



The Role of the Trust Fund of the International Criminal Court (ICC) in the Reparation of Victims: Bosco Ntaganda as a Case Study

Dr.Awara Hussein Ahmad

Law Department, College of Law and Administration, University of Halabja, Kurdistan
Region, Iraq,

awara.ahmad@uoh.edu.iq

Assist Prof. Dr.Idrees Qadir Rasul

Law Department, Faculty of Law, Political Science and Management, Soran University,
Kurdistan Region, Iraq

idrees.rasul@soran.edu.iq

Assist Prof.Dr.Aram Nabee Mohammed Wasani

Law Department, Faculty of Law, Political Science and Management, Soran University,
Kurdistan Region, Iraq

aram.mohammad@soran.edu.iq

دور الصندوق الاستئماني للمحكمة الجنائية الدولية في تعويض الضحايا: قضية بوسكو نتاغاندا كحالة دراسة

د. آواره حسين أحمد

قسم القانون، كلية الحقوق والإدارة، جامعة حلبجة، إقليم كردستان، العراق

awara.ahmad@uoh.edu.iq

أستاذ مساعد: د. إدريس قادر رسول

قسم القانون، كلية الحقوق والعلوم السياسية والإدارة، جامعة سوران، إقليم كردستان، العراق

idrees.rasul@soran.edu.iq

أ.م.د. آرام نبي محمد وساني

قسم القانون، كلية الحقوق والعلوم السياسية والإدارة، جامعة سوران، إقليم كردستان، العراق

aram.mohammad@soran.edu.iq



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Abstract

Reparation the victims of the most serious crimes of concern to the international community such as Genocide, crimes against humanity, war crimes, and the crime of aggression constitutes a fundamental aspect of international criminal justice within the framework of the ICC where no other path exists. The Trust Fund for Victims (TFV) plays a pivotal role in the ICC's commitment to redressing harm suffered by victims by mobilizing support from States and other entities to provide reparations. This reparation is particularly crucial when the convicted person is indigent, lacks sufficient financial

means to offer reparation. Currently, in addition to ongoing proceedings before the ICC, five cases have advanced to the reparation phase. Among these, the case of Bosco Ntaganda has been selected as the subject of this study. This case was chosen due to the fact that Ntaganda is the first convicted individual to receive the longest prison sentence imposed by the court.

Keywords: Trust Fund, ICC, Reparation, Victim, International Criminal Justice, Bosco Ntaganda.

المخلص/ يُعد تعويض ضحايا الجرائم الدولية الخطيرة التي تثير قلق المجتمع الدولي، مثل جريمة الإبادة الجماعية (جينوسايد)، والجرائم ضد الإنسانية، وجرائم الحرب، وجريمة العدوان، جزءاً أساسياً من تحقيق العدالة الجنائية الدولية ضمن مسار عمل المحكمة الجنائية الدولية في الحالات التي لا يوجد فيها مسار آخر. ويلعب الصندوق الاستئماني لصالح الضحايا التابع للمحكمة دوراً محورياً في التزام المحكمة بجبر الضرر الذي لحق بالضحايا، من خلال حشد الدعم من الدول والجهات الأخرى لتوفير التعويضات اللازمة. وتكتسب هذه التعويضات أهمية خاصة عندما يكون المحكوم عليه معسراً ولا يملك الإمكانيات المالية الكافية لدفع التعويضات. وفي الوقت الراهن، بالإضافة إلى الإجراءات الجارية أمام المحكمة، وصلت خمس قضايا إلى مرحلة التعويضات، ومن بين هذه القضايا تم اختيار قضية (بوسكو نتاغاندا) لتكون محور اهتمام هذه الدراسة، وذلك لكون (نتاغاندا) أول شخص تم ادانته وفرض عليه أطول عقوبة سجن أصدرتها المحكمة حتى الآن.

الكلمات المفتاحية: الصندوق الاستئماني، المحكمة الجنائية الدولية، التعويض، الضحايا، العدالة الجنائية الدولية، بوسكو نتاغاندا.

Introduction

The TFV represents one of the most significant innovations and new tools in guaranteeing the rights of victims within the framework of international criminal justice. Its establishment within ICC has played a crucial role in promoting criminal justice and providing reparations to victims of the most serious crimes which concern to whole humanity. As a general principle, it is the convicted person who bears responsibility for reparations. However, in cases where the convicted person lacks sufficient financial means or is deemed indigent, the Court may authorize reparations to be made through the resources of the TFV. In this way, it ensures that victims and their families are not deprived of justice due to the criminal's inability to pay. In our view, the Trust Fund constitutes a notable advancement in the development of international criminal justice. It ensures that, upon the issuance of a conviction and sentencing, victims can receive reparations and are not left to suffer further harm or neglect. Unlike previous international or military tribunals—which focused primarily on prosecuting perpetrators—the ICC adopts a dual approach, simultaneously prioritizing both the prosecution of offenders and the rights and needs of victims deeper focusing on victims. From this perspective, the creation of the TFV by the ICC marks a distinct and progressive shift in the treatment of victims under international criminal law. It reflects the Court's broader commitment to a victim-centered approach to justice. Furthermore, the ICC serves as a court of last resort: when national courts are unwilling or unable to prosecute, the ICC steps in, offering victims a vital pathway to justice and reinforcing their hope that justice will be served.

Aims of the Study The aim of this study is to achieve the following objectives:

1. To familiarize with and understand the ICC Trust Fund and its legal foundation.

2. To analyze the case of Bosco Ntaganda and assess the reparation amount he has been held liable to pay.

3. To identify the victims and examine the types and modalities of reparations and procedures of reparation provided to them.

Research Questions This study is guided by the following central research questions:

1. What are the various types and modalities of reparations available to victims, and through what mechanisms can victims in this case access such compensation?

2. What is the Trust Fund for Victims? When was it established, and upon what legal foundations does it operate?

3. under what conditions are victims eligible to receive reparation from the Trust Fund, and what benefits does the fund provide to them?

