

Seeking Reparation for Torture Survivors

Submissions to the Board of Directors of the ICC Victims' Trust Fund at their 4th Annual Meeting on 22 November 2007

REDRESS welcomes the opportunity to present its observations to the Board of Directors of the ICC Victims' Trust Fund. The observations set out below are presented in the spirit of ongoing collaboration, and we hope that they are useful to the Board in the fulfilment of its objectives. We remain committed to working with the Board and the Secretariat to realise its important mandate to assist victims of the worst crimes.

Background

At the time of writing, indictments have been issued in respect of individuals in three situations: Democratic Republic of Congo, Uganda and Darfur, Sudan, and two individuals from the Democratic Republic of Congo are in custody in The Hague. Additional investigations are ongoing in the three above-named countries as well as the Central African Republic, and the Prosecutor is reviewing information in respect of crimes said to have been committed in a number of additional countries.

The level of victimisation relating to the above-referenced cases, situations and countries is acute and multi-faceted, affecting individuals, communities and entire societies. The nature of the crimes and the context in which they are said to have been committed have wide-ranging implications for local populations, taking into account the serious physical and psychological impacts and the destruction of social and economic infrastructures.

Main challenges for the upcoming year

The challenges for the Trust Fund are immense. Faced with vast needs, large expectations and limited resources, the Trust Fund must be capable of identifying through a transparent process. priorities that resonate with local communities and proceed with practical implementation. The flexibility of its mandate enables it to apply its voluntary resources to the communities broadly affected by the crimes, yet it exists and operates within the context of a criminal justice institution, and this should have a bearing on its strategies and methodologies, as well as on its public image and profile.

Already, within the short time that the Trust Fund has been operational, important progress has been made. The Trust Fund's regulations have been finalised and adopted by the Assembly of States Parties. We have seen the appointment and significant advances made by the Director of the Trust Fund's Secretariat. These include the development of programme and financial frameworks, the development of a communications strategy, identification of 36 potential projects, visits to potential beneficiary areas in the Democratic Republic of Congo and Uganda, as well as building relations with potential partners and supporters. We are supportive of the Trust Fund's recommendations to the Board in respect of its operating budget and the proposed amendment of Article 27 of the Trust Fund's regulations.

We have focused our intervention in 2 particular areas:

- 1. The implementation of the Trust Fund's Programme Framework
- 2. Trigger Mechanism / Threshold for Intervention

1. The implementation of the Trust Fund's Programme Framework

We appreciate the need for the Trust Fund to adopt a flexible approach to identifying and implementing projects given the variety of circumstances on the ground. Below are some suggestions, based on the experiences of other grant-making bodies which might assist the Trust Fund in further developing its programme framework, whilst at the same time providing transparency and certainty for donors, project implementing partners and beneficiaries alike:

a) Victim-mapping (needs assessment) in priority locations

We recognise the importance for the Trust Fund to begin implementing projects quickly in aid of victims however we believe that it may be helpful for the fund to develop situation or areaspecific strategies based on local conditions and priority victim needs (in addition to the general programme framework which already provides general criteria on projects applicable in all situations).

The process of 'victim-mapping' will assist the Trust Fund to tailor its programmes to where the need is greatest, to avoid duplication with the work of larger agencies, and will help it to assess the relative merits of project proposals as interest in the fund undoubtedly grows.

The Secretariat's field presence should have a major impact on its capacity for such mapping work. In addition, grassroots NGOs and victims' communities themselves could usefully collaborate in such a mapping exercise; this will give them some ownership over the process and will make the eventual decisions of the Trust Fund more acceptable in practice.¹

Victim-mapping is not only useful to help the Board focus its interventions and provide greater clarity to potential beneficiaries about the types of projects that are likely to receive support; it may also be a useful tool for monitoring and reporting on impact. For example, a victim-mapping exercise could form the basis of a monitoring and evaluation framework by which targets and indicators could be identified in respect of the critical areas of victimization in each locale and measured at regular intervals to assess progress. A simplified example is provided below:²

¹ Several victim mapping exercises which may be useful to the Fund for illustration purposes are listed and linked here:

a. The MacArthur Foundation: War-Affected Children and Youth in Northern Uganda: An Assessment Report, available at: http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/UGANDA_REPORT.PDF.

b. REDRESS. Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda, available at: http://www.redress.org/reports/TortureUganda_Apr%2007.pdf.

