



## **Delivering Reparations in the Context of Refugee Camps**

Project Partner: Trust Fund for Victims at the International Criminal Court

### **About the Trust Fund for Victims at the International Criminal Court**

The Rome Statute provides the legal basis for the creation of two distinct, although strictly interconnected, entities: the ICC and, pursuant to Article 79, the Trust Fund for Victims ('TFV').

The TFV was established in 2002 by Resolution of the Assembly of States Parties ('ASP'). It is governed by a Board of Directors, whose five members are elected by the ASP and which is supported by a Secretariat with full executive, legal and operational capacity. While the ICC investigates and prosecutes Rome Statute crimes, the TFV responds to the harm resulting from these crimes through its assistance and reparations mandates.

Assistance activities are decided by the TFV Board and cater to physical and psychological rehabilitation needs of, and material support to, the victims (and their families) of Rome Statute crimes in situation countries, i.e. in countries where investigations or prosecutions are ongoing. The TFV has ongoing assistance programmes in CAR, Côte d'Ivoire, the DRC, and Uganda. Assistance programmes for the situations in Georgia, Kenya and Mali will start in 2022.

TFV reparations activities may follow a reparations order issued by the Court and are based on the draft implementation plan developed upon the issuance of the reparation order against a convicted individual. The implementation plan is designed by the TFV in accordance with the findings of the reparation order and in connection with relevant stakeholders, and is approved by the Chamber issuing the order. The activities carried out by the TFV in this context address directly and specifically victims' harm as resulting from the crimes on which the conviction is based, and as recognised by the Chamber in the reparation order.

Currently, the TFV is implementing reparation orders in four cases: Lubanga, Katanga (both arising from the situation in the DRC), Al Mahdi (Mali) and Ntaganda (DRC). In this last case, an initial draft implementation plan to address the urgent needs of certain victims has been developed, while the draft implementation plan is still in development.

<https://www.trustfundforvictims.org/>

### **Project Overview**

The object and purpose of this project is to develop a study on reparation measures best applicable to situations where victim beneficiaries are refugees living in refugee camps.

Many victims of Rome Statute crimes in ICC situation countries live in refugee camps. They are awaiting the possibility to return to their homeland and residence, or to find shelter in a stable and safe housing alternative.

A number of circumstances and particular factors should be taken into account when considering the reparation potential of measures addressed to victims in refugee camps. First, humanitarian aid is usually provided in refugee camps, which might lead refugees to question the specific value of reparations and misapprehend their specific purpose. Second, and



connected to the above, lacking any concrete return or stable housing perspective, refugees might doubt, or even reject the reparative value or potential of any reparation measure. There is an open question about whether providing reparations in these circumstances could be considered by the victims as a sign of perpetuation of their refugee condition (should they perceive that they will remain in the camps further).

Other circumstances influencing the devising and the delivery of reparations to this target group, and their appreciation as such, can be identified. A few examples are: the prospect that victims may stay in refugee camps for many years and the likelihood thereof; the fact that particularly vulnerable individuals might be neglected; the risk that certain needs arising from the harm deriving from the crimes may not be addressed at all.

Research needs to consider situation-specific needs and circumstances, such as (but not limited to) demographics, linguistic and ethno-religious-cultural backgrounds, schooling rates and educational levels, psychophysical distress to living in a specific camp, etc.

This project will formulate suggestions on: (1) the best reparation measures tailored, to the extent possible, to victims of Rome Statute crimes living in refugee camps, within or outside the country of origin, and (2) most appropriate modalities to deliver the specific measures suggested. Justifications underlying the measure and strategies proposed will also be included in the research outcome. While refugee camps exist in relation to most ICC situations, the project will devote a particular attention to the situations in Darfur/Sudan, Myanmar/Bangladesh and/or CAR.

## **Project Output**

A report of 30-40 pages will be submitted to the Trust Fund for Victims at the end of the research.

