

TABLE OF CONTENTS

Introduction.....	1
I. The structure of the Victims' Strategy	6
<i>The Court should develop a mission statement on victims.</i> As a first step in the strategy development process, the Court should develop a Court-wide <i>mission statement on victims</i> to define its aims, guide its work and inform the world of the importance it attaches to implementing the victims' mandate set out in the Rome Statute. That is not to say that the Court should develop a different mission statement from that set out in the "Mission of the International Criminal Court" set out in the Strategic Plan or to revise that mission statement in any way. Instead, recognizing that the Mission of the International Criminal Court is a very broad vision covering all aspects of its work, which does not deal with specific issues such as victims, the aim should be to develop a mission statement on victims which is fully consistent with the aims of the Mission set out in the Strategic Plan, but which defines in more detail the Court's victims specific aims. Precedent has already been set for adopting issue specific mission statements with the Court's adoption of the Information and Communication Technologies mission statement, although the mission statement on victims should be more detailed and clearer.	6
<i>The Court should develop victims' specific strategic goals.</i> Amnesty International recognizes that most victims' issues will fall under Goal 1 of the Strategic Plan on "Quality of Justice":	7
II. Recommendations for a mission statement on victims.	8
<i>Recommended aim 1: The Court will treat victims with humanity and respect for their dignity.</i> The treatment of victims cuts across all aspects of the Courts' work from receiving complaints of crimes before investigations are commenced to reparations process at the conclusion of trials and longer-term protection and support in some cases. The obligation to respect the dignity of victims is set out in Article 68 (1) of the Rome Statute, as well as other international standards. Victims of genocide, crimes against humanity and war crimes, in most cases, will have suffered horrific crimes often resulting from a sustained pattern of discrimination. They will have little confidence or trust in institutions which have failed to protect them. To engage them in the Court's process, including encouraging victims to apply for reparations, it is important that the Court builds their confidence in the institution. Indeed, the proper treatment of victims can in itself have an important reparative impact for victims.	8
<i>Recommended aim 2: The Court will ensure the safety, physical and psychological well-being and privacy of victims.</i> The recommendation reiterates the obligations set out in Article 68 (1) of the Rome Statute. It is important to repeat this in the mission statement on victims. It is likely that, particularly in situations of continuing conflict, victims wishing to claim reparations will face security risks in doing so. If required, a range of measures should be taken to ensure that the safety, well being and privacy of victims are protected in the process.	8
<i>Recommended aim 3: The Court will facilitate the participation of victims and their applications for reparations.</i> In most cases victims will not be aware of their rights before the Court and will require assistance in exercising those rights. In	

particular, reparation is a complex legal issue that is not widely understood. Victims will require assistance from the Court to understand its reparations mandate and to engage in it.9

Recommended aim 4: The Court will, as far as possible, award full and effective reparations to victims of crimes where there is a conviction by the Court.

Amnesty International acknowledges that the process of developing the Victims' Strategy should not trespass on issues which are to be dealt with in judicial proceedings before the judges. Nevertheless, it is important that from the outset, the Court develops a strong message affirming its intention to implement the reparations mandate to the fullest extent, without pre-judging any of the judicial decisions of the Court or the principles on reparations that will be developed.9

II. Recommendations for victim specific goals..... 11

Recommended goal 1: The Court's mandate on victims is widely understood by victims. For victims to exercise their rights set out in the Rome Statute, it is important that they understand what those rights are and how they can be exercised before the Court. Victims must be informed that the Court can award reparations to victims, understand the limitations of the process, be informed how to apply for reparations and understand what is happening at each stage. Amnesty International recognizes that, at present, there are many areas of the reparations mandate that need to be clarified in the Victims' Strategy. In addition, a number of the judicial issues, including the development of principles on reparations, will no doubt be clarified in the first cases and these developments will need to be communicated to victims..... 11

Recommended goal 2: Victims have equal and effective access to the Court. It must be expected that in most situations where the Court investigates and prosecutes crimes, it will face tough challenges in reaching victims to inform them about the reparations mandate and victims will face serious obstacles in engaging in the Court's reparations process. For example, the security situation may make it particular difficult for the Court to inform victims of their rights and victims may face serious security concerns in communicating with the Court. There may be challenges in reaching some victims communities and for victims in completing the legal forms and information in order to exercise their rights. Each situation will of course be unique and the Court will need to develop situation specific activities to ensure that victims have equal and effective access to the Court. 11

Recommended goal 3: The Court implements its victims mandate consistently. Probably the greatest challenge for the Court in relation to reparations will be to ensure that, from its first case, it acts consistently in ensuring the full exercise of the rights of victims. It is vital for the Court's credibility that it is not seen to be treating one group of victims more favourably than others. That is not to say that the Court should take a very rigid approach to reparations, which would be more likely to result in inconsistency. On the contrary, as advocated below, it is essential that there is flexibility to respond to the needs of victims. Consistency must, however, be ensured by the development and implementation of a clear Victims'

Strategy and the development of clear Article 75 (1) principles of reparations that form the basis for reparations awards.	11
<i>Recommended goal 4: The Court adopts a victims' oriented approach to implementing the victims' mandate.</i> It is widely recognized that the success of any reparations process depends on the level of involvement of victims in the process. The preamble of the UN Basic Principles and Guidelines notes the particular importance of this goal:	12
<i>Recommended goal 5: The Court acts as a catalyst to promote reparations for other victims of genocide, crimes against humanity and war crimes.</i> As recognized throughout the process of establishing the Court, the institution itself is not a panacea that will end impunity for the worst crimes. The drafters of the Rome Statute envisaged that the Court would play an essential role in ending impunity, not merely by investigating and prosecuting a handful of individuals and by awarding reparations against those convicted, but by serving as a catalyst for similar investigations and prosecutions and awards of reparations by national courts, which continue to have the primary responsibility to do so. In addition, in making awards of reparations against individual perpetrators and in articulating principles of reparations, the Court will encourage states to establish national reparations programs and/or national courts to hold states and armed groups responsible to provide reparations in other cases. This is reflected in the Mission of the International Criminal Court which states the Court will:	12
<i>Recommended goal 6: The Court receives the full cooperation of states in implementing reparations orders.</i> Article 75 expressly requires states parties to give effect to reparations orders in accordance with Article 109 on the enforcement of fines and forfeiture. The implementation of reparations orders will, therefore, be contingent on state cooperation and the Court will need to take the initiative to encourage cooperation.	13
III. Recommendations for victim specific objectives relating to reparations.....	13
Recommended objective 1:	14
<i>Implement situation-specific strategies to inform victims in situations under investigation of the Court's reparations mandate and its mission statement on victims.</i>	14
Recommended objective 2:	15
<i>Implement situation-specific strategies to inform victims of crimes being prosecuted by the Court of the case and to call for applications for reparations.....</i>	15
Recommended objective 3:	16
<i>Implement situation-specific strategies to facilitate victims making applications for reparations.</i>	16
Recommended objective 4:	17
<i>Ensure legal representation for indigent victims to present their applications for reparations and views to the Court during the process.</i>	17
Recommended objective 5:	18

