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**International
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TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

PUBLIC

**Confidential with one public and one confidential annex- *ex parte* available to
Trust Fund for Victims and Registry only**

Filing on Reparations and Draft Implementation Plan

Source: The Trust Fund for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. On 3 March 2015, the Appeals Chamber delivered its judgment on the appeals against the Trial Chamber's "Decision establishing the principles and procedures to be applied to reparations" in the case against Thomas Lubanga Dyilo (hereinafter "Appeals Chamber judgment on reparations"). In this decision, the Appeals Chamber amended the Trial Chamber's order for reparations and issued an Amended Reparations Order for Reparations (hereinafter "Amended Reparations Order") contained in Annex A to the judgment (document ICC-01/04-01/06-3129-AnxA).
2. In this order, the Appeals Chamber requested the Trust Fund for Victims (hereinafter "Trust Fund") to submit a draft implementation plan (Annex A) and to provide the anticipated monetary value that the Trust Fund considers necessary to remedy the harm caused by the crimes for which Mr Lubanga was convicted in order to assist the Court in setting the amount of Mr Lubanga's liability.¹
3. The Trust Fund recalls the detailed procedural history that gave rise to these first ever reparation proceedings, as summarized by the Appeals Chamber in its Annex 2 (document ICC-01/04-01/06-3129-Anx2). The Trust Fund would like to note further procedural developments since these initial proceedings.

¹ see paragraph 78 of the Amended Reparations Order.

4. The Trust Fund notes that the Amended Reparations Order had directed the Trust Fund to submit the draft implementation plan within six months by 3 September 2015. The Amended Reparations Order, however, also provided for the possibility of an extension of the time limit for the submission deadline by the newly constituted Chamber if the Trust Fund could show good cause for such an extension.
5. On 17 March 2015, the Presidency of the Court referred the case of *The Prosecutor v. Thomas Lubanga Dyilo* to the present Chamber. On 11 August 2015, the Trust Fund filed a request for an extension of time to submit the draft implementation plan on the basis of regulation 35 of the Regulations of the Court, and the findings of the Appeals Chamber. On 14 August 2015, the Trial Chamber granted the Trust Fund's request for extension until 3 November 2015.²
6. The Trust Fund is mindful of the precedent that the reparation proceedings in this case may set. It takes note that these are the first ever reparation proceedings where a draft implementation plan for reparations will be discussed before the International Criminal Court, and at any international tribunal applying international criminal law.
7. The Trust Fund recalls the uniqueness of the reparations system

² see Trial Chamber II, Decision on the "Request for extension of time to submit the draft implementation plan on reparations", ICC-01/04-01/06-3161.

established by the Rome Statute, including the establishment of the Trust Fund for Victims as an unprecedented reparative institution for the benefit of victims.

8. Reparations are a commitment that the Rome Statute system makes to the victims of international crimes. Their implementation in this case will likely pose complex challenges in a situation experiencing on-going conflict and instability, requiring the commitment of various stakeholders so that this promise can as best as possible be translated into a tangible reality.
9. The Trust Fund notes the significant amount of time that has already lapsed since the violations that are to be redressed in these reparation proceedings have taken place, i.e. the time period from 1 September 2002 to 13 August 2003. The Trust Fund respectfully submits that this time lapse will directly impact on the operational reality of implementing reparations in this case. The world did not stand still for victims during this time. Manifestations of harm have likely transformed and physical, psychological, and material wounds may have deepened because they were left without redress.
10. The Trust Fund aims at establishing best practices and methodologies through this present reparations process so that they may be applied for

future reparation proceedings beyond this case, whilst being mindful that these practices and methodologies will likely need to be adapted to the particular circumstances of future cases.

11. The Trust Fund further notes that two cases pending before the Court, the case of the Prosecutor v. Germain Katanga (ICC-01/04-01/07),³ currently at the reparations stage, and the case of The Prosecutor v. Bosco Ntaganda (ICC-01/04-02/06),⁴ currently at the trial stage, concern the 2002-2003 conflict in Ituri that forms the basis of the present case; and that the same communities and victims may be affected by either one or both of these cases. Accordingly, it will be important for the Court and the Trust Fund to consider the possible interplay of these cases, and to communicate carefully so that the affected communities in Ituri will be able to realize in the context of which proceedings they are approached.

12. In order to respond to the requirements and challenges inherent in

3 On 7 March 2014, Trial Chamber II found German Katanga guilty, as an accessory, within the meaning of article 25(3)(d) of the Rome Statute, of one count of crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on 24 February 2003 during the attack on the village of Bogoro, in the Ituri district of the DRC.

4 On 9 June 2014, Pre-Trial Chamber II unanimously confirmed charges consisting in 13 counts of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities) and 5 counts of crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population) against Bosco Ntaganda allegedly committed in 2002-2003 in the Ituri Province, Democratic Republic of the Congo (DRC). Bosco Ntaganda is accused of bearing individual criminal responsibility pursuant to different modes of liability, namely: direct perpetration, indirect co-perpetration (article 25(3)(a) of the Statute); ordering, inducing (article 25(3)(b) of the Statute); any other contribution to the commission or attempted commission of crimes (article 25(3)(d) of the Statute); or as a military commander for crimes committed by his subordinates (article 28(a) of the Statute). The trial in this case opened on 2 September 2015 before Trial Chamber VI.

implementing the Amended Reparations Order, the Trust Fund will seek to soundly apply the applicable legal framework, including in particular the Rome Statute, the Rules of Procedure and Evidence (hereinafter “RPE”) and the Regulations of the Trust Fund (hereinafter “RTFV”). It will also draw on expertise and best practices developed in the context of collective reparations and mass claims processes, including those related to the commission of mass crimes, such as Holocaust-related litigation;⁵ jurisprudence on reparation in the context of human rights tribunals; and considerations from relevant domestic compensation schemes that are a permanent feature of many justice systems,⁶ in as far as these experiences may be deemed transferable.

13. The Trust Fund appreciates the thorough and comprehensive collection of core principles of reparations, which constitute the first part of the Amended Reparations Order.⁷
14. The Trust Fund notes that these principles will guide the present submission, including the principle that nothing will prejudice or be inconsistent with the rights of the convicted person to a fair and impartial

5 Dinah L. Shelton & Thomas Ingadottir, Ctr. On Int’l. Cooperation, *The International Criminal Court Reparations to Victims of Crimes* (Article 75 of the Rome Statute) and the Trust Fund (Article 79): Recommendations for the RPE found at http://www.pict-pcti.org/publications/PICT_articles/REPARATIONS.PDF.

6 Maxime Kersh, *The Empowerment of the Crime Victim: A Comparative Study of Victim Compensation Schemes in the United States and Australia* 24 Cal. W. Int’l. L. J. 345 (1994).

7 For the Trust Fund’s appreciation of the principles see also the Trust Fund’s submission in the case *The Prosecutor v. Germain Katanga, Observations on Reparations Procedure, of 13 May 2015*, ICC-01/04-01/07-3548, paras. 18 ff.

trial.⁸ The Trust Fund, however, also notes that reparation proceedings are distinct from a criminal trial. In particular, the concept of *in dubio pro reo* does not apply to reparation proceedings. Moreover, reparation proceedings are subject to different procedural rules, including different standards of causation⁹ and proof.¹⁰

15. The Trust Fund would respectfully like to underline that the implementation of reparations is not a legal proceeding taking place in a courtroom. The real challenge will be to deliver meaningful redress to the victims in the contexts in which they live in eastern DRC and/or beyond. Accordingly, reparations need to be responsive to the operational reality in which they take place, and the realities of the harm suffered by victims of the crimes for which the individual was convicted. The conditions in the situation, including *inter alia* existing capacity, infrastructure, resources, security, on-going ethnic tension and instability, and the period of time that has lapsed since the crimes occurred, will directly influence implementation.

16. To '*Do no Harm*' is a fundamental principle of the implementation of reparations to which the Trust Fund is fully committed. Reparations should not contribute to the creation of further harm, neither for the

⁸ See para. 49 of the Amended Reparations Order.

⁹ See para. 59 of the Amended Reparations Order.

¹⁰ See para. 65 of the Amended Reparations Order.

victims themselves, nor for the society in which they live. The Trust Fund is mindful of the fact that child soldiers, their family members, interveners or those who assisted direct and indirect victims may still face substantial barriers of security and vulnerability including stigma associated with the disclosure of their victim status. These barriers will likely be higher for some than for others due to a number of factors, including level of trauma, gender and current social status. Moreover, and this is particularly important in the present case where the implementation of reparations will take place in Ituri, a region which continues to suffer from widespread instability,¹¹ reparations should not be divisive and should not trigger additional stigma, discrimination, conflict and violence.¹²

17. In compliance with the Amended Reparations Order, robust design of reparation awards will require deploying creative ways to ensure fairness and inclusion of all eligible victims in gender-sensitive and inclusive ways, accounting for the possibility of structural exclusions that work against the

11 See e.g. a MONUSCO news report of 23 June 2015, titled, “*Martin Kobler urges FRPI militiamen to lay down their weapons to give a chance to peace in Irumu*” available online at <http://monusco.unmissions.org/Default.aspx?tabid=10662&ctl=Details&mid=14594&ItemID=21172&language=en-US>.

12 The Trust Fund notes that the majority of victims will likely be young and impoverished, and many seem marginalized due to their associations with armed forces. They may have missed opportunities for education, employment, and marriage, which are key pathways to increased social power or position within their communities. Many victims suffer emotional, inter-personal, and physical consequences from their experiences as child soldiers. In contrast, others, including former adult soldiers and community leaders, enjoy far greater social power. People with comparatively less social power are much more vulnerable in the face of stigmatizing attacks, such as being accused of lying, exaggerating, or being traitors. Recognizing this vulnerability, the Trust Fund proposes that any reparations programme should take extreme care to not contribute to the social stigma that many former child soldiers already face. In fact, in addition to current power differentials within communities, the Trust Fund cautions that a reparations programme could potentially sow division by being seen to provide assistance to some people but not to others, and that this is borne out by the experiences from other reparation programmes.

opportunity of potentially vulnerable groups, including women, children, young adults, those with severe mental traumatization, and persons with disabilities, to participate and have their views heard. Programmes are to be tailored to address their respective harms and meet their specific needs.

18. In order to comply comprehensively with the request of the Appeals Chamber, the Trust Fund has structured its submission in two parts: *firstly*, a filing informing the Trial Chamber about the background and processes conducted since the issuance of the Amended Reparations Order. The filing outlines key aspects of the Trust Fund's legal reasoning, including a response to the exceptional¹³ request by the Appeals Chamber to assist the Trial Chamber in determining the monetary amount of Mr Lubanga's liability; and *secondly*, an annex, containing a draft implementation plan for the reparations programme that the Trust Fund proposes to be undertaken using "other resources" (i.e. voluntary contributions collected and set aside as part of its reparations reserve), and resources that the Board of Directors to the Trust Fund approves to use to complement the payment of a reparations order against Mr Lubanga.

II. Summary of Judgment and Amended Reparations Order

¹³ Para. 240 of the AC's judgment states that the Appeals Chamber considers it is appropriate in the present case to "exceptionally seek the Trust Fund's assistance in requesting that "it provide, in the draft implementation plan, the anticipated monetary amount that it considers necessary to remedy the harms caused for which Mr. Lubanga was convicted, based on information gathered during the consultation period leading up to the draft implementation plan."

19. In the following section the Trust Fund recalls the “essential”¹⁴ elements of the reparations order as set out by the Appeals Chamber, which have guided the development of the draft implementation plan.
20. The Appeals Chamber judgment of 3 March 2015, in paragraph 1, sets out five essential elements of any reparations order by the Court: 1) the reparations order must be directed against the convicted person; 2) it must establish and inform the convicted person of his or her liability for reparations; 3) it must specify and provide reasons for the type of reparations it orders (i.e. individual, collective or both); 4) it must define the relevant harm with relation to the crimes on which the conviction is based, and 5) it must define eligibility based on the link between harm suffered and the crimes.
21. The Amended Reparations Order, contained in Annex A to the judgement, complements the judgment and provides operational guidance on how the Court intends to comply with these five elements in the present case. In doing so, it sets parameters that provide the framework within which the Trust Fund makes this submission.
22. Noting that the order in its entirety guides this submission, and for sake of clarity, the Trust Fund would respectfully like to briefly recall determinations of the Appeals Chamber that it considers particularly

¹⁴ See Appeals Chamber’s judgment of 3 March 2015, paragraph 1.

relevant to its approach in answering the Court.

23. The Amended Reparations Order is an order for collective and not individual reparations.¹⁵
24. The order is directed against Mr Lubanga,¹⁶ and he is liable for reparations in relation to the harm caused to victims of the crimes for which he was convicted.¹⁷ This is a direct reflection of the principle established by the Appeals Chamber that “reparation orders are intrinsically linked to the individual whose criminal liability is established in a conviction and whose culpability is determined in a sentence.”¹⁸
25. The relationship between the criminal culpability of Mr Lubanga, as established by the Court in the verdict and the sentence, and the victims is also a determining factor in establishing the eligibility of victims to benefit from reparations. Paragraphs 54 to 56 of the Amended Reparations Order contain further specifications as to the eligibility,¹⁹ including the ruling that “Mr Lubanga’s liability extends to localities not mentioned in the Conviction Decision, but mentioned in the context specified in the second

15 Para. 53 of the Amended Reparations Order. This also answers the first essential element of a reparations order according to the Appeals Chamber judgment.

16 Para. 53 of the Amended Reparations Order.

17 Para. 60. This partially answers the second essential element of a reparations order according to the Appeals Chamber judgment. However, in order to fully inform Mr. Lubanga of his liability also in financial terms the Appeals Chamber tasked the Trust Fund with providing the Court with an anticipated monetary amount that it considers necessary to remedy the harm caused by the crimes for which Mr. Lubanga was convicted at the end of this filing.

18 See para. 20 of the Amended Reparations Order.

19 This answers the 5th essential element of a reparations order according to the Appeals Chamber judgment.

sentence of paragraph 915 of the Conviction Decision, in the evidence of witnesses listed in that sentence.”

26. The Amended Reparations Order in paragraph 58 also lists the types of harm²⁰ that it considers applicable with respect to direct and indirect victims.
27. The applicable standard of causation is a but/for relationship between the crime and the harm. Moreover, the Amended Reparations Order requires that the crimes for which Mr Lubanga was convicted were the “proximate cause” of the harm for which reparations are sought²¹ and sets as a standard of proof a “balance of probabilities.”²²

III. Overview of the implementation plan development process and outcomes

28. Following the Appeal’s Chamber’s order of 3 March 2015, and as instructed by the Appeals Chamber in paragraph 70 of the Amended Reparations Order, the Trust Fund engaged in several processes as part of the preparatory phase of the development of the draft implementation plan to be in a better position to provide a comprehensive and informed

20 Amended Reparations Order at para. 58. This answers to the forth essential element of a reparations order according to the Appeals Chamber judgment.

21 Para. 59 of the Amended Reparations Order.

22 Para. 65 of the Amended Reparations Order.

reply to the Court. The following section will discuss these processes and their outcomes.

- **Board of Directors meetings and consultations**

29. Since reparations proceedings commenced in 2011, the Board of Directors (hereinafter “the Board”) of the Trust Fund for Victims has addressed the different legal and operational parameters guiding its responsibilities under the reparations mandate. Discussions have occurred with the Trust Fund’s Secretariat (“the Secretariat”) regarding the design and implementation of Court-ordered collective reparations awards, as well as the prospect of complementing payments for collective awards if the Court declares the convicted person(s) indigent for the purpose of reparations. These discussions have been documented in filings submitted to the Court in the Lubanga and Katanga cases.

30. Upon notification of the Appeals Chamber’s Judgment and Amended Reparations Order for collective reparations awards in the Lubanga case on 3 March 2015, the Board convened its Annual Meeting in The Hague during 17-19 March 2015. The Appeal Chamber’s request to develop the Trust Fund’s collective reparations implementation plan formed a significant part of this meeting’s discussions and the staff of the Secretariat and Registry actively contributed.

31. In consideration of the complexity of the issues and tasks related to the Judgment and Amended Reparations Order, the Board supported the Secretariat's action plan toward developing the implementation plan to be submitted by the deadline of 3 September 2015, unless circumstances would dictate otherwise. The Board also agreed to hold a second meeting in The Hague in July 2015 to monitor and discuss progress made in the development of the draft implementation plan.
32. On 20-21 July 2015, the Board members endorsed the Secretariat's findings and recommendations resulting from international expert meeting in May 2015; as well as, from field missions and consultations held in 22 locations in Ituri involving over 1,340 victims, family members and representatives of affected communities conducted from May-July 2015. The Board further decided to request an extension of two months for the submission deadline and the Trial Chamber approved this request.
 - **Cooperation with the Court, including the Victim's Participation and Reparations Section, on the victim mapping process and report**
33. Acknowledging the complex nature of undertaking reparations, the Trust Fund sought to forge a close collaboration with other parts of the Court that have a particular legal responsibility and assigned role in translating reparations into a legal and operational reality. In particular, the Trust Fund engaged in an informal dialogue within the Registry, including, *inter*

alia, with the Victim's Participation and Reparations Section (hereinafter "VPRS"), the Public Information and Documentation Section (hereinafter "PIDS"), and the Registry's section on External Relations and Field Coordination.

34. On 25 March 2015, the Trust Fund formally requested the Registry's assistance in mapping potentially eligible victims in the context of its preparation of a draft implementation plan for reparations. This mapping exercise would include victims who are natural persons and victims that are organisations or institutions within the meaning of Rule 85 of the Court's Rules of Procedure and Evidence, and would include both direct and indirect victims. Further, the Trust Fund stated that it would like to be consulted throughout the process.
35. Subsequently, the Registry, through the VPRS and in consultation with the Trust Fund, developed the proposed mapping methodology, including a draft list of questions to be used with interlocutors in the course of field missions, and a draft list of key stakeholders to be consulted. VPRS and Trust Fund Secretariat staff from The Hague and the field offices in DRC participated in this consultation process to ensure coordination and the leveraging of stakeholder contacts. The Trust Fund was also consulted at later stages on draft communications requesting cooperation prepared by the Registry with the objective of obtaining information from various

external entities relevant to the mapping exercise.

36. On 14 July 2015, through an interoffice memorandum, the VPRS shared a preliminary report of the mapping exercise with the Trust Fund. It also shared an updated version on 1 October 2015. On 2 November 2015, VPRS shared the final version of their report. This full mapping report is contained in Annex 1 of this submission.
37. The objective of the mapping exercise was not to conduct a screening in which a comprehensive list of potential individual victims would be prepared. Rather, the aim was to collect from all possible sources information regarding who the victims are, where they are, how they can be found and eventually verified as victims; including, as far as possible, estimates of the total number of potential eligible victims overall, and/or in different categories (in terms of direct or indirect) and locations. This process was necessary given the more than twelve years since the violations have occurred and more than ten years since proceedings on this case commenced.
38. The VPRS, in the mapping exercise, undertook a thorough analysis of the judicial proceedings, conducted interviews and field missions and requested information believed to be in the possession of [REDACTED] (see full mapping report in Annex 1).

39. In carrying out the mapping exercise, the VPRS worked with the understanding that the victims who have communicated with the Court to-date, through presenting an application to participate in the proceedings or an application for reparations, do not represent the totality of eligible victims, or even necessarily a representative sample. Some victims who were accepted to participate in the proceedings also may not be eligible for reparations in light of the specific findings of the Chamber.
40. The mapping exercise clearly highlights many of the challenges of tracing and mapping victims of Mr Lubanga's crimes.
41. Despite its best efforts, the VPRS was not, within the available time frame, able to provide a reliable estimate of the overall number of potentially eligible victims. VPRS noted²³ that if and when access is obtained to the information [REDACTED] from the Disarmament, Demobilisation and Reintegration (hereinafter "DDR") programme, through which many former child soldiers passed when leaving the Force patriotique pour la libération du Congo [Patriotic Force for the Liberation of Congo] (hereinafter "FPLC/UPC"), then it might be possible to arrive at an estimated number, taking into account the other information gathered through consultations, as well as the DDR identification processes. However in this context, VPRS noted that data [REDACTED] does not give

²³ See VPRS mapping report in Annex 1 at page 10.

a full picture because [REDACTED] and [REDACTED] child soldiers in particular have self-demobilized.²⁴ Consultations noted many reasons could explain self-demobilization, including that:

[REDACTED]

42. More generally, VPRS found²⁵ that there still remained significant challenges to identifying eligible victims. These challenges included:

- social and cultural factors [REDACTED];
- difficulties in reliably establishing age [REDACTED];
- the fact that the former child-soldiers are scattered throughout the area [REDACTED];
- the fact that it is now over 12 years after the events, with the result that relevant supporting documentation and other evidence is often no longer available;
- political factors in some areas [REDACTED] and
- limitations on what can be expected from [REDACTED] in terms of contemporaneous records.

