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# **INTERNATIONAL CRIMINAL COURT**

## Ensuring an effective Trust Fund for Victims

### Introduction

Article 79 of the Rome Statute of the International Criminal Court provides for the establishment of a Trust Fund for Victims (the “Trust Fund”). This is consistent with international standards, such as Principle 13 of the UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power (UN Victims Declaration), which encourages “[t]he establishment, strengthening and expansion of national funds to compensate victims. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”

### Article 79 of the Rome Statute of the International Criminal Court

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Providing assistance and reparations to victims of the crimes under the jurisdiction of the International Criminal Court, listed in Article 5, including genocide, crimes against humanity and war crimes, is a central role of the Court. In particular, the Preamble to the Rome Statute states that States Parties are:

“[m]indful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.”

The Rome Statute goes significantly further than previous statutes of international criminal courts by expressly authorizing the Court in Article 75 to provide for a range of measures of reparations, “including restitution, compensation and rehabilitation.” The inclusive element of this article also allows for the Court to order other forms of reparation, including, satisfaction and non-repetition.

The Trust Fund, however, is more than a tool for providing reparations, although this will be its key role when the Court orders payments of reparations to be made via the Trust Fund, as envisaged under Rule 98 of the draft Rules of Procedure and Evidence and when determining how best to benefit victims<sup>1</sup>. However, as the language of Article 79(1) specifies, the role of the Trust Fund is intended to be even wider than providing reparations, the Article states that it will “benefit” victims and the families of such victims.

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<sup>1</sup> Rule 98 of the draft Rules of Procedure and Evidence states:

#### **Trust Fund**

1. *Individual awards for reparations shall be made directly against a convicted person.*
2. *The Court may order that an award for reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.*
3. *The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.*
4. *Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.*
5. *Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79.*

States are currently examining the Trust Fund and how it should work. A number of important issues are being discussed at the Preparatory Commission of the International Criminal Court (the “Preparatory Commission”) and intersessionally in preparation for the establishment of the Trust Fund by the Assembly of States Parties.

Amnesty International has issued this document to assist the debate, and aims to analyse and provide its position on a number of key issues that have already arisen or are likely to arise.<sup>2</sup>

### **Summary of the negotiations to establish a Trust Fund for Victims of the International Criminal Court**

Although Article 79 contains some important provisions on how the Trust Fund is funded and used, the Article deliberately does not include detailed criteria governing the operation of the Trust Fund. It was decided at the Rome Conference that such criteria would likely be complex and may need adjustment over time. The stringent amendment requirements for the Statute would make such adjustments difficult. It was also considered that the Assembly of States Parties should play a central role in the establishment of the Trust Fund and determining the criteria.<sup>3</sup>

In November 2000, at its sixth session, the Preparatory Commission established the Working Group on Financial Regulations and Rules (the “Working Group”). During this session, the Chair of the Working Group, highlighted the establishment of trust funds of the Court and the Trust Fund for Victims as being one of four key issues, that it decided should be dealt with by the Working Group with a view to preparing draft texts to be submitted to the Assembly of States Parties. This decision was taken in consultation with the Preparatory Commission Chair and the Bureau.

During the sixth and seventh session (27 November to 8 December 2000 and 26 February to 9 March 2001), the issue of the Trust Fund was not discussed in any detail, although a proposal was submitted by the French delegation<sup>4</sup> and the Norwegian delegation made a statement calling for flexibility in the Trust Fund.

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<sup>2</sup> This document was prepared in close consultation with the non-governmental organisation, Redress.

<sup>3</sup> Mark Jennings, Article 79: Trust Fund, in Otto Triffterer’s (ed.) *Commentary on the Rome Statute of the International Criminal Court : Observer’s Notes, Article by Article*, Page 1007, (Nomos Verlagsgesellschaft, Baden-Baden.)

