

# RECOMMENDATIONS TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

The Hague, 18-26 November 2009  
Position Paper No. 14

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security





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# INTRODUCTION

Since the seventh session of the Assembly of States Parties (hereinafter “the ASP” or “the Assembly”), the International Criminal Court (hereinafter “the ICC” or “the Court”) has continued to work actively in four situation countries (Uganda, Democratic Republic of Congo, Darfur-Sudan and the Central African Republic) on many different levels: investigative and prosecutorial activities, engaging communities and victims through outreach and public information, liaising with actors to ensure cooperation with the Court, among many others. A major step was taken in 2009: the first ICC trial opened on 26 January. This marked the Court’s entering of a phase of full operations with daily hearings and active involvement on the ground to engage affected communities meaningfully in the Court’s trials.

There were no new arrests in 2009. However, Bahr Idriss Abu Garda, suspect for crimes committed in Darfur, appeared voluntarily before the Court, and became the first person to answer for crimes perpetrated in Darfur, Sudan. The Court held two confirmation of charges hearings, one for Jean-Pierre Bemba, from 12 to 15 January and the second one for Bahr Idriss Abu Garda, from 19 to 30 October. The Court’s second trial, against Germain Katanga and Mathieu Ngudjolo, is scheduled to start on 24 November. This will be the first ICC trial where the accused will be prosecuted for crimes of sexual violence.

The Office of the Prosecutor is conducting a preliminary analysis into various situations with a view to possibly opening an investigation, including in Afghanistan, Colombia, Côte d’Ivoire, Georgia, Guinea, Kenya and the Palestinian Territories. FIDH attaches particular importance to the activities undertaken during the preliminary analysis phase and, in particular, to all communication work related to the role and steps undertaken by the Office of the Prosecutor during this phase. FIDH believes that such communication is key to encourage complementarity and to deter commission of further crimes. On this and other aspects, the Prosecutorial Strategy for 2009-2012 is to be commended, notwithstanding the remarks expressed by FIDH.<sup>1</sup>

As far as future investigations are concerned, the Prosecutor announced early November 2009 that he would be requesting authorisation from a Pre-Trial Chamber to open an investigation into the situation in Kenya. Kenya is, therefore, likely to become the Court’s fifth investigation.<sup>2</sup>

Victims continue to show interest in the ICC proceedings and to participate actively in them. This year, the ICC has seen the participation of victims in trial for the first time. Victims have been able to exercise their rights concretely and to make tangible contributions to the proceedings. The first ICC trial has seen the participation of 105 victims. Over 350 victims will participate in the Katanga & Ngudjolo trial. Also, 34 victims participated in the confirmation of charges hearing against Bemba, and 78 did so in the Abu Garda hearing.

While these are exciting developments, FIDH considers that the Court must continue to work hard in order to make victim participation truly meaningful. The development of an adequate victims’ strategy is essential for that to happen. In addition, FIDH believes that meaningful participation requires increased efforts for adequate legal representation.

2009 has also been a challenging year for the Court as an institution. The issuance of the first arrest warrant against an African sitting Head of State has brought about questions and generated discussions about the role of the ICC in Africa. As FIDH has stated repeatedly,

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1. FIDH Comments on the Prosecutorial Strategy, November 2009.

2. OTP Update Sheet on Kenya, Kenyan authorities committed to cooperate as ICC Prosecutor informs them that in December he will request ICC judges to open an investigation into post-election violence, [http://www.icc-cpi.int/NR/rdonlyres/10C0F90F-1AC5-4832-8E08-E3E4D28829F1/281179/UpdatedsheetKenya\\_3\\_2.pdf](http://www.icc-cpi.int/NR/rdonlyres/10C0F90F-1AC5-4832-8E08-E3E4D28829F1/281179/UpdatedsheetKenya_3_2.pdf)

there are a number of reasons which justified the Court's involvement in Africa: Africa constitutes the largest regional block of states which have ratified the Rome Statute; three of the four situations before the Court have been referred to the Prosecutor by African States themselves, the fourth one was referred by the Security Council upon consideration that the conflict in Darfur threatened international peace and security; the ICC intervention has been determined by the gravity of the crimes perpetrated in all four countries currently under investigation.<sup>3</sup> It must also be recalled that the ICC is working to provide justice to African victims, who have been unable to obtain an effective remedy in their own countries.<sup>4</sup>

