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THE ROLE OF VICTIMS IN INTERNATIONAL CRIMINAL PROCEEDINGS: FROM PASSIVE WITNESS TO ACTIVE PARTICIPANTS

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Abstract : International criminal justice was long organised as a contest between the Prosecutor and the accused, in which the person who suffered the crime appeared, at most, as a witness. This paper traces the transformation of that position from passive witness to active participant and assesses how far the change has been realised in practice. It first examines the marginal place of victims before the Nuremberg and Tokyo tribunals and the ad hoc Tribunals for the former Yugoslavia and Rwanda, and then analyses the participatory architecture of the Rome Statute, in particular Articles 68(3) and 75 and Rule 85 of the Rules of Procedure and Evidence. It reviews the modalities of participation and the jurisprudence of the International Criminal Court in the Lubanga, Katanga, Bemba, Ntaganda and Ongwen cases, and considers the principal tensions the model has produced: the fair trial rights of the accused, the management of mass victim populations, and the chronic underfunding of reparations. A comparison with the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon and other hybrid mechanisms follows. The paper concludes that, despite genuine normative progress, the promise of victim participation remains only partly fulfilled and that institutional and financial reform is needed if the Court is to meet the expectations created by its founding instrument.

IndexTerms **- victim participation, International Criminal Court, Rome Statute, Article 68(3), reparations, Trust Fund for Victims, fair trial rights, hybrid tribunals, international criminal law**

I. Introduction

International criminal justice has traditionally been structured as a bipolar contest between the Prosecutor, acting on behalf of the international community, and the accused, whose rights are protected by due process guarantees. Within this architecture the individual who had actually suffered the crime under adjudication occupied, at best, an instrumental position: that of a witness summoned to give evidence in support of the prosecution's case. The human suffering underlying the charges was, in a real sense, incidental to the proceedings rather than central to them, and the vindication of that suffering was left, if at all, to separate civil or administrative mechanisms outside the criminal process. The establishment of the International Criminal Court (ICC) under the Rome Statute of 1998 marked a deliberate and, in international criminal law, unprecedented departure from this model. For the first time in an international criminal instrument, victims were granted an autonomous procedural status enabling them to participate in proceedings independently of any role as witnesses, to have their views and concerns presented and considered at stages of the proceedings determined to affect their personal interests, and to seek reparations for the harm they had suffered.

This paper traces that transformation from passive witness to active participant and offers a critical assessment of how far it has been realised in practice. Section II outlines the marginal position occupied by victims before the International Military Tribunals at Nuremberg and Tokyo and before the ad hoc Tribunals for the former Yugoslavia and Rwanda. Section III analyses the normative architecture of victim participation under the Rome Statute and the Rules of Procedure and Evidence. Section IV examines the practical modalities through which participation occurs at different stages of proceedings. Section V turns to the jurisprudence of the ICC in the Lubanga, Katanga, Bemba, Ntaganda and Ongwen cases, which has shaped, and in some respects constrained, the content of victims' rights. Section VI considers the principal tensions the participatory model has generated, in particular its relationship with the fair trial rights of the accused, the practical difficulties of managing mass victim populations, and the persistent underfunding of reparative measures. Section VII situates the ICC's approach within a comparative frame that includes the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon and other hybrid mechanisms. Section VIII offers a critical assessment, and Section IX concludes that, notwithstanding genuine normative progress, the promise of victim participation remains only partially realised, and that further institutional reform is required if the Court is to deliver on the expectations its founding instrument created.

II. The Historical Marginalisation of Victims

The International Military Tribunals at Nuremberg and Tokyo were not designed with victims in mind. Their constitutive charters made no reference to victim participation or reparation, and the individuals who had suffered under Nazi and Japanese atrocities appeared, where they appeared at all, as witnesses called to substantiate the prosecution's case against the surviving political and military leadership. The overriding purpose of those tribunals was retributive and didactic: to establish an authoritative historical record of the crimes committed and to affirm, for the first time in binding international form, the principle of individual criminal responsibility for aggression, war crimes and crimes against humanity. Redress for those directly affected was not part of the tribunals' mandate and was left, in practice, to post-war reparations agreements negotiated at the inter-state level, from which individual victims derived, at most, an indirect and often illusory benefit.

