The Reparation Regime of the International Criminal Court: Practical Considerations

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Abstract. A key achievement of the International Criminal Court is its acknowledgment of the rights of victims to participate in proceedings and to seek reparation before the Court. This article analyses some of the specific challenges relating to the ICC reparations regime, stemming from the interplay between the ICC and national courts on such issues as tracing assets and implementing protective measures, and in enforcing the ICC's reparations orders. A review of several examples of legislation adopted by states parties on cooperation with the ICC is undertaken with a view to examining its potential impact on these issues.

1. INTRODUCTION

The Adoption of the Statute of the International Criminal Court ('Rome Statute') on 17 July 1998[1] represents a major milestone in the development of international law and in the recognition of individual criminal responsibility for international crimes. It builds on the important achievements of the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East at Tokyo set up at the end of World War II,[2] and the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda established by resolutions of the UN Security Council.[3] Perhaps the most significant aspect of the Rome Statute is that it establishes a permanent body, without the temporal and contex-

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1. Rome Statute of the International Criminal Court ('ICC'), UN Doc. A/CONF.183/9 (17 July 1998).
2. Agreement for the Prosecution of the Major War Criminals of the European Axis, 8 August 1945, 82 UNTS 279, 59 Stat. 1544 ('Nuremberg Charter'); Charter of the International Military Tribunal for the Far East at Tokyo, Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, 19 January 1946 (amended 26 April 1946), TIAS No. 1589.
3. Statute of the International Criminal Tribunal for the former Yugoslavia ('ICTY'), UN Doc. S/RES/827 (25 May 1993); Statute of the International Criminal Tribunal for Rwanda ('ICTR'), UN Doc. S/RES/955 (8 November 1994).

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tual restrictions that characterize the *ad hoc* Tribunals.[4] Another key achievement of the Rome Statute relates to its acknowledgement of the rights of victims. The Rome Statute has importantly recognized the right of victims to participate in proceedings, not only as witnesses of the crimes within the jurisdiction of the ICC but as persons with a valid interest in the outcome. It has equally made it possible for the ICC to order reparations to or in respect of victims, including restitution, compensation and rehabilitation. This is a significant departure from previous international criminal tribunals, and one which is likely to have a major impact on the course of justice before the ICC.

The right to reparation for victims of international crimes is a well-established though often unimplemented principle of international law that has been expressly guaranteed by global and regional instruments, and has been the subject of numerous declarations, resolutions and treaty texts.[5] It calls for both individual and collective measures, of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[6] Reparation is as much about the restoration of dignity and the acknowledgement of the harm suffered, as it is about monetary compensation or restitution.[7] While the right has been clearly acknowledged, its practical application has been fraught with difficulties and uncertainties. There are many issues that may still require clarification. For example, who is responsible for providing redress – the perpetrator in his/her personal capacity, the state, non-state actors, or some combination of these? What

4. While the ICC is a permanent body, Art. 11(1) of the Rome Statute specifies that "the Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute," and certain preconditions to the exercise of jurisdiction are required in accordance with Art. 12. Additionally, the Court will only be able to exercise jurisdiction in the event that there is no investigation or prosecution by a state with jurisdiction in accordance with Art. 17.
5. *See*, *specifically*, Art. 8 of the 1948 Universal Declaration of Human Rights; Art. 2(3) of the 1966 International Covenant on Civil and Political Rights; Art. 6 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; Art. 14 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Art. 39 of the 1989 Convention on the Rights of the Child; Art. 7 of the 1981 African Charter on Human and Peoples' Rights; Art. 25 of the 1969 American Convention on Human Rights; and Art. 13 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. *See also* the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN General Assembly Res. A/RES/40/34, Annex, 40 UN GAOR Supp. (No. 53), UN Doc. A/40/53 (29 November 1985), at 214; and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN.4/2000/62 (18 January 2000). *See also* the 1983 European Convention on the Compensation of Victims of Violent Crime; and Council of Europe Recommendations No. R(85) 11 (1985) and No. R(87) 21 (1987).
6. Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), UN Doc. E/CN.4/Sub.2/1997/20 (26 June 1997); Revised Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), UN Doc. E/CN.4/Sub.2/1997/20/Rev.1 (2 October 1997).
7. *See*, *generally*, REDRESS, *Torture Survivors' Perceptions of Reparation, A Preliminary Survey* (2001), available at http://www.redress.org/publications/TSPR.pdf.

principles should be used in determining the nature and scope of an award for reparation? How would domestic courts deal with cases of mass victimization? How is the measure of damages and compensation to be established in view of significant differences in legal systems and economic standards? Which body would be responsible for the provision of reparation in the form of social or medical services? Would states be required to assume any shortfall if perpetrators are insolvent?[8]

These questions are of special concern for the ICC, which may make orders for reparations against individual offenders. While the layers of responsibility in the commission of international crimes is undoubtedly complex – the only matter that will be dealt with at the ICC is individual criminal responsibility. This specific though limited role will undoubtedly impact on how and to what extent the ICC will address reparations to victims and their families. The complementary relationship the ICC will have with national jurisdictions, the relationship of non-states parties with the ICC and the special arrangements regarding the Trust Fund for Victims will be additional factors influencing the course of reparations before the Court.

