

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-02/06**

Date: **18 December 2020**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding
Judge Robert Fremr
Judge Olga Herrera Carbuccion

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF**

THE PROSECUTOR v. BOSCO NTAGANDA

Public

**Public Redacted Version of the “Trust Fund for Victims’ Final Observations on
the reparations proceedings”**

Source: The Trust Fund for Victims

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:**Office of the Prosecutor**

Ms Fatou Bensouda
 Mr James Stewart
 Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon

Legal Representatives of Victims

Ms Sarah Pellet
 Mr Dmytro Suprun

Legal Representatives of Applicants**Unrepresented Victims****Office of Public Counsel for
Victims**

Ms Paolina Massidda

**Unrepresented Applicants for
Participation/Reparation****States' Representatives****Office of Public Counsel for the Defence****Amicus Curiae****REGISTRY**

Registrar

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section**Other****Victims Participation and Reparations
Section**

Mr Philipp Ambach

Table of Contents

I.	Procedural History.....	4
II.	Confidentiality.....	7
III.	Introduction	8
IV.	Relevant Types and Scope of Harm.....	9
a.	Whether any kind of harm may be presumed.....	9
b.	Children born out of rape	10
c.	Lower burden of proof in case of sexual violence	11
V.	Amount of Liability.....	14
VI.	Types and Modalities of Reparation Awards	22
VII.	Final Observations.....	26
VIII.	Conclusion.....	26

I. PROCEDURAL HISTORY

1. On 8 July 2019, Trial Chamber VI (“Trial Chamber”) convicted Mr Ntaganda for 18 counts of war crimes and crimes against humanity committed in Ituri, Democratic Republic of the Congo (“DRC”), between 2002 and 2003.¹
2. On 25 July 2019, the Chamber issued an order whereby it designated Judge Chang-ho Chung as the Single Judge for reparation issues.² The same day, the Single Judge issued an order for preliminary information on reparations (“Order for Preliminary Information”).³
3. On 5 September 2019, the Registry submitted its observations on Reparations pursuant to the Order for Preliminary Information. The Registry provided the Trial Chamber with, *inter alia*, information on, and its proposed methodology for, the identification of victims for the purpose of reparations and an update on the security situation in the DRC.⁴
4. On 3 October 2019, the legal representative of child soldiers (“LRV Child Soldiers”), the legal representative of victims of the attacks (“LRV Attacks”, collectively with the LRV Child Soldiers, “LRVs”),⁵ the Defence for Mr Ntaganda,⁶ the Office of the Prosecutor⁷ and the Trust Fund for Victims (“Trust Fund”)⁸ filed their respective observations in response to the Registry’s observations.
5. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment (“Sentencing Judgment”).⁹
6. On 20 November 2019, the Presidency re-composed the Trial Chamber,¹⁰ and on 22 November 2019, the Chamber, in its new composition, elected Judge Chang-ho

¹ Judgment with public Annexes A, B, and C, [ICC-01/04-02/06-2359](#).

² Decision notifying the designation of a Single Judge, [ICC-01/04-02/06-2365](#).

³ Order for preliminary information on reparations, [ICC-01/04-02/06-2366](#).

⁴ Registry’s observations pursuant to the Single Judge’s “Order for preliminary information on reparations” of 25 July 2019, ICC-01/04-02/06-2366, With Public Annex I and Confidential Annex II, [ICC-01/04-02/06-2391](#).

⁵ Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations, [ICC-01/04-02/06-2430](#).

⁶ Response on behalf of Mr.Ntaganda to Registry’s preliminary observations on reparations, [ICC-01/04-02/06-2431](#).

⁷ Prosecution’s response to the Registry’s observations, pursuant to the Single Judge’s “Order for preliminary information on reparations” (ICC-01/04-02/06-2391-Anx1), [ICC-01/04-02/06-2429](#).

⁸ Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations, [ICC-01/04-02/06-2428](#).

⁹ Sentencing judgment, with one public annex, [ICC-01/04-02/06-2442](#).

Chung as the Presiding Judge and designated him as Single Judge for the purpose of the reparations phase of the proceedings.¹¹

7. On 5 December 2019, the Single Judge issued the Order setting deadlines in relation to reparations (“Reparations Calendar”), whereby he ordered: (i) the Registry to continue carrying out a “preliminary mapping of potential new beneficiaries of reparations”; (ii) the Registry – in consultation with the parties – to identify three or more experts; (iii) the Registry to submit a list of proposed experts by 14 February 2020; and (iv) the Registry, parties, and the Trust Fund to make submissions on a number of substantial questions, including the principles, criteria and methodology to be applied to reparations, by 28 February 2020.¹² The Single Judge further invited the Office of the Prosecutor and the authorities of the DRC to file submissions by the same deadline, and specified that any interested organisation could apply for the filing of submissions as *amicus curiae* by 10 January 2020.¹³

8. On 28 February 2020, in line with the Reparations Calendar, the Trust Fund,¹⁴ the Defence,¹⁵ the LRVs¹⁶, the Registry¹⁷ and the Office of the Prosecutor¹⁸ filed their respective submissions on reparations.

9. On 2 March 2020, the Registry transmitted observations from the government of the DRC.¹⁹

10. On 6 March 2020, having been granted leave to do so,²⁰ the International Organization for Migration filed *amicus curiae* observations (“IOM Observations”).²¹

¹⁰ Decision re-composing Trial Chamber VI, [ICC-01/04-02/06-2444](#).

¹¹ Decision notifying the election of the Presiding Judge and the Designation of a Single Judge, [ICC-01/04-02/06-2445](#).

¹² Order setting deadlines in relation to reparations, [ICC-01/04-02/06-2447](#).

¹³ [Reparations Calendar](#), para. 9 (e).

¹⁴ Trust Fund for Victims’ observations relevant to reparations (“28 February 2020 Observations”), [ICC-01/04-02/06-2476](#).

¹⁵ Defence submissions on reparations, ICC-01/04-02/06-2479-Conf (a public redacted version was filed on 6 March 2020: [ICC-01/04-02/06-2479-Red](#)).

¹⁶ Submissions on Reparations on behalf of the Former Child Soldiers, [ICC-01/04-02/06-2474](#); Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations (“Submissions by the LRV Attacks”), ICC-01/04-02/06-2477-Conf (a public redacted version was notified on the same day: ICC-01/04-02/06-2477-Red, of which a corrigendum was notified on 20 November 2020: [ICC-01/04-02/06-2477-Red-Corr](#)).

