

ORDER FOR REPARATIONS

(amended)

A. PRINCIPLES ON REPARATIONS

a. Introductory Remarks

1. The Statute and the Rules of Procedure and Evidence introduce a system of reparations that reflects a growing recognition in international criminal law that there is a need to go beyond the notion of punitive justice, towards a solution which is more inclusive, encourages participation and recognises the need to provide effective remedies for victims.
2. Reparations fulfil two main purposes that are enshrined in the Statute: they oblige those responsible for serious crimes to repair the harm they caused to the victims and they enable the Court to ensure that offenders account for their acts.
3. The reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. The success of the Court is, to some extent, linked to the success of its system of reparations.
4. These principles and the order for reparations are not intended to affect the rights of victims to reparations in other cases, whether before the Court or national, regional or other international bodies.
5. Principles should be general concepts that, while formulated in light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers.

b. Principles on Reparations

1. Beneficiaries of reparations

6. Pursuant to rule 85 of the Rules of Procedure and Evidence, reparations may be granted to:

- a. direct victims, and
- b. indirect victims, including
 - i. the family members of direct victims,
 - ii. anyone who attempted to prevent the commission of one or more of the crimes under consideration,
 - iii. individuals who suffered harm when helping or intervening on behalf of direct victims, and
 - iv. other persons who suffered personal harm as a result of these offences.

7. It is to be recognised that the concept of “family” may have many cultural variations, and the Court ought to have regard to the applicable social and familial structures. In this context, the Court should take into account the widely accepted presumption that an individual is succeeded by his or her spouse and children.

8. Reparations can also be granted to legal entities, as laid down in rule 85 (b) of the Rules of Procedure and Evidence. These may include, *inter alia*, non-governmental, charitable and non-profit organisations, statutory bodies including government departments, public schools, hospitals, private educational institutes (primary and secondary schools or training colleges), companies, telecommunication firms, institutions that benefit members of the community (such as cooperative and building societies, or bodies that deal with micro finance), and other partnerships.

9. A decision of the Court on reparations should not operate to prejudice the rights of victims under national and international law, as article 75 (6) of the Statute prescribes. Equally, decisions by other bodies, whether national or international, do

not affect the rights of victims to receive reparations pursuant to article 75 of the Statute. However, notwithstanding those general propositions, the Court is able to take into account any awards or benefits received by victims from other bodies in order to guarantee that reparations are not applied unfairly or in discriminatory manner.

2. Harm

10. The concept of “harm”, while not defined in the Statute or the Rules of Procedure and Evidence, denotes “hurt, injury and damage”. The harm does not necessarily need to have been direct, but it must have been personal to the victim. Harm may be material, physical and psychological.

3. Causation

11. Reparation is to be awarded based on the harm suffered as a result of the commission of any crime within the jurisdiction of the Court. The causal link between the crime and the harm for the purposes of reparations is to be determined in light of the specificities of a case.

4. Dignity, non-discrimination and non-stigmatisation

12. All victims are to be treated fairly and equally as regards reparations, irrespective of whether they participated in the trial proceedings leading to the decision under article 74 of the Statute.

13. The victims of the present crimes are to enjoy equal access to any information relating to their right to reparations and to assistance from the Court, as part of their entitlement to fair and equal treatment throughout the proceedings.¹

14. In all matters relating to reparations, the Court, as enshrined in article 68 of the Statute and rule 86 of the Rules of Procedure and Evidence, shall take into account the needs of all victims.

¹ [UN Basic Principles on Reparation for Victims](http://www.unhcr.org/refugees/UN-Basic-Principles-on-Reparation-for-Victims), principles 11, 12 and 24.

15. When deciding on reparations, the Court shall treat the victims with humanity and shall respect their dignity and human rights, and it will implement appropriate measures to ensure their safety, physical and psychological well-being and privacy,² as provided for in rules 87 and 88 of the Rules of Procedure and Evidence.