²⁴ see VPRS mapping report in Annex 1 at p. 19.

43. The VPRS concluded²⁶ that the data that could be gathered to-date resembles a puzzle, in which only some of the pieces are in place, and the overall picture is not available. It added that if the outstanding requests for cooperation lead to obtaining the data requested, this would both greatly assist in clarifying the overall picture (allowing for instance an estimate of global numbers of eligible victims), and in supporting verification of individual eligibility. If not, then it would be necessary to fall back on relying on the specific pieces of documentation that could be obtained in relation to some victims [REDACTED].

- **Consultations with Legal Representatives of Victims**

44. The Trust Fund further collaborated with the legal representatives of victims in this case, representing the limited number of victims formally participating in proceedings at present. The collaboration also included the Office of the Public Counsel for the Victims (hereinafter “OPCV”), representing potentially eligible victims. In particular, the Trust Fund held its first consultation with the three victims’ legal representative teams on 7 May 2015 through video conferencing to discuss the action plan for developing the implementation plan, and to allow for an opportunity to hear concerns from the representatives and receive their input toward the proposed way forward. The Trust Fund also supported the participation

²⁶ see VPRS mapping report in Annex 1 at page 10.

of the three teams to attend the expert consultation held in Belfast between 26 May and 2 June 2015.

45. Furthermore, on 3 and 4 September 2015, staff of the Trust Fund Secretariat conducted informal meetings with the representatives from all three teams to keep in contact on the issues and process for developing the draft implementation plan. The legal representatives informed the Trust Fund that they were in close contact with their clients about the reparations process, having recently carried out missions in Ituri. The legal representative teams also informed the Trust Fund that they had taken first steps towards obtaining voluntary and informed consent from those clients who wish to do so, with a view eventually to be able to share any information contained in the victims' applications with the Trust Fund, as discussed in paragraphs 73 and 74 of the Amended Reparations Order.

- **Reparations Expert Consultation at the Transitional Justice Institute (TJI), Ulster University in Belfast, Northern Ireland**

46. As mandated in regulation 70 of the RTFV, and suggested in paragraph 70 of the Amended Reparations Order, the Trust Fund consulted with experts (hereinafter "The Expert Group") on the nature of collective awards and the methods for their implementation. To that end, the Trust Fund under the leadership of Kristin Kalla, Senior Programme Officer, and in

partnership with the Transitional Justice Institute (hereinafter “TJI”)²⁷ at Ulster University in Belfast Northern Ireland under the leadership of Fionnuala Ni Aolain, Professor of Law and Associate Director, convened an experts meeting between 26 May and 2 June 2015.

47. The meeting hosted a group of 23 experts²⁸ across a range of expertise, geographies and disciplines together with selected staff from the Trust Fund Secretariat, the Registry, and representatives of the legal counsel for victims in the Lubanga case.

27 The TJI was established in 2003, and is internationally recognized as a leading centre in the field of transitional justice and post-conflict transition. The Institute has placed research emanating from Northern Ireland at the forefront of both local and global academic, legal and policy debates. The TJI is dedicated to examining how law and legal institutions assist (or not) the move from conflict to peace. The TJI utilizes its academic and policy expertise to work with international organisations, non-governmental organisations, and civil society in multiple countries and settings around the globe to advance justice and accountability in post-conflict societies.

28 Multi-disciplinary experts included: Fernando Calado, Director of Programs, International Organisation for Migration (IOM) Colombia; Norbert Wühler, Chair of the Appeal Board of the World Intellectual Property Organisation (WIPO) and Member of the Kosovo Property Claims Commission, former Director of IOM’s Reparations Division; Peter Van Der Auweraert, current Head of Land, Property, and Reparations Division, IOM; Craig Higson-Smith, Director of Research, Center for Victims of Torture (CVT); Carlos Beristain, Psychologist and Mental Trauma Expert; Brigid Inder, OBE, Executive Director, Women’s Initiatives for Gender Justice; Rashida Manjoo, UN Special Rapporteur on Violence against Women and Associate Prof. Dept. of Public Law, University of Cape Town; Bara Dieng, El Hadji, Team Leader DDR/RR, MONUSCO; Katharina Peschke, Former Legal Adviser of the Trust Fund/ICC and Legal Consultant; Aisling Swaine, Associate Professor of Practice, George Washington University and Visiting Scholar at Transitional Justice Institute; Kristin Kalla, Sr. Programme Officer, Trust Fund for Victims – ICC; Scott Bartell, Esq., Regional Programme Officer, Trust Fund for Victims – ICC; Bertin Bishikwabo, Field Programme Assistant in DRC, Trust Fund for Victims – ICC; Richard Budju, Field Programme Assistant in DRC, Trust Fund for Victims – ICC; Egidie Murekatete, Monitoring and Evaluation Officer, Trust Fund for Victims – ICC; Moureen Lamonge, Programme Assistant, Trust Fund for Victims – ICC; Fiona McKay, Chief, Victims Participation and Reparation Section (VPRS) – ICC; Diana Lorenzana, Field Officer in DRC, Victims Participation and Reparation Section (VPRS) – ICC; Margot Tedesco, Outreach Coordinator in DRC, Public Information and Documentation Section (PIDS) – ICC; Paolina Massidda, Principal Counsel, Office of Public Counsel for Victims (OPCV) – ICC; Caroline Baugas, Associate Legal Officer, Victims Participation and Reparation Section (VPRS) – ICC; Luc Walley, Counsel, Legal Representative for Victims, Team 1, Lubanga Case; Sylviane Glodjinon, Case Manager, Legal Representative for Victims, Team 2, Lubanga Case; Catherine O’Rourke, Senior Lecturer, Gender Research Coordinator, Transitional Justice Institute; and Fionnuala Ni Aolain, Professor of Law & Associate Director.

48. Belfast was an extraordinarily apt location to host this important gathering given the contemporary experience of conflict in the jurisdiction, as well as, the easy availability of local community, institutional, policy and academic expertise on issues of post-conflict victim support, trauma, and remedy. In addition to the core group of invited experts, Belfast-based organisations involved in the victims support sector were invited to contribute their expertise and knowledge to the group. These organisations included the Committee on the Administration of Justice, the Wave Trauma Centre, Relatives for Justice, Women's Aid, and Christian Aid.
49. The goal of the consultation was to bring together a diverse group of experts who would provide the Trust Fund with the best possible collective advice on the range of issues raised by the case and the Amended Reparations Order. Moreover, the synergy and capacity generated by bringing these multi-disciplinary experts together provided extraordinary scope to address the complexities and intersectional issues that result from the Appeals Chamber decision in this case. Those synergies and long-term thinking was invaluable given the precedential value of the first reparations decision and implementation process for the International Criminal Court.

50. The expert meeting considered, amongst others, methods for victim identification for the purpose of collective reparations, applicable standards of proof and causality, as well as, methods to assess harm for the purpose of collective reparations. The meeting discussed the imperative to adopt a gender-inclusive approach and in that respect considered: a) the ways that gender norms affect the male and female experience of the crimes of enlistment, conscription, and use; b) how these norms inform the experience of the harm resulting from and associated with these crimes; and c) how these harms, in compliance with the Amended Reparations Order, can be addressed in a manner which avoids replicating discriminatory practices and ensures gender-inclusive reparative responses.²⁹ The meeting focused on the operational implications and legal parameters of the Appeals Chamber's Judgment and the Amended Reparations Order; initial findings from the VPRS mapping outlined above; DDR programmes in the DRC; initial findings from the Trust Fund consultations on collective reparations in Ituri; collective reparations – understanding concept; programmes, comparative practice, and lessons learned; administration and implementation issues such as victims verification methodologies, standard of proof – causality vs. proximate cause for collective reparations; and physical, material and

²⁹ Presentation by Brigid Inder, OBE, Executive Director of the Women's Initiatives for Gender Justice during the expert group meeting who elaborated on the gender aspects in the Amended Reparations Order, including para. 17, and transcript on record with the Trust Fund.

psychological trauma and harm assessment methodologies and criteria of selection for collective reparations. The results of these expert discussions inform the Trust Fund's reparations filing and draft implementation plan.

- **Targeted consultations on collective reparations in Ituri in May and June 2015**

51. As stated in the Appeals Chamber's principles in paragraph 47 of the Amended Reparations Order, "wherever possible, reparations should reflect local cultural and customary practices unless these are discriminatory, exclusive or deny victims equal access to their rights." Moreover, the Amended Reparations Order in paragraph 70 stated that in its design of proposed reparations awards, the Trust Fund might be informed by the views of victims and members of the affected communities.³⁰
52. Accordingly, the Trust Fund in May and June 2015 held targeted consultations on collective reparations in Ituri, with the support of the Registry, including the VPRS, PIDS, the Safety and Security Section (hereinafter "SSS"), and the Field Operations Section (hereinafter "FOS").
53. The consultations were conducted in 22 localities of Ituri Province, eastern DRC (Djugu, Irumu, Mahagi, and Aru territories) with 1,125 participants (866 male and 259 female) in the wider consultations; and 218 participants

³⁰ See Amended Reparations Order, at paragraph 70.

(129 male and 89 female) in special focus groups, which were held wherever possible in addition to the more general consultation. These focus groups were targeting primarily persons who might fall within the category of direct victims on this case and were comparatively small in numbers and divided according to gender, i.e. two focus groups were held at each site, so that young men and young women could more freely express their thoughts and experiences.

54. Stakeholder mapping was conducted with the Registry prior to these consultations, given the challenges with locating victims who may benefit from reparations in this case. The list of invitations to these consultations ensured former child soldiers who may qualify for reparations in the present case and their families were highly represented. Forty per cent of the participants represented young people (ex-child soldiers and others) ages 18-30 years old and both male and female.
55. The primary objectives of the community consultation were to:
 - inform the victims and the communities about the Appeal Chamber's Judgment and the Amended Reparations Order in the Lubanga case, as well as, on the Trust Fund mandates and activities as part of a community outreach and mobilization strategy;

- collect information from a targeted sample of victims and community members on potential injuries and damages suffered in relation to the case;
- collect opinions about appropriate collective reparation measures; and
- collect victims' views and opinions about the ex-child soldiers' reintegration process.

56. The results of the consultations are submitted as part of the Trust Fund filing and draft implementation plan.

57. Based on paragraph 56 of the Amended Reparations Order, which contains guidance on the localities concerned by reparations, these consultations were held in communities directly relevant to the case, including locations that used to serve as training camps, where battles took place, where demobilization sites had been placed, where former child soldiers might currently reside or where child soldiers were recruited from during the jurisdictional period in this case. Communities situated near to each other (at a maximum distance of 7 km) were grouped together. In particular, in Djugu territory consultations took place in Bule, Fataki, Drodro, Lopa, Mongwalu, Katoto, Mandro, Nizi-Iga Barriere-Lopa, and Tchomia-Kasenye. In Irumu, consultations took place in Marabo-

Nayakunde-Irumu, Centrale-solenyama, Kasenyi, Shari-Rwampara, Bunia, and Bogoro. In Mahagi territory consultations were held in Nioka, Ngote, Amee, Mahagi-Centre, Ndrele, Djalasiga and Nyalebe. And in Aru territory consultations were held in the cities of Aru city and Ariwara.

58. The consultations primarily targeted former child soldiers of the FPLC/UPC and their families. Other participants included administrative officials such as heads of the post, police or neighbourhood; religious leaders, leaders of youth associations; civil society representatives; representatives of local human rights groups and local development initiatives; representatives of women's associations; representatives of vocational training centres and schools, including primary and secondary schools and university; officials from the public health sector (hospitals, and public health centres); and community leaders (including traditional chiefs, grassroots women, political representatives, and elders).
59. The key findings of these consultations inform the context in which the reparations order will be implemented, including about the local understanding of the concepts of equity, justice and reparations. The consultations clarified potential challenges, as well as gave an insight into local perceptions related to former child soldiers.

60. As anticipated by the Amended Reparations Order, the findings of the community consultations (as did those of the Expert Group) concluded that the crimes of enlistment, conscription and use have gendered dimensions. This includes, *inter alia*, the roles to which boys and girls might be assigned, the different way boys and girls may be treated, the process of enlistment and conscription, the different aspects and roles played by boys and girls in the training camps and the subsequent harms experienced by them as female and male child soldiers. Several of these aspects were specifically highlighted in each of the consultation sessions in the various localities.
61. The community consultations revealed that the time spent in the FPLC/UPC militia had affected the normal development of virtually all of the former child soldiers. In fact, the parents and other close family members indicated that the future of most of the former child soldiers continues to be concerning at present because many former child soldiers lack the opportunity to catch up with missed schooling and family education, and as a result, have failed to find employment.
62. Instead, many former child soldiers have acquired and nurtured delinquent, violent, and at risk behaviour, further aggravated by widespread addiction to drugs and alcohol as well as gender-based violence. This stigmatising behaviour created a sense of rejection between

the group of former child soldiers and the rest of the community. Female former child soldiers were perceived as having lost their dignity and social status as a result of being raped or assumed to have been raped, and, as a result, have in most areas been unable to settle into communities due to the shame and stigma associated with this form of violence. This is a situation worsened by, among other things, their lack of employment and the fact that many of them returned from their experience as child soldiers with children, which greatly affected their ability to become self-reliant. However, as the consultations made clear, achieving self-reliance for former child soldiers will be a critical factor for measuring the success of the reparations programme.

63. The consultations underscored that the time as child soldiers deprived the children and youth of their family environment. Instead, they were forced to live in camps in a climate of insecurity, violence and abuse and dominated by military conflict outside of the normal cycle of child development. This, in turn, deprived these victims not only of educational opportunities but also of physical integrity, wellbeing, sporting, cultural and recreational activities, and of positive adult role models that are important for the healthy development of a child into an adult.
64. In fact, the participants in the consultations reported that the forced introduction to violent practices, atrocities and inhuman treatment,

including in some cases the initiation to the practice of murders, assassinations, theft, looting, and forced participation in inhuman acts such as rape and torture, left a lasting mark on many former child soldiers. Many are still called by a nickname acquired during their time with the armed forces. This again reflects the prejudice by their communities, which they continue to be subjected to, and which, in part, is based on the local perception that former child soldiers as a result of the horrors that they were exposed to continue to be fond of handling weapons and using violence, lies and deception in everyday life.

65. In terms of the harm affecting the health of former child soldiers, the following manifestations were identified during the consultations, reaffirming the findings of the Appeals Chamber in the Amended Reparations Order:

- Physical disabilities as a result of war injuries (e.g. loss of limbs or loss of hearing due to firing heavy weaponry), and assault and battery;
- Psychological disorders;
- Physical and psychological damage from abuse of drugs and alcohol;

- On-going medical problems due to lack of access to health care and malnutrition during the time as child soldier; and
- Sexually transmitted diseases and injuries due to rape as well as sexual activity at a young age, because of the particular situation in the militia camps conducive to such experience, during the time as child soldiers.

66. In fact, the last point is not a mere medical problem but the consultations underlined that the loss of virginity and ‘chastity’ also constitutes a severe social and cultural stigma, directly hindering the reintegration of female child soldiers into their families and communities.

67. One point that came out strongly in the consultations as a harm that needs repair, was the loss of access to education and training during and after the time spent as child soldiers for both male and female former child soldiers. This has often led to high illiteracy rates. The problem is compounded by obstacles arising from the lack of school and training equipment destroyed in the conflict. The missed educational opportunities are made worse by the widespread inability to pay school fees due to economic hardship that followed the time as child soldiers. The consultations further revealed that females who returned to their families and communities with children, born as a result of their time as child

soldiers, faced additional barriers to accessing education and training due to stigma and child-rearing responsibilities.

68. The remedies that participants in the consultations proposed to alleviate the forms of harm that they had identified can be categorized into four categories, namely (i) measures aimed at restoring the physical and psychological health of victims; (ii) their schooling, both through formal and informal education; (iii) measures aimed at socio-economic development and fostering employment, including vocational training; and (iv) measures aimed at community reconciliation and awareness raising against child soldier recruitment.
69. Examples given during the consultations of how an award aiming at the restoration of physical and psychological health could look like include: *inter alia*, physical rehabilitation programmes for former child soldiers with physical injuries resulting from their time as child soldiers, including but not limited to, amputation of limbs, mutilation, fistula and other gynaecological problems, treatment for HIV infection or other sexually transmitted diseases; psychological trauma-based counselling and support; and/or fostering of recreational and sport activities that incorporate healing and reconciliation initiatives.
70. Examples mentioned in relation to education comprised, *inter alia*,

measures aimed at providing schooling for former child soldiers, including giving them access to state diplomas so that they could enter universities; special education programmes and bridging schools; functional accelerated literacy programmes; the establishment of youth communication centres; libraries, computer and internet facilities; and support to enable schooling of children of former child soldiers who were conceived during the time in the armed group.

71. Examples of the kind of reparation awards aimed at providing material support considered, *inter alia*, special programmes for physical rehabilitation of former child soldiers who had suffered a disability and support for their socio-economic reintegration; the establishment of vocational training, for example for modern carpentry, welding, hairdressing, auto-mechanics, dressmaking, embroidery, knitting, cooking; and/or the establishment of a processing plant for local products or alternatively water treatment, using former child soldiers as labour, thereby granting them employment.
72. In terms of measures aimed at reconciliation, examples mentioned included the establishment of community radio with participation of former child soldiers to raise awareness about peaceful coexistence; a solemn apology from Mr Thomas Lubanga; the building of monuments to promote peaceful messages like cohabitation, reconciliation and peace; the

introduction of commemorative days; and measures aimed at improving communication between communities, including for example, the rehabilitation of roads and bridges connecting communities formerly in conflict so as to allow for exchanges between those communities (e.g. use of common schools; exchange of products in one common market).

73. In addition to these concrete suggestions as to what reparation awards could entail, participants of the consultations also called for a transparent strategy in terms of a clear plan to identify victims who may benefit from reparations programmes. The consultations particularly underlined the need for inclusion of and support for girls who have left armed groups – irrespective of how they left (i.e. whether they went through a formal DDR programme or were auto-demobilized). The consultations revealed that only a small number of female child soldiers had participated in and benefited from the formal demobilization process, mainly because the DDR process did not allow or cater for child soldiers who returned with children. Many also wanted to avoid the stigmatisation of going through this process. As such, participants at the consultations emphasised that reparations should include specific activities aimed at empowering female former child soldiers, and restoring their social status. Participants noted that this should also entail specific activities in support of the dependents (infants and young children) of former girl child soldiers.

74. The families of former child soldiers reported that they are still burdened by the crimes committed by their children, including daily accusations, payment of fines and scorn from fellow members of the community. Accordingly, they hope that measures will be taken to assist them as indirect victims, and provide reconciliation and healing with communities.
75. Finally, the consultations also made clear that there is a need felt by those consulted to ensure the inclusion of symbolic measures into the reparations initiative. In particular, measures should aim at achieving reconciliation and healing between former child soldiers and fellow community members, as well as, include activities to commemorate and reflect on the conflict and its history with a view to fostering lasting peace.
- [REDACTED]
76. The Trust Fund, through the Registry, has also engaged with [REDACTED]. In particular, on [REDACTED] July 2015, a confidential letter concerning reparations in the Lubanga case was sent to [REDACTED], requesting assistance for obtaining information in relation to the national DDR programme.
77. In reply to this request, in September 2015, [REDACTED] communicated via the Registry [REDACTED], which the VPRS included into their mapping report (see Annex 1 for more details).

- **Other efforts to obtain relevant information**

78. The Trust Fund also considers that [REDACTED] in the DRC could be in possession of information directly relevant to identifying direct and indirect victims in the present proceedings. This information is very sensitive and has proven difficult to obtain.

79. The Trust Fund has contacted [REDACTED] formally through a letter dated [REDACTED] September 2015 asking whether, as a result of its activities in the DRC, it has any relevant information based on the national DDR programme and/or the national commission for disarmament, demobilisation and reintegration (hereinafter “CONADER”) in the DRC from 2003 onwards that it might be able to share with the Trust Fund. Moreover, the Trust Fund also requested whether [REDACTED] had any information on so-called “auto-demobilized” children and youth. The Trust Fund received a response from [REDACTED] on [REDACTED] October 2015 indicating that they were considering the request and would revert back and to-date this response has not yet been received.

