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Financing of the International Criminal Court and the Role of the Trust Fund: A Legal Analysis

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ABSTRACT

As the International Criminal Court (ICC) operates on a global stage and serves as a permanent court to ensure accountability for the gravest international crimes such as Genocide, Crimes against Humanity etc., understanding the financing of the court is of paramount importance. This research paper examines into the financial sources that sustain the operations of the International Criminal Court by highlighting the role played by the Trust Fund. The paper begins by exploring the context of ICCs establishment and the financial model adopted by the court which relies on the Contributions from the member states and the International Organizations. The first part of the paper is sheds light on the financing of the ICC, sources and challenges it faces in securing a stable funding. The second part of the paper is dedicated to the Trust Fund, its functions, responsibilities of the fund and also by highlighting the crucial role of Trust Fund in supporting the victims of the International Crimes and the affected communities. The paper also assesses the challenges faced by the ICC and the Trust Fund in gathering the contributions and also it explores the potential reforms and the innovative financial mechanisms that could enhance the courts financial resilience, ensuring its continued ability to deliver justice.

Keywords: ICC, Trust Fund, Financing of ICC, Trust Fund for Victims (TFV).

I. INTRODUCTION

International Criminal Court is a permanent international court unlike its predecessors. This means it is not an organ of the United Nations but rather is an independent institution having a working relation with the United Nations. Rome Statute, which is a multilateral treaty, is the principal instrument that governs the International Criminal Court. The Assembly of State Parties acts as a supervisory body of the Court.

The International Criminal Court (ICC), standing as a beacon of global justice, undertakes the arduous task of prosecuting individuals responsible for the gravest international crimes,

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including genocide, crimes against humanity, and war crimes. As this court operates on a stage that transcends borders and embodies the collective pursuit of accountability, a critical aspect that demands scrutiny is the financial structure of the ICC.

Understanding the financing dynamics of the ICC and the pivotal role played by the Trust Fund holds paramount significance for several reasons. Firstly, the ICC's mandate to prosecute individuals for heinous crimes requires robust financial support to ensure its independence and efficacy. Examining the sources and mechanisms of funding becomes imperative to assess the court's resilience in the face of evolving geopolitical landscapes.

Secondly, the Trust Fund, established to supplement the ICC's financial needs and address the specific requirements of victims and affected communities, adds a layer of complexity and nuance to the overall financing framework. Exploring the functions and impact of the Trust Fund provides insights into the broader goals of international justice and reparations for those affected by the crimes under the ICC's jurisdiction.

Moreover, in an era where international cooperation is both crucial and fragile, understanding how states and International organizations contribute to the ICC's finances sheds light on the commitment of the global community to the principles of accountability and the rule of law.

Review of Literature

1. *Frank Jarasch, Establishment, Organization and Financing of the International Criminal Court (Parts I, IV, XI-XIII), 6 EUR. J. CRIME CRIM. L. & CRIM. Just. 325 (1998).* This research paper discusses about the establishment, organization and the financing of International Criminal Court in detail. The author highlighted about the composition and administration of the court which was mentioned under Article 34 to 52 of the Rome Statue and also about the role played by the Assembly of State Parties. The author gave a separate chapter regarding the financing of the court and also mentioned his observations relating to the topics mentioned above.³

2. Jonathan O'Donohue, Financing the International Criminal Court, 13 INT'L CRIM. L. REV. 269 (2013)². The research paper discusses about the funding of the International Criminal Court between the years 2002 to 2012 and also specifically discusses and highlights the Budget practice in the first decade and also about over budgeting and under spending. The author mentioned about the emerging negative attitudes towards Funding International Criminal Justice. Comparison was made with the former International Tribunals such as ICTY

³ Frank Jarasch, Establishment, Organization and Financing of the International Criminal Court (Parts I, IV, XI-XIII),

and ICTR. The author highlighted the arbitrary cuts and Zero Growth and also explained the approach taken by the ICC and the States parties. The author mentioned about the Cost Cutting proposals and also about the Voluntary Funding of Non-Core functions. The author concluded the research by stating that The ICC cannot succeed without the goodwill and support of the Assembly and the independent functioning of its Committee. If the Assembly continues to impose damaging cost-cutting measures in the next years, the ICC will run into serious problems and the hope of ending impunity that inspired massive support from governments and civil society around the world will fade.⁴

3. Ford, Stuart, Funding the ICC for Its Third Decade (January 13, 2023). Carsten Stahn (ed.), The International Criminal Court in its Third Decade: Reflecting on Law and Practice (Brill 2023).⁵ This research paper discusses about the 2023 budget of the ICC and also about the other financial concerns such as long term costs that would presumably continue into the future. The author also highlighted that there are, however, some potentially problematic long-term financial risks. The author also mentioned that If the court were to run out of money midway through the year, it could have serious consequences. The court would not be able to pay salaries or pay for vital services like travel or interpretation/translation services. This could cause the entire Court to shutdown, at least temporarily. It is likely that the ASP would step in with emergency funding, but the arrears issue appears to be the most significant long-term financial risk to the operation of the Court. The Court has delayed a lot of long-term maintenance and shifted to a policy of only replacing things when they break, which has resulted in millions of Euros of backlogged maintenance requirements.⁶