4. What contributions has the Court Trust Fund made to the advancement of international criminal justice, particularly in the context of the Democratic Republic of the Congo (DRC)?

Methodology of the Study In writing this study, we primarily employed the method of legal analysis. This involved examining provisions, articles, and regulations related to reparation and the Victims Trust Fund, as well as analyzing judgements regarding conviction, sentencing, and reparation in the Bosco Ntaganda case and other relevant judgements of the international courts concerning reparation.

Plan of the Research

To achieve the objectives of this research, we have divided the study into three main chapters. The first chapter is dedicated to the introduction and legal basis of trust funds. The second chapter examines the case of Bosco Ntaganda before the ICC. The third and final chapter focuses on reparations and the procedures for awarding reparations to the victims in the Bosco Ntaganda case.

Chapter One: The Legal Basis of the Trust Fund, Identification of Victims, and Beneficiaries of Reparation

In this chapter, we will examine the establishment and legal foundation of trust funds, including their sources of income. Additionally, we will explore how victims are identified from the Court's perspective and who qualifies as beneficiaries of reparations.

Establishment, legal basis, and sources of income of the Trust Fund.

The Court has played a significant role in shaping and advancing transitional justice throughout the 20th and 21st centuries. It stands out from other international military, hybrid and special criminal tribunals by providing more comprehensive rights and protections for victims, their families, and affected communities. One of the most innovative mechanisms introduced to support victims is the Trust Fund for Victims, which exemplifies a novel legal tool designed to uphold and implement victims' rights within the Court's jurisdiction.

The most important achievements of the Court compared to those courts established before and after it, lie in the following key principles, namely: "Protection of the victims

and witnesses and their participation in the proceedings¹; reparations to victims²; and the trust fund for the Victims”³.

The Trust fund may placate these concerns through its explicit and broad focus on assisting victims. By directly addressing the needs of victims, the Trust Fund can localize international justice through reparative programs. By linking their assistance to an international condemnation of injustices, the Trust Fund can endow its assistance with a symbolic significance that has psychological benefits for victims and it largely achieves the transitional justice goals implicit in the Rome Statute⁴.

ICC in article 79 (1) of its statute (Rome statute) states that: “aTrust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims”.

Under this legal framework, the Assembly of States Parties of the ICC, in 2002, established the TFV; this fund was created to benefit victims of crimes within the jurisdiction of the Rome Statute and the families of such victims⁵. In 2005, Assembly of States Parties, at the 4th plenary meeting, adopted the Regulations of the Trust Fund for Victims (RTFV)⁶. In the resolution “Calls upon governments, international organizations, individuals, corporations and other entities to contribute voluntarily to the Fund”⁷.

Therefore, the trust fund also referred to as the "victim's fund" is a new mechanism designed to ensure that victims of crimes under the court's jurisdiction, as well as their families, receive appropriate reparation. If, at the time of sentencing, the criminal lacks sufficient resources to reparate the victims and cover the damages caused, the court may use the trust fund to fulfill these obligations.

Composition and sources of Trust Fund income

The Trust Fund shall be funded by:

- “(a) Voluntary contributions from governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties;
- (b) Money and other property collected through fines or forfeiture transferred to the Trust Fund if ordered by the Court pursuant to article 79 (2), of the Rome Statute;
- (c) Resources collected through awards for reparations if ordered by the Court pursuant to rule 98 of the Rules of Procedure and Evidence;

¹) Rome statute of the international criminal court (hereafter RSICC), 1998, article 68.

²) RSICC, supra, article 75.

³) RSICC, supra, article 79.

⁴) Alexandra Nawar, transitional justice in northern Uganda: the case of the trust fund for victims, Master thesis, submitted in partial fulfillment of the requirements for the degree Master of arts, Boston university, 2014, p 60.

⁵) ICC, establishment of a fund for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims, (ICC-ASP/1/Res.6), adopted on September 9, 2002.

⁶) ICC, regulations of the trust fund for victims (hereafter RTFV), (ICC-ASP/4/Res.3), adopted in the fourth assembly of state parties, at the 4th plenary meeting, resolution number 3, on December 3, 2005, by consensus.

⁷) Preamble of the RTFV, supra, para 5.

(d) Such resources, other than assessed contributions, as the Assembly of States Parties may decide to allocate to the Trust Fund”¹.

Regarding money and other property collected through fines or forfeiture, as a generally basis for crimes of Genocide, crimes against humanity, war crimes, and crimes of aggression, “to this end, the Court shall, take into consideration the damage and injuries caused as well as the proportionate gains derived from the crime by the perpetrator. Under no circumstances may the total amount exceed 75 per cent of the value of the convicted person’s identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants”², and regarding offences against the administration of justice “under no circumstances may the total amount exceed 50 per cent of the value of the convicted person’s identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants”³. This means that victims and their families are entitled to material assistance, physical rehabilitation, and psychological rehabilitation. However, if the amount of reparations exceeds the total estimated and recognized income of the convicted person, only 75 percent of the convicted person's income will be allocated to reparation for the four mentioned crimes and for offences against the administration of justice, only 50 percent of the convicted person's income will be allocated to reparation, while the remaining amount is used to cover the financial expenses of the convicted person and his or her dependants.

The identification of victims and beneficiaries in reparation processes

A Trust Fund was established not only for the benefit of victims but also for the families of those victims⁴. It means “resources collected through awards for reparations may only benefit victims as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families, affected directly or indirectly by the crimes committed by the convicted person”⁵. It has resulted in both physical and psychological suffering for the victims and their families⁶.

It is important to note that the term “family” is not explicitly defined in Article 79 of the Rome Statute. However, the term “family members” is defined in Rule 75(1) of the Rules of Procedure and Evidence, which refers specifically to 'spouse, children, or parent.⁷ However, it remains unclear whether the definition provided in rule 75 applies generally or is limited to specific issues related to testimony, in order rule 75 primarily addresses to

¹) RTFV, supra, regulation 21 (a, b, c, d).

²) ICC, Rules of procedure and evidence (hereafter RPE), reproduced from the official records of the assembly of states parties to the RSICC, first session, New York, 3-10 September 2002, rule 146 (2).

