

**REDRESS**

*Seeking Reparation for Torture Survivors*

# State Cooperation & the Rights of Victims before the International Criminal Court

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# INTRODUCTION

This Paper provides a first analysis of States' obligations to cooperate with the Court to secure victims' rights, considering both obligations stemming from the ICC Statute as well as national legislation implementing the ICC Statute. It provides a series of recommendations about the steps that States may take (individually and as part of the Assembly of States Parties) to fulfil these obligations.

Two main areas are considered, the first is cooperation in respect of victim protection, and the second is cooperation in respect of asset tracing, freezing, seizure and transfers to the Court, both as a precautionary measure to safeguard assets pending trial, as well as in enforcing final reparations awards after conviction.

In particular, the Paper recommends that:

- As part of the process of adopting internal legislation implementing their obligations under the Rome Statute, States parties should consider specifically their obligations to cooperate with the Court in respect of victim and witness protection and asset tracing, seizure and transfer ;
- The Assembly of States Parties should develop its capacity to monitor and respond to instances of State party non-cooperation, in particular by appointing a focal point and/or working group on State cooperation, which could be tasked with i) promoting State cooperation; ii) monitoring and responding to instances of non-compliance;
- The Court should actively consider and develop its strategy to enhance state cooperation.
  - o On the particular issue of victim and witness protection, greater and more creative approaches to tackle non-cooperation are merited, including resort to the powers of the Pre-Trial and Trial Chambers and Assembly of States Parties as appropriate;
  - o On the issue of asset tracing, seizure and transfer and other enforcement of reparations awards, the OTP should play a more pro-active role in identifying assets, and should conclude special agreements with States able to second / loan investigators and undertake searches in a variety of jurisdictions; the competent Chambers should remain seized of cases until enforcement is assured and enable beneficiaries to seek the assistance of the Court in ensuring compliance; the Victims Participation and Reparations Section should be specifically mandated to monitor the enforcement of reparations awards and the Office of Public Council for Victims, as appropriate, and/or independent legal representatives should continue to be mandated during this phase of proceedings.

# 1. SUMMARY OF OBLIGATIONS TO COOPERATE

Under the Rome Statute, States Parties have a general obligation to cooperate fully with requests made by the Court<sup>1</sup> and equally to ensure that there are procedures available under their national law for all the forms of cooperation contained in the Statute.<sup>2</sup>

Article 99(1) of the Statute provides that “States must comply with requests for assistance under Article 93 in the exact ways specified by the Court, to the extent that this does not conflict with domestic law.” Herein lies a challenge, cooperation must be provided in accordance with domestic law. However, if adequate provisions are not in place, this may slow cooperation, impeding it or rendering it ineffective. Cooperation with respect to the protection of victims and witnesses or asset tracing and recovery is almost always urgent: delays will be life threatening or will allow monies to be laundered and disappear.

States Parties have the discretion to respond to cooperation requests in accordance with national laws, but the overriding duty to cooperate implies that cooperation may not be obstructed or obfuscated.

Article 93(1)(j) provides the basis of cooperation requests to states with respect to the protection of victims and witnesses. And, article 93(1)(l) provides the basis of cooperation requests to states with respect to the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture.

***It is vital that States ensure that national laws and procedures adequately implement the obligations under Article 93 of the Statute. Ad hoc or last minute arrangements that respond to specific requests will be too little, too late.***

## 2. THE ROLE OF STATES IN THE PROTECTION OF VICTIMS AND WITNESSES

In accordance with Article 68(1) of the Statute, the Court is to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court is to have regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.

Article 68(1) provides that ‘victims and witnesses’ shall receive protection. The Statute makes clear that the Victims and Witnesses Unit within the Registry shall provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.<sup>3</sup>

The Office of the Prosecutor and the Registry’s Victims and Witnesses Unit are already cooperating with the governments of Uganda and Democratic Republic of Congo. As for cooperation on the protection of witnesses and victims in Sudan, the Prosecutor has indicated that “*the continuing insecurity in Darfur is prohibitive of effective investigations inside Darfur, particularly in light of the absence of a functioning and sustainable system for the protection of victims and witnesses*”.<sup>4</sup> As a

<sup>1</sup> Article 86 of the Rome Statute, “General obligation to cooperate”, provides that: “States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.”

