participate in proceedings, was a major challenge to be addressed. In addition, assistance at grassroots level could prove helpful also in this respect.

### **Victim and witness protection**

21. The panelists highlighted the fundamental importance of ensuring appropriate protection of victims and witnesses.

22. Ms. Arbia recalled that victims' rights under the Statute are not limited to participation in proceedings before the Court, but also include the rights to be protected and to be awarded reparation. She emphasized that adequate protection of victims is a prerequisite for their participation in proceedings as victims or witnesses; it was thus crucial that the process of enabling victims to apply for participation could be done in a safe and secure environment so as not to put them at risk. In this context, Ms. Arbia further highlighted the importance of cooperation in ensuring protection and confidentiality for participating victims, as well as the need to put in place domestic measures with a view to strengthening complementarity, which is a core principle of the Rome Statute.

23. Mr. Tolbert observed that his experience in international *ad hoc* tribunals had revealed that confidentiality was a key issue in order to ensure appropriate protection of witnesses. Moreover, a robust relocation programme for witnesses should be set up so as to guarantee relocation to a safe place should their lives be at risk due to their interaction with the Court if they were to return to their respective countries. In this respect, he underlined the need for States to enter into witness relocation agreements with the Court. He stressed that these protection measures needed to be implemented professionally and that the Court could gain expertise through cooperation with States and other international tribunals who could share their experience in this area. He further noted that the Court's presence on the ground was very important in order to ensure victims' protection, recalling that a number of field offices had already been established. In addition, coordination between the different organs and units of the Court was essential.

24. In addition, Ms. Masika Bihamba pointed to the importance of protecting intermediaries who could be the targets of attacks because of their assistance to the Court.

## **2. The role of outreach**

25. The panelists underlined the importance of a robust outreach programme in order to make the Court better known, understood and reachable for the affected populations.

26. Ms. Arbia explained that the Court's outreach programme was a two-way communication between the Court and affected communities, which also helped to inform the Court on specific situation related circumstances. She observed that the programme was established to make judicial proceedings accessible to victims and affected communities in countries where the Court operated, through the dissemination of information that was tailored to the specific geographical and cultural background of victims, as well as to the crimes they had suffered. She emphasized that intermediaries, such as religious or community leaders, played a crucial role in reaching victims. She further stressed the importance of starting outreach activities at an early stage, referring to the successful missions of outreach teams in Kenya that had been undertaken even before the commencement of investigations. In addition, she underlined the importance of having recourse to modern means of communication so as to ensure effective outreach.

27. Mr. Tolbert referred to Court's outreach activities as building on the work done in this field by the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and hybrid tribunals, such as the Special Court for Sierra Leone (SCSL). Recalling the experience of the ICTY, he indicated that it was only when the Tribunal realized that they did not have much impact on the ground and that there were misconceptions of its role that the interaction with victims' groups and communities started under his direction. At that time, the term outreach was established and activities ensuring the understanding of the Tribunal's activities were gradually developed. Mr. Tolbert highlighted that outreach is not a panacea, but that it can be very powerful for victims and help to make the Court meaningful in a concrete way.

28. Ms. Mansaray highlighted that most of the challenges identified during the panel discussion could be addressed through a robust outreach programme. She highlighted the importance of reaching the most vulnerable groups of population, particularly children and women, through information that is specifically targeted so as to take their needs into consideration. She noted that cooperation with local NGOs can be very useful to this end. She also pointed out that outreach should not only focus on victims' rights, but also on fair trial rights of the defendant, as this is the way that the trials can be understood to be fair and balanced, thus facilitating the acceptance of the eventual outcome of the proceedings. Finally, she observed that managing the expectations of victims, of whom only a very limited number would be able to participate in Court proceedings, was another critical challenge the Court faced with regard to victims' participation. Otherwise, these unrealistic expectations, when not met, could negatively affect the way victims perceived the Court and international criminal justice in general.

29. As regards the situation in the Democratic Republic of the Congo, Ms. Masika Bihamba expressed concerns about the fact that to date, despite the Court's establishment of a field office in Bunia, the Court's activities, as well as its support to civil society involved in raising awareness of the Court in communities, still needed to be improved in order to meet victims' expectations.

30. Several panelists stressed that adequate funding is a prerequisite for effective outreach activities and called upon States Parties to support the Court to fulfill its mandate in this regard.

### **3. The role of the Trust Fund for Victims**

31. Ms. Rehn explained that the main functions of the Trust Fund for Victims were to provide physical rehabilitation, psychological assistance and material support. She noted that considerable progress has already been achieved. Thirty-four programmes were currently in place in the eastern Democratic Republic of the Congo, in northern Uganda, and in the near future in the Central African Republic, all reaching approximately 42,000 individuals as direct beneficiaries and close to 200,000 benefiting indirectly from the Fund. However, she expressed concern about insufficient financial means available to the Fund and therefore called upon States to increase their contributions to the Trust Fund, which largely depended on voluntary contributions. It was generally agreed that more funding should be made available in order to ensure a meaningful assistance to victims.