¹⁷ Registry’s Observations on Reparations with one public annex, [ICC-01/04-02/06-2475](#).

¹⁸ Prosecution’s Observations on Reparations, [ICC-01/04-02/06-2478](#).

¹⁹ *Transmission des observations de la République démocratique du Congo*, [ICC-01/04-02/06-2480](#).

11. On 21 April 2020, having been instructed to do so by the Trial Chamber,²² the Registry,²³ the Defence,²⁴ the LRVs²⁵ and the Trust Fund²⁶ submitted observations on the impact of COVID-19 measures on their operational capacity.

12. On 14 May 2020, the Trial Chamber appointed four experts for the purposes of the reparations proceedings and instructed them to submit by 28 August 2020 a report on four issues (“Decision Appointing Experts”).²⁷

13. On 26 June 2020, the Chamber issued the First Decision on Reparations Process (“First Reparations Decision”).²⁸ Among other things, the Chamber instructed the Registry to prepare, in consultation with the parties and the Trust Fund, a sample constituted of a limited but representative pool of beneficiaries of reparations and to report to the Chamber thereon by 30 September 2020.²⁹

14. On 30 September 2020, the Registry submitted its “First Report on Reparations”, including annexes in relation to the preparation of the sample ordered by the Trial Chamber, an application form and in relation to issues requiring clarifications from the Trial Chamber (“First Registry Reparations Report”).³⁰

²⁰ Decision on request for leave to submit Amicus Curiae observations, 17 January 2020, [ICC-01/04-02/06-2460](#), ruling on Request for Leave to Submit Observations on the issue set out under point 9 (c) of the Order ICC-01/04-02/06-2447, 10 January 2020, [ICC-01/04-02/06-2455](#).

²¹ Submission of observations on the issues identified under paragraph 9 (c) (i), (ii), and (iii) pursuant to the ‘Order setting deadlines in relation to reparations’, ICC-01/04-02/06-2483-Conf.

²² Order to provide information on the impact of COVID-19 measures on operational capacity, 9 April 2020, [ICC-01/04-02/06-2507](#).

²³ Public redacted version of “Registry Submissions pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’, ICC-01/04-02/06-2507”, 21 April 2020, [ICC-01/04-02/06-2519-Red](#).

²⁴ Defence observations pursuant to ‘Order to provide information on the impact of COVID-19 measures on operational capacity’, [ICC-01/04-02/06-2515](#).

²⁵ Observations on the impact of COVID-19 measures on operational capacity on behalf of the former child soldiers, [ICC-01/04-02/06-2516](#); Public Redacted Version of the “Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the “Order to provide information on the impact of COVID-19 measures on operational capacity””, [ICC-01/04-02/06-2518-Red](#).

²⁶ Trust Fund for Victims’ observations on the impact of COVID-19 on operational capacity, [ICC-01/04-02/06-2517](#).

²⁷ Decision appointing experts on reparations, ICC-01/04-02/06-2528-Conf (a public redacted version was notified on the same day: [ICC-01/04-02/06-2528-Red](#). On 4 February, the Registry had communicated a list of proposed experts to the parties and participants (email from the Registry to the parties on 4 February 2020 at 13:16) and on 19 February 2020, the Registry filed the proposed list in the record of the case (Registry List of proposed Experts on Reparations Pursuant to Trial Chamber VI’s Order of 5 December 2019, ICC-01/04-02/06-2472-Conf).

²⁸ First Decision on Reparations Process, [ICC-01/04-02/06-2547](#).

²⁹ [First Reparations Decision](#), paras 37-38 and disposition.

³⁰ Registry’s First Report on Reparations, With Confidential Annexes I-V, [ICC-01/04/02/06-2602](#).

15. On 30 October 2020, having been granted an extension of time to do so,³¹ the experts submitted their respective reports (“Joint Expert Report” and “Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare”, collectively “Expert Reports”).³²

16. On 15 December 2020, the Trial Chamber ruled on clarifications requests submitted by the Registry (“Decision on Registry’s First Report”).³³

17. On 18 December 2020, the Trial Chamber, ruling on a request from the LRV Child Soldiers asking the Single Judge to order the Registry to obtain the official census of the persons residing in the affected areas at the time,³⁴ of the events, issued a decision rejecting the Request and indicated that “the information requested [...] is not necessary at this stage of the proceedings for the Chamber to decide on the types and modalities of reparations to be awarded in this case.”³⁵

II. CONFIDENTIALITY

18. This submission is classified as confidential pursuant to regulation 23 *bis* (1) of the Regulations of the Court given that it discloses details about the operations that the Trust Fund carries out in sensitive locations of the DRC and as it refers to filings of the same classification. A public redacted version will be filed as soon as practicable.

³¹ Decision on Request for an Extension of Time for Filing of Experts’ Report, 20 July 2020, [ICC-01/04-02/06-2553](#), ruling on a request for extension of time (Registry Transmission of Appointed Experts’ Request for Extension of Time, With one Confidential Annex, available only to the Defence, the Legal Representatives of Victims, the Office of the Prosecutor and the Trust Fund for Victims, 3 July 2020, [ICC-01/04-02/06-2549](#)).

³² Registry Transmission of Appointed Experts’ Reports, With two Annexes In Confidential *Ex Parte* version, available only to the Registry, [ICC-01/04-02/06-2623](#).

³³ Decision on issues raised in the Registry’s First Report on Reparations, [ICC-01/12-02/06-2630](#).

³⁴ Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, [ICC-01/04-02/06-2624](#). The Registry and the Defence submitted observations thereon on 18 and 20 November 2020, respectively (Registry’s Observations on the “Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations” of 9 November 2020, ICC-01/04-02/06-2624, [ICC-01/04-02/06-2627](#); Defence response to “Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations”, 9 November 2020, ICC-01/04-02/06-2624, [ICC-01/04-02/06-2628](#)).

³⁵ Decision on the Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, [ICC-01/04-02/06-2631](#), disposition.

III. INTRODUCTION

19. The Trust Fund's present observations briefly address the issues raised in the Reparations Calendar, in the Decision Appointing Experts and in the First Reparations Decision and only insofar as the 28 February 2020 Observations require additions. The Trust Fund reiterates its submissions and requests contained therein. Additionally, the Trust Fund provides the Trial Chamber with figures in relation to the cost of ongoing programmes in Ituri to inform the Trial Chamber's decision on the liability of the accused.