<sup>2</sup> Article 88 of the Rome Statute, “Availability of procedures under national law”, provides that: “States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.”

<sup>3</sup> Article 43(6) of the Rome Statute.

<sup>4</sup> Prosecutor’s third Report to the Security Council, 14 June 2006: [http://www.icc-cpi.int/library/cases/OTP\\_ReportUNSC\\_3-Darfur\\_English.pdf](http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf)

result, the Prosecutor maintains that he is successfully carrying out investigations outside Darfur, particularly in neighbouring Chad, where witness protection measures are being implemented.<sup>5</sup>

To date, protective measures have been granted by the Pre-Trial Chambers to prosecution witnesses as well as victims participating in the proceedings. Others “who are at risk on account of testimony given by such witnesses,” might include “potential witnesses” and informers. Pre-Trial Chamber I has also recognised the need to afford protection to victims who have applied to participate in the proceedings (but who are not yet recognised by the Court as ‘participating victims’) when it granted interim protective measures to some 10 child applicants in the Lubanga case, pending a determination by the Chamber as to their status.<sup>6</sup>

## i. The role of ‘situation countries’

The role of ‘situation countries’ in providing protection and security to victims and witnesses is key, though often a complex prospect, given the prevalence of serious international crimes within the jurisdiction of the Statute, as well as the general insecurity in such countries. Situation countries that are States parties have specific obligations under the Statute, and in the case of Sudan, a non-State party, Security Council Resolution 1593 of 31 March 2005 nonetheless requires Sudan to cooperate fully with the Court. It provides:

“the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully”.<sup>7</sup>

The Prosecutor has not yet made any request to the Government of Sudan with regard to the protection of victims and witnesses in accordance with article 68(1) of the Statute. It has asserted to the Security Council that “the continuing insecurity in Darfur is prohibitive of effective investigations inside Darfur, particularly in light of the absence of a functioning and sustainable system for the protection of victims and witnesses”.<sup>8</sup>

In response to this assertion, the Pre-Trial Chamber elicited the views of Professor Antonio Cassese, former chairman of the International Commission of Inquiry on Darfur to the UN Secretary General and Louise Arbour, United Nations High Commissioner for Human Rights on the issue of the protection of victims and preservation of evidence. High Commissioner Arbour calls for “an increased visible presence of the International Criminal Court in Sudan, as she believes that carefully tailored strategies can operate effectively to conduct investigations”. She also has indicated that “the Court’s presence on the ground would also importantly contribute, to a proactive presence increasing the level of protection perceived and enjoyed by the affected population”.<sup>9</sup>

Prof. Cassese has made a number of suggestions, including a recommendation that the Prosecutor could, through a request to the Pre-Trial Chamber, ask the authorities of the Sudan to take the necessary measures for enabling the Prosecutor’s investigators to interview victims of crimes in Darfur.<sup>10</sup> **Such a request, if made, would require follow up by the Assembly of States Parties and/or the UN Security Council in enforcement of Resolution 1593.**

<sup>5</sup> Prosecutor’s response to Professor Cassese’s Observations on Issues concerning the Protection of Victims and Preservation of Evidence, filed 11 September 2006, [http://www.icc-cpi.int/library/cases/ICC-02-05-16\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-02-05-16_English.pdf).

<sup>6</sup> *Situation in the DRC; The Prosecutor v Thomas Lubanga Dyilo*, “Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l’affaire le Procureur c. Thomas Lubanga Dyilo”, [http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-601\\_French.pdf](http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-601_French.pdf).

<sup>7</sup> Security Council Resolution 1593 (2005) of 31 March 2005.

<sup>8</sup> Prosecutor’s third Report to the Security Council, 14 June 2006: [http://www.icc-cpi.int/library/cases/OTP\\_ReportUNSC\\_3-Darfur\\_English.pdf](http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf)

<sup>9</sup> Arbour’s observations were filed on 10 October, 2006: [http://www.icc-cpi.int/library/cases/ICC-02-05-19\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-02-05-19_English.pdf)

<sup>10</sup> 6 ICC-02/05 dated 25 August 2006, available at: [http://www.icc-cpi.int/library/cases/ICC-02-05-14\\_English.pdf](http://www.icc-cpi.int/library/cases/ICC-02-05-14_English.pdf), at p. 5.