32. Ms. Masika Bihamba pointed to the importance of implementing specific measures to support women who had become victims of sexual crimes and consequently often suffered from trauma and stigmatization. In her view, such assistance to date has been insufficient and should not be limited to financial aid. She further observed that her organization based in Democratic Republic of the Congo assisted women in finding a job and integrating them into a local community.

33. Ms. Ferstman underlined that the Trust Fund for Victims formed the reparative part of the Court and should be regarded as an integral part of the Rome Statute system. In concrete terms, she urged States to contribute to the Trust Fund so as to increase its resources, as well as to take measures allowing the freezing and seizure of the assets of perpetrators so they can also be injected into the TFV. She further highlighted that the adoption of national measures was crucial in order to complement the Court's activities in support of victims. Ms. Arbia also reaffirmed the importance of complementarity in this regard.

#### **D. Interactive segment between panelists and delegations**

34. The interventions of States and stakeholders reaffirmed the importance of the role given to victims under the Rome Statute system. In addition, many delegations presented concrete proposals on how to further enhance the Court's activities in strengthening the position of victims in the three main areas under discussion.

35. One delegation underlined the important role of field offices in ensuring adequate victims' protection and participation, as well as outreach, noting that activities have to be coordinated; this presence was important in order to facilitate all operations of the Court, including investigations. Another delegation pointed to the potentially increasing role NGOs could play in the future outreach activities of the Court.

36. A detailed proposal was put forward to further improve victims participation based on experience at the national level; measures include establishing offices of judicial information, a prosecutor being in charge of direct contacts with victims, special judicial support programme, including teams of social workers, and teams supporting victims' groups. Civil society could also perform some of these activities. In addition, the same delegation proposed measures to promote access to compensation and reparation mechanisms to include to education, employment and recognition and commemoration of victims.

37. One international organisation emphasized the importance to appropriately address the victims' "right to know" what has happened to their loved ones, noting that the work carried out by the ICC, including forensic investigations and exhumations, could be particularly valuable and relevant in this regard.

38. One question was posed as to the lessons learned from the experience of the International Criminal Tribunal for the former Yugoslavia with regard to cases where women who suffered sexual crimes were facing the perpetrators in the Court room. In this connection, Mr. Tolbert observed that in order to protect the interests of women and children who are testifying as witnesses, a sensitivity training programme for prosecutors and judges is essential. Moreover, the possibility of remote testimony should be granted.

39. One question was raised as to the possible role States could play in developing a policy regarding reparations. Ms. Arbia noted that to date, the Court has not yet awarded any reparations; at the same time she agreed that States could play a role in this process.

40. One delegation enquired on the financial support available to help implement protection measures at the national level. Ms. Arbia explained that a new arrangement had been created for the relocation of witnesses, namely a tripartite agreement between the Court, the contributing State and the State of relocation.

41. As regards the Trust Fund for Victims, a proposal was made to confer an additional task on the Trust Fund, namely to guide and counsel States willing to improve and strengthen their system of reparations, for example, by adopting guidelines or a code of conduct.

42. In general, the need to support the Court and the Trust Fund for Victims with sufficient financial means was underlined.

## **E. Conclusions**

43. The panel was concluded by preliminary conclusions drawn by the moderator addressing achievements, challenges and proposals for the way forward.

### **1. Achievements**

44. The Court, States Parties and Civil Society have recognized and vigorously re-affirmed the importance of victim-related provisions and the innovative mandate of the Rome Statute.

45. The Court is taking its mandate seriously and has developed a strategy to increase victim participation. This is manifest in the number of victims who have applied and participated in the proceedings before the Court.

46. Outreach activities have been intensified and special focus programs have been developed.

47. The Trust Fund is up and running and its programmes have been welcomed by victims and are making a clear impact.

### **2. Challenges**

48. Victims still lack sufficient information about the Court and its procedures.

49. This is particularly true for women and children who, for a variety of reasons, are unable to access information about the Court. This also applies to people living in remote areas.

50. Because of this information gap, many victims have unrealistic expectations of the process and reparations.

51. Security is clearly a concern for victims and witnesses who have interacted with the Court.

52. The role of intermediaries still remains unclear.

53. Visibility and resources for the Trust Fund are still limited.

### **3. The Way Forward**

54. The Court needs to find creative ways to strengthen its two-way dialogue with victims and affected communities.

55. The Court's outreach activities need to be further optimized and adapted to the needs of victims.

56. A specific policy needs to be developed for addressing the needs of women and children.

57. More protective measures are needed for victims and witnesses.

58. A comprehensive policy towards intermediaries should be finalized by the Court and implemented.

59. Field operations should be reinforced and linked to strategic planning and the allocation of resources.

60. The Trust Fund should be congratulated for conducting a monitoring and evaluation program of its current project and encouraged where prudent to increase its visibility.

61. Finally, the Court and its staff cannot walk this road alone. They need the Stewards of the Court—the State Parties—to continue their commitment, support, and leadership.