This paradigm persisted largely unaltered into the era of the ad hoc Tribunals established by the United Nations Security Council in the early 1990s. The Statutes and Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) conferred no independent right of participation on victims. Victims could appear only as prosecution or, occasionally, defence witnesses, subject to examination and cross-examination according to ordinary adversarial rules, and had no standing to present their own views, to be separately and independently legally represented, or to seek compensation from the tribunals themselves. Rule 106 of the ICTY Rules of Procedure and Evidence

permitted a victim to pursue compensation, but only by way of a civil action before a competent domestic court relying on the final judgment of the Tribunal as to criminal responsibility a mechanism that proved illusory in practice, given the practical, financial and jurisdictional obstacles confronting claimants in states still recovering from armed conflict, and given the absence of any international enforcement mechanism to compel payment. Commentators have described this omission as a significant lacuna in the design of the ad hoc tribunals, one that reflected the priorities of the Security Council members that created them: the restoration of international peace and security and the establishment of individual criminal accountability for atrocity crimes, rather than the vindication of victims' own interests in truth, acknowledgment and redress.

The consequences of this exclusion were not merely symbolic. Victims who testified before the ICTY and ICTR frequently reported feelings of alienation and a lack of control over proceedings that would determine the fate of those who had harmed them, together with, in a significant number of cases, secondary traumatisation arising from adversarial cross-examination unaccompanied by any corresponding acknowledgment of their status as rights-holders in their own right. Victims' organisations and truth commissions operating in parallel to the ad hoc tribunals frequently observed that criminal accountability, however important, could not by itself substitute for victims' own need to be heard, to have their harm formally recognised, and to receive some form of material or symbolic redress. It was against this backdrop of accumulated critique, voiced by non-governmental organisations, victims' groups and delegations from civil-law states with strong partie civile traditions, that the drafters of the Rome Statute resolved, during the negotiations of the 1990s, to design a fundamentally different model of victim engagement. The International Criminal Tribunal for Rwanda, in particular, attracted sustained criticism for the disjunction between its physical proximity to affected communities in Rwanda and its practical remoteness from those same communities' expectations of acknowledgment and material redress, a critique that fed directly into the advocacy positions taken by victims' coalitions at the Rome Conference and that helps to explain why the participatory and reparative provisions ultimately adopted in Articles 68 and 75 went considerably further than anything found in the Statutes of either ad hoc Tribunal.

III. The Rome Statute Paradigm Shift

The Rome Statute departs from the ad hoc tribunal model in three principal respects: it recognises a right of victim participation in proceedings; it establishes a mechanism for the legal representation of victims; and it creates a freestanding regime of reparations, implemented in part through a dedicated Trust Fund for Victims.

The central participatory provision is Article 68(3), which provides that where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The provision is deliberately open-textured. It does not itself define who qualifies as a victim, identify the stages at which participation is to occur, or specify the precise modalities by which views and concerns are to be presented, leaving these questions to be elaborated through the Rules of Procedure and Evidence and, more significantly, through judicial interpretation developed on a case-by-case basis. This drafting choice reflected the compromise reached at Rome between delegations favouring an expansive, civil-party model of participation and delegations concerned that any such model risked unduly complicating and lengthening proceedings and encroaching upon the rights of the accused.