<i>Implement situation- or case-specific strategies to ensure the safety of victims applying for reparations.</i>	18
Recommended objective 6:	19
<i>Establish effective mechanisms to ensure that victims are treated with humanity and dignity during the reparations process.</i>	19
Recommended objective 7:	20
<i>Establish principles on reparations.</i>	20
Recommended objective 8:	21
<i>Publicize all reparations decisions setting out in easy-to-understand language the decision and the principles applied.</i>	21
Recommended objective 9:	22
<i>Implement situation- and case-specific strategies to inform victims of developments at relevant stages of the process.</i>	22
Recommended objective 10:	23
<i>Implement situation- and case-specific strategies to obtain the views of victims at relevant stages of the process.</i>	23
Recommended objective 11:	24
<i>Implement situation-specific strategies to publicize reparations decisions.</i>	24
Recommended objective 12:	25
<i>Implement case-specific strategies to ensure cooperation in identifying, tracing, freezing and seizing of assets and enforcement of reparations orders.</i>	25
Conclusion	26
1. <i>Implement situation-specific strategies to inform victims in situations under investigation of the Court's reparations mandate and its mission statement on victims.</i>	27
2. <i>Implement situation-specific strategies to inform victims of crimes being prosecuted by the Court of the case and to call for applications for reparations. ..</i>	27
3. <i>Implement situation-specific strategies to facilitate victims making applications for reparations.</i>	27
4. <i>Ensure legal representation for indigent victims to present their applications for reparations and views to the Court during the process.</i>	27
5. <i>Implement situation- or case-specific strategies to ensure the safety of victims applying for reparations.</i>	27
6. <i>Establish effective mechanisms to ensure that victims are treated with humanity and dignity during the reparations process.</i>	28
7. <i>Establish principles on reparations.</i>	28
8. <i>Publicize all reparations decisions setting out in easy-to-understand language the decision and the principles applied.</i>	28
9. <i>Implement situation- and case-specific strategies to inform victims of developments at relevant stages of the process.</i>	28
10. <i>Implement situation- and case-specific strategies to obtain the views of victims at relevant stages of the process.</i>	29
11. <i>Implement situation-specific strategies to publicize reparations decisions.</i>	29

International Criminal Court: Establishing an effective system for reparations

Recommendations on the development of the Court- wide Victims' Strategy

Introduction

In August 2006, the International Criminal Court (Court) issued its first Strategic Plan¹ setting out its mission, strategic goals and objectives for the next ten years. Amnesty International welcomed the initiative as an important step to ensure broad understanding of the direction of the new Court and its immediate and medium-term priorities. The organization, however, expressed concern that the Strategic Plan contained limited provisions on how the Court intends to implement the victims mandate set out in the Rome Statute. The organization, therefore, urged the Court to develop detailed strategies on victims' issues.² This issue was also addressed by the Assembly of States Parties when it considered the Strategic Plan at its fifth session. In noting its appreciation for the development of the Strategic Plan the Assembly invited the Court to develop dialogue with its Bureau on "cross cutting issues such as... the position of victims."³

In response, this year, the Court has established an inter-organ Working Group within the Court for the purpose of developing a working document that would identify the Court's

¹ Strategic Plan of the International Criminal Court, ICC-ASP/5/6, 4 August 2006.

² See: International Criminal Court: Concerns at the fifth session of the Assembly of States Parties, AI Index: IOR 40/037/2006, p.9:

Amnesty International believes that the progressive provisions on victims in the Rome Statute, including those setting out their rights in relation to protection, support, information, participation and reparation represent a breakthrough for international justice, which place victims at the centre of the justice process. Indeed, the drafters of the Rome Statute made this point clear when they declared in the second paragraph of the Preamble of the Rome Statute that they were "[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." Many of the provisions for victims are unique to international justice and the Court will need to focus in the next years on ensuring that the systems are established and operate effectively. It is, therefore, disappointing that victims are not mentioned in the Mission and are only generally referred under the umbrella of "participants" in the goals. Amnesty International, therefore, urges the Court to develop detailed strategies on victims' issues and to ensure that they are more clearly set out in future revisions of the Strategic Plan.

³ ICC-ASP/5/Res.2, Strategic Planning process of the Court, adopted at its 7th Plenary session meeting on 1 December 2006, para. 1 and 3.

main strategies with respect to victims. Amnesty International welcomes the development of the Court-wide Victims' Strategy to ensure the full implementation of the victims' mandate from its first cases and to identify the roles to be played by all organs of the Court. Amnesty International urges the Court to establish a detailed and effective Victims' Strategy incorporating all elements of the victims mandate set out in the Rome Statute, including victims' protection and support, participation and reparations. To assist the Court in bringing all these interrelated issues into one strategy, the organization, as an active member of the Victims Rights Working Group, contributed to and supports the recommendations contained in its submission to the Court on the issue: *A Strategy on the Role of Victims before the ICC*.⁴ This paper supplements the Victims Rights Working Group submission by focusing in detail on incorporating the Court's reparations mandate into the Victims' Strategy.

The Court's reparations mandate. Drawing on the experiences of other international courts and in developing a legal system which represents all legal systems of the world, the drafters of the Rome Statute included provisions enabling the Court to award reparations to victims of crimes where there has been a conviction by the Court. These reparations awards can only be made against persons convicted of the crimes.⁵

"Victims" are defined in Rule 85 of the Rules of Procedure and Evidence as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." Although family members or dependants of direct victims or persons who have suffered harm in intervening to assist victims in distress or to prevent victimization are not expressly listed in the definition, it is clear that the definition would extend to such persons who can show they have suffered harm resulting from a crime within the jurisdiction of the Court.⁶ The definition also includes "organizations or institutions that

⁴ Available at: www.vrwg.org.

⁵ Article 75(2) states: "[t]he Court may make an order directly against a convicted person...." The drafters of the Rome Statute rejected proposals to allow the Court to go further and order states bearing responsibility for genocide, crimes against humanity and war crimes to fulfil their legal obligations to provide reparations to victims, see: Fiona Mackay, Are reparations appropriately addressed in the ICC Statute? in Dinah Shelton (ed.) *International Crimes, Peace and Human Rights* (2000), p.163-176; and David Donat-Cattin, Article 75: Reparations, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (1999), p965-978. Article 75(6) expressly provides that "Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law."

⁶These categories of victims are expressly recognized in the definition of victims contained in Principle 2 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly Resolution 40/34 of 29 November 1985:

have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.”⁷

Importantly, the Rome Statute adopts a positive victims' oriented approach to reparations. Victims can initiate the reparations process by applying to the Court.⁸ They can participate in the reparations process with the assistance of legal representatives and, when invited, may make representations to the Court.⁹ Victims may also appeal reparations orders.¹⁰

If the Court decides to award reparations, it has broad provisions on which mode and forms of reparations to apply. This flexibility will be important to enable the Court to provide the most effective measures for victims. The Court can award a range of forms of reparations, including, but not limited to, restitution, compensation and rehabilitation against a convicted person.¹¹ The Court can decide to order individual awards, collective awards or both.¹² Article

...The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

A similar provision is included in Principle 8 of the UN 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, adopted by General Assembly Resolution 60/147 of 16 December 2005.

⁷ Rule 85 (2) of the Rules of Procedure and Evidence.

⁸ Article 75 (1) states: “the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims....” Rule 94 sets out procedure that must be followed by victims requesting reparations and Rule 95 sets out the procedure governing the cases involving exceptional circumstances when the Court decides to act on its own motion.

⁹ Article 75 (3) states: “Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.”

¹⁰ Article 82 (4) states: “A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.” Rules 150 to 153 set out the procedures to be followed.

¹¹ Article 75 (1) and (2) expressly lists restitution, compensation and rehabilitation as forms of reparations which can be ordered by the Court. The list it is clearly non-exhaustive. Other recognized forms of reparations, including satisfaction and guarantees of non-repetition may, therefore, also be considered and ordered by the Court.

75 (1) mandates the Court to establish principles on reparations which will further define the judicial basis for determining orders, including “the scope and extent of any damage, loss and injury to, or in respect of, victims.”