80. In addition, both VPRS in the context of the above mentioned mapping exercise, and the Trust Fund have tried to approach [REDACTED], including in particular [REDACTED]. On [REDACTED] September 2015, the Trust Fund sent a formal request for information in form of a letter. A

response was received on [REDACTED] October 2015, stating they had some documentation available that may assist with the identification of victims on this case who may qualify for reparations but that this would require resources and time. VPRS has outlined more details related to this response in their mapping report in Annex 1.

IV. The order for reparations and gender considerations³¹

81. Explicit in the Amended Reparations Order is a clear and consistent reference to the significance of gender and gender equality to the design and delivery of reparation. The Amended Reparations Order explicitly states: “gender parity in all aspects of reparations is an important goal of the Court.”³²

82. To fulfil this goal, the Court stipulates that a “gender inclusive approach should guide the design of the principles and procedures to be applied to reparations.”³³

³¹ Because of the complexity in understanding how a gender inclusive approach could apply to reparations in the DRC, the Trust Fund deemed it appropriate to seek additional advice from an established gender expert in this field, Ms. Brigid Inder, OBE, Executive Director, Women’s Initiatives for Gender Justice. An internal report commissioned by the Trust Fund from the Transitional Justice Institute, Ulster University, as part of the Expert Group Consultation, also provided useful background information for this section.

³² see para 18 of the Amended Reparations Order.

³³ Ibid.

83. Under its Strategic Plan (2014-2017), the Trust Fund operates under a corresponding policy that aims to ensure its operations employ gender sensitive approaches.³⁴ Combined, these commitments equip the Trust Fund with a clear mandate to ensure a gender-inclusive approach to the execution of the reparations order. The Amended Reparations Order encapsulates and offers a strong basis for recognition, engagement and employment of gender-inclusive approaches. Outlined in previous submissions by the Trust Fund in these reparation proceedings,³⁵ and affirmed throughout the Amended Reparations Order, is provision for attention to concepts of gender, gender equality and non-discrimination on a normative, procedural and substantive basis. In this way, the Amended Reparations Order disposes an approach that sits in line with international standards and best practice. Applying these standards to the specifics of the Appeals Decision, the liability of the crime, and the Amended Reparations Order in the Lubanga case, is required. This is elucidated further, drawing together the above analysis of international standards and practice, the counsel and inputs provided by the Expert Group, and critical considerations that are significant to this case.

³⁴ Trust Fund for Victims Strategic Plan 2014-2017, August 2014.

³⁵ see Trust Fund's First Report on Reparations of 1 September 2011 ICC-01/04-01/06-2803-Red, (hereinafter "First Report") at paras. 27-36, as well as the Trust Fund's Observations on Reparations in Response the Scheduling Order of 14 March 2012 (hereinafter "Trust Fund's Observations of 25 April 2012")

84. The mandate of paragraph 18 of the Amended Reparations Order extends gender considerations to the practical, whereby the procedural aspects of reparations measures should: (i) ensure gender parity in access to and decision-making involvement in execution of such reparation awards, (ii) put in place specific measures to overcome barriers that may prevent men and women from accessing reparations, and (iii) employ approaches to design of reparations and their content that include the viewpoints, rights and needs of all.
85. Committed to fulfilling these obligations, the Trust Fund consulted the victims and their communities about the specific experiences of girl child soldiers during and returning from their time with the FPLC/UPC. The Trust Fund also sought the counsel and guidance of the experts attending the Belfast meeting on how best to secure gender-inclusive approaches to reparation that fulfill the Amended Reparations Order that draw on and are in line with international normative standards and best practice and are grounded in the realities of the context and the harms experienced by former child soldiers, their families, and their communities. The Expert Group affirmed the importance and value of employing an approach that addresses gender disparities, is attentive to the gendered dimensions of harm for both males and females, and, in particular, strives to include

women and female former child soldiers in the design, implementation and monitoring of a reparations process.³⁶

86. As recognised by the Amended Reparations Order, the context from which reparations arise, and the context in which reparations will be implemented, present a specific set of dynamics that require due attention in the delivery of a reparations programme. This responds to the Court's acknowledgement in the Order of the need to account for "applicable social and familial structures" in context,³⁷ and the Court's desire to avoid "replicating discriminatory practices or structures that predated the commission of the crimes."³⁸

87. Empirical and normative standards attest to the need for reparation provisions to be delivered in ways that address the conditions of discrimination experienced by women and girls prior to and relative to when the events occurred, as they were occurring, and in the current context of reparations delivery. Lack of attention to these dynamics may prevent the full repair and rights fulfilment of female victims.

88. The Trust Fund recognizes that in order to achieve meaningful gender-inclusivity as required by the Amended Reparations Order, a holistic

³⁶ See also Trust Fund for Victims Strategic Plan 2014-2017, August 2014, at p. 8.

³⁷ Amended Reparations Order, para. 7.

³⁸ Amended Reparations Order, para 17.

approach to the planning, design and delivery of reparative measures will be necessary as set out in the following paragraphs.

89. The Trust Fund would like to respectfully submit that the experiences of the crimes and the consequent harm associated with these crimes have important gender dimensions, as also discussed in the sections on the Trust Fund's consultations and the VPRS mapping report. These include, *inter alia*, the ability to access DDR programmes and the benefits that these offer to former child soldiers; the different roles assigned to male and female child soldiers, and the value designated by society to those roles; and the different forms and experiences of violence during their time as child soldiers within the FPLC/UPC (as victims, witnesses and/or forced perpetrators of violence).
90. In particular, the Trust Fund would respectfully like to note the following points:
 - boys and girls were enlisted, conscripted and used as child soldiers;
 - gender norms and dynamics of this specific context were instrumentalised in this crime, and the crime was experienced on a gendered basis by boys and girls; and
 - the impacts of gendered harms are being felt in the aftermath of victims' experiences.

91. Based on the outcomes of its consultations, and drawing upon the Trust Fund's experience of implementing its assistance mandate, and the views from the Expert Group, the Trust Fund respectfully submits that even where girls and boys, women, and men are subject to similar kinds of harm, the experience of that harm will differ based on pre-existing norms and inequalities that determine the meaning and function of the harm. For example, educational opportunities were interrupted for both male and female former child soldiers. However, accessing education or training programmes upon returning to their communities differs due to the additional barriers experienced by female former child soldiers. These supplementary barriers are associated with their perceived loss of virginity, dignity, and social status; and the fact that many of these young women have returned from the FPLC/UPC with children. The lack of child care facilities and diminished familial support with respect to child rearing due to their status as former child soldiers, has had a significant negative impact on the ability of these women to participate in training, find employment, and become self-reliant.
92. In the aftermath of conflict, gender norms act as "social and symbolic"³⁹ multipliers of harm – ascending to gender-specific stigma, branding,

³⁹ Margaret Urban Walker, *Gender and Violence in Focus: A Background for Gender Justice in Reparations*, in *The Gender of Reparations* 18, 44 (Ruth Rubio-Marin ed., 2009). Pg. 53.

ostracism, and exclusion that map in particular ways across perceived female roles as conduits of familial and cultural reproduction.

93. The outcome of the Trust Fund's consultations and Expert Group meetings, and experience administering the Trust Fund assistance mandate, have all identified specific reintegration challenges for female former child soldiers associated with the stigma of sexualised violence and sexual activity outside of marriage that they experienced while they were child soldiers. This adds to the complexity of being unwed mothers in societies where childbirth and maternity are closely allied with highly regulated practices of female purity, chastity and access. These issues extend to perceived marriageability for female returnees.
94. The Trust Fund's consultations confirmed that social stigma and lower social status are a common situation of former child soldiers upon returning to their homes. This effect is particularly harmful for children and adolescents for whom support from their communities is particularly important. Social stigma may be especially pernicious for girls and young women due to the multiple reasons for their diminished social status. These include: their status as child soldiers; their perceived loss of 'chastity' and 'dignity,' highly valued attributes assigned to females in these communities; and their social status as unwed mothers. It should also be noted that prior to their enlistment and conscription, girls in many

cases may already have had experienced pre-existing norms of gender inequality and discrimination, such as obstacles in equal access to educational opportunities, which as a result of their child soldier experience have further deepened.

95. The Trust Fund recalls that the Amended Reparations Order recognizes that “[p]riority may need to be given to certain victims who are in a particularly vulnerable position or who require urgent assistance.” This includes “affirmative action” approaches where and when necessary,⁴⁰ an approach that lends itself towards accounting for the impact of specific harms that require specific forms of redress. The Order also states that “awards ought to be appropriate to the harm, injury, loss and damage as established by the Court.”⁴¹ Accordingly, there is a clear mandate for a reparations regime that repairs harm in ways that are responsive to the entirety of all experiences of harm, in all their breadth and deepness.

96. The Expert Group advised that the Trust Fund’s approach to implementing reparations should:

- employ a gender lens to all aspects of the design, development and delivery of reparations and create reparative responses that align with the differentiated experiences of males and females;

⁴⁰ para 19 of the Amended Reparations Order.

⁴¹ para 45 of the Amended Reparations Order.

- take specific steps where necessary to avoid historical stereotypes regarding the masculine identification of the harms associated with the experience of child soldiers, and, in this respect, identify and overcome potential barriers impacting the reparative benefits for girls and women;
- account for and address the gendered impacts and experience of the harm caused to direct and indirect victims; and
- apply a gender-inclusive approach to the implementation of each of the reparative modalities outlined in the Amended Reparations Order.⁴²

97. The Amended Reparations Order and the Appeals Chamber's Judgment allow for:

- a concept of harm that denotes "hurt injury and damage" personal to the victim that may be material, physical and psychological" (para. 10);
- a process whereby "reparation is to be awarded based on the harm suffered" (para 11);
- a process of reparation that addresses any "underlying injustices," provides for a gender-inclusive, non-discriminatory approach, and tackles and transforms gender inequalities (paras 16, 17, 18);

⁴² Amended Order, Principles on Reparations (in particular paras. 10, 17, 18 and 19) and Section 9 (paras. 33-43).

- modalities of reparation that, if they are to be successfully achieved, require a gender-sensitive understanding of the harm experienced, an approach that tackles inequalities and a process of repair and rehabilitation that is fulsome and addresses all aspects of the gendered nature of the crime and resulting harms.

98. The Trust Fund, in developing the draft implementation plan, as well as, when eventually implementing reparations, will be guided by these considerations and findings.

V. Legal and operational consequences arising from the fact that the Trust Fund will implement reparations

1. Liability/ Indigence of Mr. Lubanga

99. As noted previously, reparations before the Court are of a judicial nature, flowing from the principle of individual criminal responsibility. Mr Lubanga has a liability towards the victims for repairing the harm that they have suffered as a result of the crimes for which he was convicted. As a consequence, and as the Trust Fund has consistently argued, the primary financial responsibility to pay for the reparation award lies with the convicted person.

100. The Trust Fund respectfully would like to reaffirm its full agreement with the Appeals Chamber's finding that firstly, the indigence of Mr Lubanga

(whether presumed or real, if and when determined by the Court for the purpose of reparations) is of no relevance to the imposition of reparations;⁴³ and that, secondly, the Trial Chamber in its first instance decision erred in assuming control of the Trust Fund's "other resources" instead of imposing liability on Mr Lubanga.⁴⁴ Both of these findings are of key importance in understanding how reparations in the present case (and in any future cases) can be funded.

101. It is of the greatest importance that the Court does everything within its powers to secure available assets of the convicted person for the purpose of reparation proceedings.⁴⁵

102. The Trust Fund respectfully notes that the Court thus far has made no formal finding whether Mr Lubanga is in a position to fund reparation awards, or whether he is to be considered indigent for purposes of reparations. That being said, and as the Trust Fund has indicated previously,⁴⁶ the Registrar in a submission contained in document ICC-01/04-01/06-63 on 31 March 2006, provisionally found Mr Lubanga indigent for the purpose of legal aid. Moreover, to the best knowledge of

⁴³ see Appeals Chamber's Judgement on reparations in paragraph 105.

⁴⁴ see Appeals Chamber's Judgement on reparations in paragraph 116.

⁴⁵ In this context, the Trust Fund would like to reiterate its view, which has become even firmer as a result of the consultations that it has carried out in the situation; that even just a symbolic gesture of support to reparations by Mr. Lubanga, such as an apology towards the victims, could have a great meaning for the victims. The Trust Fund notes at the same time that any such gesture by Mr. Lubanga must be voluntary to be truly meaningful and therefore should not be ordered by the Court.

⁴⁶ see Trust Fund's Observations of 25 April 2012, at paragraph 23.

the Trust Fund, no assets or property belonging to Mr Lubanga have yet to be identified and seized.

103. The Trust Fund would further like to respectfully note that the Appeals Chamber, in paragraph 61 of the Amended Reparations Order, made explicit reference to regulation 117 of the Regulations of the Court which obliges the Presidency, if necessary, and with the assistance of the Registrar as appropriate, to “monitor the financial situation of the sentenced person on an on-going basis, even following completion of a sentence of imprisonment, in order to enforce fines, forfeiture orders or reparation orders.”
104. Accordingly, it will be the responsibility and role of the Presidency, with assistance of the Registrar as necessary, to monitor the financial situation of Mr Lubanga, while the Trust Fund’s role is to take receipt of resources collected through awards for reparations once these are secured by the Court.
105. If resources were to be received from Mr Lubanga, the Trust Fund has the financial management capacity to separate these resources for awards for reparations from the remaining resources of the Trust Fund (according to regulations 21c and 34 of the RTFV).

106. The Trust Fund would like to also respectfully note that in case that resources of Mr Lubanga are to be identified at any stage, the Trust Fund sees three options as to how these funds may be used. Such funds could be used to replenish its general reparations reserve to the extent that the Trust Fund will have spent money on victims for whose harm Mr Lubanga was liable. Alternatively, and in particular if more money is retrieved than has been spent on reparations originally funded with voluntary contributions of the Trust Fund within its ability to complement, the plan proposed as part of the current submission could be amended and activities could be scaled up and/or extended. As a third option, a new draft implementation plan could be developed for activities funded with such funds.
107. The Trust Fund would like to also respectfully reiterate a suggestion it has made previously, asking the Court to reconsider options to proactively address Mr Lubanga's financial liability for reparation; and to seek to obtain additional information with respect to his financial background both from Mr Lubanga, as well as, from the Government of the Democratic Republic of the Congo.
108. Furthermore, the Trust Fund respectfully requests the Chamber to make a determination of whether Mr Lubanga is to be considered indigent for the purposes of reparations in the present case.

109. The Trust Fund also respectfully requests the Trial Chamber to ask the Presidency, and to seek appropriate assistance of the Registrar, to comply with the asset monitoring obligations set out in regulation 117 of the Regulations of the Court.

2. Considerations related to designing an implementation plan where reparations are implemented “through the Trust Fund” using funds “complemented” by the Trust Fund (i.e. originating from the Trust Fund’s own financial resources)

110. The Trust Fund submits that it will have a dual role to play in the implementation of reparations in this case:
- a. The Trust Fund will act as an implementing agency for reparations funded by assets of Mr Lubanga: the Appeals Chamber made an order for collective reparations “through the Trust Fund.” Accordingly, the applicable legal framework assigns the Trust Fund a shaping and defining role with regards to the precise nature of the modalities of the reparations and the methods of their implementation.⁴⁷ In fact, it is important to understand and consider that the legal framework of the Trust Fund, including the RTFV containing a dedicated chapter on the implementation of collective reparations,⁴⁸ will be binding on the Trust Fund and thus directly affect the draft implementation

⁴⁷ see regulation 69 RTFV.

⁴⁸ see regulations 69-72 RTFV.

plan.

- b. In the second role, the Trust Fund will be able to complement the payment of reparation awards: in the present seeming absence of any assets from Mr Lubanga towards financing the implementation of reparations, it seems that reparations can only be translated into practice funded out of resources from the Trust Fund.

- 111. Accordingly, the draft implementation plan assumes a scenario where collective reparations are carried out “through the Trust Fund” in accordance with rule 98, paragraph 3 of the RPE; and are funded by the Trust Fund as a result of its ability to complement awards for reparations (in accordance with regulation 56 of the RTFV).
- 112. The Trust Fund would like to share some further thoughts as to the consequences of this scenario.
- 113. It is inherent to international crimes that they result in mass victimization, and, at the same time, in particularly severe forms of harm. Fully repairing harm in cases of international crimes in most cases will be very costly, requiring substantial financial resources.

114. It is therefore even more unfortunate, that to the Trust Fund's best knowledge, no funds have yet been secured from the convicted person towards financing reparations.
115. Given the limitation of its reparations reserve, the Trust Fund will likely not be in a position in this case to contribute the entire amount that Mr Lubanga could be found financially liable for as determined by the Court. Moreover, in the Trust Fund's opinion, because of the inherent limitations of the reparations reserve compared to the cost to redress harm typically caused by international crimes, which by their very nature are particularly atrocious and affect large numbers of victims, this same dilemma may hold true for the majority of future cases reaching the reparations stage at the Court.
116. Consequently, the amount of financial liability of the convicted person towards his victims is larger than the financial basis for the programmes to be undertaken with Trust Fund resources, as suggested in the draft implementation plan.
117. The Trust Fund would respectfully like to reiterate, as it has consistently argued and as has been explicitly recognised in the Appeals Chamber

judgment, that the Board of Directors of the Trust Fund is the accountable custodian over the Trust Fund's financial resources.⁴⁹

118. The use of other resources for reparation awards is subject to the caveat that it should be made without prejudice to the Trust Fund's activities under its general assistance mandate. Furthermore, regulation 56 of the RTFV stipulates that the Trust Fund must take "particular account of on-going legal proceedings that may give rise to such awards" when deciding whether and how much of its funds to use for complementing a reparations award. All these factors, and the scarcity of available resources when compared with the needs of victims, limit the Trust Fund in its effort to complement reparation orders.
119. The Trust Fund manages its funds collected through "other resources" by allocating a portion of the funds towards its activities under its assistance mandate; and by allocating another portion of the funds to its reparations reserve, dedicated towards all cases currently pending before the Court that may result in reparation proceedings, including the present case. As previously submitted, voluntary contributions may be subject to binding

⁴⁹ An acknowledgment of the Board of Director's financial autonomy over the Trust Fund's other resources is reflected for example in paragraph 62 of the Amended Reparations Order of 3 March 2015, stating that "the Board of Directors may decide whether to advance resources to implement the order". The Appeals Chambers' judgement of 3 March itself contains a detailed discussion of this matter, see paragraphs 106-116, and in particular paragraph 113.

donor agreements, limiting the use of these funds to a certain purpose.⁵⁰

The reparations reserve presently stands at 4.8 million euros for all cases before the Court.

120. Considering the types of interventions that the Trust Fund deems to be necessary and relevant to collectively redress the harm caused to victims in the present case, as outlined in the draft implementation plan, and balancing the victims' needs against the overall availability of financial resources at its disposal to complement reparations orders for all cases currently pending before the Court, the Trust Fund is prepared to complement 1 million euros from its reparations reserve for funding a collective reparation programme in the present case. However, the Trust Fund Board respectfully notes that the complement figure is merely an indication at this stage and that it has not yet taken a final decision on the issue. Such final decision is contingent on a formal declaration of Mr Lubanga's indigence for the purposes of reparations by the Court, as well as the endorsement of the draft implementation plan by the Court.

121. The Trust Fund takes note of the language used in the Amended Reparations Order. Paragraph 62 of the Amended Reparations Order of 3 March 2015, stated that 'the Board of Directors may decide whether to advance resources to implement the order.' Paragraph 78 of the Order

⁵⁰ see Trust Fund's First Report, at paragraphs 135 and 136.

then asks the Trust Fund to include in the draft implementation plan the monetary amount, if the Board of Directors so decides, that it will complement as an advance in order that the awards can be implemented.

122. The Trust Fund would like to respectfully share some clarification regarding the term “advance.”

123. The Trust Fund respectfully submits that the term “advance” in the Reparations Order of 3 March 2015, in its understanding, does not imply that Mr Lubanga will become a direct debtor to the Trust Fund. Instead, the Trust Fund considers that Mr Lubanga will owe any financial resources in terms of his liability to the Court itself and not to the Trust Fund. Furthermore, because the Court makes the reparation order and oversees its implementation while the Trust Fund acts as the implementing agency, the Court is designated to carry out the function of a safe-keeper of the interests of the victims related to reparations ensuring equity between the victims and the convicted person. In addition, as discussed, the Regulations of the Court assign to the Presidency the role to monitor, trace, freeze, and seize assets from the convicted person.

124. The Trust Fund further views the term “advance” in the Appeals Chamber’s decision as unfortunate because it might be narrowly construed. The Trust Fund respectfully requests the Chamber to interpret

the term in the context of the language used in the Regulations of the Trust Fund and the Rules of Procedure and Evidence. In particular, the Trust Fund considers that the term “complement” in regulation 56 of the RTFV embraces a far more comprehensive concept than merely advancing resources for the implementation of a reparations order.