Rule 85 of the Rules of Procedure and Evidence defines "victims" as natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court, and extends the definition to organisations or institutions that have sustained direct harm to property dedicated to religion, education, art, science or charitable purposes, to historic monuments, hospitals, and to other places and objects for humanitarian purposes. Rules 89 to 93 set out the procedure by which applications for participation are made, assessed and determined. In practice, victims are required to complete standardised application forms processed by the Registry's Victims Participation and Reparations Section, following which a Chamber determines whether the applicant satisfies the Rule 85 definition and whether the relevant stage of the proceedings affects the applicant's personal interests within the meaning of Article 68(3). The Office of Public Counsel for Victims, established under Regulation 81 of the Regulations of the Court, provides support and, where necessary, direct representation to victims and to their chosen legal representatives, particularly where resources or logistical constraints would otherwise leave victims unrepresented.

The Statute further departs from the ad hoc precedent by permitting victims to be legally represented as of right. Rule 90 allows victims to choose a legal representative of their own selection, and empowers a Chamber, in the interests of a fair and expeditious trial, to request victims or particular groups of victims to choose a common legal representative or representatives, if necessary with the assistance of the Registry. In cases involving large numbers of applicants the Lubanga trial alone eventually involved over one hundred participating victims, and other situations before the Court have generated applications numbering in the thousands the appointment of common legal representatives has become the practical norm rather than the exception. This has, in turn, raised recurrent questions as to the adequacy of representation for victim populations whose individual circumstances, and sometimes whose interests, diverge considerably, a concern examined further in Section VI below.

Finally, Article 75 establishes principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation, and empowers the Court to make an order directly against a convicted person specifying appropriate reparations, whether upon request or, in exceptional circumstances, on the Court's own motion. Article 79 establishes a Trust Fund for Victims for the benefit of victims of crimes within the jurisdiction of the Court, and of their families, funded principally through voluntary contributions from States Parties and other donors, supplemented by such fines and forfeitures as the Court may order and by such further resources as the Assembly of States Parties may determine. The Trust Fund for Victims operates under a dual mandate: an assistance mandate, under which it may provide physical, psychological and material support to victims independently of any conviction, and a reparations mandate, under which it implements Court-ordered reparations awards following a conviction.

IV. Modalities of Victim Participation in Practice

The Rome Statute framework translates, in practice, into several distinct participatory modalities operating at different stages of proceedings. At the situation stage, before any case has been initiated against a named suspect, victims may submit representations to a Pre-Trial Chamber when the Prosecutor seeks authorisation to open a proprio motu investigation under Article 15, and Chambers have permitted victims to make submissions relevant to questions of jurisdiction and admissibility, including in the context of the Court's decision to authorise investigation into the situation in Afghanistan. At the case stage, participating victims

may, ordinarily through their legal representatives, access relevant parts of the case record, make opening and closing statements, question witnesses and experts with the leave of the relevant Chamber, and challenge the admissibility or relevance of evidence tendered by the parties.

Victims have also been permitted, in certain circumstances, to make submissions on interlocutory matters that fall short of full trial participation but nonetheless touch upon their interests, including in proceedings concerning the confirmation of charges and, at the situation stage, in connection with the Court's territorial and temporal jurisdiction, as occurred in the proceedings concerning the situation in Bangladesh/Myanmar, where victims of alleged deportation of the Rohingya population were permitted to make representations bearing on the Court's jurisdiction notwithstanding that Myanmar is not a State Party to the Rome Statute. This willingness to hear victims at the jurisdictional threshold, before any suspect has even been identified, illustrates the extent to which the Court's practice has, in places, gone beyond the comparatively cautious language of Article 68(3) itself, which speaks only of stages of the proceedings "determined to be appropriate" without expressly contemplating jurisdictional argument of this kind.

The precise scope of these entitlements has been the subject of extensive litigation, since the Statute leaves to judicial discretion both the identification of the stages at which victims' personal interests are affected and the modalities by which their views are to be presented. Early Trial Chamber practice in Lubanga adopted an expansive approach, permitting victims to lead evidence going beyond questions of sentencing and reparations and to question witnesses on matters touching upon the guilt or innocence of the accused. The Appeals Chamber subsequently narrowed this approach considerably, holding that victims do not enjoy a general and unqualified right to tender evidence relevant to the guilt of the accused, and that their participatory rights must be calibrated so as not to transform what remains, fundamentally, a contest between the Prosecutor and the Defence into a three-party proceeding.

