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REPARATIVE JUSTICE BEFORE THE INTERNATIONAL CRIMINAL

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ABSTRACT

The reparative dimension of international criminal justice has historically been overshadowed by a focus on punishing perpetrators, leaving victims of mass atrocities without meaningful redress. The establishment of the International Criminal Court (ICC) signaled a shift toward incorporating reparative measures, yet over two decades later, the Court's reparations regime remains limited.

This study examines the ICC's legal and procedural efforts to provide reparations, focusing on the Trust Fund for Victims (TFV) and the Court's responsibilities under articles 75 and 79 of the Rome Statute. Despite mechanisms for individual and collective reparations, practical challenges such as limited funding, complex procedures, and inconsistent victim participation hinder the system's effectiveness. Victims often face procedural barriers, and the ICC's reliance on state cooperation and the financial incapacity of convicted individuals further complicate reparations efforts.

The research critically evaluates the ICC's reparations framework, identifying structural and procedural obstacles while proposing strategies to enhance its victim-centered approach. By exploring how the ICC can streamline reparations, improve victim engagement, and clarify the TFV's role, the study contributes to a broader understanding of how international criminal justice can incorporate restorative principles. Ultimately, it advocates for a justice system that not only punishes perpetrators but also delivers meaningful redress to victims.

Keywords: *International Criminal Court, Reparations, Victims, Perpetrators, International Crimes, Victim Rights, Victim's Reparations.*

Introduction

The evolution of international criminal justice (ICJ) has been largely shaped by its early focus on punishing perpetrators rather than addressing the plight of victims. Dating back to the Nuremberg and Tokyo tribunals, international criminal law emphasized individual criminal responsibility for war crimes, crimes against humanity, and crimes against peace (See article one of Charter establishing Military Tribunal). Victims were largely sidelined, with little recognition of their suffering or participation in judicial processes. However, scholars such as Yang (2023) have emphasized that true reparative justice inherently involves the participation of victims in both the trial and the redress of harm, reflecting a gradual shift in the philosophy of international justice.

Over time, efforts have been made to recognize victims' rights within the framework of international law. Zegveld (2010) notes that reparation for victims of serious violations of international humanitarian law was historically treated as a secondary concern. This changed with the adoption of the United Nations General Assembly Resolution 60/147 in 2005, which established the Basic Principles and Guidelines on the Right to a Remedy and Reparation (see Resolution 60/147 of UN General Assembly adopted on 15 December 2005). These principles obligate states to ensure that victims of gross violations of human rights and humanitarian law receive adequate reparations proportionate to the harm suffered and mark a fundamental step in acknowledging the moral and legal necessity of reparations in the international justice system.

The establishment of the International Criminal Court (ICC) under the 1998 Rome Statute represented a milestone in integrating victims' rights within international criminal proceedings. The ICC became the first permanent international tribunal to explicitly grant victims the right to participate in proceedings and to claim reparations directly against convicted persons as mentioned by Hastings-Wottowa (2023). The article 75 of the Rome Statute empowers the Court to order restitution, compensation, or rehabilitation for victims, while Article 79 establishes the Trust Fund for Victims (TFV) to assist in implementing reparations. Even though this progress, the Court's reparations regime has faced challenges due to limited resources, complex procedures, and an overemphasis on retributive rather than restorative justice according to Yang (2023).

The vast number of victims, combined with the financial incapacity of convicted individuals, raises serious questions about the effectiveness and sustainability of the current reparative

framework. Scholars such as Vasilev et al. (2013) argue that the ICC's reliance on individual criminal responsibility complicates reparations, as a single perpetrator cannot realistically compensate thousands of victims of mass atrocity crimes. This gap underscores the critical role of the TFV, which, despite its limited funding, plays an essential role in achieving justice for victims.

The ICC's reparations system also faces procedural and structural limitations. The participation of victims in trial proceedings is often constrained, with the Court tending to view victims as passive participants rather than central actors in the justice process. Furthermore, the complex legal and procedural requirements governing reparations have resulted in delays and inequalities in implementation, particularly in balancing individual and collective reparations. The need for stronger state cooperation and improved mechanisms for enforcement remains vital to the realization of victims' rights to reparation.

This study therefore aims to analyze the legal regime and procedural aspects of the ICC's reparations scheme. It explores how the Court and the TFV have implemented reparations orders, the challenges encountered in practice, and the extent to which the ICC fulfills its reparative mandate under international law. Ultimately, this research seeks to contribute to the discourse on strengthening reparative justice at the ICC by proposing mechanisms and solutions that enhance victims' access to meaningful, timely, and sustainable reparation.