<sup>4</sup> PCNICC/2000/WGFIRR/DP.33

A number of delegations did, however, attend an informal intersessional meeting on the Trust Fund, organised by the Coalition for an International Criminal Court in New York on 1 and 2 July 2001. The discussions during this meeting highlighted a number of issues that need to be resolved before the Trust Fund is established, including, who should manage the Trust Fund? how should the Trust Fund be funded? who are to be the beneficiaries of the Trust Fund?

As the Working Group is currently scheduled to hold only two formal meetings and one informal meeting during the eighth session of the Preparatory Commission (24 September - 5 October 2001) and a significant amount of work on other financial issues needs to be completed in this time, it is unlikely that all the outstanding issues regarding the Trust Fund will be addressed and resolved by the Working Group in this session.

Amnesty International believes that the Preparatory Commission should consider the issue of the Trust Fund fully in order to provide sufficient guidance and effective draft texts to the Assembly of States Parties. Since the Preparatory Commission has committed the Working Group to deal with this issue, the Bureau should ensure that even if the Working Group cannot complete this task at the eighth session, that adequate time and resources will be provided at a future session, or intersessional meeting, to ensure that this important aspect of the Court is fully debated and solutions are agreed before the Assembly of States Parties establishes it. Such a meeting should include representatives from the UN Voluntary Fund for Victims of Torture, the International Criminal Tribunals for the former Yugoslavia and Rwanda, other intergovernmental and non-governmental organisations and experts concerned with the rights of victims, including those with practical experience in establishing and managing trust funds for victims of crime.

### **Who should manage the Trust Fund for Victims?**

At the Rome Conference, it was decided not to deal with this issue in the Statute but to leave the decision to the Assembly of States Parties. In particular, it was decided that the Assembly of States Parties should decide the role, if any, which should be given to the Secretary-General of the United Nations with regards to the establishment and/or functioning of the fund.<sup>5</sup>

In the debate so far, states have considered two possibilities for who should manage the Trust Fund:

- (1) The UN, as it does for a number of UN trust funds, including the Voluntary Fund for the Victims of Torture;
- (2) The Assembly of State Parties or a subsidiary body created by the Assembly.

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<sup>5</sup> Jennings, *supra*, n. 3, Page 1006.

Key questions that have arisen in the debate include: whether the Trust Fund for Victims, which is part of the International Criminal Court, a body independent of the UN, should be managed by the UN? And whether the UN Trust Fund rules would be too restrictive or inappropriate for the Trust Fund, which, for example, may need to distribute funds urgently to victims?

At the informal intersessional meeting on the Trust Fund held in July 2001, states attending generally favoured the Assembly of States Parties or its subsidiary body managing the Trust Fund, although there was no consensus on the issue.

Amnesty International supports this position, primarily because it believes that it is essential that the Trust Fund as part of the International Criminal Court should maintain its independence from the U.N.

It will also be essential that the Trust Fund has flexibility to fundraise and act in the benefit of victims. The system and rules of management of the Trust Fund should be tailor made for the purposes of the Trust Fund, rather than applying an existing system, in particular:

- Amnesty International recommends in this document that the Management of the Trust Fund should actively fundraise and promote voluntary contributions. UN management of the Voluntary Fund for Victims of Torture has focussed on state donations, in fact, in 2000 it is reported that only one non-government source donated US \$50 to the fund.<sup>6</sup>
- Most UN trust funds boards meet for one meeting lasting approximately 10 days per year. The International Criminal Court Trust Fund for Victims, will need to be more active in order to provide assistance to victims as their needs for assistance arise.
- In particular, UN trust funds, including the Voluntary Fund for Victims of Torture, only provide for emergency assistance “on an exceptional basis”.<sup>7</sup> The International Criminal Court Trust Fund for Victims should establish a system whereby the Trust Fund can distribute reparations and urgent payments for

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<sup>6</sup> *Report of the Secretary-General, United Nations Voluntary Fund for Victims of Torture*, 4 April 2001, E/CN.4/2001/59/Add.1

<sup>7</sup> *Procedures and guidelines of the United Nations Voluntary Fund for Victims of Torture for the use of organisations* (Revised at the nineteenth session of the Board of Trustees on 26 May 2000). Included in the Report of the Secretary General, *United Nations Voluntary Fund for Victims of Torture*, July 2000, A/55/178

projects, promptly within a reasonable time, without victims and other applicants having to apply for “emergency” assistance.