This is the context in which the eighth session of the Assembly will take place. FIDH acknowledges that there are an important number of issues before this session of the Assembly, including a strong focus on the preparations for the Review Conference, cooperation with the Court, the programme budget for 2010, among others.

FIDH has actively contributed to the papers developed by the Coalition for the ICC (CICC) Thematic Teams and subscribes to their content and recommendations. These papers are available at: <http://iccnow.org/?mod=asp8>

This paper focuses on a number of selected issues and makes specific recommendations on areas on which FIDH has particular expertise, and which, for the most part, are not fully addressed by CICC Team papers. This document covers the following matters: the development of a Court-wide victims' strategy; the establishment of an adequate system of legal representation for victims; other budget-related matters concerning victims' issues; and the Trust Fund for Victims.

Through its international justice programme, FIDH monitors a large number of issues related to the ICC, not all of which are covered in this paper. In following developments around the Assembly of States Parties and the relationship between the Court and States, **FIDH pays particular attention to the respect for the judicial independence of the Court and the integrity of the Rome Statute. FIDH calls upon all States Parties to be guided by these principles throughout the eighth session of the ASP.**

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FIDH is an umbrella organisation bringing together 155 human rights organisations from over 100 countries around the world. Its mandate is to contribute to the respect of all human rights, as defined in the Universal Declaration of Human Rights. FIDH aims at obtaining effective improvement in the protection of victims, the prevention of human rights violations, and at bringing perpetrators of serious violations to justice. The fight against impunity for serious violations of human rights and international crimes, and the provision of assistance to victims of those violations and crimes before judicial and quasi-judicial mechanisms are among its main priorities. FIDH has been closely involved in following developments in relation to the Rome Statute system. It has had a programme on international justice since the adoption of the Statute, and has a permanent delegation in The Hague since 2004.

Through its Legal Action Group (GAJ),<sup>5</sup> FIDH provides legal assistance to victims of torture, crimes against humanity, war crimes and genocide, to initiate and participate in legal proceedings before national and international tribunals, including the ICC, in order to allow them to exercise their rights to truth, justice and reparation.

3. FIDH Paper, The ICC's First Years, April 2009, <http://www.fidh.org/IMG/pdf/NoteCPI516anglais2008.pdf>, p. 15.

4. Will Africa Let Sudan Off the Hook?, Op-Ed by Desmond Tutu in the New York Times of 2 March 2009

5. The FIDH GAJ is a network composed of magistrates, lawyers and academics, supported by the International Justice Desk at the FIDH International Secretariat.

# IMPLEMENTING THE COURT'S MANDATE ON VICTIMS' ISSUES & MAKING VICTIM PARTICIPATION MEANINGFUL

Victims have seen in the Rome Statute an unprecedented recognition of rights. Victims' rights were not fully taken into consideration by previous international criminal tribunals. The lessons learned from those tribunals determined the drafters of the Rome Statute to give a privileged position to victims before the ICC. The consideration of the interest of victims is at the heart of the Rome Statute. The success of the ICC will be measured by the extent to which it is able to fully implement its mandate with respect to victims.

The sections below look at some of the issues related to victims which were before the Bureau over 2009 and will be before the eighth session of the Assembly, as well as other issues relevant to States Parties.