³) RPE, supra, rule 166 (3).

⁴) RSICC, supra, article 79 (1).

⁵) RTFV, supra, regulation 46.

⁶) Dr.Ghazi Faruq and others, International Criminal Justice: A Comprehensive Book, Arab Democratic Center, Berlin, Germany, First Edition, (in Arabic), 2020, p.246.

⁷) RPE, supra, rule 75 (1).

incrimination by family members during court proceedings, stipulating that “witnesses appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person. However, the witness may choose to make such a statement”¹. “Whilst the definition of “family members” may receive more attention by the ICC in due course, it would seem that the definition in Rule 75 may provide a starting point, rather than the last word, in the definition of ‘family members’ for the purpose of reparations. Certainly, more clarity is needed. This is especially so bearing in mind national and cultural traditions and notions of ‘family’ and how these can, or should, be given expression to when it comes to reparations”².

According to UN human rights committee CCPR general comment No. 16: Article 17 (Right to Privacy) the Right to respect of privacy, family, home and correspondence, and protection of honour and reputation, “regarding the term ‘family’, the objectives of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned”³. In one of its decisions, the ICC mentioned “that the concept of “family” may have many cultural variations, and the Court ought to have regard to the applicable social and familial structures. In this context, the Court should take into account the widely accepted presumption that an individual is succeeded by his/her spouse and children”⁴. The Court may therefore decide to adapt the meaning of the term to the tradition of the beneficiary group⁵. This means that the ICC is well-positioned to assess and determine the entitlements of family members in the context of reparation.

Definition of victims: Victims under Rule 85 of the RPE are defined and mentioned for the purposes of the Statute and the RPE:

- (a) “Victims” mean natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes and to their historic monuments, hospitals and other places and objects for humanitarian purposes”⁶. Including organizations and agencies within the definition of victims expands the role of the Trust Fund by enabling it to provide reparations to legal persons, who are thereby recognized as entitled to reparation.

¹) Ibid.

²) Otto Triffterer and Kai Ambos, the Rome statute of the international criminal court a commentary, third edition, 2015, p 1904.

³) United Nations human rights committee, CCPR General Comment number 16, article 17 (Right to Privacy), adopted at the thirty-second Session of the human rights committee, on April 8, 1988, para 5.

⁴) ICC, trial chamber I, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Thomas Lubanga Dyilo, decision establishing the principles and procedures to be applied to reparations, case no.: ICC-01/04-01/06, on August 7, 2012, para 195.

⁵) Otto Triffterer and Kai Ambos, supra, p 1904.

⁶) RPE, supra, rule 85.

“The ICC, in one of its judgments, mentioned that reparations can be granted to legal entities, pursuant to Rule 85(b) of the Rules. These may include, inter alia, non-governmental, charitable and non-profit organisations, statutory bodies including government departments, public schools, hospitals, private educational institutes (primary and secondary schools or training colleges), companies, telecommunication firms, institutions that benefit members of the community (such as cooperative and building societies, or bodies that deal with micro finance), and other partnerships”¹. This demonstrates that legal entities will benefit not only from legal and regulatory frameworks but also from judicial decisions and detailed judgments.

“Pursuant to rule 85 of the rules, reparations may be granted to direct and indirect victims, including the family members of direct victims; anyone who attempted to prevent the commission of one or more of the crimes under consideration; and those who suffered personal harm as a result of these offences, regardless of whether they participated in the trial proceedings”². Indirect victims may also include individuals who suffered harm when helping or intervening on behalf of direct victims.

“However, victims eligible to receive reparations in this case are not limited to the individuals who may have requested reparations or those allowed participating in the trial proceedings. Instead, it rather encompasses a much greater number of potential victims, in light of the findings in the Judgement and the Sentencing Judgment as to the scope and particularly the widespread and systematic nature of the crimes committed”³. This demonstrates that the extent and severity of the criminal’s crimes are so vast and harmful that it’s both foreseeable and inevitable that many more individuals were affected than those who have come forward to seek reparation or take part in the legal proceedings against the criminal.

Bosco Ntaganda⁴ and its case in ICC

“This case is concerned with alleged conduct by Bosco Ntaganda in the events that took place in Ituri in the Democratic Republic of Congo”⁵. The DRC signed the Rome Statute

¹) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 197.

²) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 194.

³) ICC, trial chamber VI, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Bosco Ntaganda, reparations order, case no.: ICC-01/04-02/06, on March 8, 2021, para 190.

⁴) Bosco Ntaganda is of Tutsi ethnicity, born in Rwanda on 5 November 1973, and raised in Masisi locality, North Kivu, in the DRC. This case is concerned with alleged conduct by Bosco Ntaganda in the events that took place in Ituri in the Democratic Republic of Congo (DRC), The DRC has close to 450 different ethnic groups within its borders. In Ituri alone there are approximately 18 different ethnic groups, Ituri is one of the 26th province of Congo under article 2 of the constitution of the DRC, with population estimates ranging from 3.5 to 5.5 million people. Bunia is Ituri’s capital. Ituri is fertile and rich in resources such as gold, diamonds, oil, timber, and coltan, which many groups, inside and outside the DRC, sought to exploit, see: ICC, trial chamber VI, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Bosco Ntaganda, judgement, case no.: ICC-01/04-02/06, on July 8, 2019, para 1, 2, 3, and the constitution of the Democratic Republic of the Congo, 2005, article (2).

⁵) ICC, trial chamber VI, in the case of the prosecutor v. Bosco Ntaganda, judgement, supra, para 1.

on September 8, 2000, deposited its instrument of ratification on April 11, 2002, and became a State Party¹. “The acts and conduct of Mr Ntaganda, who held the position of Deputy Chief of Staff in charge of Operations and Organisation in the UPC/FPLC between 2 or 3 September 2002 and December 2003, are analysed in the present Judgment, in the context of the events that took place between on or about 6 August 2002 and on or about 31 December 2003”². This means that the ICC has territorial, temporal, and personal jurisdiction to begin the trial of Ntaganda and the investigation of his crimes.

