

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**

Date: **6 December 2021**

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' Observations relevant to Reparations

Source: The Trust Fund for Victims

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

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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 the same day, it also issued an order for submissions on reparations ('Order'), directing *inter alia* the parties, the Registry, and the Trust Fund for Victims ('Trust Fund') to make submissions on a number of issues relevant to reparation proceedings in the *Ongwen* case by 6 September 2021.⁴ On 19 July 2021, the Trial Chamber extended the time limit for these observations to 6 December 2021.⁵
3. Both the Trial Chamber's conviction decision and the sentencing decision are currently under appeal.⁶

II. INTRODUCTION

4. The Trust Fund hereby provides its observations pursuant to the Order. In the Order, the Trial Chamber requested as follows:

The parties, the Registry, and the Trust Fund for Victims ('TFV') are instructed to make submissions, as specific as possible and of up to 50 pages each, [...] on either or all of the following issues:

- a. the need for the Chamber to consider additional principles on reparations, apart from those already established by the consistent jurisprudence of the Court, as recently adapted and expanded in the case of *The Prosecutor v. Bosco Ntaganda* (the 'Ntaganda case');

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, [ICC-02/04-01/15-1820](#), para. 5.

⁵ Decision on Requests for Extension of Time, [ICC-02/04-01/15-1865](#).

⁶ See Public Redacted Version of 'Corrected Version of "Defence Document in Support of its Appeal against the Sentencing Decision", filed on 26 August 2021', filed on 30 August 2021 as ICC-02/04-01/15-1871-Conf-Corr, 31 August 2021, [ICC-02/04-01/15-1871-Corr-Red](#); Public Redacted Version of "Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021", filed on 21 July 2021 as ICC-02/04-01/15-1866-Conf, 19 October 2021, [ICC-02/04-01/15-1866-Red](#).

- b. estimated total number of the direct and indirect victims of the crimes for which Mr Ongwen was convicted, who may be potentially eligible for reparations;
- c. any legal and factual issues relevant to the identification of eligible victims;
- d. any victims or groups of victims who may require prioritisation in the reparations process;
- e. specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Ongwen was convicted;
- f. whether recourse to factual presumptions should be considered;
- g. types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Ongwen was convicted. In particular, the suitability of collective reparations with individualised components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented;
- h. concrete estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them, including costs of running rehabilitation programmes in the region with the potential to address multi-dimensional harm of individual beneficiaries for the purposes of reparations;
- i. information as to whether the victims of the crimes for which Mr Ongwen was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes; and
- j. any additional information relevant to reparations.⁷

III. TRIAL CHAMBER QUERY 1 – REPARATION PRINCIPLES

5. Article 75 (1) of the Statute is the legal basis for the Court to develop “principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”. Due to a lack of any other legal framework that could apply pursuant to article 21 of the Statute, these principles form the legal basis for any order of reparations.

6. Accordingly, principles are instrumental to the development of the Court’s legal and substantive framework on reparations. They are of institutional interest to the Court and to the

⁷ Order, para. 5 (i) (footnotes omitted).

Trust Fund in that they serve as parameters to trial chambers when developing the orders for reparations, and as guidelines to the Trust Fund in the design and implementation of the subsequent implementation plan.

7. From the Trust Fund's perspective, principles are particularly useful during the implementation phase because they permit conveying the spirit of the reparation programme to potential beneficiaries during outreach activities, to eventual implementing partners and intermediaries, and other important stakeholders, including governments. Reparation principles function as a vehicle which allows these audiences to quickly grasp the direction of reparation measures despite any degree of unfamiliarity with the Court and its procedures.

8. The fact that these values are framed as legal principles adopted by the Court vests them with a heightened authority, enabling the Trust Fund to render clear that their application - when appropriate - is not a matter of negotiation.

9. On the basis of such principles, a reparation order determines "the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which [the trial chamber] is acting".

10. Since the principles for reparations were included in the *Lubanga* Appeals Judgment in March 2015, the chambers in *Katanga*, *Al Mahdi* and *Ntaganda* have incorporated the principles in their jurisprudence. And indeed, they are of important value also to the *Ongwen* case.

11. The Trust Fund notes that the original principles were, at least in part, specific to the *Lubanga* case.⁸ They had a focus on former child soldiers and on modalities that the Appeals Chamber considered essential to the *Lubanga* case. Similarly to the case of *Lubanga*, the Trust Fund submits that those reparation principles relevant to the case of *Ongwen* may also be specifically enunciated by the Trial Chamber in the order for reparations, including any factual presumptions to be applied, thereby guiding the implementation of the reparations in this specific case.

⁸ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED Order for Reparations (Annex A) and Public Annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129; Annex A, Order for Reparations (amended) ('*Lubanga* Appeal Judgment Principles'), [ICC-01/04-01/06-3129-AnxA](#), paras 6-52.

12. The Trust Fund also draws in particular the attention of the Trial Chamber to the principles set out in the *Ntaganda* order for reparations,⁹ some of them based on the Trust Fund's proposal, and submits that they find application in the *Ongwen* proceedings. Below, the Trust Fund sets out certain remarks to the reparation principles as arising in relation to the *Ongwen* case. The Trust Fund may address the principles again in its observations of March, after having considered the observations of parties, participants and *amici curiae*.

13. The Trust Fund has no further remarks on the principles relevant to the liability of the convicted person, the rights of the defence and the standard and burden of proof. In relation to the latter, the answer to queries 5 and 6 of all participants may matter to allow the Trial Chamber to more fully delineate the factual presumptions. In addition, the Trust Fund fully supports the principles relevant to publicity of reparation implementation and to state cooperation, the latter also being addressed in the response to queries 9 and 10 below.

TYPE OF REPARATION BENEFICIARIES

14. This principles stresses that reparations may be granted to direct and indirect victims. Indirect victims may be family members of direct victims but also persons who suffered harm in intervening to assist victims in distress or to prevent victimisation.¹⁰ The Trust Fund notes the distinction drawn between direct and indirect victims, which may in particular be relevant to smaller reparation cases, where it may be advantageous to describe the impact of the crime on victims in detail and where restitution and compensation are guiding concepts. The Trust Fund notes that the UN Basic Principles on Reparations of 2005 and article 79 (1) of the Statute refer to victims and their families. Accordingly, the Trust Fund would hereby like to give to the consideration of those making observations in this case and of the Trial Chamber, whether it may be worth returning, for the purpose of reparation implementation and in particular in the context of the *Ongwen* case, to the concept of *victims and their families*. The Trust Fund notes that the UN Basic Principles on Reparations of 2005 and the *Lubanga* reparation principles also include those who intervened to assist victims and suffered harm as a result thereof. Such a family-centred approach would still require a link between the crime and the harm suffered

⁹ *Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#) ('*Ntaganda* Reparation Order'), fn. 79.

¹⁰ See also United Nations, General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, UN Doc A/RES/60/147 ('UN Basic Principles on Reparations of 2005'), para. 8.

by the victim, which may, as set out below, also be presumed in certain instances. However, a family-centred approach in identifying and verifying victims as well as providing rehabilitative services may allow for easier access to victims who are ostracised, such as sexually and gender-based violence (‘SGBV’) victims and their children, or former child soldiers, as they may only come forward over time.

15. In any case, the Trust Fund considers it important in the context of the *Ongwen case*, as also specified in the *Lubanga* principles, that the concept of ‘family’ may have many cultural variations, and the Court and the Trust Fund ought to have regard to the applicable social and familial structures.

16. Furthermore, given the experience of chambers and the Trust Fund with deceased beneficiaries and requests in relation thereto,¹¹ the Trust Fund proposes that, while applying the relevant legal framework, succession is handled in line with the nationally and locally applicable customs and the documentation required in the relevant communities to show that a person has died and who in his or her family is the successor. In the interest of judicial economy and efficiency, such documentation should be provided to the Trust Fund and legal representatives of victims, as applicable, to accept the proposed succession. In that regard, while the presumption as set out in *Lubanga* that several persons are the successor (wife and children) may as such appear to be logical, but is in the context of reparation beneficiaries of less relevance as it does not mirror the realities in the affected communities and families.

17. Finally, a reparation principle for the representation of people with disabilities as well as minors, that establishes in general terms the requirements for their representation for the eligibility process, may be considered. Specifically, it may be beneficial to put in place a presumption that their direct family members or, as appropriate, the caregivers of the houses/families, in which they live, may represent them in the eligibility process.

DEFINITION OF HARM AND CAUSAL LINK

18. The reparation principles determine that the concept of ‘harm’, while not defined in the Statute or the Rules of Procedure and Evidence (‘Rules’), 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 and must have been suffered as a result of the commission of the crime.

¹¹ See, for instance, *Prosecutor v. Germain Katanga*, Decision on the Application for Resumption of Action brought by family members of deceased Victim a/0217/09, 18 November 2021, [ICC-01/04-01/07-3892](#), para. 5.

19. The Trust Fund considers that beyond defining ‘harm’ as required for the purposes of rule 85 of the Rules, more emphasis may need to be directed to the notion set out in article 75 (1) of the Statute, which requires the Court to “determine the scope and extent of any damage, loss and injury to, or in respect of, victims”. The latter notion - even though the vocabulary is similar to that used to define ‘harm’ - focuses on the impact of the personal harm suffered by the victim, which may go beyond the realm of the victim. It addresses, for instance, the long-term consequences and economic impact on the victim, the consequential impact on the family and on the community and *e.g.* the customs and structure of a religious or ethnic community, the moral impact more generally, the impact on the victim’s ability to support his or her family, the impact on a victim’s life plan, and ultimately the impact on the economic development of the relevant region or on the values and rights of an ethnicity, a nation or the international community (as *e.g.* in the *Al Mahdi* case).

20. This approach has been applied by the *Ntaganda* order for reparations, which combined the discussion of the notion of ‘harm’ with an assessment of the scope and extent of any damage, loss and injury to, or in respect of, victims. The Trust Fund considers that this more detailed assessment is necessary to decide on the modality of reparations, to clarify what damage, loss, and injury such modalities will address (and which not) and the resources necessary to implement the relevant modality, which can, in turn, be a basis for the determination of the amount of liability of the convicted person.

