

Annex V(a)

Stocktaking of international criminal justice

The impact of the Rome Statute system on victims and affected communities

Final report by the focal points (Chile and Finland)*

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* Previously issued as ICC-ASP/9/25.

I. Introduction

1. This final report has been prepared by the focal points, Chile and Finland, in accordance with the procedures agreed by the Assembly of States Parties (“Assembly”), whereby a final report was specifically listed as one outcome for this topic.
2. The focal points would like to extend their gratitude to the multitude of different people and stakeholders who have contributed to the stocktaking exercise and without whose dedication and expertise the results would have been much less substantial. The constructive approach by everyone involved throughout the process was remarkable and is proof of the widely recognized importance of engaging victims and affected communities and learning about the impact the Rome Statute system is having on them.
3. The aim of this final report is to highlight the key elements of the preparatory process, discussion and results of this unique stocktaking exercise at the Review Conference in Kampala. In this way, the report can serve as a reference for any further discussions the Assembly of States Parties may have as a follow-up to Kampala. The findings can be also used for benchmarking, possibly when the stocktaking exercise is repeated at some point in the future.

II. The road to Kampala

4. Following a proposal by Chile and Finland, which received strong support from various States Parties and non-governmental organizations (NGOs), the Assembly decided, at its eighth session, 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 At its eighteenth meeting, on 15 December 2009, the Bureau appointed the respective countries as focal points to prepare the topic for the Review Conference.
5. The goal of the stocktaking exercise for this topic was to engage, through an inclusive approach, victims and affected communities in the Review Conference and to highlight the importance of the Rome Statute system and the Court for them; and to contribute to identifying areas in which the Court’s positive impact could be strengthened, including any actions that States and non-State actors could take to further enhance those processes nationally.
6. From the 11 to 17 February 2010, the Governments of Finland and Chile sent representatives to Uganda to participate in a programme of visits to Northern Uganda coordinated by the organization “No Peace Without Justice”. The focal points had a fruitful exchange at grassroots level with victims and their communities and obtained first-hand information about the work of the Court and the problems faced in a situation country.
7. At The Hague Working Group meeting on 3 February 2010, the focal points held informal discussions on the modalities for taking stock of the impact of the Rome Statute system on victims and affected communities. On that occasion the Court and civil society representatives updated the States Parties on the status of victims’ issues in the context of the Rome Statute system.
8. A report entitled “The impact of the Rome Statute system on victims and affected communities” was discussed and subsequently adopted by the Bureau.² It was agreed that 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:
 - (a) The role of outreach in impacting victims’ expectations of obtaining justice and their enhanced knowledge of their legal rights;

¹ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.6, para. 5 and annex IV.

² ICC-ASP/8/49.

(b) 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;

(c) 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.

9. At its resumed eighth session, held in New York from 22 to 25 March 2010, the Assembly adopted the focal points' proposed template for stocktaking modalities. Likewise, the text of the resolution was discussed and agreed by States Parties with a view to its adoption at the Review Conference.³

10. At the fourth meeting of The Hague Working Group, on 28 April 2010, the focal points introduced a discussion paper entitled "The impact of the Rome Statute system on victims and affected communities", which summarized in a single document the key points for the panel discussion in Kampala.⁴ Furthermore, the Court introduced a report entitled "Turning the lens – victims and affected communities – on the Court and the Rome Statute system",⁵ as well as a Registry and Trust Fund for Victims (TFV) fact sheet,⁶ and the Office of the Prosecutor introduced its policy paper on victims' participation.⁷ All these documents would serve as background material for delegations preparing for the Review Conference.