Regarding subject matter jurisdiction of the ICC over Ntaganda, the court found that he committed crimes against humanity and war crimes, “The court issued its final verdict on July 8, 2019, finding Bosco Ntaganda guilty of 18 counts of crimes against humanity and war crimes”³.

Although the Court does not specify the objectives of imposing sanctions against criminals for crimes within its jurisdiction in Articles 77 and 78 of its Statute, but the preamble of the Statute “affirming that the most serious crimes of concern to the international community as a whole must not go unpunished”⁴, moreover, in the establishment of the Court the contracting parties “determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”⁵. They enshrined that objective in the preamble to the Court's Statute.

“Accordingly, the trial chamber of the ICC considers that the Preamble establishes retribution and deterrence as the primary objectives of punishment at the ICC”⁶, and “retribution must not to be understood as fulfilling a desire for revenge, but rather as an expression of the international community’s condemnation of the crimes. Furthermore, by imposing a proportionate sentence, the harm caused to the victims is also acknowledged”⁷, “With regard to deterrence, a sentence should be adequate to discourage a convicted person from recidivism (individual deterrence), as well as to ensure that those who may consider committing similar crimes are dissuaded from doing so (general deterrence) Although rehabilitation is also a relevant purpose of sentencing, it should not be given undue weight in the context of the crimes adjudicated by the Court”⁸.

In another case, the ICC enshrined several other factors for determining the sentence, which, although quite dissimilar, all give meaning to the penalty imposed. It states that:

¹) State parties to the Rome statute, Democratic Republic of the Congo, signed and ratified the Rome statute, available at: <https://asp.icc-cpi.int/states-parties/african-states/democratic-republic-of-the-congo>, accessed on October 11, 2025.

²) ICC, trial chamber VI, in the case of the prosecutor v. Bosco Ntaganda, judgement, supra, para 32.

³) ICC, trial chamber VI, in the case of the prosecutor v. Bosco Ntaganda, judgement, supra, para 1206.

⁴) Preamble of the RSICC, supra, para 4.

⁵) Preamble of the RSICC, supra, para 5.

⁶) ICC, trial chamber VIII, situation in the Republic of Mali, in the case of the prosecutor v. Ahmad Al Faqi Al Mahdi, judgement and Sentence, case no.: ICC-01/12-01/15, on September 27, 2016, para 66.

⁷) ICC, trial chamber VI, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Bosco Ntaganda, sentencing judgement, case no.: ICC-01/04-02/06, on November 7, 2019, para 10.

⁸) Ibid.

“When determining the sentence, the Chamber must also respond to the legitimate need for truth and justice voiced by the victims and their family members. It therefore considers that the role of the sentence is two-fold: on the one hand, punishment, or the expression of society’s condemnation of the criminal act and of the person who committed it, which is also a way of acknowledging the harm and suffering caused to the victims; and, on the other hand, deterrence, the aim of which is to deflect those planning to commit similar crimes from their purpose.¹ The punitive aspect of the sentence is therefore meant to restrain any desire to exact vengeance and it is not so much the severity of the sentence that should prevail as its inevitability. When determining the sentence, the Chamber must further ensure that, pursuant to rule 145(1)(a) of the Rules, the sentence reflects the degree of culpability while contributing to the restoration of peace and reconciliation in the communities concerned. Lastly, the extent to which the sentence reflects the culpability of the convicted person addresses the desire to ease that person’s reintegration into society, although, in particular in the case of international criminal law, this goal cannot be considered to be primordial as the sentence on its own cannot ensure the social reintegration of the convicted person”².

On November 7, 2019, the ICC sentenced Ntaganda to 218 years in prison for a total of eighteen counts of crimes against humanity and war crimes. And for the determination of the sentence under Article 78, when a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment if the criminal was sentenced to life imprisonment.

“Accordingly, in the particular circumstances of this case, as a result of the highest individual sentence and the statutorily mandated maximum term of imprisonment for the joint sentence being the same, no further discretion is given to the Chamber in the determination of the overall joint sentence, which shall therefore be 30 years of imprisonment”³. “In the circumstances of the case, taking into consideration the nature and gravity of the crimes, as well as Ntaganda’s solvency, the Chamber does not consider it appropriate to also impose a fine or forfeiture of proceeds. The Chamber will therefore only impose imprisonment”⁴.

Reparations and the procedures for receiving them

The ICC legal process may function differently from national jurisdiction. The steps of the legal process, from the court proceedings to the reparation stage, must follow a specific sequence, such as preliminary examinations, investigations, arrest warrants summons to appear, 1st appearance, confirmation of charges, trial, verdict, sentence,

¹) ICC, trial chamber II, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Germain Katanga, public document decision on sentence pursuant to article 76 of the Statute, case no.: ICC-01/04-01/07, on May 23, 2014, para 38.

²) Ibid.

³) ICC, case of the prosecutor v. Bosco Ntaganda, sentencing judgement, supra, para 251.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, sentencing judgement, supra, para 247.

appeals and reparations. Regarding this case—the case of Ntaganda, the subject of our study—it is in its final stage: the stage of reparations for victims.

That is why we will attempt here to examine the amount of reparation, the types and modalities of reparation, the victims who are primarily entitled to receive reparation, as well as the reparation procedures for the victims in the Bosco Ntaganda case.