## A. Victims in the Court's Strategy: A Vision on Victims

At its fifth session, the Assembly requested the Court to work further in the development of the strategic plan with regard to the "position of victims".<sup>6</sup> FIDH has followed with much interest the development of a "court-wide victims' strategy" since then, including through active involvement in the preparation of the Victims' Rights Working Group's contributions in 2007 and 2008,<sup>7</sup> and FIDH's comments to a more recent version of the draft strategy distributed for consultation.<sup>8</sup>

FIDH, together with other non-governmental organisations (NGOs), were critical of the draft strategy prepared in the course of 2008, because they considered that it was a merely descriptive document which failed to set concrete objectives and strategies. Following the recommendations made by the seventh session of the Assembly,<sup>9</sup> the Court continued to work on the document with a view to its finalisation and presentation to the current session of the ASP.

FIDH participated in the consultation process that took place in September-October 2009 following the distribution of a draft for consultation. At the time, FIDH regretted that the draft had been circulated only shortly before the ASP and that, as a consequence, the time allotted for consultation with States and civil society was necessarily limited. However, FIDH welcomed the new draft strategy<sup>10</sup> and noted that it represented a major progress with respect to the previous version. This denoted a collective endeavour and major coordination efforts among the different organs and divisions of the Court.

The latest draft recognises the central role of victims in international criminal proceedings, as well as the restorative mandate of the Court. It acknowledges that "the drafters [of the Statute] recognised also that positive engagement with victims can have a significant effect on

6. ICC-ASP/5/Res.2, Strategic Planning Process of the Court, para. 3.

7. "A Strategy on the role of Victims", November 2007, [http://www.vrwg.org/Publications/01/VRWG\\_Victims\\_strategy\\_Nov07.pdf](http://www.vrwg.org/Publications/01/VRWG_Victims_strategy_Nov07.pdf); Comments and Recommendations on the "Draft ICC Strategy in Relation to Victims of 18 August 2008", November 2008, [http://www.vrwg.org/Publications/05/VRWG\\_Victims\\_strategy\\_NOV%2008\\_FINAL.pdf](http://www.vrwg.org/Publications/05/VRWG_Victims_strategy_NOV%2008_FINAL.pdf)

8. FIDH Comments on the Draft Victims' Strategy, 14 October 2009.

9. ICC-ASP/7/Res. 3, Strengthening the International Criminal Court and the Assembly of States Parties, para. 25.

10. Report of the Court on the strategy in relation to victims, ICC-ASP/8/45.

how victims experience and perceive justice and as such contribute to their hearing process.” Similarly positive are the broad principles which underpin the strategy, stated in paragraph 15 of the document. In addition, FIDH welcomes the fact that the latest draft of the victims’ strategy makes important commitments. Examples of those are: the commitment to ensure that mechanisms are in place to provide psychological support to victims<sup>11</sup> (an area on which the Court is mandated to work according to the Statute but where further efforts need to be put into), and the acknowledgement of the role played by intermediaries and pledge for their support.<sup>12</sup>

While FIDH is excited about this progress and will follow closely the implementation of the strategy, it believes that further work needs to be done with respect to some areas:

- The current version of the strategy focuses on current challenges and activities (with very few exceptions), but fails to identify targets beyond present activities, to anticipate future challenges, and to provide a solid basis for the implementation of the strategy in the medium-term. For example: The section on participation (objective 4)<sup>13</sup> is heavily focused on the process for victims to apply for participation, but falls short of addressing other major areas of concern such as security and participation; notification obligations; and most importantly, ensuring effective participation. Another good example is the section on reparations (objective 5),<sup>14</sup> which focuses mainly on assistance projects implemented by the Trust Fund, but does not address thoroughly how the Court will implement its reparations mandate.
- Overall, the document presents a view of how the Court “handles” victims and what the Court does for victims. But it fails to acknowledge what victims bring to the Court and to judicial proceedings, the important role they have in the impact of the Court’s activities at national level and how the Court should take that into account in order to improve its policies so as to make them more “victim-oriented”.
- Strategies normally apply to a certain period of time. The Victims’ Strategy, however, is open-ended and does not set concrete targets to be achieved before a given moment in time.