Article 79 of the Rome Statute establishes a Trust Fund “for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims.” Where appropriate, the Court can order that reparations awards be paid through the Trust Fund.¹³

To ensure that reparations orders are enforced, the Court will require the cooperation of states, including identifying, tracing, freezing and seizing assets.¹⁴

The importance of incorporating reparations into the Victims' Strategy. It is essential that the Court puts in place at the earliest stages effective strategies to implement the reparations mandate. Recognizing that implementation of the reparations mandate is interrelated to other elements of the victims mandate, including, protection, support, notification, participation and legal representation, it is logical that, instead of creating an individual strategy for reparations, the Court should establish a Victims' Strategy covering all aspects of the victims mandate, including reparations.

The Court's reparations processes are conducted following trials. It is, therefore, understandable that, at this stage in the Court's history, reparations is the least developed part of the victims' mandate. The Court has begun setting up the mechanisms and procedures to implement the reparations mandate. In particular, Amnesty International welcomes the establishment of the Victims Participation and Reparations Section (VPRS) in the Registry and acknowledges the work already undertaken to develop some public information related to the Court's reparations mandate¹⁵ and to develop standard application forms for reparations, which have been adopted by the Court.¹⁶

¹² Rule 97 states “[t]aking into account the scope and extent of any damages, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis.”

¹³ Article 75 (2) states “[w]here appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.” Rule 98 (2) sets out that the Court may order that an award of individual reparations be made through the Trust Fund where “at the time of making the order, it is impossible or impracticable to make individual awards directly to each victim.” Rule 98 (3) sets out that the Court may order that collective awards for reparations be made through the Trust Fund “where the number of victims and the scope, forms and modalities of reparations makes a collective award more appropriate.”

¹⁴ Articles 75 (4) and (5) clearly set out that states obligations to cooperate fully with the Court extends to enforcing reparations orders. Chapter 12, Section IV of the Rules sets out the procedures to be followed in the enforcement of reparations orders.

On 9 November 2007, the Trial Chamber announced its intention to start the Court's first trial on 31 March 2008.¹⁷ The progress in this first case means that it is now vital to accelerate the development of the reparations system to ensure that it operates effectively from the very first case. The Victims' Strategy will be an essential part of this process aimed at defining the non-judicial elements of the reparations system, including the establishment of procedures and mechanisms to implement the reparations mandate.

In addition to the establishment of the Victims' Strategy, further measures will also need to be taken to develop other aspects of the reparations mandate:

- The Court should commence a dialogue, including consultation with all organs of the Court, the Trust Fund for Victims, civil society and other experts, towards developing its Article 75(1) principles on reparations to be applied by the Court in reparations proceedings;¹⁸
- The Trust Fund for Victims should establish a strategy, in consultation with the Court for making reparations orders of the Court through the Trust Fund, ensuring compliance with the Trust Fund Regulations;¹⁹ and

¹⁵ For example, an information section on reparations is available on the Court's website: <http://www.icc-cpi.int/victimissues/victimsreparation.html>

¹⁶ Available at: <http://www.icc-cpi.int/victimissues/victimsreparation/victimsreparationForm.html>

¹⁷ Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision regarding the Timing and Manner of Disclosure and the Date of Trial, 9 November 2007, para. 29.

¹⁸ Amnesty International believes that the best approach to develop principles would be for the judges to develop and apply principles on a case by case basis. This would allow some flexibility and enable the principles to evolve taking into account case specific circumstances. To prepare for the first reparations processes, Amnesty International encourages the Court to establish a dialogue on the principles to guide the principle setting process during cases, allowing for consultation with all organs of the Court, the Trust Fund for Victims, experts on reparations and civil society organizations. To assist the Court in this process, Amnesty International intends to issue in 2008 a submission to the Court on developing principles on reparations. The organization may request permission to submit *amicus curiae* briefs to the Court on matters of international law relating to the principles in specific cases.

¹⁹ Amnesty International welcomes important progress reported in the *Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2006 to 30 June 2006* (ICC-ASP/6/11, 14 September 2007, para.5) including the development of a programmatic framework for the Trust Fund, which was endorsed by the Board in June. As a next step, strategies specific to implement reparations orders of the Court should be established. Amnesty International plans to provide input to the Trust Fund on this issue in 2008.

- States should ensure that they can cooperate fully with the identification, tracing, freezing and seizing of assets and the enforcement of reparations orders²⁰

This paper aims to provide recommendations to the Court on fully incorporating the reparations mandate set out in the Rome Statute into the Victims' Strategy. The submission follows the structure of the Strategic Plan and recommends that a mission statement on victims, victims' specific goals and victims specific objectives are established, which are consistent with the Strategic Plan. To illustrate objectives, the organization also lists some possible activities.

The Court has indicated that the Victims Strategy will propose Court-wide objectives in relation to victims, explore overlapping factors and issues influencing the strategy relating to victims, and how to measure the impact of the strategy. To assist the Court in this process, Amnesty International will endeavour in its recommendations to highlight issues where there is overlap both in relation to victims' issues and other areas of the Courts work and to identify methods of measuring impact. Furthermore, acknowledging the Court's intention that in developing the Victims' Strategy special care will be taken in order not to trespass on issues which are to be dealt with in judicial proceedings before the judges, Amnesty International's recommendations will focus primarily on non-judicial matters. The organization, however, plans to address judicial related issues in a future submission to the Court on the development of principles on reparations in accordance with Article 75 (1) of the Rome Statute.

I. The structure of the Victims' Strategy

Amnesty International believes that the Victims' Strategy should set out in clear language and structure, the Court's vision and aims for implementing the victims mandate in the Rome Statute, as well as its priorities for achieving it. In addition to establishing Court-wide objectives in relation to victims, Amnesty International recommends that the process should go further, following the same format as the Strategic Plan, to also establish a mission statement on victims and victim specific goals.

The Court should develop a mission statement on victims. As a first step in the strategy development process, the Court should develop a Court-wide *mission statement on victims* to define its aims, guide its work and inform the world of the importance it attaches to implementing the victims' mandate set out in the Rome Statute. That is not to say that the

²⁰ Amnesty International, which has campaigned for the enactment of effective implementing legislation of the Rome Statute since the adoption of the Rome Statute, plans to issue in 2008 guidelines for states implementing the Rome Statute to enact effective legislation, including detailed recommendations for states to ensure that they can cooperate with the enforcement of reparations orders. The organization will also continue to work with countries enacting legislation, including providing comments on existing laws and draft legislations.

Court should develop a different mission statement from that set out in the “Mission of the International Criminal Court”²¹ set out in the Strategic Plan or to revise that mission statement in any way. Instead, recognizing that the Mission of the International Criminal Court is a very broad vision covering all aspects of its work, which does not deal with specific issues such as victims, the aim should be to develop a mission statement on victims which is fully consistent with the aims of the Mission set out in the Strategic Plan, but which defines in more detail the Court’s victims specific aims. Precedent has already been set for adopting issue specific mission statements with the Court’s adoption of the Information and Communication Technologies mission statement, although the mission statement on victims should be more detailed and clearer.²²

The Court should develop victims’ specific strategic goals. Amnesty International recognizes that most victims’ issues will fall under Goal 1 of the Strategic Plan on “Quality of Justice”:

Conduct fair, effective and expeditious public proceedings in accordance with the Rome Statute and with high legal standards, ensuring full exercise of the rights of all participants.

It will, however, be important to expand on the goal to consider and develop goals specific to implementing the victims’ mandate, which will guide the preparation of the victims’ specific objectives.