Furthermore, Amnesty International, supports the payment of Trust Fund management costs by the Court’s funds, in accordance with Article 114 of the Rome Statute, at least in its first years, providing that it guarantees the Trust Fund’s independence. The organization believes that such costs should not be paid for by the Trust Fund itself, as such a system would diminish the amount of assistance available to victims.

### **What should be the sources of the Trust Fund?**

In order for the Trust Fund to be successful in fulfilling its goal of benefiting “victims of crimes within the jurisdiction of the Court, and of the families of such victims” it must of course have sufficient resources. Forecasting how much money the Trust Fund will need is a difficult task, for example, although it may be possible to anticipate how many cases the Court will consider in one year, it will be very difficult or impossible to forecast how many victims each case will involve or their needs, at least in the early stages of the Court’s existence.

Amnesty International believes that sustained and substantial income is essential to ensure that the Trust Fund can fulfil its mandate and to account for the unpredictability of the number and needs of victims within the jurisdiction of the Court. To obtain such income, the Trust Fund will need to be promoted and supported by the Assembly of State Parties, the management and staff of the Trust Fund, as well as the relevant organs of the Court. Effective fundraising will be essential.

There has already been significant discussion about the sources that would best support the Trust Fund. Most discussions centre around the four sources listed in paragraph 1 of the French proposal commented on below.

#### **(1) Resources collected through fines and transferred to the trust fund by order of the Court pursuant to article 79(2) of the Statute;**

This source is expressly provided for in the Statute and must be included in the sources of the Trust Fund. The provision should follow the text of Article 79 and include forfeiture as well as fines.

#### **(2) Resources collected through awards from reparations by order of the Court pursuant to Rule 98 of the text of the Rules and Procedure and Evidence;**



Rule 98 provides that the Court may order that reparations for a victim(s) can be paid via the Trust Fund and that such funds should be separated from other resources for victims of particular cases. This will be particularly important where the Court orders a collective award for victims.

**(3) Voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.**

Amnesty International believes that voluntary contributions will be a valuable source for the Trust Fund and should be actively promoted by the Assembly of States Parties, the Trust Fund Managers and staff and the relevant organs of the Court, including:

- establishing a special meeting during each annual meeting of the Assembly of State Parties, provided for in Article 112 (6), to review the resources of the Trust Fund and to provide state parties with an opportunity to pledge donations to the Trust Fund;
- promoting the Trust Fund in the UN and other international organizations;
- ensuring that the Trust Fund Managers have resources, including staff and materials, to promote the Trust Fund and fundraise to corporations and the general public. For example, fundraising through the website of the Court (such initiatives should be reported to the Assembly of State Parties).
- working in close consultation with the Coalition for an International Criminal Court, which will be undertaking similar efforts.

Promoting and fundraising for the Trust Fund should be an expense under Article 114 of the Statute and should be budgeted for and paid by the funds of the Court, at least in the first years of the Trust Fund.

***Criteria for voluntary contributions***

Amnesty International believes that criteria for accepting voluntary contributions should ensure that the Trust Fund Managers may refuse any voluntary contribution which they believe are against the spirit of the Trust Fund for Victims.

To assist the Trust Fund Managers in making this determination it will be essential for the Assembly of States Parties to set out clear criteria. In drafting this criteria, the Preparatory Commission should consider carefully the potential conflicts that can be caused by earmarking and the criteria should include a list of prohibited discriminatory purposes for earmarking, including donations limited to a particular geographical region. The criteria should also state that certain types of earmarking may be consistent with the spirit of the Trust Fund, including, donations to benefit particular classes of victims, such

as, child victims, victims of sexual violence and victims of particular types of crime, such as torture.

