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**Proposal submitted by Japan concerning rules of procedure
and evidence relating to Part 6 of the Statute, the Trial**

Rule 6.31. Reparations to victims

Rule E. Trust Fund

(a) Subject to paragraph (b) of this rule, in making an order for reparations against a convicted person, the Court shall, regardless of the number of victims, specify the amount of damage, loss or injury incurred by each victim and order the convicted person to make reparations directly to each victim without depositing them in the Trust Fund.

(b) The Court may order that the award for reparations be deposited in the Trust Fund in particular cases where it is impossible or very difficult for the convicted person to make reparations directly to each victim, such as the case where the whereabouts of the victim becomes unknown after the determination of damages is made.

(c) The award for reparations deposited in the Trust Fund in accordance with paragraph (b) of this rule shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as it becomes possible.

Explanatory note

This rule clarifies the relationship between the order for reparations to victims made against a convicted person in accordance with the first sentence of paragraph 2 of article 75 of the Statute, and the order for reparations made through the Trust Fund in accordance with the second sentence of the same paragraph.

The second sentence of paragraph 2 of article 75 stipulates that, where appropriate, the Court may order that the award for reparations be made through the Trust Fund. However, the relationship between that sentence and the first sentence in the same paragraph is not clear from the current wording of the Statute. If the second sentence in question means not only:

- (i) That, with regard to the source of reparations, reparations to victims can be made from the Trust Fund, which has nothing to do with the property of the convicted person,
- (ii) But also that, with regard to the route of payment of reparations, reparations which consist of the property of the convicted person can be made through the Trust Fund,

there should be a clear principle which will be applied in the case of (ii) above.

It must be made clear that, in principle, reparations should be made directly from the convicted person to victims without being deposited in the account of the Trust Fund and that, even if the award for such reparations may be made through the Trust Fund in particular cases, it must ultimately be paid to victims without fail.

The reasons are as follows:

1. Basically, since the reparations ordered against a convicted person are calculated based on the actual damages that the victims suffered, the right to receive those reparations belongs to those victims. Thus, except in exceptional circumstances where it is difficult or impossible to do so, those reparations should be paid to victims directly and immediately. In principle, there is no reason to deposit them in the Trust Fund.
2. If reparations ordered against a convicted person are deposited with the Trust Fund by the convicted person and such reparations are not received by victims, it will be impossible to prevent those victims from claiming reparations against the convicted person, for example, in accordance with the domestic law of a certain country based on the same statement of claim. In this case, however, since the convicted person has already deposited his property in the Trust Fund in accordance with the order for reparations calculated based on the actual damages to the victims, it will give rise to a question whether he or she is allowed to defend himself or herself by insisting that he or she has already acquitted himself or herself of the order for reparations made by the Court. So, in this case, either the right of victims or that of the convicted person will be infringed because either the victims will not be able to receive the actual reparations or the convicted person will be obliged to pay the reparations twice.
3. Moreover, from the procedural point of view, to ensure the right of defence of the convicted person as explained in paragraph 2 above, the convicted person should be in a position to know precisely the final destination of the reparations that he or she paid.

As explained above, in the light of the possibility that victims may bring a civil suit after the International Criminal Court orders reparations, as far as the reparations which consist of the property of the convicted person are concerned, the calculation of the actual damages or the method of payment should not be done on a collective basis because this would infringe upon the right of victims to claim reparations against the convicted person. (This could also give rise to a problem, as

explained in paragraph 2 above, regarding the relationship between the victims who claim reparations based on the actual damages they have suffered and the convicted person who may defend himself or herself by saying that he or she has already paid the reparations in accordance with the order of reparations on a collective basis and which include the damages suffered by the victims in question.) Therefore, the calculation and the payment should be made on an individual basis.

This rule E tries to ensure the property right of the convicted person and victims while at the same time avoiding the possible problem of double payment by the convicted person, as explained above. The scope of this rule is limited to the case where the Court makes an order for reparations against a convicted person as clearly stipulated in the rule. Therefore a possible order for reparations using sources other than the property of the convicted person which is deposited in the Trust Fund as explained in subparagraph (i) above is out of the scope of this rule. It is not the intention of the delegation of Japan to exclude the possibility of collective reparations in those cases. Moreover, this rule is not intended to stipulate the criteria for management of the resources of the Trust Fund other than the property deposited by the convicted person in accordance with the order for reparations.