Article 75 of the Statute, which provides that:

> the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting[9]

is of only limited guidance. The finalized draft Rules of Procedure and Evidence are equally broad.[10]

How will the reparations provisions play out in practical terms? While on a positive note, the flexibility of the Rome Statute and Rules of Procedure and Evidence should provide the ICC with the capacity to devise

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8. All of these issues were raised by M. Cherif Bassiouni in his Report of the independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, UN Doc. E/CN.4/1999/65 (8 February 1999).
9. Art. 75(1) of the ICC Statute.
10. Rule 97 of the finalized draft Rules of Procedure and Evidence provides:

> 1. Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both.
> 2. At the request of victims or their legal representatives, or at the request of the convicted person, or on its own motion, the Court may appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.
> 3. In all cases, the Court shall respect the rights of victims and the convicted person.

mechanisms to suit particular circumstances, there are a number of associated risks. For example, the manner in which national jurisdictions will enforce the reparations orders of the ICC is left open,[11] and it is not clear how national courts will deal with competing claims for assets. Will they prioritize orders emanating from the ICC? To what extent will the Court inquire into the adequacy or effectiveness of domestic reparations regimes, where they exist?

This article was written as the Statute entered into force,[12] with the understanding that the Court is no longer a theoretical possibility but a soon-to-be functioning, active institution. It provides a first analysis of how the reparations provisions might operate in practice and notes some of the uncertainties and potential constraints. While certain aspects of the ICC reparations regime reflect the experiences of other bodies and courts, many of the provisions are unique and untried, and only a number of states parties have adopted internal legislation on cooperation with the Court. It will therefore be difficult to prejudge or predetermine with any certainty how these provisions will play out. Nonetheless, certain comments can be made.

2. The Development of Reparations Before International Criminal Tribunals

The inclusion of provisions relating to reparation for victims in the ICC Statute was a significant achievement not to be underestimated. There was no true precedent in international criminal tribunals to draw upon,[13] and the initial draft statute prepared by the International Law Commission made no provision for reparation, other than to propose that the Court be empowered to order that fines paid be transferred to a trust fund established by the UN Secretary-General for the benefit of victims of crime.[14] There was strong resistance to the call for a reparation regime for the ICC. It will be difficult enough for the ICC to meet what was understood to be its core mandate – bringing perpetrators of crimes within the jurisdiction of the Court to justice. Reparations could potentially cloud procedures

11. The way in which states enforce fines or forfeitures is "in accordance with the procedure of their national law."
12. At the time of writing, more than 60 states had ratified the Statute, setting into motion the formal entry into force of the Statute, on 1 July 2002. The draft Rules of Procedure and Evidence had been finalized for adoption by the Assembly of States Parties and many of the subsidiary agreements had been prepared for adoption by the Assembly of States Parties.
13. Neither the ICTY or ICTR Statutes provide for reparation to be dealt with by the Court itself. The Inter-American Court of Human Rights and the European Court of Human Rights do provide for reparation though they deal with state responsibility for violations of human rights and therefore are of only limited relevance. The closest examples perhaps are the criminal jurisdictions of those states following the civil law tradition.
14. Report of the International Law Commission on the Work of its 46th Session, 49 UN GAOR, 49th Sess., Supp. (No. 10), UN Doc. A/49/10 (2 May–22 July 1994), Art. 47(3)(c)).

before the Court, and there will be practical challenges for the ICC to decide on the form and extent of reparations, exacerbated by the fact that judges come from a wide array of legal jurisdictions.[15] There was also concern that the introduction of reparations provisions would somehow invoke principles of State responsibility, when the Court had a clear focus on individual responsibility.[16] Some feared that the exercise would be futile, in that many individual perpetrators who might be called upon to pay reparations would be judgment-proof.[17]

The practice and procedures of the ICTY and ICTR exemplify the need for effective mechanisms for reparation. Even those few powers the ICTY and ICTR have to deal with reparation have been hard to invoke, and have consequently not been effective tools for victims seeking reparation. Rule 105 of the Rules of Procedure and Evidence for both tribunals, which provides that the Trial Chamber may determine the matter of restitution of property taken unlawfully by the convicted person, has yet to be applied. Rule 106 common to both Tribunals provides that judgments establishing guilt are to be binding as to the criminal responsibility of the convicted person for the purpose of an action for compensation, which might be brought by victims in national courts. Rule 106 has not been of particular use to victims.[18] In the case of Rwanda, domestic laws already recognized the right to reparation, and victims have claimed and have been awarded vast amounts in damages as part of the criminal prosecutions which have proceeded pursuant to the Organic Law on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990.[19] Lack of funds has inhibited

15. These issues are discussed at length by C. Muttukumaru, *Reparations to Victims*, *in* R.S. Lee (Ed.), The International Criminal Court The Making of the Rome Statute: Issues, Negotiations, Results 262, at 262–264 (1999).
16. *Id.*, at 267:

> It became obvious that a significant number of delegations were not prepared to accept the notion of State responsibility to, or in respect of victims. However, this refusal does not diminish any responsibilities assumed by States under other treaties and will not – self-evidently, prevent the Court from making its attitude known through its judgments in respect of State complicity in a crime.

17. *See*, *generally*, Muttukumaru, *Id. See also* D. Donat-Cattin, *Article 75*, *in* O. Triffterer (Ed.), Commentary on the Rome Statute of the International Criminal Court. Observers' notes, Article by Article 966 (1999).
18. *See* M. Cherif Bassiouni & P. Manikas, The Law of the International Criminal Tribunal for the Former Yugoslavia 704 (1995):

> Rule 106, which addresses victim compensation, raises once again the issue of enforcement: should the SC pass a new blanket resolution or adopt separate resolutions for each case? It is doubtful that the Rule will be enforced.