1. Research Methodology

According to Dawson (2019), a research methodology is the primary principle that guide a research. It becomes the general approach in conducting research on a topic and determines what research method to use. A research methodology describes the techniques and procedures used to identify and analyze information regarding a specific research topic. It is a process by which a researcher designs a study, so that he/she can achieves its objectives using the selected research instruments. Like any other research, this study is resorted to different techniques and methods in order to validly collect and analyze data.

1.1 Techniques

1.1.1 Documentary Technique

Previously, techniques to be applied in any research vary according to the objective to be achieved (Grawitz, 1994). This mainly consists in consulting different books, case laws, legal writings and commentaries, electronic sources, reports, etc, is used in collecting the data needed for the compilation of this research.

1.2 Methods

1.2.1 Analytical Method

Analytical research method is a specific type of research that involves critical thinking skills and the evaluation of facts and information relative to the research being conducted. It used during studies to find the most relevant information. The analytic method enable us to make critical analysis of normative texts in force.

1.2.2 Exegetic Method

Exegetical method is a tool to help interpreters hear the passage and not impose inappropriate notions upon it. According to Gary (2016), the objective of exegetic method is to resolve an interpretive problem in the text so as to determine its meaning and significance. The exegetical method is used as a tool in the interpretation of legal provisions that used as reference in this study.

1.2.3 Synthetic Method

Synthetic Method is the opposite of analytic method that proceed from unknown to known. In practice, it is the complement of analysis. It states with something already known and connect that with the known part of the statement. The synthetic method serves us as an important tool in case of lecture of different works by synthesizes the collected data.

2. Analysis on Reparation Framework under the International Criminal Court

2.1 Rome Statute of the International Criminal Court

The ICC's mandate for the reparation of victims is rooted in the Rome Statute, its founding treaty. The Statute embodies a traditional concept of Justice that provides for the prosecution and punishment of the guilty and obliges the court to establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation (article 75). This article outlines the principles of reparations, allowing the Court to determine the scope and extent of any damage, loss, or injury to victims.

Furthermore, the Article 79 of the Rome Statute establishes the Trust Fund for Victims (TFV). The Trust Fund for Victims (TFV) at the International Criminal Court (ICC) is a crucial mechanism designed to provide reparations to victims of crimes within the ICC's jurisdiction. The Fund is managed according to criteria to be determined by the Assembly (article 79 (3)). The court can decide whether to compensate victims through this fund and it may order that money or other property collected through fines and forfeiture be transferred to the fund (articles 75 (2) and 79 (2)). However, Article 75 in the Rome Statute is explicitly limited to individuals about mandate for the reparation of victims (See the Article 75 (1) of the Rome Statute). The exclusion of state responsibility within the language of the Rome Statute, indicates, as Sperfeldt (2017) points out, a selective borrowing of the right to reparation developed in human rights law.

While its mandate is noble, the TFV faces significant challenges, particularly in terms of funding and implementation. Article 75 allows the ICC to order reparations directly, but the TFV's reliance on voluntary contributions limits its effectiveness and sustainability. Moreover, the lack of clear guidelines in Article 79 on how funds should be allocated can lead to inconsistencies in reparations, potentially undermining the victims' sense of justice.

2.2 The Rules of Procedure and Evidence

The procedure for reparation claims involves the submission of evidence by victims, the participation of victims in proceedings, and the issuance of reparations orders after a conviction. Rule 94 of the Rules of Procedure and Evidence specifies the process by which victims can apply for reparations, requiring them to submit detailed information about the harm they have suffered and the type of reparation sought.

Rule 94 of the Rules of Procedure and Evidence (RPE) in the context of the International Criminal Court (ICC) deals with the notification of reparations proceedings. This rule outlines the procedure for notifying victims or their legal representatives about reparations proceedings, ensuring that those directly affected by the crimes under investigation are informed and given the opportunity to participate. It is fundamental to the reparative dimension of the ICC's work, underscoring the importance of victim participation and the recognition of their suffering within the judicial process. Moreover, the ICC places significant emphasis on ensuring that reparations are not merely symbolic but have a tangible impact on victims.