III. Kampala Review Conference

A. Official segment

11. The fifth plenary session of the Review Conference on 2 June 2010 was dedicated to stocktaking of the impact of the Rome Statute system on victims and affected communities. The session was opened by the focal points for this stocktaking topic, namely Chile and Finland. The United Nations Secretary-General's Special Representative for Children and Armed Conflict, Radhika Coomaraswamy, delivered a keynote speech highlighting the importance of justice for victims and the special needs of children and women.⁸

12. The panel discussion was introduced by a short movie entitled "The promise of the Rome Statute system for victims and affected communities: are we there yet?". The subsequent discussion panel was chaired by Mr. Eric Stover of the Berkeley Human Rights Center and composed of Ms. Justine Masika Bihamba, coordinator of the Synergy of Women for Victims of Sexual Violence – DRC (Synergie des femmes pour les victimes des violences sexuelles), Ms. Carla Ferstman, Director of REDRESS, Ms. Silvana Arbia, Registrar of the International Criminal Court, Ms. Binta Mansaray, Registrar of the Special Court for Sierra Leone, Ms. Elisabeth Rehn, Chairperson of the Board of Directors of the TFV, and Mr. David Tolbert, President of the International Center for Transitional Justice (ICTJ).

13. Speakers addressed the importance of victims' participation in the Court's proceedings, the central role of outreach, issues linked to the protection of victims, witnesses and intermediaries, the issue of reparations and the role of the TFV. Special emphasis was given not only to the progress made so far by the Court, but also to the way forward. The panel was followed by a question-and-answer session by States and civil society.⁹

³ *Official Records ... Resumed Eighth Session ... 2010* (ICC-ASP/8/20/Add.1), part II, ICC-ASP/8/Res.9. The template can be found in annex I of the resolution.

⁴ RC/ST/V/INF.4.

⁵ RC/ST/V/INF.2.

⁶ RC/ST/V/INF.3.

⁷ RC/ST/V/M.1.

⁸ <http://www.icc-cpi.int/Menus/ASP/ReviewConference/Stocktaking/Stocktaking.htm>

⁹ ICC video summaries of this panel are available on the ICC YouTube Channel:

- Part 1: <http://www.youtube.com/watch?v=1oDcYQZW7uY>;

- Part 2: http://www.youtube.com/watch?v=ePiZz22_Qw4.

14. At the end of the panel discussion the moderator drew some preliminary conclusions with respect to achievements, challenges and proposals for the way forward. A draft informal summary by the focal points of the panel's findings was circulated during the Review Conference.¹⁰ The conclusions of the panel were as follows:

(a) Achievements

(i) The Court, States Parties and civil society have recognized and vigorously reaffirmed the importance of victim-related provisions and the innovative mandate of the Rome Statute.

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

(iii) Outreach activities have been intensified and special focus programmes have been developed.

(iv) The Trust Fund for Victims is up and running and its programmes, which have been welcomed by victims, are making a clear impact.

(b) Challenges

(i) Victims still lack sufficient information about the Court and its procedures.

(ii) 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.

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

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

(v) The role of intermediaries still remains unclear.

(vi) Visibility and resources for the Trust Fund are still limited.

(c) The way forward

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

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

(iii) A specific policy needs to be developed for addressing the needs of women and children.

(iv) More protective measures are needed for victims and witnesses.

(v) A comprehensive policy towards intermediaries should be finalized by the Court and implemented.

(vi) Field operations should be reinforced and linked to strategic planning and the allocation of resources.

(vii) The Trust Fund should be congratulated for conducting a monitoring and evaluation programme of its current project and encouraged, where prudent, to increase its visibility.

¹⁰ RC/ST/V/1.

(viii) 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.

B. Findings and recommendations of civil society side events during the Review Conference

15. The findings and recommendations of the various side events organized during the Review Conference by civil society greatly assisted an understanding of the impact of the Rome Statute system and ways to further enhance it. The findings which relate to the specific focal areas identified in the preparatory documents and which seemed to enjoy wide support at the various side events are highlighted below. The Victims Rights Working Group (VRWG) of the Coalition for the International Criminal Court (CICC) adopted the following outcome recommendations following their side event.

1. The CICC VRWG agreed outcome recommendations following the “Civil society taking stock” panel

(a) Recommendations to States

(i) Arrests: effective multilateral and bilateral cooperation is needed to execute arrest warrants.

