



**Comments on the ICC Draft Resolution on victims and reparation, dated 19 August 2013**

**04 September 2013**

The Victims' Rights Working Group (VRWG)<sup>1</sup> is pleased to share general as well as specific comments on the Draft Resolution on Victims and Reparations (resolution) ahead of The Hague Working Group co-facilitation on *Victims and affected communities and Trust Fund for Victims, including reparations and intermediaries* taking place on 5 September 2013. It is our understanding that substantive discussions on the draft resolution will start following that meeting. We welcome the opportunity to contribute to the development of this important resolution and look forward to providing further input on the resolution in the lead up to the Assembly of States Parties (Assembly).

**Summary of key concerns on the overall scope and objectives of the draft resolution**

The Assembly's 12<sup>th</sup> Session, in November 2013, will include a dedicated plenary on victims and affected communities. The VRWG welcomes this as a clear indication of States Parties wish to keep victims' concerns at the centre of discussions regarding the International Criminal Court and the full realisation of victims' rights, including the system of victim participation and reparation. We suggest that, as was done in 2012 with regards to the plenary sessions on cooperation and complementarity, there should be a place-holder paragraph in the draft resolution with text to be finalised during the ASP session to welcome the plenary session on victims and draw together some of the outcomes and conclusions from the session. In that regard, we call for the resolution to acknowledge a heightened sense of commitment to victims and victims' issues, in line with the decision to have this plenary session and in anticipation of important outcomes of the session.

We welcome the draft's recognition of the importance of the Rome Statute for victims. However, we also recommend that language is included in the resolution acknowledging the importance of victims and affected communities within the Rome Statute system as well as the beneficial role of victims' participation plays in relation to the Court's proceedings and the judicial process as a whole. Indeed, as the ICC has stated:

victims' participation empowers them, recognizes their suffering and enables them to contribute to the establishment of the historical record, the truth as it were of what occurred. Victims play an important role as active participants in the quest for justice and should be valued in that way by the justice process. Moreover their participation in the justice process

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<sup>1</sup> The VRWG is a network of over 500 national and international civil society groups and experts created under the auspices of the Coalition for the International Criminal Court in 1997 and facilitated by the REDRESS Trust.

contributes to closing the impunity gap and is one step in the process of healing for individuals and societies.<sup>2</sup>

Such language would reinforce the resolution's focus on addressing victim participation and provide a useful lens through which an ongoing review of the system can take place.<sup>3</sup> We suggest that the resolution call for future discussions in the context of this facilitation to consider how to render the participation of victims before the ICC reparative, meaningful and effective for all and to ensure that such discussions seek out expertise in its consideration of the issues and include consultations with relevant stakeholders (including victims themselves, NGOs and victims legal representatives).

Concerning the issues of victim participation and reparation, we urge States Parties to consider rewording some of the current language in relation to reviewing the participation system as well as calling for more collective approaches to both participation and reparation. We believe that States play an essential role in providing general oversight to the Court and establishing principles for reviews of areas of the Court's work. However, we have concerns in relation to parts of the present draft resolution which seem to direct the Court to implement specific changes in relation to matters that, under the Rome Statute and Rules of Procedure and Evidence (RPE), clearly fall within the remit of judges to determine. Such language is inconsistent with judicial independence and should be removed. In particular, language relating to review of the system for victims to apply to and participate in proceedings should recommend general principles, which would be used to frame the reviews undertaken by the Court rather than promoting specific changes.

As indicated in the VRWG paper to The Hague Working Group of 8 July 2013<sup>4</sup> on the importance of victim participation, the term "collective" carries multiple meanings and is in itself a complex concept. We believe that there is a need for more reflection around what is meant by this term and recommend that the Court thoroughly examine the concept, and engage all stakeholders in the process, including victims' groups, civil society, experts and the diplomatic community. In addition, suggestions relating to the basis on which victims should be grouped for the purpose of participation relate to the substance of decisions falling within the remit of the judges and should be deleted.

In relation to reparation, we note in particular that Rule 97 RPE provides that "Taking into account the scope and extent of any damage, loss or injury, *the Court* may award reparations on an individual basis or, where it deems it appropriate, on a collective basis or both"[emphasis added]. The current language in the draft resolution urging the Court to prioritise the implementation of collective reparation contradicts this Rule, infringing on the judges' prerogative to rule on awards for reparation.

