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Assessment of The Role of Trust Fund for Victims of International Crimes Under the Rome Statute

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Abstract

The International Criminal Court (ICC) has made a significant advancement compared to earlier courts regarding the rights of victims, especially by broadening the ways in which they can be protected, involved, and compensated. Article 75 states that reparations can be given either directly by the person found guilty or through the Trust Fund mentioned in Article 79. This article assesses the role of the Trust Fund for Victims of international crimes under the Rome Statute. In realising this objective, it adopts a qualitative research methodology, and the method used is the doctrinal method. The Trust Fund is very important as far as compensation for victims of international crimes is concerned. However, it suffers from inadequate resources that impede its effective role. It is demonstrated that the function of the Trust Fund is twofold: first, it can be used by the Court as depository, and it can be used by the Court as intermediary. It is recommended that the TFV also focus its attention on gathering voluntary contributions that will ensure the fulfilment of the reparation awards. Despite the inherent challenges, the TFV could still offer valuable lessons, or at the very least motivation for starting similar projects. These projects can help deal with certain issues such as the Rwanda genocide or serve a larger goal similar to the Fund for victims of torture.

Keywords: assessment; trust fund; victims; international crimes

1. Introduction

The practice of international justice has made a significant shift from narrowly focused criminal accountability to a broader and more holistic understanding of the total needs of victims' justice. In particular, international criminal justice is concerned with victims of mass atrocity crimes whose needs are profound and whose capacities are limited by the experiences of gross and systematic violence. These needs include the building of individual and communal capacity to participate in criminal processes, as well as remedy and repair of the aftermath of criminal procedures. The Trust Fund for Victims represents, in many ways, the epicenter of this shift in international law practice,

as a unique institution that has a central role in providing both assistance and reparations mandate under the International Criminal Court (Rome) Statute¹. This article is undertaken to address how well that task has been operationalised in practice by the Trust Fund in the compensation of victims of war crimes, genocide, and crimes against humanity. In parallel, the assessment has a wider purview by allowing a broad engagement with the challenges, complexities, and realities on the ground that shape the enforcement of reparations for victims, as well as moulding institutional responses by interveners including the Trust Fund which remains one of the main means of compensating victims under the Rome statute especially when the offender cannot afford the damages or pay for the damages provided for by the court. Given the challenges of successfully implementing reparations, there is often little time or capacity to measure (as one goes along) what has worked effectively and what has not. International organisations, states, courts, and civil society have made consistent calls for evidence of success, failure, and/or the value of reparations.²

In addition, the value of evaluation in the practice of transitional justice, international criminal law, and human rights is increasingly recognised.³ At the simplest level, because most human rights and humanitarian law treaties provide for the right to a remedy, assessing if remedies work in practice is critical to understanding whether state obligation has, in fact, delivered.⁴ State obligations with respect to reparations follow from the essential right to a remedy contained in both human rights and humanitarian law treaties.⁵ Delivering remedies in practice has proven challenging for states not only in the provision of adequate resources, but in providing fair, transparent, and accessible processes to victims of serious human rights violations in a consistent and effective way. The Trust Funds for victims therefore become the only way out, especially with the manner in which some of these crimes are committed.

Questions of repairing harm suffered by victims of mass atrocity are issues that traditionally have fallen outside the scope of international criminal law. The major focal point of international criminal law for a long period of time has been the punishment of perpetrators, not the question of reparations.⁶ The International Criminal Court (the ICC or the Court) represents an important step forward for the rights and recognition of victims in international criminal law, and the trust fund created under the ICC is an essential means in the preparation of victims of war crimes, genocides, and crimes against humanity. According to the Rome Statute of the International Criminal Court (ICC), the Trust Fund for Victims (TFV) plays a crucial role in providing reparations and assistance to people who have suffered harm as a result of crimes within the jurisdiction of the Court, namely genocide, crimes against humanity, war crimes, and aggression.⁷ The TFV was officially established

¹Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) [hereinafter Rome Statute]. The Rome Statute, art. 68(3) proclaims the principle of victim participation [w]here the personal interests of the victim are affected.”

²For example, *Prosecutor v. Lubanga*, ICC-01/04-01/06-3217, Order Pursuant to Rule 103 of the Rules of Procedure and Evidence, 5, 7 (July 15, 2016).

³Thoms et al., *State-Level Effects of Transitional Justice: What Do We Know?*, 4(3) *International J. Transitional Just.* 329 (2010).

⁴Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at art. 8 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 23, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171; Rome Statute, *supra* note 1 at art. 68, 75; African Charter on Human and Peoples’ Rights CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 7.