(ii) Protection: further cooperation agreements needed, including relocation and protection agreements; support for the newly established ICC relocation fund needed; national witness and victim protection legislation needed, including provision for psychosocial support and necessary resources for implementation.

(iii) Reparations and access to justice: national reparations programmes, including long-term rehabilitation programmes are needed to fulfil States’ primary responsibility to repair victims; adequate implementing legislation on asset tracking and freezing must be adopted; implementation of principles and mechanisms for victims to be heard in relevant national processes.

(b) Recommendations in support of the Court

(i) Outreach: States need to support the Court in increasing its outreach capacity, with gender-specific programmes executed in partnership with civil society organizations and information on victim participation specifically addressed to victims and victim communities.

(ii) Field presence: States need to support the Court in increasing the profile and staffing levels of field offices, inter alia to ensure context-specific information and outreach and to contribute to increased protection.

(iii) Prosecutions: States should assist and cooperate with the Prosecutor, particularly in ways that can ensure effective investigation and prosecution of gender-based crimes and avoid perceptions of bias.

(iv) Protection: States need to support the Court in further developing the range of measures to protect victims and witnesses on the ground, especially vulnerable victims such as women, victims of gender-based crimes, and children; and in developing and adopting strategies to protect intermediaries.

(v) Victim participation: States need to ensure resources for effective and meaningful participation, including adequate field presence and support of intermediaries.

(vi) Legal representation: States need to ensure sufficient resources for an adequate and comprehensive legal aid scheme, including external common legal representation of victims.

(vii) In situ proceedings: States need to support the Court in ensuring that hearings take place within the relevant regions to ensure increased visibility and access to justice, while ensuring protection for victims.

(viii) Reparations and the TFV: States need to support increased outreach activities to sensitize populations about reparations proceedings, in particular to manage expectations.

(ix) TFV: States need to provide generous and regular support to the TFV; outreach is needed on the mandate of the Fund and on procedures for enabling victims to benefit from assistance.

2. Other findings from Kampala side events

(a) *Victim participation*

16. The civil society organizations generally recognized the progress made from the early stages of international criminal justice (examples: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)), when no active involvement for victims was granted, to the Rome Statute system, where victims are given an important role.

17. This development should be seen as adding to the fight against impunity, also the wish to have content for justice – justice being the means to an end – the end being people. It is essential to ensure that justice has a reparative effect for victims, who are the main beneficiaries of the system.

18. Some victims' legal representatives pointed out that while the rights of victims were clearly stated in the Rome Statute, many of the rights victims currently enjoyed had been concretely specified through the legal proceedings before the Court over the past several years.

19. At many side events it became evident that at community level expectations are high as to what the Court can or should do. That is why it is important for civil society to work at grass-roots level to ensure that communities do not raise their hopes too high, only to have them frustrated. After all, healing and reconciliation need to happen at the national level.

20. At one side event addressing the massive trauma experienced by victims/survivors, the importance of a holistic approach to (massive) trauma was raised, and the need to see victims' participation and justice as one essential element in the process of healing for individuals and societies. There is a very strong need for many victims to tell their story and be heard and, secondly, to see the perpetrators facing justice. However, the search of justice can be a way of revictimization. It is important that sufficient psychological support is available when these issues are handled.

21. Many civil society representatives throughout various situation countries testified that participation is in principle a major event, but in many situations proceedings and trials have not (yet) taken off. Arrest warrants need to be enforced; if they are not, then the hope will be forlorn.

22. In the same vein, the trial process, even when it has started, is complex and takes a very long time. Many survivors die before they see the end result. Also, the charges might not cover all the harms suffered – especially problematic are the gender-based crimes, victims of which suffer high levels of stigmatization. The issue of meeting – and managing – victims' expectations throughout the process should not be underestimated.

23. In the affected communities, there are huge areas where there is no Court intervention and the Court has to rely on NGOs as intermediaries, for example to distribute information or help to fill in forms. In many cases, there are security concerns, especially in cases where the perpetrators have not been arrested, or no effective action has been taken at the national level to protect victims, witnesses or intermediaries.

