THE RIGHT OF VICTIMS TO REPARATIONS UNDER INTERNATIONAL LAW COMPARATIVE ANALYSIS OF THE AD HOC INTERNATIONAL CRIMINAL TRIBUNALS, SPECIAL COURTS AND THE INTERNATIONAL CRIMINAL COURT

Donatien Nikuze*

ABSTRACT

Victims have long been silent partners in the prosecution of perpetrators of genocide and serious human rights violations. Victims have been brought to courts for the sole purpose of testifying on their traumatic experiences. However, international standards such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, recognize victims' rights to be treated humanely. These texts also recognize the right of victims to adequate, effective and prompt reparations, which should be proportional to the gravity of the violations and harm suffered. This article analyzes the normative framework and practice of victim reparations under the ad hoc International Criminal Tribunals and Special Courts in comparison to the International Criminal Court. This paper concludes that the ad hoc tribunals should be brought to compliance with international standards comparing to the International Criminal Court, which is also an imperfect institution.

Key words: Victim; Reparation; International Criminal Tribunal; Special Court, International Criminal Court.

* Research Fellow, Research and Documentation Center on Genocide, National Commission for the Fight against Genocide, Kigali, Rwanda

1. Introduction

International courts and tribunals have existed since the beginning of the modern international justice system.[1] Modern international courts and tribunals are diverse in their mandates, structure, and organization (Philippe Sands et al., 1999). They have long enabled states and others to settle disputes. However, it was the Nuremberg trials after Second World War that most clearly marked the beginning of ad hoc tribunals dealing with criminal cases against individuals accused of the core international crimes, such as genocide, war crimes and crimes against humanity.

Genocide[2], crimes against humanity[3], and war crimes[4] are recognised worldwide as the most abhorrent of crimes. The perpetrators of these crimes are understood as enemies of all mankind (*hostis humani generis*) and must be held accountable for what they have done.

In recent years, a number of criminal tribunals and special courts have been established to investigate, prosecute and try individuals accused of genocide and serious human rights violations. In 1944, following Second World War, the first special ad hoc International Criminal Tribunals were held in Nuremberg, Germany and Tokyo, Japan. These International Military Tribunals (IMTs) were

[1]The first international court—the Central American Court of Justice— was established in 1907. The next international court to be established was the Permanent Court of International Justice in 1922, in The Hague. Therefore, the number of international courts has since increased markedly. Different courts and tribunals were established by the Security Council including the recent ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda and the International Criminal Court

[2]According to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNCPPCG) approved by the General Assembly of the United Nations on 9 December 1948, genocide means 'any of the following acts committed with the intent to destroy, in whole or in part a national, ethnical, racial or religious group as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group;(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part;(d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group'.

[3]According to ICC Rome Statute, 'Crimes against humanity' include 'any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury' (ICC Rome Statute, Art.7).

[4]According to ICC Rome Statute, war crimes means 'Grave breaches of the Geneva Conventions of 12 August 1949; serious violations of the laws and customs applicable in international armed conflict and serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 (ICC Rome Statute, Art.8; Geneva Conventions of 12 August 1949 and their additional Protocols).

established for trying those responsible for war crimes and the mass extermination of millions of civilians and prisoners of war pursuant to the following counts: crimes against peace, war crimes, crimes against humanity, and the conspiracy to commit any of the foregoing in a '*Common Plan'*. The IMT established the '*Nuremberg Principles*,' according to which every person is responsible for his/her own actions and that, as a result, no one stands above the international law (Totten and Bartrop, 2009: 425-426). Nuremberg was important because it conferred individual responsibility for widespread crimes. Even though this was a prosecutorial innovation, the Nuremberg Charter didn't have a definition of what constitute a victim and didn't have any sort of reparation mechanism for victims.

Five decades later, in May 1993, the UN Security Council, in accordance with Chapter VII of the UN Charter, established the International Criminal Tribunal for former Yugoslavia (ICTY) under resolution 827 passed on 25 May 1993. This tribunal was established in response to mass atrocities first committed in Croatia and later in Bosnia and Herzegovina in which thousands of civilians were killed and wounded, tortured and sexually abused in detention camps, and in which hundreds of thousands were expelled from their homes. These atrocities caused outrage across the world, spurring the UN Security Council to create an ad hoc international tribunal (UN Doc. S/25274: 7-11). It is in this regard that the ICTY was established for prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia from 1991. Its full jurisdiction extended until 1999.

Similarly, recognizing that serious violations of humanitarian law were committed in Rwanda[5] and acting under Chapter VII of the UN Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 passed on 8 November 1994. The ICTR was established to prosecute those who played a leading role in planning and executing the genocide against the Tutsi and those who committed crimes against humanity and war crimes in the territory of Rwanda between 1 January 1994 and 31 December 1994.

The ICTR and ICTY were significant because, in focusing the trials on genocide, war crimes and crimes against humanity, they have shown that an individual's senior position can no longer protect him or her from prosecution. The tribunals' work demonstrates that those suspected of bearing the

[5] Report on the situation of human rights in Rwanda submitted by René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994

greatest responsibility for atrocities will be held legally responsible for their acts. It demonstrates a shift from impunity to holding people in positions of power responsible (Kathryn Sikkink, 2011).

Aside from the ICTR and the ICTY, several other courts have been established to try global crimes. Following serious crimes committed in the territory of Sierra Leone during the country's decade-long civil war (1991-2002),[6] the Government of Sierra Leone and the United Nations established the Special Court for Sierra Leone (SCSL) in 2002 to prosecute persons who bear 'the greatest responsibility' for serious violations of international humanitarian law and Sierra Leonean law in Sierra Leone since 30 November 1996 (Statute of the Special Court for Sierra Leone, 16 January 2002, Art.1). Based in the country where the atrocities were committed, the Special Court for Sierra Leone was established as a '*hybrid*'[7] court combining both international and domestic law.