⁵While the term reparation is used in many contexts, in international law it has generally been understood to designate measures to be adopted for the redress of various harms resulting from certain crimes or breaches of state responsibility. The move from state to individual remedy in this context is a significant shift in its own right. Rep. of the Int’l Law Comm’n, 53rd Sess., April 23–June 1, July 2–August 10, 2001, Draft Articles on Responsibility of States for Internationally Wrongful Acts, With Commentaries, U.N. Doc. A/56/10, at arts. 1, 31 (2001) [hereinafter Draft Articles]; Pablo de Greiff, *Justice and Reparations*, in *The Handbook of Reparations* 453 (Pablo de Greiff ed., 2006).

⁶Bassiouni, M. Cherif, *International Recognition of Victims’ Rights*, in *Oxford Journals, Human Rights Law Review*, 6 (2), 2006, p. 203

⁷Vasiliev, Sergey. & Sluiter, Göran. (eds.), *International Criminal Procedure: Principles and Rules*, Oxford University Press,

on 9 September 2002, pursuant to Article 79(1) of the Rome Statute.⁸ The Fund is the first of its kind in international law with the mission of supporting activities which address the harm of victims caused by international crimes.⁹ As there are practical challenges of implementing Court-ordered reparation awards, the TFV has a crucial role to play when working with victims in the implementation process. If the ICC could not provide a meaningful reparations programme, it would lose credibility in the eyes of victims and the general public.¹⁰

There are two distinct aspects of the overall mandate of the TFV. First, to implement reparation awards ordered by the Court against a convicted person and second, to use its other resources for the benefit of victims subject to Article 79 of the Rome Statute.¹¹ It is impossible to discuss the reparation of victims under the ICC without discussing the role played by the trust fund in compensating victims as a result of war crimes, genocide, and crimes against humanity.

2. The Rationale for the Trust fund for Victims under the Rome Statute

The Trust Fund for Victims (TFV) is justified under the Rome Statute as a mechanism to ensure justice and redress for victims of the most serious crimes, even when perpetrators cannot provide reparations. Its legal foundation is laid out in Article 79 of the Rome Statute. The Rome Statute embodies a growing international understanding that justice for mass atrocities must include victims' voices and needs. The TFV operationalises this principle by ensuring that justice is not only punitive, but also restorative and inclusive. One fundamental purpose of the TFV is to fill a justice gap. Many perpetrators are indigent or unable to pay reparations. The TFV ensures that victims are not left without support. The TFV provides material, psychological and symbolic assistance, helping victims rebuild their lives.

The Trust Fund was created under the Rome Statute as a unique mechanism "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims".¹² By delivering tangible benefits to victims, the TFV enhances the Court's credibility and moral authority. The Rome Statute acknowledges victims' rights to participation, protection, and reparation as a justification, and affirms victim rights. The rationale for the TFV was acknowledged in the case of *Prosecutor v. Ahmad Al Faqi Al Mahdi (ICC-01/12-01/15)*. In its Reparations Order of 17 August 2017, the ICC Trial Chamber VIII stated: The Trust Fund for Victims plays a crucial role in implementing reparations, ensuring that victims receive appropriate redress and support, especially when the convicted person is indigent.¹³ In multiple decisions, the ICC has affirmed that the TFV exists to: Operationalise victims' rights under Article 75 and 79 of the Rome Statute, Bridge the gap between legal judgement and real-world justice, and Support victims' recovery and reintegration, even outside judicial proceedings (through its assistance mandate).

3. The functions of the Trust Fund in the Compensation of Victims under the Rome Statute

Under the Rome Statute, the function of the Trust Fund is two-fold:¹⁴

Oxford, 2013, P. 67

⁸7 ICC-ASP/1/Res.6, Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims, 9 September 2002.

⁹Vasiliev et al., 2013, p. 1361

¹⁰TFV Strategic Plan 2014–2017, 2014, p. 18

¹¹Rule 98(2–5) of the RPE

¹²

¹³ICC-01/12-01/15 P, 9.

¹⁴However, the Assembly of States Parties might extend the competencies of the Trust Fund beyond these two aspects to benefit victims of crime within the jurisdiction of the Court, and of the families of such victims.

1) It can be used by the Court as depository. This means that the Court can order money and other property collected through fines or forfeiture to be transferred to the Trust Fund. The Trust Fund collects these funds, pools them together, and utilises them for the benefit of victims as provided in article 79.2; and

2) It can be used by the Court as an intermediary. This means that, when the Court "...makes an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims...", it can also order that the award of such reparations be made through the Trust Fund as provided in article 75.2 of the Rome Statute.