24. It is not clear to many victims, or civil society representatives, how victims can come forward to participate in this process, or how crimes can be documented or evidence given by a witness. In the case of many crimes, a long time passes between the crime and the investigation. Furthermore, a crime such as rape, which to start with is taboo in many societies, is also difficult to prove.

25. Participants from areas under preliminary examination or investigation by the Prosecutor of the Court, such as Palestine, Colombia and Afghanistan, highlighted the positive impact of the Rome Statute system and the hopes raised by the announcement of the Court's involvement in the respective areas, but also the ensuing frustration and negative impact given the lack of progress to date.

(b) Role of outreach

26. It became evident that most issues and problems relating to participation in, and understanding of the Court's work have a direct link to outreach activities.

27. It was often pointed out that trials will only be meaningful to the communities if there is outreach and if outreach is proactive, mindful of the cultural setting and sensitive to peoples' opinions of the Court and the various trials.

28. Civil society representatives stressed that in communities there are no unified opinions regarding justice. Opinions vary based on exposure to violence, gender, wealth and education. Outreach needs to be tailored to specific audiences, children should talk to children. Outreach needs to be local.

29. On the other hand, the people targeted also have a voice. Victims have to be informed and this information will help them speak up. They need to be informed throughout the case.

30. Many civil society participants in the Review Conference side events felt that the Court needed to keep an active presence in the field, closer to communities. More outreach and resources were needed to actively engage communities.

31. At one side event on outreach, an example was given of a study carried out in the Central African Republic (CAR): outreach typically reaches wealthy, educated men. However, in the CAR the prosecution case relates to sexual violence. Women are a key audience. Hence there is a tangible need for local innovative outreach to women, targeting the vulnerable groups not reached by ongoing outreach efforts.

32. Another example was given from Cambodia (Extraordinary Chambers) of a weekly TV talk show about the trials that attracts 1.5 to 2 million viewers in a country of 14 million people, 10 million of whom have access to television. There is also a virtual tribunal currently in development, which will help the legacy phase. Some innovative features for inspiration include: building a broad-based partnership between national and international NGOs, adapting a variety of media for different phases of the trial process, reaching a range of audiences. For example, filming in different parts of the country, tours of the court in the killing fields, court officials were invited to meet villagers (150-200 individuals) at dialogues with emphasis on justice, followed by afternoon sessions on reconciliation, with psychologists participating.

(c) Reparations and the role of the Trust Fund for Victims

33. Many civil society participants from the Democratic Republic of the Congo (DRC) were unhappy with the fact that the scope of the charges in the Lubanga case leaves aside rape, which means that huge number of victims cannot have access to justice and reparations. They expressed the need for some form of recognition by the Court, and TFV projects could be helpful in this regard.

34. At a side event on gender justice, it was pointed out that more attention needs to be paid to the particularized harms women, girls and children experience during armed conflict. The crimes against women continue to be under-investigated and under-prosecuted. Through the TFV the Court has been able to support victims of gender-based violence, though the number of projects is very limited to date.

35. As a concrete example of the impact of the Court in the DRC, it was pointed out that the armed forces stopped recruiting children when they heard what happened to Lubanga. However, as the demobilization did not go well, the former child soldiers have still not gone back to school. This has led to an increase in the exploitation of natural resources, with many former child soldiers being exploited in the extraction process, and women continue to be raped when out in the fields. The point was made, therefore, that in the context of reparations or TFV projects, attention should be paid to getting former child soldiers back to school, training or employment.

36. It was also noted that physical rehabilitation projects have impacted victims positively. Victims feel the Court has heard their plea. However, support is still very minimal – and outreach is very small. The TFV needs more resources in order to be able to support more victims.

37. It was widely felt that the transparency of the TFV needs to be increased at the field level – more information is needed about projects and how to access them.

38. One proposal from a civil society representative was that the TFV must prioritize on life-saving interventions; some victims had died before being assisted medically. Processes to access the fund can take months, sometimes a year. Mechanisms should be identified so that the TFV can fast-track the implementation of urgent projects.

