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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR* v. *DOMINIC ONGWEN*

Public

Trust Fund for Victims' Final Observations on Reparations

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**

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The Uganda Victims Foundation (UVF)

Acholi Religious Leaders Peace Initiative
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The Foundation for Justice and Development
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The United Nations

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REGISTRY

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Section

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I. RELEVANT PROCEDURAL HISTORY

1. On 4 February 2021, Trial Chamber IX ('Trial Chamber') convicted Mr Ongwen on 62¹ counts of war crimes and crimes against humanity.² On 6 May 2021, the Trial Chamber sentenced Mr Ongwen to 25 years of imprisonment.³

2. On 6 May, Trial Chamber IX issued an 'Order for Submissions on Reparations' ('Order')⁴ directing the parties, the Registry, the Trust Fund for Victims ('TFV' or 'Trust Fund'), the Office of the Prosecutor ('Prosecutor'), the Republic of Uganda, and persons or organisations authorised to act as *amicus curiae*, to make submissions on a list of issues identified by the Chamber ('submissions on reparations'), by 6 September 2021;⁵ and (ii) authorised the parties and the TFV to respond to any submissions by 4 October 2021.⁶

3. In the Order, the Trust Fund for Victims was also instructed to respond to any submissions on the specific points referred to in paragraph 5 (i) of the Order and submit any last arguments that they wish the Trial Chamber to consider when rendering the reparations order.

4. On 19 July 2021, the Chamber issued the Decision on requests for extension of time, *inter alia*, extending the time limits for the submissions on reparations until 6 December 2021.⁷

5. On 9 November 2021, the Legal Representatives of Victims ('LRVs') submitted the Victims' Request for an extension of the time limit to submit their observations on reparation proceedings ('LRVs' Request'),⁸ requesting a three-month extension of the time limit for their submissions on reparations.

¹ While the Trial Chamber, in its 6 May 2021 Order for Submissions on Reparations, speaks of 61 counts, the Trial Judgment actually convicted Mr Ongwen on 62 counts.

² Trial Judgment, 4 February 2021 ('Trial Judgment'), [ICC-02/04-01/15-1762-Red.](#)

³ Sentence, 6 May 2021, ('Sentence Decision'), [ICC-02/04-01/15-1819-Red.](#)

⁴ Order for Submissions on Reparations 6 May 2021, ('Order for Submission on Reparations') [ICC-02/04-01/15-1820](#), para. 5.

⁵ [Order for Submissions on Reparations](#), para 5. (i), (ii), (iii).

⁶ [Order for Submissions on Reparations](#), , para. 6.

⁷ Decision on requests for extension of time, 19 July 2021, ('Decision on requests for extension of time') [ICC-02/04-01/15-1865](#).

⁸ Victims' Request for an extension of the time limit to submit their observations on reparation proceedings, 9 November 2021, ('Victims' Request for an Extension of Time'), [ICC-02/04-01/15-1890](#).

6. On 18 November 2021, the Chamber extended the time limit for the LRVs, the Prosecutor, the OPCV, the Defence, and the TFV to respond to the submissions on reparations referred to in paragraph 6 of the Order, until 7 March 2022.

7. On 6 December 2021 the Defence⁹, the Legal Representatives of Victims¹⁰ ('LRV'), the Office of Public Counsel for Victims¹¹ ('CLRv'), the Registry¹², and the Trust Fund for Victims ('Trust Fund' or 'TFV')¹³ filed submissions and observations on a number of issues relevant to reparations proceedings in the *Ongwen* case.

8. On 7 February, the Prosecution,¹⁴ and the Government of the Republic of Uganda¹⁵ filed observations on Reparations.

9. On the same date, the Registry,¹⁶ filed additional observations on the Mapping Exercise and Reparations, and the LRVs submitted further submissions on Reparations.¹⁷

10. *Amici curiae* also made submissions on Reparations pursuant to article 75 of the Statute and Rule 103¹⁸ of the Rules of Procedure and Evidence.¹⁹

⁹ Defence Submissions on Reparations, ('Defence Observations') [ICC-02/04-01/15-1917](#).

¹⁰ Victims' Preliminary Submissions on Reparations, ('LRVs Preliminary Observations'), [ICC-02/04-01/15-1921](#).

¹¹ Common Legal Representatives of Victims' Submissions on Reparations, ('CLRv Observations'), [ICC-02/04-01/15-1923-Red](#).

¹² Registry's Mapping Report and Submission on Reparations, ('Registry's Observations') [ICC-02/04-01/15-1919](#); Registry Report on the Mapping Exercise Annex I, [ICC-02/04-01/15-1919-AnxI](#); Registry Submissions on Reparations in the Ongwen Case Annex II, [ICC-02/04-01/15-1919-AnxII](#).

¹³ Trust Fund for Victims' Observations relevant to Reparations, ('TFV Observations'), [ICC-02/04-01/15-1920](#).

¹⁴ Prosecution's Observations on Reparations, ('Prosecution's Observations'), [ICC-02/04-01/15-1976](#).

¹⁵ The Government of the Republic of Uganda's Submissions on Reparations, ('the GoU Observations'), [ICC-02/04-01/15-1978](#).

¹⁶ Registry's Additional Submissions on the Mapping Exercise and Reparations, ('Registry Additional Observations'), [ICC-02/04-01/15-1975](#).

¹⁷ Victims' Further Submissions on Reparations, ('LRVs Further Observations'), [ICC-02/04-01/15-1977](#).

¹⁸ [Rome Statute](#) of the International Criminal Court, Article 75; [Rules of Procedure and Evidence](#), article 103.

¹⁹ *Amicus Curiae* brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence by Avocats sans Frontières (ASF), Emerging Solutions Africa (ESA), Essex Transitional Justice Network at the University of Essex Global Survivors Fund (GSF), Gulu Women's Economic Development and Globalization (GWED-G), Institute for Peace and Strategic Studies at Gulu University International Federation for Human Rights (FIDH), REDRESS, Watye Ki Gen, Women Advocacy Network ('ASF *et al* Observations'), [ICC-02/04-01/15-1971](#); Submission on *Amicus Curiae* Observations on Reparations by The Populance Foundation International (TPFI) – Civil Society Organizations (CSO), Makmot Kibwanga & Co. Advocated – Legal Consultants, Lango War Claimants' Association (LAWCAS) – Victims' Association, Lango Camp Host Association (LACHA) – Victims' Association, ('TPFI *et al* Observations'), [ICC-02/04-01/15-1973](#); Joint Submission by the United Nations on Reparations pursuant to Rule 103 of the Rules of Procedure and Evidence by the United Nations ('UN Observations'), [ICC-02/04-01/15-1972](#); Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute and rule 103 of the Rules by The Foundation for Justice and Development Initiatives (FJDI) and the War Victims and Children Networking (WVCN) ('FJDI and WVCN Observations'), [ICC-02/04-01/15-1922](#); Public Order for Submission on Reparation by Amuria District Development Agency (ADDA) ('ADDA Observations'), [ICC-02/04-01/15-1980](#); *Amicus Curiae* Observations by the International Center for Transitional Justice and the Uganda Victims Foundation, pursuant to article 75 of the Statute and Rule 103 of the Procedure and Evidence ('ICTJ and UVF Observations'), [ICC-02/04-01/15-1974](#);

11. The TFFV hereby submit its response to the parties, the Registry, the Prosecutor, the Republic of Uganda, and persons or organisations authorised to act as *amicus curiae* submissions on reparations pursuant to the Order (‘TFFV Final Observations’).