CHILD VICTIMS

21. One of the relevant factors to be considered in reparation proceedings is the age of the victims. The Court shall take account of the age-related harm experienced by the victims and of their needs. 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 the ‘best interests of the child’ that is enshrined therein. The Trust Fund would like to stress in the context of the *Ongwen* case, the need to recognise children born out of rape as victims regardless of the familial relationship between the perpetrator and the victim,¹² considering the many children born out of SGBV crimes by Sinia brigade members and those of Mr Ongwen himself. It is essential to recognise them as victims, independent of whether they still live with the perpetrators or if they still provide for them.

¹² UN Basic Principles on Reparations of 2005, para. 8.

ACCESSIBILITY AND CONSULTATION WITH VICTIMS

22. The Trust Fund wishes to underline the importance of the principle that 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. The consequence of this reparation principle is that reparation implementation must allow for sufficient flexibility to consult with and address the needs of the victims, their families and communities throughout the lifecycle of a reparation implementation programme.

MODALITIES OF REPARATIONS

23. Individual and collective reparations are not mutually exclusive, and they may be awarded concurrently. 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. 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

24. The Trust Fund notes that the following definitions of restitution, compensation and rehabilitation can be discerned from the current jurisprudence:

25. 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.¹⁴ Restitution aims, to the extent possible, at restoring the victims to their circumstances before the crime was committed, even if full restitution will often be unachievable for victims of the crimes within the jurisdiction of the Court.¹⁵

26. Compensation is a form of economic relief, consisting usually in the award of monetary funds or any other act ordered by the Court, as payment for the damages suffered.¹⁶ 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

¹³ *Lubanga* Appeal Judgment Principles, [ICC-01/04-01/06-3129-AnxA](#), para. 34.

¹⁴ *Ibid.*, para. 35.

¹⁵ *Ntaganda* Reparation Order, para. 201.

¹⁶ *Ibid.*, para. 84.

of the crime and the circumstances of the case); and iii) in view of the availability of funds, this result is feasible. 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.¹⁷

27. Rehabilitation measures are aimed at addressing the medical and psycho-social conditions of the victims. 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.¹⁸

28. Rehabilitation measures are further directed at facilitating victims' reintegration into society, taking into account the differences of impact these crimes have on victims of different genders. Rehabilitation should aim at the restoration of a function or the acquisition of new skills required as a result of the changed circumstances of a victim due to the crimes. It should seek to enable to the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social, and vocational ability; and full inclusion and participation in society.¹⁹

29. The Trust Fund notes that the definition of restitution, in particular, and that of socio-economic rehabilitation measures may appear similar; however, while the former focuses on a situation of *restitutio in integrum*, the latter focuses on improving the current situation of the beneficiary and affording him or her with the means of becoming a full member of society.

30. Finally, compensation should be regarded as a disbursement of money, where restitution is not possible and in recognition of the particular harm suffered by the victims, keeping in mind that such compensation should be proportional and adequate to the harm suffered and the gravity of the violation as well as the circumstances of each case. Any payments that are not proportional and adequate to the harm suffered should be regarded as symbolic, recognising merely in general terms the harm suffered by these victims.

31. As to the other forms of reparations, the Trust Fund considers that the UN Basic Principles on Reparations of 2005 set out, in particular, measures that are considered as satisfaction and guarantees of non-repetition. While some of these measures are directly aimed

¹⁷ *Lubanga* Appeal Judgment Principles, [ICC-01/04-01/06-3129-AnxA](#), paras 37, 40.

¹⁸ *Ibid.*, para. 42.

¹⁹ *Ntaganda* Reparation Order, para. 203.

at states and therefore not at individually convicted persons, the following satisfaction measures may possibly be taken into consideration by the Court, in particular when awarding collective reparations through the Trust Fund: raising awareness on the public apology by the convicted person (insofar as considered voluntary and honest); commemorations and tributes to the victims, inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian training and educational material at all levels; the search of the whereabouts of disappeared persons and assistance in the recovery, identification and reburial of the bodies; full public disclosure of the truth insofar as not causing further harm. Some of the satisfaction measures mentioned in the UN Basic Principles on Reparations of 2005 are already fulfilled by the Trial Judgment and require outreach and publicity relevant to the conviction.

PROPORTIONAL AND ADEQUATE REPARATIONS

32. The reparation principles establish that victims should receive appropriate, adequate and prompt reparations. The awards ought to be proportionate to the harm, injury, loss, and damage as established by the Court. Reparations should aim at reconciling the victims with their families and the affected communities. 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.

33. The Trust Fund fully supports that reparations need to be appropriate, adequate, and prompt. It considers that in particular this reparation principle should be tailored to the specific case of *Ongwen* to channel appropriately the expectations of victims. Upon considering the observations of the parties, participants, and *amici curiae*, the Trust Fund will include a proposal to this effect in its March 2022 observations.

DIGNITY, NON-DISCRIMINATION, NON-STIGMATISATION AS WELL AS PRIORITISATION

34. All victims are to be treated fairly and equally as regards reparations, irrespective of whether they participated in the trial proceedings. 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. 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.

35. 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. Equally, the Court should avoid further stigmatisation of the victims and discrimination by their families and communities. 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.

36. Relevant to the principle of non-discrimination is also the principle of prioritisation, which is addressed in more detail under query 4 below.

DO NO HARM²⁰

37. The Trust Fund fully supports the ‘do no harm’ principle, as it has advocated for this principle in the *Ntaganda* proceedings.²¹ This principle complements the humanitarian principles of humanity, impartiality, neutrality, and independence. It requires the actors to anticipate, monitor, and address the potential or unintended negative effects of their actions. When deciding on the types and modalities of reparations, the Court shall ensure that reparation measures themselves do no harm. At a minimum, this includes taking all steps necessary to ensure that access to justice and reparations by victims and affected communities does not lead to further or secondary victimisation, that they do not create or exacerbate security concerns or tensions among communities, and that victims are not endangered or stigmatised as a result.

GENDER-INCLUSIVE AND SENSITIVE APPROACH TO REPARATIONS²²

38. Due consideration should be given to address the specific needs of individuals based on their sex and their gender expression or identity, and reparations should be fulfilled without discrimination on that basis. The Court should take into account the existence of previous gender and power imbalances, as well as the differentiated impact of harm depending on the victim’s sex or gender expression or identity. It is thus necessary to identify and address specific harms that victims may suffer because of their gender.

²⁰ *Ntaganda* Reparation Order, paras 50-52.

²¹ *Prosecutor v. Bosco Ntaganda*, Trust Fund for Victims’ observations relevant to reparations, 28 February 2020 (‘Trust Fund’s February 2020 Observations’), [ICC-01/04-02/06-2476](#), paras 30-33.

²² *Ntaganda* Reparation Order, paras 60-62.

SGBV²³

39. The Trust Fund underlines in the context of the *Ongwen* case the importance of this principle that expresses that all victims, regardless of their sex and gender expression or identity, may be affected by sexual and gender-based crimes. When designing reparations for victims of SGBV, the especially grave nature and consequences of sexual violence crimes, in particular against children, must be recognised. Reparations should reflect and address the multi-faceted harm suffered by victims, noting that both their relatives and their communities may be impacted. Reparation measures should take into account the potential obstacles, including stigma and ostracism, involved in seeking and obtaining access to reparations. It is paramount that they do not reinforce pre-existing discriminatory patterns, but rather seek to transform them to ensure that everyone has equal access to reparations.

40. In the context of the specific SGBV crimes adjudicated in the *Ongwen* case, the life-changing long-term impact of the crimes of the continuous crimes of forced marriage and forced pregnancy in particular may be specifically mentioned under this principle.

TRANSFORMATIVE REPARATIONS²⁴

41. In general terms, the transformative purpose of reparations aims at producing both a restorative and a corrective effect and to promote structural changes, dismantling discrimination, stereotypes, and practices that may have contributed to create the conditions for the crime to occur. In defining the scope of transformative reparations, the Court should focus on confronting social exclusion by prioritising a participatory process over outcomes and by challenging unequal power relations. The process of obtaining reparations should in itself be empowering and transformative and give victims the opportunity to assume an active role in obtaining reparations. The Trust Fund considers that this principle may be of particular relevance to the *Ongwen* case, given the need to re-integrate the former child soldiers in the affected communities and promote restorative justice.

NO OVER-COMPENSATION²⁵

42. The Trust Fund notes that the *Ntaganda* Trial Chamber also established a principle relevant to ‘no over-compensation’. It expresses that reparations should adequately repair the

²³ *Ntaganda* Reparation Order, paras 63-67.

²⁴ *Ntaganda* Reparation Order, paras 94-95.

²⁵ *Ntaganda* Reparation Order, paras 99-100.

harm caused, to the extent possible, thereby underlining that granting multiple modalities of reparations for the same harm suffered by the victims shall not be regarded as over-compensation. As a second consideration, the trial chamber held that “[w]here the Court considers the application of joint and several liability or responsibility *in solidum*, victims shall not be over-compensated for the harm they suffered”.²⁶ The Trust Fund considers that the latter part of the new principle may become essential once co-perpetrators of Mr Ongwen are tried, but has arguably less relevance to the case of Mr Ongwen.

IV. TRIAL CHAMBER QUERY 2 – NUMBER OF POTENTIAL BENEFICIARIES

43. Any current exercise to determine numbers of potential beneficiaries prior to the implementation of reparations will be inexact. The Trust Fund’s experience working with victims and reparation programming has shown that there are various stages when potential beneficiaries come forward and can thus be identified. One such stage is during an outreach campaign of identifying potential beneficiaries. Another stage is when beneficiaries actually start receiving reparations. At that stage, others may realise that the reparation programme is operational and also come forward. The Trust Fund is cognisant that the Trial Chamber requires at least a general estimate of the number of potential beneficiaries in order to determine the amount of liability. At this stage, any number of potential beneficiaries submitted will be an educated guess on the basis of various sources of information collected from various sources and stakeholders.