20. At the outset, the Trust Fund commends the tremendous work accomplished by the experts as set out in the Expert Reports and expresses its gratitude to the experts for the constructive exchanges. The Trust Fund also expresses its appreciation for the mapping of the victims by the VPRS as set out in Annex IV to the First Registry Reparations Report and is looking forward to receiving the estimates of the potential number of victims.

21. The Trust Fund considers that the Expert Reports as well as the VPRS mapping will be highly useful in establishing the draft implementation plan should the Trial Chamber order that reparations awards against the convicted person be made through the Trust Fund and in particular if any funds of the convicted person be deposited with the Trust Fund or made otherwise available to the Trust Fund (article 75 (2) of the Statute and rule 98 (2) and (3) of the Rules of Procedure and Evidence).

22. As to the Expert Reports, the Trust Fund respectfully points out that the versions of these documents to which it has access are redacted. The Trust Fund hereby requests the Trial Chamber that it is granted access to the non-redacted versions of these documents in order to enable it to carry out consultations based on these reports in preparing for and carrying out the implementation of the reparations.

23. The following observations are provided on the basis of the Trust Fund's advisory role as set out in the 28 February 2020 Observations³⁶ and pertain to: (i) limited additional observations on relevant types and scope of harm; (ii) the amount of liability, including the cost of services in Ituri; and (iii) the appropriate types and modalities of reparations. The Trust Fund also takes the opportunity to address

³⁶ [28 February 2020 Observations](#), para. 13.

operational matters related to the preparation of the implementation plan and the implementation of the reparations themselves.

IV. RELEVANT TYPES AND SCOPE OF HARM

24. In relation to the relevant types and scope of harm, the Trust Fund refers to the 28 February 2020 Observations in relation to the need to establish categories of victims having suffered certain types of harm,³⁷ and respectfully submits that the LRVs are best placed to make observations on the harm reported by their clients. Additionally, the IOM Observations and the Expert Reports provide ample information on this topic, ensuring that a comprehensive overview of the types of harm, including of unidentified victims, has been provided to the Trial Chamber.

25. In the present section, the Trust Fund concentrates on the three issues posed by the Trial Chamber in the First Reparations Decision, namely: (i) whether any kind of harm may be presumed; (ii) whether the harm caused to children born of rape can be attributable to Mr Ntaganda; and (iii) whether a lower standard of proof should be applied for SGBV victims. As the Trust Fund considers that certain legal aspects of these issues are best addressed by the parties, the focus of this submission lies on the possible impact of certain determinations on the implementation stage.

a. WHETHER ANY KIND OF HARM MAY BE PRESUMED

26. The Joint Expert Report and the Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare propose that victims of the attack and child soldiers may be presumed to have suffered some kind of harm. They consider that no additional evidence should be required for each victim to show what kind of harm he or she has suffered.³⁸ The Trust Fund finds this approach reasonable in the current circumstances and for the following reasons.

27. First, the Trust Fund recalls the Sentencing Judgment, where the Trial Chamber already found to a standard beyond reasonable doubt that the victims of the attack and the child soldiers have suffered certain kinds of harm.

³⁷ [28 February 2020 Observations](#), paras 73-100.

³⁸ [Joint Expert Report](#), para. 16; [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), para. 81.

28. Second, the time elapsed since the commission of the crimes and the widespread lack of documentation would make it impracticable – and therefore wholly artificial – for the victims to try and attempt to demonstrate that harm was suffered as the result of the attack or as a result of their experience as child soldiers.

29. Third, the Trust Fund considers that the very nature of the cases dealt with by the Court, that is mass crimes, must be taken into account in determining whether or not harm can be presumed. Indeed, requiring from each and every potential victim of the attack to demonstrate that they have suffered a certain kind of harm would in fact require an extensive amount of field work to collect documents and narratives from the victims and would potentially introduce a somewhat arbitrary element in the eligibility assessments. This approach would not be compatible with the rights of the victims and carry the risk of delays.

30. Accordingly, the Trust Fund agrees with the Expert Reports that certain types of harm must be presumed.

31. Lastly, the Trust Fund considers that the approach of assuming harm is wholly compatible with the Court’s case law on the issue and recalls notably that the Appeals Chamber in *Lubanga* has approached the question of the types and scope of the harm similarly in a generalised manner,³⁹ in particular as it focused on collective reparations and not on individual reparations.

b. CHILDREN BORN OUT OF RAPE

32. In accordance with the Trial Chamber’s instruction to this effect, the Trust Fund hereby addresses whether children born out of rape can be presumed to have suffered harm as a result of the commission of the crime of rape and sexual slavery. The Trust Fund concurs with the Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare⁴⁰ and the LRV Attacks⁴¹ that certain types of harms can be presumed for children born out of rape.

³⁹ Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with Amended order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#), para. 81. *See also* Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable (“Decision Setting the Size of the Reparations Award”), 15 December 2017, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 185.

⁴⁰ [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), paras 53-58, 80, fn. 365.

33. First, the Trust Fund notes that the Court's current case law⁴² fully supports the view that it was reasonably foreseeable for the accused that the crimes of sexual slavery and rape could result in unwanted pregnancies.

34. Second, the Trust Fund would like to recall its 28 February 2020 Observations on the issue,⁴³ wherein it set out that empirical field observations conclusively show that children born out of rape invariably present symptoms of various forms of trauma.

35. Third, these observations are supported by recent research.⁴⁴ In short, children born out of rape appear to surely suffer from some form of emotional harm and stigma, in addition to sometimes other forms of harms such as the loss of life plan as a result of the rejection by their mother.

36. Accordingly, the Trust Fund fully supports the experts' and LRV Attacks' view that children born out of rape can be presumed to have suffered certain kinds of harm. Proceeding otherwise would result in a situation whereby each child born out of rape would need to demonstrate that this filiation has caused them harm, which – in the same way, if not worse, as for the victims of the attack and former child soldiers – would constitute an artificial exercise, due to the generalised lack of records and the difficulty to evaluate the harm on a case-by-case basis.

c. LOWER BURDEN OF PROOF IN CASE OF SEXUAL VIOLENCE

37. Whether a lower burden of proof should apply in case of sexual violence (including sexual slavery) is relevant in relation to two separate, yet interrelated, issues: (i) what kind of harms have been suffered by victims of sexual violence; and (ii) the proof required for establishing whether a victim is a beneficiary of an award of reparations.