Reparations proceedings constitute a further and largely distinct participatory modality, generally initiated following a conviction. Article 75(1) empowers the Court to establish principles relating to reparations to victims, and permits it to act either upon request from victims or, in exceptional circumstances, on its own motion. Reparations may take individual or collective forms, or a combination of both, and the Court has increasingly favoured collective, community-oriented reparations including symbolic measures, rehabilitation programmes, educational assistance and infrastructure projects as a pragmatic response to the practical difficulty of individually verifying and compensating every member of large-scale victim populations in resource-constrained, often still-insecure, post-conflict settings. Victims also enjoy limited rights of appeal in relation to reparations orders, and, under Article 82(4), a legal representative of victims may appeal a reparations order, a right that has been exercised, for example, in relation to the scope of the Lubanga reparations principles.

Victim participation must also be distinguished, conceptually and procedurally, from the protective measures available to victims and witnesses under Article 68(1), which requires the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, having regard in particular to the nature of the crime, especially where it involves sexual or gender-based violence or violence against children. These protective functions are discharged principally through the Victims and Witnesses Unit within the Registry, which may recommend protective measures such as in-camera testimony, voice and image distortion, or relocation, quite independently of whether the individual concerned has been granted status as a participating victim under Rule 85. The two regimes nonetheless interact closely in practice, since many participating victims are also prosecution witnesses, and Chambers must therefore calibrate participatory rights such as access to filings that may reveal a witness's identity or location so as not to undermine protective measures put in place for the same individual in a different procedural capacity.

V. Jurisprudential Development: Lubanga, Katanga, Bemba, Ntaganda and Ongwen

The Court's practice of victim participation has been shaped substantially through its jurisprudence, beginning with the Lubanga case the ICC's first trial, concerning the conscription, enlistment and use of child soldiers in the Democratic Republic of Congo. Trial Chamber I's 2008 decision permitted victims to participate at trial in a manner not confined to matters of reparation, allowing them, subject to Chamber approval, to introduce and challenge evidence and to make submissions on issues arising during the trial, in what commentators have described as the most expansive interpretation of Article 68(3) in the Court's history. Following Lubanga's conviction in 2012, Trial Chamber I issued a decision establishing principles and procedures to be applied to reparations, emphasising a victim-centred, gender-sensitive and non-discriminatory approach, and endorsing collective reparations to be implemented through the Trust Fund for Victims in light of Lubanga's acknowledged indigence. The Appeals Chamber amended those principles in 2015, clarifying the Trial Chamber's obligation to render a reparations order directly and formally against the convicted person, notwithstanding his indigence, so as to preserve the legal and symbolic significance of individual liability for reparations even where the Trust Fund would, in practice, advance the funds required to satisfy the order.

The Katanga case, concerning the 2003 attack on the village of Bogoro in Ituri province, produced the Court's first reparations order actually implemented in practice. The Trial Chamber awarded both individual and collective reparations, and significantly awarded a symbolic sum in addition to collective measures, reflecting the Chamber's assessment that individual awards fully commensurate with the harm suffered were financially unrealistic given both Katanga's own indigence and the scale of the victimisation involved.

The Bemba case illustrates the structural fragility of a reparation's regime contingent upon a sustained conviction. The Appeals Chamber's 2018 acquittal of Jean-Pierre Bemba Gombo on charges of command responsibility for crimes committed by troops under his effective authority in the Central African Republic extinguished, at a stroke, the prospect of any reparations award in that case, leaving several thousand participating victims without redress after years of engagement with the proceedings. This outcome has been cited by scholars as a stark illustration of the vulnerability of a reparative model that remains parasitic upon successful prosecution, a vulnerability with no direct analogue in domestic civil compensation schemes, which typically do not depend upon a prior criminal conviction of the person alleged to be responsible.