4. Eric Wiebelhaus-Brahm & Kirsten Ainley (2023) The evolution of funding for the International Criminal Court: Budgets, donors and gender justice, *Journal of Human Rights*⁷ The research paper discusses about the ICCs budget process, Trust Fund for Victims and its reparations practices and also the mandate of the Trust Fund for Victims. The author specifically highlighted the politics of the ICC and also mentioned the concerns of the observers about the court are rooted in budgetary control by the European Powers. The research paper also talks about the Debt politics of the ICC i.e. like many intergovernmental

⁴ Jonathan O'Donohue, Financing the International Criminal Court, 13 INT'L CRIM. L. REV. 269 (2013)

⁵ Ford, Stuart, Funding the ICC for Its Third Decade (January 13, 2023). Carsten Stahn (ed.), *The International Criminal Court in its Third Decade: Reflecting on Law and Practice* (Brill 2023)., Available at SSRN: <https://ssrn.com/abstract=4323894> or <http://dx.doi.org/10.2139/ssrn.4323894>

⁶ Report of the Committee on Budget and Finance on the work of its thirty-ninth session, Doc No. ICCASP/21/15, dated 29 Nov. 2022, at page 4

⁷ Eric Wiebelhaus-Brahm & Kirsten Ainley (2023) The evolution of funding for the International Criminal Court: Budgets, donors and gender justice, *Journal of Human Rights*, 22:1, 31-46, DOI: 10.1080/14754835.2022.2156276:

organizations, the ICC struggles to get state parties to pay their dues, which calls into question state parties commitment toward justice. Budgets are of limited use if the money is not actually delivered. This further complicates the Courts ability to complete its mission. There was a separate chapter about the Gender Spending at the ICC and it analysed on the gender equality, gender representation, and sexual and gender based crimes to assess the extent to which budgetary constraints impact the gender related commitments made by the ICC.

Overview of the ICC and Key Features of ICC:

The International Criminal Court (ICC) is a permanent international forum established to prosecute individuals for the most serious crimes of international concern, such as genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC operates as a court of last resort and intervenes only when national legal systems are unwilling or unable to prosecute those individuals who are responsible for the commission of these crimes. The Court follows the principle of individual criminal responsibility, holding individuals accountable for their actions. The ICC's jurisdiction is not limited to a specific region or time frame. It can investigate and prosecute crimes regardless of where they occurred or when. The ICC plays a crucial role in the international legal framework, aiming to ensure accountability for individuals responsible for the most serious international crimes and contribute to the prevention of such crimes in the future.

II. FINANCING

Before the incorporation of Part XII of the Rome Statute there was a discussion as to whether the ICC should be financed by the Contributions from the states parties or by the United Nations.

a) States such as USA, Germany and Japan supported the approach of an exclusive financing by the States parties as against the model of financing by the Court out of the regular UN budget by putting forward the arguments viz. the unsatisfactory situation of the UN, the risk that some main contributors to the UN budget already in arrears in payment of their financial contributions which eventually delays the funding to the ICC and also payment blockage by the UN, the possibility that other priorities of the UN could endanger the financial means for the ICC.

b) States such as Sweden, Norway, Canada and Australia supported the approach of funding by the United Nations by putting forward the argument that States parties could deter the financially weak countries from joining the ICC and also they stated that the initial financing of the ICC would have to come from the UN budget and that the financing of cases

referred to the Court by the Security Council of the United Nations should be borne by the UN.

Finally, a compromise suggesting a mixed financing which was put forward by the states such as Arab countries and the Spain, firstly by State Parties and secondly by the United Nations was acceptable to the factions under the condition that the funds coming from the United Nations should 'in particular' be provided in relation to the expenses incurred due to referrals by the Security Council. The term 'in particular' helped both sides to accept the compromise, leaving the door open for UN funding of a general nature, and on the same time indicating that UN funding should be mainly for cases referred to the Court by the Security Council.⁸

Provisions related to Financing under the Rome Statute

Part XII of the Rome Statute⁹– Article 113 to 118

<u>S.No</u>	<u>Article of the ICC</u>	<u>Subject matter in the Article</u>
1.	Article 113	Financial regulations – It mentions that all financial matters related to the court and the Assembly of State Parties (ASPs) are governed by the Statute and the <u>Financial Rules and Regulations</u> adopted by the ASPs
2.	Article 114	Payment of all expenses of the court and the ASPs shall be paid from the funds of the court
3.	Article 115	Funds of the Court and the ASP: Two possibilities to cover the expenses of the court a). From the assessed contributions by the states and b). Funds provided by the United Nations in relation to the expenses incurred due to the referrals by the UN Security Council
4.	Article 116	Governments, international organizations, corporations, individuals and other entities to provide the Court with voluntary contributions, in accordance with relevant criteria adopted by the Assembly of States' Parties (Voluntary

⁸ Frank Jarasch, Establishment, Organization and Financing of the International Criminal Court (Parts I, IV, XI-XIII), 6 EUR. J. CRIME CRIM. L. & CRIM. Just. 325 (1998)

⁹ Rome Statute of the International Criminal Court <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

		Contributions)
5.	Article 117	Assessment of contributions from state parties as per Article 115(a) in accordance with an agreed scale of assessment; based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based
6.	Article 118	Annual audit by an independent auditor

The compromise in Article 117 sets for a scale of assessment based on the scale¹⁵ adopted by the United Nations'.

Regulations 5 and 6 of the Financial Rules and Regulations of the ICC¹⁰ are also significant as they mention about the Provision and appropriation of funds, assessment of contributions, and applicable rate of exchange for contributions, General fund, unexpected voluntary contributions etc.