38. As to the first issue, the Trust Fund refers to the 28 February 2020 Observations⁴⁵ and the Expert Report on Reparations for Victims of Rape, Sexual

⁴¹ [Submissions by the LRV Attacks](#), para. 38.

⁴² See e.g. Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order ("Al Mahdi Reparations Order"), 17 August 2017, [ICC-01/12-01/15-236](#), para. 44.

⁴³ [28 February 2020 Observations](#), paras 24-25 and 86.

⁴⁴ [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), paras 53-57 and in particular fn. 252.

⁴⁵ [28 February 2020 Observations](#), paras 83 - 87.

Slavery and Attacks on Healthcare⁴⁶ that address in detail what kind of harm can be presumed for victims of sexual violence.

39. As to the second issue, the Trust Fund observes that this question has not yet been decided by a trial chamber for the purpose of reparations to victims of sexual violence. In the three cases that gave rise to a reparation order, including two related to Ituri, the standard of proof applied by the Trial Chamber and/or the Trust Fund is the standard of “a balance of probabilities” in the spirit of the Appeals Chamber determination in its *Lubanga* Amended Order for Reparations,⁴⁷ and by reference to the jurisprudence of other courts.⁴⁸

40. The trial chambers applied the standard of “a balance of probabilities” in a manner befitting the circumstances of the respective cases. In the *Lubanga* case, Trial Chamber II considered, for collective reparations, that an application form, a precise and coherent statement and identity related supporting documents suffice to establish that an applicant is a child soldier.⁴⁹ In the *Katanga* case, Trial Chamber II proceeded, for collective reparations, to a similar analysis, granting also attention to additional supporting documents in order to consider the types of harms of the victims and whether they are covered by the conviction.⁵⁰ In the *Al Mahdi* case, for individual reparations with victims identified at the reparation implementation stage, an attestation system has been set forth to supplement a short, simple and efficient application form specifically drafted for that purpose.⁵¹ For collective reparations, including collective

⁴⁶ [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), paras 24-60, 81.

⁴⁷ Annex A to “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with Amended order for reparations (Annex A) and public annexes 1 and 2”, 3 March 2015, [ICC-01/04-01/06-3129-AnxA](#), para. 65.

⁴⁸ [Internal Rules and Regulations ECCC](#), Rule 23 bis (1), 16 January 2015 (Rev.9) : “[...] When considering the admissibility of the Civil Party application, the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.”; *see also* ECCC, *Kaing Guek Eav alias Duch*, Judgement of 26 July 2010, [case n° 001/18-07-2007-ECCC/SC](#), paras 523 and 527; IACtHR, *Velásquez Rodríguez v. Honduras*, Judgment (Merits), 29 July 1988, [Series C, no. 4](#), paras 127-128; IACtHR, *Perozo et al. v. Venezuela*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), 28 January 2009, [Series C, no. 195](#), para. 112; IACtHR, *Rosendo Cantú et al. v. Mexico*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 31 August 2010, [Series C, no. 216](#), para. 105; IACtHR, *Fernández Ortega et al. v. Mexico*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 30 August 2010, [Series C, no. 215](#).

⁴⁹ [Decision Setting the Size of the Reparations Award](#), paras 63-64.

⁵⁰ Order for Reparations pursuant to Article 75 of the Statute (“*Katanga* Order for Reparations”), 24 March 2017, [ICC-01/04-01/07-3728-tENG](#), paras 55 - 56 and 62 - 63.

⁵¹ Trial Chamber VIII, Public redacted version of ‘Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations’, 12 July 2018, [ICC-01/12-01/15-273-Red](#), para. 61; Trial Chamber

reparations with an individual component, the Trust Fund's implementing partners, under the guidance and close supervision of the Trust Fund,⁵² are carrying out this determination.

41. Regulation 63 of the Regulations of the Trust Fund provides that the Board of Directors of the Trust Fund determines the applicable standard of proof, subject to any order issued by the Court. In this respect, the Trust Fund informs the Trial Chamber that unless otherwise instructed, it intends to apply the standard of proof of a balance of probabilities to all victims.

42. Accordingly, at issue is the application of this standard rather than the standard itself. In relation to victims of sexual violence, the Trust Fund considers that a coherent and consistent narrative by a potential beneficiary that shows that the harm suffered falls within the remit of the crimes for which Mr Ntaganda has been convicted, would be sufficient to establish the victim's eligibility for reparations. The Trust Fund believes that this approach is fully in line with the "do no harm" principle,⁵³ and that requiring other types of proof such as evidence of treatments or corroborating statements would put an undue hardship on victims of sexual and gender-based crimes.⁵⁴ Lastly, the Trust Fund has noted – and endorses – the suggestion made in the Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare that gender-sensitivity and ethical training should be administered to any person getting in contact with SGBV victims.⁵⁵

VIII, Decision on TFV Submission of Draft Application Form, 21 November 2018, [ICC-01/12-01/15-301](#).

⁵² The Trust Fund is organising workshops with the implementing partners to ensure that the eligibility criteria are understood by them, and the Trust Fund is constantly in contact with them to provide guidance. This close coordination is necessary to ensure that those targeted by the programmes are indeed victims of the crime that the reparation order aims to repair and that it is made clear to them that services brought are a reparation for the harm they suffered as a result of the crime they (or their relatives) were subjected to. Whether reparations are individual or collective, the Trust Fund will always ensure that the standard of proof is met before a potential victim has access to the award.

⁵³ [28 February 2020 Observations](#), paras 30-33 requesting the adoption of the "do no harm" principle.

⁵⁴ See also [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), paras 81.

⁵⁵ [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), page 139.

V. AMOUNT OF LIABILITY

43. *Cost to repair* - As established by the Appeals Chamber, it is appropriate for the Trial Chamber to focus on the cost of the identified remedy, i.e. the **cost to repair**⁵⁶ to determine an amount of liability that is fair and properly reflects the rights of victims on the one hand and those of the convicted person on the other hand. In doing so, the Trial Chamber may rely on **estimates**, but must resolve uncertainties in favour of the convicted person.⁵⁷

44. In their report, the experts, relying on figures produced in the *Lubanga* and *Katanga* cases, provide a quantified estimate *per capita* of the *harm* suffered, and in turn propose amounts of individual compensation to be awarded in addition to a set of services (collective but individualised reparations).⁵⁸ The Trust Fund considers that these services and their costs are at the core of resolving the cost to repair the harm suffered by the victims of this case. The Trust Fund notes that the experts indicated the difficulty to quantify the costs of collective reparations.⁵⁹ In the present submission, the Trust Fund thus endeavours to provide indicative figures in relation to reparation projects that address the different categories of harm suffered by the victims of the crimes for which Mr Ntaganda has been convicted. Such reparations, while collective, would, in fact, be highly individual by nature, tailored to the need of each victim (victim-centred), and to the realities in Ituri.