16. Reparations shall be granted to victims without adverse distinction on the grounds of gender, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth or other status, as set forth by article 21 (3) of the Statute.³

17. Reparations need to address any underlying injustices and in their implementation the Court should avoid replicating discriminatory practices or structures that predated the commission of the crimes.⁴ Equally, the Court should avoid further stigmatisation of the victims and discrimination by their families and communities.⁵

18. A gender-inclusive approach should guide the design of the principles and procedures to be applied to reparations, ensuring that they are accessible to all victims in their implementation. Accordingly, gender parity in all aspects of reparations is an important goal of the Court.⁶

19. Priority may need to be given to certain victims, who are in a particularly vulnerable situation or who require urgent assistance. The Court may adopt, therefore, measures that constitute affirmative action in order to guarantee equal, effective and safe access to reparations for particularly vulnerable victims.⁷

² [UN Basic Principles on Reparation for Victims](#), principle 10.

³ [UN Basic Principles on Reparation for Victims](#), principle 25.

⁴ [Nairobi Declaration](#), p. 2.

⁵ The Paris Principles emphasise that measures in favour of former child soldiers should not “stigmatise or make any negative distinction between children who have been recruited or used and those who have not [...]. It is also detrimental to all conflict-affected children if other vulnerable children who have not been associated with armed forces or armed groups are placed at a disadvantage vis-à-vis those who have been so associated” ([Paris Principles](#), principle 3.3).

⁶ See [Nairobi Declaration](#), principle 2; [Beijing Declaration](#), para. 141. See also [UN Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies](#), para. 64 (g).

⁷ See [Convention on the Elimination of All Discrimination against Women](#), article 4; [Nairobi Declaration](#), p. 2.

5. The liability of the convicted person

20. Reparation orders are intrinsically linked to the *individual* whose criminal liability is established in a conviction and whose culpability for the criminal acts is determined in a sentence.

21. The convicted person's liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case.

6. Standard and burden of proof

22. In the reparation proceedings, the applicant shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case. Given the fundamentally different nature of reparations proceedings, a standard less exacting than that for trial, where the prosecution must establish the relevant facts to the standard of "beyond a reasonable doubt", should apply. In determining the appropriate standard of proof in reparation proceedings, various factors specific to the case should be considered, including the difficulty victims may face in obtaining evidence in support of their claim due to the destruction or unavailability of evidence.

7. Child victims

23. One of the relevant factors to be considered in reparation proceedings is the age of the victims, in accordance with article 68 (1) of the Statute. The Court shall take account of the age-related harm experienced by the victims and of their needs, pursuant to rule 86 of the Rules of Procedure and Evidence. Furthermore, any differential impact of these crimes on boys and girls is to be taken into account.⁸

24. In reparation decisions concerning children, the Court should be guided, *inter alia*, by the Convention on the Rights of the Child and the fundamental principle of

⁸ [Paris Principles](#), principle 4.0.

the “best interests of the child” that is enshrined therein.⁹ Further, the decisions in this context should reflect a gender-inclusive perspective.

25. When dealing with reparations concerning children, the Court must be mindful of the need to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.¹⁰

26. Reparation orders and programmes in favour of child soldiers, should guarantee the development of the victims’ personalities, talents and abilities to the fullest possible extent and, more broadly, they should ensure the development of respect for human rights and fundamental freedoms. For each child, the measures should aim at developing respect for their parents, cultural identity and language. Former child soldiers should be helped to live responsibly in a free society, recognising the need for a spirit of understanding, peace and tolerance, showing respect for equality between the sexes and valuing friendship between all peoples and groups.¹¹

27. The Court shall provide information to child victims, their parents, guardians and legal representatives about the procedures and programmes that are to be applied to reparations, in a form that is comprehensible for the victims and those acting on their behalf.