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<sup>2</sup> *Court's Revised strategy in relation to victims*, ICC-ASP/11/38, para. 10.

<sup>3</sup> Victims' participation in proceedings brings crucially valuable benefits to the Court itself. Victim participation helps bridge the gap between the Court and affected communities, thereby reinforcing the Court's legitimacy by providing local ownership over the process and creating confidence in the system. In addition, victims who participate in proceedings can bring to the attention of the Judges important factual and cultural elements that assist the Chambers to understand the context in which crimes took place. The participation of victims can also contribute to the establishment of the truth which, in turn, can be a form of satisfaction for affected communities. Finally, judgments that take into consideration victims' views and concerns may play a positive role in changing the narrative of what happened and, as a result, reinforce the social rejection of such conduct and further contribute to the prevention of international crimes. See *VRWG paper to The Hague Working Group of 8 July 2013* on the importance of victim participation accessible through: [http://www.vrwg.org/VRWG\\_DOC/2013\\_July\\_VRWG\\_HWG\\_ParticipationFINALrevised.pdf](http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf)

<sup>4</sup> Accessible through: [http://www.vrwg.org/VRWG\\_DOC/2013\\_July\\_VRWG\\_HWG\\_ParticipationFINALrevised.pdf](http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf)

Finally, the VRWG welcomes the recognition that cooperation is essential to the implementation of reparations decisions as well as in relation to safeguarding assets through tracing, freezing and seizing operations. We encourage the inclusion of specific language that would call not only on the Court but also on States Parties to do more in this regard.

The VRWG looks forward to continuing the constructive dialogue with States Parties on this important issue.

Annex : comments and suggested language in relation to certain paragraphs of the draft resolution

**Comments on the Preamble** (note: suggested textual changes from the VRWG are highlighted in the left hand column while comments and explanations appear in the right hand column)

Draft Resolution	Comments
<p><b>Victims and Reparations</b></p> <p><i>The Assembly of States Parties,</i></p> <p>PP1: <i>Recalling</i> its resolution ICC-ASP/11/Res.7;</p> <p>PP2: <i>Reaffirming</i> the importance of the Rome Statute to the victims and affected communities in its determination to put an end to impunity for the perpetrators of the crime of genocide, crimes against humanity and war crimes, thus contributing to their prevention, [agreed language: ICC-ASP/11/Res.7, PP1]</p> <p><b>PP2 bis: Recognizing that victims' participation in ICC proceedings undoubtedly brings benefits to the victims themselves including the possibility to be heard, to voice views and concerns and to request reparation and also provides acknowledgement of the harm suffered by the victim, recognition that the victim is "part of" the legal process meant to provide him/her with redress and play a key role to enabling the restoration of victims' dignity, which is the "ultimate objective in the provision of redress".</b></p> <p><b>PP2 ter: Underlining that victims participation in proceedings brings crucially valuable benefits to the Court itself, helping bridge the gap between the Court and affected communities, thereby reinforcing the Court's legitimacy by providing local ownership over the process and creating confidence in the system, assisting Chamber to understand the context in which crimes took place and contributing to the establishment of the truth.</b></p> <p>PP3: [<b>Reiterating/Reaffirming/Recalling</b>] that victims' [<b>individual</b>] and equal rights [<b>to participate in the proceedings, under article 68 of the Rome Statute,</b>] and to expeditious and effective access to justice, protection and support, adequate and prompt reparation for harm suffered, and access to relevant information concerning</p>	<ul style="list-style-type: none"> <li>- PP2: <b>Importance of the Court for victims, and of victims for the Court:</b> We welcome the recognition in the preamble paragraphs of the importance of the Rome Statute to victims and affected communities. As referred to in the VRWG paper to The Hague Working Group of 8 July 2013, we suggest including a parallel reference on the importance of victims for the Court; and, particularly regarding victim participation, we would suggest adding language to reflect that participation brings benefits to both the Court and to victims. The VRWG suggests language in PP2 <i>bis</i> and <i>ter</i>. Alternatively, consideration could be given to recalling the ICC's statement referred to in the general comment above.</li> <li>- PP3: We welcome the language in the preamble recalling victims' individual and equal rights to participate in proceedings, to expeditious and effective access to justice, protection and support, reparation and access to information as well as the emphasis on the importance of effective outreach to give effect to the unique mandate of the Court towards victims.</li> <li>- PP5: We submit that, while high numbers of victims wanting to engage with the Court should indeed not come as a surprise and, in fact, that it attests to the nature of the crimes under the jurisdiction of the ICC that are committed in a widespread and/or systematic manner, the current statement that the 'number of victims is by definition very high' , should be nuanced to reflect the fact that not all cases before the Court will necessarily imply large, or "very high," numbers of victims (in all cases, this will be relative to the crimes the accused is charged with) .</li> </ul>