There is a substantial difference on how the trust fund can be used by the court as a depository and how it can act as an intermediary under article 75.2 and those under 79.2 of the Rome Statute. Indeed, it is only in the case of funds deriving from fines and forfeiture under article 79(2) that the Trust Fund will actually act as a trustee. This is referred to as the one who holds legal title to property in trust for the benefit of another person.¹⁵ The wording of article 75(2) clearly indicates that reparations can be awarded by the Court's order into the Trust Fund.¹⁶ This means that the Trust Fund never acquires proprietary rights to compensation awarded for the benefit of victims. It merely acts as an intermediary.¹⁷ It follows that while the Trust Fund can use funds deriving from fines and forfeiture for anything it might consider beneficial for victims, in the case of awards for reparations, it is bound to disburse it solely to the victims of that particular convicted individual at the time and in the forms decided by the Court. This fundamental difference in functions has an enormous impact on the way the Trust Fund will be structured, managed and financed, and on its relations with the Court.

4. The Trust Fund as "Depository"

According to Article 79(2) of the Rome Statute, the Trust Fund for Victims (TFV) is described as a "depository" of resources intended to benefit victims of crimes under the jurisdiction of the International Criminal Court (ICC). This designation has specific legal and operational implications. The term "depository" refers to the TFV's role as a custodian or holder of funds that are: Collected through fines or forfeitures imposed by the ICC, received as voluntary contributions from States Parties, organizations, or individuals and allocated for the benefit of victims and their families.¹⁸ In this sense, the TFV acts as a secure and accountable financial repository, ensuring that resources are preserved, managed, and disbursed in accordance with ICC rulings and victim needs.

Under article 77(2) of the Rome Statute, in addition to imprisonment, the Court may order fines and forfeiture of proceeds, property and assets derived directly or indirectly from the adjudged crime, without prejudice to the rights of bona fide third parties.¹⁹ Fines will be collected and property will be forfeited by States Parties, in accordance with the procedure of their national law, and they will

¹⁵Shelton, D. L., *Remedies in International Human Rights Law*, Oxford: Oxford University Press, 1999, p. 70

¹⁶Indeed, the Preparatory Committee's Draft Statute authorized the Court to order that the award of reparations be made into the Trust Fund. See Report of the Preparatory Committee on the Establishment of an International Criminal Court, Draft Statute & Draft Final Act, UN Doc. A/Conf.183/2/Add.1, 1998, art. 73. In any event, the French text of article 75.2 leaves no room for doubt. It reads: "La Cour peut rendre contre une personne condamnée une ordonnance indiquant la réparation qu'il convient d'accorder aux victimes ou à leurs ayants droit. Cette réparation peut prendre notamment la forme de la restitution, de l'indemnisation ou de la réhabilitation. Le cas échéant, la Cour peut décider que l'indemnité accordée à titre de réparation est versée par l'intermédiaire du Fonds visé à l'article 79."

¹⁷Shelton, D. L., *Op. Cit.*, 78.

¹⁸Walker, Margaret Urban, *What Is Reparative Justice?*, Marquette University Press, Milwaukee, 2010, P. 56.

¹⁹Article 77 Applicable penalties 1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute: (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. 2. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties

transfer those funds to the Court as per art. 109 of the Rome Statute.²⁰ The Court may eventually order money and any other property collected through fines or forfeiture to be transferred to the Trust Fund as seen in art. 79.2.²¹ The significance of this funding source for the Trust Fund will largely depend on the amount of fines imposed. In determining fines, according to the criteria provided in the Rules of Procedure and Evidence, the Court shall take into account such factors as the gravity of the crime and the individual circumstances of the convicted person. For example, age or social and economic conditions of the convicted person, the motive of crime, or superior orders. This can be seen in art. 78(1) of the Rome Statute.²²

When these funds are transferred to the Trust Fund, the Rome Statute does not give any further directions on how they can be used, nor who will have the power of decision. In other words, The Rome Statute does not give any directions on how art. 79(2) funds cannot be used, nor who will have the power of decision.²³ This is a critical gap that should be addressed in drafting the Court's Rules of Evidence and Procedure. The Court should have the primary responsibility to determine their allocation. The power to decide how to allocate money and any other property collected through fines or forfeiture could rest with the Court or with the Trust Fund. Among the two solutions, it is the Court which should be given the primary responsibility to determine allocation in its order of transfer to the Trust Fund. The Trust Fund should be allowed to determine the destination and use of such funds only when the Court has declined to do so.²⁴ In the Rome Statute the power to decide on the amount, management, and destination of compensation rests with the Court. If money and any other property collected through fines or forfeiture is eventually to be used also to supplement inadequate reparations that victims of crimes can obtain from the convicted person (i.e. inadequate because assets could not be seized or because they are insufficient), then the Court must have full control of these resources. Article 79(2) provides that funds should be used for the benefit of victims only. Under no circumstances should they be used to support operational costs of the Court.