Following the massive human rights violations that took place in Cambodia between 1975 and 1979, an era of starvation, torture, mass killings and deportations under the Khmer Rouge, the United Nations worked with Cambodia in 2003 to create the Extraordinary Chambers in the Courts of Cambodia (ECCC) to try those responsible for the crimes against humanity, war crimes and genocide. The ECCC was created by the Cambodian government in conjunction with the UN as 'hybrid' national-international tribunal.

For the aforementioned courts and tribunals, each one referred back to previous tribunals as a precedent. However, as they were established only to try crimes committed within specific time-frames and during specific conflicts, the International Criminal Court (ICC), the first permanent court governed by the Rome Statute, was established on 1 July 2002 as a culmination of these systems. This permanent court was therefore established to try international crimes in an effort to end impunity. More importantly, the ICC brought innovations in the victims' right to reparations.

[6] Sierra Leone suffered through a gruesome, eleven years civil war. The Revolutionary United Front (RUF), led by Foday Sankoh, used amputations and mass rape to terrorize the population and gain control of the country's lucrative diamond mines. Charles Taylor, then president of neighboring country Liberia, backed the insurgency providing arms and training to the RUF in exchange for diamonds. The pro-government Civil Defense Force (CDF), under the leadership of Sam Hinga Norman, committed serious offenses as well.

[7] *Hybrid* tribunal/courts are ad hoc institutions, created to address particular situations. In a 'hybrid' tribunal, 'both the institutional apparatus and the applicable law consist of a blend of the international and the domestic. Foreign judges sit alongside their domestic counterparts to try cases prosecuted and defended by teams of local lawyers working with those from other countries. The judges apply domestic law that has been reformed to accord with international standards' (Dickinson, 2003: 295)

In each of these courts and tribunals, the rights of victims should appear as an important part of the justice process. In light of the rights of victims enshrined in the United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power on 29 November 1985, the question arises as to whether victims' rights are sufficiently respected at the ad hoc International Criminal Tribunals, Special Courts and at the ICC. In particular, do these courts and tribunals ensure that victims of gross human rights violations are accorded the core right to reparations? This paper focuses on how the right to reparations for victims is respected under the ad hoc International Criminal Tribunals and Special courts, as compared to the ICC.

2. Understanding and theorizing the key concepts

2.1. Victims of crime[8]

Under the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985:

> Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term victim also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress […] (Bassiouni Principles, 2005, para.8)

Under this declaration, a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. Victims include natural persons who have suffered harm as a result of any crime within the jurisdiction of the Court; or organisations or institutions that have sustained direct harm to any of their property, which is dedicated to religion, art, science, or charitable purposes and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

[8] This paper doesn't focus on victims of any violations. The analysis made is limited only to the victims of the gravest crimes (Genocide, crimes against humanity, war crimes and sexual assault) judged under ad hoc International Criminal Tribunals, Special Courts and at the International Criminal Court.

2.2. History of reparations in International Law

The right of victims to reparations is a well-established tenet of international law. It is a principle of law that has existed for centuries. The right to reparations for international wrongful acts was recognized as a rule of international law as early as the 1927 judgment of the Permanent Court of International Justice (PCIJ) in the *Chorzów Factory* case. According to the Court, 'it is a principle of international law and even a general conception of law that any breach of an engagement involves an obligation to make reparations' (*Chorzow Factory* case, PCIJ, 1928, ser A, No. 17, 4: 29). The Court further ruled that 'reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed' (*Chorzow Factory* case, PCIJ, 1928, ser A, No. 17, 4: 47).

The rights of victims to an effective remedy, redress and reparations is based upon international customary law, the *erga omnes* obligation to prosecute gross human rights violations, international and regional instruments, and states' national legislation providing for remedies and reparations for victims and survivors. This right and corresponding obligation to make reparations is a well-established international state's responsibility (Shelton, 2002). Because states are considered to be the foundation and regulators of international law, all states must partake in accountability for the rules of a lawful international community. In the global populace, international law requires that all nations and states that are economically and socially stable have a duty to help establish rule of law so that justice is defended and reparation is made for those who have been victimized. It is in this regard that international human rights law progressively recognized the right of victims of human rights violations to pursue their claims for redress and reparations before national justice mechanisms and, if need be, before international forums (UN, 2008).

Reparations under international law are mainly customary norms that apply exclusively to relations between states.[9] In contrast, international law as it applies to individuals is not a separate body of law but rather a variation on the application of regular international norms. This was the assumption under which the Nuremberg Tribunal found the liability of individuals. The *Trial of the Major War*

[9]Draft Articles on State Responsibility, UN doc A/56/10. *See* Text with commentaries by the special reporter John Crawford (hereinafter 'Commentaries'), adopted by the ILC at its 53th session, 2001, (Yearbook of the International Law Commission, 2001, vol. II, Part Two), on Art.28, para. 3; The UN General Assembly (UNGA), in its resolution 56/83 of 2001, commended the draft to the attention of governments 'without prejudice to the question of their future adoption or other appropriate action'

Criminals before the International Military Tribunal states that international law imposes duties and liabilities upon individuals as well as upon states (IMT, vol. I, Nuremberg, 1947: 223).

The progressive recognition of the status of individuals under international law, owing in large part to the developments of international human rights law since World War II, has significantly impacted the concept and application of the principle of reparations as a right of victims. According to international law principles, all violations of international obligations that result in harm require the award of adequate reparations (REDRESS, 2011: 7). The individual perpetrator is not only criminally responsible for the crimes he has committed towards the international community, but also liable for the harm he has caused towards the victims being the object of protection of the criminal norms. The principle that individuals are obliged to pay compensation for harm they have caused was introduced into international criminal courts as a general principle of law (Liesbeth Zegveld, 2010: 85).