2.3 The Trust Fund for Victims

The Trust Fund for Victims (TFV) was established under the legal framework of the Rome Statute, RPE and Regulations of the Assembly of States Parties in accordance with Article 79 of the ICC Statute (See the Regulation of the Trust Fund of 2025). The Trust Fund has a dual mandate: firstly, to deliver general assistance to conflict victims without prejudice to ongoing proceedings of the Court, and secondly, to enforce the reparations orders of the Court. It operates in accordance with Articles 75 and 79 of the Statute, which mandate reparative measures for victims of crimes under the jurisdiction of the ICC.

Article 75 empowers the Court to order reparations to victims, states that: "The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation as reported by Bassiouni (2000). Article 79 creates the TFV as a mechanism to implement these reparations and to provide assistance to victims and their families. This article states that "A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims."

For instance, the TFV is authorized to receive funds from the following sources: (a) Voluntary contributions from Governments, international organizations, individuals, corporations and other entities; (b) Money and other property collected through fines or forfeitures transferred to the Trust Fund if ordered by the Court pursuant to Art. 79, para. 2, of the Statute; (c) Resources collected through awards ordered by the Court; and (d) other contributions, as the Assembly of States Parties may decide to allocate to the Trust Fund (Resolution ICC-ASP/1/Res.6.).

Additionally, the rule 98 of RPE outlines how the court may order reparations to be made directly to victims or through the Trust Fund for Victims, depending on the circumstances. The rule allows for reparations to be made either individually or collectively, and provides the option for the ICC to award reparations in the form of restitution, compensation, or rehabilitation. If reparation orders cannot be made directly to the victims, they may be channeled through the Trust Fund, which then distributes them accordingly.

3. Forms of reparation

Restitution, compensation and rehabilitation are the only forms of reparation expressly referred to in the Rome Statute (See Art. 75(1) and also Rule 97(1)). The Court has also recognized that ‘other types of reparations, for instance those with a symbolic, preventative or transformative value, may also be appropriate’ (See case Lubanga, *supra* note 26, para. 222). Reparations refers to the act or process of making amends for wrongs through the restoration and rehabilitation of those who have been harmed, restitution for the harm, and cessation of harmful practices. Reparation measures include:

Restitution, which should restore the victim to their original situation before the violation occurred, e.g. restoration of liberty, reinstatement of employment, return of property, return to one’s place of residence. The goal of restitution is to reverse the harm done, as far as possible, and to directly address the losses suffered by victims of international crimes like war crimes, genocide, and crimes against humanity. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.” Restitution is traditionally considered to be the primary form of reparation, since it aims to reestablish the situation of the victim as it was prior to the commission of crimes.

Restitution under the ICC faces challenges, especially in cases where the harm done is irreversible, such as loss of life or severe psychological trauma. Additionally, identifying and tracing assets for restitution can be complex, particularly when perpetrators have hidden or dissipated their assets. For many victims before the ICC, restitution alone will be inadequate. Regardless of these difficulties, restitution remains a vital component of reparative justice, symbolizing an effort to directly undo some of the tangible harm caused by crimes prosecuted by the ICC.

Compensation, which should be provided for any economically assessable damage, loss of earnings, loss of property, loss of economic opportunities, moral damages according to the article 75 of the Rome Statute. This type of reparation seeks to provide financial redress for losses suffered as a direct result of the crimes. Per the UN Principles on Reparation, any reparation proposals involving compensation for moral damages must “encompass financial reparation for physical or mental suffering (Adopted Resolution 60/147, *supra*, p. 204).” However, in many cases, the damage suffered by victims is immense and irreparable, making financial compensation inadequate in addressing the full scope of harm. The ICC acknowledges these limitations, often supplementing compensation with other forms of reparation such as restitution and rehabilitation to ensure a more holistic approach to justice and victim recovery.

Rehabilitation, which should include medical and psychological care, legal and social services. The ICC's mandate for rehabilitation is rooted in the idea of restorative justice, which seeks to repair the harm caused by crimes and address the needs of victims under Article 75 of the Rome Statute. However, the effectiveness of rehabilitation as a form of reparation under the ICC faces practical challenges. The sheer scale of victimization in many ICC cases often makes it difficult to provide individualized rehabilitation to all victims and the process can be lengthy and bureaucratic, delaying much-needed support. Regardless of these challenges, rehabilitation remains a vital aspect of the ICC's reparation framework, offering victims not only compensation for their suffering but also an opportunity for healing and reintegration into society.