violations and redress mechanisms are essential components of justice [**and, in this regard**], *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the International Criminal Court towards victims, [agreed language: ICC-ASP/11/Res.7, PP2 and PP3, and ICC-ASP/11/Res.8, PP17]

PP4: [**Noting that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively;**] [agreed language in the context of the United Nations General Assembly: **PP 17 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: United Nations General Assembly resolution A/RES/60/147**]

PP5: [**Mindful that the Court's competence *ratione materiae* relates to crimes committed in a widespread and/or systematic manner and, in consequence, the number of victims can is, by definition, be very high**] [based on co-Facilitators' concept note]

PP6: Delete [**Highlighting that the Court asked the Assembly of States Parties, at its eleventh period of sessions, to provide guidance on the path that the Court system should take in relation to victims<sup>5</sup> and pointed out that regarding victims' participation and reparations its capacity is limited<sup>6</sup>;**] [based on co-Facilitators' concept note]

PP7: Delete [**Bearing in mind that the Court has insisted that the principles on reparations referred to in article 75 of the Rome Statute will be developed through its jurisprudence on a case by case basis and stated that the discussion on the matter needs to take place after the Lubanga and Katanga/Ngudjolo cases have concluded<sup>7</sup>;**]

- PP6: we suggest PP6 is deleted. The statement that the Court has limited capacity in relation to participation and reparation appears to be inferred by reference to a document which only refers to the long standing understaffing of the Victims Participation and Reparation Section rather than an overall lack of capacity of the Court to implement its victim mandate.
- PP7: With a view to streamlining the draft resolution and, when possible, shortening the document, we suggest that the current PP7 be moved and merged with OP 7 below.
- PP8: We welcome the inclusion of references to the *Independent Panel of experts report on victims' participation at the International Criminal Court* as recognition by States Parties of the contribution that external expert advice can make to discussions about the work of the Court.
- PP11: We suggest that pp11 be moved up in the text of the preamble to the beginning.

<sup>5</sup> “[...] The entire ICC system is very aware of the difficult economic circumstances facing the global community [...] ***The Assembly must decide and provide guidance to the Court on the direction it would like the Court system to take and about the tools the Court system will have at its disposal to achieve the goals set for it*** [...]”. International Criminal Court. Assembly of States Parties, *Report of the Court on the Revised strategy in relation to victims: Past, present and future*, document ICC-ASP/11/40, 5 November 2012, paras. 55, 56. Emphasis added.

<sup>6</sup> “[...] Currently, the VPRS [Victims Participation and Reparation Section] has only five established field staff posts to cover all situations and cases. ***This situation is simply unworkable*** [...]”. *Ibid.*, para. 76. Emphasis added.

<sup>7</sup> Report of the Bureau on the Study Group on Governance, ICC-ASP/10/30, of 22 November 2011, para. 26; Study Group on Governance: Lessons learnt: First report of the Court to the Assembly of States Parties, ICC-ASP/11/31/Add.1, 23 October 2012, Annex, para. D. 3 (“Principles and assessment of reparations”); Report of the Bureau on