Monitoring earmarking will have to take place on a case by case basis and the criteria should also provide that the Trust Fund Managers when considering donations should take into account the nature of the earmarking, its discriminatory aspects (in accordance with the prohibited discriminatory purposes set out in the criteria), the consequences for excluded victims and the effect of accepting the donation on the spirit and integrity of the Trust Fund. For example, the Trust Fund must ensure that earmarking does not lead to an imbalance in funds available to particular groups.

The Trust Fund Managers should report each year to the Assembly of States Parties on voluntary contributions, including their experience of using the criteria and any recommendations for revision or amendment of the criteria.

**(4) A portion of the Court’s financial resources that the Assembly of States Parties may allocate to the fund on a regular basis.**

There has so far been a considerable debate as to whether Court funds should be allocated to the Trust Fund. Concern has been raised that funds of the Court may already be limited as a result of State Parties deciding the budget and, given the discretionary nature of this source, any allocation to the Trust Fund may be very small. While Amnesty International recognises that the Court’s funds may be limited, it believes that the Court should provide, subject to appropriate guarantees of the Trust Fund’s independence, funding for staff, materials and other resources to promote voluntary contributions and to fundraise effectively.

**Who should be the beneficiaries of the Trust Fund?**

A substantial part of the debate so far has been about the identity of the beneficiaries of the Trust Fund. Article 79 is ambiguous in its wording “for the benefit of victims of crimes within the jurisdiction of the Court, and families of such victims.” Many delegations have interpreted this restrictively to mean only victims or family members of victims of a particular crime being prosecuted by the Court (hereafter “victims before the Court”). However, many other delegations interpret this phrase more broadly, to mean that the Trust Fund can be used to the benefit of victims of the crimes, even if a case is not before the Court (hereafter “victims not before the Court”).

The discussion on this issue has focussed on the need to ensure on the one hand, that the beneficiaries of the Trust Fund are not so limited that it will deny assistance to all those victims who are not before the Court, who may otherwise be unable to obtain assistance and, on the other hand, to ensure that the class of beneficiaries is not so

broadly defined that the Trust Fund would not have resources to process the applications, let alone provide assistance, at least in the early stages of the Trust Fund.

Taking into account these valid concerns, Amnesty International suggests the following criteria, to be reviewed by the Assembly of States Parties each year, with a view to broadening the scope of victims that the Trust Fund can assist, taking into account the experiences reported by the Trust Fund Managers and resources of the Trust Fund at that time:

*The Trust Fund for Victims should be used for the benefit of victims under the jurisdiction of the Court and families of such victims, if the Pre-Trial Chamber makes a ruling under Article 15 of the Rome Statute of the International Criminal Court authorizing the Prosecutor to commence an investigation into any crime committed in the same situation.*

Article 15 (4) provides that in order for the Pre-Trial Chamber to authorize the commencement of an investigation it must consider that the “case appears to fall within the jurisdiction of the Court.” Paragraph 2 for the Article requires that in analysing the seriousness of information received, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organisation or other reliable sources that he or she deems appropriate. Given the amount of research and level of information it is likely that the Prosecutor will submit to the Pre-Trial Chamber in an Article 15 application, the ruling of the Pre-Trial Chamber should be sufficient, for the purposes of the Trust Fund, to determine whether a situation falls within the jurisdiction of the Court.