19. Organic Law No. 08/96 of 30 August 1996. According to private sources in Rwanda, as at 31 December 2001, out of the trials of 6,454 individuals before the specialized chambers, more that 36 billion Rwandan franc had been awarded in reparations proceedings, though there had been no enforcement.

enforcement.[20] The Tribunal's Chief Prosecutor, Carla del Ponte, criticized these inadequacies and indicated her desire to see things change.[21] Judge Pillay, President of the ICTR, expressed the need to develop appropriate mechanisms for reparations,[22] as did Judge Jorda, President of the ICTY.[23] In the end, neither President wanted to be given the mandate for processing and ascertaining awards for reparation, as it was viewed that these

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20. *See* International Crisis Group, International Criminal Tribunal for Rwanda: Justice Delayed, 7 June 2001, Africa Report No. 30. It is available on the internet at http://www.intl-crisis-group.org/projects/africa/rwanda/reports/A400442_02102001.pdf. The Report cites Assistant Public Prosecutor Emmanuel Rakangira as follows: "Currently there are billions of Rwandan Franc in the form of damages (awarded by national courts). No, its practically impossible." The Report continues by stating that

> In the four years since trials started in Rwanda, the amounts were of course very generous on paper. Close to US 100 million have been awarded after only some 4,000 people have been tried. In reality, however, not a single cent has been paid out because the defendants are indigent.

21. I'd go even further by saying that whenever a financial investigation takes place as part of a general investigation and we manage to freeze a defendant's money, the judges ought to decide what happens to that money. For me, there is only one proper response: give it to the victims. Of course, the pain does not go away. But if you are a victim and receive financial support, especially in the difficult conditions that we know about in Rwanda, then that's already a real bonus. According to the law governing international tribunals, all compensation claims must be made to the national legal system, which is the only body apt to judge. But just think of a civil action taken in a country like Rwanda or anywhere else: it takes a long time and costs a lot of money. Changing things on this front is a tricky business, since it requires changing the legal statutes, which means that the decision is down to the Security Council. That said, I have to say that there is a loophole in the law which might allow us to make some headway on the question. There is a rule which states that it is up to the judges to rule 'on sentences and sanctions'. I'm going to use the concept of sanctions to argue that sentences means prison and sanctions is the confiscation of money that has been sequestered. Let's say I'm making an interpretation. We're not quite there yet, but I've opened up the debate at least.

    Compensating victims with guilty money, Interview with Carla del Ponte, The Hague, 9 June 2000. Copyright Diplomatie Judiciaire, appearing at http://www.diplomatiejudiciaire.com/UK/Tpiruk/Prosecutor13.htm.
22. *See* Letter of 14 December 2000 of the UN Secretary-General, addressed to the President of the Security Council, UN Doc. S/2000/1198 (15 December 2000). Interestingly, Judge Pillay made note of Art. 75 of the ICC Statute but indicated that this may not be the best way forward for the Tribunal. While it was recognized that the practices of the Tribunal would need to be modified to ensure that victims have access to reparations, a provision such as Art. 75 may cloud the activities of the Tribunal and impede its principle mandate – bringing those accused of crimes within the jurisdiction of the Tribunal to justice. It would be practically impossible for the ICTR to develop the capacity to undertake a reparations programme within its doors – this would require new rules and procedures, which would be difficult and time-consuming to implement. Other options were suggested in lieu, such as the establishment of a trust fund for victims, to be run by the United Nations or another governmental body, or the establishment of a limited role for proceedings for compensation to be dealt with by the Tribunal, applicable to those victims testifying before the Tribunal.
23. UN Doc. S/2000/1063 (3 November 2000).

activities might well prevent the Tribunals from carrying out their main objective.[24]

Both the Rwandan and Belgian Governments applied to file *amicus curiae* briefs with the ICTR to raise, among other issues, the issue of victim compensation before the ICTR.[25] The ICTR stated, in denying Belgium's request to enable prejudiced claimants to appear before the Tribunal as plaintiffs and not as mere witnesses, in accordance with Article 23(3) of the Statute (relating to penalties), and Rules 105 and 106 of the Rules, (relating to restitution of property and compensation to victims, respectively), that:

> (3) The third and final issue on which Belgium wishes to address the Trial Chamber, is that of the right of those Belgians, or their rightful claimants, injured by the 1994 Rwandan genocide, to appear before the Tribunal as plaintiffs, seeking penalties against the accused. We note that pursuant to rules 100 and 101 (pre-sentencing procedure and Penalties, respectively) of the Rules, these phases of the proceedings are open to the Prosecution and Defence only. At this juncture, the Trial Chamber is of the view that this question is not yet ripe for our consideration. This is because a discussion of penalties does not arise before a determination of guilt or innocence.[26]

In September 2000, the Registrar of the ICTR initiated a Support Program for Witnesses and Potential Witnesses, to provide facilities such as legal guidance, psychological counseling, and physical rehabilitation and reintegration assistance,[27] though there has never been sufficient funds for the programme and thus it has been of limited effect.

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24. *Id.*
25. In The Prosecutor *v.* Théoneste Bagosora, Decision on the Amicus Curiae Application by the Government of the Kingdom of Belgium, Case No. ICTR-96-7-T, T.Ch. II, 6 June 1998, the Rwandan Government applied to file an *amicus curiae* brief on 20 April 1998. The Government requested that the Tribunal consider the restitution and compensation of victims, and for private and public institutions that had been affected by the crimes committed by the accused. The Chamber granted the Rwandan Government leave to file the *amicus curiae* brief, though it is not clear whether or not the brief was actually pursued. The Government of Belgium also applied to file an *amicus curiae* brief on 22 September 1997. The purpose of the brief was threefold: (1) to clarify the power of the Tribunal to prosecute the accused pursuant to Art. 3 (crimes against humanity) of the Statute for his responsibility for the killings of the Belgian soldiers, and three members of the technical assistant mission; (2) to envisage the possibility for the Tribunal to hear the Belgian legal authorities who investigate in Rwanda and Belgium; and (3) to authorize Belgian victims and their rightful claimants to appear before the Chamber as plaintiffs in accordance with the rules relating to restitution and compensation (Art. 23(3) of the ICTR) Statute, and Rules 105 and 106 of the Rules of Procedure and Evidence). The Chamber granted limited leave to file an *amicus curiae* brief on the first issue. (Decision of 6 June 1998). Summary information provided from McGill University Faculty of Law, Working Group on International Justice website, http://www.law.mcgill.ca/justice/documents-en.html.
26. Prosecutor *v.* Théoneste Bagosora, Decision on the Amicus Curiae Application by the Government of The Kingdom of Belgium, Case No. ICTR-96-7-T, T.Ch. II, 6 June 1998.
27. *See* UN Press Statement, ICTR/INFO-9-2-242, EN Arusha, 26 September 2000.