<p>PP8: [<i>Taking note</i> of the “Independent Panel of experts report on victims’ participation at the International Criminal Court”, based on the Panel’s meeting and consultation held in The Hague from 24 to 27 April, 2013, and organized by Amnesty International and Redress,]</p> <p>PP9: [<i>Aware</i> that, pursuant to article 75, paragraph 2, of the Rome Statute, the Court may order, where appropriate, that the award for reparations be made through the Trust Fund for Victims, as well as of the current financial situation of the Trust Fund,]</p> <p>PP10: [<i>Acknowledging</i> the requirement for the Board of Directors of the Trust Fund for Victims, in accordance with its Regulation 56, to provide adequate resources to complement payments for reparations awards, and mindful of the need of strengthening the Fund’s reserve for reparations;] [based on ICC-ASP/11/Res.8, OP64]</p> <p>PP11: [<i>Determined</i> to ensure the effectiveness of victims’ rights, which constitute a cornerstone of the Rome Statute’s regime,]</p>	
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**Comments on the Operative paragraphs (note: suggested textual changes from the VRWG are highlighted in the left hand column while comments and explanations appear in the right hand column):**

<p>1. <i>Takes note</i> of the ongoing and continuous work of the Court in reviewing its Strategy in relation to victims and of its last Report on the matter, as it was requested by the Assembly at its eleventh period of sessions<sup>8</sup>, and <b>calls on the Court to ensure that efforts continue to ensure the Strategy is a practical document guiding the Court’s work in all spheres that relate to victims and include measurable and time-bound objectives.</b> [Official Records, Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May-11 June 2010, RC/11, 21 December 2010, Annex V(a), paras 45-46]</p> <p><del>[delete: demands the Court to review it again, in consultation with States Parties and other relevant stakeholders, once the judicial cycle have finished [based on ICC-</del></p>	<p>OP1. We note the there is no need to demand another review of the Strategy on victims as this is a living document that is monitored and revised on an ongoing basis. A process and timeline for a review has already been established. We note that the revised victims’ strategy provides that:</p> <p>During the first two years, the Court’s inter-organ Working Group on Victims (WG) will monitor the implementation of the Revised Strategy at bi-annual meetings to assess the level of implementation and identify the obstacles and revisions needed to enable the most effective and efficient implementation of the Revised Strategy. The WG will also conduct periodic consultations with various knowledgeable stakeholders from both within</p>
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Victims and affected communities and the Trust Fund for Victims and Reparations, ICC-ASP/11/32, of 23 October 2012, para. 35. This position was stressed by the Court representative who addressed The Hague Working Group on 28 May 2013.

<sup>8</sup> See ICC-ASP/11/Res.8, OP 57.

<p>ASP/11/Res.7, OP1 and OP2, and ICC-ASP/11/Res.8, OP57],]</p>	<p>and outside the ICC system. ...</p> <p>And that</p> <p>A detailed review will take place eighteen months after the adoption of the Revised Strategy and will aim to assess its implementation and its overall effectiveness at the levels both of policy and of practice. The Court will engage an independent unbiased evaluator, from either an external source or a capable internal office, to conduct a comprehensive evaluation process with a primary focus on the outcomes of the Strategy. The Strategy will be updated and suitable measures will be integrated based on the outcome and suggestions of that evaluation. The Court will provide States with a complete report on its progress at the end of every detailed evaluation, or every two years, whichever is shorter.</p> <p>We suggest that language of OP1 be revised to reflect the above monitoring and review mechanisms and timeframes and to call for revisions to be of a practical nature toward ensuring effective implementation and evaluation of the Strategy's impact.</p>
<p>2. Notes with continued <b>[and deep]</b> concern reports from the Court on the persistent backlogs the Court has had in processing applications from victims seeking to participate in proceedings, a situation which impacts on the effective implementation and protection of the rights and interests of victims under the Rome Statute, [agreed language: ICC-ASP/11/Res.7, OP3, ICC-ASP/11/Res.8, OP58]</p> <p>3. <b>[Reaffirms]</b> the urgent need <b>to review [delete: modify]</b> the system for victims to apply to participate in proceedings in light of the existing situation, in order to ensure the sustainability, effectiveness and efficiency of the system <b>[in the long term]</b>, including <b>identifying</b> any necessary amendment to the legal framework, while preserving the rights of victims under the Rome Statute <b>[and of the accused in a manner not prejudicial to an impartial and a fair trial and, in line with this, calls upon the Court to explore innovative, clear and consistent ways to expedite the judicial proceedings in relation with victims' applications to participate, such as developing common inter-organ guidelines on victim applications and participation in consultation with all relevant stakeholders]</b></p> <p><b>[delete: the setting of a short application form for participation and the establishment of a centralized database]</b>, [agreed language: ICC-ASP/11/Res.7, OP4, ICC-ASP/11/Res.8, OP58; <b>new language based on Expert Panel's report on</b></p>	<p><b>OP2/3/4: Changes to the way victims apply to and participate in proceedings</b></p> <p>We support States' position that changes are required in relation to the way victims apply to and participate in proceedings, and submit that States should strongly call on the Court to continue its review processes relating to the victim participation system and identify concrete solutions. We welcome the language calling upon it to do so by exploring "innovative, clear and consistent ways to expedite the judicial proceedings in relation with victims' applications to participate" but are mindful that the resolution should not dictate specific solutions to the Court. Rather, States should encourage the Court to address the issue through a consultative process and to ensure that such discussions seek out relevant expertise and include consultations with relevant stakeholders including victims themselves, NGOs and victims legal representatives.</p> <p>We suggest that the resolution should call for future discussions in the context of this facilitation to consider how to render the participation of victims before the ICC meaningful, effective and reparative for all.</p>