## ii. Other States

The main roles of other States in the protection of victims and witnesses relates to how victims and witnesses on their territory are physically and psychologically protected during investigations or other processes,<sup>11</sup> and their agreement to relocate to their territory those victims and witnesses and related persons who require such services on account of their interaction with the Court. There are only five relocation agreements that have been concluded with the Court so far, with two or three others in their final stages. **More States, preferably from States close to the 'situation countries', are needed to come forward and conclude agreements with the Court.**

Certain States will have special responsibilities in ensuring protection and security of victims and witnesses and related persons. These would include ***the host State (the Netherlands)*** which would have a responsibility to ensure, in the Headquarters Agreement as well as part of the regular practice, the safe transit of victims, witnesses and others involved in Court process in a manner that safeguards their dignity and security and does not give rise to further security risks.

Others with detailed responsibilities include countries in which large numbers of victims have sought temporary protection or asylum (e.g. Chad, Kenya, etc.). It is vital that such States agree with the Court special protocols on the protection of victims and witnesses.

## iii. Intergovernmental bodies

In addition to the role of the UN Security Council in overseeing the enforcement of its resolutions (and specifically resolution 1593 in the case of Sudan), intergovernmental bodies will be well placed to assist in the protection of victims and witnesses and related persons affected by ICC proceedings. In particular, UN Peace Keeping Missions, the African Union, NATO and other regional military, police or quasi-enforcement operations are well placed to provide assistance, particularly in situations in which the situation or territorial State is unable to provide the requisite assistance.

# 3. COOPERATION TO ENSURE REPARATIONS TO VICTIMS

Assets could be located in any number of national jurisdictions. If the Court's reparations regime is to be effective, it will require significant interaction and coordination with national jurisdictions of States parties and non-States parties alike. The key cooperation challenges to ensure reparations to victims include:

- The ability to efficiently carry out and enforce orders for "protective" or anticipatory measures to safeguard assets;<sup>12</sup>
- Enforcing final awards of reparations including monetary and non-monetary awards under article 109 of the Statute;
- Cooperation with the Trust Fund for Victims to foster its role as a supplementary mechanism to ensure that awards reach victims; and
- Institutional responsibility within the ICC for monitoring the enforcement of reparations orders.

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<sup>11</sup> A number of States Parties have national witness protection legislation and it is important that national authorities are able to utilise such legislation to the benefit of victims and witnesses and other related persons involved in ICC proceedings.

<sup>12</sup> Article 93(1)(k) provides that States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions: the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties;

## i. Protective or Anticipatory Measures to Safeguard Assets

The Rome Statute allows a Pre-Trial or Trial Chamber to order “protective measures” upon the issuance of an arrest warrant or summons, or once a person is convicted.<sup>13</sup> Such measures primarily depend on a) the availability of domestic procedures able to swiftly respond to a request for assistance by the International Criminal Court, and b) obtaining cooperation from States Parties and non-State Parties alike.

Assuming that States are willing to cooperate, appropriate domestic legislation and procedural mechanisms to foster cooperation are key (e.g. naming the bodies responsible for receiving and implementing cooperation requests and ensuring that such bodies are well apprised of their responsibilities in advance of any actual request, clarifying the internal procedures to formally recognise and fulfil the requests, including the role of local bodies, and how such requests are prioritised as against local or third-country requests). Without such measures, cooperation to safeguard assets will be very slow and may ultimately undermine its preventive purpose.

For the most part, national implementing legislation has provided that the ICC’s provisional orders or warrants are enforceable as if they were domestic orders and in this respect they are not generally accorded any superiority or priority, unlike the procedures certain States have set out for the implementation of Security Council resolution tracing and freezing orders. Furthermore, the introduction by certain States of a discretion for the national judge hearing the application on whether and how to give effect to the order may in practice undermine the certainty of the ICC’s cooperation regime.