II. FINAL OBSERVATIONS

12. The Trust Fund hereby provides its final observations on reparations as well as on the various submissions and observations filed before the Trial Chamber in these reparation proceedings. The Trust Fund recalls that it is not a party to the reparation proceedings and has an advisory role in the present stage of the proceedings, in particular in relation to the modalities of reparations and costs arising in relation to the implementation of a reparation programme.²⁰ The Trust Fund will not focus on all legal issues, such as whether Mr Ongwen is to be considered a victim,²¹ the scope of indirect victims,²² or the request for suspension,²³ matters addressed already e.g. comprehensively by the OTP submission.²⁴ As the body that will likely have to implement the order for reparations with its own resources, it will, however, focus in these observations on issues relevant to the design and implementation of the reparations following the Trial Chamber’s order for reparations, such as victim expectations and the uncertainties relevant to this case.

1. Expectation management, outreach and timeline

13. To start with, the Trust Fund notes that it arises from the submissions and observations that many different interactions with victims and victim communities took place over the past year in relation to the reparation proceedings, including by *amici curiae* and VPRS in their relevant capacities. In the appreciation of the Trust Fund, such interactions were instrumental to develop informed views, have also raised victims’ knowledge and awareness about the reparations proceedings, and may have inspired victims’ expectations about possible forthcoming awards. In this context, and given the close engagement of a range of organisations

Submissions on *Amicus Curiae* Observations on Legal Questions Presented in Order No ICC-02/04-01/15-1820 on Reparations by the Uganda Association of Women Lawyers (FIDA Uganda) (‘FIDA Uganda Observations’), [ICC-02/04-01/15-1947](#); Submissions of *Amicus Curiae* Observations by Acholi Religious Leaders Peace Initiative (‘ARLPI Observations’), [ICC-02/04-01/15-1925](#).

²⁰ *Prosecutor v. Ntaganda*, Trust Fund for Victims’ observations relevant to reparations, 28 February 2020, ICC-01/04-02/06-2476, paras 12, 13.

²¹ [Defence Observations](#), paras 31-36.

²² [Defence Observations](#), paras 41-43.

²³ [Defence Observations](#), paras 19-21.

²⁴ [Prosecution’s Observations](#), e.g. paras 27, 29; also making reference to [Statement](#) of the ICC Prosecutor, Fatou Bensouda, at the opening of trial in the case against Dominic Ongwen stating that “having suffered victimisation in the past is not a justification, nor an excuse to victimise others”.

and civil society in the reparation proceedings, the Trust Fund respectfully makes the following suggestions:

14. First, the Trust Fund notes that the impending Appeals Chamber judgment against the conviction may possibly have an impact on the order for reparations. It may e.g. affect the Trial Chamber's determination of the liability amount or of certain categories of harm suffered by victims if the material scope of the crimes was more limited. Accordingly, to avoid raising undue expectations of victims,²⁵ the Trial Chamber may wish to consider whether to issue the order for reparations, as a matter of best practice, only upon a final conviction.²⁶

15. Second, the TFCV respectfully suggests that the following aspects should feature prominently in the essential²⁷ outreach process about the order for reparations, and will liaise to this end with the Registry,²⁸ that has the primary responsibility to carry out outreach in relation to a court order:

16. If parties appeal the order for reparations, it will need to be clearly underlined that this is not yet the final order and that it may therefore be subject to change (including the amount of liability).²⁹

17. Emphasis would need to be laid on the fact that the liability amount is directed against the convicted person and at his financial situation. It will need to be underlined that the TFCV would aim at complementing the amount of liability, as it has accomplished or is aiming at in the other reparation cases. However, the TFCV as such is not the addressee of the order for reparations and does not, accordingly, have the obligation to make these resources available to the full amount of liability; nor should its role or responsibility be depicted in this way.

18. The message to victims, communities and civil society should be that the Trust Fund will, as part of the development of the DIP, consult with part of the many victims and with the victim communities associated with the case, in particular in the areas with the highest victim

²⁵ See [Prosecution's Observations](#), paras 3-7, which relate to the request of the Defence to stay the proceedings, see [Defence Observations](#), paras 19-21.

²⁶ Uncertainty will be added thereafter by appeals against the order for reparations; however, this uncertainty can be managed by the Trust Fund, see *Prosecutor v. Ntaganda*, Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence ('TFCV Observations on Defence Request for Suspensive Effect') [ICC-01/04-02/06-2679](#) para 29; and ideally by letting the process of development of the DIP run in parallel to such appeal proceedings (see para. 21 below).

²⁷ See also [ASF et al Observations](#), para 24.

²⁸ The TFCV wishes to underline in this context the excellent cooperation it enjoys with the Registry, including in terms of outreach.

²⁹ The Trust Fund recalls in this context its filing in [TFCV Observations on Defence Request for Suspensive Effect](#).

population, i.e. in the area of the IDP camps that were attacked and where many of the victims, including Former Child Soldiers and SGBV Victims, reside.³⁰ Given the expected high number of victims,³¹ the Trust Fund will not be in a position to consult with all victims and affected communities before the DIP is submitted to the Trial Chamber. Programme implementation may, at least in part, however, focus on building ownership of the reparation programme with victims and affected communities, with a view to strengthening the victims' agency and involve them in the creation of, in particular, the socio-economic measures within each community.³² The details of such a participatory programme development process informed by a harm based, victim centred, and victim empowering approach,³³ and in how far it can be applied during the implementation of the reparations, will be developed in the draft implementation plan.

19. Another essential message relates to the scope of the reparations and the timing of the start of the implementation. It needs to be reiterated that the Trust Fund, working promptly and efficiently in line with the process foreseen in the Regulations of the Trust Fund, will first need to develop a realistic (based on a forecast of available resources) implementation plan for approval of the Trial Chamber. Thereafter, implementing partners will need to be selected and contracted. Only then will the identification and verification process will be carried out in full³⁴ and can the implementation of reparation measures start.

20. As background information: the Trust Fund, in developing the DIP carries out the following steps:

- a. In-depth consideration and assessment of all aspects of the order for reparations;

³⁰ See e.g. [LRVs Further Observations](#), para. 10.

³¹ See [Registry Report on the Mapping Exercise](#), para 31 counting at total of 50,300 direct Victims of the Attacks on the Four Camps at the time of the attack and about (subject to further assessments) 10,250 Former Child Soldiers and SGBV Victims, part of them probably overlapping with the Victims of the Attacks on the Four Camps.

³² See also [UN Observations](#), para 25, 27, 41-42, 44 stressing the need for agency; see also [ADF et al Observations](#) paras 30-32.

³³ Ibid; [TFV Observations](#), para 22, 41, 78, 107; *The Prosecutor v Ahmad Al Faqi Al Mahdi* Lesser Public Redacted Version of "Updated Implementation Plan" submitted on 2 November 2018 ICC-01/12-01/15-291-Conf-Exp, [ICC-01/12-01/15-291-Red3](#), para 162; *The Prosecutor v Ntaganda*, Trust Fund for Victims' Observations Relevant to Reparations, [ICC-01/04-02/06-2476](#), para 34-36; see also [TFV Strategic Plan](#) 2020-2021, 7.

³⁴ See also *The Prosecutor v Bosco Ntaganda*, Trust Fund for Victims' submission of Draft Implementation Plan, [ICC-01/04-02/06-2732](#); Public redacted version of the Annex A to "Trust Fund for Victims 'submission of Draft Implementation Plan" ICC-01/04-02/06-2732, dated 17 December 2021, ('Ntaganda DIP'), [ICC-01/04-02/06-2732-AnxA-Red](#), paras 232, 315.

- b. Consultations with victims, victim communities, and civil society (if possible together with Legal Representatives) and consultations with the Ugandan government and international and non-governmental organisations in Uganda;
- c. Design of a programme based logical framework for the implementation plan and related cost assessment;
- d. Submission of the outline of the implementation plan to the Board of Directors for their review and guidance;
- e. If parties are willing, direct consultation of the outline with the parties (in writing) to inform the Board of Directors appropriately before their approval;
- f. Finalisation of draft and submission to the Board of Directors for approval;
- g. Further amendment in line with Board of Director's guidance and submission to the Trial Chamber for approval.