According to the United Nations, the right to reparations has a dual dimension under international law: (a) a substantive dimension to be translated into the duty to provide redress for harm suffered in the form of restitution, compensation, rehabilitation, satisfaction and, as the case may be, guarantees of non-repetition; and (b) a procedural dimension as instrumental in securing this substantive redress. The procedural dimension is subsumed in the concept of the duty to provide 'effective domestic remedies' explicit in most major human rights instruments (UN, 2008: 6). As stated authoritatively by the Human Rights Committee, the duty of states to make reparations to individuals whose rights under the Covenant have been violated is a component of effective domestic remedies: 'without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy […] is not discharged'.[10] This affirms the jurisprudence of several human rights bodies, which attaches increasing importance to effective remedies as implying a right of the victims and not only a duty of states.

While international law stipulates a duty to make reparations, it does not prescribe a method of implementation. Before the establishment of the ICC, reparations rules and regulations were left essentially to domestic law, whereby each state had to ensure in its legal system that there existed legal avenues for victims to claim reparations. We must ask why is it the role of the state, rather than

[10] General comment N° 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

the international community, to create legal reparations for grave international crimes that impact all humanity like genocide, war crimes, and crimes against humanity? Despite serious efforts by the United Nations to promote its standards and norms, the compliance by Member States with the provisions of the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is still unsatisfactory. It is in this regard that the international community and the concerned states should work together and assist in the establishment and implementation of states' reparation programmes. They should clarify what kinds of reparations should be paid, for which offences, and to which victims and by whom should they be paid.

2.3. Forms of reparations

The types of reparation appropriate to remedy harm suffered by victims differ depending on individual circumstances. Reparation initiatives can be designed in many ways. According to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (known as the Bassiouni Principles; General Assembly Resolution 60/147 of 16 December 2005) reparations includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (Bassiouni Principles, 2005, Principles 19-23)

Restitution is the action of restoring or giving back something to its proper owner or making good or giving an equivalent for any loss, damage or injury previously inflicted (Laycock, 1989: 1279-1280). It 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 (Bassiouni Principles, 2005, Principle 19). However, for some crimes, it is often impossible to restore victims' lives to their original statuses. For instance, the nature of crimes of genocide, crimes against humanity and war crimes emphasize that it is impossible to put survivors back where they were prior to the violation or to repair the violation given the scale and gravity of the offenses at hand. Necessarily, reparation measures will be symbolic.

Compensation includes payment of any quantifiable damage resulting from the crime, including: physical or mental harm such as pain, suffering and emotional distress; lost opportunities such as education; material damages and loss of earnings such as loss of earning potential; harm to reputation or dignity; and costs required for legal or expert assistance such as medicines, medical,

psychological, and social services (Bassiouni Principles, 2005, Principle 20). While in theory compensation may take various forms or shapes, in practice monetary compensation is likely to be the most common form of compensation. However, it is important to note that for victims of gross human rights violations, compensation can be difficult to assess: how much does a life cost? As with restitution, in the case of compensation it is difficult if not impossible to apply a quantifiable variable to the harm and trauma inflicted upon victims in the pursuit of reparations.

Rehabilitation: International law does not delineate a working definition of rehabilitation as a form of reparations under international law. The closest expression of such a definition is found in the Basic Principles that indicate that in certain situations persons who have suffered certain types of serious human rights or humanitarian law violations should be redressed by way of, among others, rehabilitation, meaning 'physical and psychological care as well as social and legal services' (Bassiouni Principles, 2005, Principle 21). Rehabilitation measures may be ordered individually, specifically for identified victims through compensation claims, or as collectively' (Edith-Farah Elassal, 2012: 285). Rehabilitation may consist of remedies intended to assist victims in reintegrating in society under the best possible conditions by providing, for instance, medical, psychological, and legal or social services (UN Doc. E/CN.15/1998/CRP4/Add.1). In this regard, a sum of money could be paid to cover cost[s] required for legal or expert assistance, medicines and medical services and psychological and social services. Socio-economic programmes facilitating victims' reintegration may also be put in place.

Satisfaction refers to effective measures aimed at the cessation of continuing violations. Satisfaction takes various non-material forms including official acknowledgement of wrong, an expression of regret, apology, disclosure of the details of the offence, service to the victim or a cause chosen by them (Coben and Harley, 2004: 158-160; Bassiouni Principles, 2005, Principle 22)

Guarantees of non-repetition include different individual and collective elements such as revelation of truth, public acknowledgment of facts and acceptance of responsibility, prosecution of the perpetrators, search for the disappeared and identification of remains, the restoration of the dignity of victims through commemoration and other means, activities aimed at remembrance, education, and prevention of similar crimes in the future (Bassiouni Principles, 2005, Principle 23)

3. Right of victims to reparations under ad hoc International Criminal Tribunals

Since the beginning of the international criminal proceedings at the International Military Tribunals (IMTs) at Nuremberg and Tokyo, the first ad hoc International Criminal Tribunals to try individuals for international crimes, and throughout different proceedings held at the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), and the Extraordinary Chambers in the Courts of Cambodia (ECCC), the role of victims of international crimes has been limited to that of witnesses. Due to the framework of justice these tribunals have adopted, the right of victims to reparations was not given specific attention in court proceedings and decisions. These tribunals operated on retributive theory of criminal justice,[11] that is exclusionary of and inimical to specific concerns for reparations for victims. Their main purpose is to establish whether the accused person has committed a crime and to mete out proportional punishment if the answer is in the affirmative. It is the offender's guilt – not the victim's suffering – that is at issue. Once punishment is assessed, the trial concludes. The largely retributive object driving these tribunals limits victims to a peripheral status in the court proceedings and reduces victims to passive participants acting only as witnesses in the criminal process (Heikkila, 2004). Rather, punishment should be seen to make restorative justice possible (Ashworth, 1986). This retributive justice system lacks some restorative justice practices in order to repair the harm caused to the victims.

3.1. The International Military Tribunals (IMTs) at Nuremberg and Tokyo

The creation of the IMTs at Nuremberg and Tokyo, the first of their kind in 1945, were justified in similar ways. The IMT at Nuremberg was mandated to try war criminals of the European Axis for war crimes, crimes against humanity and crimes against peace (Nuremberg Charter, Art. 6). The Tokyo tribunal had a similar mandate of prosecuting and punishing members of the Japanese high command (Charter of International Military Tribunal for the Far East, Art. 5).