For these reasons, FIDH believes that the strategy needs further tuning. It is recommended that it be kept under review during the implementation process. FIDH recalls the importance of the Court’s strategic documents to provide a vision to the Court’s work and the definition of its priorities, as well as a guidance to both the Court and States in the budgetary process.

**FIDH recommends that the Assembly:**

- **Acknowledges the progress made by the Court in the development of the victims’ strategy;**
- **Calls on the Court to continue to revise the strategy in order to improve it further and adapt it to new developments;**
- **Encourages the Court to consult with States Parties and civil society in the development of the final version of the document in a process that allocates adequate time to these consultations.**
- **Requests that the Court starts working on the implementation of the strategy and presents a report on the progress achieved to the next session of the ASP.**

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11. *Id.*, para. 39.

12. *Id.*, para. 46.

13. *Id.*, paras. 44-49.

14. *Id.*, paras. 50-55.

## **B. Victims in the Court's budget : Making Victim Participation a Reality in Practice**

### *1. An Adequate System of Legal Representation*

At its seventh session, the Assembly invited the Court to present to its eighth session an updated report on the legal and financial aspects for funding victims' legal representation before the Court.<sup>15</sup> The consideration of the scheme for legal aid for victims was one of the prominent victim-related issues which was before the Bureau in 2010. FIDH was actively involved in discussion with the Court and The Hague Working Group on this matter to which it attaches great attention.

FIDH has carefully considered the Report on the Bureau on legal aid for victims' legal representation,<sup>16</sup> the Report of the Court on legal aid,<sup>17</sup> as well as the recommendations made by the Committee on Budget and Finance (CBF) in its report to report on the work of its thirteenth session.<sup>18</sup>

FIDH considers that the Bureau's report draws sound conclusions and puts forward sensible recommendations. With respect to the issues tackled in the report, which were the object of extensive discussion in 2010, FIDH submits the following considerations:

#### a. Justification for a legal aid scheme

As recalled in this paper, victim participation is one of the key and unique features of the Rome Statute. Because of the technicalities of legal proceedings, as well as the number of participating victims, the distance between the Court and the field and security implications, victims can only act concretely in the proceedings through the assistance of a lawyer, acting as their legal representative, who appears before Court to convey their views and concerns. Widespread poverty and precarious living conditions among victims of the crimes under the jurisdiction of the Court justify the set-up of a legal aid scheme. Should there be no legal aid, victims would, in practice, simply be unable to exercise their rights. This scheme should be tailored to acknowledge the need of victims' legal representatives to be able to be in continuous contact with the victims, and, at the same time, follow the proceedings at the seat of the Court.

#### b. Involvement of external counsel

FIDH submits that it is essential to involve external counsel coming, whenever possible, from either the country where the crimes were committed, or alternatively, the country where victims are based. Involvement of external counsel goes to the very core of the idea of victim participation. Lawyers from the situation countries have a better knowledge of the relevant national legal system, as well as the context in which crimes were committed. This places them in an excellent position to understand and convey victims' views and concerns, and to assist judges in the examination of cases. In addition, lawyers from the situation countries or lawyers from the countries where victims are based (in the cases of victims who have had to re-locate abroad) have better access to victims; some speak their languages, and are familiar with or share their culture. Finally, by having lawyers from several countries, including situation countries, involved in ICC proceedings, the Court can contribute to the reinforcement of the national judicial system (positive complementarity).

That being said, FIDH agrees that there should be no duplication of work between external counsel and the Office of Public Counsel for Victims (OPCV). FIDH sees the role of the

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15. ICC-ASP/7/Res. 3, Strengthening the International Criminal Court and the Assembly of States Parties, para. 16.

