

**REDRESS**

*Ending Torture. Seeking Justice for Survivors*

## **Comments to the Trust Fund for Victims on its Draft Strategic Plan 2014-17**

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## Introduction

REDRESS welcomes the opportunity provided by the Secretariat of the TFV to present its observations on its Draft Strategic Plan 2014-7. We commend the Secretariat on its efforts in engaging stakeholders in an extensive strategic planning process and drawing up its draft Strategic Plan 2014-7. Our comments relate only to some of the fundamental aspects of the Strategic Plan, focusing on the regulatory framework, its mission, goals (and related programme strategies) and its core values.

We welcome the inclusion of information about the process that led to the development of the Strategic Plan, as well as findings from the TFV's own internal evaluation, which underscore goals of transparency.

### 1. The Trust Fund's Strategic Goals

**Goal 1:** *"To support quality programmes that strengthen local capacity through meaningful participation, strengthened systems, enhanced learning and innovation so that victims and their families overcome harm, lead dignified lives and contribute towards reconciliation and peace building within their communities".*

We note the importance of the TFV's first Strategic Goal, but raise several issues regarding its formulation:

#### Supporting victims as direct beneficiaries

While we appreciate the importance of building sustainable and long term support for victims, through capacity building, better systems, learning and innovation, it would seem that in the first place, the primary goal of the Trust Fund should be focused on victims themselves; the Trust Fund should be "to support *victims* through quality [assistance and reparation] programmes [...]"

#### Avoiding cumulative goals that are difficult to achieve

We agree that quality programmes that strengthen capacities, systems and learning and that are also innovative are positive aims, however these could usefully be separated out from the primary goal of supporting victims, as the two may not always be compatible. For instance, medical treatment might not be particularly innovative (removing bullets, fistula repair) and might not necessarily improve any systems or learning. This should not be problematic. Enabling victims' rehabilitation and restoration of their dignity is already a significant goal. The qualitative aspects of strengthening capacities, sustainability, etc. might nonetheless usefully constitute a separate goal.

#### Considering reconciliation and peace building with caution

Assistance relates to instances where there is a necessity to provide physical or psychological rehabilitation or material support in accordance with Regulation 50. Reconciliation and peace building activities would fall outside the scope of the immediacy of the assistance intended in Regulation 50.

As regards the reparation mandate, the Trust Fund Regulations do not define reparations. Article 75 of the Rome Statute indicates three potentially relevant forms of reparation, which include restitution, compensation and rehabilitation. In the absence of reparations principles or specific

rulings by the Chamber as to how the Court envisages that victims be repaired, the Trust Fund has potentially a somewhat open canvass as to the kinds of projects that will be carried out as reparation.

From REDRESS' perspective, the Trust Fund may wish to follow current best practice and international standards on reparation, that are encapsulated in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation. The forms of reparation that are referred to include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Peace building and reconciliation activities could be formulated within these, but for a number of reasons have never constituted a form of reparation in and of themselves. This is because these goals may not align with individual victims' perceptions, feelings, needs or views about what has happened. Indeed, peace building and reconciliation may feel offensive to some victims, particularly when they do not feel that justice has been done or that the truth has been recognised.

On the other hand, *social inclusion and enabling victims' full participation in society* have traditionally been considered important components of victims' rehabilitation.<sup>1</sup> For some victims engaging in peace building or reconciliation activities as a social activity might be a meaningful means of re-establishing a sense of purpose, self worth and dignity that enables their participation in society. However, from a reparation perspective, the goal remains the victims' rehabilitation, not the peace building or reconciliation. In this respect, there could be many other types of similar activities that are of equal worth, such as restoring community or cultural values, practices and traditions that might have deep meaning to victims.