However, while the establishment of the IMTs created a precedent that perpetrators of crimes against humanity, war crimes and crimes against peace would henceforth be accountable for their actions, no

[11] Retributive justice is a justice system oriented mainly toward punishing the offender.

mechanism was put in place to address specific concerns of victims' right to reparations (UN Res.95/1 of 11 December 1946). The concept of victim was virtually absent from the statutes of the International Military Tribunals. During the Nuremberg and Tokyo trials that were held from 1945 to 1948, the role of Holocaust victims was limited to that of witnesses. None of them could join as a civil party to receive reparation (Edith, 2012: 263). Even if the IMTs were established and operated while the Bassiouni Principles weren't in effect, neither the Nuremberg Charter nor the IMTFE Charter explicitly mentions victims.

From the mandates of the two tribunals, it can be deduced that the intention of the Allies was never to address the concerns of war victims beyond what the trial of key perpetrators could offer. The suffering of victims received negligible mention from those concerned. The only provision in the Nuremberg Charter relevant directly to victims was related to looted property. It provided that 'in addition to any punishment imposed by it, the tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany' (Nuremberg Charter, Art. 28). This provision was very positive for victims but was not included in the IMTFE Charter and was never invoked at the trial.

Nonetheless, the IMTs laid the groundwork for modern international criminal law. They were the first tribunals where violators of international law were held responsible for their crimes. They also recognized individual accountability and rejected historically used defenses based on state sovereignty. However, they also laid the foundation for the current paradigm of international criminal law that places emphasis on perpetrators by affording them greater protections (such as the right to defend themselves before the courts and tribunals, ensure their everyday security, health care, food, etc.) and regards victims as incidental individuals whose rights should be subordinated.

3.2. The ad hoc tribunals

In the 1990s, the United Nations established the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. However, the United Nations did little to modify the position of victims in international criminal justice. Victims' interests are only addressed within the general objective of maintaining international peace and security, within which their rights will not be violated again (Aldana-Pindell, 2002). The fact that there are specific victims' concerns that need attention because of direct or indirect victimization of individuals was not given much emphasis.

The tribunals, like Nuremberg, adopted a retributive approach to justice characterized by punishment of perpetrators (Mekjian and Varughese, 2005)

3.2.1. ICTY and ICTR Statutes

At both the ICTY and the ICTR, there is no clear identification of reparations as a victim's right in either tribunal's respective statute. Both statutes make only passing and indirect reference to the subject in Article 22 of ICTY Statute and Article 21 of ICTR Statute, which both deal with '*Protection of Victims and Witnesses'*. One might have hoped that this would imply a right to reparations as it is difficult to understand how a victim can be 'protected' without redressing the damage caused to the victim. And yet reparation is not explicitly referenced in these provisions. As a result, it could be argued that the drafters of the ICTY and the ICTR statutes meant for reparations to be excluded from the list of victim remedies at the ad hoc tribunals.

Therefore, it is difficult to see how the drafting of the ICTY (1993) and ICTR (1994) Statutes contributed toward meaningful progress with respect to victims' rights in international criminal law. Rather, these institutions seem to focus exclusively on the prosecuting and punishing perpetrators. Indeed, the preamble of Resolution 827 creating the ICTY states that the Tribunal was established for '*the sole purpose of prosecuting persons responsible for serious violations of humanitarian law'* yet also to '*contribute to ensuring that violations are halted and effectively redressed'*. The preamble of Security Council Resolution 955, establishing the ICTR, echoes the above but adds that the tribunal will provide a '*contribution to the process of national reconciliation'*. These statutes refer only to the relevance of victims as witnesses without any provision on victims' right to reparations, under the tribunals. As avowed by the former President of the ICTY Claude Jorda, victims have largely been considered only as '*object-matter or an instrument'* in the proceedings of these two ad hoc International Criminal Tribunals (Jorda and Hemptinne, 2002). Even if the both ad hoc tribunals continue to play an important role in the enforcement of international criminal law, they fail to adequately address issues of reparations to victim.

3.2.2. ICTY and ICTR Rules of Procedure and Evidence

In drafting the Rules of Procedure and Evidence of the ICTY and the ICTR, some attempt was made to address the issue of victims' rights to restitution and compensation. However, as noted by

Cassese, the possibility of reparations was compromised due to the absence of a corresponding provision in the statutes (Cassese, 2003: 429). Nevertheless, Rules 105 and 106 of the ICTY Rules of Procedure and Evidence as amended on 13 December 2001, replicated in the Rules of Procedure and Evidence for the ICTR, recognise the rights of victims to restitution and compensation. Rule 105 declares:

> After a judgment of conviction containing a specific finding as provided in Rule 88 (B), the Trial Chamber shall, at the request of the Prosecutor, or may, at its own initiative, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate (Rules of Procedure and Evidence of ICTY and ICTR, Rule 105 A)

Rule 106 clarifies the method by which victims may claim '*compensation.*' The rule states, '*A victim may bring an action in a national court or other competent body to obtain compensation. In such a situation, the judgment of the tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury.*' (Rules of Procedure and Evidence of ICTY and ICTR, Rule 106, B.C.). As stated by REDRESS, the compensation provision contained in Rule 106 106 of the ICTY/ICTR Rules of Procedure and Evidence is rather vague and would benefit from interpretation to facilitate its application (REDRESS, 2011). Although it makes clear that victims have a right to obtain compensation through domestic courts, it does not specify any particular national court presumed to be the appropriate forum through which victims may claim reparations. There are thus remaining challenges to be addressed in order to put into effect to the reparations provisions given the inconsistencies in national law on the subject. The rule explicitly states that victims may bring a cause of action pursuant to relevant national legislation, reflecting that the ICTY and the ICTR do not have the power to alter domestic law or jurisdiction with respect to awarding reparations. However, they did not specify the appropriate venue or procedures for bringing reparation claims. Ideally, the Rule 106 would have spelled this out. There are also other problems associated with transferring reparations to domestic courts including but not limited to re-traumatisation, need to prove victimhood, and the possibility that the state might not be impartial in this instance or as impartial as an international tribunal.

