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International Crimes, Peace, and Human Rights: The Role of the International Criminal Court

Edited by
Dinah Shelton



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CHAPTER 12

REPARATIONS FOR VICTIMS OF INTERNATIONAL CRIMES

*Dinah L. Shelton*¹

A. INTRODUCTION

Article 75.1 of the Rome Statute mandates the Court to:

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.

The application of this provision must be based on respect for the internationally guaranteed human rights of every person appearing before the Court, whether victim or defendant. Human rights law establishes a minimum standard of treatment that must inform the Court's work. Given the concurrence of jurisdiction between national tribunals and the International Criminal Court, individuals should receive no less favorable treatment at the International Criminal Court than that guaranteed them in national courts under the international customary and treaty law of human rights.

B. LESSONS FROM INTERNATIONAL HUMAN RIGHTS LAW

1. The Right to a Remedy

The right to a remedy when rights are violated is expressly guaranteed by global and regional human rights instruments. Most texts guarantee both the procedural right of effective access to a fair hearing and the substantive right to a remedy. The Universal Declaration of Human Rights provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts

¹ An earlier version of this contribution was prepared for and distributed by The Center on International Cooperation of New York University to the July 26–Aug. 13, 1999, Meeting of the Preparatory Commission for the International Criminal Court. Further information on the Center is available, along with its publications and working papers, on the Center's web site <www.nyu.edu/pages/cic>.

violating the fundamental rights granted him by the constitution or laws" (Article 8). The International Covenant on Civil and Political Rights contains three separate articles on remedies. Article 2.3 calls on States Parties to ensure that any person whose rights or freedoms recognized in the Covenant are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have the right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy; and to ensure that the competent authorities shall enforce such remedies when granted. The Convention on the Elimination of Racial Discrimination also contains broad guarantees of an effective remedy (Article 6), like the Convention on the Elimination of All Forms of Discrimination against Women, which requires competent national tribunals and other public institutions to ensure "the effective protection of women against any act of discrimination." (Article 2.c).

The United Nations Convention against Torture refers in Article 14 to redress and compensation for torture victims: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

Declarations, resolutions and other non-treaty texts also address the right to a remedy. In some instances, the issue is raised by human rights organs when issuing "general comments." In 1998, the Working Group on Involuntary or Enforced Disappearances issued a General Comment to Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance. The Working Group elaborated on the obligation to provide adequate compensation. Compensation is deemed "adequate" if it is "proportionate to the gravity of the human rights violation (e.g., the period of disappearance, the conditions of detention, etc.) and to the suffering of the victim and the family." Amounts shall be provided for any damage, including physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation, and costs required for legal or expert assistance. In the event of the death of the victim, as a result of an act of enforced disappearance, the victims are entitled to additional compensation. Measures of rehabilitation should be provided, including medical and psychological care, rehabilitation for any form of physical or mental damage, legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to the place of residence, and similar forms of restitution, satisfaction and reparation that may remove the consequences of the enforced disappearance.

Norms adopted in the area of crime prevention and criminal justice also mandate remedies. The United Nations Declaration of Basic Principles of Justice for

Victims of Crime and Abuse of Power² contains broad guarantees for those who suffer pecuniary losses, physical or mental harm, and “substantial impairment of their fundamental rights” through acts or omissions, including abuse of power. Victims are entitled to redress and to be informed of their right to seek redress. The Declaration specifically provides that victims of public officials or other agents who, acting in an official or quasi-official capacity, violate national criminal laws, should receive restitution from the state whose officials or agents are responsible for the harm inflicted. Abuse of power that is not criminal under national law but that violates internationally recognized norms relating to human rights should be sanctioned and remedies provided, including restitution and/or compensation, and all necessary material, medical, psychological, and social assistance and support.