There are several advantages to this approach which should be highlighted:

- The Trust Fund would not be exclusively for victims who are before the Court, which in Amnesty International’s view is too narrow a group, but includes victims involved in a situation where the crimes are being or have been committed, and the Court is investigating or has investigated.
- The Trust Fund would be able to provide assistance to victims of accused persons before the Court where the Prosecutor has decided, for whichever reason, not to include their crime in the indictment, as well as victims where the accused perpetrator cannot be found or has died.
- The Trust Fund would be able to provide assistance to those victims where the Court is investigating other crimes committed during the same situation, but where the person accused of committing the crime against the victim has not been indicted by the International Criminal Court and national legal systems are unable or unwilling to investigate or prosecute.
- It allows for assistance to victims to be granted by the Trust Fund early in the process. To wait until later in the process, for example, conviction of a person who

- committed crimes in the situation, especially where victims are not before the Court and have no support from the Victims and Witnesses unit, may result in years of unnecessary hardship.
- The system will be appealing to potential donors by ensuring that it will have a broader range of tasks than just “topping up” reparations where the convicted person is unable to pay some or all of the reparations ordered by the Court, providing additional assistance to victims who have received reparations and providing assistance to victims where the Court has convicted the accused but not ordered reparations.

### **When the Trust Fund should make awards to victims**

In preparation for the establishment of the Trust Fund by the Assembly of States Parties the Preparatory Commission should consider when an award can be made to victims and what criteria will have to be fulfilled before an award can be made. The criteria adopted will, no doubt, need to be revised in the light of experience. The Trust Fund should review the effectiveness of the criteria in its annual reports to the Assembly of States Parties, in consultation with victims and other interested parties and make recommendations from time to time for any necessary amendments.

#### ***Victims before the Court***

The Trust Fund Managers when considering applications filed by victims before the Court, will encounter four different situations: (1) victims requesting interim assistance during the trial; (2) victims that are awarded reparations by the Court via the Trust Fund; (3) victims that are not awarded reparations by the Court following a conviction and; (4) victims where the trial did not result in a conviction or order for reparations. Criteria for each situation should be examined and developed separately.

***1. Interim award of reparations in special circumstances.*** Those victims of cases that are before the Court, during the trial, will receive the benefit of protection, legal representation and other special measures, in accordance with Article 68 of the Rome Statute and Rules 87, 88 and 90 of the Rules of Procedure and Evidence. These measures will be paid from the funds of the Court. As these systems are in place, it may not be necessary to make an award from the Trust Fund for these victims until a conviction and, subject to judicial determination, an award for reparations has been made. However, a discretion should be available for the Manager of the Trust Fund to make an interim award in special circumstances from the general resources of the Trust Fund, providing such an award is not prejudicial to or inconsistent with the rights of the accused and a fair impartial trial.

The necessary assistance a victim or their families will require after the trial will depend on whether and how much reparations have been awarded by the Court. Amnesty International therefore believes, that except in special circumstances, the trigger mechanism for making an award to victims before the court should be the Court's order on reparations.

***2. Victims that are awarded reparations by the Court.*** Such victims should still be able to apply for assistance from the Trust Fund, if they consider that the award by the Court was insufficient and they still require assistance. These victims should be informed of their right to apply to the Trust Fund by the Court and/or the Victims and Witnesses Unit.

Similarly, where a collective award for reparations has been ordered by the Court to be paid by the Trust Fund under draft Rule 98(3) and subsequently a large number of victims apply for the award, diminishing the award significantly per victim, victims individually or collectively should be able to apply for assistance from the general Trust Fund (funds not separated under draft Rule 98).

There should also be a system in place so that victims who have been awarded reparations via the Trust Fund under Rule 98 can obtain assistance from the general Trust Fund where there is delay in obtaining reparations from the convicted person. When making this decision Trust Fund Managers should consider that if reparations are not obtained from the convicted person, the advance will have to be considered as a payment from the general Trust Fund outside of draft Rule 98. Where reparations are subsequently paid by the convicted person, the advance payment to the victim from the general fund should be repaid to the general fund from the reparations, but only after the full amount of the reparations order has been paid to the victim.

***3. Victims that are not awarded reparations by the Court following a conviction***  
Victims in this situation should still be able to apply to the Trust Fund for assistance. These victims are victims for the purposes of the Trust Fund, and should be informed of their right to apply to the Trust Fund by the Court and/or the Victims and Witnesses Unit.