28. The views of the child victims are to be considered when decisions are made about reparations that concern them, bearing in mind their circumstances, age and level of maturity.¹² The Court shall also reflect the importance of rehabilitating former child soldiers and reintegrating them into society in order to end the successive cycles

⁹ [Convention on the Rights of the Child](#), article 3. *See also* [Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#).

¹⁰ [Convention on the Rights of the Child](#), article 39.

¹¹ [Paris Principles](#), principles 7.46 - 7.49.

¹² [Convention on the Rights of the Child](#), articles 12, 29; [Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#), para. 8 (d).

of violence that have formed an important part of past conflicts. These measures must be approached on a gender-inclusive basis.

8. Accessibility and consultation with victims

29. The victims of the crimes, together with those members of their families and communities who meet the criteria of eligibility for reparations, should be able to participate throughout the reparations process and they should receive adequate support in order to make their participation substantive and effective.

30. Reparations are entirely voluntary and the informed consent of the recipient is necessary prior to any award of reparations, including participation in any reparations programme.¹³

31. Outreach activities, which include, firstly, gender- and ethnic-inclusive programmes and, secondly, communication between the Court and the affected individuals and their communities are essential to ensure that reparations have broad and real significance.¹⁴

32. The Court should consult with victims on issues relating, *inter alia*, to the identity of the beneficiaries and their priorities.

9. Modalities of reparations

33. Individual and collective reparations are not mutually exclusive, and they may be awarded concurrently.¹⁵ Furthermore, individual reparations should be awarded in a way that avoids creating tensions and divisions within the relevant communities. When collective reparations are awarded, these should address the harm the victims suffered on an individual and collective basis.

34. Reparations are not limited to restitution, compensation and rehabilitation, as listed in article 75 of the Statute. Other types of reparations, for instance those with a symbolic, preventative or transformative value, may also be appropriate.

¹³ [Paris Principles](#), principle 3.8.

¹⁴ [Report of the Bureau](#), paras 26-32.

¹⁵ See [Moiwana Community v Suriname](#), paras 194 and 201.

a. Restitution

35. Restitution is directed at the restoration of an individual's life, including a return to his or her family, home and previous employment; providing continuing education; and returning lost or stolen property.¹⁶

36. Restitution may also be apposite for legal bodies such as schools or other institutions.

b. Compensation

37. Compensation should be considered when i) the economic harm is sufficiently quantifiable; ii) an award of this kind would be appropriate and proportionate (bearing in mind the gravity of the crime and the circumstances of the case); and iii) in view of the availability of funds, this result is feasible.¹⁷

38. Compensation is to be approached on a gender-inclusive basis and awards should avoid reinforcing previous structural inequalities and perpetuating prior discriminatory practices.

39. Compensation requires a broad application, to encompass all forms of damage, loss and injury.¹⁸

40. Although some forms of damage are essentially unquantifiable in financial terms, compensation is a form of economic relief that is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted.¹⁹

Examples include:

- a. Physical harm, including causing an individual to lose the capacity to bear children;²⁰

¹⁶ [UN Basic Principles on Reparation for Victims](#), principle 19; [Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#), para. 37.

¹⁷ [UN Basic Principles on Reparation for Victims](#), principle 20.

¹⁸ [UN Basic Principles on Reparation for Victims](#), principle 20. *See also* [ECCC Internal Rules](#), rule 23 *bis* (l) (b); *"Las Dos Erres" Massacre v. Guatemala*, para. 226, where the IACtHR noted: "[I]t is evident that the victims of prolonged impunity suffer different infringements in their search for justice, not only materially, but also other suffering and damages of a psychological and physical nature and in their life projects, as well as other potential alterations of their social relations and to the dynamics of their families and communities."

¹⁹ [UN Basic Principles on Reparation for Victims](#), principle 20.