4. Issues related to the Implementation of Reparation Regime under ICC

4.1 Limitation of individual and collective reparations

Reparations can be individual or collective, and both types can be awarded concurrently (rule 97(1) RPE). Understanding the strengths and limitations of individual and collective reparations is necessary if practitioners are to combine them in a culturally appropriate and creative manner (Roht-Arriaza & Orlovsky 2009).

Individual reparations aim to “serve as recognition of specific harm to an individual, and of an individual's worth as a rights-bearing citizen (Roht-Arriaza & Orlovsky 2009).” Payment of individual reparations ensures that the victim feels a sense of personal justice as their own personal grievances have been examined and addressed individually. Individual reparations

under the International Criminal Court (ICC) offer several key advantages, such as addressing directly the harm suffered by victims, offering personalized compensation that can help restore dignity, provide material support, and acknowledge the specific suffering endured on a personal basis.

This personalized approach increases the effectiveness of the reparations. The Inter-American Court of Human Rights case of *Loayza Tamayo v Peru* (Series C No. 43, IACtHR, 27 November 1998), provides an example of reparations to an individual as the court not only ordered restoration of Tamayo's liberty but also her former job and salary until she was able to re-join teaching. Despite the success in this case, pursuing individual reparations through the courts is rarely effective and often an incomplete, slow and challenging way of dealing with individual reparations on a large scale.

However, there are significant limits to individual reparations. One key issue is the challenge of equitable distribution in cases with vast numbers of victims, such as post-conflict societies where systemic abuses have occurred. Resources may be insufficient to fully compensate all victims, leading to a sense of injustice for those who receive minimal support. Additionally, individual reparations may not fully address the broader societal harms caused by mass atrocities. While they are vital for acknowledging the suffering of specific individuals, they often fail to capture the collective trauma and structural damages inflicted on communities. Individual reparations, if not paired with broader transitional justice mechanisms like truth commissions or institutional reforms, risk being perceived as a superficial fix. Without addressing the root causes of violations, reparations may fall short in contributing to long-term peacebuilding and reconciliation efforts in post-conflict settings.

As for collective reparation, the term 'collective reparations' is ambiguous in that it has no clear definition of who exactly qualifies as the 'collective.' Nonetheless, it is clear that collective reparations aim to address and aid in the undoing of collective harm (Rosenfeld, 2010). According to Roht-Arriaza (2004), a basic understanding of collective reparations and collective harm is to assume that when the "harm is defined in terms of an attempt to destroy a group, so that reparation should be similarly defined." As a result of this, collective reparations reach a wide range of victims bypassing the issues such as hierarchy, funding and efficiency faced by individual reparations.

Collective reparations tend to focus more on the moral aspect of reparations through rehabilitation, measures of satisfaction and guarantees of non-repetition, although they can also address the material aspect as well. In Guatemala following the Plan de Sanchez massacre and the subsequent case of *Plan de Sanchez v Guatemala* (Series C. No. 105, IACtHR, 29 April 2004), the rehabilitation program that was implemented provided the surviving community with healthcare benefits, housing and development programs, education and better infrastructure in the town allowing for the rebuilding of the community as a collective.

Collective reparations have been criticized for being overtly impersonal as they tend to overlook the personal suffering of some individuals (Roht-Arriaza & Orlovsky 2009). Collective development reparations such as the construction of healthcare centres and education facilities also carry with them a risk that the perpetrators may benefit from the reparations in addition to the victims (ICTJ, The Rabat Report, 2009). This would result in the value of the collective reparations being belittled, as was the worry in Rwanda where the Hutu and the Tutsi lived intertwined in the same communities (Murchan, 2016).

Providing collective reparations to a group and expecting to redress all victims is an impossible reality as there will always be those who have suffered that are left feeling marginalized and forgotten about. To further this point it is worth noting that an individual within the collective may not actually receive any particular benefit from collective reparations as the benefit may not reach them or they will not be affected personally and thus the reparations are essentially useless to them. Therefore it is clear that to have effective reparations there must be a combination of both collective and individual measures implemented (Murchan, 2016).

4.2 Insufficient Funding for Victim Reparations

International experience makes it plain that no reparations program has been able to satisfy the criterion of *restitutio in integrum* (Wierda & De Greiff, 2004). The issue of insufficient funding for reparations under the International Criminal Court (ICC) significantly undermines the effectiveness of delivering justice to victims of international crimes. In theory, reparations ordered by the ICC can be awarded on an individual or collective basis.