125. Regulations 56 of the RTFV clearly has a financial dimension, stating that the Trust Fund may complement “the resources collected through awards for reparations” and discussing “the need to provide adequate resources to complement payments for awards.”
126. The Trust Fund considers that, in addition to this primary financial dimension, the language used in regulation 56 of the RTFV, when read in conjunction with the language of rule 98 (3) of the RPE stipulating that collective reparations are implemented “through the Trust Fund,” also contains a second dimension - reflecting the Trust Fund’s much wider mandate to engage itself and its resources in reparations, i.e. both firstly, its agency role in the implementation and secondly, funding, in terms of its ability to financially complement payments for awards ordered against the convicted person, at the discretion of the Trust Fund’s Board of Directors.

127. To the Trust Fund, the term “complement” in regulation 56 of the RTFV, next to a financial connotation, therefore, has the following much wider implications:

- a. to allocate, within the limits of its reparations reserve, the necessary financial resources towards delivering meaningful reparations towards victims, in response to the harm they have suffered as a result of the crimes as established by the Court;
- b. to maintain sound financial management of all its available financial resources with respect to the mandates of the Trust Fund for the maximum benefit of victims of crimes within the jurisdiction of the Court;
- c. to dedicate the required human resources for delivering reparations and leveraging networks of partners in the implementation of reparations;
- d. to build on the Trust Fund’s experiences from its general assistance mandate for the design, administration and implementation of reparations, including in establishing the necessary processes;
- e. to work in close consultation with the parties to reparation proceedings including the victims of the case and the convicted person and their legal representatives; victim communities; national authorities; civil

society; experts; and other relevant stakeholders, as appropriate;

- f. to encourage efforts at the national level towards a wider scheme of reparations beyond Court-ordered reparations, where appropriate and possible; and
- g. to ensure that the principles on reparations, as clarified in the Appeals Chamber decision of 3 March 2015, are translated into a tangible reality for victims, including by upholding the dignity of victims and ensuring that reparations are non-discriminatory, non-stigmatizing, gender-sensitive and in respect of the “*Do no Harm*” principle.

128. The Trust Fund respectfully invites the Trial Chamber, in its consideration of the draft implementation plan, to adopt this wider understanding of the term “complement.”

129. The Trust Fund also respectfully submits that in its understanding, when the Trust Fund “complements” resources towards awards for reparations, the Trust Fund has a shaping role in reparations as set out in the RTFV. The Trust Fund would like to affirm its commitment to ensuring that any funds that it decides to dedicate for reparations are used in the most effective way whilst, at the same time and as a matter of precedence, seek to benefit the most vulnerable victims and those who have suffered the gravest harm.

VI. The Trust Fund's understanding related to the Trial Chamber's request for a list of victims

130. The Trust Fund notes that in its decision ICC-01/04-01/06-3161 of 14 August 2015, granting the Trust Fund an extension for the submission of the draft implementation plan, the Trial Chamber in paragraph 6 considered "it advisable to reiterate, in this connection, that, in accordance with the Appeal's Chamber's instructions, the plan must (i) identify the victims eligible to benefit from the reparations;⁵¹ (ii) evaluate the extent of the harm caused to the victims;⁵² and (iii) determine the appropriate modalities and forms of reparations⁵³ on the basis of the criteria and principles adopted in the Order." The operative part reiterated these concerns, stating that the Trust Fund's submission should (i) contain a list of the victims potentially eligible to benefit from the reparations, including the requests for reparations and the supporting material; (ii) an evaluation of the extent of the harm caused to the victims; (iii) proposals for the modalities and forms of reparations; the anticipated monetary amount, as indicated for which Mr Lubanga is liable; and (iv) the monetary amount which the Trust Fund could potentially advance.

⁵¹ ICC-01/04-01/06-3129-AnxA, paras. 6-9, 12-19, 54-57 and 63.

⁵² Ibid., paras. 10-11, 58-59 and 65.

⁵³ Ibid., paras. 23-28, 33-48, 67-70 and 79.

131. The Trust Fund shares the Trial Chamber's concern arising from the complexity of these first ever reparation proceedings that the Trust Fund, in developing the draft implementation plan, must adhere to the rulings and framework set out Appeals Chamber's judgment and Amended Reparations Order.
132. The Trust Fund would like to note that in its consultations with victims' counsel and the Registry held on 3 and 4 September 2015 in The Hague, it became evident that the Trial Chamber's request to identify the victims eligible to benefit from the reparations, and its subsequent mentioning of a list, was open to different interpretations, including the interpretation that the Trial Chamber may have directed the Trust Fund to collect applications for reparations from potential beneficiaries claiming to be victims.
133. Therefore, the Trust Fund in the following would like to respectfully share how it understands the Trial Chamber's reminder of the Appeals Chamber's instructions. Before doing so, the Trust Fund would like to underline that it takes its role in implementing reparations in the present case very seriously and is fully committed to comply with the Amended Reparations Order in its entirety. In fact, it is particularly committed to those findings of the Appeals Chamber that were cited by the Trial Chamber in support of its paragraph 6 of the extension order of 14 August

2015. Specifically, the Trust Fund is committed to comply with the Appeals Chamber's ruling on eligible beneficiaries of reparation awards as defined in terms of direct and indirect victims as set out in paragraphs 6-9, paragraphs 54-56 and paragraph 63; their appropriate identification as set out in paragraph 57; as well as the principles on dignity, non-discrimination and non-stigmatisation, including *inter alia* fair and equal treatment and access to information, the need to address underlying injustices avoiding discriminatory practices and structures that predate the commission of the crimes; a gender-inclusive approach and prioritization of particularly vulnerable victims as set out in paragraphs 12-19.

134. The Trust Fund's understanding of the Trial Chamber's reminder to identify victims who may benefit from reparation awards is guided by two key findings of the Appeals Chamber's Judgment of 3 March 2015.

135. Firstly, in paragraph 8, the Appeal Chamber held that only victims within the meaning of rule 85 (a) of the RPE and regulation 46 of the RTFV, who have suffered harm as a result of the crimes for which Mr Lubanga was found guilty, are eligible to claim reparations against Mr Lubanga. The Appeals Chamber explicitly clarified that this is also true when an award is made for the benefit for a community in saying that, where an award for reparations is made to the benefit for a community, only members of the community meeting the relevant criteria are eligible.

136. Secondly, the Appeals Chamber in paragraph 7 also held that when only collective reparations are awarded pursuant to rule 98 (3) of the RPE, a Trial Chamber is not required to rule on the merits of individual requests for reparations.
137. The Trust Fund interprets these two key findings in the Appeals Chamber's judgment to indicate that in the present case, the Court has opted against adopting an applications-based process to reparations, and consequently, against determining the eligibility of victim/beneficiaries on a case-by-case basis.
138. This interpretation of the Trust Fund relies also on the Appeals Chamber's more detailed argumentation in the body of the Judgment.
139. In particular, the Trust Fund recalls that in paragraphs 148-152 of its Judgment, the Appeals Chamber considered that the Court's legal text provide for two distinct procedures for awards for reparations, a primarily applications-based procedure for individual awards, and a second procedure relevant to collective awards where a determination by the Court of individual damage, loss or injury in relation to the crime is not mandatory. It also considered that individual requests for reparations, while theoretically possible, are not necessarily required. Applying this argumentation to the present case, paragraph 164 of the Appeals

Chamber's Judgment states explicitly that "the Appeals Chamber determined that the Trial Chamber's decision had been to order reparations on a collective basis under rule 98 (3) of the RPE, rather than to rule on the merits of individual reparation requests and found that the Trial Chamber had not erred in this respect."

140. The Trust Fund further would like to recall the Appeals Chamber's findings in paragraph 167 of the Judgment where the Appeals Chamber stated that:

"The Regulations of the Trust Fund provide for the inclusion of unidentified beneficiaries into a reparations programme and for their identification only **at the implementation stage**, without providing for a specific role for the convicted at this implementation stage. However, the Appeals Chamber notes that the Trust Fund expressly stated that it would not be opposed to Mr Lubanga having the opportunity to review the screening process of victims at the implementation stage, subject to any protective measures, and to comment on the draft implementation plan and have his observations considered. The Appeals Chamber considers it appropriate to include the Trust Fund's suggestion in this respect in the amended order for reparations."

(emphasis added)

141. In this context, the Trust Fund would also like to recall that the Appeals Chamber explicitly found that “the Regulations of the Trust Fund are an instrument to the Rome Statute for purposes of interpreting provisions related to reparations awarded through the Trust Fund; ” and that, as it has previously pointed out, these Regulations stipulate a mandatory verification process (Regulation 62-65, titled “Section III Verification”) only in the case of individual awards to victims pursuant to Rule 98 (2) of the RPE. While the Regulations of the Trust Fund **do not contain any mandatory verification requirement with regards to collective reparations** pursuant to Rule 98 (3) of the RPE. When collective reparations are ordered, the Trust Fund is merely required to set out “**the precise nature of the collective award(s), where not already specified by the Court, as well as methods for its/their implementation.**” (emphasis added)
142. In fact, in the present case, the Trust Fund has suggested as an appropriate method for verification to include a victims’ screening process at the implementation stage, and in addition, has voluntarily offered Mr Lubanga to review the proposed methodology of this process.
143. The Trust Fund also would like to respectfully note that the Appeals Chamber in paragraph 74 of the Amended Reparations Order stated that only “when the collective reparation awards contained in the draft

implementation plan have been approved, the Trust Fund is directed to seek consent to participate therein from the victims whose applications are forwarded to it,” and that until then, the Appeals Chamber instructed the Trust Fund to refrain from reviewing any victims’ requests for reparations until such consent has been obtained.

144. Accordingly, the Trust Fund interprets that in the present case, the Trial Chamber, in its reminder in the decision of 14 August 2015, has not required the Trust Fund to collect individual applications for reparations from potentially eligible victims and to compile those into a list for consideration by the Trial Chamber at the present stage of proceedings and as part of this submission, which would have been an instruction previously not made by the Appeals Chamber.

145. Instead, in the Trust Fund’s understanding, the Trial Chamber has merely reiterated the Appeals Chamber’s instruction to demonstrate the development of a thorough screening mechanism in accordance with paragraph 167 of the Judgment, and paragraph 66 of the Amended Reparations Order to be employed **at the implementation stage.** (emphasis added)

146. This interpretation of the legal language contained in the Court’s decisions also reflects the organisational reality of the Court. Within the structure of

the Court and the division of work between the various areas, including Chambers, Registry, Office of the Prosecutor, and the Trust Fund, the role of collecting and handling applications of victims, including those for reparations, has been assigned to the VPRS of the Registry.

147. Furthermore, and because reparations are not just a legal construction but their implementation will take place in an operational reality, the Trust Fund would like to add a number of operational considerations as to why it makes sense to delay the eligibility screening until the implementation stage, i.e. after the precise nature and form of reparation awards have been finally determined in form of a judicial order and their implementation is finally about to commence These considerations include, *inter alia*:

- In the Trust Fund's experience of delivering assistance to victims under its assistance mandate, making victims come forward and requesting detailed information about the harm they have suffered is a very sensitive process and may lead to re-traumatization. Moreover, the Appeals Chamber has clarified that it is entirely voluntary for victims to accept reparations and that their participation in reparation proceedings needs to be based on informed consent. Consequently, the Trust Fund advocates that victims should not be obliged to have to repeat their stories but ideally just share them at the most relevant point in the process,

which, in the Trust Fund's understanding, is when they are taken into the reparations programme. This sensitivity is particularly strong in the present case. As the Appeals Chamber has recognized, shame and stigma are prevalent among former child soldiers and it may take significant courage for them to come forward to claim the reparations to which they are legally entitled.

- If there is a significant delay between collecting this information and the actual delivery of reparations, this may lead to misplaced expectations and frustration on part of the victims. Furthermore, information collected may no longer be accurate at the time of implementation. Unfortunately, while these proceedings have already taken significant time, the Trust Fund expects that after its submission on 3 November 2015, additional time will be needed for completing the judicial process, including allowing for observations by the parties on this submission, the time it will take for a decision by the Trial Chamber and potential further appeals proceedings. While the Trust Fund stands ready to begin the implementation of reparations, it does not expect this next step to start in 2015.
- As explained above, the financial resources of the Trust Fund to complement reparations are limited and will unfortunately likely be insufficient to redress all forms of harm caused to every victim

(direct or indirect) as a result of the crimes for which Mr Lubanga was convicted. As set out in the draft implementation plan, reparations will be in part rehabilitative and symbolic with a view to reaching as many victims as possible. However, the Trust Fund will also have to make difficult choices, including a prioritization of certain victims over others. If a list of all potentially eligible victims would be compiled at the present stage, the fact that later some of these victims may not be able to receive redress for the harm that they have suffered and reported, may further exacerbate their trauma, frustration and suffering.

148. Furthermore, compiling a list of all victims in this case would be a very time consuming and resource intensive undertaking. However, as the Trust Fund has consistently argued it is necessary to bear in mind the principle of proportionality (whilst not neglecting the rights of the convicted person): if the process for implementing reparations (for which Mr Lubanga is also financially liable) is very expensive but has to be paid out of the same limited funds available, even less of those limited funds will be left over to fund the actual reparation awards from which the victims could benefit. Consequently, it makes sense to only undertake those procedural steps strictly necessary to administer collective reparations, i.e. in the present case a thorough screening and intake

process of only those victims who qualify and also will in fact benefit from collective reparations awards.

149. The draft implementation plan sets out how the Trust Fund envisages the screening methodology in relation to the proposed reparation awards. This screening and intake process will allow direct and indirect victims, as defined by the Court, to benefit from reparation awards. It will comply with all further requirements of the Amended Reparations Order, including in particular the principles on dignity, non-discrimination and non-stigmatisation set out in paragraphs 12-19.

150. The Trust Fund is mindful that the proposed procedures are subject to observations by the parties, including the Defence, and that the methodology to be actually applied at the implementation stage will ultimately be determined by the Court. The Trust Fund envisages that the screening and intake process will be an initial step in implementing the collective reparations awards, as determined by the Court. As set out in the draft implementation plan, the screening and intake process will at a subsequent stage also allow a detailed evaluation of the extent of the harm caused to (individual) victims requested by the Trial Chamber so that each victim within the collective framework of reparations can benefit according to their needs arising from the specific harm he or she has experienced.

VII. Interplay of reparations with the Trust Fund's assistance mandate

151. The Trust Fund would like to respectfully provide some clarification as to how it understands the relationship between its assistance and reparations mandates.

152. It notes that the Appeals Chamber in several places has explicitly referred to the Trust Fund's assistance mandate. In particular, in paragraph 55 of the Amended Reparations Order the Appeals Chamber stated that it considered it appropriate for the Board of Directors to engage its assistance mandate to include members of affected communities into assistance programmes operating in the situation area, where such persons do not meet the eligibility criteria for reparations as defined by the Court. In paragraph 64, it stated that it considered it appropriate for the Board of Directors to engage its assistance mandate to benefit victims of sexual and gender-based violence.

153. The Trust Fund's assistance and reparations mandates each follow different legal procedures. Reparations are determined after a criminal case has resulted in a conviction. They are decided before a Trial Chamber, following the legal framework applicable for reparations. Assistance mandate activities, on the other hand, are not linked to an individual

criminal case or triggered by judicial proceedings but initiated in situations before the Court, at the Trust Fund Board's discretion, and following a situational assessment according to regulation 49 of the RTFV. Prior to undertaking any assistance activities, the Trust Fund notifies the responsible Pre-Trial Chamber according to regulation 50 of the RTFV so that it can assess whether the intended activities interfere with any on-going criminal cases pending before the Court. Because assistance activities are not directly linked to a specific case, and therefore are not dependant on the conviction of a person, they have a wider reach and can offer benefits to victims under the jurisdiction of the ICC in the situation in a timelier manner, and closer to the time that the harm has occurred.

154. The Trust Fund notes that, as supported by its programmes, operational experience, and research, there is an important reparative dimension in the Trust Fund's assistance mandate that recognizably distinguishes it from development and humanitarian work. It has been measured⁵⁴ that being a beneficiary of the assistance mandate embodies a reparative and empowering degree of recognition for victims.

155. The Trust Fund considers, however, that the moral value of Court-ordered reparations is distinct from the value of benefitting from the assistance

⁵⁴ See First Report at para. 196 with further references and the Trust Fund's Fall 2010 Programme Progress Report, "Learning from the TFV's Second Mandate: From Implementing Rehabilitation Assistance to Reparations," <http://www.trustfundforvictims.org/sites/default/files/imce/TFV%20Programme%20Report%20Fall%202010.pdf>.

mandate. It is even more important because of their entitlement to reparations given victims become right-bearers. This right of victims to reparations is determined in a judicial proceeding involving the public acknowledgment that the convicted person has wronged the victims.

156. The Trust Fund considers its two mandates to each have their own intrinsic value. Neither is the assistance mandate subservient to the reparations mandate nor is the reparations mandate subservient to the assistance mandate.
157. Against this background, the Trust Fund is respectfully concerned about the way in which the Appeals Chamber has suggested using the assistance mandate to redress gaps in the eligibility for reparations that stem from the Prosecution's strategic choices and narrow charging. The Expert Group in Belfast also echoed this sentiment, with concerns expressed that the assistance mandate should not be instrumentalised by the reparations mandate.
158. Moreover, the Trust Fund is mindful that it would be unfortunate to set a precedent in this case that would curtail the discretion of the Board of Directors to determine in what context and situation its limited resources could best be used for the benefit of victims. That, notwithstanding, the Board of Directors will consider whether and how to use the assistance

mandate in the context of the reparations order in the present case. The Trust Fund notes that in case it comes to a positive determination that it will propose to undertake activities under its assistance mandate, it will submit its findings to the relevant Pre-trial Chamber based on its situational assessment.

VIII. The notion of collective reparations

159. As noted previously, the Appeals Chamber, in its Amended Reparations Order of 3 March 2015, has made an order for **collective reparations** (emphasis added). This is very significant for the draft implementation plan because collective reparations and individual reparations are distinctly different in substance and procedure.

160. The Trust Fund notes that the Appeals Chamber has made some important findings on how the notion of collective reparations must be interpreted in the present case, setting the parameters within which the Trust Fund will frame its draft implementation plan. In particular, the Judgment of the Appeals Chamber found the first reparations order of the Trial Chamber erroneous regarding some aspects of the community-based approach that the Trial Chamber had endorsed in its decision.⁵⁵ It clarified

⁵⁵ see Judgment of the Appeals Chamber on reparations at paragraphs 210-215 and in particular para. 214.

that members of communities are only entitled to an award for reparations in as far as the harm they suffered meets the criterion of eligibility in relation to the crimes of which Mr Lubanga was found guilty. The Appeals Chamber further noted that this should not preclude such persons to benefit from the Trust Fund's assistance mandate.⁵⁶ Acknowledging that certain crimes may have an effect on a community as a whole, it considered that, if there is a sufficient causal link between the harm suffered by members of that community, and the crimes of which Mr Lubanga was found guilty, it is appropriate to award reparations to that community as a group of victims; but that the scope of the convicted person's liability in respect to this community must be specified.⁵⁷

161. In light of these findings, and the fact that the notion of collective reparations may be subject to further discussion and litigation, the Trust Fund would respectfully like to share the following observations.
162. The Trust Fund notes that the Rome Statute and the applicable legal framework do not define the notion of "collective reparations."
163. Moreover, there is no agreed upon definition of collective reparations in international law. In particular, international human rights treaty law

⁵⁶ see Judgment of the Appeals Chamber on reparations at paragraph 215.

⁵⁷ see Judgment of the Appeals Chamber on reparations at paragraph 212.

makes no specific reference to collective reparations, and normative human rights standards have addressed this gap to only a limited extent.

164. The “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (hereinafter “the Basic Principles”)⁵⁸ include only a rather limited discussion of collective reparations. The preamble recognizes that victimization may be directed at individuals, as well as groups of persons targeted collectively.
165. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition submitted a report to the Human Rights Council specifically focusing on reparation,⁵⁹ in which he noted the ‘ambiguous’ nature of the term because ‘collective’ refers to both the nature of the reparations (e.g. the types of goods distributed or the mode of distributing them) and the kind of recipients of such reparations (e.g. collectivities).
166. The Trust Fund recalls that the RPE take a pragmatic approach, stating that the Court may opt for collective reparations “where the number of the victims and the scope, forms and modalities make a collective reparation

⁵⁸ UN General Assembly A/Res/60/147, 21 March 2006.

