

Resolution ICC-ASP/12/Res.5

Adopted at the 12th plenary meeting, on 27 November 2013, by consensus

ICC-ASP/12/Res.5

Victims and affected communities, reparations and Trust Fund for Victims

The Assembly of States Parties,

Recalling its resolution ICC-ASP/11/Res.7,

Determined to ensure the effective implementation of victims' rights, which constitute a cornerstone of the Rome Statute system,

Reaffirming the importance of the Rome Statute to the victims and affected communities in its determination to hold to account the perpetrators of the crime of genocide, crimes against humanity and war crimes, thus contributing to their prevention,

Reiterating that victims' equal rights to present their views and concerns in the proceedings where their personal interests are affected, under article 68 of the Rome Statute, and to expeditious and effective access to justice, protection and support, adequate and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms are essential components of justice and, in this regard, *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the International Criminal Court towards victims,

Noting that the crimes within the jurisdiction *ratione materiae* of the Court may affect large numbers of victims, targeted either individually or collectively,

Noting that certain principles and procedures for reparations are set out by Trial Chamber I in its 'Decision establishing the principles and procedures to be applied to reparations' in the case against Thomas Lubanga Dyilo, dated 7 August 2012, and are subject to an on-going appeal,

Aware that, pursuant to article 75, paragraph 2, of the Rome Statute, the Court may order, where appropriate, that the award for reparations be made through the Trust Fund for Victims, and *mindful* of the current financial situation of the Trust Fund,

Acknowledging that the Board of Directors of the Trust Fund for Victims, in accordance with its Regulation 56, shall determine whether to complement the resources collected through awards for reparations, and, noting the request of the Board to strengthen the Fund's reserve for reparations,

1. *Welcomes* the ongoing and continuous work of the Court in implementing and monitoring its Revised Strategy in relation to victims¹ and its report² on the matter, as was requested by the Assembly at its eleventh session;
2. *Recalls* its concerns about the difficulty the Court has encountered, on some occasions, in processing applications from victims seeking to participate in proceedings, and *notes* the efforts of the Court to ensure that such a process impacts positively on the effective implementation and protection of the rights and interests of victims under the Rome Statute;
3. *Reaffirms* the need to review the system for victims to apply to participate in proceedings, in order to ensure the sustainability, effectiveness and efficiency of the system, including any necessary amendment to the legal framework, while preserving the rights of victims under the Rome Statute and *calls upon* the Court to explore ways to harmonize the application process for victims to participate in the proceedings before the Court, and in consultation with all relevant stakeholders;
4. *Takes note* with appreciation of all the efforts to enhance the efficiency and effectiveness of victim participation, and *invites* the Bureau to explore, in consultation with the Court, the need for possible amendments to the legal framework for the participation of victims in the proceedings;

¹ ICC-ASP/11/38.

² ICC-ASP/12/41.

5. *Notes* the importance, when recruiting officers in charge of victims and witnesses affairs, of ensuring that they have the necessary expertise to take into account cultural traditions and sensitivities and the physical, psychological and social needs of victims and witnesses, particularly when they are required to be in The Hague or outside their country of origin to participate in proceedings before the Court;
6. *Reiterates* the need for the Court to continue to ensure that principles relating to reparations be established in accordance with article 75, paragraph 1, of the Rome Statute, and *further requests* the Court to report back to the Assembly at its thirteenth session;
7. *Reiterates* its call to States Parties, where crimes under the Court's jurisdiction have been committed, to adopt and implement victim-related provisions, as appropriate, consistent with the 1985 United Nations General Assembly resolution 40/34 "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", the 2005 United Nations General Assembly resolution 60/147 "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" and other relevant instruments;
8. *Recalls* its invitation to States Parties, where crimes under the Court's jurisdiction have been committed, to act in solidarity with victims by, inter alia, playing an active role in sensitizing communities on the rights of victims in accordance with the Rome Statute in general, and on victims of sexual and gender based violence as well as other vulnerable groups in particular; combating their marginalization and stigmatization; assisting them in their social reintegration process and in their participation in consultations; and promoting a culture of accountability for these crimes;
9. *Reiterates* that liability for reparations within the framework of the Rome Statute is exclusively based on the individual criminal responsibility of a convicted person, and that therefore under no circumstances shall States be ordered to utilize their properties and assets, including the assessed contributions of States Parties, to fund reparations awards, including in situations where an individual holds, or has held, any official position;
10. *Stresses* that, since the identification, tracing and freezing or seizure of any assets of the sentenced person are indispensable for reparations, it is of paramount importance that all necessary measures are taken to that end, in order for relevant States and relevant entities to provide timely and effective assistance pursuant to articles 75, 93, paragraph 1(k), and 109 of the Rome Statute, and *calls upon* States Parties to enter into voluntary agreements, arrangements or any other means to this end with the Court;
11. *Reaffirms* that the declaration of indigence of the accused for the purpose of legal aid bears no relevance to the ability of the convicted person to provide reparations, *takes note* of the Court report on this matter, and *further requests* the Court to continue to develop a scheme in that regard and to report back to the Assembly;
12. *Reasserts* that the enforcement of reparations awards, in accordance with the Rules of Procedure and Evidence, shall be prioritized when deciding on the disposition or allocation of fines and forfeitures of property or assets belonging to the sentenced person;
13. *Renews* its appreciation to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims, and *encourages* the Board and the Secretariat to continue to strengthen their ongoing dialogue with the Court, States Parties and the wider international community, including donors as well as non-governmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact and ensure the continuity and sustainability of the Fund's interventions;
14. *Calls upon* States, international and inter-governmental organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims also in view of possible reparations, the current financial situation of the Fund and in light of article 75, paragraph 2, of the Rome Statute, in order to substantively increase the volume of the Trust Fund for Victims, broaden the resource base and improve the predictability of funding; and *renews* its appreciation to those that have done so;

15. *Recalls* the responsibility, under the Regulations of the Trust Fund for Victims, of the Board of Directors to endeavour to manage its resources originating from voluntary contributions in such a way as to ensure an adequate reserve to complement any Court-ordered reparations awards, without prejudice to its activities under the Trust Fund's assistance mandate including those funded by earmarked contributions;
16. *Requests* the Court and the Trust Fund for Victims to develop a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations;
17. *Invites* States Parties to consider making earmarked voluntary contributions to the Trust Fund, in accordance with their financial ability, for the purpose of strengthening its reparations reserve, in addition to any regular voluntary contributions to the Fund, and *expresses its appreciation* to those that have already done so;
18. *Welcomes* the constructive exchange between States Parties, the Court, the Trust Fund for Victims and civil society during the plenary session on victims and affected communities, held for the first time at the twelfth session of the Assembly, with a special focus on reaffirming the significance of victims' rights under the Rome Statute, and *notes with appreciation* the commitment expressed by the participants to continue strengthening the capacity of the Court and the Fund in order to ensure the full and effective implementation of victims' rights;
19. *Decides* to continue to monitor the implementation of the rights of victims under the Rome Statute, with a view to ensuring that the exercise of these rights is fully realized and that the continued positive impact of the Rome Statute system on victims and affected communities is sustainable;
20. *Decides* to continue discussions on this topic focusing, through its Bureau, on victims' participation.