3. Reparations Before the International Criminal Court

The reparations procedures set out by the Rome Statute and finalized draft Rules of Procedure and Evidence encompass a series of interlinking measures: Firstly, once a warrant of arrest or a summons has been issued, the Pre-Trial Chamber may make an order for protective measures to ensure that any assets which might be the subject of a future reparations order are maintained.[28] Upon a finding of guilt, the Court may proceed to a determination of reparations to victims.

The basic provisions regarding reparations before the Court appear in Article 75 of the Statute and Rules 94–98 of the finalized draft Rules of Procedure and Evidence. Article 75(1) provides that the Court shall "establish principles relating to reparations to, or in respect of, victims" and, based on these principles, the Court may "determine the scope and extent of any damage, loss and injury to, or in respect of, victims" and paragraph 2 authorizes the Court either to "make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation" or, where appropriate, to "order that the award for reparations be made through the Trust Fund provided for in Article 79."

Paragraph 3 provides that before making an order for reparations, the Court "may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States." Victims' requests for reparations would be filed with the

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28. Art. 57(3)(e) provides that the Pre-Trial Chamber may "seek the cooperation of States pursuant to Article 93, paragraph 1(k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims." This provision may well be of critical importance to the realization of reparations awards, in those instances where there are assets and they are traceable. Rule 99(1) of the Rules of Procedure and Evidence specifies that:

> the Pre-Trial Chamber, pursuant to Article 57, paragraph 3(e), or the Trial Chamber, pursuant to Article 75, paragraph 4, may, on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine whether measures should be adopted.

According to Donat-Cattin, *supra* note 17, at 966, Art. 75(4) could be read as limiting any measures that could be taken, to the post-conviction phase. He states, in reference to the debates regarding the adoption of this Paragraph, that:

> Several states participating in the ICC negotiations were nonetheless cautious on the matter. On the one hand, they based their attitude against protective measures on the strict interpretation of the presumption of innocence, and more broadly, the right of the accused not to be potentially damaged by a provisional measure such as freezing of assets. On the other hand, some delegates feared that non-crime related property could have been subject to such measures, thus infringing upon very serious prohibitions related to property rights under their domestic law.

He notes, however that Art. 57(3)(e) would give rise to protective measures before conviction.

Registrar, who would duly notify the person named in the request or identified in the charges, and to the extent possible, to any interested persons or any interested states, subject to any protective measures.[29] Rule 95 of the Rules of Procedure and Evidence provides that the Court, when determining orders for reparations on its own motion, would request the Registrar to notify the persons against whom the order may be made, and to the extent possible, victims, interested persons and interested states.

While those interested in making representations regarding reparations are required to file written requests with the Registrar in accordance with Rules 94 and 95, it is envisioned that oral representations could be made in certain circumstances. These representations would be made during the sentencing hearing or subsequent hearings scheduled by the Trial Chamber.[30]

Rule 97 specifies how reparations are to be assessed. Paragraph 1 provides that:

> Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both

and paragraph 2 allows for the appointment of:

> appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.

The reparations provisions are without prejudice to the rights of victims under national or international law, and are without prejudice to the responsibility of states under international law.

The possibility for the Court to award collective reparations is likely to have a significant effect in shaping and developing new jurisprudence on creative means and mechanisms for reparations. There is likely only to be a limited amount of funds for reparations awards when compared with the rights and needs of victims, and therefore collective awards may be, at times, the only method to bring a certain measure of justice to victims.

Rule 98(1) provides that "individual awards for reparations shall be made directly against a convicted person", and paragraphs 2–4 detail modalities for using the Trust Fund for Victims to allocate or distribute the reparations awards made by the Court to victims. Paragraph 2 provides that the Court may order that awards for

29. Rule 94 of the Rules of Procedure and Evidence.
30. Art. 76(3) of the Statute and Rule 143 of the Rules of Procedure and Evidence.

> reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim,

whereas paragraphs 3 and 4 provide that awards for reparations be made through the Trust Fund, "where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate," or when made "to an intergovernmental, international or national organization approved by the Trust Fund." Paragraph 5 provides that "other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79." At the time of writing, the modalities for the operation of the Trust Fund for Victims were still under discussion by the Preparatory Commission for the International Criminal Court.[31]

The Court may decide to request assistance from states parties such as the execution of searches and seizures and the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes, for the purposes of facilitation of forfeiture proceedings.[32] States parties would have the obligation to give effect to fines and forfeitures ordered by the Court, as well as reparations orders.[33] In this regard, Rule 217 of the Rules of Procedure and Evidence provides that:

> the Presidency shall, as appropriate, seek cooperation and measures for enforcement […] as well as transmit copies of relevant orders to any State with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connection.

Rule 218(3) provides that:

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31. Art. 79(3) of the Statute provides that the Assembly of States Parties has the responsibility for developing the criteria for management of the Trust Fund for Victims. However, in recognition of the need for detailed discussions on the issue, the Bureau tasked the Preparatory Commission to prepare recommendations for the Assembly of States Parties on the Trust Fund for Victims. It was initially placed within the Working Group on Financial Regulations and Rules and later transferred to the Working Group on Financial Issues. The main issues discussed by delegates related to a proposed management structure of the Fund and its relationship with other bodies of the Court, voluntary contributions, and the scope of beneficiaries.
32. Art. 75(5) provides that

    > the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this Article, it is necessary to seek measures under Article 93, paragraph 1.