<p>victims' participation and suggestions made by the Trust Fund for Victims on 25 April 2013]]</p>	
<p>4. Takes note with appreciation of all efforts to enhance the efficiency and effectiveness of victim participation, <b>and calls for further discussion in the facilitation on victims and reparation in 2014 on means of rendering the participation of victims before the ICC as meaningful, effective and reparative as possible for all, and requests the Court to ensure that such discussions seek out relevant expertise and include consultations with relevant stakeholders including victims themselves, NGOs and victims legal representatives as well as States Parties.</b></p> <p><del>[delete: including in particular by encouraging a more collective approach, [which implies that victims can be grouped, for these purposes, with basis on different criteria, such as age, gender, type of crime, common perpetrator, belonging to vulnerable groups, location, inter alia,] and [reminds] its request to the Bureau to prepare, in consultation with the Court [and following the "Roadmap on reviewing the criminal procedures of the International Criminal Court" endorsed by the Assembly<sup>10</sup>], any amendments to the legal framework for the implementation of a predominantly collective approach in the system for victims to apply to participate in the proceedings; [agreed language: ICC-ASP/11/Res.7, OP5, ICC-ASP/11/Res.8, OP58; new language based on Study Group on Governance reports and expert panel on victims' participation report]</del></p>	<p>We recall the VRWG recommendation<sup>9</sup> that any proposal for change to the legal framework of the Court must be preceded by a <i>comprehensive evaluation</i> of how the system has worked to date, including careful consideration of all the possible options for changes. Ahead of any proposal for change to the legal texts of the Court, the VRWG recommends that the Court undertake further efforts to streamline the way it processes applications within the existing legal framework. Amendments to the legal framework should be referred to only as a possibility, rather than as an assumed consequence of the review process.</p> <p>Furthermore, we submit that the specific changes required to address ongoing issues and backlogs are ultimately a matter for the Court's Judges - safeguarding the rights of the parties, including the procedural rights of victims - to address and rule on. Rather than making specific recommendations to the Court on what changes to implement, or on what basis victims should be grouped, which would infringe on judicial independence, States parties could more usefully recommend general principles, that would be used to frame ongoing reviews and call on the Court to develop common approaches in 2014, for example by establishing inter-organ guidelines on the victim participation system.</p>
<p>5. Urges the Court, in recruiting officers in charge of victims and witnesses affairs, to ensure that they have the necessary expertise to take into account the cultural traditions and sensitivities, the physical and <b>trauma-related psycho-social</b> needs of victims and witnesses, <b>and their gender and ages</b>, particularly when they are required to be in The Hague or outside their country of origin to <b>[participate in proceedings before the]</b> Court; [agreed language: ICC-ASP/11/Res.8, OP70]</p>	<p>OP5. We support the inclusion of this paragraph and suggest adding references to the need for officers to also have optimal expertise in victims' specific needs related to trauma, psycho-social issues, gender and age groups.</p>
<p>6. <del>[Delete]Invites the Bureau to report to the Assembly at its [thirteenth] session on any appropriate measures [agreed language: ICC-ASP/11/Res.7, OP6, ICC-</del></p>	<p>OP6. It is unclear what the Bureau is requested to report upon. We suggest that this paragraph be removed or clarified.</p>