39. A concern was raised that concepts and categories – such as the victims qualifying for immediate assistance by the TFV, the victims of the case, of the situation, participating victims, direct and indirect victims – are such that confusion is caused among communities and at some stage they might even cause jealousy or cause hostilities to be reopened.

40. An example was cited from the Inter-American system, where the legal representatives of victims work in coordination with teams providing psychological assistance to victims to help define the model of reparations – on an individual basis, or a model based on psychosocial assistance – i.e. based on a community perspective.

41. It was recommended that a multidisciplinary examination of the potential beneficial impact of reparations should be carried out. The justice process throughout should contribute to healing rather than to re-traumatizing victims. The Court should maintain a clear focus on reparative justice.

C. Way forward after Kampala

42. The stocktaking exercise of the ICC Review Conference has been described by many as a success, including the sub-item on the impact of the Rome Statute on victims and affected communities. The focal points agree that the goals set for engaging the victims and their communities in the Review Conference and identifying the current strengths, weaknesses, opportunities and threats for the Court and the Rome Statute system as part of the impact were largely met. Everybody should now have enough information to know where we stand. The question is – where do we go from here? It is important that the required changes and improvements get the same level of dedication as their identification. This decision will ultimately define the success or failure of the stocktaking exercise.

43. The focal points are of the view that these findings should be thoroughly reflected in the various organs of the Court, the Assembly and civil society organizations as they go about their regular activities. As the issues raised relate directly to the core business of all the organs of the Court, they should therefore be incorporated and mainstreamed throughout the process, from strategic planning and prioritization to decision-making and financing these activities, as well as in implementation at field level. The designation of one or two focal points for “victims issues” within the Assembly and its working groups could prove to be helpful for a more permanent follow-up, for example within the Strategic Plan.

44. In order to pave the way for discussion on follow-up, the focal points would like to end this report by summarizing some possible improvement measures arising from the findings and the resolution.

1. Strategic planning process including the Court's Strategy on Victims

45. The Court should look again in a coordinated manner and with a sense of urgency at its Strategic Plan and Strategy on Victims. It should ensure that the mechanisms for participation in judicial proceedings are as accessible as possible, avoiding unnecessary complexities or documents that are impossible to obtain. The application forms as well as their processing should be simplified.

46. The Strategy on Victims should include measurable and time-bound objectives. It should also clearly define the criteria of participation as well as modalities for receiving reparations, so that victims can make informed choices. The criteria should be obvious to the man on the street—and the woman in the village. Furthermore, the criteria, as well as the modalities of the participation process – such as the full implications of participation and the possible progress and delays the process may entail – should be clearly explained to potential applicants. Outreach has a large role to play here.

47. While the outreach activities of the Court represent a major generational, substantive and technological step forward from earlier international criminal tribunals, the findings show that there still is need for improvement. Paradoxically, messages need to be more targeted and, at the same time, they need to reach wider audiences, often in extreme geographical and security conditions. The successful experience of another recent tribunal, the Extraordinary Chambers in the Courts of Cambodia, has proven the effectiveness of in situ visits by Court officials (including judges), and of audiovisual tools in reaching wider audiences. But how to reach those distant villages, where rape is still an ongoing reality? Does the Court have any other alternatives than to rely on the intermediaries at the grass-roots level?

48. The Court's strategy on intermediaries is a matter that in light of the findings of the stocktaking would seem to require urgent attention, for example in the context of the Court's strategic planning process. Practice established in the field should not be the guiding principle for the Court's operations. There are plenty of examples of how the lack of a coherent approach creates confusion among victims and the intermediaries dealing with them, security issues and, in the worst case, problems for the trials. While the temptation is great to use the intermediaries to have the means to meet the ends, the use of intermediaries should be based on sustainable practice and Court-wide policy.

2. Budget

49. Implementing some of the findings and recommendations arising from the stocktaking exercise implies reconsidering current operations and, consequently, reallocating or adding resources in some areas. Ideally this would be closely linked to the strategic planning process mentioned above.