Regional instruments also contain provisions requiring legal remedies for violations of human rights. The commissions and courts have interpreted and applied these guarantees in several cases. The European Convention on Human Rights modeled its general remedial provision, contained in Article 13, on Article 8 of the Universal Declaration of Human Rights. The American Convention on Human Rights goes further, entitling everyone to effective recourse to protection against acts that violate the fundamental rights recognized by the constitution “or laws of the state or by the Convention,” even when the act is committed by persons acting in the course of their official duties (Article 25). The African Charter has several provisions on remedies. Article 7 guarantees every individual the right to have her/his cause heard, including “the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.”

In sum, it is clear that the existence of effective remedies is an essential component of international human rights law.

2. The Purpose of Remedies

The primary function of corrective or remedial justice is to rectify the wrong done to a victim. Compensation can only provide something equivalent in value

² U.N.G.A. Res. 40/34 of Nov. 29, 1985. Paragraph 4 states that victims are entitled to access to the mechanisms of justice and prompt redress for the harm they have suffered. Procedures are to be expeditious, fair, inexpensive and accessible. Where appropriate, restitution should be made to victims, their families or dependents by offenders or third parties responsible for their behavior. (Para. 8) Victims of abuse of power are defined as those harmed by acts which do not yet constitute violations of national criminal laws. In 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, Aug. 27–Sept. 7, 1990), recommended that states base national legislation upon the Declaration and requested the UN Secretary General to study the feasibility of establishing an international fund for victims of transnational crimes. Report of the Congress, A/CONF.144/28. The Council of Europe produced the European Convention on the Compensation of Victims of Violent Crimes (1983), a 1985 recommendation R(85) 11 on the position of the victim in the framework of criminal law and procedure, and a 1987 recommendation R(87)21 on assistance to victims and prevention of victimization.

to that which is lost; rectification or restitution restores precisely that which is taken. Where restitution or rectification is not possible, substitute remedies, including damages, are required. In fact, monetary compensation is the most common form of reparation because, as Grotius says, "money is the common measure of valuable things." The amount of compensation must correspond to the value of restitution in kind. Arbitral tribunals frequently restate the theory that reparations "must wipe out all the consequences" of the illegal act. In the *Lusitania* cases, the arbiter Parker stated that the "remedy must be commensurate with the injury received. . . . The compensation must be adequate and balance as near as may be the injury suffered."³

Human rights violations committed by state officials are qualitatively different from private injury because of the motives and nature of the conduct as well as the identity of the wrongdoer. Individuals expect protection from the state; one of its fundamental purposes is to secure the safety and well-being of those within its power. For the government itself to cause harm adds an element of outrage generally not present in purely private wrongdoing. The Inter American Court of Human Rights recognized the profound impact that such violations can have. In the *Loayza Tomayo v. Peru (Reparations)*⁴ decision, it pointed out that the very existence and conditions of the life of a person are altered by unfairly and arbitrarily imposed official actions taken in violation of existing norms and of the trust that is placed in the hands of public power, whose duty is to protect and provide security in order for individuals to exercise their rights and satisfy their legitimate personal interests. The remedies afforded should reflect the breach of trust involved because, in general, the more outrageous the wrongdoer's conduct, the more outraged and distressed the victim will be and the greater the harm that will be suffered.

Remedies should provide the important psychological and social functions of reintegration and rehabilitation of the victimized. Victims of abuse often are blamed for their victimization or avoided because of the horrific nature of the stories they have to tell. Bystander's guilt may also lead to rejecting the victims. Not infrequently, the social reaction is indifference or avoidance leading to a silence that is detrimental to the victims, producing isolation and mistrust. Children of victims may adopt these reactions and themselves become victims over time. The need to re-adapt to normal society and return to pre-victim ways of living and functioning is crucial.

As compensation is the most common remedy, every legal system should strive for certainty in calculating damages to avoid under- or over-compensating a victim. Uncertainty and arbitrariness in awards undermines respect for the law; legal certainty represents one of modern jurisprudence's central concerns as the

³ *Lusitania* cases, 7 R.I.A.A. 35, 36.

