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**Review Conference of the Rome Statute**Distr.: General  
30 May 2010Original: English

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Kampala  
31 May – 11 June 2010**The impact of the Rome Statute system  
on victims and affected communities<sup>1</sup>****A. Introduction**

1. Attention to the concerns of victims of mass violence has grown significantly since the first major international war crimes trials at Nuremberg and Tokyo, where the voices of victims were largely absent. Regional human rights bodies, such as the European Court for Human Rights and the Inter-American Court, have developed *effective remedies* that States are obligated to provide to victims of serious violations of international human rights. These procedural and substantive rights also have been codified in two important United Nations declarations<sup>2</sup> and the Rome Statute of the International Criminal Court (hereafter “the ICC”).

2. The Rome Statute, which provides the legal underpinning for the ICC, gives victims an innovative role as witnesses, participants and beneficiaries of reparations. In doing so, the ICC recognizes that it has “not only a punitive but a restorative function” reflecting the “growing international consensus that participation and reparations play an important role in achieving justice for victims.”<sup>3</sup>

3. Despite the Court’s many achievements in its eight years of operation, it still faces numerous challenges in its efforts to uphold and promote the rights of victims. Moreover, the 111 States Parties to the Rome Statute could play a more active role assisting the ICC in its efforts, as well as initiating and promoting programs at the national level to improve access of victims and affected communities to justice and reparations. To that end, this paper examines three of the Rome Statute’s key precepts concerning victims and affected communities – along with their associated challenges:

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<sup>1</sup> This discussion paper was researched and written by Eric Stover, Camille Crittenden, and Alexa Koenig (University of California, Berkeley), Victor Peskin (Arizona State University), and Tracey Gurd (Open Society Justice Initiative) in coordination with the focal points (Finland and Chile) on this stock-taking topic and in consultation with a wide range of civil society actors and victims representatives, as well as the Court.

<sup>2</sup> These principles found expression in instruments such as the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), available at <http://www.un.org/documents/ga/res/40/a40r034.htm>, and the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2005), available at <http://www2.ohchr.org/english/law/remedy.htm>.

<sup>3</sup> See *Report of the Court on the Strategy in Relation to Victims*, document ICC-ASP/8/45, 10 November 2009, Introduction, available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8/ICC-ASP-8-45-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf) (hereafter “*Strategy in Relation to Victims*”).

- a) 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) in situation countries;
- b) The contribution of the Trust Fund for Victims toward individual dignity, healing, rehabilitation, and empowerment, and areas in which its work could be enhanced, including obtaining more funds; and
- c) The role of outreach in enhancing victims' knowledge of their legal rights and calibrate their expectations of obtaining justice.

## **B. Victims and affected communities in the Rome Statute system**

4. The ICC Rules of Procedure and Evidence define "victims" as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." Victims may also include "organizations or institutions that have sustained direct harm to any of their property dedicated to religion, education, art, or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes."<sup>4</sup> Victims can interact with the Court in distinct ways including as victim participants, witnesses, applicants or recipients of reparations, or individuals who otherwise communicate with the prosecutor or the Court regarding specific situations.<sup>5</sup>

5. While neither the Rome Statute nor the ICC's procedural rules explicitly define the term "affected communities", these communities are understood to include direct victims of war crimes and crimes against humanity, as well as a broader population or group which has been the collective target of an attack as defined in the definition of crimes within the Court's jurisdiction, and may share a common experience of victimization. Since reparations may be granted collectively, it is also useful to consider how certain crimes, such as conscripting and enlisting children in hostilities, can affect specific populations or groups as a whole. In this regard, the successful reintegration and rehabilitation of former child combatants may be dependent on reparations aimed at strengthening the security and cohesiveness of the family and community.