ICCS Measures to Ensure Transparency and Accountability:

1. **Budget Approval:** The Court's Assembly of States Parties, consisting of its member states, is responsible for approving the annual budget. This process ensures that states have a say in the Court's financial decisions, promoting transparency.

2. **Independent Oversight:** The ICC has established an independent oversight body, the Independent Oversight Mechanism (IOM)¹⁷. The IOM reviews the Court's financial management and internal controls, offering recommendations to enhance transparency and accountability.

3. **Financial Regulations:** The ICC has a robust system of financial regulations and rules that guide its financial operations. These regulations are designed to prevent misuse of funds and ensure that resources are allocated effectively.

4. **Resource Mobilization:** To address funding shortages, the ICC actively engages in resource mobilization efforts, seeking additional support from external sources, such as philanthropic organizations and international partners.

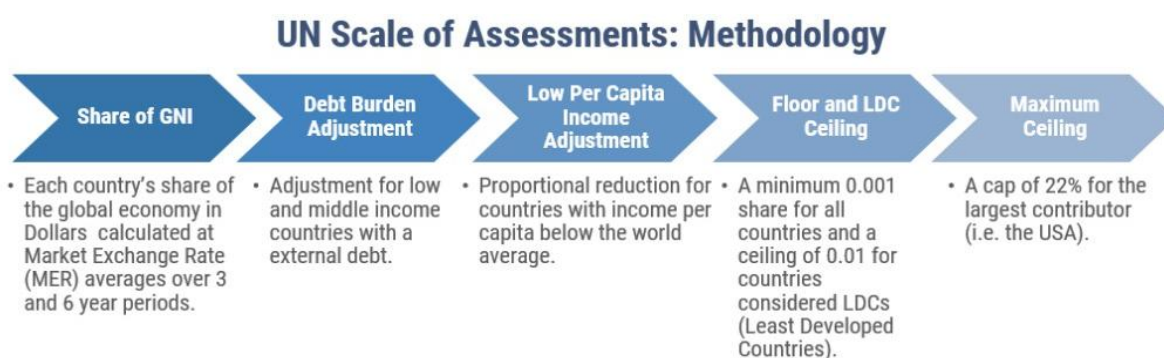
Budgets of UN and UN scale of assessments:

There are two main budgets of the UN: the regular budget and the peacekeeping budget.

¹⁰ Financial Regulations and Rules <https://www.icc-cpi.int/sites/default/files/FRRENG0705.pdf>

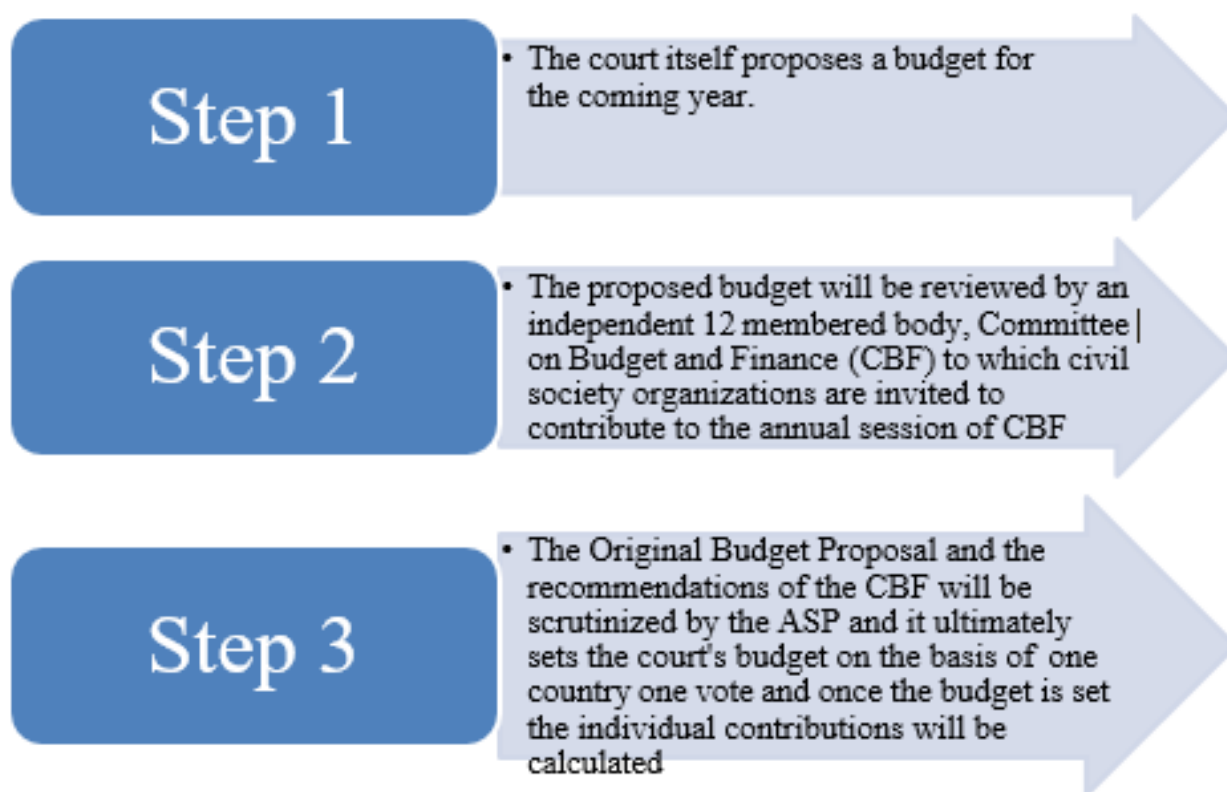
For the regular budget, each country's contribution is based on a formula intended to represent a country's capacity to pay. The formula starts by using a country's share of global gross national income. Adjustments are then applied for factors like their debt and population, with a minimum and maximum determined for least developed countries and the largest contributor.