50. As the budget discussions following Kampala are taking place in a stringent economic environment, it will be difficult to envisage major budgetary increases in any single area. Yet, it could be argued that some expenses coupled with strategic goals represent more of an investment than a running cost. For example, a review of the Court's audiovisual production capabilities, or finding ways of obtaining better access to public television channels would be useful in this regard.

3. Cooperation and complementarity

51. Protection of witnesses and victim participants was a major concern. This area falls traditionally in the sphere of cooperation, and it has more recently also been discussed in the context of complementarity and the need to strengthen the ability of national governments to protect witnesses, victims, judges and prosecutors. States, the Court and other stakeholders should step up their efforts to seek and exchange information on the various possibilities and best practices, including innovative arrangements such as tripartite agreements or the role that regional organizations can play.

52. When discussing the impact of the Rome Statute system on victims, it is imperative to recognize the negative impact that the unimplemented arrest warrants have. Time after time it became evident that the lack of execution of arrest warrants presents a big threat to the Court's credibility in the eyes of the victims (among others) and thus the real possibility of a backlash. Therefore, finding ways to improve the execution of the Court's arrest warrants should be a matter of priority to all States Parties and to those supporting the Court.

53. As to reparations, due to the massive nature of the crimes, and with the Court being the court of last resort with a policy of prosecuting only those most responsible, the States (both situation countries and other States) also have a fundamental role to play within the Rome Statute system from the point of view of complementarity. In establishing national reparation systems, General Assembly resolution 60/147 of 16 December 2005 (Basic Principles and Guidelines on the Right to a Remedy) could serve as a reference. With this in mind, States should not wait until the end of a judicial cycle for the victims to be compensated but could, for example, already prioritize within existing or future development projects for victims of crimes falling under the Rome Statute.

4. Trust Fund for Victims and reparations issues

54. It was encouraging to observe in the findings the positive impact that the TFV has been able to create amongst victims who have been either direct or indirect beneficiaries of its assistance under the "second mandate" of the TFV.

55. Yet, the minimal resources it has collected though voluntary contributions come nowhere near meeting the needs of the potential beneficiaries. Unfortunately, one of the expected outcomes of this stocktaking exercise, namely pledges to the TFV, was not as great a success as it could have been given the positive evaluation of the TFV's activities and its impact among victims. Still, some new donors joined in, which is always a positive development. However, the TFV clearly needs to sharpen up its fundraising strategies, and States and other stakeholders need to become more sensitive to these activities. One way to do so, in addition to responding to the TFV's call for contributions, is to seek synergies between TFV projects and States' development projects.

56. The TFV also needs to work more in disseminating accurate information within the communities regarding the mandates and purpose of the TFV in order to avoid misperceptions about its activities or resources, leading to disappointment and frustration among victims. Again, outreach is called for.

57. With regard to the first mandate and the future role of the TFV in implementing possible reparations orders by the Court, there was nothing yet to take stock of in Kampala. However, it was felt that, while safeguarding the judicial independence of the Chambers in this matter, the issue could be raised at the Assembly from a policy perspective.

Appendix I

Resolution RC/Res.2¹

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

Appendix II

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 session¹, its updated version² and the discussion paper³.

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.

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:

* Previously issued as RC/ST/V/1.

¹ *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II, ICC-ASP/8/Res.9, annex I.

² RC/ST/V/INF.1.

³ RC/ST/V/INF.4.

- (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.

Appendix III

Discussion paper^{*1}

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 declarations² 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.”³

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:

(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.”⁴ Victims can interact with the Court in distinct ways including as

* Previously issued as RC/ST/V/INF.4.

¹ 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.

² 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>.

³ 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 (hereafter “*Strategy in Relation to Victims*”).

⁴ Rule 85, *Rules of Procedure and Evidence, International Criminal Court*, in *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A; available at <http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3->

victim participants, witnesses, applicants or recipients of reparations, or individuals who otherwise communicate with the prosecutor or the Court regarding specific situations.⁵

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.