6. Three sections and units of the ICC (in addition to the Office for Public Counsel for Victims, Trust Fund for Victims, and the Office of the Prosecutor) have direct contact with victims and affected communities. The Victims Participation and Reparation Section of the Registry facilitates victim participation in proceedings before the Court, *inter alia*, by informing them of their rights, assisting in the application for participation, and organizing legal representation. Together with the Registry's Outreach Unit, the Section aims to improve awareness about the Court's work and educate affected communities about their legal rights. The Victims and Witnesses Unit is responsible for providing protection and support to witnesses and victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, including logistical arrangements and counseling. In addition, there are two semi-autonomous entities, the Office of Public Counsel for Victims and the Trust Fund for Victims. While the Office for Public Counsel for Victims offers legal support and assistance to victims and their legal representatives, the Trust Fund for Victims provides support to victims in the form of physical rehabilitation, psychological assistance, and material support and, if instructed by a chamber of the Court, may implement reparations awards following a conviction. The Trust Fund for Victims works with survivors and their communities as full-fledged partners in designing effective and locally relevant interventions.

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<sup>4</sup> Rule 85, *Rules of Procedure and Evidence, International Criminal Court*, available at [http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules\\_of\\_procedure\\_and\\_Evidence\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf) (hereafter "*Rules of Procedure and Evidence*").

<sup>5</sup> International Criminal Court, *Strategy in Relation to Victims*, above note 3.

### C. Recognizing the rights of victims to justice, participation and reparation

7. Article 68 of the Rome Statute enables victims to present their views and concerns to the court when their personal interests are affected, and “at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.” It also values “positive engagement with victims” and its implementation ensures that the “unique perspective” of victims will be actively brought into the justice process.<sup>6</sup> Rule 90 of the ICC’s Rules of Procedure and Evidence allows victims to “be free to choose a legal representative” or to choose a common legal representative with other victims. Victim participation has increased significantly since the start of first trial: after a careful beginning with only four victims participating in the confirmation of charges hearing in the Lubanga case, there are now almost 350 victims admitted in the Katanga trial. Overall, victims have been actively participating in all cases before the Court.

8. Organizations such as Human Rights Watch have noted that active engagement of victims in proceedings can help make a crucial link between The Hague and affected communities and cultivate a “sense of investment in ICC proceedings.”<sup>7</sup> Indeed, according to the Victims Rights Working Group (VRWG, a network of over 300 national and international civil society groups and experts), victims who have applied to participate in the ICC’s processes see the ICC as having real and specific meaning for their hopes of accessing justice. Many victims who have participated directly in the ICC’s proceedings have provided positive feedback, stating that they felt valued by having their concerns heard and welcoming the opportunity of being part of a larger judicial process.<sup>8</sup>

9. Though most victims participate through legal representatives acting on their behalf, three victim-participants have addressed the Court directly in the trial of Thomas Lubanga (who is charged with the conscription, enlistment and use of child soldiers in the conflict in the Democratic Republic of the Congo). In January 2010, a former schoolteacher who said he was beaten when trying to stop the conscription of his students, told the ICC that his court appearance “was an opportunity for us to be able to [tell] the world what happened ... and ask for reparations if possible.”<sup>9</sup> The legal representatives of victims also recognize that judges can benefit from the presence of victims in the courtroom as they can provide them with a “different picture” of the “reality of the situation.” One legal representative in the Lubanga case noted that the testimonies of victims can help their own communities “understand that these young people who were in that group [of child soldiers] are not to be considered as criminals but as victims.”<sup>10</sup>

10. However, the Court faces numerous challenges in its efforts to make participation meaningful for victims. Among the issues to be addressed are victims’ need for clear information about the timeline of investigations and prosecutions, logistical and psychological support, legal representation, physical security, and the possibility of reparations.

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<sup>6</sup> International Criminal Court, *Strategy in Relation to Victims*, above note 3, at p. 1.

<sup>7</sup> Human Rights Watch, *Courting History: The Landmark International Criminal Court’s First Years*, 11 July 2008, at <http://www.hrw.org/en/reports/2008/07/10/courting-history-0>, at p.114 (hereafter “*Courting History*”).

<sup>8</sup> Victims Rights Working Group, *The Impact of the Rome Statute System on Victims and Affected Communities*, 22 March 2010, at <http://www.vrwg.org/Publications/05/Impact%20of%20ICC%20on%20victims%20DRAFT%2022%20march%202010%20FINAL.pdf>, at pp. 14-15 (hereafter “*Impact of the Rome Statute System*”).

<sup>9</sup> See Wakabi Wairangala, *Victim Tells Court His Village Wants Reparations*, 12 January 2010, available at <http://www.lubangatrial.org/2010/01/12/victim-tells-court-his-village-wants-reparations/>.