⁴ *Loayza Tomayo v. Peru*, Judgment of Nov. 27, 1998, 43 Inter-Am. Ct. H.R. (ser.C) (1998).

law searches for order and predictability. The rule of law implies that society administers justice by fixing standards that individuals may determine prior to controversy and that reasonably guarantee all individuals like treatment. Accurate assessment is also necessary because inadequate or excessive awards frustrate the compensatory, retributive and deterrent functions of the law.

The prevalence of compensation as a remedy should not diminish consideration of the need for other kinds of redress. When rights are infringed, someone has been victimized because of an unwarranted act of interference and therefore justifiably has the right to reclaim her/his prior position. This focus on the victim demands provision of something equivalent in value to that which was lost, or restoring precisely that which was removed. The primary goal of remedies thus should be rectification or restitution rather than compensation. When rights are violated, the ability of the victim to pursue self-determination is impaired and it is not justifiable generally to assume that compensation restores the moral balance *ex ante*. A morally adequate response addresses itself in the first instance to restoring what was taken.

3. Who May Claim Remedies

International tribunals have adopted rules and decided cases setting forth the procedural requirements to claim remedies, including standing to file claims, presentation of claims, and the power of the tribunals to oversee the execution of judgments. The designation of a "victim" is an international legal question and at a minimum includes the individual whose right or freedom has been violated. It generally is not necessary for the victim to be a national or resident of the defendant state. When the victim is deceased or the injury has consequences for other persons, third parties also may be characterized as victims of the violation. The former European Commission on Human Rights defined the term "victim" as including "not only the direct victim or victims of the alleged violation, but also any person who would indirectly suffer prejudice as a result of such violation or who would have a valid personal interest in securing the cessation of such violation."⁵

Among the cases decided by the Inter-American Court of Human Rights by the end of 1998, few direct victims had survived the breaches to bring an international complaint. In all remaining cases, various family members and other dependents of the deceased were the claimants. In such cases they sought remedies for injuries to the deceased prior to death, wrongful death, and consequential damages they have suffered in their own right. The Inter-American Court has held that both pecuniary and non-pecuniary claims survive and automatically pass

⁵ X v. Federal Republic of Germany, App.4185/69, 35 Eur. Comm'n H.R. Dec. & Rep. 140, 142 (1970). See also Koolen v. Belgium, 1478/62 13 Eur. Comm'n H.R. Dec. & Rep. 89; X v Germany, 282/57, I Y.B. Eur. Conv. on H.R.166; Andronicou and Constantinou v. Cyprus (Admissibility), 82B Eur. Comm'n H.R. Dec. & Rep. 112 (1995).

to the victim's heirs or successors. In general, the Court requires the state to remedy the harm caused to those who suffer the "immediate effects" of its breaches of human rights guarantees when those effects are sufficiently direct and proximate. In *Loayza Tamayo v. Peru*, the Court held that the victim's family members were also "injured parties" within the meaning of Article 63.1 and could present their own claims during the reparations phase of the case. The Court considered that the term "family members" should be understood in a broad sense to include all those persons linked by a close relationship, including the children, the parents and the siblings. Similarly, in *Blake v. Guatemala*, the parents and siblings of the disappeared all claimed to be directly injured by Blake's disappearance and death. The Court referred to the especially grave context of forced disappearance that caused the family anguish and suffering, together with insecurity, frustration and impotence in the face of the government's failure to investigate. Finding that the family had experienced grave moral damage and suffering as a result of the violations, it awarded each member of the family \$30,000. Finally, in *Suarez Rosero v. Ecuador*, the applicant sought \$20,000 in moral damages for himself, and \$20,000 for his wife and daughter. The Court awarded \$20,000 each to him and his wife, and \$10,000 to the daughter, holding that it is human nature to suffer in the circumstances he had been through and that no proof was required. Further, there must be presumed repercussions for his wife and daughter. The Court based its award on the totality of the circumstances and awards made in similar cases.

The Human Rights Committee has also indicated that family members may be considered victims of violations perpetrated on one of their relatives. In the case of a disappearance, the Committee found that the mother of the disappeared was a victim.