⁵⁹ see Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition A/69/18, UN General Assembly 14 October, 2014.

more appropriate.” This seems also a reflection of the fact, that, as the Trust Fund has consistently argued, the categorization of an award as either collective or individual will trigger different procedural requirements,⁶⁰ including for addressing identification of victims.⁶¹

167. The Trust Fund submits that the lack of a clear definition of the concept of “collective reparations” was a deliberate choice by the drafters to offer a pragmatic approach because it allows the Court’s reparations system to flexibly respond to the specific situation of the cases before it.

168. In its previous submissions, the Trust Fund has already shared its understanding of collective reparations as a notion to which it applies a wide and flexible interpretation.⁶²

169. The Trust Fund would specifically like to note that in its view, some forms of collective reparations might result in individual benefits. It would also like to note that some forms of collective reparations, such as, symbolic reparations in the form of a memorial, provide an inherently collective benefit of sharing memory and may not be conceived in individual terms.

170. Furthermore, one possible interpretation of the notion of collective reparations is to understand “collective reparations” in the sense of

⁶⁰ see Trust Fund’s First Report at paras. 17-26.

⁶¹ The Appeals Chamber Judgment contains a detailed discussion of important procedural consequences in distinguishing between individual and collective reparations in paragraphs 144-168, including that collective reparations do not demand an applications-based approach.

⁶² see Trust Fund’s First Report at paras 24-25

“community reparations.” This interpretation is important to further discuss here because of the case history. Indeed, the Appeals Chamber in paragraph 54 of the Amended Reparations Order has clarified the limitations adopting this interpretation of collective reparations as community-based reparations in the present case. It specified that “the order may be implemented, where appropriate, with respect to communities, with due regard to the principle that members of that communities are entitled to an award for reparations in so far as the harm they suffered meets the criterion of eligibility (...).”

171. The Trust Fund would respectfully like to clarify that in its view, ‘community-based reparations’ or ‘community reparations’, such as reparations addressing the community as a whole, are just one possible form within the much wider concept of collective reparations and that this notion of collective reparations is itself an open concept.⁶³

172. The Trust Fund’s wide and flexible understanding of the concept of collective reparations was reaffirmed by the discussions in Belfast by the Expert Group, where the experts discussed at length the notion of collective reparations. The experts agreed that there is not a set definition

⁶³ The Trust Fund would like to underline that in its filing of April 2012 in the first instance proceedings, the Trust Fund advocated for a ‘community based approach’ to reparations, involving a consultative process with the affected community, i.e. the Trust Fund proposed a particular process to arrive at some form of collective reparations, rather than just strictly ‘community reparations’, i.e. a particular form of collective reparations aimed at benefitting a community.

for this legal term. They made reference to the practice of administering collective reparations both in international human rights law, with specific reference to the experience of the Inter-American Court as the leading human rights tribunal on collective reparations, as well as practice in administrative reparation programmes at a national level in Colombia, Morocco and Peru.

173. The experts, by way of examples, elaborated a list of scenarios that may all fall within the notion of collective reparations and that is illustrative of the fact that the term “collective reparations” may encompass a range of different notions. They concluded that collective reparations could be considered both, in terms of ‘collective beneficiaries’ as well as in terms of ‘collective benefits.’
174. Concerning possible collective beneficiaries, the experts gave the following examples for collective reparations citing examples of concrete practice in the human rights and administrative reparations context:
 - Victims of the violation of a collective right;
 - Victims of a collective harm - when the harm is tied to group membership (such as the violence against indigenous groups) this results in harms that are collective in nature, and therefore, calls for collective forms of redress; where violence is based on group

identity, reparation may seek to address harm to social status and identity;

- Harms concentrated in a particular community that self-defines as collective;
- Collective defined on basis of occupying a shared geographic area;
- ‘Society as a whole’; and
- The option of focusing reparative efforts on certain geographical regions, generally those most severely affected by a conflict, where a larger number of victims is likely to be concentrated.

175. Concerning possible collective benefits, the Expert Group gave the following examples:

- A collective benefit (“exclusive” or “non-exclusive”): distinction between collective reparations that are “inherently collective and exclusive” (such as specialized health services for a target group of victims); and collective reparations that are “community-oriented and not exclusive” (such as schools that benefit the entire community). Reparations with an “exclusive” element meet the needs of individual victim/survivors within a collective context. “Non-exclusive” collective reparations may play a role in ensuring

that reparations support the integration of victims and do not further exacerbate any community tensions;

- Benefits directed to a specific group of people; and
- Collective reparations as a modality of distribution: individual benefits are awarded on the basis of membership of a collective - collective here meaning that instead of being given to each victim individually, the benefit is given to a 'group' or certain 'groups' of victims who jointly manage and, as appropriate, internally distribute the benefit.

176. In light of these very different ways to interpret the concept of “collective reparations,” the Trust Fund in its draft implementation plan seeks to develop an approach that is most appropriate in the present case. In this vein, the Trust Fund relied on its interpretation of the notion of collective reparations on the findings of the Appeals Chamber and in particular, the reparation objectives as set out in the Amended Reparations Order.⁶⁴ The Trust Fund respectfully recalls that the Appeals Chamber listed a range of different and important aims that reparations in this case should seek to accomplish, including:

- to relieve victims’ suffering;

⁶⁴ see Amended Reparations Order at paras. 71 and 72.

- to afford justice by alleviating the consequences of the wrongful act;
- to deter future violations;
- to contribute to the effective reintegration of former child soldiers;
- and
- to “promote, wherever possible, reconciliation between the convicted person, the victims and the affected communities.”

177. The Trust Fund respectfully submits that to achieve these objectives, and in particular for the deterrence of future violations and the promotion of effective reintegration and reconciliation, it will in many instances at an operational level be mandatory to directly involve affected communities in addition to the (direct and indirect) victims themselves. For example, in the Trust Fund’s experience it is vital to actively involve the community in any reintegration efforts for these to be successful. In fact, not to do so would seem a conceptual and operational challenge because the reintegration that the Appeals Chamber referred to must be understood to be a reintegration into a community and not a reintegration into a group exclusively constituted of whoever falls into the definition of direct or indirect victims (e.g. a group of former child soldiers).

178. Similarly, deterrence can only work if the society as a whole is convinced that recruiting child soldiers is a crime – something sadly still of direct relevance in a situation with continued instability and violence.
179. Furthermore, in respect to reconciliation, the Appeals Chamber even lists the affected communities as an important stakeholder next to the victims and the convicted person. Again, it would make little sense to try and achieve only a reconciliation of the victims amongst themselves whilst leaving out reconciliation with the communities in which they live.
180. In short, in interpreting the concept of collective reparations by making concrete proposals for awards, the Trust Fund tries to balance the need to be mindful of the scope of liability of the convicted person against this operational and social reality. In addition to eligible direct and indirect victims, others need to be involved in certain types of reparation activities so that these can result in benefits for the victims. In the view of the Trust Fund, this involvement of persons outside the strict definition of direct and indirect victims in this case does not mean that these other participants become themselves beneficiaries of the awards – their participation is merely required to enable achievement of the desired redress for the direct and indirect victims.

IX. Modalities of reparations

181. The Appeals Chamber in its Amended Reparations Order has provided the Trust Fund with detailed guidance as to what different modalities to consider, including restitution, compensation and rehabilitation, as well as other types of reparations, including symbolic, preventative, and transformative reparations.⁶⁵ It has also explicitly requested that if any particular modality does not form the basis of any of the awards for reparations proposed by the Trust Fund in its draft implementation plan, the Trust Fund is instructed to include an explanation outlining its reasoning.⁶⁶ In addition, the Appeals Chamber has explicitly requested the Trust Fund to suggest measures aiming at “restitution” and to provide full reason as to how it arrived at the conclusion that restitution is in fact achievable for the victims in the present case.⁶⁷
182. The Appeals Chamber has further requested the Trust Fund to consider the views of the victims directly participating in proceedings, as expressed through their legal representatives for their determination of appropriate reparation modalities, whilst also expressly noting that these views should not be prioritized over the views of other victims.⁶⁸

⁶⁵ see Amended Reparations Order at paras. 67-70.

⁶⁶ see Amended Reparations Order at para. 70.

⁶⁷ see Amended Reparations Order, at para. 68.

⁶⁸ see Appeals Chamber’s Judgement on reparations in paragraph 204 with reference in footnote 255.

183. In the following, the Trust Fund would like to summarize some key elements of these submissions by legal representatives of participating victims. It respectfully submits that in developing the draft implementation plan, it has considered all submissions in full, without limiting its consideration to the elements highlighted.
184. The Trust Fund notes that in in their submission of 18 April 2012 to the Trial Chamber, document no. ICC-01/04-01/06-2864, the legal representatives of victim team 1, outlined detailed considerations for appropriate modalities for both individual and collective reparations based on a survey that they undertook of 14 participating victims. Of those, twelve expressed a preference for individual monetary compensation. The submission further stated that collective reparations were difficult in the case of former child soldiers who do not form a homogenous group. Moreover, those participating in the proceedings were often in conflict with their own communities because of the very fact that they participate in the legal proceedings against Mr Lubanga, a circumstance potentially hindering their adequate access to collective and community-based reparations. The submission also suggests that affected communities had often been supportive of child soldier recruitment, and should therefore not benefit from any reparation awards because this may be perceived as injustice. However, collective reparations aimed at

reintegration of former child soldiers into society, including awareness campaigns aimed at reducing the stigma from which former child soldiers suffer as well as campaigns against the future recruitment of child soldiers could be of value.

185. Ten out of 14 victims also welcomed the idea of a memorial commemorating fallen child soldiers and acknowledging the horrors of having been child soldiers. The majority of former child soldiers interviewed saw access to an income generating activities as a priority. The submission mentions, *inter alia*, micro credit schemes, professional training and scholarships, and the possibility to be employed in an enterprise specifically created to generate employment for former child soldiers. Redress for psychological and physical trauma was also regarded as important. However, fears were also expressed that should former child soldiers receive preferential health care treatment this could lead to their further stigmatization and evoke resentment and hatred towards them.

186. The Trust Fund further notes that, in their submission of 18 April 2012 to the Trial Chamber, document no. ICC-01/04-01/06-2869, the legal representatives of victim team 2, outlined detailed considerations for appropriate modalities for both individual and collective reparations, making reference to the individual requests contained in the applications.

187. The submission underlined the fact that the design of reparation awards must take into consideration the individual experience of child soldiers, including the gender dimension, and applicable local customs. The submission noted that victims may need redress for physical and psychological trauma and may benefit from educational opportunities and the opportunity to engage in an income generating activity, such as hairdressing, tailoring, carpentry or construction work. The legal team also referred to rule 85 (2) of the RPE, and noted that collective reparations may also be given for the use by institutions, such as schools, markets, or churches located in the affected communities for the benefit of the victims. The legal team further made reference to the specific needs of former female child soldiers who were victims of rape, proposing that additional reparative measures are needed to assist the reintegration of female former child soldiers into their communities and for the restoration of their social status.⁶⁹

188. The Trust Fund would respectfully like to note that in its consultation on collective reparations in Ituri Province, described in detail previously,⁷⁰ the needs and preferences detailed in these submissions were confirmed.

Moreover, the Trust Fund respectfully considers that all information

⁶⁹ The legal team proposed the possible use of customary measures in response to female former child soldiers who had experienced rape. The Trust Fund's view is that such measures are important to consider and may be appropriate provided, as instructed by the Amended Reparations Order, that these do not replicate discriminatory practices or structures.

⁷⁰ see section on targeted consultations on collective reparations in Ituri in May and June 2015 at paragraphs 51-75 above.

available to the Trust Fund through these consultations, the Expert Group meeting in Belfast, the submissions of the victims' legal counsel, and the VPRS mapping report taken together provides enough of a basis for proposing a concrete reparations programme as outlined in the draft implementation plan.

- **Restitution**

189. The Trust Fund recalls that in its discussion of restitution, the Appeals Chamber made reference to State responsibility and the concept of integral reparations or *restitutio in integrum*. Through its reference in footnote 38 of the Amended Reparations Order, the Appeals Chamber also introduced the concept of transformative restitution, meaning that in a context where the *status quo ante* is characterized by structural discrimination it is unacceptable that restitution results in a re-establishment of the same structural context of violence and discrimination.
190. The Basic Principles adopted in 2006 by the UN General Assembly, constitute the most comprehensive set of general international guidelines on reparations. They contain further guidance on restitution, stating that restitution includes, as appropriate, *inter alia*: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, and return to one's place of residence.

191. The Appeals Chamber noted that restitution would often be unachievable for victims of the crimes of enlisting and conscripting children under the age of fifteen or using them to participate in hostilities⁷¹.
192. It is also the Trust Fund's assessment that restitution is not achievable in this case. The experience of the child soldiers of having been enlisted and conscripted or used to actively participate in hostilities cannot be undone, especially not now that more than a decade has passed since the violations have occurred. Nothing can bring back the lost childhood for these victims.
193. Furthermore, the Trust Fund considers that the child soldiers, as compared to other "collectivities," are a comparably incongruent group of victims of the same crime. The experience of harm of each child soldier at an individual level affecting their current status quo may vary considerably from person to person, and even more so after more than a decade has passed. In the view of the Trust Fund it is therefore conceptually impossible that any collective form of reparations award could result in restoring the *status quo ante* for all victims in this case.

- **Compensation**

⁷¹ See Amended Reparations Order at para 67, sub-paragraph i. 1. In the Trust Fund's view, the Appeals Chamber's seeming doubts about the appropriateness of restitution in the present case also manifests itself in the specific request to the Trust Fund to elaborate on reasons, should it in fact consider restitution achievable.

194. As regards to compensation, the Appeals Chamber stipulates that compensation should take into account the gender and age-specific impact of the crimes, and that the Court should assess whether it is appropriate to provide compensation for the detrimental consequences of child recruitment.
195. The Basic Principles consider that compensation may be given as a form of reparations for any economic assessable damage, including “lost opportunities in employment, education and social benefits, material and moral damages,” manifestations of harm that seem directly relevant to the present case.
196. The Trust Fund notes, however, also that the Appeals Chamber elaborated on compensation in footnote 39 of the Appeals Chamber decision.
197. Firstly, it made reference to principle 3.3 and Principle 7.3 (the Trust Fund considers this to be in particular a reference to sub-point 7.35) of the Paris Principles.⁷²

⁷² The *Paris principles and guidelines on children associated with armed forces or armed groups* (Paris Principles) and Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups (Paris Commitments) were formally endorsed by 59 states in 2007 at a meeting in France in February 2007; and today have 105 Member States committed to their implementation. They contain guidelines and best practices on the disarmament, demobilization and reintegration of all categories of children associated with armed groups and on the protection of their rights.

198. Because of the great importance of the Paris Principles in developing the draft implementation plan, the Trust Fund includes the full text of these paragraphs that the Appeals Chamber referred to in this submission.

199. In particular, Principle 3.3 elaborates on reintegration and states:

Reintegration: Measures to secure the reintegration of children into civilian life should not stigmatise or make any negative distinction between children who have been recruited or used and those who have not, nor between children who have been recruited or used for temporary or short periods of time and those who have been recruited or used permanently or for longer periods of time. It is also detrimental to all conflict-affected children if other vulnerable children who have not been associated with armed forces or armed groups are placed at a disadvantage vis-à-vis those who have been so associated.

200. Principle 7.35 states:

Direct cash benefits to released or returning children are not an appropriate form of assistance, as experience has repeatedly shown.

(emphasis added)

201. In particular principle 7.35 indicates that compensation does not seem an appropriate remedy to redress the harm suffered by former child soldiers.

202. Secondly, the Appeals Chamber makes reference to an academic publication suggesting that the Court should reserve its power to order compensation payments to individual victims in cases in which the accused has assets that have been seized for that purpose, where there is a demonstrable link between the accused and the particular victim or group of victims in question and where the case concerns a limited and definable number of victims.⁷³
203. Both, the fact that the draft implementation plan is for collective reparations to child soldiers and best practices as documented in the Paris Principles speak against direct cash benefits. Therefore, the Trust Fund does not consider compensation payments to be an appropriate form of reparations in this case.
204. Furthermore, the Trust Fund respectfully submits that it considers that compensation is a form of reparations that is most adequate as an individual form of reparations and less so as a collective form of reparations. The Trust Fund further notes that the activities proposed in the draft implementation plan are to be funded with the Trust Funds' own resources. These funds, that the Trust Fund intends to complement, will not suffice to fund everything that would need to be undertaken to fully undo the harm caused by Mr Lubanga in relation to the crimes he is

⁷³ see Amended Reparations Order in footnote 39.

convicted of. Accordingly, the considerations outlined in the Appeals Chamber's footnote 39 of the Amended Reparations Order, as discussed above in paragraph 196-202 of this submission, seem of direct relevance. Based on the experience of administering its assistance mandate, the Trust Fund has been able to provide large numbers of victims in similar situations and environment with relevant assistance. It considers that its resources also in the reparations context will be most effectively used for rehabilitation activities and/or activities aimed at reconciliation, prevention, deterrence and non-repetition.

205. Furthermore, the Trust Fund would like to note that these considerations are also coherent with the legal language guiding the Trust Fund's role in individual and collective reparations, namely rule 98 of the RPE and regulation 56 of the RTFV. Rule 98, sub-rule 2 discusses how the individual award originating from the convicted person is to be deposited with the Trust Fund,⁷⁴ in the Trust Fund's understanding an indication that the law considers that it is the convicted person who finances such awards. Moreover, regulation 56 of the RTFV obliges the Trust Fund to manage its funds with a view to being able to complement collective awards and those in the sense of rule 98 sub-rule 4 of the RPE. However, it

⁷⁴ The Trust Fund would like to note that Rule 98 sub-rules 3 and 4 do not contain any language about depositing funds with the Trust Fund but instead speaks about implementing awards "through the Trust Fund."

does not contain any such obligation in the context of individual awards.⁷⁵

This must be considered a deliberate choice of the law against compelling the Trust Fund to manage its resources with a view to complementing individual awards.

206. Therefore, the Trust Fund will not prioritize the usage of its funds for compensation.

- **Rehabilitation and other types of reparations, including symbolic, preventative and transformative reparations**

207. The Trust Fund considers that rehabilitation and other forms of reparations as described in paragraph 67, iii-viii of the Amended Reparations Order, i.e. symbolic reparations, transformative reparations and reparations aimed at reconciliation and non-repetition, are forms of collective reparations that are indeed the most appropriate in the present case and under the circumstances, including in light of the limited availability of funds.

208. In proposing primarily rehabilitation awards, the Trust Fund is taking into consideration the submissions of the legal representatives representing victims in the proceedings; the outcomes of its targeted consultation on

⁷⁵ Regulation 56 of the RTFV reads: "The Board of Directors shall determine whether to complement the resources collected through awards for reparations with other resources of the Trust Fund and shall advise the Court accordingly." Without prejudice to its activities under paragraph 50, sub-paragraph (a), the Board of Directors shall make all reasonable endeavours to manage the Fund taking into consideration the need to provide adequate resources to complement payments for awards under rule 98, sub-rules 3 and 4 of the RPE and taking particular account of ongoing legal proceedings that may give rise to such awards.

collective reparations in Ituri Province; the consultation with the Expert Group in Belfast; and the experience it has had in the seven years of delivering benefits to victims under its assistance mandate.

209. The Trust Fund notes that the Appeals Chamber in its order has expressly called for the provision of medical services (including psychiatric and psychological care) along with general rehabilitation, housing, education and training.⁷⁶

210. According to the reparation principles, the design of reparations needs to consider multiple dimensions and objectives. It must be gender-inclusive and mindful of the gender dimension of experiencing harm. The design must consider the local customs and culture. It must preserve the dignity of victims, empowering them and redressing their harm without adding to further stigmatization and discrimination. Where appropriate, reparation design should to be transformative and address underlying injustices. Reparation awards should also promote the prevention of future harm and foster reconciliation. Priority must be given to particularly vulnerable victims, if necessary, through affirmative action.⁷⁷

211. The Trust Fund has strived to address all these various objectives. They have necessitated that a range of activities will be undertaken.

⁷⁶ see Amended Reparations Order at para. 69.

⁷⁷ see Amended Reparations Order at para. 19.

212. The Trust Fund notes that its experience has convinced it to rely on what it refers to as “integrated reparations programming” – organizing the delivery of material support (livelihood), physical and psychological rehabilitation as an integrated collective reparations programme. This approach will, after the screening and intake process, allow for referral of the victim-beneficiary to those benefits most appropriate in light of the harm he/she has experienced.