Regarding monetary reparation, there is a fear that States may be overburdened with compensation obligations after genocide and other serious violations of human rights, as the decision to award reparations in the form of monetary compensation requires a strong financial commitment. Most of the States that have faced genocide are usually not in a position to shore such a commitment. Even financially stronger States are generally reluctant to acknowledge an enforceable right of victims' compensation. States, however, remain averse to committing themselves to accountability to individual victims for obvious political and economic reasons. Such States almost always rely on traditional doctrines of State sovereignty in international law to oppose responsibility.

This is unfortunate, as a State in transition cannot ignore the right of the victims to reparations if it wishes to re-establish the rule of law. To establish peace and rule of law, countries must overcome the cycles of hate and violence from the past and include all citizens in the formation of a new democratic society. To achieve this, reparations are imperative since they support victims in rebuilding their lives and enable them to actively join society, reinforcing unity and reconciliation. It is in this area that there is a clear need for policy-makers and law reformers to look beyond the familiar spheres of the domestic criminal process if the justice system is to become more effective, just and legitimate in the eyes of both victims and the wider public.

3.2.3. Towards theoretical recognition of the right of victims to reparations in international law

In order to redress the wrong done to the victims, International Criminal Tribunals have little by little recognized the right of victims to reparations. There have been appeals for victim compensation made by both judges and prosecutors. In a December 1998 note, Agwu Okali, a Clerk of the ICTR at that time, presented to the Security Council a proposal to create, from the contribution of volunteers, an ICTR indemnity fund for survivors of the genocide against the Tutsi (Okali, 1998). Despite the fact that post-genocide measures were put in place to assist survivors in Rwanda, the ICTR's then-Chief Prosecutor, Carla Del Ponte, criticized the inadequacies of these measures and indicated her desire to see things change.[12] Similarly, Judge Pillay, former President of the ICTR, expressed the need to develop appropriate mechanisms for reparations at the ICTR (UN Doc. S/2000/1198) as did

[12] Carla Del Ponte, The Hague, 9 June 2000. Copyright Diplomatie Judiciaire

Judge Jorda, former President of the ICTY (UN Doc. S/2000/1063). These appeals have been followed by preliminary measures to establish a more effective reparations regime.

In June 2000, at the behest of former ICTR Prosecutor Del Ponte, the judges of the first instance and appeal chambers convened in a plenary session and wrote to the Security Council as follows: '*Each judge subscribes to the principle that the victims have to be indemnified. We thought that we can compensate the victims*' (TPIY and ICTY Press Release, 14 September 2000).

In November 2000, in an address to the Security Council, Del Ponte strongly advocated for the creation of a Claims Commission to compensate victims of the genocide against the Tutsi:

> It is regrettable that the Tribunals' statutes [...] make only a minimum of provision for compensation and restitution to people whose lives have been destroyed. My office is having considerable success in tracing and freezing large amounts of money in the personal accounts of the accused. Money that could very properly be applied by the courts to the compensation of the citizens who deserve it [...] I would therefore respectfully suggest to the Council that the present system falls short of delivering justice to the people of Rwanda and the former Yugoslavia, and I would invite you to give serious and urgent consideration to any change that would remove this lacuna (ICTY Press Release JL/P.I.S./542-e, 21 November 2000).

The latest initiative to address this matter was taken by the ex-chairperson of the UN Human Rights Commission, Libyan Najat Al Hajjaji, on 7 October 2003, when she confirmed that an agreement had been made between her organization and the ICTR with the principle of creating an assistance fund for the victims of genocide, war crimes, and crimes against humanity that would serve to compensate and assist in the rehabilitation of survivors of the genocide against the Tutsi in Rwanda'[13]. However, no such measure was ever adopted. The ICTR judges' call for a greater role of the UN in providing compensation to victims of the genocide was not heeded, and no step was taken at UN level to assist survivors in obtaining compensation. As the ICTR is about to close its doors, it appears no such measure ever will be adopted.

[13] Najat Al Hajjaji, Hirondelle (8 octobre 2003), Proposition de la création d'un fonds d'assistance aux victimes du génocide, crimes de guerre et crimes contre l'humanité

In light of this, we might note that the ICTR trial chambers should have been able to order restitution of property and goods from convicted perpetrators. Even if victims were not able to request these material entities, the prosecutors could have requested them, or the trial chamber could have done it *sua sponte*. But that never happened. While restitution of damaged property was a stated policy objective from the very beginning of the ICTR, this objective remained almost purely imaginary. It is therefore important that the Security Council create another body that could operate as an international compensation commission in order to respond to the aforementioned challenge. Similarly, the establishment of a victim reparations fund related to crimes adjudicated by any of the international tribunals, other than the ICC, could also help satisfy legal obligations with respect to victim rights in situations of gross human rights violations.

In sum, the main focus of the ICTR and the ICTY has been the prosecution of the most serious perpetrators of international crimes. These Tribunals adopted a retributive approach to justice characterized by establishing the criminal responsibility of suspected perpetrators (Mekjian and Varughese 2005). Their mandates were limited to the prosecution and punishment of persons responsible for serious violations of humanitarian law—issues related to victims have not been central to the practice of these tribunals and discourse around such practices. Victims can enter the courtroom only as witnesses. Morris and Scharf have observed that the mandate of the ICTY indicates the intention of the United Nations Security Council to exclude the possibility of compensation before the tribunals (Morris and Scharf, 1995: 167; 286-287).