- b. Moral and non-material damage resulting in physical, mental and emotional suffering;²¹
- c. Material damage, including lost earnings and the opportunity to work; loss of, or damage to, property; unpaid wages or salaries; other forms of interference with an individual's ability to work; and the loss of savings;²²
- d. Lost opportunities, including those relating to employment, education and social benefits; loss of status; and interference with an individual's legal rights²³ (although the Court must ensure it does not perpetuate traditional or existing discriminatory practices, for instance on the basis of gender, in attempting to address these issues);²⁴
- e. Costs of legal or other relevant experts, medical services, psychological and social assistance.²⁵

c. Rehabilitation

41. The right of victims to rehabilitation is to be implemented by the Court on the basis of the principles relating to non-discrimination,²⁶ and this shall include a gender-inclusive approach that encompasses males and females of all ages.

42. Rehabilitation shall include the provision of medical services and healthcare, psychological, psychiatric and social assistance to support those suffering from grief and trauma; and any relevant legal and social services.²⁷

²⁰ [Velásquez Rodríguez v. Honduras \(Merits\)](#), paras 156, 175, 187; [X and Y v. the Netherlands](#), para. 22.

²¹ See e.g. the jurisprudence of the IACtHR (e.g. [Garrido and Baigorria v. Argentina](#), para. 49; [Plan de Sánchez Massacre v. Guatemala](#), paras 80-89, 117; [The "Juvenile Reeducation Institute" v. Paraguay](#), para. 295) and the ECtHR (e.g. [Selmouni v. France](#), paras 92, 98, 105; [Aksoy v. Turkey](#), para. 113); [Pre-Trial Decision on Applications for Participation](#), p.11; [Fourth Decision on Victims' Participation](#), paras 51, 70-73.

²² See e.g. the jurisprudence of the IACtHR (e.g. [El Amparo v. Venezuela](#), paras 28-30) and the ECtHR ([Ayder and Others v. Turkey](#), paras 141-152).

²³ See e.g. the jurisprudence of the ECtHR (e.g. [Campbell and Cosans v. the United Kingdom \(Article 50\)](#), para. 26; [T.P. and K.M. v. the United Kingdom](#), para. 115; [Thlimmenos v. Greece](#), para. 70).

²⁴ It must be noted that the concept of "damage to a life plan", adopted in the context of State responsibility at the IACtHR, may be relevant to reparations at the Court. See e.g. [Loayza Tamayo v. Peru](#), paras 147-148; [Cantoral-Benavides v. Peru](#), para. 80.

²⁵ See e.g. the jurisprudence of the IACtHR ([Loayza-Tamayo v. Peru](#), para. 129 (d); [Barrios Altos v. Peru](#), para. 42).

²⁶ [UN Basic Principles on Reparation for Victims](#), principle 25.

d. Other Modalities of Reparations

43. As the conviction and the sentence are likely to have significance for the victims, their families and communities, the wide publication of the Conviction Decision may also serve to raise awareness about the conscription and enlistment of children under the age of fifteen and their use to participate actively in the hostilities,²⁸ as well as may help deter crimes of this kind.

10. Proportional and adequate reparations

44. Victims should receive appropriate, adequate and prompt reparations.²⁹

45. The awards ought to be proportionate to the harm, injury, loss and damage as established by the Court.

46. Reparations should aim at reconciling the victims with their families and the affected communities.

47. Whenever possible, reparations should reflect local cultural and customary practices unless these are discriminatory, exclusive or deny victims equal access to their rights.

48. Reparations need to support programmes that are self-sustaining, in order to enable victims, their families and communities to benefit from these measures over an extended period of time. If pensions or other forms of economic benefits are to be paid, these should be allocated, if possible, by periodic instalments rather than by way of a lump payment.³⁰

11. Rights of the defence

49. Nothing in these principles will prejudice or be inconsistent with the rights of the convicted person to a fair and impartial trial.

²⁷ [UN Basic Principles on Reparation for Victims](#), principle 21.