The total amount of reparations and the corresponding number of victims

After the ICC found Bosco Ntaganda guilty of 18 counts and sentenced him to 30 years of imprisonment, and the Trial Chamber, “taking all the above considerations into account, resolving uncertainties in favour of the convicted person, and adopting a conservative approach, the Chamber sets the total reparations award for which Mr. Ntaganda is liable at USD 30,000,000”.¹ But the Trial Chamber II of the ICC in 2023 has addendum to the reparations order of the year 2021, in its addendum order, it mentioned that “accordingly, the Chamber is satisfied that setting the amount of Mr Ntaganda’s liability for reparations at the total of USD 31,300,000 is fair, equitable, and appropriate, and takes into account the rights of the victims and those of the convicted person”.² “As to the costs to repair the harm, as detailed above, the Chamber has also relied on the conservative estimates made by the TFV and the appointed experts, nevertheless, the Chamber notes that the victims of the case suffered different kinds of harm and, in the context of collective reparations with individualised components, the cost to repair the harm for each victim may substantially differ from one to another. Having considered the Appeals Chamber’s jurisprudence, the Chamber sets an amount that it considers fair and appropriate, in light of the circumstances of the case and bearing in mind the rights of the convicted person”.³

“Accordingly, the Chamber finds Mr Ntaganda indigent for the purposes of reparations”.⁴ This indicates that no property or assets belonging to the convicted person have been identified, and that the criminal lacks the financial means to provide reparations to the victims. Consequently, the court utilizes its trust fund to ensure that reparations are made. Regarding the number of victims eligible for reparations, “as to the estimated number of victims of the attacks, the Chamber recalls that it has concluded above that they would amount to approximately 7,500 individuals in total. Accordingly, the Chamber details below its reasoning and calculations of the amounts it considers would be required to repair the harms suffered by the victims of the attacks, distinguishing between the costs necessary to provide victims with (i) mental care; (ii) physical care; and (iii) socio-economic support”.⁵

¹) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 247.

²) ICC, trial chamber II, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Bosco Ntaganda, addendum to the reparations order on March 8, 2021, case no. ICC-01/04-02/06, on July 14, 2023, para 360.

³) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, 247.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 254.

⁵) ICC, case of the prosecutor v. Bosco Ntaganda, addendum to the reparations order, supra, para 343.

“Bearing in mind that entire villages were affected by the crimes of forcible displacement, and pillage for instance, it can roughly be estimated that the potential beneficiaries will be numbering at least 100,000 across all locations affected by the crimes”¹. This means that the number of people who will benefit from reparations in other words, those who are victims of Ntaganda’s crimes as natural persons is at least one hundred thousand, despite the existence of victims who are legal persons.

Types and modalities of reparations

At this juncture, it is necessary to conduct an assessment of the reparations to be granted. “Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both”².” When it is appropriate to award both types of reparations concurrently, individual and collective reparations should, to the extent possible, aim to complement and reinforce one another”³.

Types of reparations: reparations are divided into two categories based on distribution:

* **Individual reparations:** “are those where the ensuing benefit is afforded directly to an individual to repair the harm the person suffered as a consequence of the crimes for which the defendant was convicted, conferring upon a victim a benefit to which they are exclusively entitled. Individual reparations should be awarded in a way that avoids creating or adding tensions and divisions within the relevant communities”⁴. This means that the individuals who benefit from reparation are specifically targeted, and crimes may be committed despite causing harm to society, whether that harm is to the individual personally or to their private property.

* **Collective reparations:** “refer to their nature (type of goods or services distributed or mode of their distribution) or their recipients (communities or groups). They differ from individual reparations in that they benefit a group or category of persons who have suffered a shared harm. When collective reparations are awarded, these should address the harm the victims suffered on an individual and a collective basis”⁵. This means that these communities or groups share the loss and are therefore repaired through collective reparations. The damage was done to something they all share, which is the property of the entire group.

Collective reparations are divided into two categories:

The first category: “collective reparations (“community reparations”), therefore, is intended to benefit the community as a whole and does not specifically address individual

¹) ICC, trial chamber VI, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Bosco Ntaganda, public redacted version of the “submissions by the common legal representative of the victims of the attacks on reparations” case no.: ICC-01/04-02/06, on February 28, 2020, para 72.

²) RPE, supra, rule 97 (1).

³) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 78.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 79.

⁵) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 80.

members of the group”¹. For example, “the building of a school or hospital may be of general help to the community. is that some modalities of collective reparations, such as symbolic reparations in the form of a memorial, provide an inherently collective benefit of sharing memory and may not be conceived in individual terms”².

The second category: (‘collective reparations with individualized components’) reparations in this category “focused on the individual members of the group. The ICC underscores that such reparations, although collective in nature, respond to the needs and current situation of individual victims in the group”³. “That could be said of healthcare which is provided to all members of the group but which is specialized and addresses each victim individually. Such collective reparations, framed as individualized, are provided to a group of victims, this second category of collective reparations is focused on the individuals themselves”⁴.

These two categories of collective reparations indicate that collective reparations, as recognized by the ICC, are divided into two types. The first—community reparations aims to benefit the group as a whole through measures such as schools or memorials, without addressing individuals separately. The second—collective reparations with individualized components targets individual victims within a group, offering tailored support such as specialized healthcare. While implemented collectively, these reparations respond to personal harm and needs, balancing group-based redress with individual justice and reflecting the ICC's holistic approach to victim-centered reparative justice.

Modalities of reparation

According to the Rome Statute of the ICC, there are three modalities of reparations: “restitution, compensation, and rehabilitation”⁵. However, in this case (the Bosco Ntaganda case), the Court extended the modalities of reparations to five, going beyond the three standard forms established in the Rome Statute. It included two additional modalities: “satisfaction measures and symbolic reparations”⁶. This extension, on one hand, reflects the Court’s effort to address victims’ harm more comprehensively, going beyond the standard forms to include recognition and symbolic justice. On the other hand, this broader approach demonstrates the Court’s commitment to addressing the full scope of victims’ suffering.

Regarding the Bosco Ntaganda case “at the outset, the Chamber acknowledges that the multiple, diverse, and multi-faceted nature of the harms suffered by the victims in this case, makes it difficult to reinstate the victims to the situation they were in before the

¹) ICC, trial chamber II, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Germain Katanga, public document order for reparations pursuant to article 75 of the Statute, case no.: ICC-01/04-01/07, on March 24, 2017, para 279.

²) Ibid.

³) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 81.

⁴) ICC, case of the prosecutor v. Germain Katanga, public document order for reparations, supra, para 280.

⁵) RSICC, supra, article 75 (1).