The ICTR and the ICTY lack jurisdiction to deal with reparations for victims. According to Jones, the ICTY and ICTR do not provide the possibility for victims to claim reparations either from perpetrators or otherwise under these tribunals (Jones, 1998). As the United Nations Security Council, Resolution 827 noted, '*the work of the International Tribunals should have been carried out without prejudice to the right of victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law'* (UN, Res 827/1993, 2(7)). However, the Rules of Procedure and Evidence leave open the possibility for victims to obtain compensation under national legislation or some other appropriate forum after a conviction at the tribunals (Rule 10B, ICTY and ICTR). Even though genocide survivors in Rwanda, for example, are able to rely on judgments from the ICTR for the purpose of reparations claims, the enforcement of

any potential awards would likely be difficult given the insolvency of most of the perpetrators convicted by the ICTR and the absence of a Compensation Fund.

3.2.4. Reluctance of the United Nations to participate in reparations process

During the genocide against the Tutsi in 1994, the United Nations, instead of protecting civilians, failed them by leaving the country at the peak of the killings. One would hope that after its failures the United Nations would take a leading role in compensating genocide survivors. Unfortunately, it has so far shown interest only in criminal proceedings. Although it did establish the ICTR, it has avoided dealing with the subject of reparations. How can the UN not understand its importance in the rehabilitation of victims?

In 1991, the United Nations Compensation Commission (UNCC) was established as a subsidiary organ of the UN Security Council to compensate Kuwaitis, following their 1990 invasion by Iraq. The commission has received many claims, and successful claims are paid with funds drawn from the UN Compensation Fund. This practice shows a willingness to participate in the reparation process. Thus, to what can we attribute the UN's reluctance to compensate accordingly elsewhere? It could be concluded that there is a lack of a will to participate in the reparation process. In Rwanda for example, initiatives have been taken to encourage the United Nations to amend the ICTR's statute to include the creation of a compensation fund, but without success.

The lack of action by the UN with regards to reparations for survivors of the genocide against the Tutsi sits in stark contrast to the actions steps taken by the ICTR's '*sister tribunal'*, the ICTY. The calls of former ICTY President Robinson for the establishment of a trust fund for victims led to, in 2011, an arrangement between the ICTY and the International Organization for Migration to carry out a '*comprehensive assessment study aimed at providing guidance to the Tribunal on appropriate and feasible victim assistance measures and possible means of financing the same'* (Robinson Patrick, 2011). Yet, there was no similar plan in the context of the ICTR, as the UN removed the reparations language from this tribunal. This is yet another piece of evidence of the UN's negligence and their unwillingness to provide reparations to victims of the genocide against the Tutsi.

3.3. The Special Court for Sierra Leone

The Special Court for Sierra Leone (SCSL) was established in 2002 to present an opportunity for Sierra Leone to punish the most egregious human rights offenders of the nation's civil war. The birth of the SCSL was innovative within the realm of international law because it was the product of an agreement between the UN and Sierra Leone, rather than an agreement by the Security Council imposed upon Sierra Leone. This agreement structure made the SCSL more effective in some ways than the ICTY and the ICTR, as it was directly relevant to the lives of ordinary Sierra Leone citizens who were trying to put their lives back together after the war (Celina, 2002).

The SCSL envisioned a new model for international justice. It was the first international criminal tribunal located in the country where the crimes with which it was dealing took place. There, national judges sat alongside international judges. As it still deferred to decisions made by the the Appeals Chamber of the ICTY and ICTR, the SCSL operated under the ICTR's Rules of Procedure (Statute of the SCSL, Art. 20 (3)). Still, the judges could, in case of lacunae in the source rules, amend or adopt additional rules (Statute of the SCSL, Art. 14).

The SCSL was '*a criminal justice body, largely punitive and retributive*.' Consequently, this tribunal failed to address fully the harm occasioned to victims. The rights of victims were limited to a peripheral status in the court process, which could be referred to participation rather than reparations. Therefore, an additional non-judicial approach was judged necessary. It is for this purpose that the Sierra Leone Truth and Reconciliation Commission (TRC) was established.[14] Juxtaposed to the Special Court, the TRC saw its role as driven by '*largely restorative and healing objectives'*, which constituted reparations (Sierra Leone TRC Report, 2004, Vol II, Chapter 1, para. 71). The TRC considered a broad range of measures such as accountability, acknowledgment, truth telling and reparations as central to achieving reconciliation at national, community and individual levels (Sierra Leone TRC Report, 2004, Vol II, Chapter 1, para.71). The TRC was also required, among other things, to recommend measures to be taken for the rehabilitation of victims of human rights violations (Lomé Peace Agreement, 1999, Art. XXVI (2). As the victims' rights were excluded under the SCSL, the establishment of the TRC was thus very relevant to address the issues of victims' right to reparations.

[14] The Sierra Leone Truth and Reconciliation Commission (TRC) was established by the Truth and Reconciliation Act 2000

3.4. The Extraordinary Chambers in the Courts of Cambodia

From April 1975 to early January 1979, nearly a quarter of the population of Cambodia died as a result of human rights abuses and other atrocities perpetrated by the ruling Khmer Rouge regime. Following such human rights violations, the Extraordinary Chambers in the Courts of Cambodia (ECCC) were created in 2015 and are currently in the process of trying alleged perpetrators for the first time.

As is the case of other ad hoc International Criminal Tribunals, the jurisdiction of the ECCC is limited in time and scope (UN/Cambodia Agreement, UN Resolution 57/228B (18 December 2002) A/RES/57/228B, Arts. 2, 9). First, only the crimes committed between the moments the Khmer Rouge seized power on 11 April 1975 through 6 January 1979, the last day before the overthrow of the Pol Pot regime, may be investigated. None of the crimes committed by the Khmer Rouge before or after that period may be prosecuted. Secondly, only the senior leaders of Democratic Kampuchea and those most responsible for serious human rights violations falling within the jurisdiction of the Chambers may be prosecuted.