Thus, due to victims' personal experiences, they may wish to realise objectives of social inclusion and participation in society in a very narrow way, for instance only within the community that they feel comfortable with. Or they may wish to realise this through campaigning against aspects of what they might consider to be 'an unjust peace'. For instance, the Guatemalan parliament passed a resolution in May 2014, in the name of peace, that denies the existence of genocide in the 36 year conflict. Individual Mayan victims may feel differently about this, but they might individually or collectively not wish to engage in activities to promote reconciliation or acceptance. Instead, they might prefer to re-establish aspects of their lost culture and attachments to ancestral lands that would contribute to their rehabilitation as individuals and as individuals within their injured community, as indeed was identified by the Inter-American Court in the Plan de Sanchez case<sup>2</sup> (as part of its decision on reparations applicable to the Guatemalan State).

In the context of the ICC, peace and justice have often been made to sound incompatible, and there have been situations, such as in Northern Uganda, where many victims felt confused or scared because they did not want to not have their rights to justice and accountability bargained away by community or political leaders through the adoption of amnesties, but also did not want to be perceived as anti-peace, as they also wanted to see an end to the conflict. Victims might have several views on peace and justice, and these might also be contradictory.

**Goal 3.** "The Trust Fund is a powerful advocate of the rights of victims and their families in the global justice system and humanitarian sector through the provision of reparations ordered by the ICC assistance."

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<sup>1</sup> See for instance CAT General Comment 3 on the implementation of Article 14 (of the Convention Against Torture), para 11. Article 14 is the binding article of the Convention requiring States to provide redress and rehabilitation to torture survivors. The General Comment extensively examines different forms of reparation, interpreting what is required by States to meet their obligations, including with respect to rehabilitation.

<sup>2</sup> Plan de Sanchez Massacre v Guatemala, Inter-American Court of Human Rights, Judgment of 19 November 2004 (Reparations).

REDRESS questions whether advocacy work falls within the mandate of the TFV. Given that the funds it holds are to be used for the benefit of victims in a direct sense, this goal may deserve further consideration. REDRESS of course believes that the TFV should become an example of best practice on assistance to victims and the implementation of reparations in its own right; thereby indirectly promoting victims' rights.

## 2. Cross Cutting Themes

### 2.1 The centrality of victim rehabilitation

REDRESS suggests that the **rehabilitation of victims** might constitute one of the cross-cutting themes of the Trust Fund. Rehabilitation is the foundation of the assistance mandate, and is one of the key forms of reparation. Expanding on best practice with respect to victims' rehabilitation could support the programmes and achievement of the Trust Funds' mission and goals. Victims' rehabilitation should be framed in a manner that is non-discriminatory and that follows accepted definitions and understandings of victims' needs, as follows:

*Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights [...] A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any other familial or other relationship between the perpetrator and the victim.*<sup>3</sup>

International best practice would suggest that a rehabilitation include:

- the adoption of long-term, sustainable and integrated approaches to rehabilitation;
- ensuring that specialist services for victims are used as far as possible and where appropriate;
- due regard to the particular needs of victims of gender based violence discrimination, as well as child victims;
- needs assessments for rehabilitation guided by international standards on identifying the harm suffered as well as its consequences;
- recognition that a range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services may be necessary, as well as re-integrative and social services, including community and family-oriented rehabilitation which takes into consideration the strength and resilience of the victim is important;
- Recognition that victims may be at risk of re-traumatisation and have real fears of acts which remind them of the violence they suffered, and that as a result, priority is placed on enabling a context of confidence and trust within which appropriate assistance can be provided.

It may be useful to include a definition of how the Trust Fund might define rehabilitation. For instance, the UN Committee Against Torture has interpreted rehabilitation to refer to the need to restore and repair the harm suffered including independence, physical, mental, social and vocational ability and full inclusion and participation in society; noting that a victims' life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the violations.<sup>4</sup>

### 2.2 Advancing the rights of women and girls through rehabilitation and reparation

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<sup>3</sup> UN Basic Principles on Victims' Right to a Remedy and Reparation, paras. 8, 9.

<sup>4</sup> See paragraphs 11-15 on Rehabilitation, in the CAT General Comment on Article 14 ("redress") of the Convention Against Torture, adopted 19 November 2012.