In high-profile cases, such as the reparations for the victims of war crimes committed by Thomas Lubanga in the DRC, the limited resources available to the ICC's Trust Fund for Victims (TFV) resulted in reparations that fell far short of the victims' needs and expectations. In this cases 998

out of the 2,471 victims, have enrolled and approved by the Trial Chamber in the Lubanga reparations program (*Prosecutor v. Thomas Lubanga Dyilo*, Case no. ICC-01/04-01/06). The disparity between the scope of harm and the reparations granted raises concerns about the credibility of the ICC's mandate to provide justice to victims. In the Katanga case, victims received only symbolic reparations due to limited resources. Even though Katanga's liability of \$1,000,000, his indigence prevented full individual compensation for victims. The Court, however, knew that a solely collective approach would not be seen as legitimate in the eyes of victims, and hence ordered the creation of collectivized economic programs, alongside a symbolic individual payout of \$250 to 297 identified victims (Hastings-Wottowa, 2023).

The Trust Fund for Victims (TFV) depends on voluntary state contributions, making reparations vulnerable. This reveals a systemic weakness in the ICC's funding structure. Without mandatory financing, the Court's reparative function remains unstable. The Ahmad Al Mahdi case exemplifies this, where reparations were mostly symbolic due to financial limitations despite the crime's broad impact. This weakens the role of reparations in international justice, as victims are left to bear the brunt of financial insufficiencies.

As demonstrated by the case of Dominic Ongwen, a former commander of the Lord's Resistance Army (LRA) in Uganda, who was convicted in 2021 of war crimes and crimes against humanity, and the ICC ordered reparations for his victims (*The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-2074). The ICC awarded the largest reparations order to date (over €52 million for a total of 49 772 victims). The ICC relies on the Trust Fund for Victims (TFV) to raise funds for reparations, as it cannot compel States to pay. However, limited financial support weakens its ability to deliver meaningful reparative justice, undermining its legitimacy and effectiveness.

As Aberg states (2014), significant problem of ordering reparations is the risk of inadequate resources of the perpetrator, making it impossible to afford reparations for thousands of victims. Enforcing the orders has been fraught with challenges, particularly in securing assets from convicted persons, who are often either indigent or unwilling to comply. The convicted person's inability to make reparations to their victims pose a great challenge to the ICC reparations regime.

This issue was evident in cases of Lubanga (*Prosecution vs Lubanga*, ICC-01/04-01/06-3129), where reparations to victims were delayed due to difficulties in identifying and securing the convicted person's assets. The ICC ordered reparations for Lubanga's victims, yet his lack of

available assets complicated enforcement. The Germain Katanga case illustrates the ICC's challenges in enforcing reparation orders. Although Katanga was ordered to pay \$1 million to victims, he was declared indigent, and the Trust Fund for Victims (TFV) had to step in. Similar to the Lubanga case, this situation exposes the ICC's struggle to balance symbolic justice with practical enforcement difficulties. The lack of an international mechanism to secure funds further hinders implementation. Nonetheless, the ICC's efforts and the TFV's role remain vital in providing some form of justice to victims.

4.3 Limited Scope of Reparations

The limited scope of reparations under the International Criminal Court (ICC) has been a subject of critique due to the court's inability to fully address the vast and multifaceted needs of victims in conflict zones. This framework limits the extensiveness of reparations to cases where an individual perpetrator is convicted, leaving many victims without recourse when large-scale atrocities are committed by multiple actors or in cases where defendants are acquitted or pass away during trial. For example, in the case of *Thomas Lubanga Dyilo*, only a fraction of the victims of child soldier recruitment received reparations, even though the impact of the crimes extended far beyond those directly named in the case (*Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-3129).

The ICC's reparations regime struggles to adequately address collective harms suffered by entire communities. Collective awards are crucial in mass crimes cases, as they capture harm directed at groups or communities. Such reparations are often best implemented through community-based projects that deliver medical care, psychosocial support, education, skills training, or income-generating opportunities to affected or vulnerable victims (REDRESS, 2010). The geographical distance of victims, such as in the Katanga case, hinders the enforcement of compensation. Out of 297 victims, 15 living in Europe or the U.S. were excluded from collective reparations, as the TFV found it impractical to distribute compensation to those abroad, leading to reduced or no payments for distant victims (Yang, 2023).

4.4 Challenges of the Delay in Reparations Process

Delays in the reparations process under the International Criminal Court (ICC) are a significant challenge, undermining the very objective of reparative justice. One of the main causes of these delays is the complexity of establishing liability and the scope of harm in cases involving mass atrocities. Reparations at the ICC require not only proving the guilt of perpetrators but also

assessing the damage suffered by victims, which can be an overwhelming task when the scale of crimes is vast, as seen in the cases of Thomas Lubanga and Germain Katanga.