²⁸ [Velásquez-Rodríguez v. Honduras \(Reparations and Costs\)](#), para. 36; [Tibi v Ecuador](#), para. 243; [Plan de Sánchez Massacre v. Guatemala](#), para. 81; [Sanchez v. Honduras](#), para. 172.

²⁹ [UN Basic Principles on Reparation for Victims](#), principle 15.

³⁰ [Paris Principles](#), principle 7.35 states that: "Direct cash benefits to released or returning children are not an appropriate form of assistance, as experience has repeatedly shown."

12. States and other stakeholders

50. In the process of enforcement of reparation orders, States Parties have the obligation of cooperating fully,³¹ and they are enjoined not to prevent the enforcement of reparation orders or the implementation of awards. Reparations awarded pursuant to this order do not interfere with the responsibility of States to award reparations to victims under other treaties or national law.³²

13. Publicity of these Principles

51. Reparation proceedings shall be transparent and measures should be adopted to ensure that victims have detailed and timely notice of these proceedings and access to any awards.

52. The Registrar is responsible for taking all the necessary measures in this context, including outreach activities with the national authorities, local communities and the affected populations, in order to publicise these principles and any reparation proceedings before the Court.³³

³¹ See Parts 9 and 10 of the [Statute](#).

³² See articles 25 (4) and 75 (6) of the [Statute](#).

³³ See rule 96 of the [Rules of Procedure and Evidence](#).

B. ORDER FOR REPARATIONS AGAINST MR LUBANGA

53. The present order is for collective reparations against Mr Lubanga to be made through the Trust Fund pursuant to rules 97 (1) and 98 (3) of the Rules of Procedure and Evidence.

1. Victims and groups of victims eligible to benefit from reparations

54. The present order for reparations may be implemented, where appropriate, with respect to communities, with due regard to the principle that members of communities are entitled to an award for reparations in so far as the harm they suffered meets the criterion of eligibility in relation to the crimes of which Mr Lubanga was found guilty.

55. It is appropriate for the Board of Directors of the Trust Fund to consider, in the exercise of its mandate under regulation 50 (a) of the Regulations of the Trust Fund, the possibility of including members of the affected communities in the assistance programmes operating in the situation area in the DRC, where such persons do not meet the above-mentioned eligibility criterion.

56. Mr Lubanga's liability for reparations extends to localities not mentioned in the Conviction Decision, but mentioned, in the context specified in the second sentence of paragraph 915 of the Conviction Decision, in the evidence of the witnesses listed in that sentence.

2. Identification of victims

57. Victims may use official or unofficial identification documents, or any other means of demonstrating their identities.³⁴ In the absence of acceptable documentation, a statement signed by two credible witnesses establishing the identity of the applicant and describing the relationship between the victim and any individual acting on his or her behalf is acceptable.³⁵

³⁴ [Fifth decision on Victims' participation](#), paras 87-88.

³⁵ [Fifth decision on Victims' participation](#), para. 88.

3. Harm

58. The harm caused to direct and indirect victims as a result of the crimes for which Mr Lubanga was convicted is defined as follows:

a. With respect to direct victims:

- i. Physical injury and trauma;
- ii. Psychological trauma and the development of psychological disorders, such as, *inter alia*, suicidal tendencies, depression, and dissociative behaviour;
- iii. Interruption and loss of schooling;
- iv. Separation from families;
- v. Exposure to an environment of violence and fear;
- vi. Difficulties socialising within their families and communities;
- vii. Difficulties in controlling aggressive impulses; and
- viii. The non-development of “civilian life skills” resulting in the victim being at a disadvantage, particularly as regards employment.

b. With respect to indirect victims:

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

4. Standard of causation

59. The standard of causation is a “but/for” relationship between the crime and the harm and, moreover, it is required that the crimes for which Mr Lubanga was convicted were the “proximate cause” of the harm for which reparations are sought.

5. Scope of Mr Lubanga’s liability for reparations

60. Mr Lubanga is liable for reparations in relation to the harm caused to the victims of the crimes for which he was convicted.