44. In relation to making submissions on the estimated number of potential beneficiaries, in the Trust Fund’s view the starting point must be the number of participating victims, which is 4,095.²⁷ Being fully aware that, given the different standards of proof for participation compared to reparations, a participating victim may not in all circumstances automatically qualify for receiving reparations, the Trust Fund still submits that most likely a large number of the participating victims, if not all, would be eligible for reparations.

45. However, the Trust Fund submits that, this notwithstanding, numbers of victims remain uncertain, especially in relation to the attacks on the camps, child soldiers, and the SGBV crimes not directly perpetrated by Mr Ongwen. This represents the bulk of the number of potential beneficiaries.

²⁶ *Ntaganda* Reparation Order, para. 100.

²⁷ Updated Consolidated List of Participating Victims, 29 June 2020, [ICC-02/04-01/15-1746](#).

46. The Trust Fund notes that the Trial Chamber, in the Order, instructed “the Registry, with the assistance and cooperation of the LRVs as appropriate, [...] to undertake a comprehensive mapping of direct and indirect victims potentially eligible for reparations”.²⁸ The Trust Fund neither intends, nor has the capacity, to duplicate such a mapping exercise. In light of the specific instruction in the Order, the Trust Fund understands the Trial Chamber’s second query to be directed primarily at the Registry. In preparation for the Registry’s mapping exercise, the Trust Fund assisted the Registry with getting into contact with intermediaries, held meetings with the Victims Participation and Reparations Section (‘VPRS’) and provided further information. The Trust Fund further informs the Trial Chamber that the VPRS shared its mapping exercise report with the Trust Fund prior to filing it. However, the Trust Fund prefers to await the final version of that report before taking the VPRS’s figures as a basis for more detailed submissions, for example on the costs of reparations.

V. TRIAL CHAMBER QUERY 3 – IDENTIFICATION OF ELIGIBLE VICTIMS

47. As one of the five essential elements of an order for reparations, the Trial Chamber “must identify the victims eligible to benefit from the awards for reparations or set out the criteria of eligibility based on the link between the harm suffered by the victims and crimes of which the person was convicted”.²⁹

48. As to the eligible victims, the Trust Fund understands the Trial Judgment to generally set out three categories of victims based on the counts for which Mr Ongwen was held responsible.

49. The first category of victims are the victims of the attacks on the internally displaced people (‘IDP’) camps Pajule, Odek, Lukodi, and Abok (‘Victims of the Attacks on Four Camps’). Within this category, victims have suffered from the crimes of murder, attempted murder, torture, enslavement, pillaging, persecution, outrages upon personal dignity, and destruction of property.

50. The second category of victims are the women and girls within the Sinia Brigade, including the seven women in Mr Ongwen’s household, who were subjected to forced marriage, torture, rape, sexual slavery, and enslavement (‘SGBV Victims’). The seven women

²⁸ Order, para. 5 (iv).

²⁹ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED Order for Reparations (Annex A) and Public Annexes 1 and 2, 3 March 2015 (‘Lubanga 2015 Judgment’), [ICC-01/04-01/06-3129](#), para. 1.

in Mr Ongwen's household, in addition, were subjected to forced pregnancy and outrages upon personal dignity.

51. The third category of victims are the former child soldiers who were part of the Sinia Brigade ('Former Child Soldiers').

52. The Trust Fund, by proposing that there are these three categories of victims, does not imply that the future beneficiaries for reparations may only belong to one category. Based on the Trust Fund's experience in northern Uganda, the reality of the victims of this conflict is that victims belong to more if not all categories of these crimes, either directly or as family members. By way of example, during the attacks on the IDP camps children were abducted and conscripted as child soldiers and raped or subjected to sexual slavery or forced marriage. Accordingly, these three categories are not meant to separate the victims into groups. They serve as a categorisation tool for linking the victims to the many different crimes, for which Mr Ongwen has been convicted.

53. The eligibility criteria are the criteria relevant to setting out, which kind of harm suffered by the victims needs to be taken into account and how such harm is to be linked to the Trial Judgment. The Trust Fund considers that this is addressed by its answers to other queries of the Trial Chamber, in particular those relevant to the description of the harm and factual presumptions, as well as by the principles of reparations. Therefore, any relevant legal issues are addressed in relation thereto.

54. As to the factual issues arising, which are not addressed elsewhere, the Trust Fund understands this query to relate more generally to the process of eligibility determination and not just be limited to the *identification* of potential beneficiaries.³⁰ The Trust Fund submits that in previous reparation proceedings, the eligibility process has taken differing forms, depending on the number of potential beneficiaries, the type of award, and the involvement of the relevant trial chamber. In the *Ntaganda* case, with the guidance of that trial chamber, the Trust Fund has commenced an effort to streamline the eligibility process. An eligibility process, which could still be adapted to specific situations, is being developed and will be presented in the Trust Fund's draft implementation plan in the *Ntaganda* case in December 2021.

³⁰ The Trust Fund differentiates the *identification* of potential beneficiaries, which is a process of finding victims and collecting information, from the verification of their eligibility for reparations, which is an assessment made by the Trust Fund.

55. The Trust Fund wishes to make use of this model in other cases as well, including the instant one, with the caveat that it remains adaptable and flexible. However, it should be borne in mind that the model to be developed in the *Ntaganda* case is premised on a specific reparation order and draft implementation plan. As such, many parameters, for example the type of reparation award, are known in the *Ntaganda* case but not yet known in the *Ongwen* case. These unknowns necessarily impact the design of the eligibility model to be applied in this case. Therefore, the Trust Fund intends to submit to the Trial Chamber the eligibility model as applicable to the *Ongwen* case in its draft implementation plan.

56. Apart from the exact procedures, the Trust Fund submits that the non-finality of the conviction and the unknown estimate of potential beneficiaries significantly impact the approach to the identification and verification of eligible victims. In the Trust Fund's view, there should be no outreach campaign or raising of any sort of expectations prior to a decision on the pending appeal of the Trial Judgment.

57. Nonetheless, the Trust Fund expects the Registry's mapping exercise to result in a large number of potential beneficiaries, most likely the largest number of victims in reparation proceedings before the Court to date. As a result, the eligibility process may require adaptations. The Trust Fund stresses in this respect that in order to avoid raising undue expectations prior to the approval of the draft implementation plan, no identification measures should take place.

58. In relation to specific issues that may be considered for the eligibility process in the instant case, the Trust Fund draws the attention to the fact that lists of people or families may exist, who were present or residing at one of the four IDP camps when the crimes were committed. The accessibility, use and usefulness of such lists would need to be considered carefully keeping in mind the need to facilitating and expediting the eligibility process.

VI. TRIAL CHAMBER QUERY 4 – PRIORITISATION OF VICTIMS

59. One of the reparation principles set out in the *Lubanga* case is that, while all victims are to be treated fairly and equally, priority may need to be given to certain victims who are in a particularly vulnerable situation or require urgent assistance.³¹ The *Ntaganda* Trial Chamber held that “attention should be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or

³¹ *Lubanga* Appeal Judgment Principles, [ICC-01/04-01/06-3129-AnxA](#), para. 19.

gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers”.³² In the instant case, considering the expected high number of potential beneficiaries, such a group of priority victims may be extremely large and would encompass in any case two of the three categories of victims, set out above, *i.e.* SGBV Victims and Former Child Soldiers.

60. The Trust Fund points out that the conflict in relation to the Lord’s Resistance Army (‘LRA’) that has affected the region far beyond Uganda, is not currently ongoing in northern Uganda with no more IDP camps accounted for. Rather, the victims have settled in their original communities or elsewhere. Accordingly, different from the situation in the *Ntaganda* case, the victims are not at this very moment subjected to ongoing conflict or displacement. Therefore, it may be considered that this case has different prioritisation needs.

61. From the Trust Fund’s experience in northern Uganda, the most vulnerable victims may be those with long-standing physical injuries or mental illnesses unaddressed for nearly 20 years. The impact of these injuries and illnesses is particularly high, as these conditions pose serious impediments to the victims’ and their families’ well-being and hinder them to contribute effectively to their families’ income and the development of their community. Addressing victims and families of victims with such harm would therefore be the most promising in terms of achieving positive impact on not only the victims themselves but also their families and communities. For these reasons, the Trust Fund’s assistance programme, set out below under query 8 in more detail, had and still has a focus on exactly such injuries and illnesses. These victims can belong to either of the three categories of victims set out above.

62. The query of the Trial Chamber is directed at prioritisation in the ‘reparation process’. The Trust Fund reads this as referring to the process of implementing reparations. Considering the expected high number of beneficiaries in this case, the limited human resources in terms of specialists that can address this harm and the limited financial resources of the Trust Fund, prioritisation will be necessary; however, such prioritisation may also be based on other criteria than the harm suffered by the victims. To those belongs for example the utility of using a community-based approach to identify and shape appropriate rehabilitative measures, and the beneficiaries. This would require the Trust Fund to start reparations based in communities and within those communities to identify harm suffered by the victims. In addition, reconciliatory,

³² *Ntaganda* Reparation Order, para. 93.

community-driven processes may first be put in place for *e.g.* Former Child Soldiers before starting rehabilitation measures. The Trust Fund considers that an indication of prioritisation may indeed be helpful in the order for reparations, however, it is preferably that this be shaped in a flexible and open way, allowing the Trust Fund to adapt the implementation to the circumstances in northern Uganda, the geographic distribution of the beneficiaries, the availability of specialised personnel (doctors, nurses etc.) and its own financial constraints.

VII. TRIAL CHAMBER QUERY 5 – TYPES AND EXTENT OF THE HARM

63. The Trial Chamber convicted Mr Ongwen on 62 counts as further set out below. As set out above, there are broadly speaking three categories of victims: a) Victims of the Attacks on Four Camps; b) SGBV Victims; and c) Former Child Soldiers.