<sup>9</sup> In the VRWG paper to The Hague Working Group of 8 July 2013, accessible through: [http://www.vrwg.org/VRWG\\_DOC/2013\\_July\\_VRWG\\_HWG\\_ParticipationFINALrevised.pdf](http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf)

<sup>10</sup> See ICC-ASP/11/Res.8, OP 41; International Criminal Court. Assembly of States Parties, *Report of the Bureau on the Study Group on Governance*, document ICC-ASP/11/31 of 23 October, 2012; and International Criminal Court. Assembly of States Parties, *Study Group on Governance: Lessons learnt: First report of the Court to the Assembly of States Parties*, document ICC-ASP/11/31/Add.1 of 23 October 2012.



<p>ASP/11/Res.8, OP58];</p>	
<p>7. <b>Recalls that the Court indicated that principles on reparation would be established on a case by case basis, and [delete: Notes that different topics related to principles and procedures for reparations set out by Trial Chamber I in the case against Thomas Lubanga Dyilo, dated 7 August 2012, were subject of appeal<sup>11</sup> and, therefore, urges the Court to ensure that coherent and consistent principles relating to reparations will be established in accordance with article 75, paragraph 1, of the Rome Statute, with the aims of guaranteeing legal certainty and consolidating a predictable system for victims], and further requests the Court to report back to the Assembly at its [thirteenth] session; [new language based on ICC-ASP/11/Res.7, OP7, explanations made by the Court representative on 28 May 2013 and proposals made by the Trust Fund for Victims representative on 25 April and 16 and 28 May, 2013]</b></p>	<p>OP7. We suggest that the language of PP7 and OP7 is merged with a view to shortening the resolution. The wording of the paragraphing needs to be carefully reviewed as to not give the impression that States Parties are suggesting a specific course of action to the judges on a specific case that is pending appeal.</p>
<p>8. <b>Recognizes that while States bear responsibility for ensuring that victims of gross violations of international human rights law and serious violations of international humanitarian law are provided with</b> with adequate, effective and prompt reparation for the harm they suffered, <b>the Rome Statute envisages [delete: Highlights/[Reiterates/Reaffirms] that liability for reparations in the context of judicial proceedings taking place before the ICC is [[delete: exclusively] based on the individual criminal responsibility of a convicted person, therefore under no circumstances shall States be ordered to utilize their properties and assets, including the assessed contributions of States Parties, for funding reparations awards, including in situations where an individual holds, or has held, any official position, [without prejudice to the obligation of States Parties set forth in article 109, paragraph 3, of the Rome Statute and to other obligations States have under international law</b> [agreed language: ICC-ASP/11/Res.7, OP8]</p>	<p>OP8. We stress that States have an obligation to provide victims of gross violations of international human rights law and serious violations of international humanitarian law with adequate, effective and prompt reparation for harm suffered. As a result we urge states to qualify the language of OP8 to reflect that the limited liability for reparation mentioned only refers to the ability of the ICC to order reparation under the Rome Statute and is without prejudice to other obligations States have under international law to provide reparation to victims.</p>
<p>9. <b>[Reiterates its call] upon States Parties where crimes under the Court’s jurisdiction have been committed, to adopt [and implement, pursuant to international standards and the principle of complementarity,] victims-related provisions [and to create national institutional capacities on victims’ rights and optimal care,] as appropriate, consistent with the 1985 United Nations General Assembly resolution 40/34 “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, the 2005 United Nations General Assembly resolution 60/147 “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious</b></p>	<p>We strongly support the call upon States Parties to ensure that they adopt and implement victims-related provision and to create national institutional capacities on victims’ rights and optimal care. In that regards, we suggest the reference to States obligations under international standards, in addition to the reference to the principle of complementarity.</p>

<sup>11</sup> It is the “current situation”, as it was highlighted by the Court representative that addressed The Hague Working Group on 28 May 2013.

