



**VICTIMS' TRUST FUND TEAM**  
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)  
Comments on the Trust Fund for Victims' Global Strategic Plan for 2009-2011  
MARCH 2009

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The **Victims' Trust Fund Team** ("Team") is part of the CICC NGO team structure, and has been in existence since 2005. It monitors and provides input to the effective establishment and operation of the International Criminal Court's Trust Fund for Victims ("Trust Fund" or "Fund") established by Article 79 of the Rome Statute.

### Comments on the Trust Fund for Victims' Global Strategic Plan for 2009-2011

The Coalition for the International Criminal Court (CICC) Trust Fund Team (Team) hereby submits its comments to the Trust Fund for Victims' Draft Global Strategic Plan for 2009-2011 (Strategic Plan). These comments refer to Version 1 of the Strategic Plan, dated August/October 2008<sup>1</sup>.

The Team is composed of individuals and organisations who have expertise in the field of reparations and assistance to victims. Members of the Team have followed the creation of the International Criminal Court (ICC) Trust Fund for Victims, and subsequent developments, including the adoption of the Regulations of the Trust Fund in 2005 and the initial operations of the Trust Fund's Secretariat.

Members of the Team include both international and field-based experts, who also have -for the most part- experience in monitoring the ICC and other international justice processes, including through engagement with a variety of actors and stakeholders (diplomats, other actors within the ICC, members of the committee of Budget and Finance, donors and observers, among others). The Team's expertise in this field has been applied when considering the Strategic Plan.

It should be noted that the Team's comments will focus on the **strategic** rather than the programmatic aspects of the document. In addition, the Team looks forward to continued engagement with the Trust Fund on a variety of issues, including working toward further transparency of the Trust Fund's activities, building the Trust Fund's profile within affected communities, and the upcoming election of the Trust Fund's new Board of Directors.

#### Consultation process

In previous submissions to the Trust Fund's Secretariat and Board of Directors, the Team had recommended that the Trust Fund increased its visibility by, among other initiatives, making public its plans, goals and priorities. The Team is, therefore, delighted that the Trust Fund Secretariat has opened a consultation process in relation to the Strategic Plan, and it is grateful for having been invited to provide comments.

The comments set out in this document are intended to provide constructive assistance to the Secretariat.

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<sup>1</sup> The first page of the Strategic Plan indicates October 2008, while the reference "V1. August 2008" is read on every page of the document

## **General comments: Scope of the document**

The Team is positively impressed by the breadth and detail of the document which clearly evidences the importance that the Secretariat gives to strategic planning. However, the Strategic Plan covers only a portion of the Fund's activities, though these are analysed in rigorous detail.

The document seems to deal almost entirely with the assistance mandate of the Fund. There is limited consideration of the reparations mandate (see further discussion below). The Team believes that the strategic plan of an institution should be comprehensive of all aspects of the relevant entity's mandated activities. Whilst it is recognised that the Trust Fund requires further input from the Court in relation to what precise role the Trust Fund will have in implementing Court-ordered reparations awards, it is recommended that the Trust Fund more clearly include such aspects into the Strategic Plan.

The Team also recommends that the Strategic Plan include the Fund's strategies on communications and fundraising, and show how all the different components of the Fund's operations interrelate and are to be coordinated.

In addition, it is recommended that, in order to facilitate communication with States Parties, donors and other stakeholders, much simpler and targeted information be made available at the outset of the Plan (or in a separate document), showing what the axes of the Fund's operations are, how they interrelate, the main objectives and ways to attain them.

The Team also attaches great importance to monitoring and evaluation, and has appreciated that a great portion of the document is devoted to monitoring and evaluation as well as performance indicators. This information will prove extremely useful for internal purposes and communication with certain actors, in particular donors, who will be interested to trace the progress of the fund in meeting its set objectives as well as in understanding more clearly how donated funds were allocated.

The Team has also observed that although the Plan makes reference to country programmes and country indicators for the purpose of evaluation, it does not include situation-specific strategies, identifying the needs of victims and their families and setting out concrete plans and strategies for each of the countries where the Trust Fund has jurisdiction to operate. Situation-specific strategies should be developed for each situation and incorporated into the Strategic Plan or issued as separate documents.