See also, for guidelines on needs assessments in post-conflict situations, http://www.reliefweb.int/rw/lib.nsf/db900SID/LHON-64UGQZ/SFILE/Needs Assess Post Conflict UNDG Aug 2004.pdf?OpenElement.

Examples of programme matrixes and guidelines are linked here:

a. United States' Office of the Coordinator for Reconstruction and Stabilization Post Conflict Reconstruction Essentials Tasks Matrix, available at: http://www.state.gov/s/crs/rls/52959.htm

European Commission project cycle management guidelines: http://ec.europa.eu/europeaid/qsm/documents/pcm_manual_2004_en.pdf

Priority vulnerable groups / Issues Identified by Locale	Targets for Trust Fund (not actual - examples only)	Assessment Indicators
Gender Based Violence (DRC)	 need to address psychological impact of women and girls subjected to gender based violence chronic need for fistula operations HIV/AIDS treatment 	- inclusive projects secured to address psychological impact (5000 beneficiaries to receive support in year 1) - relationships secured with medical services providers to address needs (partnership agreements agreed and work programmes commenced in 3 priority areas)
Child soldiers (DRC)	- scolarisation and income generation programmes for children outside of adult-led households	- collaboration agreements reached in 5 target areas (6000 beneficiaries supported in year 1)
Displaced communities (Darfur)	- community housing reconstruction grants - education programmes - basic health, shelter	- collaboration agreements with housing and shelter organisations reached in 5 target areas

b) Public Information on the Trust Fund's programme framework

The Trust Fund's web page explains the nature of projects that the Trust Fund hopes to support. It may be useful to make reference in this section to the particular countries and locations that the Trust Fund is focusing upon, in order to avoid applications by parties outside of the Trust Fund's purview.

In addition, on the basis of any victim-mapping exercise the Secretariat is able to undertake, it may be appropriate to encourage projects which tackle some of the issues which are determined by the Trust Fund to be fundamental (e.g. the Trust Fund would welcome applications for support which address issues relating to gender-based violence, child soldiers, displacement in particular).

Furthermore, the website and other material to be distributed in the Trust Fund's priority areas of intervention, might provide a list of issues for applicants to address in their applications to the Trust Fund.³ It is recognized that the size, capacity and experience of applicants will vary considerably. Nonetheless a guide for applicants on materials to submit may make it easier for the Trust Fund to judge the relative merits of different applications. We are aware that the Secretariat has produced project preparation guidelines and encourages these to be made widely available to potential beneficiaries, including on the Trust Fund website. Some of the areas that might be usefully included in such a list are as follows:

i. Information on the Applicant - Is the applicant a registered NGO, victims' association, international organization, etc. When was the organization established and what are its principle objectives? What is its annual budget?

³ Several examples of grassroots or smaller scale funding application guides produced by donors are highlighted below:

a. The UN Voluntary Fund for Victims of Torture: http://www.ohchr.org/english/about/funds/torture/index.htm

b. Urgent Action Fund for Womens' Human Rights: http://www.urgentactionfund.org/new-site/index.php?id=93

c. Kios Foundation: www.kios.fi/application_forms/hakuopas..pdf

d. Global Fund for Human Rights: http://hrfunders.org/fghr/apply.html

- ii. The Project explain the rationale for the Project, how the idea for the project was developed (who was involved in conceptualizing the Project) and the benefit it will have for victims of genocide, crimes against humanity and war crimes. Explain the activities, the timeframe and how the Project will be carried out.
- iii. Involvement of victims explain how the Project has engaged with victims in the Project design, and how victims will be involved in the implementation.
- iv. Quality control Explain what measures have been put in place to ensure the quality of the outputs and how progress in achieving the goals will be monitored and evaluated
- v. Budget explain the budget as well as any contributions (financial or other) from other sources
- vi. Outcomes explain the benefit that will be achieved by the end of the Project
- vii. A list of three well-respected persons known to the organisation who can act as referees

Threshold for Intervention

Article 50 of the Trust Fund regulations provides:

50. For the purposes of these regulations, the Trust Fund shall be considered to be seized when:

(a) (i) the Board of Directors considers it necessary to provide physical or psychological rehabilitation or material support for the benefit of victims and their families; and