## processes

REDRESS supports the TFV's cross cutting theme relating to the advancement of women's human rights, increasing women's participation and empowerment. The Trust Fund Secretariat has developed excellent knowledge and programming in this area.

REDRESS suggests that it may be useful to narrow this theme to fit within the context of the Trust Funds' mandate (assistance and reparations), as the current framing might be perceived as perhaps somewhat broad. Thus, the advancement of women's rights would specifically be in the context of the provision of assistance or reparation, in line with the 2007 *Nairobi Declaration on women and girls' right to a remedy and reparation*<sup>5</sup>, rather than more generally. The reframing of this goal in this manner might also help ensure that gender is appropriately considered in programming, rather than to define programming by gender.

The reference to the Nairobi Declaration is welcomed by REDRESS, and its due consideration by the Trust Fund will help to ensure that the document commands increasing authority as an international best practice standard that should be applied also by States.

### **2.3 Promoting dignity, recognition and social inclusion through victim-led community initiatives**

REDRESS supports the Trust Fund's reference to the promotion of social inclusion through community initiatives, however there are several issues that arise with the promotion of peace, reconciliation acceptance and conflict prevention as stated aims or cross cutting themes of the Trust Fund for Victims. These may be coincidental additional outcomes, but are inherently problematic for a number of reasons as already identified above in relation to the Trust Fund's first Strategic Goal. Victims should not feel obligated to reconcile with their neighbours if they do not want to – it is their right to heal and restore their dignity as they choose, and in their own time.<sup>6</sup>

#### ***Promoting dignity***

REDRESS suggests that, given the specific violations suffered that dehumanise, traumatise and destroy individual dignity, it may be appropriate to re-focus this cross cutting theme on restoring dignity. As has been developed in jurisprudence and leading texts upholding victims' rights, the importance of victim participation in redress and rehabilitation processes is ultimately to enable the restoration of the dignity of the victim. It was recently expressed as follows by the Committee Against Torture:

*The Committee emphasises the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress*<sup>7</sup>.

#### ***Promoting recognition (as a form of satisfaction)***

For many victims the truth and recognition of the truth will be very important components of how they understand justice. Promoting recognition often falls within Satisfaction as a form of reparation and can have singular value and importance to victims. Examples include the continued lack of

<sup>5</sup> [http://www.wunrn.com/news/2007/05\\_07/05\\_28\\_07/060307\\_nairobi.htm](http://www.wunrn.com/news/2007/05_07/05_28_07/060307_nairobi.htm)

<sup>6</sup> There are numerous historic examples that might be analysed from a victims' perspective. These include the Mothers of the Plaza de Mayo in Argentina, or victims in Rwanda or Former Yugoslavia who often have to live side by side with their perpetrators who may have committed atrocities against them or stolen their homes.

<sup>7</sup> Paragraph 4 of the CAT General Comment on Article 14 of the Convention Against Torture, CAT/C/GC/3, adopted 19 November 2012.

recognition of the Comfort Women used in Asia by Japan in the Second World War, the sustained demands of the 'Mothers of the Plaza de Mayo' in Argentina for acknowledgment of what had happened to their children or continued campaigning by victims' groups in Guatemala for recognition genocide. Promotion of recognition, as understood by victims might usefully accompany dignity and social inclusion as a cross cutting theme.

### **3. The Trust Fund's Values**

#### ***Humanity and Respect of Dignity***

While the Strategy document refers to 'Respect', REDRESS suggests that language from the 2005 UN Basic Principles in its chapter on the Treatment of Victims (Chapter VI) be considered. In this regard, it is suggested that the value of 'Respect' be widened to 'Humanity and Respect of Dignity'. In this regard, the Trust Fund for Victims will value each person for their thoughts, opinions, diversity, and individual needs and resilience.

#### ***Victim-Centred***

The TFV might usefully find ways in which to consider the needs and perspectives of individual victims, who may not always be reflected in a group approach; groups of victims will not always have homogeneous needs or views (which does not prevent collective approaches to support individual victims).