    Art. 93(1)(h) deals with searches and seizures and k with the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes.
33. Art. 75(5) specifically refers to the applicability of Art. 109 (dealing with the requirements of state parties to enforce fines and forfeitures, and/or to take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited), to the reparations orders of the Court.

> in order to enable States to give effect to an order for reparations, the order shall specify: (a) The identity of the person against whom the order has been issued; (b) In respect of reparations of a financial nature, the identity of the victims to whom individual reparations have been granted, and, where the award for reparations shall be deposited with the Trust Fund, the particulars of the Trust Fund for the deposit of the award; and (c) The scope and nature of the reparations ordered by the Court, including, where applicable, the property and assets for which restitution has been ordered.

In accordance with Rule 219, national authorities do not have the ability to modify the reparations specified by the Court, the scope or extent of any damage, loss or injury determined by the Court or the principles stated in the order. However, parties adversely affected can appeal orders for reparations.[34]

4. How Will the International Criminal Court Reparation Regime Relate to Proceedings Before Domestic Courts?

4.1. Hurdles for the victims

Assets could be located in any number of national jurisdictions. If the Court's reparations regime is to be effective, it will require significant interaction and coordination with national jurisdictions of states parties and non-states parties alike. This will involve a series of hurdles for victims.

4.2. The general obligation to cooperate with the Court

States parties have a general obligation to cooperate with the Court, and to ensure that their national legislation enables and facilitates cooperation.[35] This is a positive obligation of all states parties, which may require significant amendment of their national laws. In respect of reparations, the appropriate jurisdictions of states parties would need to implement the ICC's requests for provisional and protective measures to trace and freeze assets as appropriate and to recognize the jurisdiction of and enforce the reparations orders of the Court. As an extension to the complementarity

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34. Art. 82(4) of the Rome Statute provides that

> A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under Article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

35. Art. 86 of the Rome Statute provides that: "States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court." Art. 88 specifies that: "States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part."

principle, they would arguably need to do the same for orders emanating from the national courts of states parties.[36]

The Statute does not specify the manner in which states must cooperate on issues related to provisional measures or enforcement of reparations orders. Nevertheless, the duty to implement the reparations orders of the Court, if it is to be met, would necessarily include the obligation to ensure that there are effective national procedures available, as well as the obligation to create such procedures if they do not exist. States retain a measure of discretion to give effect to this obligation in accordance with their national laws, but the overriding duty to cooperate would mean that enforcement cannot be obstructed or obfuscated. Consequently, it is arguable that certain procedural bars existing in various national jurisdictions which could have the effect of inhibiting cooperation with the Court would be inconsistent with the Statute and Rules of Procedure and Evidence, though it is not clear how these inconsistencies will be dealt with by the Court, if at all, and the role that the Assembly of States Parties may have, if any, in ensuring this type of compliance by states parties.

In the case of non-states parties, there is no overriding obligation to cooperate with the Court though those non-states parties who wish to cooperate with the Court may do so, "on the basis of an ad hoc arrangement, an agreement with such States or any other appropriate basis."[37] If assets are located on the territory or in the control of non-states parties, the Court, or most likely the individual recipients of reparations orders, would need to advocate for the recognition of the ICC order in that jurisdiction. It may well be difficult to secure such assets in these circumstances.

4.3. Tracing assets and the implementation of protective measures

The obligation to cooperate will not itself guarantee the implementation of reparations orders. It will be a challenge to trace, freeze and seize assets located in the state where the crime is alleged to have occurred, as it may be transitioning from a conflict, and/or may not wish to lend support to the ICC proceedings. It will also be difficult to locate and trace extraterritorial assets. The processes relating to mutual assistance in criminal matters are traditionally slow and a major source of frustration for requesting authorities. This slowness is made worse by the speed in which debtors can move their assets, if they learn that a freezing or seizure order

36. This is not spelled out in the Rome Statute nor the Rules of Procedure and Evidence, though is arguably a natural extension of the provisions relating to complementarity. It will depend for the most part on whether or not the states in question entered into bilateral agreements or treaties.
37. Art. 87(5)(a) of the Statute.

is imminent.[38] Even where assets can be traced in the national jurisdiction of a state party or in a jurisdiction of a non-state party willing to cooperate with the Court, it would need to be conclusively shown that the assets are owned or controlled by the debtor. Proving this will be a continual challenge made worse by complicated bank secrecy laws in those jurisdictions where assets are likely to be located, laws which are often designed to maintain the confidentiality of this very information.[39]

While some of the banking secrecy provisions are slowly being lifted for the specific purpose of mutual cooperation in criminal matters,[40] obtaining the relevant data can still be a cumbersome process, and certain jurisdictions still provide for criminal sanctions for any unauthorized waiver of bank secrecy.[41] Certain national courts, such as those in the United States and the United Kingdom, have sought to give their domestic disclosure orders extraterritorial effect, by issuing disclosure orders to banks located within their jurisdiction, but pertaining to information held at foreign branches,[42] but these methods, however questionable to requested states, would not be available to an international body or Court which will need to rely on the cooperation of states parties and non-states parties alike.

Most states parties that have already adopted internal legislation on their cooperation with the Court have dealt with the requirements of the Statute to provide assistance in the identification, tracing and freezing of assets, by incorporating an executive function into requests for assistance, by involving an Attorney General or Public Prosecutor in the request, which would then be analysed with varying tests and degrees of discretion, by a requested Court. For the most part, implementing legislation has provided that the ICC's provisional orders or warrants issued in accordance with

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38. The elaborate procedures for lifting banking secrecy and the multiple remedies that are available to those that are accused of not providing information and to any party concerned – especially in offshore jurisdictions and large financial centers – have become strongly resented by some requesting authorities.