²¹ The Mission of the International Criminal Court states:

As an independent judicial institution in the emerging international justice system, the International Criminal Court will:

- Fairly, effectively and impartially investigate, prosecute and conduct trials of the most serious crimes;
- Act transparently and efficiently; and
- Contribute to long lasting respect for and the enforcement of international criminal justice, to the prevention of crime and to the fight against impunity.

²² Report on the strategy of the Court on Information and Communication Technologies, ICC-ASP/5/7, at para. 8:

ICT mission statement:

The mission of the ICTS is to assist the Court in achieving its goals and objectives. It will do so by using a client-oriented approach to build and maintain a highly reliable, secure and scaleable information and communication system, infrastructure and architecture that allows the Court to execute its mission globally in an effective manner.”

II. Recommendations for a mission statement on victims.

Amnesty International recommends that the mission statement on victims should set out the core aims of the Victims' Strategy. Below Amnesty International recommends some key aims and explains how they relate to the issue of reparations. Of course, there will be other aims relevant to other aspects of the victims' strategy, outside the scope of the reparations focus of this paper that may also be included.

Recommended aim 1: The Court will treat victims with humanity and respect for their dignity. The treatment of victims cuts across all aspects of the Courts' work from receiving complaints of crimes before investigations are commenced to reparations process at the conclusion of trials and longer-term protection and support in some cases. The obligation to respect the dignity of victims is set out in Article 68 (1) of the Rome Statute, as well as other international standards.²³ Victims of genocide, crimes against humanity and war crimes, in most cases, will have suffered horrific crimes often resulting from a sustained pattern of discrimination. They will have little confidence or trust in institutions which have failed to protect them. To engage them in the Court's process, including encouraging victims to apply for reparations, it is important that the Court builds their confidence in the institution. Indeed, the proper treatment of victims can in itself have an important reparative impact for victims.

Recommended aim 2: The Court will ensure the safety, physical and psychological well-being and privacy of victims. The recommendation reiterates the obligations set out in Article 68 (1) of the Rome Statute. It is important to repeat this in the mission statement on victims. It is likely that, particularly in situations of continuing conflict, victims wishing to claim reparations will face security risks in doing so. If required, a range of measures should be taken to ensure that the safety, well being and privacy of victims are protected in the process.

²³ Principle 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states: "Victims should be treated with compassion and respect for their dignity."

Principle 10 of the UN 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 states:

Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

Recommended aim 3: The Court will facilitate the participation of victims and their applications for reparations. In most cases victims will not be aware of their rights before the Court and will require assistance in exercising those rights. In particular, reparation is a complex legal issue that is not widely understood. Victims will require assistance from the Court to understand its reparations mandate and to engage in it.

Victims seeking reparations may wish to participate in the process, including legal representation. It should also be noted that participation in the trial can itself have a reparative impact for victims. For example, “[j]udicial and administrative sanctions against persons liable for the violations” are listed as a form of reparation in the UN 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 (UN Basic Principles and Guidelines), which were designed to reflect current international law. Allowing victims to participate in the process allows them to see the crimes committed against them examined in a judicial process; where appropriate, it will allow them to tell their story and to present their views; if the person is convicted of their crime, the reparations process will allow them to detail the injuries they have suffered and to set out what remedies they require.

Recommended aim 4: The Court will, as far as possible, award full and effective reparations to victims of crimes where there is a conviction by the Court. Amnesty International acknowledges that the process of developing the Victims' Strategy should not to trespass on issues which are to be dealt with in judicial proceedings before the judges. Nevertheless, it is important that from the outset, the Court develops a strong message affirming its intention to implement the reparations mandate to the fullest extent, without pre-judging any of the judicial decisions of the Court or the principles on reparations that will be developed.

Amnesty International has recommended the text above on the basis that it contains three important elements. Firstly, it recognizes that under international law, victims of genocide, crimes against humanity and war crimes have a right to full and effective reparations. The right is set out in Article 11 of the UN Basic Principles and Guidelines which codifies international law on reparations:

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

...

(b) Adequate, effective and prompt reparation for harm suffered...²⁴

²⁴ The right to reparation is well established in international human rights law as a central element of the right to a remedy contained in international and regional human rights instruments, see: Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 2

The term “full and effective” reparations is a specific term used in Principle 18 of the UN Basic Principles and Guidelines which sets out the level of reparations that victims should receive:

victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation,

Secondly, the recommendation makes a strong commitment on behalf of the Court, consistent with the provisions of the Rome Statute, to realize the rights of victims of crimes convicted by the Court to reparations. As set out in the goals section below, consistency is fundamental to the success of any reparations system. The most effective way to ensure consistency is to endeavour to implement the provisions of the Rome Statute to the fullest extent.

Thirdly, the recommendation recognizes that there are limitations of the Court’s reparations mandate and the realities it may face. The inclusion of “as far as possible” recognizes that in ordering reparations against a convicted person, the Court may not be able to achieve full and effective reparations. For example, there may be measures that victims

(3); Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, Article 13; International Convention on the Elimination of All Forms of Racial Discrimination, Article 6; Declaration on the Protection of All Persons from Enforced Disappearance, Articles 9 and 13; UN Principles on Extra-legal Executions, Principles 4 and 16; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principles 4-7; Charter of Fundamental Rights of the European Union, Article 47; American Convention on Human Rights, Article 7 (1) (a) and 25; American Declaration of the Rights and Duties of Man, Article XVIII; Inter-American Convention on Forced Disappearance of Persons, Article III (1); Inter-American Convention to Prevent and Punish Torture, Article 8 (1); African Charter on Human and People’s Rights, Article 7 (1) (a); Arab Charter on Human Rights, Article 9; Updated Set of principles for the protection and promotion of human rights through action to combat impunity, Principle 31.

The right to reparation is also well established in international humanitarian law, see: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 (Hague Regulations), Article 3; Geneva Conventions, Common Article on grave breaches, found respectively at 51/52 /131/148; Protocol to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 91; Statute of the International Criminal Tribunal for the former Yugoslavia, Article 24(3); Statute of the International Criminal Tribunal for Rwanda, Article 23(3); Statute of the Special Court for Sierra Leone, Article 19.

require which are beyond the Court's mandate – such as ordering states to take specific reparative measures. The reference to “victims”, instead of “all victims” recognizes that, even if there is a conviction, there may be some circumstances where the Court may decide not to award reparations to certain victims, for example, where victims have been unable to demonstrate that they are victims of the crimes in question.

II. Recommendations for victim specific goals

Building upon the goals set out in the Strategic Plan, in particular, Goal 1 on “Quality of Justice,” Amnesty International recommends that the Court adopt the following victims' specific goals, which relate to reparations.

Recommended goal 1: The Court's mandate on victims is widely understood by victims. For victims to exercise their rights set out in the Rome Statute, it is important that they understand what those rights are and how they can be exercised before the Court. Victims must be informed that the Court can award reparations to victims, understand the limitations of the process, be informed how to apply for reparations and understand what is happening at each stage. Amnesty International recognizes that, at present, there are many areas of the reparations mandate that need to be clarified in the Victims' Strategy. In addition, a number of the judicial issues, including the development of principles on reparations, will no doubt be clarified in the first cases and these developments will need to be communicated to victims.

Recommended goal 2: Victims have equal and effective access to the Court. It must be expected that in most situations where the Court investigates and prosecutes crimes, it will face tough challenges in reaching victims to inform them about the reparations mandate and victims will face serious obstacles in engaging in the Court's reparations process. For example, the security situation may make it particular difficult for the Court to inform victims of their rights and victims may face serious security concerns in communicating with the Court. There may be challenges in reaching some victims communities and for victims in completing the legal forms and information in order to exercise their rights. Each situation will of course be unique and the Court will need to develop situation specific activities to ensure that victims have equal and effective access to the Court.