Regardless of whether the decision on the use of funds deriving from fines and forfeiture is taken by the Trust Fund or the Court, such funds should be used for the benefit of victims only. Under no circumstances should they be used to support operational costs of the Court.²⁵ The legislative history of the article supports such interpretation.²⁶ The fact that funds deriving from fines and forfeiture

²⁰Article 109: Enforcement of fines and forfeiture measures 1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law. 2. If a State Party is unable 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. 3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgment of the Court shall be transferred to the Court.

²¹The international criminal tribunals for the former Yugoslavia and Rwanda offer no guidance as they do not have provisions on the imposition of fines in their statutes.

²²Article 78: Determination of the sentence 1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person. 2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime. 3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

²³Article 79(2) of the Rome statute.

²⁴Ferstman, M. Goetz and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity, Systems in Place and Systems in the Making*, Martinus Nijhoff Publishers, Leiden, 2000, pp. 313.

²⁵Bottiglierio, Ilaria, *Redress for Victims of Crimes under International Law*, *Martinus Nijhoff*, Boston, 2004, P. 133.

²⁶Article 79, providing for the establishment of the Trust Fund, is in Part 7 of the Rome Statute (Penalties). In earlier drafts the Trust Fund was part of the provision on fines collected by the Court. Both the International Law Commission Draft Statute and the Preparatory Committee Draft Statute indicated that fines could either be transferred to a trust fund, to the State of which the victims were nationals, or to the Registry to defray the costs of the trial. Conversely, during the negotiations in Rome, preference was given to using the funds collected through fines and forfeiture to benefit victims through a trust

are not included as sources of the Court's funding listed in article 115 also strongly supports such a conclusion. Having said this, it remains to be seen which victims should benefit and how much money and other property are collected through fines or forfeiture. Legal aid should be granted not only in proceedings before the Court itself, but also for any other proceedings in national fora aimed at obtaining reparations when the Court has declined doing so. Clear policies on the allocation of such funds between cases will have to be adopted. Indeed, in the Rome Statute article 79(2), funds are not earmarked exclusively for the benefit of the victims of the case from which they originate. Nothing in the Statute prohibits the use of money and other property collected through fines or forfeiture for purposes other than financing compensation. The Rules of Procedure and Evidence should clearly indicate that the Court (or the Trust Fund, if the Court declines to do so) may designate such funds for purposes other than financial compensation.

In 2014, the trust fund was used in the case of the *Prosecutor v. Germain Katanga* also known as the Katanga case.²⁷ The Katanga case is a pivotal example of how the Trust Fund for Victims (TFV) operates under the Rome Statute to deliver reparations and support to victims of international crimes. It showcases the role of the TFV in implementing court-ordered reparations when the convicted person cannot pay. Based on the facts of this case, Germain Katanga was convicted by the ICC in 2014 for his role in the 2003 attack on Bogoro village in the Democratic Republic of Congo (DRC). He was accused of committing War crimes and crimes against humanity, including murder, destruction of property, and pillaging. Civilians in Bogoro suffered serious harm from loss of family members, homes, livelihoods, and psychological trauma. In 2017, the ICC issued a reparations order for 297 victims. Katanga was declared indigent, so the TFV stepped in to fund and implement the reparations using its own resources. Each victim received \$250 USD as symbolic compensation in cash, including; Housing support, Income-generating activities, Education assistance, Psychological rehabilitation. The TFV conducted consultations with victims to tailor reparations to their needs. The emphasis was placed on restoring dignity, rebuilding lives and fostering community healing. This case is important to this work; it was the First ICC case to deliver both individual and collective reparations. It further demonstrated the ability of the TFV to translate legal judgments into meaningful support and also Reinforced the principle that justice must include restoration, not just punishment.