#### ***Accessibility***

Accessibility is not included in the core values, but REDRESS suggests that the Trust Fund might wish to consider this possible addition. Accessibility is usually mentioned in relation to rehabilitation, in that services for survivors should be accessible.

### **4. Discussion of 'Moving toward transformative justice'**

The general gist of "*moving towards transformative justice*" underscores the principles set out in the Nairobi Declaration on Women and Girls' Right to a Remedy and Reparation. In this respect, REDRESS agrees that "addressing the transformative dimension may serve not only as a form of reparative justice but also as an opportunity to overcome structural conditions of inequality, violence and exclusion." Literature on victims' rights, trauma and healing have often referred to the past, present and future aspects of victimisation, and victims' need to address all these aspects in order to fully 'repair' the harm done.<sup>8</sup>

However, we would like to sound a note of caution again as regards the Trust Fund' assertion in its Strategic Plan that: "*Living the ideals of transformative justice means ensuring that the TFV's programmes move beyond their purely restorative function and take steps to work for peace in the midst of conflict.*" It is the view of REDRESS that this would to fall outside its mandate.

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<sup>8</sup> Yael Danieli, *Massive Trauma and the healing role of reparative justice*, in Ferstman et al. (eds.) *Reparations for victims of Genocide, War Crimes and Crimes Against Humanity* pp 41-78, 2009 Brill-Nijhoff.

**Annex:**  
**REDRESS' publications relating to the work of the Trust Fund for Victims**

- Comments to the Trust Fund for Victims in light of the Court's First Reparations Decision, March 2013:  
<http://www.redress.org/downloads/publications/CommentsTrustFundFirstReparationDecision.pdf>
- Reparations before the International Criminal Court: Issues and Challenges (Conference Report), September 2011:  
<http://www.redress.org/downloads/publications/SUMMARYreport.pdf>
- Justice for Victims: the ICC's Reparation Mandate (Report), May 2011:  
[http://www.redress.org/downloads/publications/REDRESS\\_ICC\\_Reparations\\_May2011.pdf](http://www.redress.org/downloads/publications/REDRESS_ICC_Reparations_May2011.pdf)
- Reconciling Entitlements and Feasibility in Implementing ICC Reparations: Presentation to the Board of Directors of the Trust Fund for Victims, 21 March 2011: <http://www.redress.org/downloads/publications/REDRESS-TFVBoardMeetingMarch2011.pdf>
- Comments to the Trust Fund for Victims on the Progressive Realisation of their Mandate: March 2010,  
[http://www.redress.org/downloads/publications/REDRESS\\_Paper\\_for\\_TFV\\_Board\\_22March2010.pdf](http://www.redress.org/downloads/publications/REDRESS_Paper_for_TFV_Board_22March2010.pdf)
- Submissions to the Board of Directors of the Trust Fund for Victims at their 4<sup>th</sup> Annual Meeting, 22 November 2007:  
<http://www.redress.org/publications/REDRESS%20Submission%20Board%20VTF%20Nov%202007.pdf> ;
- Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity. Systems in Place and Systems in the Making (Conference Report- Peace Palace), September 2007:  
<http://www.redress.org/downloads/publications/ReparationsVictimsGenocideSept07.pdf>
- Comments to the Secretariat of the Trust Fund for Victims on its Preliminary Draft Guideline documents, 18 May 2007.
- Submissions to the Board of Directors of the Trust Fund for Victims at their 3d Annual Meeting, November 2006:  
<http://www.redress.org/publications/SubmissionstoICCVictims%27Trustfund.pdf>;
- The International Criminal Court's Trust Fund for Victims (Discussion Document), December 2003:  
<http://www.redress.org/publications/TFVReport.pdf>
- The ICC Trust Fund for Victims, Resource Materials on Other Trust Funds and Compensation Mechanisms, July 2002: [http://www.redress.org/publications/icc\\_trustFund.pdf](http://www.redress.org/publications/icc_trustFund.pdf).