### Case Example: Requests to trace, freeze and seize Thomas Lubanga’s Assets

Pre-Trial Chamber I is seized of the case against Thomas Lubanga and has demonstrated a concern and awareness of the urgent need to trace assets and seize property, noting that, by the time “*an accused person is convicted and a reparation award ordered, there will be no property or assets available to enforce the award*”.<sup>14</sup>

The Pre-Trial Chamber has powers to request cooperation of States of its own motion,<sup>15</sup> and requested cooperation from the DRC both in execution of the Arrest Warrant and in tracing, identifying and seizing Thomas Lubanga’s assets.<sup>16</sup> This was done simultaneously with its request for cooperation on the Arrest Warrant, initially under seal, and later made public after Lubanga’s apprehension and transfer to The Hague. Furthermore, on 31 March 2006, the Pre-Trial Chamber *publicly* requested all States Parties to identify, trace and freeze or seize property and assets of Mr. Lubanga.<sup>17</sup>

The process would have been enhanced with:

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<sup>13</sup> Rule 99(1) of the Rules of Procedure and Evidence: 1. The Pre-Trial Chamber, pursuant to article 57, paragraph 3 (e), or the Trial Chamber, pursuant to article 75, paragraph 4, may, on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine whether measures should be requested.

Rule 57(3)(e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

<sup>14</sup> *Situation in the Democratic Republic of Congo (DRC) in the case of the Prosecutor v Thomas Lubanga Dyilo*, “Decision on the Prosecutor’s Application for a Warrant of Arrest, Article 58”, issued under Seal, and reclassified as public on 24 February, “Decision concerning Pre-Trial chamber I’s Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr. Thomas Lubanga Dyilo” - pp 60-61

<sup>15</sup> Article 57(3)(e) of the Rome Statute.

<sup>16</sup> *Situation in the DRC, The Prosecutor v Thomas Lubanga Dyilo*, “Demande adressée à la République Démocratique du Congo en vue d’obtenir l’identification, la localisation, le gel ou la saisie des biens et avoirs de M Thomas Lubanga Dyilo”, 9 March 2006. ICC-01/04-01/06-62.

<sup>17</sup> *Situation in the DRC, case of the Prosecutor v Thomas Lubanga Dyilo*, “Request to States Parties to the Rome Statute for the Identification, Tracing and Freezing or Seizure of the Property and Assets of Mr Thomas Lubanga Dyilo”, 31 March 2006. ICC-01/04-01/06-62.

- **Greater specificity in the request.** States parties may have difficulty responding to broad requests for assistance, where the location and nature of the assets is not specified. This is conditioned upon detailed investigations by the Prosecutor in collaboration with States Parties, to uncover the nature and whereabouts of assets prior to the issuance of a request for cooperation.
- **Ex parte requests.** In the Lubanga case, the bulk of the requests were made by the Pre-Trial Chamber of its own motion and publicly. Public requests may be self-defeating, given the facility of assets transfer.

The extent of the duty to search for assets in order to give effect to requests for protective measures is unclear and few jurisdictions countenance "fishing expeditions." This underscores the need for specificity in the request. In the Marcos litigation, the States in which assets were said to be located were reluctant to disclose comprehensive bank documentation, particularly without safeguarding the privacy of non-participating third parties.<sup>18</sup>

## ii. Enforcement of reparations orders of the Court

With respect to reparations awards, article 75(5) of the Rome Statute indicates that the obligations of State Parties are the same as those set out in Article 109 relating to the enforcement of fines and forfeitures. Article 109 provides that State Parties must give effect to an ICC order in accordance with their national laws, and "*without prejudice to the rights of bona fide third parties*" (Article 109(1)). In case of the inability to give effect to a forfeiture order, a State must "*take measures*" to recover the equivalent value of the award (Article 109(2)). Finally, any funds recovered by the State in this respect *must* be transferred to the ICC (Article 109 (3)).

The Rules of Procedure and Evidence provide further detail on State obligations in this context. Rule 217 indicates that the Presidency can seek cooperation from any State connected to the sentenced person *either* by virtue of nationality or habitual residence, *or* by virtue of the location of assets connected to the victims. Rule 219 provides that States cannot modify the reparations specified by the ICC; its decision on the scope and extent of damages, loss or injury; or the principles upon which this determination was based. Furthermore, States are obliged to "*facilitate the enforcement of such order (sic).*" Similarly, States cannot modify the orders of fines made by the ICC (Rule 220). Finally, the Presidency, having consulted with the State of enforcement, is empowered to "*decide on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court*" (Rule 221).