21. In case the order for reparations is appealed, the Trust Fund considers that, for efficiency and resource-related reasons, steps e. and f. as set out in the above list should only take place once the order for reparations has become final on appeal. However, all preparatory steps can be taken in the meantime, without requiring suspension of the proceedings. In case the parties do not appeal the order for reparations, the Trust Fund considers that developing a DIP in line with the process set out above takes between nine months to one year, in particular if step e. referred to above could be included in the process with a view to expedite the proceedings overall,³⁵ similar to the consultations held in the second half of 2021 in the *Ntaganda* case in respect of the eligibility process.³⁶

22. Following the approval of the Trial Chamber, the Trust Fund will require another eight months to one year to secure the services of implementing partners.³⁷ Thereafter, a multi-annual implementation process will commence, in the course of which the Trust Fund will reach out to the victims, determine whether they are beneficiaries falling under the relevant programme, enable victims' and communities' involvement, and provide incrementally reparations to the beneficiaries.

³⁵ The procedural histories and time elapsed between the first DIP and the final decision of the Trial Chamber on the DIP and the relevant submissions of the parties in e.g. *Al Mahdi* and *Ntaganda* are of relevance here. In *Lubanga* and *Katanga*, approval of proposed measures needed to be sought throughout the implementation process.

³⁶ [Ntaganda DIP](#), paras 259, 260, 298.

³⁷ [Ntaganda DIP](#), para. 231.

23. In sum, the Trust Fund underlines the need to conduct outreach starting without delay after the order for reparations is issued in order to establish clearly the parameters of the process that will ensue after the order for reparations has been issued and manage the expectations of victims.

2. Uncertainties and their influence on the DIP

24. In order to ensure that the draft implementation plan possesses a realistic scope and form, the Trust Fund respectfully submits that it is necessary to that the order for reparations is shaped in a way that provides the Trust Fund with sufficient flexibility to design the reparations in a victim-centred and community-based manner, and to account for a number of variables that cannot be comprehensively addressed now or, foreseeably, at the time of drafting the DIP.

25. The first variable, given the likely finding of indigence of Mr Ongwen,³⁸ is the amount of funds that the Trust Fund will have available to complementing the payment of the award against Mr Ongwen.³⁹ Given the annual revenue of the Trust Fund of around EUR 2.6 to 3 million over recent years and the pending or impending needs of assistance programmes and, in particular, the other reparation cases (the case of *Lubanga/Ntaganda*, with an open complement of about EUR 18 million, as well as future reparation cases in Darfur/Sudan and the Central African Republic), the Trust Fund cannot but currently plan with very limited yearly amounts. If the liability amounts in reparations cases keep increasing in line with the tendency and similar considerations as in *Katanga/Lubanga* and *Ntaganda*, the Trust Fund is likely to find itself in a position to not be able to fully complement the liability amount from voluntary contributions, including contributions earmarked to this case. This circumstance is informing the Trust Fund's observations of programme cost, further below. More so, the entire region of Northern Uganda, beyond the boundaries of this case, also has development needs, given the prevailing poverty⁴⁰ and the urgency to enact development initiatives.⁴¹ As expressed elsewhere,⁴² in the eyes of the Ugandans and the international actors, the order for reparations would need to be proportionate to the reparations that may ultimately be available to other victims of the conflict with the LRA. Conversely, the order for reparations will certainly be of

³⁸ [Defence Observations](#), para 60.

³⁹ Trust Fund for Victims [Regulations](#), para 56.

⁴⁰ UNDP, Assessment of [Development Results Evaluation of UNDP Contribution Uganda](#) ('Development Results Evaluation of UNDP Contribution Uganda'), page 43- 44; The World Bank, '[Uganda Poverty Assessment 2016: Fact Sheet 2016](#) ('Uganda Poverty Assessment 2016'); [CLRV Observations](#), para 111.

⁴¹ [Development Results Evaluation of UNDP Contribution Uganda](#), page 76.

⁴² ASF *et al.*, para. 15.

informative value to any future Ugandan reparation initiative, be it as a consequence of court cases, or government reparation programme.⁴³

26. Keeping such considerations in mind, the Trust Fund would welcome if the parameters set by the Trial Chamber in the order for reparations provide for sufficient flexibility to allow the Trust Fund to implement the reparations in accordance with its finances. In this context, the Trust Fund notes that in the *Ntaganda* Reparations Order, the relevant Trial Chamber did not itself award cash money to victims in any form, including amounts of symbolic financial payments etc., or determined conclusively restitution or compensation to be awarded to all or a part of the victims. Such an approach is also in line with a process that intends to involve the victims and their communities to the degree possible.⁴⁴

27. The second variable refers to the final number of beneficiaries, which remains unknown, even though the VPRS has been in a position to provide general estimates.⁴⁵ The Trust Fund notes with appreciation these estimates, in particular as to the number of persons in the camps at the time of the attacks.⁴⁶ Also, it notes that the LRVs continue to engage in a more concrete estimate in that respect.⁴⁷ In addition, the TFV notes the VPRS estimate for the Former Child Soldiers and SGBV Victims, their potential and partly overlap with Victims of the Attacks on the Four Camps, the facts that they were exchanged between the different LRA armies, and the problems arising in making precise determinations in this respect.⁴⁸

28. The Trust Fund considers that a number of Former Child Soldiers and SGBV Victims may also be Victims of the Attacks on Four Camps as they were abducted during the attacks.⁴⁹ In addition, the majority of the Victims of the Attacks on Four Camps still live in the relevant area surrounding the former IDP camps.⁵⁰ While, the Trust Fund does not intend to limit its activities to the areas surrounding the four camps,⁵¹ the Trust Fund proposes to start reparation activities in the communities of these four areas. This should allow the Trust Fund to

⁴³ ASF *et al.*, para. 15.

⁴⁴ See also [Ntaganda Reparations Order](#), para 45-47.

⁴⁵ See [Registry Report on the Mapping Exercise](#), para 31 and counting at total of 50,300 direct Victims of the Attacks on the Four Camps at the time of the attack and about (subject to further assessments) 10,250 Former Child Soldiers and SGBV Victims, part of them probably overlapping with the Victims of the Attacks on the Four Camps.

⁴⁶ [Registry Report on the Mapping Exercise](#), Para 33, 34, 36, 37, 39, 40, 43, 44.

⁴⁷ [LRVs Further Observations](#), paras 9-11.

⁴⁸ [Registry Report on the Mapping Exercise](#), paras 49-56.

⁴⁹ [Prosecution's Observations](#), para 11; See e.g. [Trial Judgment](#), paras 129, 171-172, 222-225, 2310- 2402, 2415, 2352-2365; [Sentence](#) paras 359, 384; [Registry Report on the Mapping Exercise](#), para 44.

⁵⁰ [LRVs Further Observations](#) para 10.

⁵¹ See e.g. [TPFI et al Observations](#), para 25.

incrementally reach out to the SGBV Victims and Child Soldiers, who may be difficult to reach for various reasons and not coming forward through outreach activities.⁵² Rather, they may ultimately be reached through the SGBV Victims and Child Soldiers, who will already take part in the programme and through engagements with relevant victim associations. The same will apply to Victims of the Attacks on Four Camps, who may have left the area.⁵³

29. The Trust Fund notes that the estimates provided by VPRS⁵⁴ relate to the number of direct victims, i.e. those who were subjected to the attacks, were child soldiers, or were subjected to SGBV or born out of SGBV. It is the TFV's understanding that the estimate may also include those categories of indirect victims as arising from the *Lubanga* Appeal Judgment, i.e. indirect victims who lost a family member in the attack or as a child soldier, or those who e.g. witnessed the crimes or intervened.