Standing to claim remedies thus will extend to all direct and indirect victims of crimes within the jurisdiction of the ICC. This will necessarily include legal as well as natural persons. Article 8 of the Statute includes crimes whose victims most often are legal persons. These crimes include extensive destruction and appropriation of property (Article 8.2.a.iv), attacking or bombarding towns, villages, dwellings or buildings (Article 8.2.b.v), and intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, and historic monuments (Article 8.2.b.ix). The last, in particular, is likely to involve claimants from municipalities to foundations, religious institutions and museums. Looting of cultural property and the destruction of cultural monuments is a war crime and contrary to the 1954 Hague Convention on the Protection of Cultural Property During Armed Conflict. It is a crime that has become particularly significant during ethnic and religious conflicts. Examples abound of such attacks and efforts to recover such property by the legal entities entitled to the property, from the Greek Cypriot church lawsuits to recover stolen mosaics from churches in occupied Cyprus, to the looting of the museum of Kabul, to the taking of temple artifacts in Cambodia, to on-going efforts to recover art stolen dur-

ing the Second World War. If legal persons are not permitted to make claims at the ICC, there will be many instances of looted or destroyed cultural property in which no one will have standing to seek restitution or compensation, thus rendering a portion of the Court's jurisdiction moot.

4. Kinds of Remedies

The law of remedies in legal systems throughout the world seeks to undo the effects of wrongdoing and restore what was taken from the victim. Thus, restitution is preferred when possible and money is awarded as a substitute when the victim cannot be restored to her/his pre-injury position. In practice, restitution is generally limited to claims of stolen property, unlawful termination of employment or arbitrary detention, and similar cases where the exact thing taken can be returned. For personal injury and death no restoration is possible, however. Life cannot be recovered, nor can a rape or torture victim have the rape or torture expunged. In such cases, money becomes a substitute for the pre-injury status.

A sum of money awarded as damages is designed to compensate victims for harm they have suffered, with the intention of making the victim as well off as he or she would have been if the injury had never occurred. It must be recognized that large amounts of money may be necessary to place the victim in the same position of relative satisfaction that he or she occupied before the event. The assessment or calculation of damages is complex. Physical injury, for example, can cause harm in two ways. First, it lowers the level of income received, and second it usually lowers the value of any income received because of the loss of possibilities to enjoy it.

Human rights tribunals classify monetary compensation under three headings: pecuniary losses, non-pecuniary damage, and costs and expenses.

Intangible injuries such as physical pain and suffering have long been recognized as legitimate elements of damages. Mental anguish independent of physical injury is also now recognized as an element of recovery, including humiliation, loss of enjoyment of life and other non-pecuniary losses. Loss of consortium when one is deprived of a spouse may include loss of love and companionship as well as services in the home, society, and sexual relations. The impairment of any of these gives a right to damages. Interference with parent/child relations may lead to damages for loss of companionship, comfort, guidance, affection and aid. All these factors represent the irreplaceable intangibles of family life. In civil law systems, "*préjudice moral*" includes pain and suffering, sadness and humiliation caused by disfigurement, loss of amenities, loss of recreational ability, loss of any of the five senses, inability to enjoy sexual relations, harm to marriage possibilities, and generally damage to the enjoyment of life. Overall, where there has been an injury, the focus is at least in part on diminution of the injured person's expectations of life.

In sum, national and international tribunals award compensation for violations of basic rights and provide numerous examples of expansive remedies designed to ensure the restoration, as nearly as possible, of the situation that would have existed had the wrongful conduct not occurred.

5. Remedies When There Are Large Numbers of Cases

Actions within the jurisdiction of the Court are likely to accompany internal armed conflicts, where the sheer number of victims and perpetrators may overwhelm the best efforts to provide full redress to victims. When there are thousands of victims in need of justice, both the procedures and the substance inevitably alter. Administrative solutions like sampling, or summary procedures can assist in affording swifter resolution of claims for compensation. Compensation and other remedies are part of the rehabilitation process of torture victims and other survivors of gross misconduct. In balancing needs and ability to pay, compromise is probably necessary in many cases because there are insufficient funds to provide full compensation to all victims. In the context of state action, a U.N. Victims of Crime report recommended that "if it is uncertain whether the budgetary means of the state will be sufficient to cover an unknown number of claimants, a fund should be established to limit the financial burden. A basic amount should be paid out immediately and the difference paid later, the final amount payable to each claimant being known only at the time when it is clear how many claimants filed claims and the amounts distributable out of the fund."⁶