16. ICC-ASP/8/38.

17. ICC-ASP/8/25.

18. ICC-ASP/8/15, paras. 125-126.



OPCV as fully complementarity to that of external counsel. OPCV is best placed to provide the indispensable support that external counsel need in The Hague, and should only represent victims only in exceptional circumstances, as acknowledged by the Chambers.<sup>19</sup>

FIDH agrees with the recommendation made by the CBF<sup>20</sup> and the Bureau<sup>21</sup> that the Court should use common parameters when comparing the cost of external counsel and the OPCV. FIDH also believes that, when making that comparison, it is imperative to include the additional costs that granting a more prominent role to the OPCV, in detriment of external counsel, would imply (including an increased travel budget and the creation of field-based positions). Regardless of the outcome of this comparison, FIDH sees major advantages to having external counsel involved -as explained above- and calls upon States Parties to take those into consideration when ultimately making a decision on the matter, after consideration by the CBF at its fourteenth session.

c. Adapting the legal aid scheme to the needs of legal representatives and latest jurisprudential developments on legal aid for victims

FIDH has monitored the development of the victims' legal aid scheme since its establishment, and has observed that it was initially copied upon the legal aid scheme for the defence because of lack of practice on the implementation of victims' rights. From the outset, FIDH together with other NGOs, indicated that victims' legal representatives had different needs from those of the defence.<sup>22</sup> These differences arise from the modalities of victim participation, as well as from the fact that victims' lawyers normally represent a large number of clients residing in distant and sometimes remote locations, and the need to ensure that counsel maintain regular contact with them in order to seek instructions and inform them of procedural developments. Such differences do not necessarily lead to a need for greater resources for victims' legal representation, but rather to a different organisation of how resources are allocated to legal teams.

The victims' legal aid scheme has evolved, following further clarification on the role of victims provided by the Court's jurisprudence. However, FIDH believes that the scheme needs to continue to develop, with due regard to the need for it to remain flexible, in order to better address the needs of victims' legal representatives and comply with the Court's decisions. For example, some of the resources already allocated to the scheme should be allotted to the set-up of a structure that allows the lawyer to maintain regular contact with victims in the field/countries where there are based.

In this respect, FIDH would like to call the attention of the States Parties to a recent judicial decision, which ordered the appointment of a common legal representative in *The Prosecutor v. Katanga et al.* case.<sup>23</sup> The decision also orders "the Registry, in consultation with the common legal representative [to] propose a suitable support structure, in order to provide the common legal representative with the necessary legal and administrative support, both at the seat of the Court and in the field."<sup>24</sup> The establishment of such support structure is vital for victim

19. ICC-01/04-01/06-1211, Decision on the role of the Office for Public Counsel for Victims and its request for access to documents, of 6 March 2008, paras. 30-35.

20. ICC-ASP/8/15, para. 126.

21. ICC-ASP/8/38, para. 43.

22. CICC Legal Representation Team, Submission to the 4<sup>th</sup> Assembly of States Parties - Comments on the organisation and resources of legal representation teams for victims and defence at the ICC, November 2005, [http://www.iccnw.org/documents/LR\\_teampaper\\_Nov05.pdf](http://www.iccnw.org/documents/LR_teampaper_Nov05.pdf), p. 6; Observations de la FIDH sur le « Projet d'ajustement du système d'aide judiciaire », 15 March 2007, [http://www.fidh.org/IMG/pdf/note\\_aide\\_judiciaire\\_FIDH\\_mars\\_2007.pdf](http://www.fidh.org/IMG/pdf/note_aide_judiciaire_FIDH_mars_2007.pdf), p. 3.

23. It should be noted that the appointment of a common legal representative applies only to this particular case. There are a number of factors that must be taken into account in order to appoint a common representatives, including: lack of conflict of interest, homogeneity in the crimes and harm victims have suffered, location of victims and number of victims represented, among others. See Order on the organisation of common legal representation, ICC-01/04-01/07-1328, of 22 July 2009, para. 12.

24. *Id.*, para. 17.

participation to work effectively and for participation to be meaningful for victims. By regular contact with victims, lawyers are able to obtain instructions and to seek their views on matters on which the judges would like to hear the victims' personal observations and concerns. It is equally crucial to guarantee that victims to are notified and informed of proceedings that affect them in an adequate and timely manner.