30. The Trust Fund notes the many different submissions in relation to transgenerational harm and the repercussions of the crimes on the generations who were born after the crimes and on the communities in which the victims live today.⁵⁵ The number of indirect victims falling within the scope of such harm will be very high. The Trust Fund submits that the goals underlying those submissions, i.e. a holistic approach, ensuring community involvement, focussing on children and their well-being as well as on education, can best be achieved by the concept expressed in the Statute of "victims and their families"⁵⁶ and in particular through the design and implementation of the collective reparation awards. In that respect, the Trust Fund recalls that the long-term goal of rehabilitation measures is to ensure that the victims are in such a physical and psychological state that they are able to contribute again to the income and well-being of their families, overcome the harm they suffered, regain their life plan, overcome stigma, and become an accepted member of their communities.⁵⁷ Achieving these goals depends on many factors, but essential and, in the context of Northern Uganda as expressed in many submissions, welcome,⁵⁸ are factors such as (a) the community involvement in the identification of beneficiaries and the design of socio-economic rehabilitation and symbolic

⁵² See [UN Observations](#), para 30, 33.

⁵³ See also the concerns expressed by [ASF et al Observations](#), para 28 and 39; [UN Observations](#), para 29-30; [TPFI et al Observations](#) para 23 and 35; [FJDI and WVCN Observations para. 22](#).

⁵⁴ [Registry Report on the Mapping Exercise](#), para 30.

⁵⁵ See [ASF et al Observations](#) paras 47-48; [ICTJ and UVF Observations](#) paras 37, 60; see also rule 85(b) on the status. [ASF et al Observations](#) paras 47-48; [ICTJ and UVF Observations](#) paras 37, 60; see also rule 85(b) on the status.

⁵⁶ [TFV Observations on Reparations](#), para 14.

⁵⁷ [Ntaganda DIP](#), page 110-114; paras 127-128; [TFV Observations on Reparations](#), 28-29, 77.

⁵⁸ See e.g. [The GoU Observations](#), para 25.

and satisfaction measures, (b) involvement of victims, by strengthening their agency⁵⁹ and, allowing them to participate, in particular, in the design of the above-mentioned measures.⁶⁰

31. Such an approach makes the community and victim involvement another variable in the design and implementation of reparations, which will need to be taken into account in the DIP. It facilitates the sustainability and acceptance of the reparations awards, thereby ultimately aiming for a transformative⁶¹ effect of the reparations. The Trust Fund notes that initiating and conducting participatory processes of such character, thereby ensuring gender mainstreaming,⁶² are activities of reparative value and to be considered an integral part of the implementation plan's core programme activities.⁶³

32. Another variable in the planning of the implementation is that it is currently (and also foreseeably at the time of the DIP) unknown, how many victims will require relatively expensive individualised physical and psychological support. It can be assumed that to the first category belong those with physical injuries as a consequence of the attacks, a rather high number of the SGBV Victims, including with HIV and other similar illnesses, and a part of the Former Child Soldiers. Accordingly, the Trust Fund will have to cater for such uncertainties as well.

33. In sum, it is imperative that the order for reparations as well as the DIP will allow sufficient room for adaptation to cater for uncertainties in this case: a) the unknown total amount of available funds, b) the unknown number of beneficiaries and what their individual requirements are, c) the goal to directly involve, for the socio-economic measures, symbolic and satisfaction measures, victims and communities not only in the design phase of the implementation plan, but also during implementation.

34. As a final point and given this section addressed the current uncertainty in the number of victims, the Trust Fund refers to the Government of Uganda observations, proposing to expand the scope of beneficiaries, not only to the victims of the crimes for which Mr Ongwen was convicted, but to include to "all other" LRA victims.⁶⁴ Evidently, addressing all the victims

⁵⁹ [ASF et al. Observations](#), paras 20-21 and 31-32.

⁶⁰ [ASF et al. Observations](#), paras 20 and 22 and 32.

⁶¹ [ASF et al. Observations](#), paras 21 and 31; [The GoU Observations](#), paras 29; [ICTJ and UVF Observations](#), para 57-58.

⁶² See [UN Observations](#), para 33. See also Office of the United Nations High Commissioner for Human Rights, Analytical study focusing on gender-based and sexual violence in relation to transitional justice of 30 June 2014, [A/HRC/27/21](#) ('OHCHR Analytical Study') paras 11, 47; The gender perspective in transitional justice processes Note by the Secretary-General [A/75/174](#) ('Gender Perspective in Transitional Justice Processes') para 14-15.

⁶³ See also below para.

⁶⁴ [The GoU Observations](#), paras 11-13.

and the harm suffered by them during the conflict would not only expand the scope of victims beyond the ICC's jurisdictional boundaries (1 July 2002 as the starting date), but also exceed the scope of personal responsibility of Mr Ongwen, keeping in mind that the order is directed against him. In addition, the Government itself is the primary addressee of Principle 9 of the Basic Principles referenced in the Government's submission. This principle has informed the TFV's assistance programme conducted since 2008 with more than 60,000 beneficiaries, who were victims of the conflict as it took place after 1 July 2002.

3. Modalities of reparations

35. The Trust Fund recalls its observations relevant to the types and modalities of reparations, suggesting a collective award⁶⁵ with rehabilitation, symbolic, and satisfaction measures as the modalities most appropriately addressing the harm still suffered today by the various categories of victims. In respect of its observations, the Trust Fund underlines that its role should not be confused with that of a party and that it stated clearly that the parties are leading on this.

36. The assumptions of the Trust Fund, on which its observations in relation to compensation and restitution were based, seem to have been confirmed by the submissions of the legal representatives.⁶⁶ The CLRV and LRV Observations show that the measures requested are of a future-oriented nature, not focusing on re-instating a situation that existed at the time the victims were in the camps or before they were abducted.⁶⁷ The main point expressed that may be a restitution-related request is the one referring to the building of a home or the buying of land.⁶⁸ The Trust Fund notes that it arises already from the LRV Observations that victims refer to the houses they lost *before* moving in the IDP camp, i.e. these losses likely fall outside the scope of order for reparations in terms of restitution.

37. In the submissions of the legal representatives, victims appear to ask primarily for financial rewards, in particular to compensate for the loss of property during the attacks. However, in that respect, too, the TFV's assumption that awarding such compensation is difficult, "given the high number of victims and the lapse of time, to assess the loss each

⁶⁵ Contrary to suggestion in [Prosecution's Observations](#), para. 38, the Trust Fund did not propose individual reparation awards but only collective reparation awards, see [TFV Observations](#), paras 108-110.

⁶⁶ See [TFV Observations](#), para 97.

⁶⁷ [CLRV Observations](#), para. 72.

⁶⁸ [CLRV Observations](#), para. 72, [LRVs Further Observations](#), para 26.

individual suffered in economic terms”⁶⁹ has been confirmed by the LRV Further Submissions, setting out e.g. that their victims request monetary compensations of different amounts, depending on their individual situation.⁷⁰ Given the totality of the victims, these amounts may even further differ. Cash money as a form of monetary compensation would require therefore a full individual assessment of the harm suffered, the value of the harm at the time of injury.⁷¹ Cash money, however, could (but not necessarily) also be part of a socio-economic rehabilitation measure or of a symbolic financial contribution for specific harm suffered. The TFFV notes in this context that a lump sum as symbolic financial compensation for all victims has been proposed also e.g. by the LRV Further Submissions, which would require a high financial commitment.⁷²

38. The TFFV notes that the parties and *amici* refer to the *Katanga* case.⁷³ Indeed, in the context of the collective reparation award, the different kinds of harm suffered by the victims were weighed in a monetary sense and in close cooperation with the relevant legal representative and the victims, who accepted this approach. Based thereon, a monetary value was linked to the various identified reparation measures, which victims could access based on a typology of the harm they suffered. This individualised approach within a collective reparation award was possible given the limited and finite number of identified victims, i.e. a total of 297 victims. This approach was and still is, even at the current last phase of implementation, highly resource, and time intensive. In the view of the Trust Fund, it would be hard to replicate this approach in the *Ongwen* case.