The Ntaganda case, concerning crimes committed in Ituri including sexual and gender-based violence and the conscription and use of child soldiers, produced in 2021 the Court's largest reparations order to date, estimated at approximately thirty million United States dollars, and notably extended reparations to victims of sexual and gender-based violence, including children born of rape committed during the conflict, reflecting an evolving judicial sensitivity to previously under-recognised categories of harm. The Ongwen case, arising from crimes committed by the Lord's Resistance Army in northern Uganda, has required the Court to confront the complex status of an accused who was himself, as a child, abducted and conscripted by the very organisation whose later crimes

he stood trial for committing, a circumstance that generated searching academic debate as to the coherence, in such cases, of a strict binary opposition between "victim" and "perpetrator" status within the Rome Statute framework, and as to the relevance of that dual status to sentencing and to the participatory rights of Ongwen's own victims.

Taken together, this body of jurisprudence illustrates both the genuine innovation represented by the ICC's participatory model and its practical fragility. Each case has required Chambers to balance victims' evolving procedural entitlements against competing considerations of expeditiousness, fairness to the accused, and the severe financial and logistical constraints under which both the Court and the Trust Fund for Victims operate.

VI. Tensions and Challenges

The integration of victim participation into a procedural system combining adversarial and inquisitorial elements has generated persistent structural tensions, the most significant of which concerns the fair trial rights of the accused. Article 67 guarantees the accused a fair and expeditious trial, including the right to examine or have examined the witnesses against him, and to adequate time and facilities for the preparation of a defence. Defence counsel before the Court have repeatedly argued that expansive victim participation in particular, rights to question witnesses, to introduce evidence, and to make submissions bearing on questions of guilt risks converting participating victims into what has been termed a "second prosecutor", structurally disadvantaging the accused and prolonging proceedings already notorious for their length and complexity. The Appeals Chamber's gradual narrowing of victims' evidentiary rights following the early Lubanga jurisprudence reflects a degree of judicial sensitivity to this concern, though it has, in turn, attracted criticism from victims' representatives and civil society organisations who argue that the Court has retreated from the more expansive and victim-centred vision embodied in early Trial Chamber practice.

A second and related tension concerns the practical management of mass victimisation. International crimes typically affect populations numbering in the tens or hundreds of thousands, yet the participatory model reflected in the Rome Statute draws substantially on continental civil-party mechanisms originally designed for far smaller numbers of individual claimants before domestic courts. The Court's principal institutional response the appointment of common legal representatives acting for large and often highly heterogeneous groups of victims has been criticised as diluting the individualised character of participation that Article 68(3) was intended to secure, since a single representative, however diligent, cannot feasibly convey the full range of views and concerns held by thousands of individual clients, some of whom may hold divergent or even mutually inconsistent interests as to the conduct or outcome of the proceedings. The application and screening process has also proved a significant practical bottleneck: victims, frequently located in remote, insecure or under-resourced areas, must complete standardised forms subject to lengthy Registry verification, a process that can extend over months or years and that carries a real risk of re-traumatising applicants required repeatedly to recount, in written form, the harm they have suffered.

A third tension concerns funding. The Trust Fund for Victims depends substantially on voluntary contributions from States Parties, supplemented by the comparatively modest proceeds of fines and forfeiture orders against convicted persons, the great majority of whom have been found, at the point of conviction, to be indigent. The gap between the scale of reparations formally ordered by the Court running, in the Ntaganda case, to tens of millions of dollars and the resources realistically available to satisfy such orders has led commentators to question whether the Court's reparative pronouncements are, in substantial part, aspirational rather than genuinely operative, with the practical delivery of assistance to victims dependent upon the Trust Fund's separate assistance mandate and upon the continued political and financial goodwill of donor states.