<p>Violations of International Humanitarian Law” and other relevant instruments; [agreed language: ICC-ASP/11/Res.7, OP9, <b>new language based on co-Facilitators’ concept note</b>]</p>	
<p>10. <b>[Recalls its invitation]</b> to States Parties where crimes under the Court’s jurisdiction have been committed to act in solidarity with victims by, inter alia, playing an active role in sensitizing communities on the rights <b>and optimal care</b> of victims in accordance with the Rome Statute in general and victims of sexual violence <b>[and crimes against children and the elderly]</b> in particular, speaking against their marginalization and stigmatization, assisting them in their social reintegration <b>and recovery processes when needed</b> and in their participation in consultations, and combating a culture of impunity for these crimes; [agreed language: ICC-ASP/11/Res.7, OP 10 ]</p>	
<p>11. <i>Stresses</i> that as the freezing, identification, <b>[tracking and seizing]</b> of any assets of the convicted person are indispensable for reparations, it is of paramount importance that the Court should seek to take all measures to that end, including <b>[precautionary measures and]</b> effective communication with relevant States so that they are in a position to provide timely and effective assistance pursuant to articles <b>[75, paragraph 5,]</b> 93, paragraph 1 (k), and <b>[109]</b> of the Rome Statute, <b>[and urges States Parties to pro-actively cooperate with the Court on these matters]</b> <b>[and urges</b> the Court to enter into voluntary agreements or arrangements to this end with States and international financial institutions, such as the United Nations Office on Drugs and Crime, the Financial Action Task Force, the Egmont Group of Financial Intelligence Units, <b>Interpol</b>, the International Money Laundering Information Network and the Secretariat for Multidimensional Security of the Organization of American States, among other relevant stakeholders]; [agreed language: ICC-ASP/11/Res. 7, OP 11, <b>new language based on ICC-ASP/11/Res. 5, OP20, OP21 and on co-Facilitators’ concept note</b>]</p>	<p>OP11. We support a strong call for increased cooperation between the Court and States Parties in relation to asset tracing, freezing and seizing for the purpose of financing reparation ordered against a convicted person. We submit that States Parties have a crucial role to play in this regard and call for the inclusion of language urging States Parties to pro-actively cooperate with the Court on these issues.</p>
<p>12. <b>[Reiterates/reaffirms]</b> that the declaration of indigence of the accused for the purpose of legal aid bears no relevance to the ability of the convicted person to provide reparations, which is a matter for judicial decision in each particular case, and further <i>requests</i> the Court to <b>[continue reviewing]</b> this matter, <b>[considering both the rights of the accused, in particular the presumption of innocence, as well as victims’ rights as enshrined in article 75,]</b> and to report to the Assembly at its <b>[thirteenth]</b> session; [agreed language: ICC-ASP/11/Res. 7, OP 12]</p>	
<p><b>[13. Invites the Court to explore the possibility of prioritizing the allocation of fines and forfeitures for the purpose of reparations to victims, in a manner <b>neither</b></b></p>	