39. Essential to such an approach, also when applying a group-based approach, is the acceptance of the victims to allow to differentiate between them according to their harm, which is particularly relevant to socio-economic forms of rehabilitation. In that regard, the TFFV will explore, in developing the DIP, what the role of the victims themselves and their communities can play in developing the socio-economic rehabilitation measures in each community/area. As set out above, involvement of beneficiaries in the process of implementation and decisions related thereto will increase the acceptance of the reparation measures, including as to the measures, which are relevant to the community, their distribution and priority among beneficiaries. Such an approach makes the socio-economic measures really of a collective

⁶⁹ [TFV Observations](#), para. 97.

⁷⁰ [LRVs Further Observations](#), para 23(v).

⁷¹ See also [CLRv Observations](#), para. 91

⁷² [LRVs Preliminary Observations](#), 63.

⁷³ See e.g. [CLRv Observations, paras](#) 70, 115, 118.

character. Evidently, a community and victim driven approach needs to respect gender, age, and child sensitive perspectives.⁷⁴

40. Satisfaction and symbolic measures should be designed in similar processes. The Trust Fund notes the many proposals for such measures already included in the observations before the Trial Chamber.⁷⁵

41. The Trust Fund is currently implementing a community-based, gender mainstreamed, and agency-sensitive approach in the collective reparations in *Al Mahdi*,⁷⁶ which includes e.g. a community-based market study for the collective economic award, and the creation of gender inclusive committees to accompany the memorialization process in Timbuktu.

42. Different from these collective approaches, physical and psychological needs require individualised care, even if treatment for particular conditions may be provided in group sessions or family sessions or through psycho-social care. They form the heart of the individualised component of the collective reparation awards. Addressing such individual needs is the basis to the success of a rehabilitation programme as a whole. The harm suffered by beneficiaries is addressed on a needs-basis only⁷⁷ and at the costs arising for the required treatment. Vulnerability of the victims and seriousness of the harm as well as any directions for prioritisation provided by the Chamber may assist to determine whom to prioritise in the treatment of physical and psychological harm, should such prioritization be required at all.⁷⁸

43. The Trust Fund welcomes the Government of Uganda Observations, in particular in their support of the modalities of reparations and their call for symbolic measures, given that the latter's implementation in particular may require the involvement of the Government. The Trust Fund met with Uganda's Attorney General during the ASP20,⁷⁹ who confirmed the strong support of the Government to the reparation implementation, as evident from the Observations as well.

⁷⁴ See [UN Observations](#), paras 26, 27; [ASF et al Observations](#), paras 20-32; [LRVs Preliminary Observations](#), para 22.

⁷⁵ E.g. [ARLPI Observations](#), proposing 12 symbolic reparation measures;

⁷⁶ See *the Prosecutor v Ahmad Al Faqi Al Mahdi* 'Public redacted version of "Twenty-third update [report](#) on the updated implementation plan", submitted on 25 February 2022' ('*Al Mahdi* Update Report') para 35, 41, ; See also Trust Fund for Victims [Management Brief Q3/2021](#) ('TFV Management Brief Q3/2021') 12, 26; See also Trust Fund for Victims [Management Brief Q4/2021](#) ('TFV Management Brief Q4/2021'), p.13.

⁷⁷ See [ASF et al Observations](#), para. 69

⁷⁸ See also [Registry Submissions on Reparations in the Ongwen Case Annex II](#), para. 23, doubting whether prioritization may be necessary.

⁷⁹ [Management Brief Q4/2021](#), pp. 5, 10.

44. A number of *amici curiae* propose that the reparations should focus on the building and maintenance of infrastructure⁸⁰ including schools⁸¹, on improving health services, including mental health and psychosocial support services, including by requiring collective reparations to allow for free and long-term services.⁸² Some *amici* request to take specific measures to improve e.g. the environment or support environmentally-active associations⁸³ and similar measures. The Trust Fund considers that most of these measures fall within the responsibility of the Government of Uganda and in fact relate to the enabling environment for Court ordered reparations as implemented by the Trust Fund to have most meaningful effect.⁸⁴ Taking such measures would not constitute reparations awards *per se*, as a measure ordered against the convicted person in this case. In practical terms, given the long-term commitment necessary to run and staff schools and hospitals, the Trust Fund would not be in a position to do so. In the view of the Trust Fund, these submissions rather point out the importance of adequate infrastructure that would allow the victims to have access to the required health care and education facilities. The CLRV Submissions and UN Observations strongly confirm such lack of infrastructure.⁸⁵

45. The Trust Fund is indeed aware that its future implementing partners will e.g. need to employ psychologists, counsellors, and other specialists necessary to enable the provision of specific mental health and psychosocial services, as warranted by the reparations order, due to the lack of available psychologists and other specialists in the area. For them to address effectively the psychological harm of this large victim community will take time. Similarly, the Trust Fund will need to ensure that victims get the health care required for them without assuming responsibility to build or manage hospitals. The Trust Fund welcomes the advocacy expressed by the many different *amici curiae* and reiterates that their advocacy with the Government and organisations that provide development assistance to improve the infrastructure, the education, and the environment in Northern Uganda remain essential and will certainly facilitate the implementation of the reparation programme over time.

⁸⁰ [ADDA Observations](#), page 7; [ICTJ and UVF Observations](#), para 61, 76; [FJDI and WVCN Observations](#), para 21 (b) (i); [CLR V Observations](#), para 74; [The GoU Observations](#), para 14.

⁸¹ [ADDA Observations](#), page 7; [ICTJ and UVF Observations](#), para 61, 76; [FJDI and WVCN Observations](#), para 21 (b) (i); [CLR V Observations](#), para 74; [The GoU Observations](#), para 14.

⁸² [UN Observations](#), paras 36-39, 49.

⁸³ [TPFI et al Observations](#), para 41;

⁸⁴ See also [UN Observations](#), para. 49; see also [Registry Submissions on Reparations in the Ongwen Case Annex II](#) para. 56 setting out that the support of the Government is necessary for identity documents, land-related matters, to promote inclusion and sustainability and to adopt comprehensive reparations legislation.

⁸⁵ See e.g. [CLR V Observations](#), paras 75, 106, 111, 120; [Annex 2](#).

46. In this context, it is of interest that the Government of Uganda Observations referred to the Netherlands based organisation “Interplast” that has provided orthopaedic equipment and constructed a prosthetic limb making factory in Gulu. The Trust Fund would like to point out that the Gulu Regional Orthopaedic Workshop (GROW), in the regional referral hospital in Gulu, and with generous support of the Italian government, was built by AVSI Foundation. Since 2008, the Trust Fund has partnered with AVSI to manufacture prosthetic limbs and orthopaedic appliances for victims of the conflict in Northern Uganda. Therefore, no other funding sources, other than the Trust Fund, has financed over the past ten years the acquisition of materials and the manufacture of prosthetic limbs and orthopaedic appliances.