The peacekeeping budget is also determined by the formula, but includes additional adjustments, such as whether a state chooses to contribute troops. These discounts are made up for by Permanent Members of the Security Council, who pay a premium that reflects their oversight of peacekeeping operations.¹¹



ICCS BUDGET PROCESS:

ICCs budget process involves a three step process



¹¹ THE SCALES OF ASSESSMENT: UNDERSTANDING THE UN BUDGET
<https://betterworldcampaign.org/us-funding-for-the-un/un-budget-formula> (Last Visited 08-11-2023)

The Principal Budget Drivers:

An underlying question is what should drive the ICC's workload and consequently its budget? There is currently no consensus on this issue. Those advocating 'zero-growth' promote a resource-driven ICC. Those opposed have yet to clearly articulate an alternative approach. A number of options are explored below:

a) **A Resource-Driven ICC:** This approach means that the Assembly decides the budget for the ICC by setting a financial envelope based on what states are willing to pay and the ICC must adapt its workload to meet the resources provided. It provides certainty for states parties and arguably forces the ICC to maximize its use of the resources provided to be as efficient as possible.

b) **A Capacity-Driven ICC:** There are a number of limitations set out in the Rome Statute and other practical factors that define the ICC's capacity. In particular, the Rome Statute provides initially for 18 judges and the permanent premises will contain three courtrooms that will determine the maximum number of cases that can proceed at any given time, without additional judges or courtroom facilities. The approach promotes the ICC running at full capacity and, therefore, achieving maximum efficiency. As with the resource-driven approach, the capacity-driven approach establishes a cut-off line beyond which the ICC will be unable to respond to impunity.

c) **A Demand-Driven ICC:** This approach promotes flexibility for the ICC to be reactive and for its work and budget to follow the demands placed on the Court. However, who creates the demand? And, how does that impact on the independence of the Prosecutor? are unanswered.

d) **An Impunity-Driven ICC:** An impunity-driven approach provides the ICC with the maximum flexibility to respond to impunity under its jurisdiction, whenever and wherever it exists. Despite its obvious compatibility with the Rome Statute, this approach is unlikely to be appealing to some states since the commission of crimes and the national responses to them are largely outside the control of the Assembly. When the commission of crimes and the number of situations are high, the ICC will require resources to conduct preliminary examinations. When national authorities are genuinely unable or unwilling to investigate and prosecute, the ICC will require resources to investigate and prosecute the crimes.¹²

¹² Jonathan O'Donohue, Financing the International Criminal Court, 13 INT'L CRIM. L. REV. 269 (2013).

Proposed and Approved Budget of ICC for the year 2022:

Table 1. 2022 proposed and approved line-item budgets (in thousands of euros).

Category	Proposed	Approved
Judiciary	13,370	12,386
Office of the Prosecutor	51,329	49,546
Registry	83,579	79,219
Secretariat of the Assembly of States Parties	3,176	3,026
Premises	2,270	2,270
Secretariat of the Trust Fund for Victims	3,388	3,227
Independent Oversight Mechanism	874	821
Office of Internal Audit	775	775
Host State Loan	3,585	3,585
Total	162,346	154,855

Source: Programme Budgets of the International Criminal Court (ICC-ASP/20/10).

For the proper functioning of International Criminal Court substantial financial resources are required. Adequate funding is essential because of the following reasons:

1. **Ensuring Independence:** The ICC's financial independence from any single state or entity is vital to maintain its impartiality in prosecuting individuals for international crimes. It needs to be free from the undue influence of powerful states that may attempt to impede and influence the investigations.
2. **Pursuing Accountability:** The ICC's primary mission is to hold perpetrators of war crimes, genocide, and crimes against humanity accountable. To do so effectively, it requires the necessary financial resources to conduct investigations, gather evidence, and ensure a fair trial for the accused.
3. **Providing reparations to the Victims:** The ICC also seeks to provide reparations and support to victims of these crimes. Adequate funding allows the Court to fulfill its commitment to assisting victims in rebuilding their lives and communities.

Challenges to the Funding of the ICC:

1. **Voluntary Contributions:** The ICC relies heavily on voluntary contributions from its member states, which can be unpredictable and inconsistent. This dependence on voluntary funding makes it challenging to maintain a stable financial footing.
2. **Budget Constraints:** The Court's budgetary needs have grown over the years, leading to concerns about how to meet these demands adequately. The ICC must find innovative ways to address budgetary constraints while ensuring the quality of its work.

3. **Political Pressure:** Some powerful states have at times exerted political pressure to influence the ICC's budget decisions or even to limit its funding. This can threaten the Court's independence and undermine its ability to carry out its mission effectively.

III. TRUST FUND

ICC has achieved a landmark achievement as compared to the previous tribunals in terms of the victims rights mainly by expanding the framework in the areas of protection, participation and reparation. Article 75 establishes that reparations can be awarded directly by the convicted person or through the Trust Fund provided for in Article 79¹³

The TFV is, together with the Victims and Witnesses Unit (VWU) and the Office of Public Counsel for Victims (OPCV), one of the three institutions within the Court that addresses the rights of the victims. The Trust Fund is one of the most important innovations introduced by the Rome Statute concerning victims which was not there in the previous International Tribunals such as ICTY and ICTR. The Trust Fund performs two principal functions: it implements reparations orders made by the Court and has a discretion to use voluntary contributions received from various sources to provide assistance to victims in situations investigated by the Court, whether or not they have suffered directly or indirectly from the crimes prosecuted before the Court.

