

NGO principles on the establishment of the Trust Fund for Victims

Article 79 of the Rome Statute of the International Criminal Court provides for the establishment of a Trust Fund “for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims” (hereafter “the Trust Fund”).

At the sixth session of the Preparatory Commission of the International Criminal Court, the Working Group on Financial Regulations and Rules accepted the task of defining the Trust Fund and its work. At the end of the eighth Session in October 2001, the Working Group having concluded its work on the Financial Regulations, decided that it did not have sufficient time or resources to complete its work on the Trust Fund and the issue has been forwarded to the ninth session, which will take place from 8-19 April 2002, for consideration by the Working Group on Financial Issues. The status of the negotiations reached by the Working Group on Financial Regulations and Rules is contained in UN document PCNICC/2001/WGFIRR/RT.5 (hereafter “RT.5”).

In making its decision, a number of delegations taking part in the Working Group on Financial Regulations and Rules requested the input of non-governmental organizations, particularly those that work on victim’s issues.

This paper contains principles to ensure an effective Trust Fund, agreed by the NGO members of the Coalition for an International Criminal Court’s Victims Working Group. Preparation of these principles has included consultations with the members of the United Nations Voluntary Fund for Victims of Torture and examination of other trust funds, including, the United Nations Trust Fund on Contemporary Forms of Slavery and the UNDP Trust Fund for Crisis, Post-Conflict and Recovery Situations.

Representatives of the Victims Working Group will be present throughout the negotiations of the Working Group on Financial Issues and can also be contacted in advance of the Preparatory Commission through the Coalition’s Secretariat.

Management and administration of the Trust Fund

The Victims Working Group is opposed to the current proposal for managing the Trust Fund set out in paragraph 5 of the annex to RT.5. Neither the financial experts of the Committee of Budget and Finance nor the administrative experts of the Registry have the experience or expertise to determine the activities of the Trust Fund or to consult directly with victims and their families.

To ensure that the Trust Fund provides meaningful and effective assistance and reparations to victims and their families, the Assembly of States Parties should appoint a Board of Trustees, made up of individuals with expertise and experience of providing assistance to victims of serious human rights violations. The tasks of the Board of Trustees should include determining the activities of the Trust Fund and promoting and soliciting contributions and pledges.

The Board of Trustees should meet regularly, at least 3 times each year and have facilities to communicate and issue advice and instructions in between meetings.

An Executive Director of the Trust Fund should be appointed to manage the day-to-day tasks of the Trust Fund. The Executive Director should have sufficient facilities and staff to effectively manage the Trust Fund, including staff members with experience of working with victims, administration and fundraising.

Oversight and accountability mechanisms should be established by the Assembly of States Parties to ensure the effective management of the Trust Fund.

Resources of the Trust Fund

The Victims Working Group recommends a broader and more flexible list of resources than those listed in paragraph 2 of RT.5. In its current form, paragraph 2 could prevent the Trust Fund from accepting contributions consistent with the spirit and aims of the Trust Fund.

The text of paragraph 2 should allow the Executive Director to accept funds from a broad range of sources, if necessary, on the advice of the Board of Trustees.

Voluntary Contributions

The Executive Director, not the Registrar as set out in RT.5, should oversee the receipt of voluntary contributions on a case-by-case basis.

Earmarked contributions shall be permissible to the extent that the consequences for excluded victims and the effect of accepting the donation are not inconsistent with the spirit and purpose of the Trust Fund.

The Board of Trustees should develop detailed criteria to guide the Executive Director in determining whether to accept voluntary contributions. If necessary, the Executive Director should consult with the Board of Trustees on implementing the guidelines.

A report should be submitted to the Assembly of States Parties each year on the acceptance and refusal of voluntary contributions.

Uses of the Trust Fund

The Trust Fund shall be used for:

- Fulfilling orders of the International Criminal Court to pay reparations through the Trust Fund, in accordance with Rule 98 (1) to (4) of the Rules of Procedure and Evidence.
- The benefit of victims of crimes under the jurisdiction of the Court, and the families of such victims in accordance with Article 79(1) and Rule 98(5).

Beneficiaries of the Trust Fund

When an order is made by the International Criminal Court for reparations to be paid to victims through the Trust Fund, in accordance with Rule 98(1) to (4) of the Rules of Procedure and Evidence, the Court will name individual beneficiaries and / or describe the beneficiaries (particularly relating to collective awards). When the victim(s) are not named by the order of the Court, the Executive Director, in consultation with the Board of Trustees, should take reasonable steps to identify the beneficiaries as described in the order.

“Victims of crimes under the jurisdiction of the Court” in Article 79(1) and Rule 98(5), should not be limited to victims participating in a case before the Court or victims of a particular individual being prosecuted by the Court. It should apply to all victims of crimes under the jurisdiction of the Court and their families, resulting from a situation where the Prosecutor of the International Criminal Court has conducted an investigation and either:

- (i) the Pre-Trial Chamber has issued a warrant of arrest in accordance with Article 58, or,
- (ii) the Prosecutor has concluded that there is not a sufficient basis for a prosecution under Article 53(2), for reasons other than the Prosecutor is satisfied that crimes under the jurisdiction of the Court did not take place, and this decision has been communicated to the victims or their families.

In accordance with the principle of complementarity, victims of crimes under the jurisdiction of the International Criminal Court that have been investigated by national authorities or prosecuted by the national court of a state which has jurisdiction over the case, should also constitute “victims of crimes under the jurisdiction of the Court” for the purposes of Article 79(1) and Rule 98(5).

Victims appearing before the International Criminal Court

The Trust Fund should not provide assistance to victims appearing before the International Criminal Court until the Court has decided whether or not to convict the accused. During the investigation and trial, the Victims and Witnesses Unit will be responsible under Article 43(6) to provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance to victims appearing before the Court.

Forms of Reparation

Awards made through or by the Trust Fund may consist of any form of reparations, including, restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

Activities of the Trust Fund

Funds paid to the Trust Fund under Rules 98(1) to (4) shall be used in accordance with the Court’s instructions set out in the order. In the event that the order does not detail the use of the award, the Executive Director shall refer the case to the Board of Trustees.

All other funds received by the Trust Fund (hereafter the "general funds") may be used for activities to benefit victims of crimes under the jurisdiction of the International Criminal Court and their families. In determining the uses of the general funds the Board of Trustees must consider the needs of the victims and their families, the resources available in the Trust Fund and whether the activity or project would discriminate against other victims and families of victims eligible for a Trust Fund award.

Uses of the general funds include:

- awards to fulfil an order of the Court for reparations against a convicted person, in accordance with Article 75(2), when the full amount of the order has not been obtained from the convicted person. In the event that funds are subsequently obtained from the convicted person, the amount shall be re-paid to the Trust Fund;

- awards made through established channels of assistance, including intergovernmental, international and national organizations for activities and projects to benefit victims and their families.

Awards to intergovernmental, international and national organizations

An award made to an intergovernmental, international and national organizations, in accordance with Rule 98(4) or from the general funds of the Trust Fund, should be subject to checks and balances, such as oversight and monitoring mechanisms, to ensure that the award is used for the benefit of the victims and their families, included in the order of the Court and / or the conditions specific to the award.