47. In relation to this, the Trust Fund observes that between 2008-2011, the Trust Fund employed the services of *Stichting Interplast Holland* to conduct reconstructive plastic surgery for victims of the conflict in Northern Uganda. Interplast was selected by the Trust Fund for project partnership following a rigorous proposal evaluation and selection process as is applicable to all the Trust Fund’s partner engagements. Interplast were issued grant agreements from the Trust Fund for nearly four years of rehabilitative surgical activities conducted in partnership with other Trust Fund implementing partners that performed victim patient mobilisation efforts in the communities.

48. In the context of the above, the Trust Fund considers it apt to refer to the submissions of the LRVs and CLRV in relation to the participation of their clients in the assistance programme,⁸⁶ which have been conducted since 2008, i.e. soon after the end of the conflict and many years before Mr Ongwen’s trial started.

49. The Trust Fund concurs with the LRVs that in any case participation of future beneficiaries of the reparation programme in the TFFV assistance programme will not pose a hindrance to their recognition as beneficiaries.⁸⁷

50. The Trust Fund provided assistance to more than 60,000 beneficiaries,⁸⁸ many of them receiving rehabilitative surgery, prostheses, and orthopaedic devices and others e.g. psycho-social support, support in the establishment of small loan/credit associations and in income-generating activities. These activities took place throughout Northern Uganda, including in the areas of the former IDP camps. Accordingly, even though the beneficiaries of projects of the

⁸⁶ [LRVs Preliminary Observations](#), para. 75; [CLRV Observations](#), para. 114.

⁸⁷ [LRVs Preliminary Observations](#), para. 75.

⁸⁸ See [CLRV Observations](#), para. 109, 110 referring to very high numbers of beneficiaries, a fact that may arise from the fact that many beneficiaries received various treatments and that the numbers may also include beneficiaries of education and peace programmes.

assistance programme may not have been aware that they received these measures as part of such a programme by the TFV, a number of them may have participated in these projects as conducted by the Trust Fund's implementing partners. As a consequence, a number of them may have received necessary medical treatment, which the TFV will not anymore provide as part of the reparation programme, except if additional treatment is necessary.

51. The Trust Fund has, in addition, regularly provided information to the LRVs and CLRVR as to the assistance programme, the partners and the projects. While the Trust Fund did not conduct these projects specifically for the victims participating in the *Ongwen* case, but rather needed to avoid any prejudicial effects to the *Ongwen* proceedings, the Trust Fund's partners acted solely on the selection criteria provided by the Trust Fund. These referred to whether the victims suffered criminal harm during the conflict and after 1 July 2002. The Trust Fund recalls that the legal representatives were invited to / present at the launch of the current assistance programme cycle after 4 April 2019. Furthermore, data about the assistance programme was shared on multiple occasions with the LRV's and CLRVR, the last time being at a meeting held on 7 May 2021.

4. Victims identification and verification

52. As to the process of identification and verification, the Trust Fund recalls that this process, and in particular the two distinct parts, identification and verification, have been addressed in the case *Ntaganda* and that the outcome of this process should equally apply to this case.⁸⁹ In respect of the verification process, the Trust Fund and the Registry are currently engaging in a process of addressing together the human resources necessary for such a task and the costs involved.

53. The Trust Fund notes with appreciation the UN Observations and looks forward to working together and consulting with the various UN organisations active in Uganda in the identification and collection of information about beneficiaries. The Trust Fund concurs with many of the observations, in particular those underlining the need for flexible timeframes for registration of victims⁹⁰ and the need to avoid processes that force persons to self-identify.⁹¹ The Trust Fund also notes the proposal of VPRS to carry out an identification process over the

⁸⁹ This does not exclude the possibility to further improve the process.

⁹⁰ [UN Observations](#), para. 30.

⁹¹ [UN Observations](#), para. 34.

next 1.5 to two years with four teams of 15 contractors each in the field.⁹² It also takes note of the proposals to include victim associations and/or communities in the process of identification and will carry out consultations in developing the DIP in respect thereof.⁹³

54. The Trust Fund notes the observations that propose to include national mechanisms for verification or the need to involve the Defence e.g. for any new allegation of harm.⁹⁴ Given the necessary link to the crimes committed by Mr Ongwen, as determined in a final conviction and set out in the order for reparations, the Trust Fund observes that involving national mechanism and processes may not be required. Rather, an administrative eligibility process under the responsibility of the Trust Fund would suffice for these determinations.

55. The Trust Fund agrees with the CLRV that participating victims should not have to fill in new application forms.⁹⁵ The TFV considers that application forms may not be necessary, while additional information may be required as part of the verification process. The TFV notes in this context the VPRS' assessment that identification and verification may be simplified for the Victims of the Attacks on Four Camps because often whole families were concerned.⁹⁶

56. With respect to the CLRV's proposal that the Trial Chamber should remain seized of any controversial matters related to the identification and recognition of potential beneficiaries,⁹⁷ the Trust Fund recalls that it has suggested in the *Ntaganda* DIP that any issue that requires the Trial Chamber's guidance will be brought before the Trial Chamber pursuant to regulation 57 of the Regulations of the Trust Fund.⁹⁸

5. Urgent needs of victims

57. The Trust Fund takes note that the CLRV and LRVs wish to indicate their priority victims for their urgent needs to be addressed by the Trust Fund as part of an initial draft

⁹² [Registry Submissions on Reparations in the Ongwen Case Annex II](#), footnote 30; the TFV recalls that the parameters set out in the *Ntaganda* DIP, are built on the assumption that neither VPRS nor TFV have the necessary staff to carry out the identification by themselves and that such a task cannot be carried out by interlocutors in the field. In addition, it is essential that the verification body can request additional information should uncertainties still exist and additional questions arise. Accordingly, the identification process must be designed in a way that sustains such processes over the lifetime of the reparation programme (see also VPRS Report, Annex II, para. 21), thereby ensuring a short time frame between the identification of new beneficiaries, their verification and the provision of reparations

⁹³ See also *Ntaganda* DIP, paras. 55-62 and 295-230; [Registry Submissions on Reparations in the Ongwen Case Annex II](#), para. 21.

⁹⁴ [Defence Observations](#), para 30.

⁹⁵ [CLRV Observations](#), paras 30, 31.

⁹⁶ [Registry Submissions on Reparations in the Ongwen Case Annex II](#), para

⁹⁷ [CLRV Observations](#), para. 35.

⁹⁸ *Ntaganda* DIP, para. 41 and 323.

implementation plan.⁹⁹ In the TFFV Observations, the TFFV has indicated that such a programme may not be beneficial at this stage; in any case it could not be developed as a community-based approach. The focus of the TFFV must lie on the expeditious development of the DIP and on holding consultations for that purpose within Uganda, without having to divert its human resources to an IDIP process.¹⁰⁰

6. Government programme

58. The Trust Fund emphasise the Government of Uganda's Observation where they indicate that they lack "a victims 'programme through which reparations can be paid, so no formal reparations have been awarded to the victims of the LRA war."¹⁰¹ Hence, there has not been any judicial reparations or a system to administer judicial or administrative reparations for victims of the conflict between the LRA and the Government of Uganda.¹⁰² The Ugandan government is correct in stating that it has established a variety of national development and recovery programs. Many of Uganda's national development programs are not restricted to the conflict-torn region of greater Northern Uganda. The distinction of reparations from development was emphasised in a recent report wherein "a Ugandan observer commented that victims themselves did not see any reparative value in measures like this" when referring to a bridge construction project.¹⁰³

59. The Trust Fund welcomes the Government's insight that there is a need to provide reparations outside of the *Ongwen* reparation programme to avoid controversies within the population. The Trust Fund considers that this risk of creating controversies may, on the one hand, be addressed by a community-based approach to socio-economic reparations and the inclusion of communities in the creation of symbolic reparations and satisfaction measures as well. On the other hand, the Government is best suited to alleviate such controversies.