<p>inconsistent with the rights of the accused <b>nor</b> prejudicial to an impartial and a fair trial;] [based on recommendations made by the Trust Fund for Victims on 25 April 2013]</p>	
<p>14. <del>[Delete: <b>Requests the Court, in order to represent the full scale of victimization and in the context of the Rome Statute legal architecture, particularly in light of Rule 97 of the Rules of Procedure and Evidence, to prioritize the implementation of a predominantly collective approach on reparations; [new language based on Rule 97 of the Rules of Procedure and Evidence, the preamble of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: United Nations General Assembly resolution A/RES/60/147, and on Alison Bottomley &amp; Heather Pryse, <i>The future of reparations at the International Criminal Court: addressing the danger of inflated expectations</i>, Policy Brief, No 5, June 2013, Centre for International Governance Innovation]]]</b></del></p>	<p>OP14. The request in the draft resolution that the Court prioritizes the implementation of a predominantly collective approach on reparations is contrary to Rule 97 of the Rules of Procedure and Evidence which requires <i>the judges</i> to decide on whether reparation will be individual, collective or both. Any language suggesting what type of reparation should be ordered infringes on judicial independence and should be deleted.</p>
<p>15. <i>Calls upon</i> States, international and intergovernmental organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims also in view of imminent reparations, <b>[the current financial situation of the Fund and in light of article 75, paragraph 2, of the Rome Statute]</b>, in order to substantively increase the volume of the Trust Fund for Victims, <b>encourages all States Parties to make regular contributions to the Fund in line with their financial abilities in order to</b> broaden the resource base and improve the predictability of funding; and <b>[renews]</b> <i>its appreciation</i> to those that have <b>already</b> done so; [agreed language: ICC-ASP/11/Res. 7, OP 13 and ICC-ASP/11/Res. 8, OP 59]</p>	<p>OP15. We welcome the language in this paragraph and note that the resolution should call on States not only to contribute to the Fund but to do so according to their financial abilities and in a regular manner, so as to encourage States not to be deterred from contributing by the inability to make a large contribution. Indeed, regular contributions by more states, regardless of their amount, will improve the financial sustainability of the Fund's programmes by supplying it with a broader base of financial support.</p>
<p>16. <b>[Renews]</b> <i>its appreciation</i> to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims, and <i>encourages</i> the Board and the Secretariat to <b>expand its fund-raising activities and</b> continue to strengthen its ongoing dialogue with the Court, States Parties and the wider international community, including donors as well as nongovernmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact <b>[and to improve the predictability of funding and the continuity and sustainability of the Fund's interventions]</b>; [agreed language: ICC-ASP/11/Res. 7, OP 14 and ICC-ASP/11/Res. 8, OP 60; <b>new language based on Trust Fund for Victims intervention on 25 April 2013]</b></p>	<p>OP16. We welcome the language in this paragraph and note that States Parties should call on the Board and Secretariat of the Trust Fund not only to continue their fundraising activities but to broaden the scope and range of potential sources of funds within these efforts.</p>

<p>17. <i>Recalls</i> the responsibility, under the Regulations of the Trust Fund for Victims, of the Board of Directors to endeavour to manage its resources originating from voluntary contributions in such a way as to ensure an adequate reserve to complement any Court ordered reparations awards, without prejudice to its activities under the Trust Fund’s assistance mandate including those funded by earmarked contributions; [agreed language: ICC-ASP/11/Res. 7, OP 15 and ICC-ASP/11/Res. 8, OP 61].</p>	<p>OP17. We welcome the language in this paragraph, particularly the remark that this is without prejudice to the assistance mandate of the Fund.</p>
<p>18. <i>Requests</i> the Court and the Trust Fund for Victims to develop a strong collaborative partnership, mindful of each other’s roles and responsibilities, to implement Court-ordered reparations; [agreed language: ICC-ASP/11/Res.8, OP 62]</p>	
<p>19. <i>Invites</i> all States Parties to consider making earmarked voluntary contributions to the Trust Fund, [as a useful fundraising approach], for the purpose of strengthening its reparations reserve, in addition to making regular voluntary contributions according to each State party’s financial ability to the Fund, [and express its appreciation to those that have done so]; [agreed language: ICC-ASP/11/Res.8, OP 62; new language based on Trust Fund for Victims note for the 25 April 2013 informal consultation]</p>	
<p>20. <i>Decides</i> to continue to monitor the implementation of the rights of victims under the Rome Statute, with a view to ensuring that the exercise of these rights is fully realized and the continued positive impact of the Rome Statute system on victims and affected communities [is sustainable, meaningful and effective in the long term]; [ICC-ASP/11/Res. 8, OP 63]</p>	
<p>[Placeholder text for outcomes and recommendations from the plenary session on victims and affected communities]</p>	
<p>[21. <i>Decides</i> to remain seize of the matter and to focus, through its Bureau, on victims’ participation [delete: once the judicial cycle have finished] in 2014<sup>12</sup>.</p>	<p>OP21. We strongly welcome the ASP’s intention to focus on victim participation in the coming period and suggest that this is highlighted as a priority for 2014 and a request is made to the Court to do the same.</p>

<sup>12</sup> The goal of this paragraph is to rationalize the Working Group workload and to have more in-depth discussions.