A fourth and more conceptual critique concerns the risk of what has been termed the "instrumentalisation" of victim participation the concern that participatory rights, however genuinely motivated by considerations of dignity, acknowledgment and voice, may in practice serve primarily to enhance the perceived legitimacy of the Court and of the broader project of international criminal justice, without producing commensurate tangible benefits for the victims whose participation is invoked in support of that legitimacy. Sceptical commentators have observed that participatory rights exercised almost exclusively through remote legal representatives, with limited direct contact between individual victims and the Chambers determining their fate, may deliver only an attenuated and largely symbolic form of "voice", falling well short of the transformative and restorative model of justice envisaged by early proponents of victim participation at the Rome Conference.

The gendered dimension of these tensions deserves particular attention. Women and girls who have suffered sexual and gender-based violence frequently face compounded practical barriers to participation, including social stigma attached to disclosure, fear of reprisal, and the absence, in many affected communities, of infrastructure through which application forms can be safely completed and returned. The Court's Policy Paper on Sexual and Gender-Based Crimes has sought to address some of these barriers by directing that outreach and application processes be designed with specific sensitivity to survivors of such crimes, and the reparations jurisprudence in Lubanga and Ntaganda has correspondingly recognised gender-sensitive harm, including stigmatisation and family rejection, as compensable categories in their own right. Nonetheless, commentators have observed that formal recognition of gendered harm in Chambers' decisions has not always translated into commensurate practical support on the ground, particularly where implementing partners lack the specialised capacity required to deliver psychosocial and reintegration assistance to survivors of sexual violence.

VII. Comparative Perspectives: Hybrid and Internationalised Tribunals

The ICC's model may usefully be contrasted with the civil-party regime adopted by the Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid tribunal established to try senior leaders of the Khmer Rouge responsible for crimes committed between 1975 and 1979. Drawing directly on the French civil-law tradition of the partie civile, the ECCC's Internal Rules permitted victims to join proceedings as civil parties with rights closely analogous to those of a party to the litigation, including standing to seek collective and moral reparations. Reflecting resource constraints comparable to those confronting the ICC, however, the ECCC ultimately confined its reparations awards to non-monetary, collective measures such as memorials, educational and public-health programmes, and formal acknowledgment of suffering, rather than individual monetary compensation. The very substantial number of civil-party applications received in Case 002 running into several thousand required the ECCC, much as the ICC has done, to move toward consolidated representation through Lead Co-Lawyers acting on behalf of consolidated groups of civil parties, illustrating that the practical challenges of managing mass participation recur wherever a genuinely participatory model is applied to the prosecution of mass atrocity, irrespective of the precise institutional design adopted.

The Special Tribunal for Lebanon (STL), established to try those responsible for the assassination of former Lebanese Prime Minister Rafiq Hariri and related attacks, likewise incorporated a regime of victim participation modelled substantially on the ICC framework, permitting victims to participate through legal representatives at stages of the proceedings determined to affect their personal interests, albeit without an equivalent reparations mandate, reparations before the STL being left, in principle, to be pursued through domestic mechanisms. More recent hybrid and internationalised mechanisms, including the Extraordinary African Chambers established within the Senegalese court system to try Hissène Habré, and the Kosovo Specialist Chambers, have continued this trend of incorporating victim participation as a standard institutional feature, suggesting that victim participation whatever its practical limitations in application has become an entrenched, rather than an exceptional, feature of the design of contemporary international and hybrid criminal justice mechanisms.

VIII. Critical Assessment

Assessed against the aspirations articulated during the negotiation of the Rome Statute, the ICC's victim participation regime represents a genuine, if qualified, achievement. It has afforded many thousands of individuals formal legal standing that was wholly unavailable to them before the ad hoc tribunals; it has generated jurisprudence recognising previously marginalised categories of harm, including sexual and gender-based violence and harm suffered by children born of conflict-related rape; and it has produced reparations awards which, however imperfectly enforced, formally acknowledge victims as rights-holders rather than treating them merely as sources of evidentiary material. At the same time, the gap between the Statute's aspirational language and its operational reality remains substantial. Participation mediated almost entirely through common legal representatives, protracted and sometimes re-traumatising application procedures, a reparative regime that remains structurally contingent on both conviction and the convicted person's solvency, and the chronic underfunding of the Trust Fund for Victims, together suggest that the transition from passive witness to active participant remains, at the level of victims' lived experience, considerably less complete than the text of the Statute alone would suggest.