As indicated in the Bureau's report,<sup>25</sup> the Court has not yet completed a full cycle of proceedings. Further experience in proceedings, including proceedings on reparations, in the first case and beyond will help the Court continue to shape the victims' legal aid scheme. FIDH recommends to the Assembly that, while keeping the victims' legal aid system under review, it encourages the Court to continue to tailor the legal aid scheme taking into account new judicial developments, as well as victims and legal representatives' needs.

**FIDH recommends that the Assembly:**

- **Endorses the recommendations made by the Report of the Bureau on legal aid for victims' legal representation, and keeps legal aid under review;**
- **Encourages the Court to continue to adapt the legal aid scheme to needs of teams and taking into consideration judicial developments on modalities of participation and tasks assigned to legal representation teams.**

*2. Sufficient Resources for the Court to Assist Victims*

a. VPRS position in the Central African Republic

The Court has requested a Associate Field Officer (P2) position for the Victims' Participation and Reparations Section (VPRS) in the Central African Republic.<sup>26</sup> It must be recalled that similar positions have been created in the field offices in Kinshasa and Kampala. These positions are key to the exercise of victims' rights to participate in the ICC proceedings since a great part of the work done by the Court in the field is done by the VPRS: outreach to victim groups, contact with applicant and participating victims and those who assist them, collection of background information relevant for victim participation requested by the judges. With the opening of the Bemba trial scheduled to take place in April 2010, the creation of this position is vital for the VPRS to carry out its responsibilities in the field, and respond to the chambers' request in an efficient and timely fashion.

The CBF has recommended, however, that the funds necessary for the creation of this position not be allocated. Instead, it has recommended that the Associate Field Officer from the Kampala office be re-deployed to the Central African Republic.<sup>27</sup> FIDH fears that the Court might not be in a situation to operate that re-deployment. First, it must be recalled that the Associate Field Officer in Kampala undertakes work for the VPRS with respect to the situation in Uganda but also in relation to the situation in Darfur. The work of this Associate Field Officer is only likely to increase with three cases opened and victims participating or seeking to participate to both the situation in Darfur and all three cases, including the Abu Garda case where the Court is preparing to go for a trial. Moreover, the conditions for the position in the Central African Republic (language, geographical knowledge and expertise in gender-based violence) are different from the ones required for the situation in Uganda and Darfur.

The non allocation of this position would seriously undermine the VPRS' capacity to carry out its responsibilities efficiently in the Central African Republic. This will have a detrimental effect on the possibility for victims to exercise their right to participate in ICC proceedings.

<sup>25</sup> ICC-ASP/8/38, paras. 16, 23, 25.

<sup>26</sup> Proposed Programme Budget for 2010, ICC-ASP/8/10, para. 357.

<sup>27</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 83, 96.

## b. VWU: protection of victims and psychologist position

FIDH was disappointed that, in the Proposed Programme Budget for 2010, the Court proposed the re-deployment funds allocated to the Victims' and Witnesses Unit (VWU).<sup>28</sup> FIDH has been advocating actively for the implementation of the Chambers' decision on victim protection<sup>29</sup> by the Registry. FIDH recalls that the Court is mandated to offer protection to victims who appear before the Court.<sup>30</sup> To date, the Court has not devised special measures to assist victims in need of protection. In discussions over the last two years, one of the arguments advanced by the Division of Court Services was the lack of sufficient resources to be allocated to the matter of victim protection. For this reason, FIDH was surprised that the proposed budget for 2010 did not re-deploy resources within the VWU in order to comply with the Chamber's order in this regard. FIDH will continue to raise this matter of utter importance with the Registry. FIDH believes that the protection of victims requires the design of measures that are adapted to the types of protection needs that applicant and participating victims face. FIDH welcomed the organisation of a expert seminar on protection by the Registry, to which it was invited to participate, in January 2009. It regrets, however, that the follow-up work-shop on victim protection announced at the seminar, has not taken place.