<sup>10</sup> See Wakabi Wairagala, *Q&A with Luc Walleyn, Lawyer for Victims in Lubanga’s Trial*, 13 January 2010, available at <http://www.lubangatrial.org/2010/01/13/qa-with-luc-walleyn-lawyer-for-victims-in-lubanga%e2%80%99s-trial/>.

11. Vulnerable populations, such as women and children (and especially survivors of sexual violence crimes), often have the least access to information about the Court because they are less likely to possess radios or attend community forums. Indeed, outreach strategies executed in partnership with local, grassroots women's organizations can help women and girls break through the social, physical, and psychological barriers that often hinder their access to the ICC.<sup>11</sup> In northern Uganda the Victims Rights Working Group has noted that the Court has implemented "excellent gender outreach" activities<sup>12</sup> and has "brought awareness of the rights to justice" to both male and female victims.<sup>13</sup>

12. Still, some victims who have chosen to participate in ICC proceedings report frustration with the application process. According to a March 2010 report by the Victims Rights Working Group, victims in the Democratic Republic of the Congo have found the process "slow" and "bureaucratic."<sup>14</sup> Redress has highlighted the long processing time for applications for victim participation in the Democratic Republic of the Congo, leading to backlogs and diminishing access for victims. The organization noted in its November 2009 report that since 2006 "over two hundred applicants in the Democratic Republic of the Congo situation alone have been waiting" for a response to their application to participate in the proceedings.<sup>15</sup>

13. The legal representatives of victims also play an important role in promoting victim participation. This is especially true of legal representatives from situation countries, who are well placed to facilitate regular, sensitive, and culturally appropriate communication with their clients. That said, many victims lack the funds to engage legal representation<sup>16</sup> in which case they may rely on rule 90, paragraph 5, of the ICC's Rules of Procedure and Evidence which states that "a victim or a group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance." The subject of legal representation and legal aid for victims has been most recently discussed by the Assembly of States Parties at its eighth session<sup>17</sup> and it will be important to keep monitoring and assessing how well victims are accessing legal representation and aid in the years ahead.

14. Victim and witness protection is a critical component of the Court's work. The Rome Statute recognizes that victims and their families need privacy, psychological assistance, and safety, including protection from retaliation and intimidation, in order to give meaningful effect to victims' access to justice. Article 68 of the Rome Statute requires the Court to "take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses," while article 43 sets up a Victims and Witnesses Unit in the Registry to provide protection and support.

15. The Victims and Witnesses Unit has three levels of protection that it implements in the courtroom and in the field to protect and support victims as witnesses and participants. These include preventive measures in the field, Court-ordered measures (such as the use of pseudonyms), and a full protection program. The Unit also is developing a system of

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<sup>11</sup> Women's Initiatives for Gender Justice, *Report Extract: Rape and Sexual Violence Committed in Ituri, in Making a Statement*, 2<sup>nd</sup> Edition (February 2010), available at <http://www.iccwomen.org/publications/articles/docs/MaS22-10web.pdf>, at pp. 23-25.

<sup>12</sup> Victims Rights Working Group, *Impact of the Rome Statute System*, above n 8, at p. 6.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, at pp. 4-6

<sup>15</sup> Redress, *Victims' Central Role in Fulfilling the ICC's Mandate*, November 2009, at <http://www.vrwg.org/Publications/02/ASP%208%20Paper%20FINAL%20Nov%202009.pdf> at p. 4 (hereafter "*Victims' Central Role*").

<sup>16</sup> *Ibid.*, at p. 6.

<sup>17</sup> *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.3, paragraphs 22-26.

“intermediate” measures (such as shorter-term, in-country relocations or international relocations at high risk times), as well as pre-emptive ones (such as an innovative use of 20 neighborhood watch initiatives in the capital of Bangui in the Central African Republic, as well as assistance from local police forces). However, the needs are great and the Court cannot meet them alone. States could do much more to help the Court provide relocation and other protective measures to victims and witnesses.