Most national implementing legislation on the enforcement of reparations orders is straightforward - States must take all possible steps to enforce the orders. Nonetheless, assets subject to provisional seizure orders will only be transferred to fulfil reparations orders if a much higher burden of proof is met. Not only must it be conclusively shown that the assets are owned and controlled by the debtor, but also that the assets are proceeds of crime.

There have been a number of faulty attempts in respect of other courts and tribunals (both national and international) where this burden was adjudged not to have been met.<sup>19</sup> This underscores the need for the Prosecutor, with the assistance of specialised national investigators as appropriate, to undertake detailed and rigorous investigations into the proceeds of crime in order that this connection can be veritably sustained. **Early correspondence and mutual assistance between the Prosecutor and States Parties should be undertaken in order to ensure sufficient expertise in tracing,**

<sup>18</sup> D. Chaikin (2000), Tracking the Proceeds of Organised Crime - The Marcos Case, Transnational Crime Conference, Canberra 9-10 March 2000, at page 16.

<sup>19</sup> See, for example, Decision on Inter Partes motion by Prosecutor to Freeze the Account of the Accused Sam Hinga Norman, SCSL- 2004-14-PT (3259-3268).

**freezing and transfer of assets.**<sup>20</sup> Also, a number of approaches have been taken by courts to ease this burden, including use of reverse onuses on the convicted defendant, as appropriate, to disprove that the said assets constitute proceeds of crime.<sup>21</sup>

The Statute provides that in those cases when it is not possible for a State Party 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.”<sup>22</sup> This will require national courts to undertake a variety of steps associated with defaulting debtors such as garnishee orders, liens and enforced sales of property.

### iii. Cooperation with the Trust Fund for Victims

The Trust Fund is relevant to the issue of enforcement both as a repository of funds paid out by sentenced individuals (Article 75(2)), and as well as a potential supplementary source of funds where reparation awards cannot be enforced against insolvent perpetrators.

State cooperation with the Trust Fund for Victims should take a number of forms:

- Ensuring the enforcement of fines and forfeiture orders destined for the Trust Fund (raising similar challenges as evoked above in relation to the enforcement of reparations orders);
- Making voluntary contributions to the Trust Fund for Victims and encouraging individuals and entities based located in their State to contribute (to date, the primary source of income of the Trust Fund is voluntary contributions from States Parties);
- Primarily for ‘situation countries’, or countries in which victims/beneficiaries are located, enabling the distribution of funds to victims/beneficiaries and enabling the Trust Fund’s projects and activities to proceed.

Regular State contributions to the Trust Fund are essential, and it is recommended that States parties and non-States parties alike earmark resources on a yearly basis for contributions. Additionally, in order to facilitate contributions from individuals, foundations and other entities, States should ensure that contributions to the Trust Fund are free from tax, similar to other charitable donations.

**The Trust Fund’s ability to undertake projects and activities for the benefit of victims will require the cooperation of States on whose territories the projects are to be implemented.** For instance, legislation may be required to enable nongovernmental organizations or other implementing partners to receive funds from external sources such as the Trust Fund for Victims. Equally, for the Trust Fund to undertake projects or activities such as building monuments or funding treatment facilities for victims, national legislation or municipal permits may be required.

### iv. Monitoring state compliance

The generality of the obligations to ‘cooperate’ and/or to ‘enforce’ may, in the absence of a clear follow-up mechanism, hinder enforcement in practice. The experience of other human rights courts and treaty mechanisms shows the utility and merits of developing internal enforcement procedures,

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<sup>20</sup> For instance, the expertise of Swiss investigators was lent at an early stage to the Special Court of Sierra Leone, enabling proactive approaches to asset recovery.

<sup>21</sup> See, for example, Article 5(7) of the UNITED NATIONS CONVENTION AGAINST ILICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES. 28 ILM 493 (1989) which provides: “Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.”

<sup>22</sup> Art. 109(2) of the Rome Statute.

and as other mechanisms have done, the ICC is encouraged to develop the necessary procedures in order to ensure enforcement in practice.<sup>23</sup>

While a system of support for victims currently exists for the duration of the ‘proceedings’ through the Victims Participation and Reparations Section of the Registry, and while responsibility for collecting and allotting fines and forfeitures is accorded to the Presidency, with the possible assistance of the Registry, neither the Statute nor the Rules of Procedure and Evidence clearly specify a body that will be responsible for following up on reparations claims once awards are made by the Court.