Integrated into the Cambodian judiciary system, the ECCC is a '*hybrid*' court, in which the judges, prosecutors and lawyers are Cambodian and foreign, and apply both Cambodian and international law. Mixed teams of national and international investigating judges and prosecutors lead investigations and prosecutions. The investigating judges and prosecutors are expected to develop a joint strategy. They must exercise their jurisdiction '*in accordance with international standards of justice, fairness and due process of law'* set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights which must be respected at all stages of the criminal process (UN/Cambodia Agreement, UN Res 57/228B, 18 December 2002, Art. 13).

However, like its predecessors, the ECCC was not conceived as an instrument of direct relief for the victims, although the protection and use of victims as witnesses in the investigations and trials is addressed in detail. The mandate and resources of the ECCC are far too limited to address individual needs, including the awards of reparations for victims.

Contrary to the other ad hoc International Criminal Tribunals, the ECCC recognizes victims as full parties in trials and active participants. Victims may be called as witnesses and they may file charges in cases in which the prosecutor alone cannot possibly cover all the crimes in question. Moreover,

victims have the right '*to seek collective and moral reparations'* (ECCC Internal Rules (Rev.8), Rule 23 bis, Rule 23 quarter, adopted on 9 February 2010; Edith, 2012: 265). Victims have full right to file charges and intervene as civil parties in ongoing criminal proceedings (Bonnieu, 2005; Coghill, 2000). The ECCC Internal Rules allow victims to apply to intervene in criminal proceedings as civil parties,' provided they show they personally suffered injury as a result of the events under investigation. The purpose of a civil action is so that parties may seek compensation for injuries and receive reparations corresponding to the injuries they suffered (Cambodian Code of Criminal Procedure, as amended in 2007, Art. 2). The ability to claim reparation is the primary, although not exclusive, reason for victims to claim and be allowed the status of civil party under Cambodian law.

Before the ECCC, civil party action has a dual purpose: (1) participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC (public action); and (2) seek collective and moral reparations (civil action) (ECCC Internal Rules, 2010, Rule 23). In this system, the civil parties have an interest in the result of the public action since they have a clear and direct interest in seeing the accused convicted of the specific crimes that caused their own suffering in order to found their exercise of civil action for damages.

Under the Internal Rules of the ECCC, civil parties have the right to ask the court to order reparations against convicted persons. Among the reparations to be awarded, individual monetary payments are not allowed. The court only awards collective and moral reparations (ECCC Internal Rules, 2010, Rule 23 quinquies). The court orders reparations that benefit groups of victims or Cambodian society in general. The role of victims is thus relegated to the realm of the symbolic, rather than the material. Victims are not themselves able to receive physical reparations, but are able to propose types of collective and moral reparations they would like the court to order, such as publishing the court's judgment in the mass media at the expense of the convicted person, funding non-profit services or other activities that aim to benefit victims, or the creation of a memorial.

Comparing to other ad hoc or hybrid international courts and tribunals prosecuting mass crimes, the main innovation of the legal system of the ECCC is its greater recognition of the victims in the proceedings and their right to seek collective and moral reparations. The ECCC recognized that there exist victims who have to be present in the courts, in order to hear from them what their wishes are in the context of the reparations process.

4. Right of victims to reparations under the International Criminal Court

The International Criminal Court was established on 1 July 2002, pursuant to the Rome Statute as a treaty-based permanent court. Its mandate is to prosecute '*the most serious crimes of concern to the international community as a whole*' (ICC Rome Statute, 2002, preamble) in accordance with general principles of criminal law and with respect for the rights of accused and the victims (ICC Rome Statute, Arts. 22-33, 66-68). The Court provides justice to victims by ordering measures geared towards full repair of harm suffered. This court has a broad and innovative mandate in relation to victims. The victim-based provisions within the Rome Statute allow victims to have their voices heard in the course of the proceedings and to obtain, where appropriate, reparations for their suffering. Pursuant to article 75 of Rome Statute, the Court may lay down the principles for reparations, which may include restitution, compensation or rehabilitation. In any form of reparations procedure, the Court considers representations from or on behalf of the convicted person, victims, other interested persons or interested states, and then makes an order directly against a convicted person, specifying appropriate reparations to, or in respect of, victims, such as restitution, compensation or rehabilitation (Baumgartner, 2008),

Reparation must be linked to an act, for which criminal responsibility of the accused is held (Edith, 2012, 274). In this regards, the article 75(2) of the Statute provides the Court with the authority to issue orders directing a convicted person to make specific and appropriate reparation to the victims. Before making an order, the ICC may invite and take account of representations from or on behalf of the offender, victims and other interested persons or States (ICC Rome Statute, Art.75 (3)). After hearing claims for reparations and by inviting comment from other interested persons, the Court may take into account the needs of the victims and others who might be affected, such as the offender's family or a *bona fide* purchaser of property that is to be restored and order the payment of appropriate reparation to the victims by the convicted person. In order to facilitate enforcement of awards, the ICC Statute mandates States parties to give effect to all decisions entered (ICC Rome Statute, Art.75 (5). National courts may not modify the order for reparations during its enforcement (ICC, Rule 129).

Where appropriate, Article 75 of the Statute provides for reparations through the Trust Fund established pursuant to Article 79. Article 79 creates the Victims Trust Fund (VTF) for the benefit of

victims of crimes within the jurisdiction of the Court and for the families of such victims (ICC Rome Statute, Art. 79 (1).

The ICC was thus the first international criminal tribunal to provide for the rights of victims to reparations. This was the greatest innovation in the Rome Statute. The fact that victims act as third parties at the ICC mean that they can make a claim for reparations that would be impossible at the ad hoc tribunals. They do it on their own behalf or through their representatives, not through a state espousing their claims.