45. The Trust Fund respectfully underlines that Ituri Province does not have a sufficiently robust infrastructure for physical, psychological or socio-economic services to accommodate the scale, quality of service delivery and harm-based focus that may be required for the collective awards.⁶⁰ Any form of collective reparations therefore requires the establishment of projects, which would strive to reach as many

⁵⁶ *The Prosecutor v. Germain Katanga*, Public redacted Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, 9 March 2018, [ICC-01/04-01/07-3778-Red](#), para. 72; *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’ (“Judgment on the appeals against Trial Chamber II’s Decision Setting the Size of the Reparations Award”), 18 July 2019, [ICC-01/04-01/06-3466-Red](#), para. 4.

⁵⁷ [Judgment on the appeals against Trial Chamber II’s Decision Setting the Size of the Reparations Award](#), para. 3.

⁵⁸ [Joint Expert Report](#), paras 174-191 and 216-231; [Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare](#), paras 64-91.

⁵⁹ [Joint Expert Report](#), para. 193.

⁶⁰ While, e.g., very limited psychological services are available in Bunia, they do not have the capacity to address larger groups of victims.

beneficiaries as possible and address the different categories of harm suffered. In that regard, collective reparations present the advantage to considerably compress the costs of repair by their sheer nature.

46. With this in mind, the Trust Fund has gathered field information related to the potential costs of various rehabilitation programmes. This information can serve as data point for the Trial Chamber to evaluate the cost to repair the harm suffered by the victims in this case. Upon receipt of the Registry's numbers of potential beneficiaries,⁶¹ the Trial Chamber will be in a position to modulate the figures provided in relation to the cost of repair to determine the final amount of liability.

47. *Operational capabilities in Ituri Province and their costs* - The figures collected by the Trust Fund reflect the cost to repair, that is, the cost required to run collective programmes that address effectively the multi-dimensional harm of the individual beneficiaries and that allow them to be restored in their right and deal with the consequences of the harm suffered. The costs below do not encompass the extra costs applicable to the screening of potential beneficiaries by implementing partners, which include a number of measures at a certain financial cost, such as consultations, the design of clear eligibility screening tools, data protection and reporting.

48. The Trust Fund recalls that in its 28 February 2020 Observations, it had produced figures related to the costs of repair of a number of types of harm *per capita* so that the Trial Chamber can form an idea of costs of services in Ituri.⁶² Over the past months, the Trust Fund has complemented this information by carrying out: (i) a field mapping of organisations currently active in the Ituri Province and consulting with them on a number of factors relevant to establish the cost of repair of the harms caused by the crimes committed by Mr Ntaganda; (ii) a desk review of past programmes carried out by the Trust Fund in Ituri in the context of its assistance mandate; and (iii) a review of the programmes launched by the Trust Fund under its assistance mandate in July 2020. The Trust Fund consulted with non-governmental organisations (both local and international) as well as DRC State services carrying out activities in favour of individuals affected by conflicts and intervening in Ituri.

⁶¹ [Decision on Registry's First Report](#), paras 12 and 64-65. The Trust Fund notes the experts' estimate that the universe of direct victims of the *Ntaganda* case is about 3,500 individuals ([Joint Expert Report](#), para. 29).

⁶² [28 February 2020 Observations](#), para. 130.

49. In relation to these programmes, the Trust Fund has endeavoured to identify a number of key elements relevant to establishing the cost to repair: (i) the nature of the activities they carry out and the type of harms the programme is intended to address; (ii) the duration of the implementation period; (iii) the location in which they were active; (iv) the estimated number of beneficiaries targeted by the programme (these programmes are ongoing so an estimate of the intended number of beneficiaries is provided instead of the final figures of beneficiaries reached); (v) the overall value of the programmes; and (vi) the challenges faced in the implementation of the ongoing programmes.

50. Based on the information gathered in the field, the Trust Fund submits the following observations:

51. First, UN agencies, international and local NGOs, and two State services currently implement projects in the Ituri Province. Due to the current security situation some of these projects have been suspended.

52. Second, it is observed that projects comparable to those required by these proceedings, have the ability to reach victims in all territories of Ituri. Indeed, even though most projects are active in the Djugu territory, there are activities being conducted in other territories (Irumu, Aru, Mahagi and Mambasa). The Trust Fund respectfully informs the Trial Chamber that, having observed this tendency, it will endeavour to identify implementing partners – if appropriate upon issuance of the order for reparations - that are either capable to operate in all territories relevant to these proceedings or, most probably, that are willing to operate in a coordinated manner with each other within a consortium to ensure that all victims can be reached regardless of their locations in Ituri.

53. Third, currently all organisations report the same challenges related to security. The occurrence of violent conflict, road side attacks, the number of armed groups and in general the increasing insecurity have rendered missions to the Djugu territory hardly feasible. That being said, the Trust Fund has observed that a number of organisations continues to operate, albeit with increased security protocols. This, again, will be taken into account by the Trust Fund when preparing its draft implementation plan and underlines the necessity to always associate with local organisations, as they are more

likely than international organisations to continue circulation in aggravating circumstances.

54. Fourth, in light of the priority given to this topic by numerous donors, a number of organisations are focusing their efforts on redressing the harm caused to SGBV victims. This circumstance will be of assistance in drawing up the draft implementation plan in this case.

55. Fifth, this exercise permitted identifying figures in terms of costs of services as set out below.

56. *Examples:* By way of example, the Trust Fund has found that a [REDACTED].

57. [REDACTED].

58. [REDACTED].

59. Another point of comparison in terms of costs are the 10 projects conducted by the Trust Fund in DRC, since July 2020, under its assistance mandate, five of which are conducted in Ituri through carefully selected implementing partners (international and national NGOs). The Trust Fund submits that the costs of these projects can usefully serve as a basis to the Trial Chamber. Indeed, unlike projects ran for humanitarian purposes, assistance mandate programmes are conducted with a view to vindicating rights of victims in relation to harm suffered from crimes falling within the Court's jurisdiction, and to provide them with reparative measures in relation to that harm. In this sense, they are comparable to a collective reparation programme with individualised components. However, they do not contain costs for the eligibility screening of beneficiaries in the same way as may be required for judicial reparations awards.