64. The harm suffered by the victims and their consequences are addressed in the Trial Judgment and the Sentencing Decision. In the Trust Fund's view it is primarily for the legal representatives of victims to refer the Trial Chamber to the relevant parts of the Trial Judgment and Sentencing Decision as well as to evidence that demonstrates the harm suffered by the victims. Accordingly, in these observations, the Trust Fund focuses only on certain aspects relevant to the harm suffered and may make more specific additional observations once it has considered the parties and participants' submissions.

a. VICTIMS OF THE ATTACKS ON FOUR CAMPS

65. The Pajule camp was attacked on 10 October 2003. In relation to Pajule, the Trial Chamber convicted Mr Ongwen of the crimes of

- Attack against a civilian population as such (Count 1);
- Murder (Counts 2 and 3);
- Torture (Counts 4 and 5);
- Enslavement (Count 8);
- Pillaging (Count 9); and
- Persecution (Count 10).

66. The Odek camp was attacked on 29 April 2004. In relation to Odek, the Trial Chamber convicted Mr Ongwen of the crimes of

- Attack against a civilian population as such (Count 11);
- Murder (Counts 12 and 13);

- Attempted murder (Counts 14 and 15);
- Torture (Counts 16 and 17);
- Enslavement (Count 20);
- Pillaging (Count 21);
- Outrages upon personal dignity (Count 22); and
- Persecution (Count 23).

67. The Lukodi camp was attacked on 19 May 2004. In relation to Lukodi, the Trial Chamber convicted Mr Ongwen of the crimes of

- Attack against a civilian population as such (Count 24);
- Murder (Counts 25 and 26);
- Attempted murder (Counts 27 and 28);
- Torture (Counts 29 and 30);
- Enslavement (Count 33);
- Pillaging (Count 34);
- Destruction of property (Count 35); and
- Persecution (Count 36).

68. The Abok camp was attacked on 8 June 2004. In relation to Abok, the Trial Chamber convicted Mr Ongwen of the crimes of

- Attack against a civilian population as such (Count 37);
- Murder (Counts 38 and 39);
- Attempted murder (Counts 40 and 41);
- Torture (Counts 42 and 43);
- Enslavement (Count 46);
- Pillaging (Count 47);
- Destruction of property (Count 48); and
- Persecution (Count 49).

69. Considering insights derived from the *Ntaganda* reparation order's qualification of crimes and their typical harm and the Trust Fund's understanding of the *Ongwen* case and the situation in northern Uganda, it makes the below preliminary submissions related to the relevant crimes and their harm.

70. The prohibition of attacks directed against civilians aims to protect lives and avoid unnecessary suffering of individuals not taking direct part in hostilities.

71. For the direct victim of murder, harm is the deprivation of life, which constitutes the ultimate harm. Relatives and dependents left behind are also victims in that they are deprived of a family member, and thereby of love and care and, depending on the situation, of support, be it financial, physical, emotional, moral, or otherwise. They hence experience psychological, physical, and also material manifestations of harm. Moreover, individuals who survived attempted murders still bear permanent scars.

72. In addition to material harm, property crimes – such as pillaging or destruction – cause psychological harm when the loss of material assets had a significant effect on the victim's daily life, either through the destruction of their dwelling, or of their means of securing an income. Property crimes against both individuals and communities entail reduced socio-economic opportunities. Victims often witnessed or experienced directly their property being destroyed or stolen. This may also have been accompanied by the threat of violence or injury to themselves at that instant. The personal and intimate manner in which these property crimes were endured is often what causes the psychological harm.

b. SGBV VICTIMS

73. The Trial Chamber further convicted Mr Ongwen of various acts of SGBV. The Trial Chamber qualified these acts as:

- Forced marriage (Counts 50 and 61);
- Torture (Counts 51-52 and 62-63);
- Rape (Counts 53-54 and 64-65);
- Sexual slavery (Counts 55-56 and 66-67);
- Enslavement (Counts 57 and 68);
- Forced pregnancy (Counts 58 and 59); and
- Outrages upon personal dignity (Count 60).

74. Victims of SGBV suffer from a wide range of often very serious physical harm, including injuries, loss of fertility, or sexually transmitted diseases. This, in turn, also affects the family and the community as a whole over both the short and long term. It contributes to the rejection of victims by their communities and social circles, to severe stigmatisation,

causing suffering for the individuals concerned and, at the same time, leads to a weakening of the social fabric of families and communities.³³

75. The experience of the Trust Fund confirms that all SGBV Victims suffer from profound psychological harm. This may manifest itself in behavioural disorders: some victims have shown suicidal tendencies and loss of self-respect and identity.³⁴

76. If sexual violence occurs when the victim is a child, physical and psychological effects can be exacerbated. Additionally, children born out of rape can be rejected: social exclusion and stigma may have long-term consequences for children in society. For instance, if children are preparing for marriage as adults and are unable to provide answers on who their parents are, this may lead to problems, including related to acquiring identity cards and matters such as land tenure and inheritance.³⁵

77. There are also long-lasting socio-economic implications caused by crimes of a sexual nature. The stigma experienced and the psychological harm affect many victims so severely that they are no longer able to undertake income-generating activities ('IGAs') in the same way that they would have been able to otherwise. This creates a loss of opportunities and income not only for direct victims, but also for their immediate family.³⁶

78. To have long-term sustainable effects, it is necessary to address the broader context of various inequalities and consider the impact on different groups. At the community level, there needs to be an understanding that women and girls who were raped or forced into marriage, and consequently had forced pregnancies, are victims of serious crimes. In order to engage at the community level, specific attention has to be paid to local ownership of the programme. Additionally, gender related socio-economic structures and power dynamics need to be

³³ UNFPA, 'Addressing violence against girls in sexual and reproductive health services: A review of knowledge assets', 13; Marion Pratt and Leah Werchick, *Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo: An assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema, and Orientale Provinces*, USAID/DCHA Assessment Report (2004), p. 7.

³⁴ See Trust Fund's February 2020 Observations, [ICC-01/04-02/06-2476](#), para. 85.

³⁵ See Sunneva Gilmore, "Better Late than Never: Reparations for Sexual Violence in the Ntaganda case before the International Criminal Court", 2 *Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence* 2021, 27, 36.

³⁶ UNFPA, 'Addressing violence against girls in sexual and reproductive health services: A review of knowledge assets', 48; A.M. Willman and Crystal Cornman, 'Sexual and Gender-Based Violence: What is the World Bank Doing, and What Have We Learned? A Strategic Review' (2013), 5.

considered, such as access to land, inheritance, credit, employment, education, physical health, and mental health services.³⁷

79. Women and girls require physical and psychological assistance that is not always easily available in northern Uganda, and is costly. Furthermore, physical and psychological rehabilitation measures would need to be long-term to render meaningful value to reparation beneficiaries.

80. Forced marriage is a multi-faceted crime that causes long-term suffering and stigmatisation. This stigmatisation has far-reaching implications in Uganda, affecting numerous generations. Women are frequently rejected by their own communities; some have been abandoned by their pre-conflict husbands, and the majority have been divorced or were abandoned by their parents. The stigmatisation of women as ‘rebel wives’ prevents them from inheriting land and remarrying, affecting their land rights.³⁸ Victims of forced marriage may suffer harm twice: (i) their involuntary conferral of the status of marriage, and (ii) society may link them to the perpetrator or international crimes.

81. When analysing the different kinds of harm caused by the crimes for which Mr Ongwen was convicted, the Trial Chamber may want to pay close attention to harms of a reproductive character, including physical and psychological harms associated with pregnancy, miscarriage, abortion and childbirth, as well as the social stigmatisation of women who gave birth as a result of rape.

82. The economic and emotional burden of forced motherhood often exacerbates women’s and girls’ struggles to cope with their own trauma, health and economic needs.³⁹

83. Forced pregnancy is reported in many contemporary conflict contexts and has devastating effects on women, men, and children. Not only do these forms of violence translate into severe, sometimes life-threatening physical and mental forms of harm, they also all too often lead to stigma, ostracism, and rejection by families and communities, leaving victims

³⁷ See Sabine Freizer, "Reparations after conflict related sexual violence: The long road in the Western Balkans", *Security and Human Rights* 27.1-2 (2016): 14, 10.

³⁸ T. Atim, G. Acan, J. Etap and A. Bunting, ‘Uganda [Country Report](#) on Forced Marriage inside the LRA, Northern Uganda’ Conjugal Slavery in War (CSiW) Research Partnership, 2017, pp 19-22.

³⁹ Trial Judgment, paras 2748-2751.

both emotionally and materially devastated.⁴⁰ In essence, this form of violence undermines societies and communities as a whole, aiming at their destruction.

c. FORMER CHILD SOLDIERS

84. The Trial Chamber also convicted Mr Ongwen of conscripting children under the age of 15 into an armed group (Count 69) and using them to participate actively in hostilities (Count 70).

85. The recruitment of child soldiers resulted in significant psychological, social, economic, and extensive physical harm. Physical manifestations of harm affecting child soldiers include disabilities, fistulas, wounds or ulcerations, mutilation, and even death. The extent of the psychological and social harm caused by child soldier crimes is extensive and goes beyond the affected individuals. There can be behavioural disorders, such as self-isolation, family and community rejection, loss of childhood, suicidal and vengeful thoughts, rejection, and stigmatisation.

86. Conscripting children under the age of 15 into an armed group and using them to participate actively in hostilities often only tells half of the crime's story. Child soldiers are sent into battle, into their own communities, to commit crimes, they are forced to murder, rape, and mutilate. All of these horrific actions demonstrate the continuous nature of the crime and the long-standing harm it may inflict on the (former) child soldier.

d. GENERAL SUBMISSIONS

87. Apart from the above submissions on the type and extent of the harm suffered by the victims of Mr Ongwen's crimes, the Trust Fund considers, as set out at the start of this section, that the legal representatives of victims can provide an insightful picture of the harm suffered by their clients and consequently what their needs are in relation to rehabilitating such harm. Accordingly, the Trust Fund defers to a large extent to the views of the legal representatives of victims on this question, in as far as the experience of harm of their current client base may be deemed to be indicative of the eventual comprehensive group of victim beneficiaries in this case.

⁴⁰ See Ruth Rubio-Marin, 'Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue', (2012) 19 *Wm & Mary J Women & L* 69, 102-104.