It is also unclear to what extent the Strategic Plan applies to reparations. Although the document seems to focus mainly on assistance, it makes numerous reference to reparations, in particular in relation to evaluation of reparations programmes (see, for example matrix 4, 6 7, 8). The Team understands that the Trust Fund's capacity to plan for reparations is limited due to the fact that no principles for reparations have yet been determined by the Court and given that the mandate for determining reparations falls squarely with the Court (as opposed to the Trust Fund). Nevertheless, in preparing a comprehensive Strategic Plan, it would be useful for the Trust Fund to indicate what actions -if any- can be undertaken in relation to reparations and what steps will be followed once a reparations order is in place. Analysis in this respect could also be helpful in the determination of what mechanism need to be put in place by the Trust Fund to ensure that sufficient funds are available to implement reparations awards.

## **Mission statement and goals**

The Team has carefully considered the mission statement and goals as stated in the Plan. One of the goals and several portions of the document, provide that advocating and facilitating reconciliation is one of the fundamental aims of the Trust Fund. The Team believes that reconciliation is beyond the Fund's mandate. The term reconciliation refers or implies bringing

victims and perpetrators and the broader communities together to encourage the making of amends; it often has religious connotations or is pursued as a matter of government policy to encourage communities to 'move forward'. In our view, reconciliation is a complex and often controversial process which is not necessarily a victim-centred activity. Engaging in community reconciliation activities can in many ways destroy the individual agency of victims to determine how they wish to respond to their victimisation and the individuals and communities that contributed to their victimisation. It must also be noted that reconciliation is only possible when victims accept and are willing to go through such process, which might not always be the case. It is suggested that an international trust fund with a specific victim-centred mandate is not best-placed to foster such activities. Instead, the Fund's activities should aim at providing redress for victims, restoring victims' dignity and facilitating their reintegration into society. This would be more consistent with the stipulated mandate of the Trust Fund, which, as stated in the Rome Statute, is: "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims."

### Definition of types of assistance

Although the assistance mandate is separate and different from the reparations mandate, a reparations perspective must be applied in the design and implementation of assistance projects by the Trust Fund. The Fund's assistance mandate was conceived as a way to make available assistance outside the scope of legal proceedings against an accused. As the Board of Directors determined in the Regulations they prepared for adoption by the Assembly of States Parties, the Board may provide, if "necessary" "physical or psychological rehabilitation or material support for the benefit of victims and their families". These types of assistance are enabled, under the Regulations, on a basis of 'necessity', i.e., to deal with situations of necessity. It is the view of the Team that the Regulations, nor any other legal document referring to the establishment and mandate of the Trust Fund, refer to the Fund as a humanitarian agency; the activities and projects of the Trust Fund must be strictly linked to the criteria set out in the Regulations and should address the harm suffered by the victims as a result of the crimes within the jurisdiction of the Court.

We have noted that this specificity is well captured in the mission statement. However, the Team is concerned about the definition of types of assistance provided in page 14 of the Strategic Plan, which do not refer to the situation of 'necessity' that the Regulations require.

Physical rehabilitation is defined as follows: "To address the care and rehabilitation of those victims who have suffered physical injury in order to recover and resume their roles as productive and contributing members of their societies."

Given the very large number of victims and their families that have suffered physical injury, it would be useful for the Strategic Plan of the Trust Fund to explain more clearly, how decisions on 'necessity' will be taken. The Trust Fund would not appear to be best-placed to take on the role of a humanitarian aid / medical agency, though it might be important for the Trust Fund to intervene, for example where the individuals concerned are victims of the crimes set out in the Rome Statute, where they are not currently receiving any assistance and are not likely to receive any, where their situation requires 'necessary' or urgent attention, but for there would be significant health repercussions.

Psychological rehabilitation is defined as follows: "To offer cost-effective psychological, social and other health benefits, and means to educate local populations about the needs of victims and the resources available to assist in their recovery."

The Team submits that the phrase above goes beyond the proviso in the Trust Fund's own regulations which refer to 'necessary' psychological rehabilitation. Psychological rehabilitation should be afforded first and foremost to address the psychological harm suffered by victims of violations themselves and their families. Addressing the social dimensions of conflict and crime-perpetration certainly contributes to eliminating stigma and facilitating social reconstruction, however it is a significant extension to the stipulated assistance function in the Regulations. We

have noted that the Strategic Plan indicates that projects could address victims' trauma, and in our view this must be a central component of any assistance projects that proceed on the basis of the mandate of the Trust Fund to provide necessary psychological rehabilitation. The definition of psychological rehabilitation should reflect this emphasis on addressing victims' trauma.

Material support is defined as follows: "To improve the economic status of the victims through education, economic development and rebuilding of community infrastructure, and creation of employment of opportunities."

The definition of material support does not make any reference to addressing the harm suffered as a result of crimes, nor to the criteria of "necessity". As explained above, extreme care needs to be applied in order to avoid confusion between assistance to address harm suffered as a result of crimes and other types of humanitarian aid.