However, it is important for us to question the amount which was given to these victims as compensation for war crime and crimes against humanity 250 US dollars is insufficient to compensate ordinary people whose livelihood has been destroyed as a result of the wickedness of another person. Also, in the case of *Prosecutor v. Ahmad Al Faqi Al Mahdi* (Mali)²⁸, the trust funds for victims were also used in war crimes to cover cultural heritage. The case of *Prosecutor v. Ahmad Al Faqi Al Mahdi* is a landmark in the history of the International Criminal Court (ICC) and the work of the Trust Fund for Victims (TFV). This case was heard by Trial Chamber VIII of the International Criminal Court (ICC) and is part of the Situation in Mali. It was the first ICC case to focus on the destruction of cultural heritage as a war crime, and it set important precedents for reparations and restorative justice. From the facts of the case, the defendant Ahmad Al Faqi Al Mahdi from Mali was convicted on 27 September 2016 on War crime of intentionally directing attacks against religious and historic buildings in Timbuktu during the 2012 armed conflict. He was sentenced to 9 years imprisonment. Regarding the rule of the Trust Fund for Victims in this case, a Reparations Mandate was activated.

fund and other options were accordingly dropped from the text, see Report of the International Law Commission on its Forty-Sixth Session, Draft Statute for an International Criminal Court, May 2 -July 22, 1994 (UN Doc. G.A., 49th Sess., Supp. No. 10, A/49/10, 1994), art. 47 and Report of the Preparatory Committee on the Establishment of an International Criminal Court, Draft Statute & Draft Final Act, supra note 3, art. 79. In 1996, the Preparatory Committee on the Establishment of an International Criminal Court, debated whether "...the International Criminal Court should concern itself with the collection of pecuniary sanctions, other than for the purpose of compensating victims". See UN Doc. G.A., 51st Sess., Supp. No 22, A/51/22, 1996, footnote 69, at 228.

²⁷ICC-01/04-01/07

²⁸ICC-01/12-01/15

In August 2017, the ICC issued a reparation order recognising the material, moral and symbolic harm caused to the people of Timbuktu. Al Mahdi was declared indigent, so the TFV stepped in to fund and implement the reparations. Three types of reparation were then issued, which are; individual, collective, and Symbolic reparations.²⁹ Individual reparations were for those directly affected by the destruction. Collective reparations included; Reconstruction of damaged sites, Community healing programmes, and Cultural preservation initiatives. The Al Mahdi case highlights how the Trust Fund for Victims can deliver innovative and culturally sensitive reparations, even in cases where the harm is not physical, but deeply spiritual and communal. It shows the commitment of the ICC to protecting cultural heritage and supporting victims to rebuild their identity and dignity. The work of TFV helped restore Timbuktu's cultural heritage, which is central to its identity as a World Heritage Site of the UNESCO. It also promoted community reconciliation and resilience, showing how reparations can go beyond financial compensation to rebuild social and spiritual foundations.

5. The Trust Fund as "Intermediary"

The second function of the Trust fund for Victims is that it acts as an intermediary. When the Trust Fund for Victims (TFV) is described as an "intermediary", it refers to its role as a bridge between the International Criminal Court (ICC) and victims, facilitating the delivery of reparations and assistance in a way that is practical, culturally sensitive, and responsive to victims' needs.³⁰ The intermediary function is also referred to as *The Dual Mandate of the TFV*.³¹ According to article 75(3) of the Rome Statute: "*Before making an order under this article,*³² *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.*" The Court is not required to consult the convicted person, victims, other interested persons or interested States before ordering and/or awarding reparations, since it is given a discretionary power to do so ("may"). However, once the position of these participants has been ascertained, the Court shall take it into account. What is remarkably missing from this reference is the Trust Fund. Nothing seems to prevent the Court from inviting representations from the Trust Fund for this purpose. However, to ensure the competent management and control of funds entrusted to the Trust Fund, it is crucial that the Rules of Procedure and Evidence mandate the Court to consult the Trust Fund before an order on reparations is made. The Trust Fund can best assess its capacity to fulfil reparations orders.³³ Admittedly, awarding of reparations by the Court will be based first and foremost on abstract legal principles relating to reparations for victims. However, the Trust Fund's actual capacity to obtain such awards must be considered. Moreover, the Trust Fund will be bound by its own regulations and operational policies which might prevent it from transferring funds in the terms requested by the Court.³⁴

Once the Court has ordered the convicted person to make reparations, it can also order the award to be made through the Trust Fund. The actual use of the Trust Fund as a means of transferring

²⁹Symbolic reparations included Public acknowledgment of harm and Ceremonies and memorials to honor the cultural loss

³⁰Alice Chang-Jung Yang, (2016), *The Prosecution's Duty of Disclosure before International Criminal Tribunals*, Brunel Law School, Brunel University, P. 44.

³¹McCarthy, Conor, Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory, in *The International Journal of Transitional Justice*, Vol. 3, 2009, pp. 250.

³²That is an order to repair and/or to award reparations through the Trust Fund.

³³Leyh, Brianne McGonigle, *Procedural justice? Victim Participation in International Criminal Proceedings*, Intersentia, Cambridge, 2011, P. 34.