Recommended goal 3: The Court implements its victims mandate consistently. Probably the greatest challenge for the Court in relation to reparations will be to ensure that, from its first case, it acts consistently in ensuring the full exercise of the rights of victims. It is vital for the Court's credibility that it is not seen to be treating one group of victims more favourably than others. That is not to say that the Court should take a very rigid approach to reparations, which would be more likely to result in inconsistency. On the contrary, as advocated below, it is essential that there is flexibility to respond to the needs of victims. Consistency must, however, be ensured by the development and implementation of a clear

Victims' Strategy and the development of clear Article 75 (1) principles of reparations that form the basis for reparations awards.

Recommended goal 4: The Court adopts a victims' oriented approach to implementing the victims' mandate. It is widely recognized that the success of any reparations process depends on the level of involvement of victims in the process. The preamble of the UN Basic Principles and Guidelines notes the particular importance of this goal:

Convinced that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large.

To a large degree, the Rome Statute and the Rules on Procedure and Evidence already provide for a victims' oriented approach to reparations. Notably, the Court must notify victims of developments and victims may present their views to the Court at relevant stages of the proceedings. It is important that the Victims' Strategy fully reflects the victims' oriented approach set out in the Rome Statute and that the principle is fully incorporated into all relevant aspects of the Courts reparations work, ensuring that such measures are consistent with the rights of the accused.

Recommended goal 5: The Court acts as a catalyst to promote reparations for other victims of genocide, crimes against humanity and war crimes. As recognized throughout the process of establishing the Court, the institution itself is not a panacea that will end impunity for the worst crimes. The drafters of the Rome Statute envisaged that the Court would play an essential role in ending impunity, not merely by investigating and prosecuting a handful of individuals and by awarding reparations against those convicted, but by serving as a catalyst for similar investigations and prosecutions and awards of reparations by national courts, which continue to have the primary responsibility to do so. In addition, in making awards of reparations against individual perpetrators and in articulating principles of reparations, the Court will encourage states to establish national reparations programs and/or national courts to hold states and armed groups responsible to provide reparations in other cases. This is reflected in the Mission of the International Criminal Court which states the Court will:

Contribute to long lasting respect for and the enforcement of international criminal justice, to the prevention of crime and to the fight against impunity.

Recognizing that the failure to provide reparation is a significant element of impunity, Amnesty International believes that the Court should not limit its aspiration to contribute to the fight against impunity by focussing solely on criminal prosecution. The Court can equally

have a positive role through its reparations orders in encouraging national authorities to ensure reparations for the victims.

Recommended goal 6: The Court receives the full cooperation of states in implementing reparations orders. Article 75 expressly requires states parties to give effect to reparations orders in accordance with Article 109 on the enforcement of fines and forfeiture. The implementation of reparations orders will, therefore, be contingent on state cooperation and the Court will need to take the initiative to encourage cooperation.

III. Recommendations for victim specific objectives relating to reparations

Consistent with the Strategic Plan and the recommendations above for a mission statement on victims and victims' specific goals, Amnesty International has developed 12 recommended objectives relevant to reparations. To illustrate the relationship between the Strategic Plan, the organization lists related objectives in the Strategic Plan for each recommendation. It also lists the relevant recommended victims' specific goal listed above. To illustrate the recommended objectives, the organization lists some suggested activities to implement them. Many of the objectives overlap with other aspects of the victims' strategy and areas of overlap are identified. The organization also sets out some recommendations for measuring impact. Amnesty International will use these recommended objectives to assess the Court's implementation of its obligations with regard to reparations

Recommended objective 1:

Implement situation-specific strategies to inform victims in situations under investigation of the Court's reparations mandate and its mission statement on victims.

Recommended victims' specific goal:	The Court's mandate on victims is widely understood by victims.
Related Strategic Plan objective:	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
Overlap with other issues.	This objective overlaps with the need to inform victims of <u>all</u> aspects of the Court's victims mandate, including, participation, legal representation, protection, support and reparations. This should be a comprehensive initiative covering all issues rather than separating them out or staggering information. The objective also overlaps with the Court's Strategic Plan on Outreach and the Strategy of the Office of the Prosecutor in relation to the information it provides to victims during investigations.
Importance of objective: To engage victims positively in the work of the Court, it is important that they are informed of their rights before the Court and how they can exercise them. This should happen as early as possible in the process, preferably following the launch of an investigation, to minimise misunderstandings about the Court's reparations mandate. Although the Court may decide not to actively seek reparations applications until a later stage in the process, it will be beneficial for the Court to inform victims as early as possible in general terms about the reparations system, how it works (including its limitations) and how and when victims will be asked to submit reparations applications.	
Possible activities to implement objective: Each situation will be different and it will be important for the Court to create a specific strategy tailored to the security situation, the challenges in reaching victims and the most appropriate medium to inform them of the reparations mandate. As the functions are fundamentally outreach related, the objective and the activities should be incorporated into the Strategic Plan on Outreach for the country. The strategy should aim to define all victims' communities in a situation under investigation and organize specific activities to reach them. Activities could include: <ul style="list-style-type: none"> • Distributing through field offices and investigation teams a guide for victims' on the Court setting out the victims mandate in an easy-to-understand manner and format. • Developing radio or street theatre initiatives addressing the victims' mandate. • Training intermediaries who work with or are engaged with victims communities. 	
Measuring impact: Impact should be measured both quantitatively and qualitatively. Quantitative in assessing the estimated numbers and percentage (not just large numbers of victims in one area) of victims reached by activities. Qualitative by assessing through questionnaires, focus groups and other mechanisms the level of understanding on specific issues.	

Recommended objective 2:

Implement situation-specific strategies to inform victims of crimes being prosecuted by the Court of the case and to call for applications for reparations.

Recommended victims' specific goal:	Victims have equal and effective access to the Court.
Related Strategic Plan objectives:	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
Overlap with other issues.	This objective overlaps with other elements of the Victims' Strategy relating to notifying victims of developments in cases.
<p>Importance of objective: To ensure equal access to reparations, the Court should inform victims at an appropriate stage that they should file applications. One of the most important questions facing the Court is: when should it begin actively seeking applications for reparations from victims? There are no time limits set out in the Rome Statute or the Rules and victims can make applications at any time. This is, therefore, a process issue that should be set out in the Victims' Strategy. The Court should aim to find an appropriate balance between (1) starting the process too early and unnecessarily raising expectations among the broader victims' population before suspects have been charged and the crimes to be prosecuted defined and (2) leaving the process too late without sufficient time and resources for victims to submit applications. Amnesty International believes that the process of seeking applications should begin following the confirmation of charges because at that time the charged person will have been surrendered to the Court, the crimes to be prosecuted will have been defined and there will be a sufficient period of time for victims to file applications in advance of judgment. Of course, if there is an acquittal or conviction on some but not all charges, victims who have applied will not be able to continue their applications into the reparations process. This will need to be explained to victims at the application phase.</p>	
<p>Possible activities to implement objective: A case-specific strategy should be developed to inform victims of the crimes being prosecuted that they have a right to apply for reparations. The strategy should identify the victims to be informed, taking into account the security situation and their involvement in the process to date. Activities could include:</p> <ul style="list-style-type: none"> • Informing legal representatives of victims participating in the case to start preparing reparations applications. • Informing the Office of the Prosecutor and the Victims and Witnesses Unit to inform victims of their right to apply for reparations. • Instruct field based staff to inform victims, including through intermediaries. • Publicly announce the process in media. 	
<p>Measuring impact: For each case, efforts should be made to project the size of the community of victims affected by the specific crimes, including eligible family members. Impact should be measured on the number of applications received in relation to the projected numbers of victims.</p>	

Recommended objective 3:

Implement situation-specific strategies to facilitate victims making applications for reparations.