G. Stessens, Money Laundering: A New International Law Enforcement Model 313 (2000).

39. For a detailed explanation of how this problem affected the recovery of the Marcos assets, *see* D. Chaikin, *Tracking the Proceeds of Organised Crime: The Marcos Case*, paper presented at the Transnational Crime Conference convened by the Australian Institute of Criminology in association with the Australian Federal Police and Australian Customs Service and held in Canberra, 9–10 March 2000, available at http://www.aic.gov.au/conferences/transnational/chaikin.pdf.

40. Even Switzerland has amended a number of its laws, such as its law on mutual assistance in criminal matters and it has adopted a series of anti-money laundering laws and directives. *See*, *generally*, C. Ringgenberg, *et al.*, *Switzerland*, *in* M. Ashe, *et al.* (Eds.), International Tracing of Assets: Rel 2, at N4/1 (1998).

41. *See*, for example, Arts. 162, 271, 273 of the Swiss Penal Code, cited *in* Ringgenberg, *et al.*, *supra* note 40.

42. Stessens, *supra* note 38. Stessens contends that these courts have "based the jurisdiction on in personam jurisdiction – adjudicative jurisdiction over the person against whom these orders are issued in order to regulate the conduct of these juridical persons abroad."

Article 57(3)(a) are enforceable as if they were domestic orders or warrants.

The French legislation on cooperation with the Court specifies that the execution of provisional measures in France will proceed in accordance with France's Code of Civil Procedure, by the Paris State Prosecutor. Provisional orders can be ordered for a maximum of two years, but can be renewed.[43] This provision, which is based on Article 15 of France's 1996 Law on Money Laundering, Drug Trafficking and Proceeds of Crime,[44] gives the State Prosecutor the ability to require the execution of provisional measures, in the sense that there is no margin of appreciation for the judge who is obliged to order the measures requested by the ICC.[45] These provisions appear to go beyond the legislation on cooperation of other states such as Canada and the draft text of Australia, where the judge hearing the application for provisional measures or restraint order retains a certain discretion in determining whether and how to give effect to the order.

In Canada, amendments to the Mutual Legal Assistance in Criminal Matters Act allow an ICC order for restraint, seizure or freezing of proceeds of crime and ICC orders for forfeiture, fines and reparations to be filed in a Canadian Court, where a judge, on application of the Attorney General, is satisfied that there are reasonable grounds to believe that there is, in any building receptacle or place any property in respect of which an order for forfeiture may be made in respect of a designated offence alleged to have been committed. Article 9.1 of the Act provides that the order may be enforced as if it were a warrant issued under Subsection 462.32(1) or

43. Art. 627-3 of the Loi n° 2002-268 du 26 février 2002 relative à la coopération avec la Cour pénale internationale, J.O. Numéro 49 du 27 Février 2002, at 3684. The original provides:

> Art. 627-3. – L'exécution sur le territoire français des mesures conservatoires mentionnées au k du paragraphe 1 de l'article 93 du statut est ordonnée, aux frais avancés du Trésor et selon les modalités prévues par le nouveau code de procédure civile, par le procureur de la République de Paris. La durée maximale de ces mesures est limitée à deux ans. Elles peuvent être renouvelées dans les mêmes conditions avant l'expiration de ce délai à la demande de la Cour pénale internationale.

44. Loi n° 96-392 du 13 mai 1996 relative la lutte contre le blanchiment et le trafic de stupéfiants et à la coopération internationale en matière de saisie et de confiscation des produits du crime.
45. Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale de la république sur la proposition de loi, adoptée par le sénat, relative à la coopération avec la cour pénale internationale, par M. Alain Vidalies, Député, le 15 février 2002, N° 3598, Assemblée Nationale.

462.33(33) of the Criminal Code.[46] This is similar to the legislation of New Zealand, which provides that if the ICC requests assistance under Article 93(1)(k) of the Statute in identifying, tracing and freezing, or seizing tainted property for the purpose of eventual forfeiture:

> The Attorney-General may give authority for the request to proceed if the Attorney-General is satisfied that a) the request relates to an international crime that is being investigated by the Prosecutor, or which is the subject of proceedings before the ICC; and b) tainted property is or may be located in New Zealand.[47]

If the Attorney General gives authority for the request to proceed, it may authorize the appropriate New Zealand authority to apply for the relevant order before the Court. Article 112(2) of the same law provides that where the ICC has issued a restraint order, "the Attorney-General may authorise the appropriate authority to register that order," which would have effect and be enforceable as if it were a restraining order made under domestic law.[48]

While Article 93(1) refers simply to "investigations and prosecutions," the Australian International Criminal Court Bill, 2001 provides that the requested court may only make a restraining order:

> if the application for the order is supported by an affidavit of a police officer stating that the officer believes that the defendant committed the crime; and the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.[49]

Article 82(3) provides that:

> If the application is made in reliance on the proposed charging of the defendant with the crime within the jurisdiction of the ICC, the court must not make a restraining order unless it is satisfied that the defendant will be charged with the crime or a related crime within the jurisdiction of the ICC within one month.

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46. Mutual Legal Assistance in Criminal Matters Act, R.S., 1985, c. 30 (4th Supp.). Art. 9.1(1) of the Act provides that

    > When a request is presented to the Minister by the International Criminal Court for the enforcement of an order for the restraint or seizure of proceeds of crime, the Minister may authorize the Attorney General of Canada to make arrangements for the enforcement of the order. (2) On receipt of an authorization, the Attorney General of Canada may file a copy of the order with the superior court of criminal jurisdiction of the province in which property that is the subject of the order is believed to be located. (3) On being filed, the order may be enforced as if it were a warrant issued under subsection 462.32(1) of the *Criminal Code* or an order made under subsection 462.33(3) of that Act 2000, c. 24, s. 57. (Emphasis in the original.)

