

march, 23rd - Rolling text

Article 66 : Reparations to victims

1. The Court [shall] [may] establish principles relating to reparations to, or in respect of¹, victims, including restitution, compensation [and][including compensation for the purposes of] rehabilitation. [In the interest of justice][Where necessary] the Court [shall][may] [upon request] determine, in its judgment, the scope and extent of any damage, loss and injury to, or in respect of, victims.

2- In accordance with the principles established by the Court,

(i) The Court may make an order directly against a convicted person for an appropriate form of reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. [Where appropriate, the Court may order that the award for reparations be made into the trust fund provided for in article 72].

An award by way of compensation may comprise :

- (i) an exemplary element ;
- (ii) a compensatory element ;
- (iii) both

(ii) [The Court may also [make an order][recommend] that an appropriate form of reparations to, or in respect of, victims, including restitution, compensation and rehabilitation be made by a State :

- if the convicted person is unable to do so himself and
- if the convicted person was, in committing the offence, acting on behalf of that State in an official capacity, and within the scope of his/her authority]

(iii) [In any case other than those referred to in subparagraph (ii), the Court may also recommend that States grant an appropriate form of reparations to, or in respect of, victims, including restitution, compensation and rehabilitation].

¹ Such a provision refers to the possibility for appropriate reparations to be granted not only to victims but also to others such as the victim's families and successors (in French "ayant-droit"). For the purposes of defining "victims", reference may be made to the Declaration of basic principles of justice for victims of crime and abuse of power (UNGA resolution 40/34) and the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and international humanitarian law (E/CN4/Sub.2/1996/70).

3. In exercising its power under this Article, the Court may determine whether, in order to give effect to any order it may make, it is necessary to request protective measures, including the tracing, freezing or seizure of proceeds, property and assets and instrumentalities of the person convicted, or of any assignee of his assets where the Court is satisfied that there is prima facie evidence that the assignment was made in order to defeat any protective order which the Court might request. For that purpose, the Court shall seek the cooperation of the interested States².

4. Before making a decision under this Article, the Court shall take account of any written or oral representations made by or on behalf of the convicted person, the victim or victims, [other interested persons][or States].

5. Deleted³

6. Victims or their successors or assigns may, in accordance with applicable [procedural] national law, pursue their remedies [in the domestic Courts]. [To that end][In national jurisdictions, for the purposes of execution], the judgments of the Court [as regards the Court's factual findings concerning the conduct of the convicted person, the damage caused to victims as a result of that conduct [and any compensation or restitution ordered] shall be binding on the national authorities of State Parties] [shall be binding and States Parties shall take the necessary measures to implement them].

7. Nothing in this Article shall be interpreted as prejudicing the rights of victims [, not covered by the judgment of the Court,] under national or international law.

NB : Consideration should be given to making a reference to a right to appeal under this article.

² Consideration should be given to using article 82.1 (1) instead of this paragraph.

³ The text of former paragraph 5 should be incorporated in the Rules of procedure and evidence : "The judgment of the Court under this Article will be transmitted by the Registrar to the competent authorities of the State or States with which the convicted person appears to have direct connection either by reason of nationality or domicile or habitual residence or by virtue of the location of the convicted person's assets and property or with which the victims have such connection".