Recommended victims' specific goal:	Victims have equal and effective access to the Court.
Related Strategic Plan objectives:	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
	8. Constantly increase support for the Court through enhancing communication and mutual understanding with stakeholders, stressing the Court's role and its independence.
Overlap with other issues.	This objective overlaps with other elements of the Victims' Strategy relating to legal representation for victims and the role of intermediaries.
<p>Importance of objective: Reparations is a complex legal concept. As Rule 94 demonstrates, the application process involves legal terminology and personal assessments of reparations required, which many victims will not understand. This is reflected in the standard forms for reparations adopted by the Court. Amnesty International remains concerned that the standard forms are too complex and, significant measures must, therefore, be taken to assist victims to complete them. If not, victims will be discouraged from making applications. It should be expected that most victims will require guidance – in particular, legal advice and assistance – to complete the forms.</p>	
<p>Possible activities to implement objective: To achieve this objective, the Court should:</p> <ul style="list-style-type: none"> • Review the standard application form for reparations and aim to simplify it, where possible, while meeting the mandatory criteria set out in Rule 94. • Provide standard form applications and guides on completing them to victims in their local languages. • Provide victims' assistance from Court field based staff to complete their forms. • Train intermediaries to assist victims in completing application forms. • Provide legal representation for indigent victims making applications (see recommended objective 4). 	
<p>Measuring impact: Impact should be measured both quantitatively and qualitatively. Quantitatively, the number of applications received (see recommended objective 2) and information on the proportion of applications where assistance has been provided and by whom. Qualitatively, the extent to which application forms are completed satisfactorily providing sufficient information to fulfil the criteria in Rule 94 will demonstrate the effectiveness of the Court's initiatives.</p>	

Recommended objective 4:

Ensure legal representation for indigent victims to present their applications for reparations and views to the Court during the process.

Recommended victims' specific goal:	Victims have equal and effective access to the Court.
Related Strategic Plan objectives:	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
Overlap with other issues.	This objective overlaps with other elements of the Victims' Strategy relating to legal representation for victims and financial assistance.
<p>Importance of objective: The reparations mandate of the Court requires that victims be able to follow the reparations process and submit their views on key issues. In particular, Article 75 (3) of the Rome Statute provides that the Court shall take into account representations of victims. To do so, victims should have access to experienced legal representation during the reparations process to collect their views, advise them throughout the process and represent them before the Court. Many victims may have continuing legal representation from participating in the trial. However, other victims may have decided not to participate in the trial but still wish to seek reparations. Amnesty International recognizes that in most cases, crimes of genocide, crimes against humanity and war crimes are committed against disadvantaged groups or persons, it should, therefore, be anticipated that, in most cases, victims wishing to participate in the reparations process will be indigent and require financial assistance. The organization welcomes that the Court has requested funds for legal representation for indigent victims in its annual budgets, which have been approved.</p>	
<p>Possible activities to implement objective:</p> <ul style="list-style-type: none"> • The Court should monitor the list of counsel and ensure that the list includes adequate numbers of counsel with experience in reparations cases involving a significant number of victims. If not, efforts should be made to identify counsel with such experience and to encourage them to join the list. • The Court should develop materials to inform indigent victims that they may seek financial assistance from the Court. • Recognizing that, even with the current restrictive prosecution strategy, cases will likely involve significant numbers of victims, the Court should, without prejudice to judicial determinations, consider and develop options for representing large numbers of victims, taking into account that there may be differing views within groups of victims. 	
<p>Measuring impact: The Court should aim to ensure that <u>all</u> victims seeking to participate in the reparations process who have been determined to be (1) victims of crimes convicted by the Court and (2) indigent are provided with legal representation. Impact should be measured by the number of victims who are provided legal representation against the number of applications which meet these two criteria.</p>	

Recommended objective 5:

Implement situation- or case-specific strategies to ensure the safety of victims applying for reparations.

Recommended victims' specific goal:	Victims have equal and effective access to the Court.
Related Strategic Plan objectives:	2. Put in place a system to address all security risks, striving for maximum security of all participants consistent with the Rome Statute.
	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
Overlap with other issues.	This objective overlaps with elements of the Victims' Strategy relating to the Court's obligation to provide protection and support to victims.
<p>Importance of objective: Victims are unlikely to seek reparations before the Court if they believe that doing so will place them at risk or if they have concerns that the process will be a negative and traumatizing experience. It should be expected that victims seeking reparations may be at risk and subject to threats, intimidation and attack, either during the reparations process or following an award. The Court will, therefore, need to take appropriate measures pursuant to Article 68 of the Rome Statute to ensure their protection and support. Any case where a victim is attacked because they have claimed reparations will have a major impact on the perception of the Court and its effectiveness. Victims will also need to be assured that in participating in the process, they will be treated with dignity and humanity, in particular by their legal representative and Court staff and provided support, where relevant.</p>	
<p>Possible activities to implement objective:</p> <ul style="list-style-type: none"> • In each situation, risk analyses should be conducted to assess any dangers to victims seeking reparations and appropriate measures that will need to be taken. If necessary, relevant measures should be communicated to the Chambers for a decision. • The Court should provide all victims claiming reparations with contact information to request assistance if they believe they are in danger. The Court should ensure systems are in place to respond immediately in such circumstances. • All Court staff that come into contact with victims claiming reparations should be trained in dealing with victims and all legal representatives are trained in working with traumatized victims and, as necessary, provided with psycho-social support staff to assist them in communicating and representing victims effectively. 	
<p>Measuring impact: Quantitatively, the Court should record the number of threats, intimidation and attacks against victims claiming reparations. Qualitative assessment should focus on the effectiveness of measures taken in response to risk. In particular, the views of victims should be collected and assessed to determine their confidence in the system, their views on the adequacy of protective measures taken as well as their views of the support provided to them by their legal representative and Court staff.</p>	

Recommended objective 6:

Establish effective mechanisms to ensure that victims are treated with humanity and dignity during the reparations process.

Recommended victims' specific goal:	The Court implements its victims mandate consistently.
Related Strategic Plan objectives:	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
	19. Develop and implement a complete set of clear ethical standards of behaviour of staff.
Overlap with other issues.	This objective overlaps with Victims' Strategy issues related to legal representation and ensuring victims are treated with humanity and dignity, as required by Article 68 (1).
Importance of objective: Ensuring that victims are treated with dignity during the reparations process (and all aspects of the Court's work) is a Court-wide obligation, which includes taking measures to ensure that non-Court staff involved in the process, including victims' representatives, defence counsel and staff of the Trust Fund for Victims staff comply. Failure to implement this obligation will undermine the perception of the Court, its victims' oriented approach and dissuade victims from applying for reparations.	
Possible activities to implement objective: <ul style="list-style-type: none"> • A comprehensive and continuing training process should be established for legal representatives for victims', defence counsel, Trust Fund for Victims staff and all Court staff that come into contact with victims. The training should focus not only on the treatment of victims, but also on the rights and how they can exercise them before the Court at different stages in the process. • As appropriate, directives or codes of conduct should reflect obligations on the treatment of victims. • A complaints mechanism should be established whereby victims or their representatives may report instances of bad practice. Complaints should be considered by relevant mechanisms or bodies to consider appropriate action. 	
Measuring impact: The effectiveness of the training and its impact on the views and skills of those who receive it should be measured by the feedback of participants and evaluation of the training program. The impact on the treatment of victims in the process should be evaluated by surveying victims. Impact should also be measured against the number of complaints filed regarding treatment of victims.	