VIII. TRIAL CHAMBER QUERY 6 – FACTUAL PRESUMPTIONS

88. The burden of proof in relation to being recognised as a beneficiary of reparations lies in the first place with the potential beneficiaries themselves. They, however, may not always be able to establish at the required standard of proof that they were victims of the crimes and suffered accordingly harm or that they were subjected to the crimes of which Mr Ongwen was convicted. Accordingly, trial chambers may decide to entertain certain factual presumptions in order to consider certain facts established to the requisite standard of proof.

89. While there is in theory a distinction between factual presumptions relevant to whether a victim belongs to one of the three categories of victims, as established above, and factual presumptions relevant to the harm suffered by these victims, the Court’s jurisprudence usually focuses on presuming a certain harm for a specific category of victims.

90. For the Victims of the Attacks on the Four Camps, the Trust Fund suggests a factual presumption that all individuals who are included on lists of inhabitants of the camps have suffered psychological harm, irrespective of whether they were present at the camp at the time of the attack. As mentioned above, this presumption is based on the way the camps were attacked, impacting all of its inhabitants. All inhabitants suffered harm as a result of the attacks, including psychological harm. Such a presumption would potentially facilitate and expedite the eligibility process in this case. It would also be a way to practically address the multitude of potential beneficiaries, who mostly belong to the category of the Victims of the Attacks on the Four Camps.

91. For the Former Child Soldiers, the Trust Fund supports the determination in the *Lubanga* case that “any child who was conscripted or enlisted into an armed group or who participated in combat suffers psychologically, as well as in a physical and material sense”.⁴¹ As mentioned above, former child soldiers may also fall into the SGBV Victims’ category. The Trial Chamber, in the circumstances of this case, may also consider to entertain a factual presumption that former child soldiers were exposed directly or indirectly to SGBV, thus suffering from the harm associated with it. Child soldiers being additionally victimised through SGBV is in fact, and perhaps particularly in this case, not a phenomenon just for female child

⁴¹ *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber II, Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, [ICC-01/04-01/06-3379-Red-Corr-tENG](#), para. 180.

soldiers. Accordingly, such harm should be presumed so that it can be addressed through programming in the reparations phase.

92. For the category of SGBV Victims, in light of the physical, psychological and material harm typically associated with such crimes, which were set out under the previous query, the Trust Fund supports that a factual presumption applies that they suffered these types of harm.

IX. TRIAL CHAMBER QUERY 7 – TYPES AND MODALITIES OF REPARATIONS

93. The Trial Chamber's query requires observations on the types of reparation awards and on the modalities of reparations. On the latter, the Trial Chamber also wishes to hear about the suitability of collective reparations with individualised components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented.

94. The Trust Fund recalls that the type of reparations award, *i.e.* individual or collective, is, as established by the Appeals Chamber, an essential element of an order for reparations under article 75 of the Statute.⁴² The most appropriate type of reparation award is always dependant on the circumstances of the case, the crimes that occurred, the harm or injury inflicted, the categories of victims, and the situational context of the victim beneficiary group.

95. The appropriate modalities of reparations flow from a harm-based assessment of the current needs and desires of victims, as expressed by themselves. The Trust Fund observes that it has not yet been privy to the observations of the legal representatives of victims before making these observations. Therefore, these observations are subject to such observations and may be further developed in the March 2022 observations of the Trust Fund.

Collective reparation award

96. The conflict in northern Uganda between the Government and the LRA was most grievous and lengthy. From a rebellion against the current president's government, it transformed into a violent war which mainly targeted civilians.⁴³ During this conflict, more than 1,4 million people were displaced, and tens of thousands more were killed, raped, mutilated, and abducted. The crimes for which Mr Ongwen has been convicted were committed between 2002 and 2005 and include a number of crimes, such as in relation to Former Child

⁴² Lubanga 2015 Judgment, para. 1.

⁴³ See Lomo, Z. and Hovil, L., 2004, *Behind the Violence: The War in Northern Uganda*, Monograph No. 99, *Institute for Security Studies, Pretoria*, South Africa, p. 4.

Soldiers, as well as to SGBV Victims, that were committed over extended periods of time, with severe consequences for these victims.

97. The Trust Fund takes into account the lapse of time between the commission of the crimes and Mr Ongwen's conviction in 2021, which is currently still under appeal, as well as the expected extremely high number of victims in this case. In addition, in particular in relation to the Victims of the Attacks on the Four Camps, the Trust Fund considers that they have also suffered from numerous other crimes during the conflict, which are not part of the scope of the Trial Judgment. These victims returned from the IDP camps back to their homes (having lost everything), or their communities (if their houses were previously destroyed) or settled elsewhere. In that respect, these victims may likely not be interested in a restitution of their situation in the IDP camps. In addition, it is impossible, given the high number of victims and the lapse of time, to assess the loss each individual suffered in economic terms. Therefore, compensation does not appear to be an appropriate remedy either.

98. Instead, the focus of reparations may need to be on rehabilitation measures, which include physical, psychological, and socio-economic rehabilitation measures. The multi-dimensional reparative value for victims that may result from rehabilitation measures should enable victims to rebuild their lives and regain their dignity. Such measures would address the following types of damage and injuries suffered by the victims as described above: (i) psychological, psychiatric, and psycho-social trauma still suffered today; (ii) socio-economic impact and consequences as suffered today; (iii) physical damage and injury as suffered today. These measures may also address other types of impacts, including at the community level.

99. In addition, satisfaction measures and symbolic measures, including symbolic compensation to certain categories of victims in recognition of their specific harm suffered, may be appropriate reparation measures. Other symbolic measures *e.g.* to recognise the harm suffered by the northern communities that were particularly affected by the crimes at issue may also be appropriate. In that regard, the Trust Fund points out that different from the *Ntaganda* case, which broadly distinguishes between the child soldiers' ethnicity and the ethnicity of the victims of the attacks, the northern communities were subjected to both – to attacks and to the abduction of their children to be conscripted as child soldiers or be forced into sexual slavery, forced marriage, and forced pregnancy. Child soldiers who came of age therefore continued to serve in the LRA and committed crimes against their own or other communities. This requires also an integrative approach to reparations.

100. Developing any such symbolic reparation or satisfaction measures will require the close involvement of the communities and civil society and, if possible, the cooperation of the government. Any such measures are by their very character collective and not individual. In addition, such measures should also, in line with the above-mentioned reparation principles, and particularly in the context of northern Uganda, strive for reconciliation within communities and integration of the victims into their communities.

101. The Trust Fund considers that rehabilitation measures would best be collectively ordered for all three categories of victims set out in response to query 3. These measures are collective, in that it is sufficient to be a victim of the crime (*i.e.* to have suffered harm due to the crime) to be eligible to receive such reparations. This means that they address the entire collective of the victims of the crimes for which Mr Ongwen has been convicted. The Trust Fund considers that it may not be necessary to specify that these rehabilitation measures have an individual component. By their very nature, rehabilitation measures are victim-centred and have an individual component: the choice of physical and psychological rehabilitation measures depends on the individual needs of the victims; the choice of socio-economic rehabilitation measures on the abilities and wishes of the victims. In the latter component, it is possible to also include a community-centred approach, by offering such activities as needed by the relevant communities upon consultations with them, the victims, and civil society.

102. The Trust Fund considers that, as a necessary rehabilitation modality, the provision of extensive mental health and psycho-social support interventions that can be accessed by individuals, families, groups, and communities and that addresses different levels of mental health care in a holistic way, including safeguarding against stigma, may be necessary. Mental health services need to be integrated in a multi-sectoral approach, involving measures in the areas of educational support, livelihood development, and physical rehabilitation.

103. In relation to dealing with certain psycho-social challenges, the Trust Fund considers that the use of a ‘training of trainers’-approach (‘ToT-approach’) may be appropriate, as successfully implemented in its assistance programme. The ToT-approach is useful in psycho-social support activities, such as music, dance, drama, sports, family, and community events. Such activities complement specialised trauma-based counselling of individual victim beneficiaries, in relation to specific mental harm, such as post-traumatic stress disorders (‘PTSD’), depression, anxiety disorders, etc.

104. In sum, the Trust Fund suggests, subject to its further consideration of the observations of parties and participants in these proceedings, that a collective reparation award to all victims of the crimes committed by Mr Ongwen may adequately repair the harm suffered by the victims in the *Ongwen* case, specifying appropriate reparations, including rehabilitation, satisfaction and symbolic measures.

105. Should the Trial Chamber so order, the Trust Fund suggests that the award for reparations be made through the Trust Fund pursuant to rule 98 (3) of the Rules. The Trust Fund currently does not suggest that rule 98 (4) of the Rules be applied to make the award to an intergovernmental, international or national organisation. Once the Trust Fund is seized by an award for reparations, the Trust Fund will develop a draft implementation plan in line with the Regulations of the Trust Fund.

106. In this plan, the Trust Fund will address the specifics of the rehabilitation measures, symbolic reparation and satisfaction measures and address any transformative, reconciliatory and integrative aspects of these measures, whether, how and when they can be implemented and in respect of which victims, taking into account the views expressed during these proceedings, further consultations with victims, communities, civil society and other contextual stakeholders, including government authorities and agencies, and within the confines of the eventual reparation order.

107. The Trust Fund submits that, as set out in the relevant reparation principles, collective reparation measures in the *Ongwen* case should be designed in a way that ensures the involvement and support of victims' families and communities to the extent possible during implementation. In that respect, the Trust Fund is committed to conduct assessments during implementation with the communities to identify what kind of socio-economic measures would be best to support victims.

Individual reparation award

108. The Trust Fund notes, however, that the Trial Judgment is referring to a rather high number of specific victims and could therefore be read as inviting, in addition to a collective award, for individual reparation awards, in particular *e.g.* for the seven women in Mr Ongwen's household and the children born out of the crimes committed against these women by Mr Ongwen himself. The Trust Fund notes that it is highly likely that Mr Ongwen will be found

indigent and that therefore voluntary contributions of States and other donors will be required to complement reparation awards, including any individual awards.⁴⁴

109. The Trust Funds notes in this respect that the Sentencing Decision establishes that it is equally grave in terms of sentencing (20 years for each count) that Mr Ongwen committed the sexual and gender-based crimes against the seven women assigned to him by himself as the sexual and gender-based crimes he committed as part of the common plan jointly with and through others. The Sentencing Decision thereby points out “that at any time between 1 July 2002 and 31 December 2005 there were over one hundred abducted women and girls in Sinia brigade”.⁴⁵

110. Based on this approach in the Sentencing Decision, reparations may therefore be provided to the seven women in the same way as to all other SGBV Victims in the case, *i.e.* in the form of rehabilitation as part of the collective reparation order.