⁶) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 207, 208.

commission of the crimes. In order to address the various harms suffered by the victims in the best manner possible, a combination of the different modalities of reparations available should be applied”¹.

The Trial Chamber of the ICC indicates that “with the principles concerning modalities of reparations in mind, as detailed above, the Chamber considers that, in principle, the following modalities of reparation appear appropriate to address the harms caused to the direct and indirect victims as a result of the crimes for which Mr Ntaganda was convicted:”²

1- Restitution: “restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property”³. “Restitution is directed at the restoration of an individual’s life, providing continuing education, or the returning of lost or stolen property. Restitution may also be apposite for legal bodies such as schools or other institutions. 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 in this case”⁴.

2- Compensation: “compensation is something, typically money, awarded to one or more victims in recognition of the harm they suffered”⁵. “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. It can pertain to pecuniary and non-pecuniary losses. It is a substitute remedy provided as a means of redress when there is no way to undo the effects of the violation through other measures. Compensation by itself cannot restore or replace rights that have been violated”⁶. The crimes committed by Ntaganda, for which he was punished, included killing, sexual violence such as rape, torture, enslavement, and the conscription of children under the age of fifteen — acts that led to the loss of childhood and life plans. The victims were left in a state from which recovery was nearly impossible. These crimes and harms fall within a category that is fundamentally considered non-material in nature, meaning they cannot be easily quantified financially. However, compensation must still be allocated, and appropriate compensation must be provided so that the victims are not left as perpetual victims.

3- Rehabilitation: rehabilitation is one of the other modalities of reparations, “rehabilitation measures are directed at facilitating victims’ reintegration into society,

¹) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 198.

²) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 200.

³) UNGA, Basic principles on reparations, UN doc, A/RES/60/147, para 19.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 83, 201.

⁵) ICC, case of the prosecutor v. Ahmad Al Faqi Al Mahdi, reparations order, supra, para 47

⁶) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 84.

taking into account the differences of impact these crimes have on victims of different genders. 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”¹. “Rehabilitation should include medical and psychological care as well as legal and social services”².

“Trauma-based counselling provided to victims may be important to respond to their psychological rehabilitation needs”³. “Rehabilitation measures ought to include the means of addressing the shame that victims, particularly former child soldiers and victims of rape and sexual slavery may feel, and they should be directed at avoiding further victimisation of all victims who suffered harm as a consequence of the crimes”⁴. “In addition, the rehabilitation measures should, in part, be directed at preventing future conflicts and raising awareness that the effective reintegration of these victims requires eradicating their victimisation, discrimination, and stigmatisation. Rehabilitation must be construed as a means to help victims overcome their exclusion and marginalisation by regaining self-confidence and trust, leaving behind their status of victim and growing a sense of belonging to the community”⁵. The purpose of these reparation measures in the form of training is to create an environment in which victims and their communities can move past the crimes committed against them and be provided with a peaceful and secure life.

4- Satisfaction measures: a satisfaction measure is one of the other modalities of reparations in the Ntaganda case, “satisfaction refers to measures that acknowledge the violation and aim to safeguard the dignity and reputation of the victim”⁶. The UNGA, in its Basic Principles on Reparations, stated that satisfaction should include, where applicable, any or all of the following: “(a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities”;⁷ “(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and

¹) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 203.

²) UNGA, Basic principles on reparations, supra, para 21.

³) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 204.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 206.

⁵) Ibid.

⁶) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 88.

⁷) UNGA, Basic principles on reparations, supra, para 22.

administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels”¹.

Regarding satisfaction measures, the ICC stated in the reparations order in the Bosco Ntaganda case that, “issuing certificates that acknowledge the harm individual victims experienced; setting up outreach and promotional programmes to inform victims of the outcome of the trial; and educational campaigns that aim at reducing the stigmatisation and marginalisation of victims of rape and sexual slavery and children born out of rape, as well as child soldier victims. These steps can contribute to society’s awareness of the crimes committed by Mr Ntaganda, the need to foster improved attitudes towards crimes of this kind, and ensure that victims play an active role within their communities”² “In particular, awareness and sensitisation about the meaning, realities, and consequences of the crimes committed in the context of this case, including crimes against former child soldiers, may support the rehabilitation and reintegration of the victims, and be an important part of satisfaction, while also contributing to reducing the stigma attached to these crimes and acknowledging the harms suffered by the victims”³. The ICC, in the same case (reparations order), “considers that other measures of satisfaction in the present case include Mr Ntaganda’s conviction, sentencing, and the present Order, which acknowledges and details the crimes that harmed the victims of the present case, and hold Mr Ntaganda accountable for the serious crimes committed and the harms caused to the victims of those crimes”⁴. This also means that sentencing Ntaganda to 30 years of imprisonment serves as another form of satisfaction for the victims and can contribute to a certain level of acceptance, reconciliation with the perpetrator, and reintegration into society.

5- Symbolic reparations: symbolic reparations represent the final modality of reparations, as established in the Ntaganda case. “Symbolic reparations may also contribute to the process of rehabilitation. One of the symbolic measures proposed is the construction of a community centre to be named after Abbé Bwanalunga⁵ —to honour his memory, but also to serve as a means to foster reconciliation between the different sectors of the community that the Abbé worked with”⁶. “The Chamber in particular noted in the sentencing judgment the deep psychological impact that the death of Abbé Bwanalunga had on those who witnessed the crime. This included not only the people who knew him, but also the clergy, and the population in general, particularly within the

¹) Ibid.

²) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 207.

³) Ibid.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 211.

⁵) Abbé Bwanalunga was priest, who served as a priest for 40 years and was well known in Ituri, see: ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 179.

⁶) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 208.

Lendu/Ngiti community. A witness recalled the impact that the murder of Abbé Bwanalanga had on the population, expressing that it was ‘a great loss and it affected many people of all ethnicities’¹.

What is important to highlight here is that Bosco Ntaganda himself, along with any other convicted person who lacks the financial means to provide reparations, must still participate in alternative, non-monetary forms of reparation — such as symbolic reparations or satisfaction-based measures — since even indigent perpetrators can contribute to the process of redress.