16. The Court has recognized that the provision of psychosocial support for victim witnesses, particularly for vulnerable groups such as women and children, is extremely important – and is taking significant steps to provide such care. Some of these steps include having the Victims and Witnesses Unit orient victim witnesses to the lay-out of the courtroom and the proceedings, providing support from an experienced psychologist, and offering guidance to judges and parties on how to question vulnerable witnesses in a sensitive manner. In addition, the Court has addressed the issue of protection for participating victims who are not appearing as witnesses in trial proceedings. However, to date, there are no specific protection and support measures in place in situation countries tailored to the needs of victim applicants.

17. Safety issues also have emerged in relation to those who assist victims. The International Bar Association, for example, cited the instance of a Congolese legal representative against whom threats escalated when the first ICC trial started and the visibility of lawyers for victims increased.<sup>18</sup> Similarly, civil society has raised concerns about the status of intermediaries, namely individuals or organizations that assist the various organs of the Court, who may face threats on account of such assistance. Although the ICC’s basic texts do not explicitly refer to obligations to protect intermediaries, decisions of the Court over the last few years have both acknowledged the work of intermediaries (in the victim context intermediaries have been described as “essential to the proper progress of the proceedings”)<sup>19</sup> and has recognized the existence of an obligation to protect “persons at risk on account of their work with the Court”<sup>20</sup> in certain circumstances. Without appropriate protection and support, fewer individuals from countries under preliminary analysis or investigation may be willing to represent or assist victims, thus undermining victims’ access to the ICC’s processes, as well as the Court’s ability to reach out to victims and otherwise implement its mandate.

18. Finally, the Rome Statute provides for reparations. Article 75 sets out the reparations regime, and allows the Court to “make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.” Before making such an order, victims can make representations to the Court. Such reparation orders may be implemented by the Trust Fund for Victims as ordered by the Chamber (discussed in greater detail below).

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<sup>18</sup> International Bar Association, *First Challenges: An examination of recent landmark developments at the International Criminal Court*, June 2009, available at [http://www.ibanet.org/Human\\_Rights\\_Institute/ICC\\_Outreach\\_Monitoring/ICC\\_IBA\\_Publications.aspx](http://www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/ICC_IBA_Publications.aspx).

<sup>19</sup> See International Criminal Court Pre Trial Chamber I, *Situation in the Democratic Republic of Congo, Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of Congo by Applicants a/0189/06 to a/0198/06, a/0200/06 to a/0202/06, a/0204/06 to a/0208/06, a/0210/06 to a/0213/06, a/0215/06 to a/0218/06, a/0219/06, a/0223/06, a/0332/07, a/0334/07 to a/0337/07, a/0001/08, a/0030/08 and a/0031/08*, November 4, 2008, ICC-01/04-545 04-11-2008, available at <http://www.icc-cpi.int/iccdocs/doc/doc583202.pdf>, at paragraph 25.

<sup>20</sup> See, for example, International Criminal Court Trial Chamber I, *Prosecutor v Thomas Lubanga Dyilo, Decision issuing corrected and redacted versions of "Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing Tu Quoque Information" of 5 December 2008"*, 2 June 2009, ICC-01/04-01/06-1924, available at <http://www.icc-cpi.int/iccdocs/doc/doc695273.pdf>, at paragraph 34.

19. The ICC has not yet had any experience with reparations – nor has the only other internationalized criminal tribunal that is enabled to provide reparations (the Extraordinary Chambers in the Courts of Cambodia) – so policies are likely to evolve over time. However, the ICC has already recognized that “every effort must be made to ensure that reparations are meaningful to victims,” including consultations with victims to determine the most appropriate and effective forms of reparations. The Court has also recognized that communication about reparations awards is necessary to ensure they are as widely known as possible by victims and affected communities.<sup>21</sup> However, it is inherently impossible to repair the losses and fully alleviate the suffering caused by heinous international crimes, and outreach is needed to manage the expectation of victims and respond to their concerns.

