



State Cooperation on safeguarding assets for reparations

Plenary debate on Cooperation

Friday 16 November, 2012, 11th Session of the ASP, The Hague.

REDRESS wanted to provide the following contribution on safeguarding assets for Reparations.

There seem to be 3 types of requests for asset tracing that can emanate from the Court:

- OTP may seek cooperation on asset tracing in the course of criminal investigations: linking assets to criminal conduct – eg through its Financial Investigation Unit (FIU) which undertakes specific investigation in this regard;
- The Registry may seek cooperation on investigating assets in view of suspects or accused persons declaring indigence in relation to legal aid;
- **Finally, the Pre-Trial or Trial Chamber may order “protective measures” to safeguard assets for the eventual purposes of reparation under article 57(3)(e) of the Statute, and States are required to comply with such requests by virtue of article 93(k).**

To date the Court has not safeguarded any funds from suspects or accused persons for the purposes of reparation. From the point of view of enabling reparations from a convicted person to victims, in accordance with the Statute, it is important that:

1. There is sufficient coordination amongst organs of the Court. For instance, when OTP seeks the cooperation of States in relation to an arrest, the involvement of the Chamber should be sought to ensure that potential freezing or seizure of assets is done at the earliest stages.
2. Asset tracing efforts must generally be coordinated in a highly confidential and speedy manner, or assets will be moved and become untraceable as soon as a suspect or accused person gets wind of a potential tracing or freezing operation.
3. States are required under Article 93(k) assist in the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes. Implementing legislation must recognise that assets need not be ‘proceeds of crime.’ Domestic provisions such as injunctions, should be available to safeguard assets as potential liability for damages as applicable in civil proceedings.
4. States also need to be able to deal with requests for cooperation that are necessarily sufficiently broad and forward looking. For instance, requests may need to cast their net widely enough to cover assets owned indirectly or where the links must still be proven. Proof of the link to the assets must be able to take place after assets have been frozen.
5. Simple and clear domestic legislation and procedures are key for effective responses to asset tracing requests. It is critical that a specific focal point or unit is identified which can engage directly with ICC officials before any requests are made; so that requests can be handled speedily and confidentially from within the relevant government department.