The 1990 conflict in the Persian Gulf created new laws and procedures on reparations for mass violations during armed conflict.⁷ The United Nations Compensation Commission has built upon the practice of international tribunals hearing claims of state responsibility for injury to aliens. It also has looked to U.S. mass tort claims administration as a model for the Iraqi claims process. It has used "some of the techniques and arts of sampling that were developed in the [U.S.] asbestos and Dalkon Shield cases."⁸ The Commission is limited to awarding monetary compensation, and cannot impose restitution or punitive damages.

The UNCC has determined that pecuniary losses include loss of income and medical expenses, mental pain and anguish due to the death of a spouse, child or parent of the individual, or the individual's serious personal injury or suffering of a sexual assault, aggravated assault or torture. Compensation may be awarded for mental pain and anguish to individuals for dismemberment, disfigurement, loss

⁶ Victims of Crimes: Working Paper Prepared by the Secretariat, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF.121/6 at 39 (1985). See also United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 13, G.A. Res. 40/34, 29 Nov. 1985, Annex.

⁷ David J. Bederman, *The United Nations Compensation Commission and the Tradition of International Claims Settlement*, 27 INT'L L. & POL. 1 (1994).

⁸ N. C. Ulmer, *The Gulf War Claims Institution*, 10 J. INT'L ARB. 85, 88 (1993).

of use of a body part, being taken hostage, being illegally detained, having a well-founded fear for one's life, and being deprived of all economic resources such as to threaten one's survival. The U.N. has published a scale of mental pain and anguish for most of the situations faced by individuals during the conflict. Victims of aggravated assault, sexual assault or torture may claim up to \$5,000 per incident.⁹

In the United States, the *Marcos* litigation exemplifies the problems associated with efforts to afford all victims some remedy. In the class action suit, the large numbers of victims necessitated innovative procedures that limited the individualized decision-making, taking of evidence, and procedural fairness to both sides that would normally be required in litigation. Rather than hold separate hearings on each of the 10,059 claims, the U.S. District Court allowed the use of a statistical sample of the claims in determining compensatory damages. After an initial review, 518 claims were ruled facially invalid, leaving a pool of 9,541, of which 137 were randomly selected by computer. The number chosen was based on the testimony of a statistical expert who stated that a random sample of 137 claims would achieve a 95 percent statistical probability that the same percentage determined to be valid among the examined claims would be applicable to the totality of claims filed.¹⁰

The 137 claimants randomly sampled, which included torture victims, families of those summarily executed, and those who disappeared, were deposed and the expert reviewed the depositions to determine the claims. Five percent of the claims were determined to be invalid. Based on the sample, the expert recommended that the sixty-four torture claimants get \$3,310,000, an average of \$52,719 per valid claim. For summary execution, the recommendation was \$6,425,767 for fifty valid claims, an average of \$128,515 per valid claim. For the disappearances, the expert recommended \$1,833,515, an average of \$107,853 per valid claim. The court applied the 5 percent invalidity rate found in the random samples in making its awards to the entire class of 10,059 remaining claims.

In calculating the amounts due for torture, the expert ranked the claims on a scale from one to five, with five representing the worst abuses and suffering. Consideration was given to: (1) physical torture, including methods used and/or abuses suffered; (2) mental abuse, including fright and anguish; (3) duration of the torture; (4) length of detention, if any; (5) physical and/or mental injuries; (6) victim's age; and (7) actual losses, including medical bills. "Although each claim of torture was unique," the expert determined "that there were sufficient similarities within a rating category to recommend a standard damage amount to each victim within that grouping." The amount ranged from \$20,000 for category one to \$100,000 for category five.