Provisions:

Article 79¹⁴

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Rule 98¹⁵

1. Individual awards for reparations shall be made directly against a convicted person.
2. The Court may order that an award for reparations against a convicted person be

¹³ Article 75 (2) of the Rome Statute

¹⁴ Article 79 of the Rome Statute <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁵ Rule 98, Rules Evidence and Procedure of the ICC <https://www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf>

deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.

3. The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.
4. Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.
5. Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of Article 79.

The Regulations of the Trust Fund for Victims: These regulations set out general provisions concerning the management and oversight of the Trust Fund, the receipt of funds, and the activities and projects of the Trust Fund. These were prepared by the Board of Directors¹⁶ and they were adopted at the 4th Session of the Assembly of the State Parties in 2005.

Regulation 116¹⁷ of the Regulations of the court:

1. For the purposes of enforcement of fines, forfeiture orders and reparation orders, the Presidency, with the assistance of the Registry as appropriate, shall make the arrangements necessary in order to, inter alia: (a) Receive payment of fines as described in article 77, paragraph 2 (a); (b) Receive, as described in article 109, paragraph 3, property or the proceeds of the sale of real property or, where appropriate, the sale of other property; (c) Account for interest gained on money received under (a) and (b) above; (d) Ensure the transfer of money to the Trust Fund or to victims, as appropriate.

2. Following the transfer to or deposit in the Trust Fund of property or assets realized through enforcement of an order of the Court, the Presidency shall, subject to article 75, paragraph 2, and rule 98, decide on their disposition or allocation in accordance with rule

¹⁶ Annex to Resolution 6/2002, § 7.

¹⁷ Regulation 116 of the Regulations of court <https://www.icc-cpi.int/sites/default/files/Publications/Regulations-of-the-Court.pdf>

221.

The Trust Fund for Victims (TFV) advocates for and assists the most vulnerable victims of the crimes within the International Criminal Courts (ICC) jurisdiction. The TFV works for victims by mobilizing people, funding opportunities for the benefit of victims, and implementing court-ordered reparations awards. The TFV listens to victims of genocide, crimes against humanity and war crimes, and amplifies their voices in the international arena. The TFV helps in this process by supporting sustainable self-help projects designed to rebuild lives, and insure that the victims and their families work side-by-side. The Rome Statute created the Trust Fund for Victims to provide support to victims in the form of reparations¹⁸ and material support¹⁹ such as rehabilitation. It reflects the international consensus that justice for victims of the gravest crimes cannot be achieved without their full participation in the ICC judiciary process; or without their involvement in defining and implementing the most appropriate means of reparations and rehabilitation.

The Trust Fund has a vital role in the design and implementation of reparations, and will be able to provide the means for victims to receive some measure of reparation in cases when the convicted person or persons do not have sufficient assets. The role of the Trust Fund is not restricted to those victims who have participated in proceedings, or who are victims of the crimes prosecuted in cases before the Court. It is mandated to assist victims of crimes within the jurisdiction of the court and their families, and should therefore be able to provide funding for projects to assist whole communities of victims of the situations which are before the Court.

Who can be considered as the victims subject to the provisions of article 79?

Article 79(1) of the Rome Statute provides that: A Trust Fund shall be established by the decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims. Eligible beneficiaries are victims²⁰ of crimes within the jurisdiction of the Court and their families. It is not clear whether victims of crimes within the jurisdiction of the Court are limited to those that have participated in proceedings before the Court from their very first encounter with it or, more broadly, those that have suffered crimes over which the Court has a mandate (genocide,

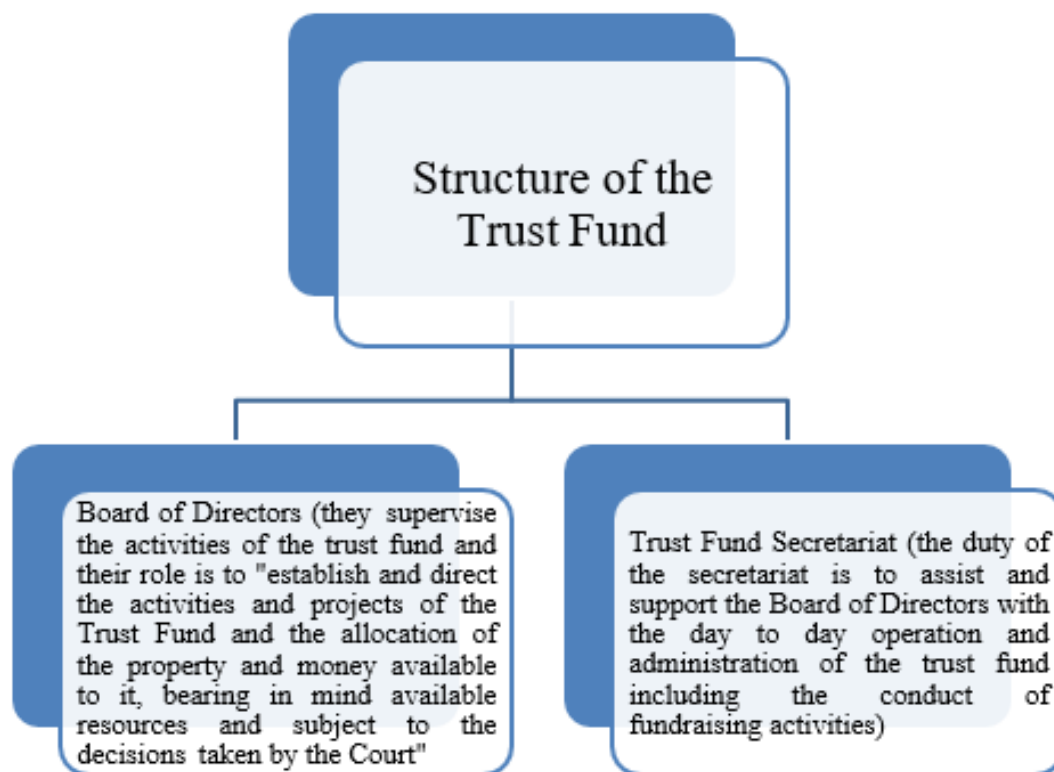
¹⁸ Article 75 (1) of the Rome Statute of the International Court