60. In this context, the Trust Fund wishes to raise several points. Firstly, reparations awarded pursuant to the Court's order for reparations do not interfere with the responsibility of States to award reparations to victims under other treaties or national law.¹⁰⁴ Secondly, the principle of complementarity also applies to reparations, as held by the ASP Bureau. The Court

⁹⁹ [CLRV Observations](#), para. 36.

¹⁰⁰ See in this context the various submissions, reports to and decisions of the Trial Chamber.

¹⁰¹ [The GoU Observations](#), para 39.

¹⁰² See also [UN Observations](#) ; [ASF et al Observations](#).

¹⁰³ Julie Guillerot, Reflections on the dimension of reparations: Where we are? Where we go?, p. 32, Reparations, responsibility & victimhood in transitional societies, School of Law, Queen's University Belfast.

¹⁰⁴ [Lubanga Appeal Judgment Principles](#), para 50; articles 25 (4) and 75 (6) of the Rome Statute.

acts as the last resort.¹⁰⁵ Thirdly, the UN Basic Principles are directed to governments which have a fundamental role to play in establishing national reparations systems.¹⁰⁶

61. The Trust Fund takes note that Uganda has taken preparatory action to move forward with its reparation programme that includes all the crimes committed in Northern Uganda and encourages Uganda to engage in its implementation. The Trust Fund has already invested about EUR 12 million since 2008 through its assistance programme that focuses on victims of crimes under the ICC's jurisdiction after 1 July 2002. Given the TFV's scarce resources, it may need to focus its activities in Uganda in future only on the *Ongwen* reparation programme. Accordingly, there is also an urgent need for the Government of Uganda to engage not only, as described in its Observations,¹⁰⁷ in development and recovery assistance for the affected region but also to start its reparation programme.

7. Evidentiary standards

62. The Trust Fund concurs with the United Nations Observations on gender inclusiveness. As was stated in *Ntaganda*, there is a need for a gender-inclusive approach when applying the 'balance of probabilities' standard to sexual crimes.¹⁰⁸ The Trust Fund agrees with the approach to expand "the types of presumable harm to include harm to victim's sexual and reproductive health".¹⁰⁹ As the Chamber considered in *Ntaganda*, "the victim's coherent and credible account shall be accepted as a sufficient evidence to establish their eligibility as victims on a balance of probabilities".¹¹⁰ The Trust Fund observes the difficulties that victims of sexual and gender-based violence face in obtaining and producing evidence and documents. This should be reflected in evidential standards and procedures.¹¹¹

63. In addition, the Trust Fund considers it crucial to consider a similar approach in reparation proceedings with regards to the age of the victim. In accordance with Rule 86 of the

¹⁰⁵ [Report](#) of the Bureau, para 53: "As to reparations, due to the massive nature of the crimes, and with the Court being the court of last resort with a policy of prosecuting only those most responsible, the States also have a fundamental role to play within the Rome Statute system from the point of view of complementarity."

¹⁰⁶ United Nations General Assembly Resolution 60/147 of 16 December 2005, '[UN Basic Principles and Guidelines on the Right to a Remedy](#)' paras 15-18; International Criminal Court, Assembly of States Parties, ICC-ASP/9/25, '[Report](#) of the Bureau on the impact of the Rome Statute system on victims and affected communities', para 53.

¹⁰⁷ See [The GoU Observations](#), para. 39.

¹⁰⁸ *Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, ('*Ntaganda* Reparations Order') [ICC-01/04-02/06-2659](#), para 60.

¹⁰⁹ [Ntaganda Reparations Order](#), paras 67 and 139.

¹¹⁰ [Ntaganda Reparations Order](#), paras 67 and 139.

¹¹¹ [Ntaganda Reparations Order](#), para 67.

Rules of Procedure and Evidence, particular attention is to be paid to the victims and their needs who were children at the relevant time.¹¹²

8. Principles of reparations

64. The Trust Fund notes the many submissions and observations relevant to proposed principles of reparations, many of them limited further developments on existing principles. The Trust Fund also observes that there is a tendency to accept all principles of reparations of the other cases also for the *Ongwen* case. In these final observations, the Trust Fund has the following views on four of the proposed principles:

65. First, the Trust Fund notes with appreciation the *amici curiae*'s observations in relation to the design of reparations, stressing the notions of the centrality of victims, of enhancing victims' agency and on involving victims in the creation of reparations (co-creation). In this context, the need for gender inclusiveness, children-sensitive, age-sensitive and transformative reparations has been underlined. The Trust Fund notes that many of these observations seem to relate to the judicial reparation proceedings before the Trial Chamber. The Trust Fund considers that at the judicial stage of the reparation proceedings the legal representatives of the participating victims have the mandate to present their clients' views and observations. They continue to do so during the development of the draft implementation plan and later on during the implementation. In addition, the Trust Fund has the task to consult with communities and directly with victims and all other relevant stakeholders when developing the draft implementation plan.¹¹³ Accordingly, elements of these principles are fulfilled by the very design of the reparation proceedings before the Court. Beyond that, however, and as evident from these final observations, the Trust Fund is committed to consider including the victims and communities, in particular in respect of the design and implementation of socio-economic, symbolic and satisfaction measures. To that end, as well, the Trust Fund will have to consult with them before finally determining how best to proceed for the purposes of the DIP. The Trust Fund underlines that these notions will have a positive effect on the acceptance and sustainability of reparations measures. At the same time, it has repercussions on the costs involved to run programmes and the implementation time – as communities and victims need to be involved in the creation of specific measures once the implementing partner has been contracted.

¹¹² International Criminal Court, '[Rules of Procedure and Evidence](#)', ('Rules of Procedure and Evidence'), Rule 86; *Ntaganda* Reparations Order, [ICC-01/04-02/06-2659](#), para 53; [Lubanga Appeal Judgment Principles](#), para 23.

¹¹³ See also *supra*, para. 20.

66. In sum, the Trust Fund considers that these notions could amount to principles applicable to the implementation of certain categories of reparations and in particular in the context of the *Ongwen* case, and given the community-centred society of Northern Uganda.¹¹⁴ The Trust Fund also concurs with the VPRS Report arguing that a victim-centred approach and correlated victim consultations should also apply to the identification process.¹¹⁵

67. Second, the LRVs propose an additional principle on reparations, namely, a principle on confidentiality.¹¹⁶ The Trust Fund recalls the principle of publicity as deriving from *Lubanga* and considers it may work contrary to the objectives of the principle of publicity to introduce such a principle on confidentiality. In addition, the TFV recalls that “reparations proceedings shall be transparent, and measures should be adopted to ensure that all victims within the jurisdiction of the Court have detailed and timely notice of these proceedings and access to any awards”.¹¹⁷ Evidently, it is crucial to adequately protect personal information, in order to avoid any further harm to the victims, particularly in accordance with the principle of Do No Harm. This refers in particular to personal information, such as information relevant to physical and psychological harm, including SGBV related harm.

68. Beyond that, however, in order to achieve acceptance and sustainability of reparations, and in particular in order to address stigma, it is good practice to more widely consult and include proactively victims and their communities, keeping in mind gender mainstreaming, child and age sensitivities. Confidentiality would not work in favour of such an approach.

69. In relation to the situation of former child soldiers and abductees the Trust Fund will first carry out further consultations during the development of the DIP, before forming a more complete picture as to how to address their specific situation, given the many different observations and submissions on this matter.¹¹⁸

70. As a final point on this matter, if the argument in favour of confidentiality is that individual awards (and therefore cash benefits) should be kept confidential,¹¹⁹ the Trust Fund considers that this creates real doubts as to whether reparations in the context of this case should include cash or other concrete financial benefits other than those agreed within the wider

¹¹⁴ The GoU Observations, para 25.