³⁴For instance, trust funds under the management of the United Nations Secretary-General have rules requiring the preparation of a cost plan and spending authority, see Secretary-General's Bulletin, Establishment and Management of Trust Funds, UN Doc. ST/SGB/188 of 1 March 1982, Administrative Instruction: General/ Trust Funds, UN Doc. ST/AI/284 of 1 March 1982, Secretary-General's Bulletin, Financial Regulations and Rules of the United Nations, UN Doc. ST/SGB/Financial Rules/1/Rev.3(1985).

reparations from the convicted person to victims is only optional. Reparations are first transferred to the Court, and the Court could decide to transfer them directly to victims. Yet, direct transfer is likely to take place only for those cases where reparations do not take the form of monetary compensation but rather of restitution. When reparations take the form of compensation, preference should be given to using the Trust Fund.³⁵

As the experience of the 1990 Gulf War demonstrates, it is unlikely that sufficient funds could be exacted from convicted persons to pay all claims.³⁶ Fines and forfeiture transferred to the Trust Fund could provide additional funding for this award. Actually, it might be easier for the Court to seize fines and forfeited property or assets than to get reparations. The Rome Statute provides that upon warrant of arrest or summons, the Court might ask States Parties to identify, trace, and freeze proceeds, property and assets, and instrumentalities of crimes for the purpose of eventual forfeiture, should the indictee be found guilty in accordance with article 57(3) (e) and (93) (1) (k).³⁷

However, under the Statute the Court cannot take similar provisional measures with regard to reparations until it has actually convicted the accused person.³⁸ This makes the collection of forfeited assets and property more likely than that of reparations. This is why article (79)(2) funds should also be used to finance reparations.³⁹ Yet, even when funds deriving from fines and forfeiture are drawn, it is still unlikely that the Trust Fund will have sufficient resources to pay all claims. Criteria on the priority of payments should be set. Various factors could be taken into account, such as the kind of injury-to be repaired, or the nature of the claimant who can either be natural or legal person.⁴⁰ Another issue to be considered is whether to resort to instalment payments for all or only certain groups of victims.⁴¹ and finally, in the case those awards are financed.

An examination of the functions of TFV as an intermediary requires us to study the dual mandate of the trust funds under this heading. As mentioned above, the intermediary function is also called the dual manage of the TFV. What differentiates the ICC's reparations regime from its predecessors is the possibility of complementing reparations orders with voluntary contributions not derived from the perpetrator.⁴² As the TFV is an independent body of the Court, it does not have to link its own finances to the convicted person.⁴³ It should be noted that Court-ordered reparations primarily address the harm caused to people rather than their current needs. Reparations could be strictly symbolic while victims need material support. The TFV's assistance mandate makes it possible for victims and their families to receive assistance prior to a conviction, using the Fund's

³⁵McCarthy, Conor, *Reparations and Victim Support in the International Criminal Court*, Cambridge University Press, Cambridge, 2012, P. 120.

³⁶This is even more true given that while UNSC Resolution 687 established State responsibility, in the case of the ICC only individual responsibility applies. Since 1991, the United Nations Compensation Commission has received approximately 2.6 million claims seeking compensation in excess of \$300 billion. As of April 1999 the fund has been able to pay \$2.7 billion. As it was clear that available funding would not be enough to pay all claims, the United Nations Compensation Commission adopted the Priority of Payment and Payment Mechanism Guiding Principles, UN Doc. S/AC.26/Dec. 17 (1994).

³⁷Of course, assistance in the identification and tracing of assets by States which are not party to the Rome Statute would depend on their national law. E.g., the U.S. Statutes on International Judicial Assistance provides that the "...district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal", 28 U.S.C. §1782.

³⁸In exercising its power under [article 75: Reparations to Victims], 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.

³⁹All general trust funds under the administration of the Secretary-General are charged for the program support function carried out by the organization, Administrative Instructions: General Trust Funds

⁴⁰Letschert, Rianne, Haveman, Roelof, De Brouwer, Anne-Marie & Pemberton, Antony (eds.), *Victimological approaches to international crimes: Africa*, Intersentia, Cambridge, 2010, P. 220.