¹⁹ Regulation 50(a)(i) of the Regulations of the Trust Fund for Victims. ICC-ASP/4/Res.3

²⁰ Definition of victim in Rule 85 of the RPE: Rule 85 of the Rules of procedure and Evidence defines victims as (a) victims means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) victims may include organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

crimes against humanity and war crimes). A crime within the jurisdiction of the Court would arguably refer to any crime listed in Article 5 of the Statute, entitled crimes within the jurisdiction of the Court. After all, a persons status as a victim should not depend on any relationship that may exist, or has existed, between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted or convicted.²¹

Structure of the trust fund:



Goals of the trust fund for victims:

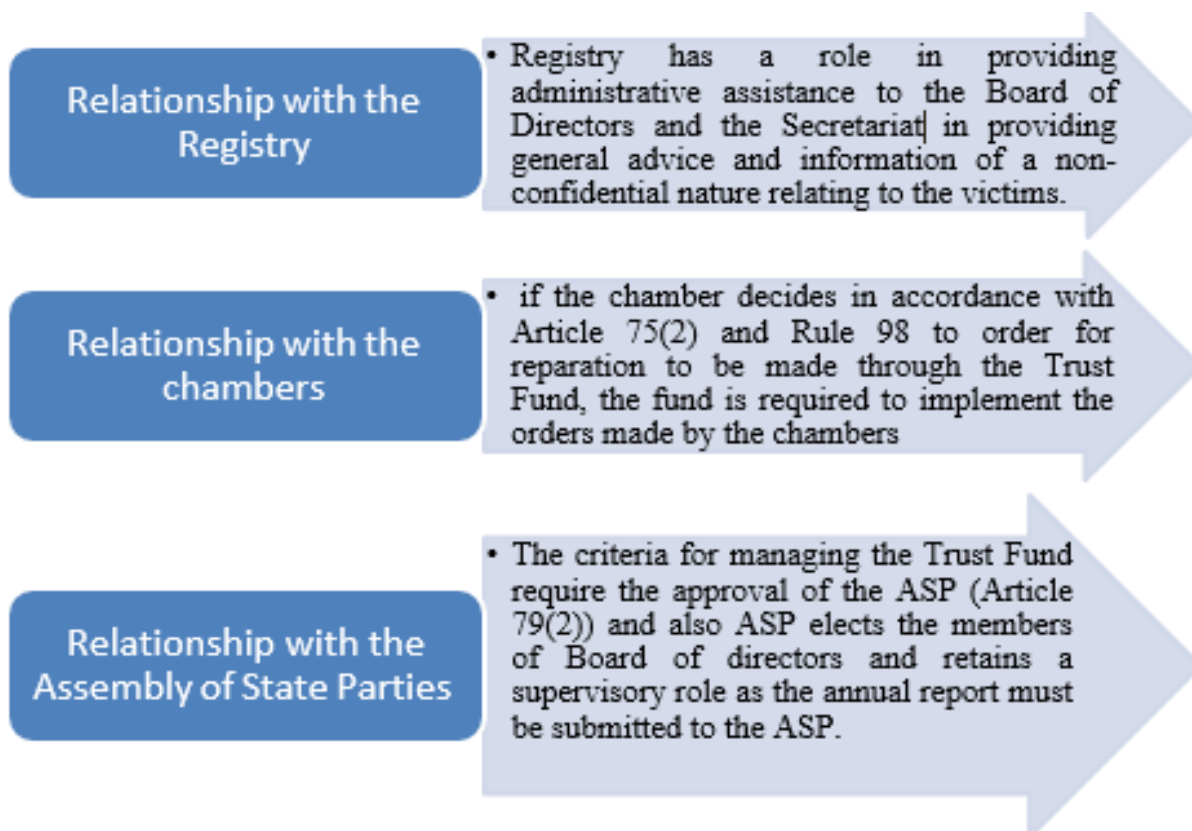
- Identifying and raising awareness on the situation of victims of genocide, crimes against humanity and war crimes.
- Mobilizing resources and partners in reaching out to victims and helping them rebuild their lives and the ones of their communities.
- Advocating for, and facilitate a dignified reconciliation within the affected families, communities, states, striving to prevent the reoccurrence of such crimes in the future.
- Implementing reparation orders made by the ICC and ensures that they are culturally relevant and effectively administered.