Reform proposals advanced by scholars and practitioners include strengthening mechanisms for direct communication between victims and Chambers independent of legal representatives; establishing minimum, and ideally assessed rather than purely voluntary, contributions by States Parties to the Trust Fund for Victims; and streamlining application and screening procedures so as to reduce both delay and the risk of re-traumatisation associated with repeated recounting of harm. Such reforms, if adopted, could meaningfully narrow the gap between the Statute's participatory promise and its practical delivery, without compromising the fair trial guarantees which the Statute equally, and rightly, protects.

A further dimension of the critical assessment concerns the relationship between the Court's two reparative tracks. The Trust Fund's assistance mandate, which does not depend upon a conviction, has in practice reached a considerably larger number of beneficiaries than the reparations mandate, which remains tied to the outcome of individual prosecutions and has, to date, produced concluded awards in only a small number of cases. This disparity has led some commentators to suggest that the assistance mandate, notwithstanding its more modest legal pedigree, may in practice constitute the more reliable vehicle for delivering tangible benefit to victims, precisely because it is insulated from the contingencies of conviction, appeal and the convicted person's solvency that have proved so consequential in Bemba and, to a lesser extent, in Katanga and Ntaganda. Whether the Assembly of States Parties should therefore expand the assistance mandate's resourcing relative to the reparations mandate, or instead pursue structural reforms to insulate reparations from the vagaries of individual criminal outcomes for example, by permitting reparations proceedings to continue on a civil standard of proof even following an acquittal on the criminal charge remains a live and unresolved question in the literature.

IX. Conclusion

The trajectory traced in this paper from the silent witness of Nuremberg and Tokyo, through the exclusion that characterised the ad hoc Tribunals for the former Yugoslavia and Rwanda, to the participating rights-holder envisaged by the Rome Statute reflects one of the most significant normative developments in international criminal law since the Second World War. Yet normative innovation has, in important respects, outpaced institutional capacity. The Court's experience across the Lubanga, Katanga, Bemba, Ntaganda and Ongwen cases demonstrates both what a genuinely participatory model of international criminal justice is capable of achieving and the practical, financial and doctrinal limits that continue to constrain it in practice. Comparative experience before the ECCC, the STL and other hybrid mechanisms suggests that these limits are not unique to the ICC's particular institutional design, but recur wherever participatory rights are extended to victims of mass atrocity on a scale that domestic civil-party models were never designed to accommodate. Realising the promise of Article 68(3) and Article 75 in full will require not further doctrinal elaboration alone, but a sustained institutional commitment from States Parties, from the Court, and from the Trust Fund for Victims alike to ensure that victim participation in international criminal proceedings delivers substantive, and not merely formal, justice to those in whose name such proceedings are ultimately conducted.

Two further observations follow from the analysis above. First, the difficulties encountered by the ICC are unlikely to be resolved by doctrinal refinement of Article 68(3) alone, since many of the most intractable problems chronic underfunding, the logistics of mass claims processing, and the fragility of a reparative order contingent on a sustained conviction lie substantially outside the Court's own control and depend instead on the political and financial commitment of States Parties. Second, the ICC's experience nonetheless carries considerable value as a template, however imperfect, for future international and hybrid tribunals, precisely because it has generated a rich and still-developing body of jurisprudence on questions the definition of harm, the balance between individual and collective redress, and the treatment of gender-based violence that earlier institutions were never required to confront. In that sense, the shift from passive witness to active participant, even where its practical delivery remains incomplete, has already reshaped the normative baseline against which the legitimacy of any future system of international criminal justice will be measured.

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