In addition, FIDH notes that the Court has requested to convert the General Temporary Assistance (GTA) position of a Psychologist/Psychological Trauma Expert at the Victims' and Witnesses Unit, into an established post.<sup>31</sup> The Committee on Budget and Finance has recommended against this request. The Committee has not explained the reasons for its recommendation.<sup>32</sup>

FIDH recalls that the tasks assigned to this position are: to conduct psychological assessments on witnesses testifying before the Court; to provide in-court assistance to victims/witnesses and to monitor witnesses during testimony, among others. FIDH believes that the Court must have a permanent capacity to conduct these activities, given that the first ICC trial is on-going, a second trial will open in November 2009 and a third one in April 2010. Therefore, the need for this expertise on a permanent basis is only likely to increase.

In addition, according to FIDH's assessment, the Court's capacity to provide psychological support to victims and witnesses, in situations other than when witnesses come to testify, has so far been limited. The expansion of these capacities, including through the establishment of permanent positions to consolidate the VWU expertise in the area, is truly encouraged. FIDH notes that this is in accordance with the Strategy in relation to victims: "The VWU will ensure that mechanisms are in place [...] to respond to requests for support or assistance, including medical and psychological support or counselling."<sup>33</sup>

### **FIDH recommends that the Assembly:**

- **Allocates the funds necessary for the creation of a permanent position of Associate Field Officer of the VPRS in the Bangui field office;**
- **Approves the conversion of the Psychologist/Psychological Trauma Expert GTA position into an established post.**

28. Proposed Programme Budget for 2010, ICC-ASP/8/10, para. 327.

29. Decision on victims' participation, ICC-01/04-01/06-1119, of 18 January 2008, para. 137.

30. Article 68.1 of the Rome Statute; Rules 17-18 of the Rules of Procedure and Evidence.

31. Proposed Programme Budget for 2010, ICC-ASP/8/10, para. 320.

32. Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 92.

33. Report of the Court on the strategy in relation to victims, ICC-ASP/8/45, para. 39.

## **C. Victims and the Trust Fund : Providing Physical and Psychological Assistance and Material Support to Victims, and Preparing for the First Reparations Awards**

### *1. On-going projects, transparency and visibility of the Trust Fund*

The Trust Fund has started implementing projects to provide physical and psychological assistance and material support to victims of the crimes within the jurisdiction of the Court and their families. 34 projects in the Democratic Republic of Congo and Uganda were approved by the Pre-Trial Chambers in 2009.<sup>34</sup> The implementation of this projects has been on-going in 2009.

FIDH welcomed the publication of the Trust Fund's Programme Progress Report 1 January-1 March 2009. The report provided useful information to donors and other stakeholders. However, FIDH regretted that no other public reports had been issued to explain the progress which has been made in the implementation of the projects and to share some preliminary results.<sup>35</sup> FIDH is equally concerned that the visibility of the Trust Fund continues to be limited among international actors and, most importantly, among potential beneficiaries in the field. FIDH has already recommended to the Trust Fund to increase outreach activities, in cooperation with the Court's Public Information and Documentation Section.

FIDH recalls that, at its seventh session, the Assembly called upon the Trust Fund Secretariat "to ensure the highest standards of transparency and visibility in respect of procedures and activities of the Trust Fund."<sup>36</sup> While progress has been made in this regard, FIDH recommends that further efforts be undertaken.

### *2. Elections of the Board of Directors*

The eighth session of the Assembly will elect a new Board of Directors for the Trust Fund for victims to renew the current membership. FIDH acknowledges the important contribution made by the current members of the Board: Madam Minister. Simone Veil (France), His Grace Archbishop Emeritus Desmond Tutu (South Africa), H.E. Mr Tadeusz Mazowiecki (Poland), Mr. Arthur N. R. Robinson (Trinidad & Tobago) and H.E. Mr Bulgaa Altangerel (Mongolia).