²¹ Victims Declaration

Independence of the trust fund and the relation with the other organs of the court:

The Trust Fund is an independent entity. The power to manage the Fund is expressly given to the Board of Directors²²

The Trust Fund has its own funding which does not form part of the regular budgetary framework of the Court. However, although the Trust Fund is not under the control of any organ of the Court, it works in collaboration with them.



Resources of the trust fund:

[The Assembly of States parties] decides ... that the Trust Fund shall be funded by:

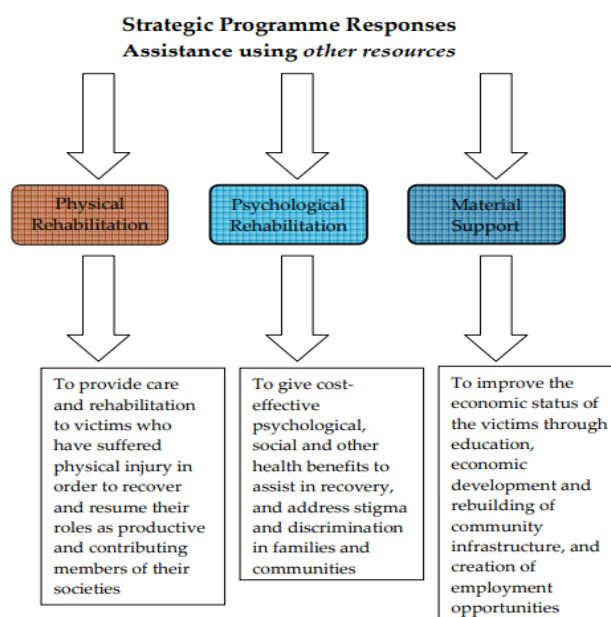
- a) Voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties;
- b) Money and other property collected through fines or forfeiture transferred to the Trust Fund if ordered by the Court pursuant to Article 79, paragraph 2, of the Statute;
- c) Resources collected through awards for reparations if ordered by the Court pursuant to Rule 98 of the Rules of Procedure and Evidence;

²² Id

- d) Such resources, other than assessed contributions, as the Assembly of States Parties may decide to allocate to the Trust Fund²³

Assistance using other resources

Regulation 47 of the Regulations of the Trust Fund states that For the purpose of these regulations, other resources of the Trust Fund refers to resources other than those collected from awards for reparations, fines and forfeitures. Assistance can be done in the following ways a) Psychological Rehabilitation b) Physical Rehabilitation c) Material Support



Examples of the assistance using other resources:

Examples of projects in the Democratic Republic of Congo (DRC)

- Provision of psychological support, physical rehabilitation, and material support related to sexual violence for men, women and children – Walungu territory, Fizi, Uvira, Bukavu, South Kivu; Beni, North Kivu; Goma, Bunia, Irumu, Djugu, Mahagi and Ituri province
- Psychological support and material support for ex-child soldiers and abducted children – Bunia and Ituri Provinces, Irumu, Djugu, Mahagi
- Psychological support for families of murdered victims – Bunia, Nyakunde, Ituri province, Aru, Goma, Masisi Territory, North Kivu province.

Examples of projects in northern Uganda

- Provision of psychological support and material support for ex-child soldiers

²³ Resolution ICC-ASP/1/Res.6 https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/ICC-ASP-ASP1-Res-06-ENG.pdf

and abducted children – Gulu and Lira

- Physical rehabilitation and psychological support for mutilated victims – Gulu, Soroti, and Lira
- Physical rehabilitation and psychological support for handicapped victims – Gulu, Pader and Lira
- Psychological support and material support for victimized villages – Apungi, Adjumani, and Teso and Lango regions.

The trust funds role in implementing court orders

The Trust Fund does not have control over awards for reparations; its role is to implement the Chambers orders, acting as an intermediary between the Court and victims. The Chambers retain a strong role in supervising implementation. In carrying out its other activities, the Board is required to ensure that the Fund always contains adequate resources to implement the Courts awards for reparations.²⁴

Under Rule 98, there are three different situations in which the Chamber can order reparations awards to be made through the Trust Fund:

- Individual awards to victims;** When individual awards are deposited with the Trust Fund, they are required to be kept separately from the other resources of the Fund and must be forwarded to each victim as soon as possible²⁵
- Collective awards to victims;** for benefitting a whole community of victims.
- Awards to intergovernmental, international or national organizations approved by the Trust Fund.** After Consultations with the interested states.

The Trust Fund has the possibility of implementing a wide range of reparations measures to provide such support to victims and their families, to cover both tangible and intangible losses. The forms of assistance referred to in the Regulations of the Trust Fund are physical or psychological rehabilitation or material support²⁶

SPECIFIC SCENARIOS FOR THE TRUST FUND:

The Court makes an individual award for reparations directly against a convicted person²⁷

In this case, the Court would not necessarily request an overt role for the Trust Fund,

²⁴Reparations And The Trust Fund For Victims https://www.fidh.org/IMG/pdf/10-CH-VII_Reparations.pdf

²⁵ Rule 98 (2)

²⁶ Regulation (VTF) 50(a) (i)

²⁷ Rules of Procedure and Evidence 98(1).

however, there would be several issues that the Board of Directors would need to contend with. In particular, if the convicted person against whom an award for reparations is made is not capable of paying, should the Trust Fund be seized of the matter and if so, in what way? Would the beneficiaries of the reparations award need to apply directly to the Trust Fund for assistance or would the Trust Fund have the ability to act in an ex officio capacity?²⁸

The Court orders that an award for reparations against a convicted person is deposited with the Trust Fund.²⁹