¹¹⁵ [Registry Submissions on Reparations in the Ongwen Case, Annex II](#), para. 35.

¹¹⁶ LRVs Preliminary Observations, para. 37.

¹¹⁷ [Lubanga Appeal Judgment Principles](#), 258-259.

¹¹⁸ See e.g. LRVs Preliminary Observations, para. 37; [ASF et al Observations](#), para. 19.

¹¹⁹ See LRVs Preliminary Observations, para. 37, penultimate sentence.

community. Otherwise, reparations risk leading to additional stigma and exclusion, which should be avoided as set out by the principle of non-discrimination and non-stigmatization as proposed by the CLRV.¹²⁰

71. Third, the Trust Fund concurs that the specific role of ‘children of war’ (including children born out of rape and other sexual crimes, children born in captivity) should be addressed,¹²¹ including with a view to improving their status within the communities, in which they live.¹²²

72. Fourth, the Trust Fund notes the ASF *et al.* Observations proposing the principle of complementarity of reparations.¹²³ The Trust Fund highly appreciates these observations and agrees with many of the notions expressed, such as that reparations by the Court should “not be crafted in isolation from other forms of reparations that are taking place and that could be enhanced or diminished by ICC orders”¹²⁴ and that the Court should consider “how its own reparation orders could potentially be replicated and/or complemented by national efforts”.¹²⁵

73. While the Trust Fund considers that the notion of positive complementarity of reparations is of great importance, reference to the principle of subsidiarity requires further consideration. As such, the Trust Fund considers that these matters are of limited relevance in the current proceedings, but will certainly be essential to reparation proceedings in the Central African Republic.

9. Costs

74. Turning to the costs of implementing the proposed modalities and given the above related uncertainties relevant to this case, the lack of infrastructure the Trust Fund respectfully submits that it is not in the position to provide a comprehensive cost estimate. The Trust Fund has provided indicative cost estimates, and takes note of the additional cost indications provided by the CLRV Submissions,¹²⁶ as well as in some *amici* observations.¹²⁷

¹²⁰ [CLR V Observations](#), para. 22.

¹²¹ E.g. ARLPI Observations, VPRS Report, Annex II, paras 9 and 33; [ASF et al Observations](#), paras 19, 64; UN Observations, para. 26.

¹²² See e.g. VPRS Report, Annex II, paras 9 and 33.

¹²³ [ASF et al Observations](#), paras 14-19.

¹²⁴ *Ibid.*, para. 15.

¹²⁵ *Ibid.*, para. 18.

¹²⁶ [CLR V Observations](#), paras 94, 97-99, 102, 104, 105, 108, 110; [Annex 1](#); [Annex 2](#); [Annex 5](#).

¹²⁷ [ARLPI Observations](#), page 12-16; [The GoU Observations](#), para 37; [ICTJ and UVF Observations](#), p. 19-20; [FJDI and WVCN Observations](#), para 22.

75. For reference, the TFV has provided rehabilitative assistance in Northern Uganda to more than 60,000 victims directly between 2008 and 2021 and has spent an estimated EUR 12 million in support of those efforts. The Trust Fund therefore considers itself to be in a position to implement an adequately responsive, community-based and victim-driven reparation programme for an estimated 60,000 victims to be implemented over a ten year period. For this, the Trust Fund considers it to be a reasonable ambition, which is *not* to be understood to be a guarantee, to complement at a value of EUR 15 million, acknowledging that in an optimal funding situation, the programme could ideally be conducted with a significantly higher financial ambition, for instance at the double value of the aforementioned amount.

76. To put this proposal in perspective, the Trust Fund considers that the costs of symbolic and satisfaction measures may be relatively modest.¹²⁸ In addition, if socio-economic measures focus on improving family income and are based on the involvement of communities and victims, perhaps supported by a market study, they can focus on priority needs and a number of beneficiaries. These processes will be led by principles of reparations, such as those on and relevant to gender mainstreaming, ‘children of war’ and SGBV, but also by the principle of non-discrimination and non-stigmatisation. Evidently, the chosen measures would need to comply with the implementing partner(s)’ available expertise, including in terms of staffing or partners. As such, socio-economic measures can be designed and implemented in close consultation with the communities at a relative modest cost-per-capita ratio. However, should more finances become available, these measures can be scaled up.

77. Physical rehabilitation is, per capita, more costly than collective forms of rehabilitation. Addressing the beneficiaries’ health, including their psychological health, is an important condition for them to be able to increase family income and allow them to regain their life plan.

78. As to the geographic scope, the vantage point will be the four areas of the camps and to Former Child Soldiers and SGBV Victims that may reside outside these areas.

79. Such programming is only possible if the Trust Fund contracts an implementing partner(s) and thereby pays for the indirect costs¹²⁹ arising for the partner to settle and operate

¹²⁸ See also [ARLPI Observations](#), page 14 that set out some costs for symbolic measures.

¹²⁹ In 2020, TFV adopted the Budget Format Guidelines that specify eligible costs under administrative cost category. The Guidelines specify that indirect costs/ programme or project support costs (PSC) / overhead costs “are those that cannot be readily and directly attributable to specific activities, projects or programme [...]”. These costs include: central administration, central programme/department administration, other internally and externally provided services, and programme/departmental programme services (central/strategic planning, resource mobilization, and reporting)”.

in the region. As set out above, Northern Uganda does not have a 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 collective reparations. Accordingly, contrary to views expressed in the CLRV Submissions¹³⁰ indirect costs for running a programme must necessarily be included in the cost assumptions, as they form an essential element of the delivery of the awards. They usually do not exceed 15 percent of the contract value with the implementing partner. Donors of the TFV are also familiar with the concept that implementing partners accrue indirect costs. Conversely, the Trust Fund's recourse to funding indirect costs from its other resources, outside of a programme value as defined by the liability amount but still resulting from voluntary contributions, is likely to be a disincentive for donors to contribute to the Trust Fund, and would constitute a disproportionate additional burden on the Trust Fund's resource development effort.

80. In addition to these indirect costs, the implementing partners also have other direct costs that necessarily support the delivery of reparation awards. To that belong their engagement in outreach in cooperation with the Trust Fund and other implementing partners, in communication with the victims, in the evaluation of the effectiveness of the reparations and their improvement over time. In addition, allowing for meaningful victim and community involvement, including by respecting gender mainstreaming,¹³¹ requires additional time and resources of the implementing partner, which should be considered as direct costs of the implementation, as it is a direct consequence of such a community and victim-driven approach. Importantly, as the identification process will require the implementing partners' work and their engagement with victim organisations and communities, tasks leading directly to the recognition of beneficiaries are considered to be direct costs arising in relation to the implementation of the reparation awards. Finally, the services provided to the beneficiaries will need to be traced and registered and shared with the Trust Fund to ensure that reparations are properly implemented. These programme monitoring costs are specific to the running of a reparation programme and will go beyond the costs arising for the running of a TFV assistance programme.

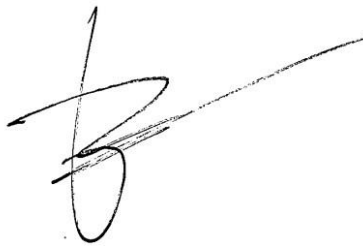
81. The Trust Fund's above related cost estimate provide indications as to the currently foreseeable scope of a reparation programme. It includes all direct and indirect costs for the running of such a programme.

¹³⁰ [CLR V Observations](#), para. 121.

¹³¹ See [UN Observations](#), para. 26.

III. CONCLUSION

82. The Trust Fund respectfully requests the Trial Chamber to take these final observations, together with its observations of 6 December 2021, into account in deciding on the order for reparations in this case.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims

Dated this 7th of March 2022
At The Hague, The Netherlands.