The situation in the case of Germain Katanga, who was convicted in 2014 for crimes committed in the Ituri region of the DRC, illustrates this issue. While a reparations order was issued in 2017, while the trial commenced on 24 November 2009, the TFV has struggled to gather enough funds to implement the reparations plan effectively, further prolonging the process for victims. The ICC's reparations process has faced long delays caused by complex harm assessments, procedural challenges, and funding shortages. These delays, evident in cases like Germain Katanga, undermine timely justice for victims. Balancing due process with efficiency remains a key challenge. Streamlining procedures, improving cooperation with local bodies, and enhancing victim participation are vital to restoring trust in the ICC's capacity to deliver effective and timely reparations.

4.5 Inability of domestic Systems to provide reparations

To overcome the issue of convicted person's inability to make reparations to their victims under ICC reparations regime, the ICC relies on the cooperation of states to enforce these orders, and the Court has to rely on the voluntarily contributed resources of the TFV (Moffet, 2014). The key element of providing justice for victims and accountability for violations is the duty of the State to provide reparations (Bassiouni, 2006). State reparations rest on a basic principle of international law, which states that an act of internationally wrongful character is governed by international law (Article 3 of (ILC), 2001). Additionally, non-member states are under no obligation to enforce ICC decisions, which can create gaps in global enforcement efforts.

The inability of domestic systems to provide reparations ordered by the International Criminal Court (ICC) reflects a significant gap between international justice and national implementation. States and domestic legal systems have the main responsibility for the enforcement of humanitarian and international human rights law.

Many states lack the financial resources, legal frameworks, or political will to fulfill reparation orders. For example, in *The Prosecutor v. Thomas Lubanga Dyilo*, where the ICC ordered collective reparations for child soldiers in the DRC, and the DRC government was unable to contribute to the reparations, leaving the burden to the ICC's Trust Fund for Victims (Decision of 18 July 2019, Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is

Liable). Also in *The Prosecutor v. Germain Katanga* (ICC-01/04-01/06 A7 A8), the ICC ordered reparations for victims of the Bogoro massacre in the DRC, but again, domestic mechanisms were insufficient to enforce this ruling.

The challenges include a lack of domestic legal infrastructure to manage and distribute reparations, especially in post-conflict societies. Many of these nations struggle to rebuild after conflict and may prioritize immediate stabilization efforts over justice for victims, despite the ICC's mandate. Consequently, reparations depend heavily on external bodies like the Trust Fund for Victims, which is often underfunded. The lack of domestic enforcement mechanisms perpetuates impunity for offenders and deepens the trauma of victims, who are left without meaningful redress. For the ICC's reparative justice to be effective, it is essential to strengthen national legal frameworks and ensure political commitment from member states.

Possible Reforms for Effectiveness of Victim Reparations under the ICC

Possible reforms to Individual and collective reparation limits

The potential solution to address the challenge of equitable distribution in cases with vast numbers of victims is to implement a tiered system of reparations. This system could prioritize those who have suffered the most severe harm while also ensuring that everyone receives some form of compensation.

To address the broader societal harms caused by mass atrocities, reparations should be combined with comprehensive transitional justice mechanisms. These could include truth commissions that focus on collective memory and public acknowledgment of past wrongs, as well as institutional reforms aimed at preventing future abuses. However, a holistic approach that includes both individual reparations and structural reforms ensures that reparative justice addresses both individual needs and the larger, systemic issues that contributed to the violence. This can promote societal healing, reduce the risk of recurrence, and foster reconciliation on both personal and collective levels. Establishing community-led committees to identify and address specific needs can further personalize the reparations process.

As for the collective reparation, one way to address the impersonal nature of collective reparations is by implementing hybrid models that combine collective and individual reparations. While infrastructure projects like healthcare centers and schools benefit entire communities,

integrating targeted support such as psychological counseling, financial assistance, or vocational training for particularly vulnerable individuals ensures that personal suffering is acknowledged. In the *Al Mahdi* case, the Court acknowledged that due to the large number of victims and the extent of the resulting economic harm, a collective form of reparation was more suitable (*Al Mahdi*, supra note 18, para. 82).