20. Given the magnitude and nature of reparations that are needed, the Court’s role can only be complementary to that of a national response. In this respect, the experiences of national reparation programs in several post-conflict countries could be instructive to States Parties who, in the general framework of the Rome Statute system, wish to develop material and moral compensation initiatives for victims and affected communities. For example, the Truth and Reconciliation Commission in Sierra Leone noted that the success of its proposed reparations mechanisms would be dependent upon the government’s willingness to commit to long-term policy goals and a strong national budget. It also argued that a national response was needed to guarantee the sustainability, continuity, and ultimate success of the program. Further, the Commission said the reparations program did not need to compete with Sierra Leone’s other important priorities, such as overcoming poverty and guaranteeing the social, economic, and cultural rights of all its inhabitants, but it could easily compliment efforts at social and economic development by improving the distribution of basic needs and services, such as education, health care, and social security, while also supporting economic development in marginalized areas of the country that were seriously affected by the conflict.<sup>22</sup>

#### **D. The contribution of the Trust Fund for Victims**

21. Article 79, paragraph 1, of the Rome Statute provides that “[a] Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of crimes within the jurisdiction of the Court.” The Trust Fund was created to perform two distinct functions:

- a) Implement court-ordered reparation awards arising from individual cases before the ICC (reparations can be funded from fines and forfeitures ordered against convicted persons,<sup>23</sup> and may be supplemented by the Trust Fund’s “other resources.”<sup>24</sup>); and
- b) Provide physical, psychological, and material assistance to victims and their families in ICC situation countries using voluntary funding from States, organizations and individuals.<sup>25</sup>

22. Guided by the concept of “local ownership and leadership,” the Trust Fund aims to breathe life into the principles of dignity, healing, rehabilitation and empowerment of victims by working with them to rebuild their lives.

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<sup>21</sup> International Criminal Court, *Strategy in Relation to Victims*, above note 3, at p. 9.

<sup>22</sup> Report and Proposals for the Implementation of Reparations in Sierra Leone, Mohamad Suma and Cristián Correa, December 2009, at [http://www.ictj.org/static/Africa/SierraLeone/ICTJ\\_SL\\_ReparationsRpt\\_Dec2009.pdf](http://www.ictj.org/static/Africa/SierraLeone/ICTJ_SL_ReparationsRpt_Dec2009.pdf).

<sup>23</sup> See rule 98, *Rules of Procedure and Evidence*, above n 4.

<sup>24</sup> See Regulation 56, Regulations of the Trust Fund for Victims, available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-ASP4-Res-03-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP4-Res-03-ENG.pdf) (hereafter “TFV Regulations”).

<sup>25</sup> See rule 98, *Rules of Procedure and Evidence*, above note 4.

23. While the Trust Fund for Victims has not yet implemented any ICC reparations orders, as no trials have been completed and therefore no case has reached the reparations phase, it has provided assistance to victims in Uganda and the Democratic Republic of the Congo since 2007. As of March 2010, the Trust Fund had launched 15 projects benefiting 26,750 direct victims in the Democratic Republic of the Congo<sup>26</sup>, and 16 projects benefiting 15,550 direct victims in northern Uganda.<sup>27</sup> Among its programs in Uganda is a project that provides medical operations and care to people whose faces and bodies have been disfigured by soldiers or rebels. Another project in the Democratic Republic of the Congo is helping to rehabilitate and reintegrate child soldiers back into their communities and provide psychosocial care and counseling to rape survivors. Since 2009, the Trust Fund has developed monitoring and evaluation tools to assess the effectiveness of its programs.<sup>28</sup>

24. That the Fund has been able to reach so many victims is not due to an over-abundance of resources or funds. The Trust Fund's secretariat maintains six full-time staff and is guided by five pro bono board members. By March 2010, the Trust Fund had collected a cash income of €5.65 million since 2002, when the Rome Statute came into force. Of that, €3.78 million were allocated to general assistance projects in the Democratic Republic of the Congo and Uganda. In October 2009, the Trust Fund also applied to the ICC to start projects in the Central African Republic in 2010<sup>29</sup> and an additional €600,000 for potential projects in the Central African Republic is earmarked from the remaining €1.87 million. The need to attract more funding is quite clear, if the Trust Fund is to conduct successfully its mandate, also in view of future reparations.

25. As the Trust Fund for Victims enters its fourth year of active field operations, it faces enormous challenges including increasing its visibility while at the same time managing the high expectations of victims who hope to benefit from future reparations and the Fund's general assistance activities. In general, a large number of potential beneficiaries remain unaware of the role of the Fund.<sup>30</sup> And although the Trust Fund has launched a specific appeal for victims of sexual and gender-based violence, its potential to help those survivors has not yet been fully realized.