As a consequence of what are, in the Team's views, unclear or inappropriate definitions, international instruments referred in the Performance Monitoring Plan (human rights convention, Millenium Development Goals, etc) and indicators (see for example Matrix 6) would equally benefit from reconsideration.

### **Justice systems**

Section 4.2 defines retributive and restorative justice systems and places the ICC under the first category and the Trust Fund under the second. The Team finds that this distinction, as well as assigning the ICC to the former category, is an extremely delicate exercise. The Team strongly advises that the Trust Fund avoid this type of value judgement, which we find unnecessary for the purpose of drafting the Strategic Plan and which could pose serious problems vis-à-vis the Court itself as well as other actors. Given that the ICC has the mandate to afford reparations to victims and is designed to ensure victim participation in criminal proceedings in full respect for their dignity, we also find the distinctions inaccurate.

For the same reasons, we advise against the use of terms such as "western justice", "Western litigation" or "Western-style court" (pages 21,22). We similarly recommend that the reference to transitional justice (page 23) be avoided, as it is not even clear in the document what role the Trust Fund (and the Court) plays in a transitional context. This, as well as the other references, are unsettled issues in international law.

While we understand that discussion of the different "types of justice" and where the Trust Fund situates itself, be relevant in the context of the Fund's dialogue with affected communities, the Team does not see an added value in including this information in an strategic document to be read mainly by international experts and Court actors.

### **Grant-allocation and selection of beneficiaries**

The Team has noted with great satisfaction that the Trust Fund attaches great importance to participation of victims and beneficiaries in the definition of projects, as well as to local ownership. We equally appreciate the consideration given to the importance of strengthening the capacity of grass roots organisations to administer grants. The Team also applauds the initiative of releasing request for proposals, which we had strongly recommended in the past.

However, we believe that there are a number of issues regarding grant-allocation and selection of beneficiaries which are not (appropriately) tackled in the Strategic Plan.

Page 15 indicates direct and indirect beneficiary targets for 2008 to 2011. First, the Team would recommend that the concepts of direct and indirect beneficiary be spelled out in the document. Second, it seems unclear to us how the Trust Fund arrives at the targeted figures and what the reasons for choosing those targets are.

Various passages in the document make reference to the Fund's goal to assist "the most vulnerable victims". However, no criteria are set out to determine which victims would fit into this category. We understand that vulnerability is not a concept that can be defined in the abstract and that it will depend, in most cases, on a variety of factors, as well as on the context of the relevant country. However, the Team believes that the Trust Fund would greatly benefit from a list of criteria that could assist it in determining whether the relevant group of victims falls under the category of "the most vulnerable".

Similarly, although the chart in figure I helpfully clarifies the grants allocation process, it remains unclear how, and under which criteria, beneficiaries and intermediaries are selected.

We have noted that one of the requirements to benefit from a grant is that the relevant organisation is locally registered. Although we understand that certain guarantees need to be offered to donors, we are concerned that certain associations could be unable to obtain legal recognition in the relevant countries, for reasons unrelated to their capacity or structure. How would the Trust Fund tackle such situations?

The Trust Fund is keen to avoid duplication through the projects it funds. However, it is unclear how this is done in practice, and whether duplication refers to other projects being funded at the same time or also projects benefiting the same community in the past or future.

Finally, the Team has noted that no reference is made to the procedure applicable to earmarking, and to what extent the grant-allocation cycle differs from funds and projects which are not earmarked. Given the sensitive character that earmarking has had in discussion among States, it would be positive to spell out the relevant process in a clear and transparent manner.

### **Visibility of the Trust Fund's activities**

The Team expressed concerns in the past about the low visibility of the Fund's activities and made recommendations in this regard. The Team has also regarded this issue when considering the Strategic Plan. While the Team understands most of the concerns expressed in relation to confidentiality of projects and intermediaries, we remain seriously concerned about the potential lack of visibility that the Fund's activities might have both in relation to victims and affected communities, as well as to donors and observers. As discussed in the past, we believe that making available information on the Fund and its activities requires engagement into a more detailed policy which considers the information needs of different stakeholders.

The Team has highlighted the importance that beneficiaries know and understand that the assistance (and later on reparations) they receive, come from the ICC Trust Fund for Victims, as opposed to other institutions, and is therefore directed at addressing the harm suffered as a result of the crimes. The Trust Fund is an essential component of the Rome Statute system for the fight against impunity and must, in our view, be seen by beneficiaries as complementary to prosecutions.