***4. Victims where the trial did not result in a conviction or order for reparations.***  
Where there is no conviction there can be no order for reparations. Victims involved in the case, should still be allowed to apply to the Trust Fund for assistance, however, the Trust Fund Manager will need to be satisfied that the person is a victim of one of the crimes before an award can be made.

### ***Victims not before the Court***

Following an Article 15 ruling by the Pre-Trial Chamber authorizing the commencement of an investigation, victims of that situation, regardless of whether their case is being investigated by the International Criminal Court should be able to apply to the Trust Fund.

In such a situation, the Managers of the Trust Fund may promote the Trust Fund and applications from victims, families of victims, non-governmental organisations and inter-governmental organisations.

Before an award can be made, the Managers of the Trust Fund must be satisfied that the applicant is a victim or a family member of a victim, or, that the proposed project will be used solely for benefit of victims of the crimes or the families of such victims.

### **Assessment and types of awards by the Trust Fund**

#### *Assessment*

The criteria in Article 79(3) should also include general guidelines for the determination of loss, damage, and injury incurred by victims, as well as categories of compensable losses. It should be up to the Trust Fund, however, in the light of experience to develop more detailed rules to implement these guidelines. These guidelines are different from the principles to be developed by the Court pursuant to Article 75(1) of the Statute with regard to reparations.

Rule 97 of the draft Rules of Procedure and Evidence sets out how the Court should assess a reparation award and provides in paragraph 2 for the Court to appoint appropriate experts “to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations.”

The Trust Fund, however, unless it is acting under a Court order under draft Rule 98, is not only intended to provide reparations to victims but to act “for the benefit” of victims and their families. Therefore, the assessment of awards from the general Trust Fund (funds not separated under draft Rule 98), should be at the discretion of the Managers of the Trust Fund, although consultation with or appointment of experts in the Management of the Trust Fund would be strongly recommended to assist this process.

In making such a determination on an application by a victim or a family member of a victim, the Managers should consider, among other factors: the nature of the crime and the injuries, harm and loss suffered by the victim; the victims current circumstances and assistance requested in the application; the level of the general Trust Fund and other claims on the Trust Fund; whether an order for reparations has been made by the Court and; what forms of reparation would most benefit the victim.

In making a determination on an application for a project to benefit victims, for example from an NGO, the Managers of the Trust Fund should consider, whether the project directly or indirectly benefits victims; the needs of victims expressed by victims groups; proposals for other projects and; whether forms of reparation other than compensation would be more beneficial to the victims including rehabilitation, satisfaction and non-repetition (see Types of reparation and awards that may benefit victims below). Awards made for specific projects should include an agreement between the Trust Fund and the project managers providing for reports and evaluation of the project which should be submitted to the Assembly of States Parties as part of annual reporting.

### ***Types of reparation and awards that may benefit victims***

Much of the debate about the Trust Fund has focussed on providing financial assistance to victims as compensation. However, there are a broad range of other forms of reparation which can be effective in benefiting victims, including, rehabilitation, satisfaction and non-repetition . For example, a recognised form of satisfaction is “commemoration and tributes to the victims,”<sup>8</sup> therefore the Trust Fund, could pay for the creation of a memorial to victims, which would be wide reaching to all victims in the region.

The range of types of reparation that the Trust Fund could fund, organise or fund projects include:

**1. Restitution.** Restitution seeks to restore victims to the original situation before the violations of international human rights or humanitarian law occurred.<sup>9</sup> Principle 22 of the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (Van Boven/Bassiouni Principles) Principles states that:

“Restitution includes: restoration of liberty, legal rights, social status, family life, and citizenship; return to one’s place of residence, *and restoration* of employment and return of property.”<sup>10</sup>

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<sup>8</sup> Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (Van Boven/Bassiouni Principles) Principle 25(g), The right to restitution and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33, 18 January 2000, E/CN.4/2000/62.