X. Elements for consideration to assess Mr Lubanga’s financial liability

213. The Appeals Chamber recognized that it is the responsibility of the Court to establish the financial liability of a convicted person as part of the reparations order. The Trust Fund recalls that paragraph 240 of the Appeals Chamber’s Judgment states that the Appeals Chamber considered it, however, appropriate in the present case to:

“exceptionally seek the Trust Fund’s assistance in requesting that it provides, in the draft implementation plan, the anticipated monetary amount that it considers necessary to remedy the harms caused for which Mr Lubanga was convicted, based on information gathered during the consultation period leading up to the draft implementation plan.”

214. The Trust Fund believes that setting this anticipated monetary amount for Mr Lubanga's financial liability is highly challenging and that the determination is within the discretion of the Court. The Trust Fund submits in the following a number of considerations that may be helpful for the Court in determining this anticipated monetary amount rather than suggesting a concrete figure.
215. The Trust Fund recalls that in paragraph 6 of its Judgment and paragraphs 20 and 21 of the Amended Reparations Order, the Appeals Chamber clarified as a guiding principle for establishing Mr Lubanga's liability that the convicted person's liability must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty in the specific circumstances of the case.
216. Within this framework, Mr Lubanga is obliged to redress all harm caused by his crimes to all victims as defined by the Court. The draft implementation plan developed as part of this submission, however, limits itself to seeking to provide some redress for many of these victims and for various forms of harm without, however, (due to the limited availability of funds) pretending to be able to achieve full redress for all eligible victims and for all forms of harm and their consequences. In fact, the Trust Fund was forced to make difficult choices to suggest a realistic draft implementation plan.

217. The Trust Fund in this respect recalls the findings of Trial Chamber I in the Judgment pursuant to Article 74 of the Statute of 14 March 2012 (ICC-01/04-01/06-2842), as confirmed by the Appeals Chamber's Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction of 1 December 2014 (No. ICC-01/04-01/06 A 5). In particular, the Trial Chamber in its verdict found beyond reasonable doubt that Mr Lubanga together with his co-perpetrators (including Floribert Kisembo, Bosco Ntaganda, Chief Kahwa, and commanders Tchaligonza, Bagonza and Kasangaki)⁷⁸ implemented a common plan to build an army for the purpose of establishing and maintaining political and military control over Ituri; and that as a result, boys and girls under the age of 15 were conscripted and enlisted into the FPLC/UPC between 1 September 2002 and 13 August 2003. The Trial Chamber was also satisfied beyond a reasonable doubt that the FPLC/UPC used children under the age of 15 to participate actively in hostilities, including during battles; and that child soldiers were also used, during the relevant period, as soldiers and as bodyguards for senior officials, including the accused. These considerations should guide the assessment of Mr Lubanga's financial liability by the Trial Chamber.

218. In the Trust Fund's view, the essential factors for establishing Mr Lubanga's financial liability, in addition to being proportionate to the

⁷⁸ see Trial Chamber I, *Judgment pursuant to Article 74 of the Statute* of 14 March 2012 (ICC-01/04-01/06-2842), at paras 1352-1354.

harm caused by the crimes for which he was convicted, are the following:

a) the number of direct and indirect victims as defined by the Court who could potentially be eligible for reparations; b) the forms of harm that these victims have suffered as a result of the crimes that Mr Lubanga was convicted of, as specified in the Court's jurisprudence in this case; c) the costs to redress the different forms of harm; and d) the costs related to the process deemed necessary by the Court for implementing the reparations.

A. Background considerations

219. At the outset of this discussion, and before providing information on the above mentioned factors, the Trust Fund would like to provide some background information on how domestic practice in the Democratic Republic of the Congo and in Colombia, as well as international human rights jurisprudence in cases involving reparations have addressed the challenge of putting an adequate price tag on the reparation of severe forms of harm associated with war crimes, other international crimes and gross human rights violations. The Trust Fund considers that this background highlights that setting liability in this context can never be a precise exercise and involves significant variations from case to case. In addition, it should be kept in mind that victims often face challenges not only when trying to obtain a legal title adequately addressing the harm

that they have suffered, but the enforcement of any such legal title awarded to them may even be more difficult.

- **Domestic practice**

220. Under Congolese law victims have the right to seek judicial remedy by bringing a civil action as part of criminal proceedings before Congolese Courts.⁷⁹

221. In cases involving crimes of genocide, war crimes, and crimes against humanity, Congolese victims must bring their claims before military courts⁸⁰ because the Congolese military courts have exclusive jurisdiction for these crimes.⁸¹ Under Congolese law, the government bears the ultimate civil responsibility for crimes committed by its agents.

222. In recent years, Congolese military courts and tribunals have awarded damages to victims, including in some cases for harm suffered as a result

⁷⁹ Articles 258 and 259 contained in book III of the Civil Code of the DRC recognize the right to reparations. Article 258 states that “any act whatsoever that causes harm to another obliges the person by whose offence the harm was caused to make amends for this harm.” Article 259 states: “A person is responsible not only for the harm caused by his/her own action, but also the harm caused by acts committed by persons answerable to him/her, or matters that are within his/her responsibility.”

⁸⁰ International Center for Transitional Justice, Sharanjeet Parmar & Guy Mushiata, *Judgment Denied: The Failure to Fulfill Court-Ordered Reparations for Victims of serious Crimes in the Democratic Republic of the Congo*, 1 (2012).

⁸¹ This jurisdiction of the military courts is established according to the provisions of Law 023/2002. Dated November 18, 2002, constituting the Military Judicial Code, and of Law 024/2002, dated November 18, 2002.

of war crimes and crimes against humanity committed by soldiers of the Armed Forces of the DRC.⁸²

223. In 2012, the international non-governmental organisation International Centre for Transitional Justice (hereinafter “ICTJ”) conducted research into domestic reparations practice in the DRC in the context of international crimes. It examined four key cases of war crimes and crimes against humanity, namely the cases of Mbandaka,⁸³ Bongi,⁸⁴ Mulesa,⁸⁵ and Songo Mboyo.⁸⁶ According to the ICTJ report, in these cases military courts in the DRC awarded high sums of reparations, i.e. a total sum of US\$126,000 in Mbandaka, a case with 25 victims and eight convicted persons; a total sum of US\$215,000 in Bongi, a case with three victims and one convicted person; a total sum of US\$481,000 in Mulesa, a case with 19 victims and 12 convicted persons; and a total sum of US\$165,317 in Songo Mboyo a case with 43 victims and six convicted persons, respectively. The Trust Fund

82 International Center for Transitional Justice, Sharanjeet Parmar & Guy Mushiata, *Judgment Denied: The Failure to Fulfill Court-Ordered Reparations for Victims of serious Crimes in the Democratic Republic of the Congo*, 1 (2012).

83 Tribunal Militaire de Garnison de Mbandaka, 12 January 2006, RP 086/2005 (Trial Chamber); Tribunal Militaire de Garnison de Mbandaka, 20 June 2005, RP 086/2005-RP 101/2006 (Trial Chamber); and Cour Militaire de l’Equateur (/CM de l’Equateur, 15 June 2007, RPA 015/2006 (Appeals Chamber).

84 Tribunal Militaire de Bunia (/TMG de Bunia), 24 March 2006, RP 018/2006 (Trial Chamber); Cour Militaire de Kisangani (/CM de Kisangani), 4 November 2006, RPA 030/2006 (Appeal Chamber).

85 Tribunal Militaire de Bunia (/TMG de Bunia), 19 February 2007, RP 101/2006 (Trial Chamber); Court Militaire de Kisangani (/CM de Kisangani), 28 July 2007, RPA 003/2007 (Appeal Chamber).

86 Tribunal Militaire de Garnison de Mbandaka (/TMG de Mbandaka), 12 April 2006, RP 084/2005 (Trial Chamber); Cour Militaire de l’Equateur (/CM de l’Equateur, 7 June 2006, RPA, 014/2006 (Appeal Chamber).

has no information as to how these courts arrived at their respective determinations of the compensation awards in these various cases.

224. ICTJ noted that the victims were faced with major challenges in enforcing these court orders. In fact, according to the report, victims in these cases had by 2012 not yet received any money and continued to wait to receive the compensation from individuals sentenced by military courts or from the government.⁸⁷ The Trust Fund has no information as to whether any progress has been made in the enforcement of the legal decisions since 2012.

225. The Trust Fund would also like to note that the above-mentioned war crimes and mass atrocity cases before domestic courts in the DRC did not specifically address the war crime of recruitment, enlistment, conscription and active use in hostilities of child soldiers.

226. In fact, there is little relevant jurisprudence on how courts address financial liability in cases concerning the recruitment of child soldiers that could be used to inform the Trial Chamber in this case. The one case that that may be relevant in the present context is a decision for collective reparations by the Colombian Supreme Court in Bogota, ordering the

⁸⁷ International Center for Transitional Justice, Sharanjeet Parmar & Guy Mushiata, *Judgment Denied: The Failure to Fulfill Court-Ordered Reparations for Victims of serious Crimes in the Democratic Republic of the Congo*, 2 (2012).

establishment of rehabilitation programmes for victims, their families and communities.⁸⁸

227. In that case, the Colombian Supreme Court granted 309 former youth paramilitaries in Colombia reparations in the form of monetary compensation and medical and psychological care. The ruling was handed down within the framework of the Colombian justice and peace process, created to bring demobilized paramilitary groups to justice.
228. The decision by the Colombian Supreme Court established that the process of reparation should be geared towards helping the youth rebuild his or her personal, family, community, social, and economic networks, ties, and links. The Colombian Supreme Court ordered that the training camps mentioned by victims should be converted into community centres where victims can denounce the commission of crimes by all actors in the armed conflict.
229. In addition, the armed group's former leader, Fredy Rendón Herrera, was sentenced to pay each victim of forced recruitment for approximately 15 months of work at minimum wage, with higher payments to those who were recruited at a younger age. The Colombian Supreme Court ordered

⁸⁸ See Colombian case- Decision: *Sentencia, Tribunal Superior del Distrito Judicial de Bogotá, Sala de Justicia y Paz, Radicación: 110016000253200782701, 16 December 2011 (Rendón Herrera Judgement)*. Colombia's Law 1448/2011 states in article 25 that victims of grave violations of human rights have the right to reparations in the forms of: restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. *Rendón Herrera Judgement*, para. 752.

that additional compensation be paid to girls, who were in a situation of potential assault or harassment from other combatants. The ruling also demanded investigation into crimes of sexual violence and cruel and inhuman treatment, such as personal injury due to disproportionate physical effort and torture.⁸⁹

- **International human rights jurisprudence**

230. More pertinent guidance may be provided by international human rights jurisprudence on reparations. International human rights courts have awarded reparations for victims of human rights violations that in their severity may be comparable to international crimes. It must be kept in mind, however, that these courts had to address a significantly different situation than that of reparations before the ICC. The human rights violations before those courts were committed by a State via its actors, and accordingly redress had to be provided by the State rather than an individual found personally guilty of a crime.⁹⁰

231. The Inter-American Court of Human Rights (hereinafter the “IACtHR”) may be considered to have developed the most comprehensive reparations system. However, even the IACtHR takes a case-by-case approach to

⁸⁹ See International Center for Transitional Justice online report titled „*Colombia’s Landmark Ruling orders reparations for former child soldiers*” at <https://www.ictj.org/news/colombia-first-ruling-requiring-reparations-recruitment-minors>.

⁹⁰ On the relevance of human rights jurisprudence in the context of assessing harm to victims in international criminal cases see Appeal Judgment in case 001 of 3 February 2012 by the Extraordinary Chambers in the Courts of Cambodia, at paragraphs 431-444, available online at <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/Case%20001AppealJudgementEn.pdf>.

ordering redress for the violations that it establishes rather than a systematized approach. For instance, the IACtHR has thus far not developed a set standard for calculating reparations, i.e. in the form of a list matching dollar amounts to certain types of crimes or damages. Instead, the IACtHR takes a case-by-case approach and in many cases relies on expert testimony to come to what it regards as a fair damage assessment.

232. In its assessment of what form of redress to award in a particular case, the IACtHR is guided by a wide range of considerations and may decide to award pecuniary and non-pecuniary damages.
233. To give just some examples of the ample jurisprudence of the IACtHR on reparations, in the Case of *Plan De Sánchez Massacre*,⁹¹ for instance, the Court ordered collective reparations. The case concerned the massacre of over 250 people (mostly women and children, and almost exclusively ethnic Achi Maya) in the Guatemalan village of Plan de Sánchez, Baja Verapaz department, on 18 July 1982, by members of the armed forces and their paramilitary allies during one of the most violent periods of Guatemala's Civil War, which pitted various groups of left-wing insurgents against the government and the armed forces. The Court

91 Inter-American Court of Human Rights, Case of the Plan de Sánchez Massacre v Guatemala, 268 members of the Plan de Sánchez Village v Guatemala, Merits, [2004] IACHR 1, IACHR Series C No 105, IHRL 1488 (IACHR 2004), 29th April 2004; available online in English translation at http://www.univie.ac.at/bimtor/dateien/iacthr_2005_plan-de-sanchez_vs_guatemala.pdf.

ordered that the State provide a housing programme for the victims because most had lost their houses. The Court also ordered to conduct a proper investigation of the massacre, and identify and punish the guilty; organise a ceremony in Plan de Sánchez at which high-ranking government officials would recognise the State's responsibility and honour the memory of the dead, to be covered by the media and conducted in both Spanish and the local language, Achi Maya; translate the American Convention on Human Rights and the Court's two judgments into Achi Maya; publish key sections of those judgments in its official gazette and in a major national newspaper (in both languages); pay US\$25,000 for the upkeep of the village's memorial chapel for the massacre victims; provide the survivors with any medical and psychological care they might require free of charge, including medicines and supplies; promote the study and awareness of the Achi Maya language and culture in the affected communities; improve the municipality's road network, drinking water supply, and sewage systems; provide the communities with qualified, bilingual schoolteachers; set up a health clinic in Plan de Sánchez and a health centre in the local town of Rabinal within five years of the Court's judgment; and order Guatemala as the respondent party to submit annual progress reports until completion. Guatemala was also ordered to pay US\$55,000 in costs.

234. In *Loayza Tamayo v. Peru*,⁹² the IACtHR developed the concept of ‘proyecto de vida,’ which assesses the harm done to an individual’s “life plan” or self-realization. It understood this concept to encompass ‘full self-actualisation of the person concerned’ taking into account ‘her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals.’ In this case, the IACtHR did not make an economic assessment of this harm, but in a later case, *Cantoral Benavides*,⁹³ the IACtHR assessed compensation for the victim who was detained and prevented from studying at university and ordered the State to provide a scholarship for his college studies.
235. Other international human rights courts, such as the European Court of Human Rights, similarly, while providing reparations and compensation to victims of human rights violations, decide the appropriate remedy on a case-by-case basis, with significant variations between the cases and no strict standards, such as a list equating a particular form of harm with (a range of) a monetary amount adequate to redress it.

B. Proposed elements of assessing the financial liability of Mr Lubanga

⁹² Inter-American Court of Human Rights, Case of Loayza Tamayo, Judgment of 31 January 1996, IACHR Series C No. 25 (1996); English translation available online at http://www.univie.ac.at/bimtor/dateien/iacthr_1997_loayza-tamayo_vs_peru.pdf.

⁹³ Inter-American Court of Human Right, Case of Cantoral Benavides Case, Judgment of December 3, 2001, Inter-Am Ct. H.R. (Ser. C) No. 88 (2001), English translation available online at http://www.univie.ac.at/bimtor/dateien/iacthr_2000_cantoral-benavides_vs_peru.pdf.

236. In the following, the Trust Fund will present its considerations on four elements that it considers crucial for establishing the financial liability of Mr Lubanga, namely (i) number of potentially eligible victims; (ii) extent of harm; (iii) cost of appropriate remedies; and (iv) administrative cost.

- **Number of potentially eligible victims**

237. The Trust Fund now turns to the four elements that are important to consider when assessing Mr Lubanga's financial liability. The first element is to have a good understanding of the number of eligible direct and indirect victims. To have a sense of the number of potentially eligible victims will also be important for an estimation of the costs of running the reparations programme, since these victims may also need at least to be addressed in the first (screening) phase of the programme. The biggest "cost driver" of the programme will, however, be the number of victims who will be the eventual beneficiaries of the reparation awards.

238. The Trust Fund respectfully recalls that the Court thus far in the first instance proceedings, as well as, in the subsequent appeals proceedings, has refrained from making any determination of the estimated overall number of child soldiers. The Appeals Chamber, however, noted in its Judgment on reparations of 3 March 2015 that in the Conviction Decision (and as relied upon in the Decision on Sentence of 10 July 2012), it was

established beyond reasonable doubt, that the crime of recruitment of individuals under the age of fifteen in the present case was “widespread” and that “a significant number of individuals below the age of fifteen” were used to participate actively in hostilities. Moreover, the Appeals Chamber underlined that the finding relevant to the widespread nature of the involvement of individuals under the age of fifteen was challenged in the appeals proceedings against the Conviction Decision and subsequently confirmed by the Appeals Chamber in those proceedings.⁹⁴

239. The Appeals Chamber also explicitly noted that the small number of victims participating in proceedings was not indicative of the likely number of child soldiers.⁹⁵

240. The Trust Fund has undertaken various endeavours to establish the number of potentially eligible direct victims, i.e. persons who have suffered from harm as a result of having been enlisted and conscripted into the FPLC/UPC militia, and used to participate actively in hostilities in the context of an armed conflict not of an international character from 1 September 2002 to 13 August 2003, and who had been under the age of fifteen during the relevant time period.

⁹⁴ Appeals Chamber Judgment on reparations, ICC 01/04-01/06-3129 of 3 March 2015, at para. 154.

⁹⁵ Appeals Chamber Judgment on reparations, ICC 01/04-01/06-3129 of 3 March 2015, at para. 153, with further references

241. The Trust Fund regrets that, at this time, despite best efforts it is not in a position to assist the Court with a definite number of potentially eligible (direct and indirect) victims.

242. The Trust Fund would like, however, to share all information at its disposal and relevant to this matter to assist the Court in making its own determination. In particular, and as outlined above,⁹⁶ the Trust Fund, following the Appeal Chamber's Judgment and Amended Reparations Order on reparations, requested the Registry to assist with mapping the victims of this case. The results of these efforts are contained in Annex 1 to this submission.

243. The Trust Fund would also like to recall that there are a number of accounts documented by non-governmental organisations. If deemed appropriate by the Chamber, these may form an element of consideration for the Court to estimate the number of direct victims potentially eligible for reparations. Relevant excerpts of open source information include the following references.

244. In its report "Ituri: 'Covered in Blood' Ethnically Targeted Violence in Northeaster DR Congo" in 2003,⁹⁷ Human Rights Watch states:

⁹⁶ see para. 34 above.

⁹⁷ Human Rights Watch, Ituri: "Covered in Blood" Ethnically Targeted Violence in Northeaster DR Congo, of 7 July 2003, available online at <https://www.hrw.org/report/2003/07/07/covered-blood/ethnically-targeted-violence-northern-drc>.

All groups have recruited children for military service, some as young as seven years old, subjecting them to the risks and rigors of military operations. As the war intensified, the forced recruitment of children increased so dramatically that observers described the fighting forces as “armies of children.”⁹⁸

As the war intensified, the forced recruitment of children also increased dramatically. Children as young as seven, including girls, have been recruited for military service.⁹⁹

Human Rights Watch researchers observed a large number of child soldiers among UPC combatants. In an interview with Human Rights Watch researchers, UPC President Lubanga claimed to have 15,000 troops. Local experts and observers believe that nearly 40 per cent of these are children under the age of eighteen.¹⁰⁰ (i.e. 6,000)

When asked about this, Lubanga said, “The UPC does not have many children under eighteen. When we recuperate people from the militia, we sometimes find children. We don’t force

⁹⁸ Human Rights Watch, *ibid*, in the summary at p. 1.

⁹⁹ Human Rights Watch, *ibid*, in the summary at p. 1.