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.⁶ 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."⁷ 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

4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf (hereafter "*Rules of Procedure and Evidence*").

⁵ International Criminal Court, *Strategy in Relation to Victims*, above footnote 3.

⁶ International Criminal Court, *Strategy in Relation to Victims*, above footnote 3, at p. 1.

⁷ 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*").

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.⁸

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."⁹ 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."¹⁰

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.

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.¹¹ In northern Uganda the Victims Rights Working Group has noted that the Court has implemented "excellent gender outreach" activities¹² and has "brought awareness of the rights to justice" to both male and female victims.¹³

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."¹⁴ 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.¹⁵

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 representation¹⁶ 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

⁸ 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%202022%20march%202010%20FINAL.pdf>, at pp. 14-15 (hereafter "*Impact of the Rome Statute System*").

⁹ See Wakabi Wairagala, *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/>.

¹⁰ See Wakabi Wairagala, *Q&A with Luc Walley, Lawyer for Victims in Lubanga's Trial*, 13 January 2010, available at: <http://www.lubangatrial.org/2010/01/13/qa-with-luc-walley-lawyer-for-victims-in-lubanga%20e2%80%99s-trial/>.

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

¹² Victims Rights Working Group, *Impact of the Rome Statute System*, above footnote 8, at p. 6.

¹³ Ibid.

¹⁴ Ibid., at pp. 4-6

¹⁵ 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*").

¹⁶ Ibid., at p. 6.

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 session¹⁷ 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 “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.¹⁸ 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”)¹⁹ and has recognized the existence of an obligation to protect “persons at risk on account of their work with the Court”²⁰ 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

¹⁷ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.3, paras. 22-26.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

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).

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.²¹ 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.²²

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,²³ and may be supplemented by the Trust Fund's "other resources."²⁴); 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.²⁵

²¹ International Criminal Court, *Strategy in Relation to Victims*, above footnote 3, at p. 9.

²² 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.

²³ See rule 98, *Rules of Procedure and Evidence*, above footnote 4.

²⁴ 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 (hereafter "*TFV Regulations*").

²⁵ See rule 98, *Rules of Procedure and Evidence*, above footnote 4.

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.

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 Congo²⁶, and 16 projects benefiting 15,550 direct victims in northern Uganda.²⁷ 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.²⁸

24. That the Fund has been able to reach so many victims is not due to an overabundance 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 2010²⁹ 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.³⁰ 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).³¹

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

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

²⁷ Ibid., p. 19.

²⁸ Ibid., p. 4-5.

²⁹ Under the TFFV’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.”

³⁰ 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, 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.

³¹ Redress, *Victims’ Central Role*, above footnote 15.

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.”³²

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.”³³

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.³⁴ 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 about the ICC through local radio and television programs.³⁵ 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.”³⁶

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

³² 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 (hereafter “*Integrated Strategy*”).

³³ 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, p. 27.

³⁴ International Criminal Court, *Strategy in Relation to Victims*, above footnote 3, at p. 4.

³⁵ 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, at pp. 1-4.

³⁶ *Ibid.*, at p. 19.

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.”³⁷ 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.”³⁸

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.”³⁹ 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.⁴⁰ 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.”⁴¹ Civil society have also encouraged the Court to make itself more visible to affected communities, including through making its field presence more accessible,⁴² ensuring high level officials regularly travel to and engage with affected populations⁴³, and holding *in situ* hearings in situation countries⁴⁴.

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

³⁷ Victims Rights Working Group, *Impact of the Rome Statute System*, above footnote 8, at p. 6.

³⁸ Redress, *Victims’ Central Role*, above footnote 15, at p. 3.

³⁹ *Ibid.*

⁴⁰ 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.

⁴¹ Victims’ Rights Working Group, *Impact of the Rome Statute System*, above footnote 8, at pp. 6-8.

⁴² 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%202009.pdf>

⁴³ See, for example, Human Rights Watch, *Courting History*, above footnote 8, at p. 114.

⁴⁴ See, for example, Human Rights Watch, *Courting History*, above footnote 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.”

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

(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.