⁴¹The UNCC made pro rata payments to Governments as funds became available,

⁴²McCarthy, Conor, 2012, Op, Cit, P, 167

⁴³ibid

voluntary contributed resources.⁴⁴ Although the assistance is not related to a convicted perpetrator, the support is very important to address the urgent needs of victims that predate the conviction. This may consequently have a reparatory effect on victims. The Rome Statute does not explicitly mention that the TFV can provide independent support to victims. Rule 98(5) sets out the option for the Fund to provide assistance to victims outside the scope of Court-ordered reparations: “Other resources of the Trust Fund can be used for the benefit of victims subject to the provisions of article 79”. The other resources refer to resources other than those collected through reparations, fines, and forfeitures; i.e. voluntarily contributed resources.⁴⁵ Without prejudice to its assistance mandate, the Board of Directors shall further undertake all reasonable endeavours to provide adequate resources to complement Court-ordered reparations.⁴⁶

Given the dual mandate of the TFV, an important question is how to apportion its other resources between complementing Court-ordered reparations and its assistance programmes. The Court has touched on this matter in its decision on the notification by the TFV to implement assistance programmes in the Democratic Republic of the Congo (DRC). Pre-Trial Chamber I held that; “the responsibility of the Trust Fund is first and foremost to ensure that sufficient funds are available in the eventuality of a Court reparation order pursuant to article 75 of the Statute.”⁴⁷ The TFV would have to take factors such as the nature of the crimes and the size of the beneficiary group, when deciding on what adequate resources would amount to within the meaning of the TFV being required to allocate resources for reparations.⁴⁸ As an intermediary, the trust funds can be used as Reparation Mandate and Assistance Mandate.

6. Challenges of the Trust Fund

One of the biggest problems of the trust fund is having enough money and resources to help the many persons who might sadly become victims of crimes that the ICC deals with. The TFV can get money from several sources: (1) donations from governments, international organisations, private people, businesses, and other groups based on rules set by the ASP; (2) cash and assets collected through penalties or seized items that the Court orders to be given to the TFV according to Article 79 of the ICC Statute; (3) funds received as reparations if the Court decides to give them out; and (4) any other resources the ASP chooses to provide to the TFV that are not mandatory contributions. The funds of the TFV will thus necessarily be limited.⁴⁹

The Trust Fund has limited resources and capacity, but is expanding its operations in other Regions. The expansion of the work of the Trust Fund presents a pragmatic challenge for the organisation and in the effective reparation of victims of war crimes under the Rome statute. The Trust Fund is in the process of opening a new assistance mandate in Cote d’Ivoire while continuing its work in both Uganda and the Democratic Republic of the Congo.⁵⁰ , it is considering reinstating the Central African Republic programme, which was suspended for security concerns in 2013 and expanded to Mali. The ICC has started to reach the reparations stage of its cases and has now issued reparations

⁴⁴Kithure Kindiki, “Prosecuting the Perpetrators of the 1994 genocide in Rwanda: Its basis in international law and the implications for the Protection of Human Rights in Africa”, 2001, *1 African Human Rights Law Journal*, P. 34.

⁴⁵Regulation 47 of the RTFV

⁴⁶Regulation 56 of the RTFV.

⁴⁷ICC-01/04-492, PTC1, Decision on the Notification of the Board of Directors of the Trust Fund for Victims in accordance with Regulation 50 of the Regulations of the Trust Fund, 11 April 2008, p. 7.

⁴⁸Regulation 55 of the RTFV.

⁴⁹Cohen, M. G. (2017, June 28). Reparations for international crimes and the development of a civil dimension of international criminal justice. p.182.Retrieved from <https://hdl.handle.net/1887/50081>, visited, 21/02/2026.

⁵⁰Press Release, International Criminal Court, Trust Fund for Victims Decides to Launch Assistance Programme in Côte d’Ivoire, U.N. Press Release ICC-TFV-20170517-PR1304 (May 17, 2017), <http://perma.cc/9RGJ-9CAU>(stating that the ICC will launch a new assistance program in Côte d’Ivoire “to provide physical, psychological rehabilitation and material support for the benefit of victims of crimes.”).

orders in three cases activating the Trust Fund's responsibilities under its reparations mandate for the first time.⁵¹ Though the Trust Fund is part of the ICC, it does not receive any funding from the Court to carry out its work and must raise funds from donor governments.⁵² Despite its limited resources, the Trust Fund has accomplished a great deal to date, evidenced by the success of the assistance mandate in Northern Uganda. However, the increasing demands placed on the Trust Fund present a significant challenge for future work and require greater attention from states and the ICC Chambers as they oversee the Trust Fund's implementation processes.

7. Conclusion

The primary rationale for the provision of the Trust Fund in the Rome Statute was originally to endow the Court with a mechanism to collect, pool together, and redistribute funds deriving from the enforcement of fines and forfeiture. In addition to this core function, the Court might use the Trust Fund as an intermediary for the financing of reparations. The use of the Trust Fund for these functions is not mandatory, but this paper suggests that the Court should use the Trust Fund to the maximum extent possible. This will free the Court from routine tasks and allow it to concentrate on its judicial functions. The Rome Statute does not give directions on how funds derived from money and any other property collected through fines or forfeiture should be allocated, nor on who will have the power to make such decisions. This is a critical gap that should be addressed at the stage of drafting the Court's Rules of Evidence and Procedure.