¹⁰⁰ Human Rights Watch, *ibid*, at p. 46.

anyone. It is just those who come freely.¹⁰¹

The UPC opened a small demobilization centre, but according to local people, this was a mere public relations gimmick; the recruitment of children continued.¹⁰²

Many observers described the UPC force as “an army of children.” The children, some as young as seven and including girls, were trained by the UPC at training centres in Mandro and Rwampara for one to two months before being sent into action. A person arrested by the UPC in Bunia said he was guarded by child soldiers.” There were four children guarding the cell, all under 13,” he recounted. “I asked them what they were doing there. They said their parents were dead and they could earn something in the army. One of them said he’d done only three years of school. They were all armed but you could tell they didn’t want to be there.” MONUC observers reported back to headquarters in Kinshasa that an estimated twenty per cent of the recruits in Mandro camp were children. Other sources estimated the Mandro camp had about 5,000 fighters, implying

101 Human Rights Watch, *ibid*, at p. 46.

102 Human Rights Watch, *ibid*, at p. 47.

there may have been nearly 1,000 child soldiers there.¹⁰³

245. In 2004, the international non-governmental organisation Child Soldiers International published a Global Report¹⁰⁴ documenting child recruitment policies and practices in 196 countries and territories (hereinafter “Child Soldiers Global Report 2004”). The report reviewed trends and developments related to the use of child soldiers since the publication of the previous global report in 2001. In the chapter for the Democratic Republic of the Congo, the report states that:

“All parties to the conflict in the Democratic Republic of the Congo (DRC) recruited, abducted and used child soldiers, often on the front line. As many as 30,000 child soldiers were estimated by international and government agencies to need demobilizing in 2003. In eastern DRC in 2003, armed political groups continued to recruit child soldiers, who constituted more than 40 per cent of their forces in some instances.”¹⁰⁵

Observers, including UN agencies, estimated in 2003 that children made up some ten per cent of the armed forces.¹⁰⁶

One 12-year-old child soldier with the UPC in 2003 told

¹⁰³ Human Rights Watch, *ibid*, at p. 47.

¹⁰⁴ The report is available online at http://www.child-soldiers.org/global_report_reader.php?id=281.

¹⁰⁵ Child Soldiers Global Report 2004, at p. 51.

¹⁰⁶ Child Soldiers Global Report 2004, at p. 52.

Amnesty International that most soldiers in his unit were aged between 10 and 12. Boys and girls as young as seven were recruited by the UPC. In February 2003 newly recruited children, still in their school uniforms, were seen on the streets in Bunia. Child soldiers took part in widespread and repeated random killings, rape, looting and arson in the district. UPC ranks were reported at that time to include 6,000 children aged between eight and 17.¹⁰⁷

246. In other words, these accounts indicate that up to 6,000 child soldiers were engaged in the FLPC/UPC at the relevant time, however, based on a different definition of the term child soldier than that contained in the Rome Statute. In fact, the task of identifying the number of eligible victims in the present proceedings is further complicated by the fact that the term “child soldier” as used in these reports is based on an understanding that this includes all children under the age of 18 rather than 15.¹⁰⁸ The above-cited reports provide a minimum of guidance on this point, suggesting that a significant portion of FPLC/UPC child soldiers were very young and fall within the category of children that were under 15 years of age.

¹⁰⁷ Child Soldiers Global Report 2004, at p. 53 with further references.

¹⁰⁸ For a discussion of the problem that arises from the fact that in the DRC the national definition of a child soldier is someone under 18, whereas in the Rome Statute the person must be under 15 see Trust Fund’s Observations of 25 April 2012 at paras 118-121.

247. As previously mentioned, the Trust Fund has contacted [REDACTED] via the Registry requesting access to [REDACTED] on child soldiers covering Ituri at the relevant time. [REDACTED] would likely be the most detailed source of information.
248. The Trust Fund recalls that as it has already previously submitted, various forms were used to gather information on the DDR process. These were distinguished into Fiches A / B/ C/ D/ E/ F/ G/H. In particular, 'Fiche B/ Fiche de vérification individuelle des enfants associés aux forces et groupes armés (EAFGA)' (i.e. the form for individual verification of former child soldiers) has been used to collect relevant information related to the age and location of recruitment of child soldiers; the duration of the recruitment; the characteristic of the recruitment (forced or voluntary); the group a child soldier was associated with, as well as their respective grade and functions. In Fiche B, the name of the armed group with which the child was associated is indicated with the age at recruitment and duration of the association. As a consequence, it could be expected that the respective database could provide information on the number of former child soldiers who have been associated with the FPLC/UPC when under 15 years of age.¹⁰⁹

¹⁰⁹ see Trust Fund's Observations of 25 April 2012 at paras 113 and 114.

249. However, as already discussed in detail in the Trust Fund's first instance submission of April 2012, there are considerable shortcomings with this data that would need to be taken into account when using the disarmament databases as a basis for estimating the number of former child soldiers that could be considered direct victims in this case. They relate in particular to the fact that the data is not completely reliable and that it does not account for so called auto-demobilized children, i.e. such children that did not undergo a formal disarmament process.¹¹⁰
250. At present, and despite having made several attempts to follow up and having been granted additional time by the Trial Chamber for these endeavours, the Trust Fund is still waiting to hear back on its requests for access to the databases.
251. As set out in the VPRS mapping report, in late September 2015, VPRS received certain relevant data from [REDACTED]. The mapping report, however, also noted that despite all efforts undertaken, it is not able to provide an estimate of the overall number of potentially eligible victims. The Registry noted that if and when access is obtained to the information [REDACTED] from the DDR programmes through which many former child soldiers passed when leaving the FPLC/UPC, it might be possible to

110 for a detailed discussion of the challenges arising in the context of relying on these databases see Trust Fund's Observations of 25 April 2012 at paras. 111-127.

arrive at an estimated number, taking into account other information gathered in consultations with local stakeholders, also as it regards the DDR identification processes.¹¹¹

252. The Trust Fund further respectfully submits that establishing the number of indirect victims is equally, if not even more challenging, than to establish the number of direct victims. The Trust Fund has no information as to the percentage of child soldiers who have died as a result of the conflict, how many people have suffered harm as a result of intervening on behalf of child soldiers to prevent his or her recruitment or other forms of harm, and how many have suffered any other personal harm as a result of the child soldier recruitment by the FPLC/UPC during the time period between 1 September 2002 and 13 August 2003. However, based on the consultations that it conducted in May and June 2015 in Ituri, the Trust Fund estimates that there are indeed a considerable number of indirect victims who may both be eligible and interested in receiving reparation awards to alleviate the harm that they have suffered as a result of the crimes for which Mr Lubanga was convicted.

253. The Trust Fund finally notes that for planning purposes, and despite all the considerations outlined above, it is necessary to formulate an estimate of the potentially eligible victims (direct and indirect) in the design and

¹¹¹ see paragraphs 39-42 above and the full VPRS mapping report itself in Annex 1.

drafting of the implementation plan. This estimated number of a total of 3,000 potentially eligible direct and indirect victims is accompanied by the caveat that a final determination of the number of eligible victims will be made during application of the draft implementation plan. As discussed in detail in plan, the figure is merely an estimate for purposes of collective reparation programme planning and budgeting at the design stage, and a final tabulation will be verified in the course of implementation.

- **Extent of harm suffered**

254. The second element that the Trial Chamber needs to consider in the assessment of the financial liability of Mr Lubanga is the types of harm suffered by the victims and the form of reparations for each of them. The Amended Reparations Order set out the various forms of harm to be redressed in the form of two lists - one for direct and one for indirect victims.

255. For direct victims, the Appeals Chamber listed as forms of relevant harm:

- physical injury and trauma;
- psychological trauma and the development of psychological disorders, such as, *inter alia*, suicidal tendencies, depression and dissociative behaviour;
- interruption and loss of schooling;

- separation from families; exposure to an environment of fear;
- difficulties socializing with family and communities;
- difficulty controlling aggressive impulses; and
- the non-development of “civilian life skills” resulting in the victim being disadvantaged, particularly as regards employment.

256. For indirect victims, the Appeals Chamber listed relevant forms of harm:

- psychological suffering experienced as a result of the sudden loss of a family member;
- material deprivation that accompanies the loss of the family member’s contributions;
- loss, injury or damage suffered by the intervening person from attempting to prevent the child from being further harmed as a result of the relevant crime; and
- psychological and material sufferings as a result of the aggressiveness on the part of the former child soldiers being relocated to their families and communities.

257. The Amended Reparations Order also contains a very detailed discussion of the modalities and forms of reparations for this case in paragraphs 67-

70, in which the Appeals Chamber gives illustrative examples of what it considers reparation awards could look like in this case.¹¹²

258. As for rehabilitation, the Appeals Chamber in paragraph 67 iii, iv and v of the Amended Reparations Order suggests that rehabilitation could include:

- measures directed at facilitating reintegration into society (taking into account gender differences) and including education, vocational training and sustainable work opportunities;
- measures to address shame (mentioned explicitly in two places, once as a form of rehabilitation and once by itself); and
- measures to prevent re-victimization of the former child soldiers.

259. In addition, the Appeals Chamber also considered that other forms of reparations (i.e. next to rehabilitation) may be relevant, listing in paragraph 67 vi-viii:

- measures with transformative objectives, however limited, to prevent future victimization;
- symbolic reparations (commemorations and tributes);

¹¹² In paragraph 69 of the Amended Reparations Order, after having provided in the preceding paragraphs the list of possible measures outlined in the following, the Appeals Chamber suggests that the Trust Fund should consider “medical services (including psychiatric and psychological care) along with assistance as regards general rehabilitation, housing, education and training.

- establishment of campaigns designed at improving the position of victims;
- certificates acknowledging particular harm;
- outreach and promotional programmes informing about the outcome of the trial;
- educational campaigns aimed at reducing stigma and marginalization;
- awareness raising about the “child soldier recruitment” crime; and
- measures to address the shame felt by some former child soldiers and to prevent future victimization.

260. The collective reparations programme should, in part, be directed at preventing future conflicts and raising awareness that the effective reintegration of the children requires eradicating victimization, discrimination and stigmatization of young people in these circumstances.

261. A voluntary apology by Mr Lubanga on a public or confidential basis could contribute to this process.

262. In the Trust Fund’s assessment, some of these “other forms” of reparations may overlap with certain forms of rehabilitation (e.g. preventative measures to avoid re-victimization and measures to address shame).

Furthermore, and as discussed in more detail above in paragraphs 176-180, the Trust Fund would further like to note that certain “other forms” of reparations seem to go beyond just addressing eligible direct or indirect victims, and instead aim at a transformation of community perceptions and attitudes held by “society as a whole.”

263. The Trust Fund finds that the measures put forward in the Amended Reparations Order may be categorized into four categories,¹¹³ namely (i) physical rehabilitation, (ii) psychological rehabilitation, (iii) material support and (vi) a category of “symbolic and other measures,” including any measures aimed at victim acknowledgment and empowerment, for example, by addressing discrimination and stigma; non-repetition, including community education on the crime; transformation, including with regards to gender discrimination; and reconciliation.

264. At present, the Trust Fund is not in a position to inform the Court with any degree of final precision how many of the eligible victims will need medical services, be it for physical or psychological rehabilitation; how many will need material support, including in the form of rehabilitation, education and training; and how many will need a combination of various

113 The first three categories correspond to the categories of assistance set out in regulation 50a of the RTFV that the Trust Fund may provide under its assistance mandate. The forth category corresponds to the Appeals Chamber’s suggestions in paragraph 67 vi-viii.

services. The Trust Fund considers it likely that most direct victims will indeed require a combination of various services.

265. Based on its experience with delivering support to former child soldiers under its assistance mandate, the Trust Fund respectfully suggests that certain types of harm, such as the experience of shame and stigma, will almost certainly be widespread; or in the case of psychosocial trauma, they may even be universal; whereas certain (and possibly more cost intensive) forms of medical needs, such as the need for a prosthesis following a lost limb, or a surgery for wounds sustained as a result of the engagement as a child soldier in the conflict, will be less frequent.

- **Financial cost of remedies**

266. As the third element to assist the Trial Chamber with assessing Mr Lubanga's liability, the Trust Fund will in the following provide information based on its work under its assistance mandate, as to what rehabilitative interventions cost that may seem appropriate in light of the harm suffered by the direct and indirect victims in this case.

267. In doing so, the Trust Fund would respectfully like to underline again that reparations and assistance are two distinct mandates. By providing these examples under the assistance mandate the Trust Fund does not want to indicate that Mr Lubanga's financial liability should be limited to what the

Trust Fund deemed the most effective use of its resources under the assistance mandate. In particular, the Trust Fund would like to note that there are certain types of serious harm that would require redress in terms of reparations, such as for example complicated and expensive treatments to cure medical conditions, but that the Trust Fund's assistance mandate, given its inherent limitations, has not even attempted to address.

- **Psychological rehabilitation**

268. Most forms of harm that the Appeals Chamber has identified in the Amended Reparations Order call for psychological rehabilitation. In particular, psychological trauma and the development of psychological disorders, such as, *inter alia*, suicidal tendencies, depression and dissociative behaviour, trauma resulting from separation from families and exposure to an environment of violence and fear; difficulties socializing with family and communities; and difficulty controlling aggressive impulses; are all forms of harm identified by the Appeals Chamber for direct victims and in the Trust Fund's view call for psychological rehabilitation. Furthermore, harm in form of "non-development of civilian life skills resulting in the victim being disadvantaged, particularly as regards employment" also primarily calls for psychological rehabilitation with a focus on reintegration. It may be complemented by material support in the form of livelihood schemes and

education, as well as physical rehabilitation in those cases where necessary (e.g. because a prosthesis is needed for being able to carry out physical work).

269. As regards the harm suffered by indirect victims, psychological rehabilitation seems warranted to address both the psychological suffering experienced as a result of the sudden loss of a family member, as well as, psychological suffering as a result of the aggressiveness on the part of former child soldiers, relocated to their families and communities.
270. The findings of the Appeals Chamber on harm, and the Appeals Chamber's apparent focus on the psychosocial dimensions of harm, reflect the fact that the consequences of having been a child soldier must be considered deep and enduring. The child soldier experience undeniably causes complex psychological effects, as the Trust Fund can reaffirm from the experience of delivering assistance to former child soldiers under its assistance mandate.
271. The Trust Fund considers it appropriate to propose to the Court that psychosocial harm affects all victims in this case (although the manifestations of this harm may vary in degree). For example, once it has been established that a child participated in military activities it can be presumed to have suffered some form of psychosocial harm. Or, if it has

been established that a mother or a father have lost a child because it has died while it was serving with the FPLC/UPC, they can be presumed to have suffered some form of psychosocial harm.

272. The Trust Fund presents this presumption based on expert advice, on its own experience from working with former child soldiers under its assistance mandate, and on its consultations held in Ituri in May and June 2015.

273. In fact, because of the complexity of understanding the psychological harm to victims, a key dimension of harm in the present case, the Trust Fund has deemed it appropriate to seek expert advice from an established expert on psychosocial rehabilitation with a wide range of relevant experience in comparable situations, Mr Craig Higson-Smith, director of research for the Centre for Victims of Torture, and his research associate, Ms Shannon Golden. In the following, the Trust Fund would like to share some elements of the advice that it has received and present to the Court implications that arise for the present proceedings.

274. The experts submitted that for any child separated from his or her family and community to participate in any form of military activities is such a significant disruption of the child's healthy developmental pathway that psychosocial harm must be assumed. This presumption of harm of former

child soldiers has been argued extensively in academic sources.¹¹⁴ The experts submit that this presumption of harm is valid regardless of the age at which the child was recruited, the circumstances under which the child was recruited, or the activities or events to which the child was exposed. In particular, the experts noted that cognitive development occurs incrementally, in relation to stimulation in the external and inter-personal context. Neurological studies show that the temporal lobes and prefrontal cortex—the parts of the brain responsible for mature reasoning and impulse control—do not fully develop until late adolescence. This is not culturally or contextually dependent but is universal to humans. Even if a young person has developed the cognitive capacity to predict the full range of consequences of a particular choice or action, their higher impulsivity may still result in them making choices that they might later regret. Adolescents typically engage in riskier activities than adults and are highly vulnerable to external influences from peers and powerful people in their community.

114 For academic discussions of the far-reaching and multifaceted psychological impact of the child soldier experience on survivors see the report of the expert witness in the first instance proceedings, Elisabeth Schauer (CHM-0001), *The Psychological Impact of Child Soldiering*, ICC-01/04-01/06-1729-Anx1 (EVD-CHM-00001); as well as her report written jointly with Thomas Elbert for US Institute for Peace, *The Psychological Impact of Child Soldiering*, with extensive further references. (available online at <http://www.usip.org/sites/default/files/missing-peace/The%20psychological%20impact%20of%20child%20soldiering%20-%20Schauer.pdf>) with further references. See also Roos Haer and Lilli Banholzer, "Group's Attachment and the Successful Reintegration of Child Soldiers," *Journal of Development Effectiveness* 6, no. 2 (2014). Betancourt et al., "Past Horrors, Present Struggles: The Role of Stigma in the Association Between War Experiences and Psychosocial Adjustment Among Former Child Soldiers in Sierra Leone," *Social Science & Medicine* 70, no. 1 (2010): 17–26.

275. Thus, and as evident from the fact that the Rome Statute also criminalizes voluntary “enlistment” of any child under the age of fifteen into military forces, any claims that a child “volunteered” are not an acceptable justification, including for exclusion from reparations.
276. The experts also specifically noted that a number of former child soldiers may be affected by traumatic stress, a term which refers to the emotional and inter-personal effects of experiencing or witnessing horrifying or life threatening events. They cautioned that even though much of the research on child soldiers focuses on post-traumatic stress disorder (PTSD), childhood exposure to war has been linked to a much broader range of sequelae, including higher rates of physical illness with a wide range of bodily symptoms, depression and suicidality, dissociation and de-realization, impaired cognitive functioning, and developmental delays.
277. They further highlighted other elements that may negatively affect the psychological wellbeing of a former child soldier, including stigma and lower social status. The consultations of the Trust Fund held in Ituri confirm that former child soldiers, upon returning to their homes, have often discovered that they have been relegated to a lower status than people who were previously their peers. The experts cautioned in this regard that while lower social status can also affect adults who experienced war, this effect is particularly harmful for children and

adolescents, who are at a life stage, where support from their community is particularly influential in shaping their long-term adult trajectories, including the social support that will be afforded to (or withheld from) their own children. In other words, the negative psychological impact of having been a child soldier may have repercussions into the next generation.

278. The Trust Fund respectfully underscores what has been argued, i.e. that psychological harm universally affects all eligible victims in this case (albeit to different degrees). It considers this will have direct repercussions both on implementing reparations, as well as, on calculating the financial liability of Mr Lubanga.
279. In order to assist the Court with making a cost estimate for what the costs would be to provide psychological rehabilitation to eligible victims in the present case, the Trust Fund submits information on the costs to carry out activities aimed at providing psychological rehabilitation under the assistance mandate. The Trust Fund propose that similar types of programmes should be considered and implemented in the context of reparations.
280. In particular, under its assistance mandate, the Trust Fund provides support for comprehensive and integrated psychological rehabilitation,

which includes individual and group-based trauma counselling; music, dance and drama groups to promote social cohesion and healing; community sensitization workshops and radio broadcasts on victims' rights, information sessions, and large-scale community meetings. Community awareness responses often include broad-based community education on conflict related issues, including sexual and gender-based violence, as well as, on the links between peace, justice, and reconciliation and rehabilitation.

281. A particularly relevant example of the Trust Fund's work on psychological rehabilitation under its assistance mandate is TFV/UG/2007/R1/014c, a project carried out since October 2009 by a Trust Fund implementing partner in northern Uganda. As part of the project, the partner provides on-site mental health clinical mentoring and supervision to the counsellors in local partner organisations, with a view to building a network of mental health service providers in the region, and to link that network to Ugandan strategic partners with expertise in mental health rehabilitation. The programme aims at addressing the fact that many victims of war are faced with specific problems related to the atrocities that they survived, in particular post-traumatic stress, depression, anxiety, poor behavioural functioning and other symptoms, many of which are often unknown to an untrained counsellor.

282. Counselling requires a set of skills and resources: skilled and trained counsellors, a confidential and protective environment, outreach and initial screening for symptoms and needs, a clear definition of counselling that the client understands, informed consent, clarification that services provided are non-material, and regular follow-up assessment. To effectively and sustainably provide redress for these special needs, the implementing partner works with local organisations to provide certified training in trauma-based counselling as a complement to their established service delivery structure.

283. This project implements in Gulu, Kitgum, Amuria and the Lira districts of northern Uganda. It started in October 2009 and will at present run until 29 November 2015, with the possibility of further extension. A total of 971,188 euros were obligated by the Trust Fund for this period of time. Thus far, the project has benefitted 964 direct victims and many more victims indirectly. Through building the capacity of local counsellors, the project will leave a sustainable legacy.

- **Physical rehabilitation**

284. The Trust Fund respectfully submits that a substantial number of direct and indirect victims in this case have sustained harm as a result of the crimes committed and require physical rehabilitation. This was

reconfirmed by the consultations with victims and their communities that the Trust Fund held in Ituri in May and June 2015, when a need for physical rehabilitation in relation to harm sustained as a result of the child soldier crimes was widely mentioned.