In this case, the Board of Directors will need to examine a series of questions, as follows: How will the funds be physically separated from the rest of the Trust Fund resources? If the Court order does not identify the individual victims, how will the Trust Fund go about identifying victims? What if the funds received from the convicted person (if any) are not sufficient to cover the reparations award issued by the Court? Should/must the Trust Fund supplement this award with its other general resources, should it have any? How will the Trust Fund report to the Court on the implementation of its order? The Court orders that an award for reparations against a convicted person is made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.³⁰

How will the principles relating to reparations that will be issued by the Court, apply to the Trust Fund? If no directions come from the Court, how will the Trust Fund determine the nature and content of the award?³¹

With respect to these first two issues, it is recommended that the projects or activities to be subsidized by the Trust Fund should support the goals of the Fund and benefit victims as defined in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of violations of international human rights law and violations of international humanitarian law.

²⁸ Redress/Dsc Report On The ICC Trust Fund For Victims <https://redress.org/wp-content/uploads/2018/01/TFVReport.pdf>

²⁹ Where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim, the award for reparations thus deposited in the Trust Fund will be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible, Rules of Procedure and Evidence, 98(2)

³⁰ RPE 98(3).

³¹ Art 75(1) Rome Statute: The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.³²

IV. RELEVANT INTERNATIONAL AND DOMESTIC LEGISLATIONS RELATED TO VICTIMS

UN Declaration, 1985: The Magna Carta of Victims Rights

The UN Declaration, 1985 resulted from international cooperation in the development of international crime policies facilitated by the United Nations.³³ It also recognized that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders.

The UN Declaration, 1985 consists of two parts: Part A, on Victims of Crime, which is subdivided into sections regarding Access to justice and fair treatment, Restitution, Compensation, and Assistance; and Part B, on Victims of abuse of power³⁴

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The provisions relating to compensation are envisaged under BNSS vide Sections 260, 273, 395, 396, 399, 400.

V. CONCLUSION AND SUGGESTIONS

The funding of the International Criminal Court (ICC) and the Trust Fund for Victims (TFV) plays a crucial role in ensuring the effective functioning of the ICC. The current funding mechanisms and the working of the Trust Fund face challenges such as:

1. **Challenge of Mass Reparations Claims:** The nature of international crimes implies a continuous need for reparations claims, potentially overwhelming the Court's capacity to manage them effectively.
2. **Expertise Needed for Administrative Challenges:** Managing reparations proceedings requires a specialized group of experts to handle administrative issues, including identifying beneficiaries, determining the scope and nature of remedies, and working with limited evidence.
3. **Risk to the Court's Primary Objective:** The extensive administrative tasks

³² Rules of Procedure and Evidence, 98(4).

³³ <http://legal.un.org/avl/ha/dbpjvcap/dbpjvcap.html>

³⁴ <http://legal.un.org/avl/ha/dbpjvcap/dbpjvcap.html>

involved in reparations could divert the Court's focus from its primary goal of ending impunity by establishing guilt or innocence for the most serious international crimes.

4. **Financial Dependence on Perpetrators:** Ordering reparations directly against convicted individuals becomes problematic when perpetrators lack the financial capacity to fulfill these obligations, relying on the voluntary contributions of the Trust Fund for Victims.

5. **Indigence of Convicted Individuals:** Many perpetrators before the ICC are declared indigent, even before the conclusion of the trial proceedings posing a significant challenge to the reparations regime and necessitating reliance on the Trust Fund for Victims.

6. **Voluntary Donations and Feasibility:** Relying on voluntary donations for reparations does not guarantee the feasibility of providing adequate compensation to victims, raising concerns about the sustainability of the reparations system.

7. **Debates on Scope of Reparations:** Questions arise regarding the scope of victims eligible for reparations from the Trust Fund, including whether it is limited to crimes actively investigated by the Court or extends to victims of any crime listed in Article 5 of the Statute.

8. **Challenges in Defining Eligible Victims:** Determining the eligibility of victims for reparations becomes complex, especially when considering crimes outside the Court's jurisdiction and complementarity processes.

9. **Legal Definitions and Trust Fund Dilemma:** The Trust Fund faces the challenge of interpreting legal definitions in Article 5 of the Rome Statute when assessing claims, potentially placing it in the position of determining the correspondence between events and legal definitions.

10. **Scope of Trust Fund Activities:** While most Trust Fund activities relate to the Court's reparations process, Rule 98(5) of the Rules of Procedure and Evidence allows the Fund to allocate resources for the benefit of victims without a direct connection to the reparations process, introducing further complexities.

SUGGESTIONS:

1. **Diversifying Funding Sources:** Exploring alternative financing models beyond voluntary contributions, such as dedicated international taxes or a portion of seized assets, to ensure a more stable and consistent revenue stream to the ICC's Trust Fund.

2. **Increasing Awareness and Advocacy:** Developing campaigns to educate the public and governments about the crucial role of the International Criminal Court (ICC) and the Trust Fund for Victims (TFV), fostering increased political will and financial commitment.

3. **Promoting Regional Cooperation:** Encouraging collaboration with regional organizations, seeking their financial contributions to strengthen the overall financial stability of the ICC and TFV. This approach can foster a more comprehensive and collective effort in addressing international criminal issues.

4. **Establishment of a Reserve Fund:** Creating a reserve fund to buffer against fluctuations in voluntary contributions, ensuring that the ICC and TFV have a financial safety net during periods of lower funding.