In cases of conviction, trial chambers are supposed to order reparations payments, but they can choose to do so through the Trust Fund for Victims. Therefore, victims are informed and advised to make their application for reparations to be paid through the Trust Fund for Victims established by the Assembly of States parties in September 2002 in accordance with Article 79 of the Rome Statute. Victims have to complete a written application with the Registry containing evidence laid down by Rule 94 of the Rules of Procedure and Evidence. Rules 94 to 99 of the ICC set out the procedures for reparations to victims whereby reparations may be granted by the Court upon request of victims or based on a motion of the Court itself. However, neither the Statute nor the ICC Rules of Procedures and Evidences prescribe how these provisions will be implemented. They do not provide any mechanisms or procedures for processing reparations claims and the implementation of awards (Henzelin et al., 2006). It falls to the Court to establish not only appropriate mechanisms and procedures for processing reparations but also the relevant principles as required by Article 75 (1) of the Rome Statute. The language of this article confirms that the Court has a great deal of discretion as to how to organize and conduct reparation proceedings.

In order to claim for reparations, victims should be properly informed of proceedings. While international courts and tribunals often rely on the Internet and other electronic media to disseminate such information, these are unlikely to consistently be sufficient tools to conduct an information campaign. Victims do not always have access to the Internet. In this regards, the Court should develop strategies for dealing with information campaigns in such situations, keeping in mind the number of potential partners who can assist, including local authorities and international organizations (both governmental and non-governmental).

Other issues arise in relation to the ICC. As the process of affording reparations to victims is designed to restore the dignity of survivors, there still a question of how the courts ensure that procedures for claiming reparations under the ICC's Trust Fund do not constitute a secondary victimization of beneficiaries. In offering reparation to victims, how is it ensured that the forms of reparation best address the needs of survivors and their communities considering there is no established formula that would help to identify the most suitable remedy? To answer such questions requires a careful analysis of variety of perspectives victims maintain and other factors that differentiate them such as time, age, and experience during the post-victimisation period. It furthermore requires consultation with the victims themselves and the collection of adequate information about their losses. This could consequently help in deciding on the best form of reparation to victims.

Comparing to the ad hoc International Criminal Tribunals and Special Courts, what makes the Rome Statute significantly different from all predecessors, is that for the first time victims of international crimes and their families can access the Court to express their views and concerns and to claim reparations for the wrongs suffered. The Victims Trust Fund for Victims, provided for in Article 79 of the Rome Statute, is the main mechanism for implementing reparations awards by the ICC, along with the ICC's legal mandate to order convicted individuals to compensate victims. The Trust Fund is a historic institution essential for the realization of the ICC's progressive mandate towards victims and is an acknowledgment of the rights of victims of genocide, crimes against humanity and war crimes.

As the Rome Statute does not apply retrospectively, there is no such fund for victims of crimes under the mandate of the ICTR and ICTY. As stated by Judge Dennis, former President of the ICTR, *'the lack of reparation for genocide survivors was one of the main shortcomings of the ICTR'* (Dennis, 2011).

Conclusion

Reparations are imperative and a legal right owed to the survivors of atrocity. They can contribute to the individual and societal aims of rehabilitation, reconciliation, consolidation of democracy and restoration of law. They can also help overcome traditional prejudices that have marginalized certain sectors of society and contributed to the crimes perpetrated against them.

This paper demonstrates that the ad hoc International Criminal Tribunals since the Nuremberg and Tokyo IMTs have lacked competence to adjudicate beyond criminal sanction. The failure to provide for victims beyond routine protection has been one of the shortcomings of these tribunals.

In general, the international community has managed to both symbolically and institutionally keep faith and solidarity with victims and survivors of mass atrocity. But there is one glaring exception in this regard: little has been done to comply with the right of victims to reparations. The overall attention given to victims in proceedings has been inadequate and focused primarily on urgent witness protection measures, rather than long-term considerations, such as the right to reparations. The ad hoc International Criminal Tribunals have no system to establish civil party proceedings by which victims may be able to seek real reparations. Their statutes state that reparations should be referred to municipal jurisdictions. However, it is often very complicated in municipal jurisdictions to respond to victims' rights to reparations given that, in some cases, there is not enough political will. Doubting the fairness of national justice for effective redress of the damage caused to the injured party, the cooperation of the international tribunals and the national justice would be necessary for crimes judged under international law so that there would be commitment by governments and organizations to do everything possible to comply with the right of victims to reparations.

Even though sanctioning perpetrators is an aspect of reparations, victims surviving in inhumane conditions and with memories of destroyed lives are still awaiting justice and the grant of reparations. However, they have suffered due to the inaction of the international community. Against this backdrop, the creation of an institution that incorporates both elements—punishment through criminal prosecution and reparations to victims of international crimes at the international level—is of a paramount importance.

Contrary to the ad hoc International Criminal Tribunals, the ICC has been established with a broad and innovative mandate in relation to victims. This instituted criminal justice grants the right to reparations to victims. It enables victims to claim reparations for harm suffered. To that end, it has established Trust Fund for Victims responding to the harm suffered by victims of crimes under the jurisdiction of the ICC. This Fund has a dual mandate of implementing reparations awards ordered by ICC and providing assistance outside the scope of reparations.

Particularly, in the case of genocide, reparations to victims should be given a priority to avoid leaving victims with a feeling that their suffering is not sufficiently recognized. Reparations should be given to victims by the authors of crimes, relevant governments, tribunals and the international community. To that end, it is necessary to establish reparation fundraising structures for survivors. The international community may establish a Fund and elaborate rule and regulations of its functioning. The management should remain under the international community. In the words of Jorda, the former President of the ICTY and Hemptinne, the Senior Legal Officer at the Special Tribunal for Lebanon and former legal officer at the ICTY, reparations for those who have suffered such harm is a '*sine qua non condition for the establishment of a deep-rooted and lasting peace'* (Jorda and Hemptinne, 2002: 1398).

Reparations play a particularly important role in a comprehensive policy to redress human rights abuses for the simple reason that they are the only measure that immediately and specifically targets victims. However, providing victims with a right of reparation is, therefore, an empty victory if there is no corresponding mechanism to provide such a right. In this regards, the International Community and States should have an obligation to have and clarify forms of mechanisms in place to redress violations and ensure reparations for the injury caused to victims.

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