61. Should Mr Lubanga be found indigent, despite efforts to identify his property and assets, including through, *inter alia*, requests for assistance from States Parties, his financial situation shall be monitored pursuant to regulation 117 of the Regulations of the Court.

62. The Board of Directors of the Trust Fund, upon being seized of the present order for reparations, may decide whether to advance its resources in order to enable the implementation of the order. If its Board of Directors decides to do so, the Trust Fund will be able to claim the advanced resources from Mr Lubanga.

63. The present order for reparations covers direct as well as indirect victims who have suffered harm as a result of the crimes for which Mr Lubanga was convicted. In order to determine whether a suggested “indirect victim” is to be included in the reparation scheme, a determination should be made as to whether there was a close personal relationship between the indirect and direct victim, for instance as exists between a child soldier and his or her parents.³⁶

64. It is appropriate for the Board of Directors of the Trust Fund to consider, in its discretion, the possibility of including victims of sexual and gender-based violence in the assistance activities undertaken according to its mandate under regulation 50 (a) of the Regulations of the Trust Fund. It is also appropriate for the draft implementation plan to include a referral process to other competent NGOs in the affected areas that offer services to victims of sexual and gender-based violence.

³⁶ [Lubanga OA 9 OA 10 Judgment](#), para. 32.

65. In relation to the standard of proof, the standard of “a balance of probabilities” shall apply.³⁷

66. The Trust Fund shall provide Mr Lubanga with the opportunity to review its proposed screening process of victims at the implementation stage, subject to any protective measures.

6. Modalities and forms of reparations

67. The ordered modalities of reparations include restitution, compensation and rehabilitation, as well as other types of reparations such as those with a symbolic, preventative or transformative value. With the principles concerning the forms of reparations in the background, it is necessary to point out that:

- i. Restitution should, as far as possible, restore the victim to his or her circumstances before the crime was committed,³⁸ even if this will often be unachievable for victims of the crimes of enlisting and conscripting children under the age of fifteen and using them to participate actively in the hostilities.
- ii. The measures put in place for awarding compensation should take into account the gender and age-specific impact that the crimes of enlisting and conscripting children under the age of fifteen and using them to

³⁷ The term “balance of probabilities” is also described as a “preponderance of proof” or “balance of probability”. Black’s Law Dictionary defines it as: “the greater the weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other”. Black’s Law Dictionary, Eighth Edition, Garner (ed.), 2004, page 1220. It is important to note that during the Preparatory Commission some delegations suggested that the evidence standard should be based on a “balance of probabilities”, as opposed to the “beyond reasonable doubt” standard applied in criminal proceedings. Many reparations programmes dealing with mass claims have also adopted flexible evidential standards based on a “plausibility test” in order to accommodate the situation of the victims, who usually have difficulties in providing the documentation that is required. See P. Lewis and H. Friman, “Reparations to Victims”, in R. S. Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers, Inc., 2001), p. 474, at p. 486.

³⁸ In the context of State responsibility, the IACtHR established that “the concept of ‘integral reparation’ (*restitutio in integrum*) entails the re-establishment of the previous situation and the elimination of the effects produced by the violation, as well as the payment of compensation for the damage caused. However, bearing in mind the context of structural discrimination in which the facts of this case occurred, which was acknowledged by the State [...], the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable” (emphasis added) (*Cotton Field Case*, para. 450).

participate actively in the hostilities can have on direct victims, their families and communities. The Court should assess whether it is appropriate to provide compensation for detrimental consequences of child recruitment.³⁹