47. Sec. 111 of New Zealand's International Crimes and International Criminal Court Act 2000 026.
48. *Id.*, Sec. 130.
49. Art. 82(2) of the Exposure draft, International Criminal Court Bill 2001, available at http://law.gov.au/intcrimcourt/exdraft2210801.doc.

4.4. Implementing the reparations orders of the Court

In respect of post-conviction reparations orders or forfeiture and confiscation proceedings relating to assets located outside of the jurisdiction of the Court, the framework for implementation by states parties is relatively straightforward[50] – they must take all necessary steps to enforce the orders. For example, Article 12(2) of the United Kingdom's implementing legislation provides that:

> When a request is presented to the Secretary of State by the International Criminal Court for the enforcement of an order of reparation or forfeiture, or an order imposing a fine, he may authorise the Attorney General to make arrangements for the enforcement of the order.[51]

The French legislation provides that the implementation of fines, forfeiture and reparations orders will be authorized by the *Tribunal correctionel*, which will be bound by the decision of the ICC.[52]

Article 9.2(1) of the Canadian Mutual Legal Assistance in Criminal Matters Act provides that:

> (1) When a request is presented to the Minister by the International Criminal Court for the enforcement of an order of reparation or forfeiture, or an order imposing a fine, the Minister may authorize the Attorney General of Canada to make arrangements for the enforcement of the order.
> (2) On receipt of an authorization, the Attorney General of Canada may file a copy of the order with the superior court of criminal jurisdiction of […]. On being filed, the order shall be entered as a judgment of that court.

Article 124 of the New Zealand legislation provides that for orders relating to victim reparation, if the ICC

> (i) makes an order under Article 75 of the Statute requiring reparation; and (ii) requests that the order be enforced in accordance with Article 109 of the Statute; […] the Attorney-General may give authority for the request to proceed if he or she is satisfied that the order (a) requires reparation; and (b) is of a kind that can be enforced in the manner provided in this section. In that case, the Attorney General must refer the request to the appropriate New Zealand agency; and that

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50. *See supra* notes 31–33 and accompanying text.
51. Crimes Against Humanity and War Crimes Bill, as presented to the House of Commons on 24 July 2000.
52. L'exécution des peines d'amende et de confiscation et des décisions de réparation sera autorisée par le tribunal correctionnel, qui sera lié par la décision de la Cour pénale internationale; les difficultés d'exécution ou les contestations relatives à l'affectation du produit des amendes ou des biens seront renvoyées à la Cour, qui leur donnera les suites utiles.

    Arts. 627-16 and 627-17 of the French legislation on cooperation with the ICC.

> agency must, without delay, take such steps to enforce the order as if it were a comparable order in domestic law.[53]

The Australian Bill provides that upon an order pursuant to Article 75 requiring reparation, and the ICC requests that it be enforced, the Attorney General is to execute the request by advising the Director of Public Prosecutions ('DPP') to apply for the registration of the order in the competent court.

There are several areas of cooperation which require further clarification. It is not evident how national courts will deal with the eventuality of competing claims for assets, or how they will assign priorities in order to adjudicate between these claims. For instance, it is plausible and likely that in the trial of major leaders or government figures, the state of the jurisdiction where the crimes occurred will have a competing claim against the perpetrator for corruption or misappropriation of state funds or other economic crimes.[54] Similarly, there may also be additional corporate creditors and/or victims who did not apply through the ICC reparations process,[55] whose claims would need to be adjudicated by national courts. Most jurisdictions will have pre-existing rules on related matters though they may not be sufficiently precise or appropriate in this context, nor will they necessarily give priority to the orders emanating from the Court. Many state parties will have enacted proceeds of crime legislation dealing with some of these issues as part of their efforts to deal with money laundering and other forms of transnational crime, and international conventions and agreements have been developed to create common systems to address

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53. Subsec. 5 specifies that

> […] an order may not be made […] (a) imposing a sentence for non-payment of an order of the ICC requiring monetary payment; or (b) modifying an order of the ICC made under Article 75 of the Statute, without the prior agreement of the ICC; or (c) remitting or directing that no further steps be taken to enforce all or any part of a sum of money due under an order made by the ICC, without the prior agreement of the ICC.

54. As an example, the Philippines Government continues to seek to recover the assets from the Marcos regime, while a series of third-party claimants, including thousands of torture survivors who had been awarded a civil judgment for compensation in a US Court pursuant to the Alien Tort Claims Act, seek to have this judgment enforced. The search for plundered assets often follows the end of a corrupt regime, though assets are usually carefully hidden and mechanisms for effective tracing and seizure are underdeveloped and not always successful. Former President Milošević was initially arrested in Belgrade on charges of corruption and abuse of power. If he were to be convicted by the ICTY and had there been a reparations regime before the ICTY, the potential beneficiaries of reparations orders would have competed with other potential creditors, including the Federal Republic of Yugoslavia for any assets seized.
55. There is no obligation on victims to apply for reparations before the ICC. In fact, Art. 75(6) specifically provides that reparations proceedings before the ICC will not impact on domestic proceedings: "Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law."

some of these problems, though they may not deal with all possible eventualities.[56]

The Statute provides that in those cases when it is not possible for the state to give effect to an order for forfeiture, it "shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties."[57] This will require national courts to implement a variety of proceedings traditionally associated with defaulting debtors such as garnishee orders, liens, and enforced sales of property, though in keeping with the focus on individual criminal responsibility, it does not go so far as to suggest that the states in question should step in when the individual debtors are judgment-proof.[58] In the case that the debtor has no traceable assets whatsoever, there is little that can be done to recover the amounts owing to victims. Who will intervene when the perpetrator cannot pay? The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power dealt with this problem in its 12th and 13th Principles, as follows:

> 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
>
> (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
>
> (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
>
> 13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

5. The Trust Fund for Victims

The Statute does not refer to the potential role of states parties in providing victims with compensation for injuries when perpetrators cannot, though it does provide in Article 79 for the establishment of a Trust Fund

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56. *See*, for example, the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), 28 ILM 493 (1989) and the Council of Europe 1990 Convention no. 141 on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the 'Strasbourg Convention'), ETS No. 141.
57. Art. 109(2) of the Rome Statute.
58. *See*, for example, Principle 11 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 5, which provides that:

> Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

for Victims, "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims." This Trust Fund could in principle step in to provide relief to those victims for whom reparations orders had been awarded but where no enforcement of the awards was possible due to the insolvency of the perpetrator or the inability to recover his/her assets. Its precise scope of activities has not yet been defined, though this may well be one of the desirable usages for the Fund.[59] It is clear, however, that the Fund will be under-resourced, at least at the outset and the demands for funds will be far greater than what could feasibly be supplied. Individual victims may look to other, and possibly more solvent debtors (aside from or in addition to the individual perpetrators convicted by the Court) to ensure that they receive some form of redress. This may require that they lodge actions for reparation before national courts.

Both Canada and the United Kingdom have opted to create national trust funds, as part of their internal legislation on cooperation with the Court. Section 30 of Canada's Crimes Against Humanity and War Crimes Act (2000, c. 24) establishes a Crimes Against Humanity Fund:

> into which shall be paid (*a*) all money obtained through enforcement in Canada of orders of the International Criminal Court for reparation or forfeiture or orders of that Court imposing a fine; (*b*) all money obtained in accordance with section 31; and (*c*) any money otherwise received as a donation to the Crimes Against Humanity Fund. (2) The Attorney General of Canada may make payments out of the Crimes Against Humanity Fund, with or without a deduction for costs, to the International Criminal Court, the Trust Fund established under Article 79 of the Rome Statute, victims of offences under this Act or of offences within the jurisdiction of the International Criminal Court, and to the families of those victims, or otherwise as the Attorney General of Canada sees fit. (3) The Governor in Council may make regulations respecting the administration and management of the Crimes Against Humanity Fund.

Article 26 of the United Kingdom's legislation is almost identical to the Canadian legislation.

These initiatives are laudable in that they will ensure that any funds obtained in the national jurisdiction through enforcement of awards, from fines and forfeitures, and from proceeds of crime will be used for the benefit of victims. These trust funds might, however unintentionally,

59. This has been advocated by a number of organisations and institutes following the deliberations at the meetings of the Preparatory Commission for the ICC. *See*, for example, REDRESS, *Ensuring the Rights of Victims in the ICC: Specific Concerns and Recommendations Relating to the Trust Fund for Victims*, prepared for the 8th Preparatory Commission of the ICC, September/October 2001, available at http://www.redress.org/Trustfund.html; Amnesty International, *International Criminal Court: Ensuring an Effective Trust Fund for Victims*, IOR 40/005/2001 01/09/2001, available at http://web.amnesty.org/ai.nsf/Index/IOR400052001?OpenDocument&of=THEMES\INTERNATIONAL+JUSTICE; T. Ingadottir, *The Trust Fund for Victims (Article 79 of the Rome Statute) A Discussion Paper*, Project on International Courts and Tribunals (PICT), February 2001, at http://www.pict-pcti.org/publications/publications.html.

operate at cross-purposes to the ICC Trust Fund for Victims. While the national funds will at least partly fund the activities of the ICC including the ICC Trust Fund for Victims, they may also provide funding to:

> victims of offences under this Act or of offences within the jurisdiction of the International Criminal Court, and to the families of those victims, or otherwise as the Attorney General of Canada sees fit.[60]

One of the concerns of non-governmental organizations and certain delegates raised during the 8th meeting of the Preparatory Commission in September–October 2001 related to the parameters for the ICC Trust Fund for Victims and the possible range of acceptable voluntary contributions, and particularly, the fear that insufficient controls on earmarking of voluntary contributions may affect the integrity and neutrality of the Fund, and specifically its ability to reach all eligible victims. If all state parties used national trust funds in lieu of contributing to the ICC Trust Fund for Victims, it would not be possible to manage and control the level of earmarking, and consequently certain victims of less-publicized conflicts might have access to a lower amount of contributions. This would have a negative impact on the Court as a whole.

6. CONCLUSIONS

For possibly the first time in the history of international criminal tribunals, justice for victims is a real possibility. The Rome Statute and Rules of Procedure and Evidence provide a clear opening for victims to assert and realize their rights, though practical uncertainties and impediments abound. These impediments are not restricted to proceedings before the ICC, but reflect the challenges that victims and other judgment-creditors continue to face in a much wider context, particularly when claims are multi-jurisdictional.

There are, however, certain specific challenges relating to the ICC reparations regime, which stem from the complex relationship states parties and non-states parties will have with the Court and the degree to which the Court can oversee the enforcement of its orders. In recognition that states parties have an obligation to cooperate with the Court, and not necessarily with the victims or other recipients of awards for reparations, victims will certainly need the assistance of the Court in seeking to enforce orders before national jurisdictions, and this should be taken into account in the development of victims services at the Court.

Much will be learned from the first Court processes and those remaining procedural deficiencies may need to be reviewed as this new and important process continues to develop.

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60. Sec. 30(2) of Canada's Crimes Against Humanity and War Crimes Act (2000, c. 24).