111. It may be considered awarding all SGBV Victims and their children born out of SGBV crimes individual reparation awards, in particular by way of compensation, in order to acknowledge their individual suffering. Given the reparation principle relevant to non-discrimination and the serious effects on the dignity of each victim who has suffered from SGBV crimes, as well as the ‘do no harm’ principle and possible re-traumatisation, the Trust Fund considers that a symbolic amount that becomes part of the collective reparation award may be better placed to address such harm (see above 99). However, the Trust Fund will have to assess carefully the possible number of SGBV Victims and the availability of resources to complement the reparation award before committing to such a measure in the draft implementation plan.

Challenges

112. The Trust Fund, when developing the draft implementation plan and the methods of implementation, will need to address many different challenges and will need take into account various risks, some of which are addressed in a preliminary manner as follows:

⁴⁴ *The Prosecutor v. Germain Katanga*, Notification pursuant to regulation 56 of the TFC Regulations regarding the Trust Fund Board of Directors’ decision relevant to complementing the payment of the individual and collective reparations awards as requested by Trial Chamber II in its 24 March 2017 order for reparations, 17 May 2017, [ICC-01/04-01/07-3740](#), para. 36.

⁴⁵ Sentencing Decision, para. 331.

113. *Context:* First, northern Uganda continues to face deeply concerning challenges. In the 2019/2020 Uganda National Household Survey, the Acholi region was ranked as the poorest in the entire country, with almost 70 per cent of individuals living in poverty.⁴⁶ In addition, many refugees from neighbouring countries still live in the region.

114. *Geographic location of the victims:* The Acholi region includes the districts of Gulu, Kitgum, Omoro, Pader, Agago, Nwoya, Amuru, and Lamwo. Three of the former IDP camps – Odek, Pajule, and Lukodi – are located in the Acholi region. The Trust Fund considers that, while the inhabitants of the camps have returned to their original homes or settled elsewhere, many of them stemmed from and accordingly later remained in this region. However, the conflict had spilled over in 2002 to other regions of Uganda as well, where the Sinia brigade was active too. Victims are therefore spread throughout the territory of northern Uganda and even throughout Uganda.

115. *Expectations of victims and the cultural context:* As set out above, preferences expressed by victims are an important factor in determining the rehabilitation measures. However, the socio-economic measures provided to the beneficiaries may not align with their expectations to reparations, *e.g.* if thinking in terms of compensation for economic loss and within their domestically defined understanding of what reparations may entail. In addition, wishes of victims are informed by their social context, that is, victims would rarely articulate needs and aspirations that sit outside their own cultural compass. Psychological trauma may be one example. While psychological trauma is a constant manifestation of harm (for example, with child soldiers, relatives of murdered victims, those subjected to rape and/or sexual slavery), acknowledging the existence of such trauma and the need to address it may encounter personal and social constraints. In order to avoid exposing individuals to undue social pressure, it is in the experience of the Trust Fund more effective to address individual psychological harm by ensuring the implication and positive support of the beneficiary's family, group, and community.

116. *SGBV Victims:* An important caveat results from the particular experience of the Trust Fund with SGBV victims. Such victims would, in addition to the injuries and damages suffered from SGBV crimes, have suffered physical and psychological harm, as well as material losses as a result of, for example, dropping out of school or losing the social support structures due to

⁴⁶ The Uganda National Household Survey, Uganda Bureau of Statistics, pp. 83-91.

ostracisation. Accordingly, SGBV victims may decide not to come forward in identification processes as that would require a direct engagement and with that, the risk of social exposure and stigma. Conceiving reparation measures as collective in character, yet yielding individual benefits, may increase the chances of reaching this important group of victims.

117. According to information gathered by the Trust Fund in northern Uganda, the biggest challenge SGBV survivors face is the day-to-day challenge of having to single-handedly fend for their children. The stress of having to provide for their families on a daily basis, the burden of costs such as rent, food, medical care, and school fees is often over-whelming. As a result of the daily stresses of life, many of these SGBV survivors cannot heal from what they went through.

118. Children born in captivity require reparative measures tailored to their specific experience of harm. While the relatives of their mothers may have welcomed their daughters back, the children they return with may remain unwelcome guests. They are seen as out-casts and agents of the oppressors, therefore suffering extreme stigmatisation. Further, they are not considered when family resources are being shared, especially land resources. This category of victims needs support to secure means of livelihood for their survival.

119. In SGBV programming, victims may take a long time to open up, especially male victims due to cultural models, socially-imposed behavioural patterns and expectations, and fear of retribution. In addition, any rehabilitation measures for SGBV Victims must avoid further risks of stigmatisation. On the other hand, in the best-case scenario such programming may have a catalytic effect on SGBV Victims, who may, at the end of the rehabilitation programme, become active in community centres and initiatives, established to ensure their continuous inclusion in the communities.

120. *Former Child Soldiers:* Many LRA members may be found to be victims themselves, as they were forcibly abducted and brutalised by the LRA leadership when they were still children. This reinforces the idea that the reintegration of these individuals into Ugandan society is crucial for the future stability of northern Uganda. Moreover, the focus of the local communities on reconciliation rather than on retributive justice is strengthened by the intrinsic value of healing among the northern cultures. Accordingly, in addressing specifically the category of Former Child Soldiers, the Trust Fund will need to consider how best to integrate restorative justice processes into its reparation programme.

121. *Disappeared victims*: The Trust Fund observes that many victims have been denied closure due to the unknown fate of their loved ones. Camp residents have ‘disappeared’ or were buried in mass graves. For some victims, it is essential to trace what happened to their loved ones and have their remains ‘repatriated’. This is particularly important in the cultural context of some victim communities. Reparation measures involving reburials would likely require assistance from the Ugandan government and religious and cultural leaders.

122. Finally, the Trust Fund also points to the importance of ‘conflict sensitivity’, which is closely related to the ‘do no harm’ principle and the requirement to treat victims equally. The onset of judicial reparation measures focusing on victims’ harm in the *Ongwen* case may create tension within communities if they do not see how the measures might benefit all of them. Case victims, and situational victims of similar crimes, have very close relations and have suffered similar injuries. Such tensions should be countered with non-eligible reparation victims benefiting from the above-mentioned symbolic measures or a community-based approach to the development and implementation of collective awards, as well as possibly from Trust Fund-funded assistance activities, or government-led reparation initiatives. In any event, reparation programmes require strong advocacy and outreach within communities to avoid animosity against potential beneficiaries and the recurrence of cycles of social or violent conflict.

Expeditious implementation

123. The Trust Fund considers that the Trial Chamber’s question relevant to the expeditious implementation of reparation measures is directed at whether the Trust Fund can address victims’ urgent needs through an initial implementation plan prior to the development of the draft implementation plan.

124. The Trust Fund considers it essential to focus its resources on the prompt development of an implementation plan and related consultation processes instead of starting in parallel with implementation and identification processes for rather small numbers of victims that are considered prioritised. Evidently, once implementation of reparations starts based on the approved implementation plan, participating victims will be the first to receive reparation measures as their whereabouts are already known and the identification of other potential beneficiaries will only start on a full scale once implementing partners are in place to collect their personal information.

125. Even upon approval of the draft implementation plan, prompt implementation, especially in relation to prioritised victims, remains important. This will require appropriate consideration of financial parameters, including the Trust Fund's ability to (incrementally) complement the payment of reparation awards, in accordance with regulation 56 of the Regulations of the Trust Fund. Once the Trial Chamber sets the amount of liability of the convicted person in the reparation order, and hence the total value of the reparation award, the Trust Fund will have to consider how to approach its funding role, in consideration of available resources, the potential of acquiring additional earmarked voluntary contributions on the basis of the reparations award, and the most appropriate consideration of prioritisation and vulnerabilities.

126. Upon considering the submissions of the parties and participants, the Trust Fund may revert on the issue of expeditious implementation in its March 2022 observations.

X. TRIAL CHAMBER QUERY 8 – COST ESTIMATES

127. Given the above-expressed assumption that collective reparations may foremost focus on recognition, rehabilitation, and symbolic/satisfaction measures, the costs below focus on costs arising for rehabilitation of victims, their families and communities. The Trust Fund addresses this query in two parts. First, it sets out in some detail its experience as to the rehabilitation provided to victims in Uganda since 2008 and describes the relevant programmes and measures taken. Second, based on its experience and reinforced through recent contacts with past and current partners, it assesses the costs arising for rehabilitation measures.

Background to Trust Fund's assistance programmes in Uganda

128. In terms of existing structures in Uganda, the Trust Fund began implementing an assistance programme in 2008 across the conflict-affected region of northern Uganda. To date, the assistance provided to victims of the conflict between the Government of Uganda and the LRA includes medical rehabilitation, psychological rehabilitation, and livelihood support. In the conflict-affected region of northern Uganda, the Trust Fund has assisted more than 60,000 beneficiaries directly (figure from December 2020), including attendees of education and training programmes and well over 350,000 indirect beneficiaries (family and community members).

129. The Trust Fund appreciates the support that local authorities have extended to the assistance programme over these many years. Trust Fund assistance activities are conducted in

partnership with non-governmental organisation (‘NGO’) implementing partners, including Ugandan NGOs, international NGOs, faith-based organisations, cultural institutions, and academic institutions. Over the course of the Trust Fund’s assistance activities in Uganda, the Trust Fund has partnered with more than 25 organisations to provide rehabilitation assistance to victims across more than 22 districts of the conflict affected region.

130. The Trust Fund considers that there are many victims of the conflict that continue to endure harm from conflict crimes and reaffirms its support to victim assistance activities, contributing to the resilience of victims and their ability to overcome unimaginable harm as the foundation for a just and peaceful society, built on shared trust and confidence in the future.