<sup>9</sup> Van Boven/Bassiouni Principles, Principle 22.

<sup>10</sup> Van Boven/Bassiouni Principles, Principle 22.

**2. Compensation.** Compensation should “be provided for any economically assessable damage resulting from violations of international human rights or humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities, including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity; and
- (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.”<sup>11</sup>

Compensation for torture must include “the means for as full rehabilitation as possible”.<sup>12</sup>

**3. Rehabilitation.** Rehabilitation includes “medical and psychological care as well as legal and social services”.<sup>13</sup>

**4. Satisfaction and guarantees of non-repetition.** Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
- (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;

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<sup>11</sup> Van Boven/Bassiouni Principles, Principle 23.

<sup>12</sup> UN Convention against Torture, Art. 14.

<sup>13</sup> Van Boven/Bassiouni Principles, Principle 24.



(d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;

(e) Apology, including public acknowledgment of the facts and acceptance of responsibility;

(f) Judicial or administrative sanctions against persons responsible for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;

(i) Preventing the recurrence of violations by such means as:

(i) Ensuring effective civilian control of military and security forces;

(ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;

(iii) Strengthening the independence of the judiciary;

(iv) Protecting persons in the legal, media and other related professions and human rights defenders;

(v) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;

(vi) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;

(vii) Creating mechanisms for monitoring conflict resolution and preventive intervention.<sup>14</sup>

Other guarantees of non-recurrence include:

“(a) Disbandment of parastatal armed groups . . .

(b) Repeal of all emergency laws, abolition of emergency courts and recognition of the inviolability of habeas corpus; [and]

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<sup>14</sup> Van Boven/Bassiouni Principles, Principle 25

(c) Removal from office of senior officials implicated in serious violations.”<sup>15</sup>

### **Conclusions**

The Trust Fund for Victims is intended to and should play an important role in the Court as a mechanism for distributing reparations awarded by the Court to victims. However, the Trust Fund has a much wider mandate than reparations and is intended to “benefit” not only victims of crimes within the jurisdiction of the Court, but also their families.

Negotiations to date, during the Preparatory Commissions Working Group on Financial Regulations and Rules and an informal meeting organised by the Coalition for an International Criminal Court in July 2001, indicate that there are many issues in relation to the operation of the Trust Fund that need broader discussion and solution before the Trust Fund is established by the Assembly of States Parties. Amnesty International calls upon the Preparatory Commission and other interested parties, to ensure that this takes place.

Amnesty International in this paper recommends that a broad view is taken of the roles that the Trust Fund can play and the range of victims it can benefit. In doing so the organisation recognises that the sources of the Trust Fund will need to be substantial and sustained, and accordingly Amnesty International has made recommendations on how this can be achieved through effective promotion and fundraising.

Amnesty International also encourages those discussing the Trust Fund, to consider the range of reparations, including programs and initiatives that the Trust Fund can support, beyond restitution and compensation. Such initiatives can have as strong an impact in benefiting and providing reparations to victims, without necessarily incurring a significant cost to the Trust Fund.

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<sup>15</sup> Report of Mr. Louis Joinet on the question of the impunity of perpetrators of human rights violations (civil and political rights) (Joinet Report), para. 43; see also Principle 37 of the Set of Principles for the Protection and Promotion of Human Rights through Action to end Impunity (Joinet Principles). The Joinet Principles spell out the guarantees of non-recurrence in some detail, including Principle 38 (disbandment of unofficial armed groups directly or indirectly linked to the state and of private groups benefiting from the state’s passivity); Principle 39 (repeal of emergency legislation and abolition of emergency courts); Principle 40 (administrative and other measures relating to state officials implicated in gross human rights violations); Principle 41 (implementation of administrative measures); and Principle 42 (nature of measures that can be taken against state officials).

**KEYWORDS:** ICC1 / COMPENSATION1