60. In terms of figures, over the first year of implementation the Trust Fund intends to reach 17,245 victims (of which 445 direct beneficiaries of rehabilitation programmes and 16,800 beneficiaries of education activities) for an estimated combined cost of USD 741,000 for the first year, which includes the inception phase. The projects are intended to run for a period of five years financed by an average amount of USD 200,000 per project and per year and with a target of 50,000 beneficiaries. By way of example, the Trust Fund, through its implementing partner «*Association des Mamans Anti-Bwaki (AMAB)*» is providing assistance to victims of the conflicts in Ituri in the territories in the Djugu, Aru, Mahagi and Irumu territories in the form of physical

rehabilitation activities (medical referrals, medical support), psychological rehabilitation measures (counselling, family mediation) and material support (income generating activities, vocational trainings and saving scheme cooperatives). For the first year of activity, the project is reaching 80 direct beneficiaries for a total budget of \$150,000. The same partner conducted a nine-year project with a similar focus that ended in 2017. This project was financed by the Trust Fund with a total value of USD 1,039,850 and addressed 3,435 direct beneficiaries, 20,610 of their family members as well 37,614 members of the relevant communities. The Trust Fund advises to take into account estimates from past projects carefully as DRC faced a high inflation rate in year 2018. A similar programme is conducted simultaneously by the Trust Fund in the Djugu and Mahagi territory, together with implementing partner «*Fleuves d'eau vive qui coulent aux autres (FLEVICA)*». It is intended that 125 beneficiaries will be reached over the course of the first year of activity for a budget of USD 150,000 and that the benefit from measures of psychological rehabilitation and material support such as community based conflict mediation, peace building education, income generating activities, vocational training and capacity building of victims.

61. In respect of assistance provided to victims of sexual crimes (in particular girl mothers victims of the wars in Ituri), the Trust Fund is providing assistance – together with its implementing partner – to 120 direct beneficiaries in the Irumu territory (Shari, Bogoro, Kasenyi and Nyakunde communities) for a budget of USD 150,000 over the first year. The reparative measures consist in a holistic package, that is medical referrals for victims suffering from sexual infections, counselling, family mediation, school assistance for dependents of victims and young child soldiers, material support including vocational training, income generating activities and support for saving scheme cooperatives. The Trust Fund – together with the same implementing partner – conducted a nine-year project with a similar focus that ended in 2017. This programme costed a total of USD 1,490,500 and reached 878 direct beneficiaries for psychological and physical rehabilitation, and 548 of those with socio-economic measures, including schooling.

62. Turning now to psychological support and education for peace, the Trust Fund is currently conducting two projects of this kind in Ituri. The first one is conducted together with implementing partner “*Observatoire des Droits Humains (ODH)*” and is operating in the territories of Djugu, Mahagi, Irumu, Aru and Mambasa and focuses on

psychological rehabilitation through education for peace, youth sensitization, capacity building of youth organisations, creation of peace clubs and other outreach activities. It is intended that 120 direct beneficiaries will be reached during the first year for a total budget of USD 140,000. As most of the activities will be conducted via media outlets, it is expected that a number of indirect beneficiaries are also reached.

63. The second project is implemented through *Missionnaires d'Afrique* and will cover the Ituri Province but also North and South Kivu and focusses on activities related to peace education in schools, memory healings and community dialogues. Specifically for the Ituri Province, this project will be implemented in the Bunia, Irumu, Djugu and Mahagi territories. Children in schools are targeted for the peace education and the communities in the targeted territories for activities, such as memory healings and community dialogues for peacebuilding. It is expected that about 16,800 beneficiaries (school pupils and students, teachers etc) will benefit from the project during the first year of implementation for a budget of USD 150,000. The same partner conducted an eight year programme that ended in 2017 with a similar focus. This programme was financed by the Trust Fund with a total of USD 1,235.764 and reached 53,658 beneficiaries in schools and the community.

64. The Trust Fund underlines that the first year of the project typically permits enrolling less beneficiaries than the subsequent year as the first months after launching the project are dedicated to setting up the project and carrying out outreach (inception phase). As a result, the numbers of beneficiaries reached during the first year are usually lower than the numbers that will be reached subsequently. In addition, it is typical for the collective, but individualised, programmes that a beneficiary may receive assistance over a longer period.

65. *Summary:* In sum, the Trust Fund proposes that upon receipt of estimates as to the number of potential beneficiaries and upon deciding on the reparations to be awarded in this case, the Trial Chamber uses the figures reported above and set out in the 28 February 2020 Observations to estimate the costs that programmes would cost. This approach would permit, on the one hand, respecting the rights of the accused by compressing costs and, on the other hand, making sure that reparations are practicable and that the evaluation of the cost of repair is realistic and commensurate with the realities in the field.

66. To conclude, the Trust Fund submits the following five observations in relation to the amount of liability.

67. First, the Trust Fund recalls its submissions, as set out in the 28 February 2020 Observations and above, in relation to the necessity to set an amount of liability encompassing both direct and indirect costs.⁶³

68. Second, assuming that Mr Ntaganda is found indigent for the purposes of these reparations proceedings, the implementation of reparations can only be achieved insofar as available with the voluntary contributions of the Trust Fund. These consist of contributions of States Parties to the Statute but also of other donors. Accordingly, it is essential to explore anew whether Mr Ntaganda possesses undiscovered assets.

69. Third, the Trust Fund respectfully draws the attention of the Trial Chamber to the financial resources of the Trust Fund. To date, the Board of Directors of the Trust Fund, while striving to fully complement the reparation awards, has complemented the reparation awards in the three cases, in which the convicted person was considered fully indigent, as follows: *Al Mahdi* (EUR 1.384 million of EUR 2.7 million), *Lubanga* (EUR 3.85 million of EUR 8.37 million [USD 10 million]) and *Katanga* (fully complemented EUR 837,000 [USD 1 million]). According to the case law at the Court, the determination of liability as such is independent from the available resources of the Trust Fund.⁶⁴

70. The Trust Fund respectfully observes that the amount of liability as set by the Trial Chamber will most likely raise victims' expectations about the implementation of awards by the Trust Fund, while additional fundraising will most likely be required to fully complement the award. The Trust Fund respectfully proposes to the Trial Chamber to address this issue in the reparation order, e.g., by acknowledging the likely difference between the values of the amount of liability and of the (immediately) available resources at the Trust Fund, through allowing for phased and flexible approaches to design and implementation. This may include prioritising certain categories of victims and by allowing the Trust Fund to, e.g., adjust the implementation plan through scaling up activities in function of additional availability of funds.