While this lack of follow-up responsibility may be common in domestic legal systems, it seems that in light of the possible difficulties relating to obtaining the cooperation of States as described above, a stronger and more visible Court-level enforcement mechanism that can engage directly with States and track compliance is appropriate for an international court such as the ICC.

**OTP:** The Office of the Prosecutor should play a more pro-active role in identifying assets, and requesting specific, detailed and confidential cooperation through the Pre-Trial Chamber. The Office of the Prosecutor should conclude special agreements with States able to second / loan investigators and undertake searches in a variety of jurisdictions.<sup>24</sup>

**Chambers:** Ensuring that the ICC remains seized of cases until enforcement is assured. As part of the continuing responsibility of the relevant chamber of the ICC who issued the order, the person(s) affected should be entitled to seek the assistance of the Court in ensuring compliance. This would involve decisions on standing before the Court as well as continued access to legal representation in the enforcement phase.

**Victims Participation and Reparations Section (Registry):** A continuing role in monitoring the enforcement of reparations awards is merited, in light of the particularities of the ICC system and the fact that it will be difficult/impossible for victims within the jurisdiction of the Court (the judgment creditors) to follow up with States where assets are located. Also, the lack of implementing legislation in many States parties may impede the easy recognition of IC judgments by foreign courts. An arm of the Registry should be tasked with monitoring cooperation and enforcement requests, and following up with the bureau of the Assembly of States Parties to ensure compliance.

**Victims’ Legal Representation:** It is important to ensure the continued role of victims’ legal representatives into the enforcement stage. This would include ensuring the continued role of the Victim Participation and Reparations’ Section and the Public Council Unit for Victims, as appropriate, and continued resources for independent legal representatives during this phase of proceedings.

**Assembly of States Parties:** According to article 87(5)(b) and (7), failure of States Parties or non-States Parties, which agreed to cooperate with the Court, to give effect to Court orders may result in the Court referring non-compliance to the Assembly of States Parties or to the Security Council, if it was the Council that had referred the matter to the ICC. The Assembly of States Parties should develop its capacity to monitor and respond to instances of State party non-cooperation, in particular by appointing a focal point and/or working group on State cooperation, which could be tasked with i) promoting State cooperation; ii) monitoring and responding to instances of non-compliance.

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<sup>23</sup> For a review of follow-up mechanisms of other international bodies, see REDRESS, Enforcement of Awards for Victims of Torture and Other International Crimes, May 2006, available at: [http://www.redress.org/publications/master\\_enforcement%2030%20May%202006.pdf](http://www.redress.org/publications/master_enforcement%2030%20May%202006.pdf).

<sup>24</sup> e.g. the special Agreement between the Special Court for Sierra Leone and Switzerland providing a 6 month rotation of Swiss investigators able to undertake research into assets in Switzerland.

# REDRESS

*Seeking Reparation for Torture Survivors*

REDRESS is an international human rights organization, with a mission to promote justice for victims of torture and related international crimes. We work with individuals and groups of survivors to assist them in their efforts to access justice and obtain enforceable remedies; and we promote the development of national and international institutions capable of responding adequately and effectively to victims' needs and rights to justice.

REDRESS has actively worked on the ICC since pre-Rome and has informally coordinated NGO activity on victims' rights through the 'Victims' Rights Working Group' since this time. The main focuses of REDRESS' work on the ICC are: (i) to increase the knowledge of concerned field actors (including victims' legal representatives; law enforcement and prosecution authorities; government service agencies providing physical and psychological support to victims of crimes etc.) on the rights of victims under the statute and the obligations on agencies working at the local level to guarantee protection and security to victims; (ii) to enhance dialogue with victims' groups to better understand their concerns and fears regarding the ICC and to network and liaise with national and international actors, included the Registry and the Office of the Prosecutor of the ICC to ensure that these concerns are addressed.

For more information on REDRESS' ICC programme, please contact Mariana Goetz at [mariana@redress.org](mailto:mariana@redress.org), or at the coordinates below.

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