Upon an analysis of the different concepts and principles relevant to reparations and how these work in the context of refugee camps, the following questions may be posed and discussed:

- Should reparations be provided while victims remain *in* refugee camps? Which factors (e.g. time spent in the refugee camp, likelihood of return, expected impact of the reparations) would weigh in favour and which against?
- What forms of reparations, or combination thereof, would be most appropriate? (e.g. compensation, psychological assistance, symbolic forms of recognition, etc.)
- What reparation measures, for each form of reparation, would best suit existing needs?
- How would they be different from humanitarian assistance and what would be the reason for that?
- To whom (group), how and when should such reparations be provided?
- What are the specific challenges and risks, if any, for the entity delivering reparative measures, in refugee camps?

The specification of the preferred research methods is left to the choice of the research team, the research supervisor and Human Rights Centre Clinic team.

The outcome of the research project will support the TFV Secretariat in the consideration of possible options for reparative measures and delivery strategies, as specific for victims living



in refugee camps, in devising and drafting future reparations implementation plans, as requested by the Court, or when the underlying factual circumstances are such that these types of measures might be required.

The study may be published upon and following such agreement between the Trust Fund's Legal Adviser and the research supervisor.

## Project Timeline

### Phase 1: November-December 2021

- Preliminary research, understanding the project and developing research/report outline.
- Identifying a list of experts for interviews and questionnaire, if applicable.
- Securing ethical approval, if interviews are necessary.
- Mapping of cases and bibliography. The outline and bibliography to be submitted to the TFV by the end of autumn for comments.

### Phase 2: January-March 2022

- Carrying out the interviews online or via telephone, if applicable.
- Research and data gathering.
- Report writing.
- Submission of the first full draft to the TFV.

### Phase 3: April-June 2022

- Revision and finalising the research based on input from the TFV.

## Essential readings

### ICC reparations related readings:

- Appeals Chamber, Appeal judgment ([ICC-01/04-01/06-3129](#)) and Amended order for reparations ([ICC-01/04-01/06-3129-AnxA](#)), *Lubanga*, 3 March 2015.
- Trial Chamber II, Reparations Order, *Katanga*, 24 March 2017, [ICC-01/04-01/07-3728-tENG](#)
- Trial Chamber VIII, Reparations Order, *Al Mahdi*, 17 August 2017, [ICC-01/12-01/15-236](#)
- TFV, Lesser Public Redacted Version of Updated implementation Plan, 14 October 2019, [ICC-01/12-01/15-291-Red3](#)
- Trial Chamber VI, Reparations Order, *Ntaganda*, 8 March 2021, [ICC-01/04-02/06-2659](#)

### TFV related readings:

Draft Implementation Plan [Lubanga](#) (including Annex A), [Katanga](#) and [Al Mahdi](#); Initial Draft Implementation Plan [Ntaganda](#) (including Annex A)

[Reparations factsheets; TFV Management Briefs 2020 and 2021.](#)

### Refugee Camps:



- [UNHCR – 1951 Refugee Convention](#)
- [UNHCR – Refugee Camps](#)
- [UNHCR – Refugee Status Determination](#)

Academic contributions:

- Samantha Bradley, '[The Case for Transformative Reparations for Conflict-Related Sexual Violence in Rakhine State at the ASEAN Intergovernmental Commission on Human Rights](#)', in *Asia-Pacific Journal on Human Rights and the Law* (2019).
- Scott Leckie, '[Post-Conflict Reparation, Restitution and Human Rights – Where to Head From Here?](#)', in *Netherlands Quarterly of Human Rights*, Volume 27-1 (2009).
- Sharia Samy, [Reparations to Palestinian Refugees. A comparative perspective](#), Routledge Studies, 2010

**Focal points in ICC Trust Fund for Victims:**

- TFV Legal Adviser [TFV-Legal@icc-cpi.int](mailto:TFV-Legal@icc-cpi.int)