⁹ *Id.*

¹⁰ *In re Estate of Marcos*, 103 F.3d 767, 782.

For summary executions and disappearances, the existence of torture prior to the death or disappearance was weighed in the damages. Loss of earnings was also factored in, using the formula of $2/3 \times (80 - \text{age of death}) \times \text{annual income}$, a formula adopted by the Philippine Supreme Court. A cap of \$120,000 was placed on lost earnings. When there was no evidence of earnings, the average for the occupation was utilized.

The *Marcos* cases and the international experiences described above demonstrate the unlikelihood of full compensation even when the desire to provide redress is present. Given the limited resources available, the courts and states have sought a fair way of prorating the claims based on the severity of injury. Such an approach maximizes the recovery of all of the victims who came forward, but should be coupled with other remedies, from prosecution to rehabilitation.

If the International Criminal Court decides upon a sampling or other summary procedure, it should consider utilizing its authority under Article 76.3 to afford an appellate hearing to those who claim error in the application of the procedure to their claims.

B. RECOMMENDATIONS FOR THE PROCESSING OF CLAIMS UNDER THE ROME STATUTE

The Court will need to develop processes for the filing of claims early on and maintain them throughout the criminal proceeding. This process should begin as soon as an individual is accused of crimes within the jurisdiction of the Court, in order to allow the marshaling and preservation of evidence. Files can be maintained of those who wish to seek compensation for abuse perpetrated by the defendant. The actual hearing on reparations cannot take place until the conviction is obtained. During the criminal phase, the role of victims will be primarily as witnesses for the prosecution.

The Statute foresees that a hearing may be held in connection with sentencing, and this will require that claims be submitted within a reasonable time prior to the hearing. At the hearing, if there are a manageable number of claimants, the Court may accept oral arguments or evidence from each of them. If there are large numbers involved, proceedings similar to those used in the UNCC or the *Marcos* case will be required, perhaps using sampling techniques or designating a representative for the victims.

The issues of evidence and standards of proof will be extremely important. While the requisite standard for conviction is proof beyond a reasonable doubt, this is not an appropriate standard for claims of reparation after the conviction has been obtained. In essence, the claim of redress is a civil claim heard in the criminal jurisdiction. Different legal systems use different terminology, but all utilize a lower standard of proof for civil claims, usually preponderance of the evidence, a balance of probabilities, or "*conviction intime*." It would be unjust to require a

high standard of proof of loss or injury, given the circumstances in which many of the victims will find themselves, including refugee status, homelessness, and lack of medical care where certificates or evidence of injury could be obtained.

Inevitably, there will be injuries that emerge or continue after the completion of the criminal proceedings. It seems unreasonable and unmanageable for the Court to continue reopening cases or retaining jurisdiction to hear all claims that may emerge after the date of conviction. In such instances, the Rules of Procedure and Evidence might provide that claims have to be presented to the Trust Fund and not to the Court itself. If the national courts are functioning, there could be an added requirement of seeking relief in the domestic jurisdiction prior to filing the international claims against the defendant.

C. CONCLUSION

The inclusion of a provision on victim reparations in the Statute of the Court confers an opportunity and a responsibility on the Court to afford justice to those who have suffered from the heinous crimes committed by those indicted and convicted of crimes within the Court's jurisdiction. A moral imbalance is created by the wrongs done, and the direct means of correcting that imbalance is for the wrongdoer to restore what was taken or to pay full compensation in lieu of restitution. While criminal prosecution of the guilty serves the needs of international society to deter and punish, victims require more if they are to be rehabilitated and reintegrated into society. To fulfill the goals of Article 75, the Court Rules of Procedure and Evidence should recognize that there are direct and indirect victims, and that the term "victims" includes both natural and legal persons. All victims should be afforded full redress when possible, but at least some redress in every case. Methods of sampling, representation and other innovative mechanisms can assist in achieving this goal when the number of claimants is too large to allow individualized hearings and determinations of reparations. Finally, it is essential to recognize that the failure to provide justice would risk further cycles of violence, thus undermining one of the purposes for the creation of the Court.