26. In those situation countries where the Trust Fund has been active, many victim groups seem pleased with its work. According to a January 2010 survey by the Victim Rights Working Group, victims groups whose members had benefited from Trust Fund assistance noted that the Fund's activities had created "hope, trust, confidence and a sense of belonging by the victims." Still, other groups were disappointed that they had been unable to access the Fund's programs and questioned the selection process for beneficiaries. Redress also has expressed concern that Congolese victims lack information about how to apply for reparations (separate from that required to apply to participate in ICC proceedings) and often are confused about the type of reparations that may be awarded (e.g. collective, as opposed to individual).<sup>31</sup>

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<sup>26</sup> Recognizing Victims & Building Capacity in Transitional Societies, Spring 2010 Programme Progress Report, p.14, <http://www.trustfundforvictims.org>.

<sup>27</sup> Ibid., p. 19.

<sup>28</sup> Ibid., p. 4-5.

<sup>29</sup> Under the TFV's Regulation 50, the Fund's Board members must notify the relevant ICC chamber of its proposed activities in a situation country when it considers it necessary "to provide physical or psychological rehabilitation or material support for the benefit of victims and their families."

<sup>30</sup> FIDH Position Paper no. 13, *Recommendations to the Assembly of States Parties, The Hague, November 14-22, 2008*, [http://www.fidh.org/IMG/pdf/FIDHPositionPaperASP7\\_Nov2008.pdf](http://www.fidh.org/IMG/pdf/FIDHPositionPaperASP7_Nov2008.pdf), p. 12-13; FIDH Position Paper no. 14, *Recommendations to the Assembly of States Parties, The Hague, November 18-28, 2009*, <http://www.fidh.org/IMG/pdf/ASP532ang.pdf>, p. 12-13.

<sup>31</sup> Redress, *Victims' Central Role*, above n 15.

## **E. The role of outreach**

27. For many survivors of mass violence, acquiring information about the ICC – let alone access to it – can be a tremendous challenge. The barriers they face are many, and often difficult to surmount. The main barrier is simply a lack of knowledge about the existence of the ICC or a lack of awareness about what it is and how it works. In addition, some victims may find it too psychologically or emotionally painful to follow the progress of trials, or are simply not interested in pursuing justice. Others will confront logistical obstacles including the sheer geographical divide between the Court and affected communities, a multiplicity of languages, poor systems of communication, and lack of access to unbiased and accurate information about the Court. There may be a lack of understanding about judicial processes in general, or an attribution to international judicial institutions of the perceived faults of national judicial systems, such as lengthy proceedings, corruption or a lack of due process. Lastly, communities can become polarized in the wake of war and mass violence and victims may fear for their personal security if they try to make contact with the Court.

28. Despite these challenges, the Court recognizes that access to justice is fundamental for victims to realize their right to a remedy. The ICC views outreach as a process for “establishing sustainable, two-way communication between the Court and communities affected by situations that are the subject of investigations or proceedings. It aims to provide information, promote understanding and support for the Court’s work, and to provide access to judicial proceedings.”<sup>32</sup>

29. To accomplish these goals, the ICC has created an infrastructure to facilitate communication with victims and provide access to its mechanisms for justice and reparations. It has tried to inform affected populations about legal developments at the ICC and its limitations and receive feedback from victims and affected communities about their justice needs and expectations for the Court. Civil society has recognized that the Court’s outreach and communications efforts are vital for “facilitating participation and legal representation of victims in the proceedings; explaining due process rights; [and] facilitating redress for affected communities.”<sup>33</sup>

30. The ICC has identified victims who may be entitled to participate in proceedings or receive reparations as a key target of its outreach activities and continues to develop strategies specifically to reach them, communicate their rights, and provide up-to-date information about ICC decisions.<sup>34</sup> It also has acknowledged that if “the rights of victims are to be effective, victims must first be aware of their right to participate so that they can take informed decisions about whether and how to exercise it, and must be assisted to apply to participate throughout if they wish to do so.” The Court faces significant challenges in this effort: first, to reach the victims themselves, and second, to provide accurate and relevant information.