Recommended objective 7:

Establish principles on reparations.

Recommended victims' specific goal:	The Court implements its victims mandate consistently.
Related Strategic Plan objectives:	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
Overlap with other issues.	This objective overlaps with other elements of the judicial process of developing and implementing principles relating to reparations pursuant to Article 75 (1) of the Rome Statute.
Importance of objective: Article 75 (1) of the Rome Statute specifically mandates the Court to develop principles "relating to reparations to, or in respect of, victims including restitution, compensation and rehabilitation." Recognizing that each case will be unique, the development of clear principles governing reparations, including the scope and extent of damage, loss and injury to, or in respect of, victims is essential to ensure that the Court is consistent in performing its reparations mandate. These principles will increase understanding of the Court's reparations system, provide a sound basis to determine reparations orders and justify decisions in different circumstances.	
Possible activities to implement objective: The development of the principles on reparations is an issue that will ultimately be decided by the Court. However, in preparation for the first reparations proceedings, the Court should organize a Court-wide dialogue, including consultations with the Trust Fund for Victims, civil society and other experts to identify the full range of issue where principles should be established and to exchange of views on some of the key issues.	
To ensure that the principles are fully understood by all the in the process, legal representatives of victims should receive up to date information and training on principles as they are developed.	
Measuring impact: Impact should be measured based on the scope of principles relating to reparations developed in the first reparations processes.	

Recommended objective 8:

Publicize all reparations decisions setting out in easy-to-understand language the decision and the principles applied.

Recommended victims' specific goal:	The Court implements its victims mandate consistently.
Related Strategic Plan objectives:	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
	9. Develop and implement a structure to ensure publicity of all proceedings for local and global audiences.
Overlap with other issues.	This objective overlaps with outreach and communication and translations of key decisions of the Court. It also relates to ensuring that the Court can act as a catalyst for national reparations (see recommended objective 11).
Importance of objective: It should be expected that the Court's decisions on reparations will receive significant attention and will be reported widely through the media and other networks following the work of the Court. The decisions will likely receive as much coverage as the Court's judgment on guilt or innocence. Each decision will be unique, dealing with different facts, harm suffered by victims and views of victims on reparations required. It will be important for the credibility of the Court to publicize its reparations decisions in a language spoken and understood by the victims in order to generate support for the Court as an institution. It is also important that it explains its decisions, which may deal with complex issues, in an easy to understand manner and explaining the principles applied to increase understanding of its work and to guard against criticism of inconsistency. Publication of these orders, which seek to address the suffering of victims, will also inform the broader victims' community (including victims whose cases were not prosecuted by the Court), that they have a right to reparations, which will hopefully act as a catalyst to inspire or shame relevant national authorities to fulfil their obligations.	
Possible activities to implement objective: <ul style="list-style-type: none"> • Strategies should be developed to publicize reparations orders in specific countries and globally. In particular, easy-to-understand summaries should be issued in all cases. • The Court should adopt a budget proposal with sufficient funds to publish in a timely manner all reparations orders (together with summary materials) in all six official languages of the Court, in accordance with Article 50 (1) and local languages of affected victims' communities. 	
Measuring impact: Impact should be measured by monitoring the accuracy of reporting by the media on the reparations order. Furthermore, the level of understanding of victims' communities of the reparations order should be surveyed, including both groups of victims who benefit from the order and those that are not covered by the order.	

Recommended objective 9:

Implement situation- and case-specific strategies to inform victims of developments at relevant stages of the process.

Recommended victims' specific goal:	The Court adopts a victims' oriented approach to implementing the victims' mandate.
Related Strategic Plan objectives:	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
Overlap with other issues.	This objective overlaps with notifications to victims and victims' participation, including legal representation.
<p>Importance of objective: A key element of implementing a victims' oriented approach requires that victims seeking reparations fully understand and follow the process conducted by the Court. Rather than just be told when to apply and be informed of the outcome of the reparations process, victims seeking reparations and their legal representatives should benefit from notification of relevant developments in the case so that they can follow proceedings and contribute at relevant stages by communicating their views. At a minimum, notification should occur: once charges are confirmed calling for applications from victims of the crimes to be prosecute (see recommended objective 2); following a determination of guilt or innocence, including informing victims whether the person was convicted of the crime they suffered and whether their claim for reparations can proceed; before and during the reparations process including, notification of reparations proceedings before the Court (pursuant to Rule 96) and details of proceedings, including the date of hearings, postponements and the date of the delivery of the decision as well as requests, submissions motions and other documents relating to the reparations process (pursuant to Rule 92 (5)).</p>	
<p>Possible activities to implement objective:</p> <ul style="list-style-type: none"> • For each case, the Court should develop activities to keep victims and their legal representatives informed of the process. • Recognizing that legal representatives will, in most cases, be best placed to communicate developments to victims, the Court should develop, in consultation with victims' representatives and civil society, guidelines and best practice for legal representatives to keep victims informed of their applications. 	
<p>Measuring impact: The views of victims and legal representatives should be canvassed on each case to determine the level of satisfaction with the notification system. The number of complaints registered by victims and legal representatives before the Chambers and the Registry on notification will also be a key indication of impact.</p>	

Recommended objective 10:

Implement situation- and case-specific strategies to obtain the views of victims at relevant stages of the process.

Recommended victims' specific goal:	The Court adopts a victims' oriented approach to implementing the victims' mandate.
Related Strategic Plan objectives:	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
Overlap with other issues.	This objective overlaps with victims' participation and legal representation.
<p>Importance of objective: Article 68 (3) of the Rome Statute expressly provides that “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court....”</p> <p>A reparations process conducted by the Court clearly involves the personal interests of victims and there may be a number of situations where the Court may decide that presentation of their views would be appropriate. For example:</p> <ul style="list-style-type: none"> • Victims' views and concerns may provide important contextual information on claims by persons who claim to be <i>bona fide</i> third parties. • Victims' views on the forms of reparations they believe would most effectively address the harm they have suffered would be essential information for the Court to determine an award, including the forms of reparations. <p>Moreover, implementation of this provision will ensure that victims are engaged in the reparations process and empowered by participating in the exercise of their rights, rather than mere observers.</p>	
<p>Possible activities to implement objective: Although it is clearly a decision of the relevant Chambers to decide whether to consider the views of victims on specific issues on a case by case basis, there are important activities that can be conducted to facilitate such a process when such a decision is made.</p> <ul style="list-style-type: none"> • It would be particularly useful for the Court to develop, in consultation with victims' representatives and civil society, guidelines for legal representatives on collecting the views of victims to submit to the Court and to consider how to address challenges of collecting views from large numbers of victims. • The Court will need to develop policies on how to respond to situations where victims represented by a common legal representative have conflicting views. 	
<p>Measuring impact: The impact of the objective should be measured by the proportion of victims claiming reparations whose views are presented to the Court. Complaints that victims were unable to present their views should also be measured.</p>	

Recommended objective 11:

Implement situation-specific strategies to publicize reparations decisions.