285. Such injuries may include the loss of physical integrity, including but not limited to, loss of limbs caused by engagement in armed conflict, loss of hearing or eye sight due to exposure to firing heavy weaponry and explosions; burns, shrapnel or bullet wounds; medical problems developed as a result of rape that occurred during the time as child soldiers or because of giving birth at a too young an age, if a causal link between the child soldier recruitment, early age at first sexual intercourse, and early pregnancy can be established on a balance of probabilities; sexually transmitted infections, such as HIV, contracted during the time as child soldiers and as a result of the conditions in the military camps that fostered sexual violence, promiscuity, unprotected sex, and multiple sexual partners; injuries sustained as a result of battery and assault during the time as child soldiers;¹¹⁵ mutilations sustained during the time as child soldiers; long-term medical problems developed as a result of malnutrition and the unhealthy living conditions in the camps during the time as child soldiers; medical problems developed as a result of substance

¹¹⁵ The verdict in this case established as a factual basis in the context of the conviction that harsh corporal was a frequent element of being a child soldier. See Trial Chamber I, Judgment pursuant to Article 74 of the Statute, of 14 March 2012, ICC-01/04-01/06-2842, at paragraphs 883-889.

abuse developed in response to the child soldier experience and psychological disorders, including but not limited to suicidal tendencies, depression and dissociative behaviour.

286. The Trust Fund would like to note that at present it does not support any projects aimed at physical rehabilitation under its assistance mandate in the DRC. Instead, to fill this gap, implementing partners of the Trust Fund are providing for those beneficiaries who need medical attention referrals to nearby clinics and hospitals, including the Panzi Hospital in Bukavu.
287. One of the Trust Fund's implementing partners carried out a medical survey in 2011 to assess the capacity of the health facilities in the surroundings of Bunia that are able to provide the appropriate post-surgical care services to victims. The survey also classified the type of physical injuries and the surgical needs of a large group of victims participating in a project under the Trust Fund's assistance mandate.
288. Among the 19 health facilities visited during the assessment, 3 hospitals and 14 health centres fulfilled the requirement for the provision of post-surgical care. Moreover, in total, 390 men and women (Men: 61%; Women: 39%) were identified as people physically harmed during the conflicts in Ituri. Their average age is 39 years, with three quarter of these victims falling in the age group of 21-60 years old. Agriculture (41%) and small

business (12%) are the main activities of those victims, who are professionally active, while one-third did not work.

289. The assessment found that conflict related physical traumas had occurred mostly to the lower limbs (38.1%), head (19.4%) and upper limbs (18.7%). Moreover, some form of orthopaedic rehabilitation constitutes the main type of physical rehabilitation needed for the victims (86%). Almost all (92%) had never received any care for their physical (as well as psychological) trauma.
290. The Trust Fund respectfully suggests that the outcome of this assessment may provide background information relevant to the present case. In particular, that specialized healthcare and trauma counselling for victims is not readily available in Ituri.
291. In addition, the Trust Fund considers that its experiences of carrying out physical rehabilitation activities in northern Uganda may provide information indicative for what it would cost to provide physical rehabilitation for direct and indirect victims in this case. However, the Trust Fund would like to note that the public health infrastructure in Ituri is less developed than in northern Uganda. Therefore, the cost to carry out physical rehabilitation in Ituri is likely higher than in northern Uganda.

292. Physical rehabilitation is a key aspect of the Trust Fund's assistance mandate in northern Uganda. In particular, victims of torture, mutilation, disfigurement, amputation, burns and other injuries sustained as a result of war crimes against civilians have been assisted through the combined efforts of these projects to-date. The medical rehabilitation activities has expanded to respond to reconstructive plastic surgery to remedy facial, head, and burn injuries; providing prosthetic devises (fitting and repairs); physiotherapy treatment; orthotic devises and related services; orthopaedic surgical services; provision of professional health services for all individuals (women, men and children) who have been victims of sexual violence; trauma counselling and psychological support services; corrective surgery to remove foreign objects (bullets and/or explosive fragments); post burn contracture corrective surgery and physiotherapy and mobility and recuperative therapy after severe burns; as well as, victim patient community mobilization initiatives and the establishment and maintenance of a referral mechanism with competent service providers for post-operative care and follow-up.

293. The Trust Fund's medical rehabilitation partners in northern Uganda include:

- **TFV/UG/2007/R1/14(a)** – reconstructive plastic surgeons led by an international surgeon and a senior physician consultant at Mulago

Hospital in Kampala. The project ran from second half of 2008 until July 2011 and the total project obligation over that period of time was 45,475 euros. The project benefited 105 victim beneficiaries.

- **TFV/UG/2007/R1/14(b)** – orthopaedic surgery, complex bullet and shrapnel surgery, plastic surgery, physiotherapy, counselling services, and operation of three medical clinics. The project ran from early 2011 – April 2013 and the total project obligation over that period of time was 86,165 euros. The project benefited 222 victim beneficiaries.
- **TFV/UG/2007/R1/018 and TFV/UG/2007/R2/042**– a regional orthopaedic workshop (fabrication, fitting, and maintenance of prosthetic and orthotic devices), physiotherapy, plastic surgery, and patient mobilization, as well as, including an element of trauma counselling. The project has been implemented from second half of 2008 and is still operational, and the total project obligation over that period of time was 679,919 euros. The project has benefited 1436 victim beneficiaries.

- **Material Support**

294. The crimes committed by Mr Lubanga also have direct material implications for the victims. The Appeals Chamber indicated that harm for

direct victims includes interruption and loss of schooling; and the non-development of civilian life skills, resulting in the victim being disadvantaged, particularly as regards employment. The Appeals Chamber also recognized harm in the case for indirect victims as material deprivation that accompanies the loss of the family member's contributions, as well as, material suffering as a result of the aggressiveness on the part of the former child soldiers being relocated to their families and communities.

295. These manifestations of harm may in fact have repercussions that could go beyond the direct and indirect victims and affect the economic prospects of society as a whole. As the Trust Fund noted in its submission in April 2012,¹¹⁶ "because child soldiers were not able to go to school and faced difficulties after their return to reintegrate into school, the communities lack young people with a minimum of literacy and education at present, affecting the socio-economic prospects of communities as a whole."

296. The Trust Fund respectfully submits that, based on its experience of assisting former child soldiers and their families under the assistance mandate, the disruption of childhood and schooling almost inevitably resulted in tangible material loss: for the former child soldiers because

¹¹⁶ see Trust Fund for Victims, *Observations on Reparations in Response to the Scheduling Order* of 14 March 2012 ICC-01/04-01/06-2872, of 25 April 2012, at paragraph 154.

they find it more difficult to find employment because of their more limited education which may be compounded with effects of their trauma and stigma; for indirect victims, in particular close family members, because they are also traumatized which may affect their productivity and they may lack a family member that could serve as a potential additional income earner.

297. The need for material support to redress the harm caused by the crimes for which Mr Lubanga was convicted was reconfirmed by the Trust Fund's targeted consultations on collective reparations, held in Ituri in May and June 2015. Socio-economic activities and livelihood development, vocational training, activities aimed at giving victims access to employment, schooling for former child soldiers so that they could obtain state diplomas to enter higher education, and functional literacy classes were cited amongst the highest priorities expressed.
298. In the Trust Fund's view, almost all direct and indirect victims in this case have suffered some relevant harm that would entitle them to some form of material support.
299. The Trust Fund further notes that the Appeals Chamber mentioned several examples of material support as forms of reparations in the present case. These examples directly mirrored the needs and priorities expressed

during the Trust Fund's consultations in Ituri. In particular, in paragraph 67 iii of the Amended Reparations Order, the Appeals Chamber suggested the provision of education and vocational training, along with sustainable work opportunities that promote a meaningful role in society.

300. Furthermore, the Amended Reparations Order states in paragraph 67v, that steps to rehabilitate and reintegrate former child soldiers may also include their local communities, to the extent that reparation programmes are implemented where their communities are located. In doing so, the Appeals Chamber made reference to the above cited Paris Principles, which stipulate:

7.79 Educational and skills training should recognise that many children who were associated with armed forces or armed groups, while missing years of education, have learned other skills and competencies that they do not want to lose and which can be useful in civilian society.

7.80 Accelerated learning programmes suitable for adolescents who have missed years of school should be compatible with and recognised by the formal system of education.

7.81 Alternative forms of education such as adult literacy classes or evening classes should be offered to children who cannot or do not wish to enter the formal educational system.

7.82 Access to education or training programmes is likely to be even more difficult for girls than for boys for a variety of reasons including cultural expectations, poverty, and the need for girls to earn a livelihood, work at home, or look after children. Training programmes should include but not be restricted to occupations considered suitable for girls to enable subsequent income generation while building on the skills and abilities they have developed while with the armed force or armed group.

7.83 Provision should be made for relevant vocational training and opportunities for employment, suitable for the needs of all girls and boys including those with disabilities. The following guidance should be adhered to:

7.83.0 An adequate technical analysis of the livelihood systems, market opportunities, and household economies in the places to which children are returning should be used to develop

economically relevant training, alternative forms of education, and opportunities for economic reintegration;

7.83.1 Actors supporting children's reintegration should coordinate their work, learn from each other, develop joint programmes, ensure appropriate referrals to those having particular expertise in income generation and vocational training and take measures to avoid variations in the benefits of their respective programmes;

7.83.2 Consultation with communities should develop local programmes such as collective initiatives that benefit small groups of children and the community they return to;

7.83.3 Training in very basic business skills is also needed to prepare children to keep accounts and handle money;

7.83.4 Young people with no previous work experience should be offered apprenticeship and/or 'on-the-job' training opportunities;

7.83.5 Children who need to earn a living immediately upon return to their family and community should have opportunities to do so while they obtain professional training and/or an improved education. For example, the sale of some objects

produced in the training phase could allow them to purchase the tools they need for future work. In some circumstances, limited materials can be provided as start up support;

7.83.6 Life skills training – including civic education, parenting skills, rights at work and home, prevention of HIV/AIDS, and education to counter interpersonal violence – should also be part of all programmes designed for young people;

7.83.7 Life skills programming should be sensitive to the particular challenges faced by girls upon reintegration. It should allow both girls and boys to acquire a greater understanding of the challenges faced by the other and foster positive gender relationships;

7.83.8 Providing children with opportunities to begin to learn or relearn skills such as non- violent conflict resolution and anger management can be very helpful to children who have learnt to use violence and aggression in their everyday lives;

7.83.9 Training programmes for girls should take into account child care and meet other needs while training, such as flexible training schedules. “

301. The Trust Fund has been supporting projects aimed at translating these Paris Principles into practice, and has undertaken dedicated assistance projects to support child soldiers and other youth victims of war. The information on the costs associated with these projects could assist the Trial Chamber in assessing the financial liability of Mr Lubanga in respect to such modalities for reparations.

302. In particular, the Trust Fund undertook the following projects in Ituri

- **TFV/DRC/2007/R1/011, TFV/DRC/2007/026 and TFV/DRC/2007/R2/03** – these projects aimed at reintegrating vulnerable children, including former child soldiers and war orphans, within their communities through support of small business activities for those children. The implementing partner provided beneficiaries with guidance in choosing an occupation, as well as, with training and supports kits to start micro-enterprises (such as goat herding), and ensured capacity building in these endeavours. Through the establishment of collectively managed micro credit schemes, or “MUSOs,”¹¹⁷ through community business

¹¹⁷ The “System of Mutual Solidarity” (short MUSO), is a specific process of village saving schemes that was first introduced as such in 1995 in Senegal. It originated as an adaptation to the “tontine,” a French investment scheme devised in the 17th century and expanded across a number of former French colonies in central Africa in the form of village savings groups. The MUSO system utilizes three savings boxes of different colours: 1) one into which participants can deposit their own money and withdraw small loans for businesses and income-generating activities, 2) one into which participants can deposit their own money and withdraw it for more expensive emergencies and 3) one into which participants can deposit external funding, including from donors. As part of its capacity building efforts, in 2011 the Trust Fund began working with

centres and community therapy activities, the implementing partner also aimed to foster a sense of reparative justice within the affected communities and to promote a culture of non-repetition. The project operated in Ituri and ran from November 2008 until end of September 2014 and the total project obligation over that period was US\$1,053,404.¹¹⁸ The project directly benefited 524 victim beneficiaries.

- **TFV/DRC/2007/R2/028** project is based in Bunia and in the surrounding localities. The project focuses on supporting former child soldiers and provided vocational training and reintegration kits such as goats (for those who opted for the cattle kit), or a sewing machine (for those who opted for dress making and tailoring). The implementing partner encouraged beneficiaries to form and/or join “MUSO” groups as part of longer-term strategy for attaining economic self-reliance. These “MUSOs” were also used as a platform for community and inter-community dialogues with a view to cultivating a spirit of reconciliation and social

organisations experienced in MUSO to bring the system to its local partners in Ituri district and the Kivus. Several of these organisations are implementing projects using earmarked funds. The Trust Fund convened these partners together with a MUSO expert to discuss how the system could support the Trust Fund work. The introduction of MUSO was an innovative approach intended to reinforce solidarity among victims belonging to different or similar communities and their community members because the MUSO collectivities will include both direct victims of the war and community members. A key strategy to projects aim at reintegration is the inclusion of “indirect” beneficiaries (e.g. “vulnerable children” in a project primarily designed for former child soldiers). With this system in place, the victims are also finding adequate tools for the proper management of their income generating activities and are able to generate savings.

118 The Trust Fund runs projects in the DRC on a US dollar basis, whilst projects in Uganda are administered in euros.

cohesion that may prevent future violence. Beneficiaries were also provided with opportunities to access social and recreational activities, aimed at their psychological improvement.

- **TFV/DRC/2007/R2/29**, is a second complementing project, between the Trust Fund and the same implementing partner, aimed at specifically rehabilitating former girl child soldiers. In particular, it included almost 200 girls abducted into armed groups, who had given birth while in captivity as forced wives and/or sex slaves. These girls were offered an accelerated learning programme. The project also provided a day care centre where the young mothers could leave their babies while at school. Through the accelerated learning programme, the young mothers were enabled to catch up with their peers at school with a view to gaining entry into the regular school system. The programme in addition aimed at building a bond between the girls with their babies who were often primarily seen as sources of stigma and economic burden. Furthermore, the project delivered medical support, and encouraged the child mothers and their parents to acquire health insurance and access to health care services. With a view to encouraging the reintegration of these often severely stigmatized girls into their families and communities, the project contained elements promoting the involvement of victims'

families, for example, through the forming of a parents' cooperative, as well as, the involvement of personnel of the schools the girls attend.

Both projects were based in Ituri and ran from November 2008 until end of August 2014 and the total obligation for both projects over that period of time was US\$1,722,757. The project directly benefited 485 victim beneficiaries.

- **Symbolic and other forms of reparations**

303. As discussed, the Amended Reparations Order proposes undertaking symbolic and other forms of programmes, including those that have transformative objectives "to help prevent future victimisation." For instance, the Appeals Chamber explicitly called for the fact that the reparation award should in part be "directed at preventing future victimisation" and at raising awareness that the effective reintegration of the children requires eradication of victimisation, discrimination and stigmatisation of young people in these circumstances."¹¹⁹

304. The Trust Fund's submits that these symbolic and "other" forms of reparations are an important and integral part of reparations in this case; and hence, are elements to be considered in the assessment of Mr

¹¹⁹ see Amended Reparations Order at para. 67 v-vii.

Lubanga's financial liability. Indeed, reparations have a strong symbolic dimension that reaches far beyond just providing material redress, and results in recognition of victims as right holders and their empowerment. In the Trust Fund's view, this dimension is of particular importance in the present case where restitution is not achievable, as already discussed.

305. The Trust Fund respectfully submits that while some of these more symbolic forms of reparations explicitly mentioned by the Appeals Chamber, and in particular a voluntary apology by Mr Lubanga, have no monetary implications, others do. For example, an educational campaign to prevent future recruitment of child soldiers requires financial resources.

306. Under its assistance mandate and in addition to meeting the needs linked to specific personal forms of harm, the Trust Fund has supported projects that target victimized communities with a view to strengthening broader processes of reconciliation and acceptance, and addressing the underlying causes of violence.

307. Such projects included:

- **TFV/DRC/2007/R1/019** - a project to promote peace and social cohesion in the districts of Ituri, North Kivu and South Kivu. Through "Schools of Peace" (Ecoles de la paix – 'Ecopaix'), the implementing partner strives to restore a culture of peace

among children and young victims of war crimes and violence of any kind in the regions. The “Peace School” project consisted of a mobile, two-day camp run by university students trained in conflict resolution that helps children and young adults collectively address their trauma, construct messages of peace and healing, and share them with their wider communities. The camp begins with a film and discussion, and continues with story telling, analysis, critical thinking, drawing, writing, and drama. Through collective, creative expression, children voice their trauma, and learn from each other about how to resolve conflict non-violently. At the end of the two days, children put together a play to sum up all that they have discussed and learned, and invite their families and community members to attend. The “Peace School” has scaled-up its activities with continued support from the Trust Fund to integrate its lessons of peace and reconciliation into the regular school system in Ituri so that the wider community may benefit from its messages. The project ran from November 2008 until August 2015 and the total project obligation over that period of time was US\$969,564. The project directly involved 53,658 victim beneficiaries and had a significantly wider reach beyond that number in affected communities.

- **TFV/DRC/2007/R1/004 & TFV/DRC/2007/R2/027** - these projects operated in Bunia, and in the territories of Irumu, Djugu, Mahagi, Aru, and Mambasa. The project established a “Cadre de concertation pour la paix” (peace and dialogue framework) involving community members, traditional leaders and local authorities to promote conflict resolution. The project facilitated community reconciliation in form of “Peace Week” events, which brought together community members to discuss priority problems leading to conflict, and identify solutions and prevention strategies in large meetings between communities, usually involving up to 100 participants, with larger community meetings, or “Barazas,” with around 400 participants. In addition, social science approaches were combined to collect and document the stories of 500 victim beneficiaries on average. The aim of the “Histoire Partagé” (shared history) was to preserve the communities’ historical memory, whilst also determining the root causes of the conflicts, and proposing solutions with a view to avoiding the reoccurrence of violence. The project further included an element of identification of victim survivors of sexual violence and other war crimes who were in need of medical care, psychological support, and/or socioeconomic support so that these victims could be referred to

appropriate services. The project ran from November 2008 until September 2014 and the total project obligation over that period of time was US\$1,430,960. The project directly involved 1269 victim beneficiaries and had a significantly wider reach beyond that number in affected communities.

- **Administrative costs**

308. It is the Trust Fund's understanding that Mr Lubanga, as the person financially liable for reparations, is also liable for the costs that will be incurred to carry out their implementation (other than regular budget costs, such as the Trust Fund Secretariat's staff costs); and that this "administrative implementation cost" is a factor to be considered when setting the financial liability.

309. The Trust Fund recalls that this is the first time that the Court and the Trust Fund engage in the implementation of reparation proceedings. The Trust Fund considers that the applicable legal framework allows the Court a degree of flexibility in setting the procedural requirements of the reparation proceedings; and that the administrative cost will depend on what process the Court will legally prescribe in the present case. Elements where choices of the Court may have a bearing on the cost include, for instance, 1) the type and extent of efforts to identify victims and reach out

to them; 2) public information; 3) the screening process; 4) costs related to security; as well as, 5) the costs for documenting the implementation and impact of reparation awards, with a view to reporting to the Trial Chamber on the implementation progress and victim satisfaction.

310. The Trust Fund notes that it has consistently advocated for proportionality between the actual reparation awards (as the primary cost driver) versus the administrative implementation costs. Accordingly, the Trust Fund respectfully submits that all involved, (including the Court, the parties to the proceedings, the Trust Fund and any implementing partners) should strive to keep administrative implementation costs low and limit them to a reasonable percentage of the costs required for direct benefits to the victims.

311. In this context, the Trust Fund would like to share that under its assistance mandate it obliges its implementing partners to spend a maximum of 15 per cent of the total budget on the administrative overhead required for implementation.¹²⁰

312. The Trust Fund is well aware that its assistance mandate and the reparations mandate follow different requirements, and that on the assistance mandate, the Trust Fund is primarily accountable towards its

¹²⁰ The Trust Fund proposal template used in the context of its assistance mandate for negotiating a contract with implementing partners includes a clause that states: "Please take note that total administrative and management costs should not exceed 15% of the total budget."

donors, whilst the reparations mandate brings with it much more stringent legal requirements. That being said, the Trust Fund would urge the Court to bear in mind any potential cost implications when it refines the implementation requirements.

FOR THE FOREGOING REASONS:

The Board of Directors respectfully submits its observations, draft implementation plan in Annex A, and the Registry's victim mapping report in Annex 1 to the Appeals Chamber, in response to the Amended Reparations Order of 3 March 2015.



Pieter W.I. de Baan

Executive Director of the Secretariat of the Trust Fund for Victims, on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 3 November 2015

At The Hague, The Netherlands