31. In response to these challenges, the ICC has systematically been increasing both the quality and scope of its outreach efforts with affected communities. In 2009 alone, field teams held a total of 365 interactive sessions involving 39,665 people in situation-related countries during the year. Potentially, a further 34 million people were regularly offered information

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<sup>32</sup> International Criminal Court, *Integrated Strategy for External Relations, Public Information and Outreach*, at [http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402\\_IS\\_En.pdf](http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf) (hereafter “*Integrated Strategy*”).

<sup>33</sup> Coalition for the International Criminal Court, *Report on the Eighth Session of the Assembly of States Parties to the Rome Statute*, January 2010, available at [http://www.coalitionfortheicc.org/documents/CICC\\_-\\_ASP\\_8\\_Report.pdf](http://www.coalitionfortheicc.org/documents/CICC_-_ASP_8_Report.pdf), p. 27.

<sup>34</sup> International Criminal Court, *Strategy in Relation to Victims*, above n 3, at p. 4.

about the ICC through local radio and television programs.<sup>35</sup> An outreach audiovisual team produced several programs including “ICC at a Glance” with summaries of the Court’s proceedings; “News from the Court,” presenting other events at the ICC; and “Ask the Court,” a series in which senior ICC officials answer questions from participants during outreach activities and events in the field. Such progress notwithstanding, the Outreach Unit acknowledges that “a lot more needs to be done to increase the Court’s visibility within the affected communities.”<sup>36</sup>

32. Some victims who have been reached by the ICC’s outreach programs have welcomed the effort to keep them informed. According to the Victims Rights Working Group, victims in South Kivu in the eastern Democratic Republic of the Congo have indicated that “visits of the delegates of the ICC for outreach and sensitization have been reassuring.” In Uganda, victims have said that “the existence of the ICC has brought awareness of the rights to justice, and that many victims have knowledge about the ICC, its role, and its strength.”<sup>37</sup> Still, reaching victims, particularly in rural and remote areas, often is a difficult task. Redress lamented in November 2009 that “[t]he majority of victims of the crimes being prosecuted by the Court, particularly women and girls, are still unaware of the Court’s proceedings.”<sup>38</sup>

33. Meeting the challenge of the variety of information needs also has been difficult. The Court has recognized that not all victims need or want the same type of information – but as Human Rights Watch has noted, the ICC must still be ready to respond to the variety of information needs of victims. As Redress highlighted in November 2009, “[t]oo many victims are still reporting that they do not know how to get in touch with the Court, or that the representatives that conduct outreach are unable to respond to more specific questions about victim participation or the Prosecutor’s strategy.”<sup>39</sup> This is heightened in the case of vulnerable populations, such as children and women, who often face more challenges in receiving information and making their views known.

34. Surveys and research by nongovernmental organizations suggest that the ICC’s outreach initiatives have been welcomed and are gradually improving awareness and perceptions of the Court in some communities. A population-based survey conducted in northern Uganda in 2007 found that around 60 percent of respondents knew of the ICC, a significant increase from two years earlier, when only 27 percent had heard of the court.<sup>40</sup> That said, the depth of their knowledge about the Court was fair to poor and only 2 percent of respondents knew how to access the Court. Results of a Victims Rights Working Group questionnaire distributed to victims groups in January 2010 found that the impact of the ICC was “highly dependant on whether communities have been specifically targeted for outreach activities.” Areas where outreach activities had taken place saw “an increased knowledge among victims and affected communities about the ICC and its mandate.”<sup>41</sup> Civil society have also encouraged the Court to make itself more visible to affected communities, including through making its field presence more accessible,<sup>42</sup> ensuring high level officials regularly

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<sup>35</sup> See ‘Executive Summary,’ International Criminal Court, *Outreach Report 2009*, at [http://www.icc-cpi.int/NR/rdonlyres/8A3D8107-5421-4238-AA64-D5AB32D33247/281271/OR\\_2009\\_ENG\\_web.pdf](http://www.icc-cpi.int/NR/rdonlyres/8A3D8107-5421-4238-AA64-D5AB32D33247/281271/OR_2009_ENG_web.pdf), at pp. 1-4.

<sup>36</sup> *Ibid.*, at p. 19.