During 2009, FIDH together with other members of the CICC Trust Fund Team, advocated for States Parties to nominate qualified candidates meeting the requirements to sit on the Board of Directors of the Trust Fund,<sup>37</sup> and possessing the necessary skills to undertake the important tasks assigned to the Board, which include among others:

- Definition of the Trust Fund's priorities;
- Approval of assistance projects and ultimate responsibility for their implementation;
- Preparation of plans for implementation of reparations awards;
- Oversight of the Trust Fund Secretariat;
- Fundraising efforts.

The following candidates have been nominated: H.E. Mr. Bulgaa Altangerel (Mongolia), Betty Kaari Murungi (Kenya), Mr. Eduardo Pizarro Leongómez (Colombia), Madam Minister Elisabeth Rehn (Finland), Dr. Vaira Vīķe-Freiberga (Latvia).

<sup>34</sup>. According to Regulation 50 of the Regulations of the Trust Fund.

<sup>35</sup>. As this paper was being finalised, the Secretariat of the Trust Fund circulated the Programme Progress Report, November 2009. FIDH was unable to consider the report in order to include an assessment in this paper.

<sup>36</sup>. ICC-ASP/7/Res.3, para. 49.

<sup>37</sup>. "The members of the Board shall be of high moral character, impartiality and integrity and shall have competence in the assistance to victims of serious crimes", ICC-ASP/1/Res.6, Annex, para. 3.

FIDH is not aware that wide consultations were held among States of each continent to try to identify the best qualified candidates. It recommends that the process of identification of candidates be further improved and that thorough consultations be undertaken before the next round of elections.

FIDH calls on the new members Board of Directors to exercise their functions responsibly and dynamically. The Trust Fund faces challenges inherent to a new and *sui generis* institution working in on-going conflicts. FIDH submits the following recommendations to the new Board:

- Ensure greater transparency and visibility of the Trust Fund, both among international actors and potential beneficiaries;
- Continue to devise and implement fundraising strategies, bearing in mind, in particular, that the first reparations orders might be issued in 2010/2011;
- Exercise effective oversight over the Trust Fund Secretariat and ensure appropriate coordination with the Registry and other organs of the Court, especially considering the preparations that must be undertaken in view of the first reparations awards.

### 3. Call for contributions

The balance of voluntary contributions received by the Trust Fund as of 31 June 2009 was € 3,129,588.90.<sup>38</sup> As recalled above, the Trust Fund has already launched assistance projects in Uganda and the Democratic Republic of Congo. According to a recent submission filed with Pre-Trial Chamber II, the Fund also plans to initiate assistance projects in the Central African Republic in the near future.<sup>39</sup> In addition, in September 2008, the Trust Fund launched a global appeal to assist victims of sexual violence.<sup>40</sup> Finally, it must be recalled that following the closure of the Lubanga trial, the first reparation awards could be issued in 2010/2011. For all these reasons, it is imperative that the Trust Fund receive additional contributions from all sectors, including States.

#### **FIDH recommends that:**

- **The Assembly encourages the new Board of Directors to work towards increased transparency and visibility of the Fund, identification of fundraising opportunities, as well as active support to the Trust Fund Secretariat in the definition of priorities, strategic planning, implementation of projects, preparations for reparations and coordination with other organs of the Court;**
- **The Assembly calls for further voluntary contributions to the Trust Fund for Victims in its omnibus resolution;**
- **States consider making further contributions to the Trust fund, in particular regular rather than occasional ones;**
- **States consider pledging funds in their statements during the General Debate.**

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38. Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for the period 1 July 2008 to 30 June 2009, ICC-ASP/8/18, Annex I.

39. Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund for Victims, ICC-01/05-29, of 30 October 2009.

40. ICC Press Release, Global appeals for €10 million to assist 1.7 million victims of sexual violence launched, 10 September 2008.



# FIDH represents **155** human rights organisations on **5** continents

## Keep your eyes open

### Establishing the facts

#### investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

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FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

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#### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

## ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 155 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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