However in the *Katanga* case, victims dismissed collective symbolic measures as inappropriate, ineffective, or potentially disruptive (ICC-01/04-01/07-3728-tENG, para. 301). Similarly, in the *Al Mahdi* case, victims rejected the symbolic measures proposed by the Trust Fund for Victims such as memorialization, using *Al Mahdi*'s apology, considering them unsuitable (ICC-01/12-01/15-291-Red2, paras. 157–67). Furthermore, investing in community-centered reparations, such as rebuilding infrastructure and promoting economic opportunities, can help create a more equitable and inclusive reparative framework.

Solutions to Insufficient Funding for Victim Reparations under ICC

Since everyone convicted by the Court to date has been found to be indigent, a major challenge lies in finding the financial means to carry out the different types of reparations, both individual and collective mandated by the Court (Moffett & Sandoval, 2021). Voluntary donations to the Trust Fund are insufficient to support the Court's reparation mandate. This is partly because reparations should not rely on whether states or other actors choose to contribute, and also because, as Mégret (2014) points out, the issue involves an imbalance between the demand for reparations and the available resources.

One of the original answer to address the insufficient funding for victim reparations under the ICC is to establish a mandatory contribution mechanism for member states. Instead of relying solely on voluntary donations, states parties to the Rome Statute could be required to allocate a small percentage of their annual budget to the Trust Fund for Victims (TFV) as suggested Moffett & Sandoval (2021). This could be structured similarly to membership fees for international organizations, ensuring a steady and predictable flow of funds. Again, penalties for non-compliance, such as restrictions on voting rights within the ICC Assembly of States Parties, could incentivize contributions.

The Trust Fund for Victims (TFV) should be expanded into a more sustainable and autonomous funding entity that does not rely solely on voluntary contributions. A hybrid funding model could

be introduced, incorporating mandatory contributions from ICC member states, international corporate accountability mechanisms, and development aid programs. By diversifying funding sources and securing long-term financial commitments, the ICC can enhance its ability to bridge the gap between reparations orders and tangible victim relief.

In addition to this, creating a reparation bond program where institutional investors, corporations, NGO and philanthropists can invest in long-term funding for victim reparations would be an asset. These bonds could function similarly to social impact bonds, where investors provide upfront capital and receive returns based on measurable outcomes, such as the successful rehabilitation of victims. This approach would encourage global financial participation in transitional justice while providing a sustainable funding stream for reparations, reducing dependency on unpredictable voluntary contributions.

The provisions in the Rome Statute clearly reaffirm the obligation of placing the convicted persons under an obligation of providing reparations to their victims (Vasiliev & Sluiter, 2013). However, it is often said that the perpetrators lack the resources to adequately compensate for the harm caused by their crimes. To overcome this issue the ICC should establish a proactive asset-tracing mechanism within the ICC framework. This mechanism should involve collaboration with international financial institutions, national authorities, and forensic financial experts to identify and freeze and repurpose illicit assets linked to war crimes and assets belonging to accused individuals before and during trial proceedings. Finally, collaborations with anti-corruption bodies and financial intelligence units could help identify hidden assets, ensuring that perpetrators' wealth contributes meaningfully to victim reparations rather than remaining inaccessible due to legal loopholes.

Adjustments to Limited Scope of Victim Reparations of ICC

One potential approach to the limited scope of ICC reparations is to expand the eligibility criteria for victims beyond those directly linked to a convicted perpetrator. The ICC could establish a broader reparations framework that accounts for systemic victimization in mass atrocity cases, ensuring that entire affected communities receive reparations regardless of individual criminal responsibility. By allowing reparations to be awarded based on the gravity and scale of harm suffered rather than strict legal causation, more victims could be reached, including those left out due to acquittals, procedural limitations, or the death of the accused.

Another approach is to enhance international cooperation in the enforcement of reparations, particularly for victims who have fled to other countries. The ICC could establish legal mechanisms in partnership with national governments and regional bodies to facilitate the identification and compensation of displaced victims. This could involve cross-border agreements that recognize ICC reparations orders and enable victims to receive compensation regardless of their location.

Solutions to Delays in Reparations Process

The approach to address delays in the ICC's reparations process is to simplify procedural requirements and establish a more expedited framework for assessing harm and liability. The court could adopt a tiered approach where victims are classified based on the severity of harm suffered, allowing for faster initial compensation for those with clear and immediate needs while conducting a more detailed assessment for complex cases. Again, integrating standardized assessment tools and digital records could reduce bureaucratic inefficiencies, enabling quicker verification of victims' claims without compromising due process.