This study has argued that the Court should have the primary responsibility to decide on the use of funds deriving from fines and forfeiture. The Trust Fund should be allowed to determine the destination and use of such funds only when the Court has declined to do so. Article 79.2 funds (fines and forfeiture) should be used for the benefit of victims only. Under no circumstances should they be used to support operational costs of the Court. They should first be used to finance compensation. However, the Rules of Procedure and Evidence should further indicate that the Court (or the Trust Fund, if the Court declines to do so) may use such funds for purposes other than compensation, such as legal aid of victims, interim relief, or humanitarian assistance. In particular, legal aid should be granted not only in proceedings before the Court itself but also for any other proceedings in national fora aimed at obtaining reparations when the Court has declined to do so. It is the responsibility of the Assembly of States Parties to decide whether the Trust Fund should take on a broad role and assist all victims within the jurisdiction of the Court and their families by various means.

Nevertheless, the Trust Fund's non-judicial nature will need to be clearly stressed to avoid any misgivings on the effects of its various engagements. The Court's use of the Trust Fund to award reparations needs to be carefully considered. First of all, the legal implications of the Court's order under article 75.2 need to be elaborated upon, and the eventual extent of the Trust Fund's obligations has to be specified. Secondly, the Court will need to establish a mechanism or organ (perhaps a "Claims Bureau") to keep track of and process claims for reparations.

The Trust Fund should be allowed to rely on such an organ as much as possible. Because of its relatively limited assets, the Trust Fund should not be burdened with procedural costs which could otherwise be handled by other bodies financed from the regular budget of the Court. Thus, the Trust Fund should only be used for distribution of available funds, but not as a claim processing instrument.

Criteria for setting priorities for the payment of reparations should be set, possibly as early as in

⁵¹Press Release, Following Mr. Bemba's Acquittal, ; Statement by Trust Fund for Victims Board of Directors: Under the Rome Statute, Reporative Justice Provides Undeniable Value to Victims, International Criminal Court.

⁵²Frédéric Mégret, *Justifying Compensation by the International Criminal Court's Victims Trust Fund: Lessons from Domestic Compensation Schemes*, 36 Brook. J. Int'l L. (2010), p 123.

the Rules of Procedure and Evidence. Moreover, to ensure competent management and control of funds entrusted to the Trust Fund, it is crucial that the Rules of Procedure and Evidence mandate the Court to consult the Trust Fund before an order on reparations is made.

Finally, concerning funding of the Trust Fund with resources other than those specified in the Statute, this paper argues that the Trust Fund should not encumber the Court's budget and vice versa. The two should remain as separate as possible. The Trust Fund should be allowed to receive voluntary contributions, and the Assembly of States Parties will need to adopt criteria deciding when, from whom, and in which form donations can be accepted and how these funds will be used. These criteria should be broader than those of the Court, and the Trust Fund should be allowed to engage in negotiations with governments and other potential contributors. However, should voluntary contributions be excluded from the Trust Fund's funding sources, it should nevertheless be considered whether the Court should share with the Trust Fund some of the voluntary contributions it might receive under article 116 of the Rome Statute.

Thus, the Trust Fund for Victims (TFV) plays a pivotal role in transforming international justice from legal abstraction into lived reality for victims of war crimes. Established under Article 79 of the Rome Statute, the TFV ensures that reparations are not merely symbolic but restorative, inclusive, and responsive to the deep scars left by conflict. The TFV renders justice beyond conviction. The TFV bridges the gap when convicted individuals are indigent, ensuring that victims still receive reparations. Prioritise dignity, healing, and empowerment through individual, collective, and symbolic reparations. From the Democratic Republic of Congo to Mali and Uganda, TFV has implemented reparations that rebuild lives and communities. Its existence affirms the commitment of the ICC to restorative justice, recognising that accountability must include redress. Ultimately, the TFV embodies the principle that justice must not only punish perpetrators but also repair the harm suffered by victims, making it an indispensable pillar of international criminal justice.

It is recommended that the TFV also focus its attention on gathering voluntary contributions that will ensure the fulfilment of the reparation awards. Despite the inherent challenges, the TFV could still offer valuable lessons, or at the very least, motivation for starting similar projects. These kinds of project can help address certain issues, such as the genocide in Rwanda, or serve a wider goal, similar to the Fund for victims of torture mentioned earlier.

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Le cas echeant, la Cour peut decider que l'indemnité accordee a titre de reparation est versee par l'intermediaire du Fonds vise a l'article 79."

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