⁶³ [28 February 2020 Observations](#), paras 131-136.

⁶⁴ [Al Mahdi Reparations Order](#), para. 112.

71. Fourth, the Trust Fund notes that the Joint Expert Report proposes to award a financial compensation to each victim of the crimes committed by Mr Ntaganda, in addition to collective reparations. If compensation is deemed an appropriate way to address the harm of the victims, the Trust Fund very much favours awarding them any such amount of compensation, in combination with collective reparations, such as rehabilitation, as this allows for flexibility in the allocation of funds in that funds reserved for compensation can be transferred into a collective program or *vice versa*.⁶⁵

72. Fifth, the Trust Fund respectfully draws the attention of the Trial Chamber to the *Lubanga* reparation programme implementing a comprehensive collective reparation award. Trial Chamber II has approved the Trust Fund's proposed programmatic framework for collective reparations based on individual services provided to victims which include, notably, physical and psychological rehabilitation, vocational training and income-generating activities.⁶⁶ The Trust Fund recalls that the purpose of the *Lubanga* reparation programme is to repair comprehensively the harm suffered by all direct and indirect victims of the crimes for which Mr Lubanga has been convicted.

73. [REDACTED].

74. The Trust Fund notes that the Trial Chamber expressed in paragraph 65 of the Decision on the Registry's First Report doubts as to whether all victims eligible to reparations in the *Lubanga* case "may also be eligible for reparations in the *Ntaganda* case". The Trust Fund also refers to paragraph 45 of the IOM Observations.

75. The Trust Fund respectfully submits to the Trial Chamber that it is highly likely that the implementing agency of reparation awards in both *Lubanga* and *Ntaganda* will be the Trust Fund and most likely not the relevant convicted person. It is submitted that running two reparation programmes in parallel for (nearly) the same victims and the same harm would be a challenge for the Trust Fund, not only in terms of operations but

⁶⁵ [Al Mahdi Reparations Order](#), para. 139. In the *Al Mahdi* case, the Trial Chamber ordered a combination of individual, collective and symbolic reparations and proceeded to make intermediate calculations of the amount of liability for each of these reparations but authorised the Trust Fund to modulate the allocation of funds. In practice, this is necessary to ensure that reparations can be conducted: by way of example, the Trust Fund set aside an important envelope for individual reparations to ensure that any and all beneficiaries coming forward could receive their individual reparations. Should excess money remain (as should be the case in light of the fact that a reserve was also set aside), these funds will be redirected to the collective reparations.

⁶⁶ Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims, 6 April 2017, [ICC-01/04-01/06-3289](#).

also in terms of fundraising. Accordingly, the Trust Fund requests the Trial Chamber to take this into account in its reparation order to the degree possible. The Trust Fund stands ready to provide further observations, if so desired. This request does not extend to categories of harm, which were not addressed by the *Lubanga* conviction or reparation order, such as sexual violence related harm.

VI. TYPES AND MODALITIES OF REPARATION AWARDS

76. The Trust Fund recalls in full its submissions on the appropriate types and modalities of awards⁶⁷ and will accordingly provide here limited additional input. The role of the Trust Fund is not to be construed with that of a party. It is therefore not its place to advocate for one of the different judicial outcomes solicited in the present case. For this reason, the Trust Fund merely emphasises some of the considerations it believes the Trial Chamber should bear in mind when reviewing the experts' findings and recommendations as well as the parties' submissions.

77. The Trust Fund recalls that the applicable legal framework at the Court does not require the Trial Chamber to provide for all details of collective (but individualised) reparation awards at the time of the delivery of reparation orders. It recalls that in all prior reparation cases, the specification of the reparation awards has been addressed in the Trust Fund's draft implementation plan.

78. The Trust Fund respectfully recalls the structure of the Regulations of the Trust Fund: where individual awards are issued against the convicted person (and the convicted person deposits a reparation award with the Trust Fund) and the beneficiaries have already been determined, the draft implementation plan needs to primarily address the details of the beneficiaries and the method of disbursement (regulation 59 of the Regulations of the Trust Fund).

79. Where individual awards are issued against the convicted person and the beneficiaries have not yet been determined by the Court, the identification and verification of beneficiaries is the task of the Trust Fund (regulations 60-65 of the Regulations of the Trust Fund). The Appeals Chamber has determined that decisions of

⁶⁷ [28 February 2020 Observations](#), paras 108-128.

the Board of Directors on eligibility are subject to judicial review.⁶⁸ Accordingly, the draft implementation plan should not only address the method of disbursement but also the identification and eligibility process for determining the beneficiaries.

80. Where collective awards are issued against the convicted person, these are implemented as set out in regulation 71 of the Regulations of the Trust Fund by intermediaries or partners or through implementing partners. The draft implementation plan “shall set out the precise nature of the collective award(s), where not already specified by the Court, as well as the methods for its/their implementation” (regulation 69 of the Regulations of the Trust Fund).

81. The Trust Fund considers that many passages of the Expert Report may be relevant to the stage of preparation of the draft implementation plan.⁶⁹ The Trust Fund will take these reports and the submissions of the parties on these reports into account when drafting the implementation plan.

82. *Consultation:* The Trust Fund notes in particular that the Expert Reports lays stress on the need to consult with victims, as do the IOM Observations. The Trust Fund fully agrees with these suggestions, which are in accordance with its practice, and underlines its commitment to consult closely with victims, LRVs, civil society and experts before submitting the draft implementation plan. The Trust Fund has done so in the design of the *Lubanga* and *Katanga* reparations and still continues to consult in relation to and during the implementation. Similarly, in designing the *Al Mahdi* implementation plan, the Trust Fund worked closely with the LRVs, civil society and experts to design the very comprehensive reparation awards. In this respect, the Trust Fund refers to the 28 February 2020 Observations, paragraphs 35-36, where it stressed that, in particular, any kind of symbolic measures be designed with the victims and for their benefits.

83. *Compensation:* The Trust Fund takes good note of the fact that the Expert Reports propose as appropriate reparations what they refer to as “individual measures” and “collective measures”. Having carefully analysed the Expert Reports, the Trust Fund submits that the experts have proposed reparations which are collective in nature

⁶⁸ *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Public redacted Judgment on the appeal of the victims against the “Reparations Order”, 8 March 2018, [ICC-01/12-01/15-259-Red2](#), paras 2, 59-72.