131. Trust Fund assistance activities in northern Uganda include the following conflict-affected districts: Ouke, Apac, Alebtong, Lira, Amolatar, Dokolo, Kwanja, Gulu, Omoro, Kitgum, Lamwo, Kole, Oyam, Agago, Nwoya, Amuru, Pader, Kapyelebong, Amuria, Kaberamaido, Soroti, and Adjumani.

132. In 2019, a new phase of the programme was initiated in Uganda to better focus rehabilitation efforts on physical injuries and psychological trauma coupled with livelihood support to victims.

133. Under the assistance mandate in Uganda, the Trust Fund provides three forms of support to victims and their families in the situation through program funding for physical rehabilitation, psychological rehabilitation, and material support:

- a. Physical rehabilitation includes provision of reconstructive and general surgery, prosthetic and orthopaedic devices, bullet and bomb fragment removal, physiotherapy, post-operative care and follow-up, specialised services for SGBV survivors such as fistula repair, and chronic pain management.
- b. Psychological rehabilitation includes provision of clinical counselling services for individuals, families, and small group trauma counselling to respond to mental health disorders such as PTSD, depression, anxiety disorders, etc. In addition to counselling services, the Trust Fund supports psycho-social programming to promote community reconciliation initiatives. Peer support group activities include music, dance, drama, and sports activities promoting healing and social cohesion. Psychosocial activities also include peacebuilding, community sensitisation campaigns and workshops, radio broadcasts concerning topics such as acceptance, mitigating stigma (SGBV, child soldiers), and promoting integration within communities.

- c. Material support activities address the livelihood harm endured by victims through village savings and loan associations ('VSLAs'), IGAs, vocational training, animal husbandry, and improved agriculture initiatives. Livelihood initiatives aim to revitalise local economies and rehabilitate household livelihoods.

Physical rehabilitation

134. Restoring mobility is the first step towards enjoying basic rights such as access to food, shelter, education, employment, equal opportunities, and equal citizenship. The physical rehabilitation provided by the Trust Fund involves the provision of mobility devices such as prostheses, orthoses, walking aids and wheelchairs, physiotherapy, and access to surgical and medical services. Furthermore, to ensure appropriate reintegration into families and communities, schools, and workplaces, the Trust Fund provides socio-economic support.

135. To increase access to medical rehabilitation for victims of conflict in Uganda, extensive outreach to the communities in the North were conducted in order to make victims aware of service availability and to therefore increase service accessibility.

136. The success of the Trust Fund is driven by collaboration with its partners, local orthopaedic workshops, local professionals, local government, and Ministry of Health authorities with a view to strengthening local capacity, ensuring service continuity and increasing sustainability. The physical rehabilitation interventions of the Trust Fund are provided in partnership with AVSI⁴⁷ at the Gulu Regional Orthopaedic Workshop, at Gulu Regional Referral Hospital, Lira Regional Referral Hospital, and area health centres.

137. The Trust Fund under the AVSI-managed project uses *SwissLeg*, high-mobility, and low-cost technology, to meet victims' needs, and provides professional trainings on limb fabrication to prosthetic and orthopaedic technicians in Uganda. The Trust Fund project trained students from the Orthopaedic Technology Training School in Mulago. During the two-week training, the students learnt practical aspects in prosthetic production (assessment, casting procedure, caste modification, and moulding among others).

138. Such an initiative facilitated the expansion of rehabilitation services for amputees to orthopaedic workshops in different regions of Uganda and victims no longer have to travel great distances for repairs, fitting, and replacements. The Trust Fund promotes rehabilitation

⁴⁷ See below in relation to this partner.

services that are relevant to victim situations and sustainable by increasing local expertise in the new technologies.

139. The Trust Fund works with an international team of surgeons complemented by local surgeons to provide surgical rehabilitation procedures for victims. The Trust Fund in partnership with HRI⁴⁸ organised surgical camps across northern Uganda where major and minor surgical procedures were performed to remove bullets and bomb fragments, relieve post-burn contractures, fistula repair, and many other procedures (*e.g.*: herniorrhaphy, thyroidectomy, hydrocelectomy, exploratory laparotomy, total abdominal hysterectomy, arthrotomy, corrective osteotomy and external fixation, pinning, Mayo's repair, ankle fusion, bilateral salpingo-oophorectomy, excision and triamcinolone injection, sequestomy, open reduction and internal fixation surgery, and debridement among others). Post-operative care and follow-up care after discharge is conducted with victim patients at their nearest health facility.

Psychological rehabilitation

140. One of the most significant consequences of armed conflict and other situations of violence is their impact on the mental health and psychosocial well-being of the people affected.

141. The mental health and psychosocial support provided by the Trust Fund as part of its assistance activities includes a wide range of activities to address the psychological trauma and psychiatric consequences either caused by or exacerbated by the conflict.

142. The Trust Fund develops assistance programming that builds local capacity to improve the mental health and the emotional well-being of individuals and communities affected by armed conflict mental trauma.

143. The Trust Fund continued its core activities to build the capacity of local mental health professionals through partnership with local organisations. The Trust Fund provided high quality trauma care through intensive small groups and individual psychotherapy to clients showing symptoms of PTSD, anxiety disorders, depression, and other behavioural disorders.

144. Victims relate that psychological rehabilitation services are an integral component of the recovery process because it helps them to alleviate mental trauma of things they

⁴⁸ See below in relation to this partner.

experienced and witnessed during the conflict. Six months of therapy follow-up assessments have shown a decrease in the frequency of clients' mental health symptoms. These decreases are significant and of a large magnitude, demonstrating a clinically meaningful reduction in mental health symptoms.

145. In addition to trauma counselling, the Trust Fund also supports psycho-social initiatives such as community sensitisation activities in order to identify LRA-affected communities in need of mental health services; meetings to raise awareness of the effects of torture and trauma on the individual survivors and communities as a whole.

146. The Trust Fund provided clinical training to staff in its partner organisations. To maintain the quality of care and well-being of mental health providers, the Trust Fund provided 100 clinical supervisions to mental health providers to ensure that counsellors receive timely, detailed feedback, enabling them to refine and expand their skill sets.

147. The Trust Fund continued to strengthen its partnership with Makerere University's Department of Psychology and developed a Master's level diploma program in trauma counselling.

148. Cognitive Behavioural Therapy ('CBT') has been one of the effective forms of therapy the Trust Fund uses to improve social functioning among conflict affected communities. It has transformed the lives of the beneficiaries who integrated strategies such as relaxation exercises and experience sharing in their daily routine tremendously. Results of progressive assessment using the daily mood scale indicated that a majority of beneficiaries participating in CBT have 'good mood' (mood rated between a scale of 6-8).

149. In partnership with government health centres, the Trust Fund facilitated access to psychotropic drugs for victims with psychiatric symptoms. Psychiatric Clinical Officers have reported good drug adherence and reduction in cases of relapse among beneficiaries.

Material support activities

150. The Trust Fund aims at improving economic opportunities of victims through IGAs such as VSLAs and other small business initiatives. These initiatives are not only the foundation for victim economic empowerment, but also provide a platform for wider family and household empowerment in areas such as food security and increased agricultural productivity, and for increasing the social participation and reintegration of women, girls, and people with disabilities.

151. The Trust Fund provided ToT on the VSLA methodology to a group of victims. With this new knowledge they are empowered to act as mentors to mobilise, form, and train VSLA groups in their communities. They are able to train other community members in VSLA concepts and many VSLA groups were established in their communities. Members received grant support that enables them to easily access capital in the form of loans and to engage in IGAs and the benefit from savings interest in the VSLA.

152. These groups received regular supervision and guidance in bookkeeping and governance support. Beneficiaries are currently engaged in agribusiness where they are able to grow soya beans, green grams, sun flower, cotton, and cereal crops to supplement their savings. Through group farming, beneficiaries reported increased food security at household level, improved nutrition, increased production, and access to labour from group members.

153. VSLAs have shown great success in improving socio-economic conditions of victims, creating a peer support group, and in enhancing peaceful co-existence.

SGBV activities

154. When the assistance programme in northern Uganda was renewed in April 2019, the Trust Fund refined its activities to better physically and psychologically rehabilitate victims coupled with livelihood support initiatives. All of the Trust Fund projects provide rehabilitation services to victims of the conflict including to SGBV survivors. It is important to note however that while all of the projects provide rehabilitation services to SGBV survivors, only two projects are recipients of SGBV-earmarked funds and therefore only two projects report quarterly on these specific efforts to the Trust Fund. These two projects have reported more SGBV survivors within the projects than were projected in the proposal.

155. Services provided to SGBV survivors include: medical treatments and therapies such as reconstructive or corrective surgeries for fistula repairs and the management of chronic pain physiotherapy; victim mobilisation and referrals for specialised medical care at various healthcare facilities; mental health services including trauma-based counselling to individuals, couples, and families; psycho-education initiatives at the community level to raise awareness; and acceptance of mental health, causes, and mitigation measures. Therapeutic measures employed in the projects included CBT, controlled administration of pharmaceutical therapies in relation to mental trauma or illnesses resulting from violent experiences endured during conflict in either abduction and captivity by the LRA or during attacks in their communities

during the conflict, livelihood support in the form of VSLAs, IGAs, and peace-building initiatives including the training of Community Support Structures at the community level to mediate conflicts including SGBV and land tenure disputes which greatly affect SGBV survivors.

156. In the programme renewal period from April 2019 until October 2021, the Uganda assistance programme has served a total of 2,476 survivors of SGBV.

Peacebuilding activities

157. The Trust Fund uses reconciliation and transitional justice approaches aimed at dealing with the consequences of the inter-ethnic conflict and legacies of systematic human rights violations and abuses so as to provide healing and redress for all victims and to promote peaceful co-existence.

158. Victims of war have difficulties reintegrating with their community due to many challenges, such as having to live with or near a “perpetrator”, often they cannot engage in activities they were involved in prior to the conflict, and many have experienced abandonment by family members and spouses.

159. Through periodic community sensitisation meetings in the communities of northern Uganda, the Trust Fund works together with local leaders to raise awareness in the community over issues including but not limited to: the consequences of war and the need and importance of physical and psychological rehabilitation for war victims. The sessions are designed to reduce stigma, promote rehabilitation, and inclusion of the persons living with physical disabilities and psychological trauma brought on by the conflict.