Another effective solution is enhancing partnerships with local organizations, civil society groups, and national courts to facilitate evidence collection and victim identification. These partnerships could also help implement interim relief programs that provide immediate support to victims while awaiting final reparations, ensuring they receive some form of justice without excessive delays. By leveraging local expertise and existing community networks, the ICC could overcome logistical barriers related to displacement, inaccessible records, and security concerns. Furthermore, training local actors in reparations procedures would improve coordination, making implementation more efficient.

Solutions to inability of domestic Systems to provide reparations

To address the issue of convicted persons' inability to make reparations to victims under the ICC's reparations regime, one solution is to establish a global reparations fund that consolidates contributions from both states and private sector entities. This fund could act as a safety net for victims when the national systems are unable to fulfill the reparations. States that are more capable could contribute proportionally based on their GDP or international obligations, with these funds then distributed by the ICC or through partnerships with international organizations, ensuring that victims receive reparations regardless of their country's economic and political

circumstances. By diversifying funding sources and broadening participation, the sustainability of reparations programs could be better secured.

One of the major challenge to expediting implementation in many States Parties is the insufficient technical expertise and limited financial resources needed to create thorough implementing legislation (Human Rights Watch, 2001). The solution is to improve domestic legal frameworks to enable more robust enforcement of ICC reparations orders. States could be incentivized to create dedicated reparations enforcement mechanisms within their legal systems, ensuring a seamless process from international ruling to local implementation. To facilitate this, the ICC could offer technical assistance, funding, and legal expertise to states, especially post-conflict countries, to help establish the necessary infrastructure and legal structures. Additionally, the ICC should consider creating bilateral agreements with member states to compel cooperation on reparations enforcement, underpinned by international accountability measures that would ensure countries adhere to their obligations.

Finally, the ICC could shift its focus to include a broader range of reparative measures that go beyond financial compensation, especially in states that lack the resources to provide cash reparations. This could involve expanding the scope of reparations to include in-kind contributions such as education, healthcare, and psychological support for victims, which could be provided through partnerships with local NGOs, civil society, and international development organizations. By fostering collaboration between multiple stakeholders, the ICC could create a more comprehensive and sustainable reparations model that addresses the long-term needs of victims while ensuring accountability and justice.

CONCLUSION AND RECOMMENDATIONS

Conclusion

As conclusion, the ICC's reparation framework is crucial as it highlights the evolving role of international criminal justice in addressing the needs of victims. While the ICC has made significant strides in incorporating victim-centered justice, the limitations in funding, procedural complexities, the exclusion of state responsibility hinder its full potential. Similarly, collective reparations, although valuable for addressing large-scale harms and fostering societal healing, risk overlooking the specific needs of individuals who may not directly benefit from broader programs.

Furthermore, systemic issues such as insufficient funding, prolonged delays in the reparations process, and weak enforcement mechanisms significantly hinder the ICC's ability to deliver meaningful justice to victims of mass atrocities. It calls for a holistic approach to ensure reparations provide meaningful justice for victims. However, without comprehensive reforms such as securing sustainable funding, improving procedural efficiency, and strengthening state cooperation, the reparations framework will continue to fall short of its intended goals. The proposed reforms, ranging from tiered compensation models and simplified legal processes to mandatory state contributions and proactive asset tracing-aim to ensure that victims receive meaningful redress while fostering long-term societal healing.

The key recommendations include: (a) Simplify the claims process and deploy mobile tribunals within the ICC to ensure remote communities access reparations efficiently and (b) the establishment of a hybrid Models of Individual and Collective Reparations. ICC member states should (c) allocate a budget percentage to the Trust Fund for Victims, introduce reparation bonds to attract investments, and enhance asset forfeiture to redirect illicit funds from perpetrators, ensuring sustainable funding for victim reparations. The ICC should also (d) expand reparations by strengthening cross-border agreements, ensuring displaced victims receive justice and support regardless of their location. (e) Establish an emergency reparations fund for interim relief, collaborate with local organizations for swift victim identification and evidence collection, and standardize assessment tools to accelerate claim verification, ensuring a faster and more efficient reparations process. (f) To strengthen asset recovery, establish an ICC asset-tracing unit to identify and freeze perpetrators' assets before and during trials. (g) Support domestic systems in

implementing ICC reparations by assisting states in creating enforcement mechanisms, offering technical and financial aid to enhance legal frameworks, and collaborating with NGOs and international organizations to deliver non-financial reparations, such as education, healthcare, and psychosocial support.

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