<sup>37</sup> Victims Rights Working Group, *Impact of the Rome Statute System*, above n 8, at p. 6.

<sup>38</sup> Redress, *Victims’ Central Role*, above n 15, at p. 3.

<sup>39</sup> *Ibid.*

<sup>40</sup> Phuong Pham, Patrick Vinck, Eric Stover, Andrew Moss, Marieke Wierda, and Richard Bailey, *When the War Ends: A Population-based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda*, December 2007, p. 5. The survey was conducted under the auspices of the Human Rights Center of the University of California, Berkeley, Payson Center for International Development, and the International Center for Transitional Justice.

<sup>41</sup> Victims’ Rights Working Group, *Impact of the Rome Statute System*, above n 8, at pp. 6-8.

<sup>42</sup> See for example, See for example, No Peace Without Justice, *The International Criminal Court Field Presence*, November 2009, at <http://www.npwj.org/sites/default/files/documents/File/Field%20Operations%20Paper%20November%2>

travel to and engage with affected populations<sup>43</sup>, and holding *in situ* hearings in situation countries<sup>44</sup>.

## F. Conclusion

35. By engaging victims in trial proceedings, reparation programs, and outreach activities, the Court not only acknowledges and recognizes their suffering and losses, it also helps to make proceedings in The Hague more relevant to communities affected by mass violence. Indeed, if done in a meaningful and consultative way, formal recognition of victims, coupled with effective outreach programs, can help cultivate a sense of local ownership of ICC proceedings and lay the groundwork for greater acceptance of facts established by the Court's judgments. Such efforts can also help reduce the likelihood of future conflict and strengthen a tenuous peace. A further indirect impact can be the empowerment of victims as active members in the rebuilding of their war-torn societies, recognizing them as subjects – and not merely as objects – in the process. Since victims are the main beneficiaries of justice, the Court also can benefit from the perspectives of victims, not only in the conduct of judicial proceedings but also in the development of institutional policies.

36. As States Parties contemplate the stock-taking item on the impact of the Rome Statute on victims and affected communities at the Review Conference, they may wish to consider the Court's achievements and challenges presented in this discussion paper. For ease of reference, the key findings regarding challenges for the Court and States Parties, as appropriate, are listed below:

- a) Victim participation and reparations
  - i) Improving the link between effective outreach and victim participation;
  - ii) Enhancing outreach efforts so as to more effectively engage marginalized and vulnerable populations such as women and children;
  - iii) Easing the backlog of victim participation applications to victim participation;
  - iv) Streamlining the process for applying for legal aid;
  - v) Recognizing the psychological needs of victim witnesses, especially among vulnerable populations such as women and children;
  - vi) Providing protective measures not only to victim witnesses at serious risk, but also to participating victims who are not witnesses, and others who assist the work of the court;
  - vii) Signing cooperation agreements between States Parties and the ICC for the permanent relocation of victims and witnesses at serious risk, and to work with the ICC to create a system of “temporary measures” of protection as necessary;
  - viii) Signing cooperation agreements between States Parties and the ICC to track, freeze, and seize convicted persons' assets when a reparation order has been issued; and

<sup>43</sup> See, for example, Human Rights Watch, *Courting History*, above n 8, at p. 114.

<sup>44</sup> See, for example, Human Rights Watch, *Courting History*, above n 8, at p. 114. See also article 3, paragraph 3, of the Rome Statute, which provides: “The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.”

- ix) Developing mechanisms to address reparations at the national level and help to facilitate victims' rights to truth, justice and reparations, with a particular focus on ensuring access and benefits for women and children.
- b) Trust Fund for Victims
  - i) Increasing contributions to the Trust Fund for Victims;
  - ii) Increasing the Trust Fund's visibility and outreach efforts both to inform people about its work and to manage expectations about what it can realistically achieve; and
  - iii) Increasing the Trust Fund's engagement with vulnerable groups, such as child victims and victims of sexual violence so that they can access and benefit from its general assistance work.
- c) Outreach
  - i) Increasing its presence in ICC situation countries and those under preliminary analysis;
  - ii) Developing more effective, innovative tools and strategies to reach the affected communities, also in rural and remote areas; and
  - iii) Developing more effective tools and strategies to reach women, children, and other vulnerable populations.