160. The Trust Fund projects use Community Support Structures that have continued to play an active role in mediation of conflict in their communities. Conflicts addressed in the aftermath include land disputes, domestic violence, animal theft, and issues of child abuse among others.

Trust Fund’s current partners

1. AVSI Foundation

Capacity building, advocacy, and physical rehabilitation.

Medical rehabilitation to disabled victims of war in northern Uganda through provision of prosthetics, orthotics, and physiotherapy; improve the quality of life and social inclusion for physically disabled victims of war through psycho-social rehabilitation in northern Uganda

through identification and assessment of amputates, provision of capacity building to social workers, community sensitisation, and patient follow up.

2. Center for Children in Vulnerable Situations (CCVS)

Centre for expertise in psychological support services and well-being of war affected children, families, and communities.

Psychological rehabilitation services to war-affected children, youth, and adults with a focus on direct war victims, through provision of psychological counselling and supporting the rebuilding of social relationships and networks and increasing the local capacity and know-how of key community stake holders in providing basic psycho-social support within communities, schools, and health centres; community sensitisation through local radio stations programme “Healing our Wounds”.

3. Center for Victims of Torture (CVT)

Treating the mental health needs through counselling and capacity building.

Provide survivors of LRA-inflicted torture and violent trauma with effective mental health rehabilitation services through on-site mental health clinical mentoring as well as providing intensive and on-going clinical supervision and training to the counsellors in partner NGOs; creating a cadre of mental health professionals and paraprofessionals necessary for sustainability of mental health trauma rehabilitation in Uganda.

4. Health Right International (HRI)

Comprehensive medical and psycho-social support for the war victims.

Comprehensive medical treatment, physical and psychological rehabilitation services for victims and survivors of war; empower and promote survivors and local community participation in support of recovery; through surgical and treatment interventions to relieve suffering and the wounds of war; response to the needs of victims including SGBV survivors in the communities and offer training to local stakeholders.

5. Transcultural Psychological Organisation (TPO)

Provision of integrated physical and psychological rehabilitation to victims.

Provide physical and psychological rehabilitation services to victim survivors; improve access to rehabilitative, surgical and medical services through capacity building for social workers and developing referral pathways among service providers. The project integrates a component of livelihood improvement of war survivors.

Cost estimates for rehabilitation measures

161. In an effort to estimate the costs of various reparation projects to be set up, the Trust Fund has reached out to a number of organisations operational in the region. Below, the Trust

Fund sets out the information it has received over the past months, including from its partners based on their entire experience, which it therefore considers to be up-to-date.

162. The Trust Fund stresses that this is not meant to be a proposal for projects, as these can only be developed upon issuance of the order for reparations as part of the draft implementation plan. Rather, it is meant as a general indication for the Trial Chamber about the ranges of probable costs for certain types of rehabilitation initiatives, considering that the organisations have been active in the region for many years.

163. Separately, on 4 November 2021, the Trust Fund also published an expression of interest for organisations to apply to be involved in the reparation implementation. From the responses received, the Trust Fund will create a roster of organisations which could be invited to become implementing partners. The expression of interest is currently open until 31 December 2021 and may be extended if necessary to receive the best quality market response.

164. The questionnaire sent to organisations operational in the region yielded the following results in relation to estimated costs for certain services for victims:

Type of reparation initiative	Cost estimate per person
Physical rehabilitation, <i>e.g.</i> : <ul style="list-style-type: none"> • Prosthetics / amputees / persons with disabilities, new limb, replacement, repair • Corrective surgery • Burn injuries • Post-burn contractures • Bullet and shrapnel removal • Follow-up care • Physiotherapy • etc. 	<ul style="list-style-type: none"> • Medical treatment: €50 per person • Orthosis: €75 per person • Below knee prosthesis: €372,5 per person • Above knee prosthesis: €745 per person • Functional arm: €620 per person • General physiotherapy and chemotherapy treatment: €87 per person • General corrective surgery: €125 - €150 per person • Corrective surgery for fistula: €150 per person • Orthopaedic surgery: €150 per person • Referral surgery, including transportation and follow-up: €175 per person • Other complex surgeries (for example hip replacement): € 4,000 per person

<p>Psychological rehabilitation</p> <ul style="list-style-type: none"> • Counselling (anxiety disorders, PTSD, depression, etc.) • Psychosocial support – music, dance, drama, sports, families, and communities 	<ul style="list-style-type: none"> • One-on-one counselling: €13-€20 per person per session • Psychiatric treatment through referral: €25 per person • Group therapy: €75 per group of 12-15 individuals • Family support services: €75 per family
<p>Livelihood support (service delivery requires 2-2.5 years of victim engagement)</p> <ul style="list-style-type: none"> • Income-generating activities (business skill, apprenticeship) • Improved agriculture • Vocational training • Village Savings and Loan Associations ('VSLA') • Animal husbandry 	<ul style="list-style-type: none"> • VSLA: €800 - €1,000 per group of 30 individuals • Income-generating activities: €1,250 - €4,500 per group of 30 individuals • Agricultural business and schooling: €800 - €1,250 per group of 30 individuals

165. As can be seen from the above table, the estimated costs for certain services differ depending on the severity of the injury or condition. In addition, the number of service providers (*e.g.* doctors, psychologists, trainers) is not unlimited, as is the geographic scope within which they can be active. Therefore, in developing a reparation programme, it will be necessary to prioritise certain geographic areas by the expected numbers of beneficiaries and to take into account in its design that it will need to move its geographic focus throughout the relevant territories over the years, thereby step-by-step reaching out to all accessible victims.

166. An important cost-factor, additional to the direct costs of providing services, are the indirect costs necessary to establish or maintain the structures of the implementing partners within the region. The Trust Fund observes within the assistance programme up to a maximum of 15% for indirect administrative and management costs for the implementation of a project by the implementing partners. The Trust Fund submits that indirect and direct costs need to be taken into account when determining how much it costs to rehabilitate the victims of this case. The above-mentioned costs include, as a rule, both direct and indirect costs.

167. The Trust Fund may be able to provide more detailed submissions by March 2022, including after taking note of submissions by the Registry, the legal representatives of victims and the *amici curiae*. As to costs, the Trust Fund generally expects that individual (one-to-one)

physical and psychological rehabilitation measures, which are costly, may not be required for all beneficiaries in this case. Group-based psychosocial and socio-economic rehabilitation measures, aimed at empowering the community, families, and providing group support, may need to be accessible to most of the beneficiaries. These measures are considerably less costly than individual rehabilitation measures.

XI. TRIAL CHAMBER QUERIES 9 AND 10 – OTHER REPARATIONS

168. The Trust Fund is not aware of any prior judicial or domestic administrative reparations that the victims of the crimes for which Mr Ongwen was convicted may have received. The Trust Fund's assistance programme partners' rehabilitation measures may have addressed a number of victims who fall within the scope of the beneficiaries of the *Ongwen* case. Insofar as beneficiaries received such rehabilitative measures from the Trust Fund, in particular psychological, psycho-social, and physical rehabilitation, it will need to be carefully assessed whether they still require additional rehabilitation in these areas. Insofar as socio-economic measures are concerned, such beneficiaries may not wish to choose a training (*e.g.* if they already received it and carry out a business), but they may still require other income-generating measures. In that respect, the first part of the principle of no over-compensation, as referred to above under the first query, should find application.

169. The Trust Fund is aware of draft transitional justice legislation under consideration in Uganda that could possibly engender reparations for victims of Mr Ongwen's crimes. The policy on transitional justice was adopted in 2019 and the relevant law is in the legislative process since. The Trust Fund observes that the Trial Chamber separately invited the Ugandan government to make submissions in relation to the reparation proceedings in this case. The Trust Fund considers that the Ugandan government is in a better position to make observations in relation to whether victims of Mr Ongwen's crimes have received national reparations.

170. As a final remark, the Trust Fund underlines that reparations for mass atrocities require the support, commitment, and action of the state, in which the mass atrocities were committed and where the victims live. The Court's reparation scheme is directed against an individually convicted person, who can financially support reparation measures, or pay for reparations in their entirety, and can serve as a source for satisfaction measures, such as apologies or through participation in symbolic activities. The Trust Fund, in implementing collective reparations, setting up rehabilitation schemes and using money from voluntary contributions of States and

other donors, can go beyond this. For measures implemented by the Trust Fund to succeed, however, it needs the support of civil society, of the affected communities, of provincial governments and, most crucially, the cooperation of the government itself. In that respect, the Trust Fund recalls as well the general obligations of States to cooperate with the Court as set out in Part 9 of the Statute. The Trust Fund recalls with appreciation the support afforded to it by the Government of Mali in organising the symbolic ceremony for the implementation of the symbolic reparation award.⁴⁹

171. In addition, while the Trust Fund can implement reparations with a victim-centred approach, it is the Government that can ensure that measures that benefit all the victims of the conflict and may serve to rehabilitate the affected region as such, such as the building of schools, hospitals, and more generally the infrastructure, are put in place. Similarly, guarantees of non-repetition, an important aspect of reparations, as well as certain measures of satisfaction (inclusion of the account in educational materials) can only be provided by the relevant Government, if need be with the support of the international community.⁵⁰


172. The Trust Fund is committed to further improve the good cooperation it enjoys with the Ugandan government, and in particular the Attorney-General and his office, and to advocate for the relevant satisfaction and other reparation measures for victims of this case. The Trust Fund will meet the Attorney-General during the current Assembly of States Parties in The Hague.

XII. CONCLUSION

173. The Trust Fund requests the Trial Chamber to take its observations into account when considering the reparation order in this case and is committed to provide further observations in February, insofar as new relevant information comes to the fore, and its final observations in March 2022.

⁴⁹ See *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trust Fund for Victims' Twentieth update report on the updated implementation plan and request to reclassify as public portions of the case record, 19 May 2021, ICC-01/12-01/15-386-Conf, paras 44-49.

⁵⁰ UN Basic Principles on Reparations of 2005, paras 22-23.



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Dated this 6th of December 2021

At The Hague, The Netherlands.