- iii. Rehabilitation of the victims of child recruitment should include measures that are directed at facilitating their reintegration into society, taking into account the differences in the impact of these crimes on girls and boys. These steps should include the provision of education and vocational training, along with sustainable work opportunities that promote a meaningful role in society.⁴⁰
- iv. The rehabilitation measures ought to include the means of addressing the shame that child victims may feel, and they should be directed at avoiding further victimisation of the boys and girls who suffered harm as a consequence of their recruitment.
- v. The steps taken to rehabilitate and reintegrate former child soldiers may also include their local communities, to the extent that the reparations programmes are implemented where their communities are located.⁴¹ Programmes that have transformative objectives, however limited, can help prevent future victimisation, and symbolic reparations, such as commemorations and tributes, may also contribute to the process of rehabilitation.
- vi. The Court, through the present trial and in accordance with its broad competence and jurisdiction, assisted by the States Parties and the international community pursuant to Part 9 of the Statute on

³⁹ [Paris Principles](#), principles 3.3 and 7.3. See also P. De Greiff and M. Wierda, “The Trust Fund for Victims of the International Criminal Court: Between Possibilities and Constraints”, in K. De Feyter et al. (eds.), *Out of the Ashes - Reparation for Victims of Gross and Systematic Human Rights Violations* (Intersentia, 2005), p. 225, at p. 239. The authors suggest that “the Court should reserve its power to order compensation payments to individuals for cases in which the accused [...] has assets that have been seized for this purpose; [...] where there is a demonstrable link between the accused and the particular victim or group of victims in question, and [...] when the case concerns a limited and definable group of victims”.

⁴⁰ Paris Principles, principles 7.77 - 7.84.

⁴¹ [Convention on the Rights of the Child](#), article 39. See also the jurisprudence of the IACtHR which has awarded rehabilitation as part of broader measures of reparations (e.g. [Barrios Altos v. Peru](#), para. 42).

“International cooperation and judicial assistance”,⁴² is entitled to institute other forms of reparation, such as establishing or assisting campaigns that are designed to improve the position of victims; by issuing certificates that acknowledge the harm particular individuals experienced; setting up outreach and promotional programmes that inform victims as to the outcome of the trial; and educational campaigns that aim at reducing the stigmatisation and marginalisation of the victims of the present crimes. These steps can contribute to society’s awareness of the crimes committed by Mr Lubanga and the need to foster improved attitudes towards events of this kind, and ensure that children play an active role within their communities.⁴³

- vii. Reparations may include measures to address the shame felt by some former child soldiers, and to prevent any future victimisation. The reparation awards should, in part, be directed at preventing future conflicts and raising awareness that the effective reintegration of the children requires eradicating the victimisation, discrimination and stigmatisation of young people in these circumstances.
- viii. Mr Lubanga is able to contribute to this process by way of a voluntary apology to individual victims or to groups of victims, on a public or confidential basis.

68. Should the Trust Fund determine that restitution is in fact achievable for victims of the crimes for which Mr Lubanga was convicted, the Appeals Chamber instructs the Trust Fund to provide full reasons as to how it arrived at this conclusion in its draft implementation plan.

⁴² See articles 86 *et seq.* of the [Statute](#).

⁴³ [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 (both situation countries and other States) also have a fundamental role to play within the Rome Statute system from the point of view of complementarity. In establishing national reparation systems, General Assembly resolution 60/147 of 16 December 2005 [[UN Basic Principles and Guidelines on the Right to a Remedy](#)] could serve as a reference. With this in mind, States should not wait until the end of a judicial cycle for the victims to be compensated but could, for example, already prioritize within existing or future development projects for victims of crimes falling under the Rome Statute”.

69. In designing the awards for reparations, the Trust Fund should consider providing medical services (including psychiatric and psychological care) along with assistance as regards general rehabilitation, housing, education and training.

70. In designing the awards for reparations, the Trust Fund should endeavour to design awards on the basis of all the identified modalities of reparations. The design of the awards will also be informed by the views received during the consultation stage with victims, members of the affected communities, as well as potentially experts, which the Trust Fund will undertake prior to submitting its draft implementation plan. It is possible that not all the modalities will ultimately be reflected in the awards for reparations. In this respect, should any particular modality not be the basis of any of the awards for reparations proposed by the Trust Fund in its draft implementation plan, the Trust Fund is instructed to include an explanation regarding the reasons why that modality is not reflected in the proposed awards for reparations.