For this reason, the ICC is “not compelled to order that the convicted person bear the costs, due to a lack of financial means he could contribute solely to non-monetary reparations and that his participation in symbolic reparations could be envisaged solely with his consent is consistent with rule 98 of the Rules of Procedure and Evidence”². The rule 98 states that “individual awards for reparations shall be made directly against the convicted person”³.

This is also considered a request for forgiveness and amnesty, meaning that this symbolic reparation must be made with the consent of the convicted person, who must sincerely seek the victims' forgiveness, express wholehearted repentance and genuine remorse, request amnesty from the victims, and affirm that they will not commit the offense again.

Cost to repair the victims' harms

Despite the listing of the types and modalities of reparations, what remains to be provided is an estimate of the reparations and the costs to repair the harms caused to the victims of the crimes for which Mr Ntaganda was convicted.

The Chamber notes that the TFV has provided preliminary estimates, as follows:

A. Physical rehabilitation: “costs for medical treatment for severe physical injury: 3000 USD per victim. Cost to treat infectious and chronic diseases, including HIV infection, loss of fertility etc.: 450 USD per victim including medical costs, transport, costs for stay and food while at hospital”⁴;

B. Psychological rehabilitation: “rehabilitation for severe mental trauma, including behavioural disorders, isolation, suicidal tendencies, loss of childhood etc.: 2000 USD per year”⁵;

C. Individual socio-economic reintegration: “about 3000 USD per person, consisting of 2000 USD for a reinsertion kit, 500 USD for vocational training, and 500 USD for one year of coaching per person. Programmes such as microcredit schemes with individual

¹) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 179.

²) ICC, appeals chamber, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Thomas Lubanga Dyilo, judgement 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, case no.: ICC-01/04-01/06 AA2A3, on March 3, 2015, para 98.

³) ICC, RPE, rule 98 (1).

⁴) ICC, trial chamber VI, situation in the Democratic Republic of the Congo, in the case of Bosco Ntaganda, public Trust Fund for Victims' observations relevant to reparations, No.: ICC-01/04-02/06, on February 28, 2020, para 130 (a).

⁵) TFV February 2020 Submissions, ICC-01/04-02/06, supra, para. 130(b).

coaching: 500 USD per person per year. These programmes should last for two to three years to yield expected results. Recovery of important documents lost or destroyed during the conflict: 300 USD in fees to obtain newly issued documents”¹;

D. Programmes to address the loss of physical infrastructure: “building a school or a health centre – 50,000 USD, building a market 100,000 USD, establishing a source of drinking water - 6000 USD”².

“Regarding customary justice in the DRC, the Appointed Experts note that, in Ituri, most rural victims are familiar with a system of compensation quantified by a specific number of cows, with loss of life being negotiated with a minimum of ten cows and the burning down of a house or another loss of property typically starting with six cows, with the value of a cow being between USD 500 and USD 600”³.

This highlights that villagers are familiar with raising cattle, which serves as both a livelihood and a culturally symbolic means of justice or reconciliation. While offering cows as compensation is not a literal price for a human life, it represents a traditional form of reparation. However, such practices do not align neatly with the legal framework of the ICC, which operates under international law rather than customary or traditional justice systems. The ICC bases reparations on principles of harm, accountability, and the rights of victims, rather than local customs like cattle-based compensation. Nevertheless, the ICC often engages with communities in post-conflict areas and may consider cultural norms to ensure that reparations are meaningful to victims, respect local values, and are accepted by those affected.

However, the estimated reparations for the harm caused to victims as outlined above, cannot be considered a genuine or adequate price for the loss of life and the extensive damage suffered. Despite this ICC has adopted the principle that “reparations awarded pursuant to this order do not interfere with the primary responsibility of States to address the harms suffered and award reparations to victims pursuant to their obligations under other treaties or national law, in the process of enforcement of reparation orders, States Parties have the obligation to cooperate fully, and they are enjoined not to prevent the enforcement of reparation orders or the implementation of awards”⁴.

After examining the types and modalities of reparations, we concluded that victims in the Bosco Ntaganda case should receive both individual and collective reparation. Reparations should encompass all five recognized forms: restitution, compensation, rehabilitation, satisfaction measures, and symbolic reparations.

“As explained above, transitional justice lacks a single clear definition. Regardless, any conception of transitional justice necessarily requires mechanisms that incorporate both retributive and restorative principles of justice with the goals of redressing past injustices and preventing future injustices”⁵. According to RTFV, “the Board of Directors deems it

¹) TFV February 2020 Submissions, ICC-01/04-02/06, supra, para. 130(c).

²) TFV February 2020 Submissions, ICC-01/04-02/06, supra, para. 130(d).

³) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 237.

⁴) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 102..

⁵) Alexandra Nawar, supra, p 31.

necessary to provide physical or psychological rehabilitation, as well as material support, for the benefit of victims and their families”¹.

Prioritisation “In all matters related to reparations, the Court shall take into account the needs of the victims and shall treat them with humanity, respecting their dignity and human rights. The Court shall also take into account that certain victims may present continued vulnerability. It shall implement appropriate measures to ensure the victims’ safety, physical, and psychological well-being and privacy”². “Reparations shall be granted to victims without adverse distinction on the grounds of sex, gender identity, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth, marital, or other status”³. This means that the ICC must take all victims into account in matters of reparation, without discrimination, and conduct the proceedings equally and fairly. However, during the implementation of reparations, the ICC must take prioritization into account, recognizing that some victims may require earlier access to reparations. The principle of prioritization does not constitute discrimination among victims.

In the Reparations Order, the ICC adopted the principle of ‘prioritisation’, “according to which, although 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. The chamber further indicated that, [w]hen determining priorities, 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 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”⁴. “When determining specific rules of prioritisation in the present case, the Chamber stressed that ‘priority ought to be given to victims who are in a particularly vulnerable situation or require urgent assistance’, referring in particular to the same groups of victims mentioned above”⁵. The question arises: if the income and resources of the Trust Fund are insufficient to provide reparations for all the damage, pain, and losses, which reparations will be prioritized? In response, we say that the ICC “recognises that priority may need to be given to certain victims who are in a particularly vulnerable situation or who require urgent assistance. These may include, inter alia, the victims of sexual or gender-based violence, individuals who require immediate medical care (especially when plastic

¹) ICC, RTFV, supra, regulation 50 (a) (i).

²) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 42.

³) Ibid.

⁴) ICC, trial chamber II, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Bosco Ntaganda, public decision on the TFV’s initial draft implementation plan with focus on priority victims, case no.: ICC-01/04-02/06, on July 23, 2021, para 5.

⁵) ICC, case of the prosecutor v. Bosco Ntaganda, public decision on the TFV’s initial draft implementation plan with focus on priority victims, supra, para 6.

surgery or treatment for HIV is necessary), as well as severely traumatized children, for instance following the loss of family members”¹.

Procedures for receiving reparation

After Bosco Ntaganda was convicted and sentenced to imprisonment, the process of providing reparations to the victims for the harm they suffered began. In this case, the ICC determined that Ntaganda does not have the financial means to pay reparations and is considered indigent. Therefore, the ICC will provide reparations through its Trust Fund for Victims.

“In the reparations proceedings, victims may use official or unofficial identification documents, or any other means of demonstrating their identities that are recognised by the Chamber. In the absence of acceptable documentation, the Court may accept a statement signed by two credible witnesses establishing the identity of the applicant and describing the relationship between the victim and any individual acting on his or her behalf”². “When the applicant is an organisation or institution, the Chamber will recognise any credible document that constituted the body in order to establish its identity”³.

The ICC in article 75 (1) of its statute, states that: “The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting”⁴. This implies that reparations to victims may be granted either upon written request by the victims or at the ICC’s own initiative. Both approaches are outlined below.

Procedure upon request of the victim

A victim’s request for reparations under article 75 of the ICC shall be made in writing and filed with the Registrar. It shall contain the following particulars:

- “(a) The identity and address of the claimant;
- (b) A description of the injury, loss or harm;
- (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
- (d) Where restitution of assets, property or other tangible items is sought, a description of them;
- (e) Claims for compensation;
- (f) Claims for rehabilitation and other forms of remedy;

¹) ICC, trial chamber I, the case of the prosecutor v. Thomas Lubanga Dyilo, judgement 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, supra, para 200.

²) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 198.

³) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 199.

⁴) RSICC, supra, article 75 (1).

(g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses”¹.

Procedure on the motion of the Court

In cases where the ICC intends to proceed on its own motion pursuant to article 75 (1), it shall ask the Registrar to provide notification of its intention to the person or persons against whom the ICC is considering making a determination, and, to the extent possible, to victims, interested persons and interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3². Therefore, as a general principle, the victim reparation process requires a written request from the victim or injured person. However, in exceptional circumstances, reparations may be awarded based on a recommendation by the ICC.

“All victims are to be treated fairly and equally during the reparations process, irrespective of whether they participated in the trial proceedings. This includes equal access to information relating to reparations proceedings”³. “It would be inappropriate to limit reparations to the relatively small group of victims that participated in the trial and those who applied for reparations”⁴, the ICC states that “in all matters related to reparations, the Court shall take into account the needs of the victims and shall treat them with humanity, respecting their dignity and human rights. The Court shall also take into account that certain victims may present continued vulnerability. It shall implement appropriate measures to ensure the victims’ safety, physical, and psychological well-being and privacy. Reparations shall be granted to victims without adverse distinction on the grounds of sex, gender identity, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth, marital, or other status”⁵. “Reparations may be granted to direct and indirect victims, including the family members of direct victims anyone who attempted to prevent the commission of one or more of the crimes under consideration; and those who suffered personal harm as a result of these offences, regardless of whether they participated in the trial proceedings”⁶. “In order to determine whether a suggested "indirect victim" is to be included in the reparations scheme, the Court should determine whether there was a close personal relationship between the indirect and direct victim, for instance as exists between a child soldier and his or her parents”⁷. This means that if the ICC establishes the existence of a victim-perpetrator relationship in a case, reparation will not be limited to victims who have submitted written requests. All individuals recognized as victims of

¹) RPE, supra, rule 94 (1) (a, b, c, d, e, f, g).

²) RPE, supra, rule 95 (1).

³) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 41.

⁴) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 187.

⁵) ICC, case of the prosecutor v. Bosco Ntaganda, reparations order, supra, para 42.

⁶) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 194.

⁷) ICC, case of the prosecutor v. Thomas Lubanga Dyilo, public Decision establishing the principles and procedures to be applied to reparations, supra, para 195.

the crime — including those who did not request reparation or participate in the ICC proceedings — may also be entitled to reparation.

Conclusion

The TFV established and enforced by the ICC, represents a pioneering step in international criminal justice by affirming and safeguarding the rights of victims. Designed to assist those affected by crimes under the ICC's jurisdiction, the Fund plays a critical role when convicted individuals are unable to provide reparations due to a lack of financial means. In such cases, the TFV intervenes to ensure that victims still receive meaningful redress. This mechanism has been notably applied in the case of Bosco Ntaganda, who received the longest prison sentence issued by the ICC, alongside one of the highest reparation orders. As he has been declared indigent, the TFV will provide reparations on his behalf. Reparations through the ICC may be granted either upon written request from victims or initiated by the Court itself. While all victims are treated equally in the process, priority is given to those in the most urgent or severe circumstances, ensuring that justice is both equitable and responsive to the needs of those most affected.

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¹³⁾ ICC, trial chamber II, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Germain Katanga, public document decision on sentence pursuant to article 76 of the Statute, case no.: ICC-01/04-01/07, on March 23, 2014.

¹⁴⁾ ICC, appeals chamber, situation in the Democratic Republic of the Congo, in the case of the prosecutor v. Thomas Lubanga Dyilo, judgement 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, case no.: ICC-01/04-01/06 AA2A3, on March 3, 2015.

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