Recommended victims' specific goal:	The Court acts as a catalyst to promote reparations for other victims of genocide, crimes against humanity and war crimes.
Related Strategic Plan objectives:	9. Develop and implement a structure to ensure publicity of all proceedings for local and global audiences.
Overlap with other issues.	This objective overlaps with communication with victims (addressed in recommended objectives 8 and 9) and the Strategic Plan on Outreach.
Importance of objective: In accordance with the principle of complementarity, the Court is expected to act as a catalyst for national justice to deal with the many crimes the Court will not be able to investigate and prosecute. Amnesty International hopes that, by providing reparations in some cases against convicted persons, the Court will also inspire national authorities to establish reparations programs; empower the broader victims' communities by affirming the right to reparations; and create important precedents for national courts to follow in considering claims by victims. To achieve this, national authorities and the broader victims' population, including civil society and victims' organisations, must be informed of the Court's decisions on reparations. Such measures will help ensure that the broader victims' community understands that in ordering reparations to victims, the Court is implementing the right to reparations in its cases rather than providing some victims with special treatment.	
Possible activities to implement objective: Situation-specific strategies should also be developed, taking into account the content of the specific ruling. ²⁵ The strategy will need to consider: <ul style="list-style-type: none"> • How to communicate complex aspects of the ruling in an easy-to-understand manner. • Messages clarifying that even though the Court is only mandated to award reparations to victims of crimes in cases tried before it, all victims of genocide, crimes against humanity and war crimes have a right under international law to full and effective reparations. • Responding to criticism that special treatment has been provided to victims who are awarded reparations by the Court. 	
Measuring impact: Impact should be measured by the national response (in the short and the longer term) to Court reparations orders, including: <ul style="list-style-type: none"> • The response of the victims' community and civil society in campaigning for national reparations or filing applications for reparations before national courts. • The response of national authorities in relation to establishing national reparations processes. 	

²⁵ Amnesty International believes that the Court should consider a number of measures to act as a catalyst for national reparations in making its judicial decisions. These recommendations will be addressed in the organization's forthcoming paper on developing the Article 75 principles on reparations.

Recommended objective 12:

Implement case-specific strategies to ensure cooperation in identifying, tracing, freezing and seizing of assets and enforcement of reparations orders.

Recommended victims specific goal:	The Court receives the full cooperation of states in implementing reparations orders.
Related Strategic Plan objectives:	7. Develop situation-specific mechanisms to provide for all necessary cooperation, in particular the arrest and surrender of persons.
Overlap with other issues.	The objective overlaps with the responsibilities of the Court and the Assembly of States Parties to promote full cooperation from states.
Importance of objective: The Court will not be able to fulfil its reparations orders without the full cooperation of states parties in identifying, tracing, freezing and seizing assets (as required by Article 93 (1) (k)) and enforcing reparations orders in accordance with Article 75 (5) and Article 109. Although reparations can be awarded through the Trust Fund for Victims, it is important that to the fullest extent possible, the Court enforces the orders against the convicted person.	
Possible activities to implement objective: <ul style="list-style-type: none"> • To ensure against the disposal of assets by suspects, the Court should review, in consultation with experts and civil society, its strategies for ensuring the identification, tracing and freezing of assets as early as possible in the process. In particular, the role of the Office of the Prosecutor, which will be best placed to conduct financial investigations leading up to the announcement of summonses or charges should be clarified. • The Court should work with the Assembly to ensure its full support and guidance for states parties in ensuring cooperation to implement reparations orders. At its sixth session, the Assembly considered a Report on Cooperation prepared by the Bureau in consultation with the Court and states parties. Unfortunately, although the report is detailed in many respects, it does not address the issue of enforcing reparations orders.²⁶ 	
Measuring impact: Impact can be measured in the following ways: (1) the number of states parties which include effective provision on cooperation with regard to reparations in their implementing legislation; (2) the extent to which the Assembly incorporates reparations into its work to support cooperation with the Court and (3) the number of reparations orders fully implemented with the cooperation of states.	

²⁶ To contribute to this process, Amnesty International intends, after consultation with a broad range of experts, to issue detailed guidelines to states parties to ensure that their legislation implementing the Rome Statute provides for effective cooperation in enforcing reparations orders.

Conclusion

Amnesty International welcomes the opportunity to provide a submission to the Court on the development of its Victims' Strategy and hopes that the recommendations contained in this paper will be considered useful. The organization encourages the Court to continue the transparent process of developing the Victims' Strategy and to make available a draft for consultation before it is adopted.

Amnesty International plans to follow the process towards adoption of the Victims' Strategy and may provide further submissions, specifically in relation to drafts circulated by the Court for consultation. The organization also plans to issue other submissions on the establishment of the Court's reparations system focussing on:

- the development of Article 75 (1) principles on reparations;
- guidelines for states to enact effective cooperation legislation for reparations; and
- the development of strategies to award reparations through the Trust Fund.

For more information on Amnesty International's work on reparations, please visit our website: www.amnesty.org/international-justice²⁷

²⁷ Amnesty International plans to launch these new web pages, including pages on reparations, in the near future.

Summary of Amnesty International's recommendations

Recommended victims specific goals	Recommended victims specific objectives	Related Strategic Plan Objectives
1. The Court's mandate on victims is widely understood by victims.	1. <i>Implement situation-specific strategies to inform victims in situations under investigation of the Court's reparations mandate and its mission statement on victims.</i>	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
2. Victims have equal and effective access to the Court.	2. <i>Implement situation-specific strategies to inform victims of crimes being prosecuted by the Court of the case and to call for applications for reparations.</i>	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
	3. <i>Implement situation-specific strategies to facilitate victims making applications for reparations.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
		8. Constantly increase support for the Court through enhancing communication and mutual understanding with stakeholders, stressing the Court's role and its independence.
	4. <i>Ensure legal representation for indigent victims to present their applications for reparations and views to the Court during the process.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
	5. <i>Implement situation- or case-specific strategies to ensure the safety</i>	2. Put in place a system to address all security risks, striving for maximum security of all participants consistent with the Rome Statute.

	<i>of victims applying for reparations.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court’s activities, in a manner that is respectful of diversity.
3. The Court implements its victims mandate consistently.	6. <i>Establish effective mechanisms to ensure that victims are treated with humanity and dignity during the reparations process.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court’s activities, in a manner that is respectful of diversity.
		19. Develop and implement a complete set of clear ethical standards of behaviour of staff.
	7. <i>Establish principles on reparations.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court’s activities, in a manner that is respectful of diversity.
	8. <i>Publicize all reparations decisions setting out in easy-to-understand language the decision and the principles applied.</i>	6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court’s activities in affected communities. 9. Develop and implement a structure to ensure publicity of all proceedings for local and global audiences.
4. Court adopts a victims’ oriented approach to implementing the victims’ mandate.	9. <i>Implement situation- and case-specific strategies to inform victims of developments at relevant stages of the process.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court’s activities, in a manner that is respectful of diversity.

		6. Cultivate a level of awareness and understanding of the Court appropriate to the stage of the Court's activities in affected communities.
	10. <i>Implement situation- and case-specific strategies to obtain the views of victims at relevant stages of the process.</i>	3. Develop policies for implementing the quality standards specified in the Statute and the Rules on Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.
5. The Court acts as a catalyst to promote reparations for other victims of genocide, crimes against humanity and war crimes.	11. <i>Implement situation-specific strategies to publicize reparations decisions.</i>	9. Develop and implement a structure to ensure publicity of all proceedings for local and global audiences.
6. The Court receives the full cooperation of states in implementing reparations orders	12. <i>Implement case-specific strategies to ensure cooperation in identifying, tracing, freezing and seizing of assets and enforcement of reparations orders.</i>	7. Develop situation-specific mechanisms to provide for all necessary cooperation, in particular the arrest and surrender of persons.