(ii) the Board has formally notified the Court of its conclusion to undertake specified activities under (i) and the relevant Chamber of the Court has responded and has not, within a period of 45 days of receiving such notification, informed the Board in writing that a specific activity or project, pursuant to rule 98, sub-rule 5 of the Rules of Procedure and Evidence, would pre-determine any issue to be determined by the Court, including the determination of jurisdiction pursuant to article 19, admissibility pursuant to articles 17 and 18, or violate the presumption of innocence pursuant to article 66, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

(iii) Should there be no response from the Chamber or should additional time be needed by the Chamber, consultations may be held with the Board to agree on an extension. In the absence of such an agreement, the extension shall be 30 days from the expiry of the period specified in sub-paragraph (a) (ii).

After the expiry of the relevant time period, and unless the Chamber has given an indication to the contrary based on the criteria in sub-paragraph (a)(ii), the Board may proceed with the specified activities.

(b) When the Court makes an order for reparations against a convicted person and orders that the award be deposited with or made through the Trust Fund in accordance with rule 98, sub-rules 2 to 4 of the Rules of Procedure and Evidence.

Given the current phase of proceedings before the ICC, the Trust Fund's project work fits largely within the first sphere of activity. Several comments are made in this respect:

• There is no formal trigger within the Trust Fund Regulations which specifies the moment in which the Trust Fund may first show an interest in providing support to victims and

their families. It would appear that the Trust Fund may therefore become involved at the early investigation phase, prior to the issuance of arrest warrants in any given situation. Nonetheless, in order to promote certainty in the Trust Fund's work, it may be useful to adopt an internal working guideline to assist the Fund in determining when interventions may be contemplated. It might be useful to use the decision by the Prosecutor to initiate an investigation (article 53 of the Rome Statute) as an operative date. At present, if this timing was used, the Trust Fund's sphere of activity would extend to Democratic Republic of Congo, Uganda, Darfur and Central African Republic.

• Once the Trust Fund considers it necessary to provide physical or psychological rehabilitation or material support for the benefit of victims and their families in any given case, in accordance with Regulation 50 (a) of the Trust Fund Regulations, the procedure set out in Paragraphs (ii) and (iii) relating to the notification of potential projects to the Court become operable. These provisions recognize that it is for the Trust Fund to determine its priorities and actions, yet take into account the potential impact that such interventions may have on the ongoing work of the Court. In this respect, it is recommended that, as is set out in Paragraph (ii), the Trust Fund adopt a formal approach in its notifications. A Standard notification procedure undertaken in writing to the Court would help to avoid any confusion about whether the 45 days had passed and in this respect, would enable the Trust Fund to proceed more swiftly with implementation. The notification procedure could be undertaken as soon as projects are identified, in order not to prolong the time to implementation.

The Trust Fund's early interventions are extremely important.

- Firstly, the needs of victims and their families are often urgent and therefore the capacity of the Trust Fund to react swiftly and flexibility may be the sole opportunity for the ICC as a whole to respond adequately to victims' needs and concerns.
- In addition, given the length and complexity of ICC criminal proceedings, the earliest work of the Trust Fund will be the clearest, most tangible and understandable result for those following the progress at the ICC at the local level. Therefore the earliest successes of the Trust Fund will have a positive impact on the Court as a whole.
- Furthermore, the early work of the Trust Fund in countries in which the ICC's mandate is mis-understood or even rejected by the Government, such as Sudan, may serve to build confidence and spheres of much needed support.

The benefits of the Trust Fund's work vis-à-vis the rest of the ICC should be taken into account in the overall communications strategy of the ICC, in addition to the internal communications strategies of the Trust Fund, in order to ensure that victims receive a clear and coherent picture of how their rights and interests may be advanced by the ICC as a whole.

REDRESS is an international human rights organization, with a mission to promote justice for victims of torture and other related international crimes. We work with individuals and groups of survivors to assist them in their efforts to access justice and obtain enforceable remedies; and we promote the development of national and international institutions capable of responding adequately and effectively to victims' needs and rights to justice.

REDRESS has actively worked on the International Criminal Court since pre-Rome and has informally coordinated NGO activity on victims' rights through the 'Victims' Rights Working Group' since this time. It has produced several reports on the Victims' Trust Fund as part of its advocacy on the Trust Fund Regulations, and has worked closely with other members of the NGO Coalition for the International Criminal Court (CICC) to see these Regulations adopted.