⁶⁹ See e.g. [Joint Expert Report](#), paras 184 *et seq.* addressing the details and modalities relevant to the implementation plan.

with individualised and symbolic components. The Trust Fund considers that the monetary compensation they propose as a measure may not necessarily have to be construed as an individual reparation measure. The Appeals Chamber held that “in awarding collective reparations to victims, this can include reparations which are individualised; in this respect, collective reparations can include the payment of sums of money to individuals to repair harm suffered and the possibility for individuals to participate in particular programmes that address the specific harm that those individuals have suffered”.⁷⁰ Individual reparations have been defined to “confer on a victim a benefit to which the person is exclusively entitled; put differently, the benefit received is particular to the victim”.⁷¹ The Trust Fund submits that the compensation measure proposed by the Expert Reports is standardised and in that regard of a symbolic nature. It has been determined taking into account the shared harm of each category of victims. Accordingly, the Trust Fund suggests that standardised payments to all victims be considered a form of collective reparations.

84. Based on this approach, the Trust Fund respectfully submits that the Trial Chamber would not be required to stipulate the amount of such an individual amount to be provided to each victim. Rather, in the spirit of the above submissions, the determination of such an amount, if any, would be left to the draft implementation plan and the specification of the “precise nature of the collective award(s)”.⁷² In general, the Trust Fund considers that it is best if the reparation order gives sufficient flexibility to the Trust Fund to prepare an implementation plan that is responsive to the needs of the victims and adjusted to the field realities.

85. Finally, the Trust Fund respectfully points out that providing an amount of compensation for material and moral harm to all victims would mean that the victims who are both victims of Mr Lubanga and of Mr Ntaganda would receive, in addition to the reparation programme in the *Lubanga* case that is meant to address comprehensively their physical, psychological and material harm, also an additional compensation for material and moral harm.

⁷⁰ [Judgment on the appeals against Trial Chamber II’s Decision Setting the Size of the Reparations Award](#), para. 40.

⁷¹ [Katanga Order for Reparations](#), para. 271.

⁷² See regulation 69 of the Regulations of the Trust Fund.

86. *SGBV victims*: The Trust Fund highly welcomes that the implementation of reparations in this case will be for the benefit of victims who suffered from sexual slavery and other forms of sexual violence and respectfully points out in this context that repairing the harm suffered by victims of sexual and gender-based violence is a priority for many donors of the Trust Fund as well as the Trust Fund itself.

87. Based on the Trust Fund's experience in interacting with former child soldiers but also generally based on its recent experience with the eligibility decisions in *Lubanga* and *Al Mahdi*, the Trust Fund respectfully submits that it expects that the number of victims of sexual violence may increase considerably during the reparation implementation phase.

88. In order to fully accommodate the "do no harm" principle, the Trust Fund suggests to delegate the verification of victims of sexual violence to implementing partners, trained and instructed by the Trust Fund, who also employ psychologists, in the context of collective but individualised reparation awards, instead of setting out to awarding individual reparations that require for purposes of the eligibility screening interaction with the Trust Fund, the Court and other interlocutors.

89. *Symbolic measures and building of health post*: The Trust Fund sees great value in the symbolic measure proposed by the LRV Attacks for the killing of Abbé Bwanalonga as well as the re-building of the health post as proposed by the Expert Reports. The Trust Fund respectfully submits to the Trial Chamber that it would need to consult in the field with civil society, DRC authorities, implementing agencies and, in particular for the symbolic measures, the victims, before proposing such collective awards in the draft implementation plan. This will allow the Trust Fund to have up-to-date information and assess these measures holistically as part of the collective award.

90. In general, and as set out in the 28 February 2020 Observations, the Trust Fund considers that at the stage of the preparation of the implementation plan and during implementation, the "do no harm" principles commends that victims are constantly consulted and that if any measure shows to harm victims, it is suspended. In this spirit, the Trust Fund reiterates its request⁷³ to the Trial Chamber to adopt the "do no harm" principle.

⁷³ [28 February 2020 Observations](#), paras 30-33 and 143.

Organisation under rule 98 (4): The Trust Fund does not suggest to the Trial Chamber to proceed pursuant to rule 98 (4) of the Rules of Procedure and Evidence,⁷⁴ as, based on its study, there is currently no international, national or intergovernmental organisation that is actively involved in Ituri in providing reparations to the victims of crimes or that has the capacity to respond to the multi-layered harm suffered while being able to explain that measures are reparations measures.

VII. FINAL OBSERVATIONS

91. The Trust Fund is currently engaged on a daily basis with implementing partners and beneficiaries in Ituri in the context of the *Lubanga* case, the *Katanga* case and for its assistance mandate. This will prove to be beneficial to the preparation of a draft implementation plan. Generally, the resources and length of time required for developing such a document largely vary depending on the reparations ordered and it is in the interests of victims that in-depth field work be effectuated at that time so that reparations can then unfold expeditiously. The Trust Fund can nonetheless indicate that an approximate amount of four to six months – depending on the nature of the reparations awarded – is expected to be necessary in light of, on the one hand, the potential complexity and magnitude of the reparation order, and on the other hand, the fact that, unlike in other cases, the Trust Fund has a good access, circumstances permitting, to the field and to victims in this case.

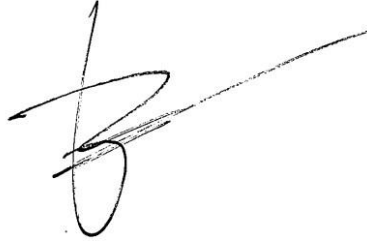
VIII. CONCLUSION

92. The Trust Fund respectfully requests the Trial Chamber to:

- take note of the present observations;
- take note of the 28 February 2020 Observations and all the requests expressed therein, including those relevant to “do no harm principle” and the eligibility screening at the reparation implementation stage;
- Upon issuance of the reparation order, grant access to the Expert Reports⁷⁵ as set out in paragraph 22 above.

⁷⁴ [28 February 2020 Observations](#), para. 108.

⁷⁵ Registry Transmission of Appointed Experts’ Reports, With two Annexes In Confidential *Ex Parte* version, available only to the Registry, [ICC-01/04-02/06-2623](#).



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 18 December 2020
At The Hague, The Netherlands