7. Objectives of reparations

71. Reparations in the present case must - to the extent achievable - relieve the suffering caused by the serious crimes committed; afford justice to the victims by alleviating the consequences of the wrongful acts; deter future violations; and contribute to the effective reintegration of former child soldiers. Reparations can assist in promoting reconciliation between the convicted person, the victims of the crimes and the affected communities.

72. Reparations should secure, whenever possible, reconciliation between the convicted person, the victims of the crimes and the affected communities.⁴⁴

8. Transmission of requests for reparations to the Trust Fund

73. The Registrar is instructed to consult, through their Legal Representatives, with the victims who submitted individual applications for reparations in this case in order

⁴⁴ The limited scope of the charges brought by the Prosecutor against Mr Lubanga limited the categories of victims who have participated in this case. They come largely from the same ethnic group and they do not necessarily represent all those who suffered from crimes committed during the relevant conflict in Ituri. This situation could give rise to a risk of resentment on the part of other victims and the re-stigmatisation of former child soldiers within their communities.

to seek their consent to disclosure of confidential information to the Trust Fund for purposes of participation in the eventual collective programme(s) that are to be designed by the Trust Fund.

74. The Trust Fund is instructed to refrain from further reviewing the requests for reparations until such consent is received and to permanently remove any confidential information it may have stored electronically or elsewhere in the case that consent is not granted. When the collective reparation awards contained in the draft implementation plan have been approved, the Trust Fund is directed to seek consent to participate therein from the victims whose applications are forwarded to it.

9. Draft implementation plan

75. The Trust Fund is directed to prepare the draft implementation plan and submit it to the newly constituted Trial Chamber within six months of the issuance of the present order. The Trust Fund may be granted an extension of this time limit by the newly composed Chamber, if good cause for such an extension is shown.

76. The newly composed Trial Chamber shall monitor and oversee the implementation stage of the present order, including having the authority to approve the draft implementation plan submitted by the Trust Fund. The Chamber may be seized of any contested issues arising out of the work and the decisions of the Trust Fund.

77. Prior to approving the plan, the parties shall have the opportunity to submit observations to the Chamber regarding those aspects of the draft plan affecting their interests and rights. Other interested parties may request leave of the Chamber to submit observations.

78. The Trust Fund is directed to provide, in the draft implementation plan, the anticipated monetary amount that it considers necessary to remedy the harms caused by the crimes for which Mr Lubanga was convicted, based on information gathered during the consultation period leading up to the submission of the draft implementation plan. The Trust Fund should also include the monetary amount, if its Board of Directors so decides, that it will complement as an advance in order that the awards can be implemented.

79. When deciding on the nature of the awards for reparations that the Trust Fund will determine pursuant to regulation 55 of the Regulations of the Trust Fund, the Trust Fund is instructed to take into account the views and proposals of victims regarding the appropriate modalities of reparations and programmes that in the view of the Trust Fund should be a part of any reparations awarded on a collective basis. It should also take into account the views and proposals already submitted in the course of the reparation proceedings. These views shall not be prioritised over the views by other victims expressed during the consultation stage.

80. Prior to the Trial Chamber setting the amount of Mr Lubanga's liability, the parties shall have the opportunity to appear before the Trial Chamber or make submissions in writing on the scope of Mr Lubanga's liability, in light of the information provided by the Trust Fund in its draft implementation plan, within a time limit to be set by the Trial Chamber.

81. The Trial Chamber's determination of the amount of Mr Lubanga's liability for the awards for reparations constitutes a part of the order for reparations within the meaning of article 75 (2) of the Statute and is therefore appealable, pursuant to article 82 (4) of the Statute.