

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-02/05-01/20
Date: 23 October 2026**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

***IN THE CASE OF THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN
(‘ALI KUSHAYB’)***

Public

**With Confidential *ex parte* Annex A (only available to OTP, Defence, CLRV, VPRS and
TFV)**

Trust Fund for Victims' Additional Submissions on Reparations

Source: Trust Fund for Victims

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☒ **Legal Representatives of the Victims**
Common Legal Representative of Victims

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants**
(Participation/Reparation)

☐ **The Office of Public Counsel for Victims**

☐ **The Office of Public Counsel for the Defence**

☐ **States' Representatives**

☒ **Amicus Curiae**

REGISTRY

☒ **Trust Fund for Victims**

Registrar

M. Zavala Giler, Osvaldo

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☒ **Victims Participation and Reparations Section**

☐ **Other**

I. INTRODUCTION

1. The Trust Fund for Victims (‘TFV’) hereby provides its observations pursuant to Trial Chamber I’s (‘Trial Chamber’ or ‘Chamber’) order requesting additional submissions (‘Order’), issued on 17 September 2026.¹

2. The Chamber instructed the TFV and the Common Legal Representative for Victims (‘CLRv’) to file written observations on the amount of liability, to include any calculations on the cost to repair caused by the crimes of which Mr Abd-Al-Rahman was convicted, and provide a cost breakdown on the basis of the proposed types and modalities of reparations.²

3. In addition, the TFV and CLRv were requested to make observations on the possibility of setting different amounts for the types of harm,³ the Defence’s proposal to establish a schedule providing specific amounts of *pretium doloris* for the various types of harm,⁴ and the appointment of an appropriate expert in the determination of *pretium doloris* to do the same.⁵

II. BACKGROUND

4. Pursuant to the Trial Chamber’s Order of 9 December 2025, the TFV submitted its observations on reparations on 6 July 2026.

5. On 17 July 2026, the Defence filed its response to the TFV’s observations.⁶

6. On 8 September 2026, the Chamber held a hearing on reparations in the present case.⁷

7. On 17 September 2026, the Chamber issued the Order requesting the present submissions on the amount of liability of Mr Abd-Al-Rahman.

8. On 16 October 2026, the TFV requested, by way of email, an extension of time to file its additional submissions.⁸ On the same day, the Trial Chamber granted the request by way of

¹ Order requesting additional submissions, 17 September 2026, ICC-02/05-01/20-1364 (‘Order’).

² Order, para. 3.

³ Order, para. 4.

⁴ Order, para. 4; Defence Consolidated Response on Reparations, 3 July 2026, ICC-02/05-01/20-1354 (with confidential Annex 1), para. 31.

⁵ Ibid.

⁶ Defence Response to TFV Submissions on Reparations, 17 July 2026, ICC-02/05-01/20-1359-Red (confidential version notified on 16 July 2026).

⁷ See Decision on the CLRv request for extension of time and extension of page limit and scheduling a hearing before the Chamber, 2 April 2026, ICC-02/05-01/20-1317-Red (confidential version notified on the same day), p. 6; Order on the conduct of the hearing on reparations, 17 July 2026, ICC-02/05-01/20-1360; Chamber’s email of 20 August 2026, at 17:28.

⁸ TFV request for an extension of time for additional submissions (email from the TFV to Trial Chamber I, dated 16 October 2026, at 10:24).

email, extending the deadline for the filing of the TFV's additional submissions to 23 October 2026.⁹

9. On 16 October 2026, the CLRV filed her additional submissions on reparations.¹⁰

III. CLASSIFICATION OF THE PRESENT OBSERVATIONS

10. Pursuant to Regulation 23 *bis* of the Regulations of the Court, the TFV has classified the Annex to the present observations as confidential *ex parte* given it refers to information a) that may put the victims at risk if disclosed at this stage of the proceedings, b) may hamper the future implementation of reparations and c) refers to information that was conveyed to the TFV in a confidential manner.

IV. INDICATIVE COSTS OF REPARATIONS

11. In accordance with the Chamber's instructions,¹¹ the TFV provides in the Annex indicative costs for selected measures that could fall within the proposed modalities of reparations, other than possible symbolic cash payments or compensation. These include collective symbolic and rehabilitation measures, individualised rehabilitation for victims suffering persisting physical or psychological harm, and measures supporting the implementation of a reparations programme. The Annex identifies the principal cost references and assumptions underlying the calculations.

12. While the TFV has not previously implemented reparations programmes in Darfur, it has obtained information from external stakeholders and organisations undertaking comparable activities and providing relevant services. The TFV has also drawn on its experience in implementing reparations programmes in other situations, including in Uganda, the Central African Republic and Mali, as well as on expenditure incurred in connection with its limited activities and consultations in Darfur. To ensure consistency of information before the Chamber, the TFV has drawn on the detailed cost information provided by the CLRV as a source of reference costs for goods and services in Darfur and Chad. Where possible, the Annex distinguishes these reference costs from the assumptions made by the TFV concerning the number of beneficiaries, locations and measures considered for costing purposes.

13. For the purpose of providing indicative costs, the TFV has considered an initial five-year implementation period in a minimum of seven locations known to host victims of the

⁹ Trial Chamber I decision concerning the TFV's request for an extension of time (email dated 16 October 2026 at 13:53).

¹⁰ CLRV's Additional Submissions on Reparations, ICC-02/05-01/20-1366, 16 October 2026 ("CLRV's Additional Submissions on Reparations").

¹¹ Order, para.3.

convicted crimes in Darfur and in Chad. The Annex also provides estimates for rehabilitation and other measures that may continue or become appropriate upon return to the four case locations, assuming a further five-year period of TFV engagement. These assumptions provide a basis for the calculations without determining the duration, geographical scope or scale of the eventual reparations programme.

14. The indicative costs presented in the Annex relate to selected activities based on different assumptions, some of which may constitute alternatives, overlap or require adaptation. They therefore provide reference points rather than a proposed implementation budget, and cannot, without further assessment and reasoning, be summed together to establish an overall cost of repair. Such an assessment would require, in particular, further assumptions concerning the number of eligible victims and the number of treatments or interventions that may be required. Moreover, the estimates distinguish between measures during displacement and those that may become appropriate upon return, while certain infrastructure and other services may be provided by actors other than the TFV.

15. The TFV notes that the scope of a future reparations programme and the measures through which the proposed modalities would be implemented remain considerably more uncertain than in previous cases. The number and geographical distribution of eligible victims, their specific reparative needs and the precise configuration and scale of the measures remain unknown. Costs may also be affected by security conditions, accessibility constraints, the availability of services and logistical requirements. The TFV recalls its previous observations concerning the exceptionally high costs associated with the transfer of funds in Darfur, security and protection requirements, and communication with affected communities. These costs are particularly volatile, and protection requirements cannot presently be reliably assessed without access to the camps.¹²

16. Further uncertainty concerns measures supporting return to ancestral land and community reconstitution, whose nature and scale will depend on circumstances that cannot presently be predicted, including the conditions under which return may eventually become possible and the activities undertaken by other actors.

V. POSSIBLE APPROACHES TO DETERMINING THE AMOUNT OF LIABILITY

17. The Chamber has requested further information concerning the estimated costs of repairing the harm suffered by victims through relevant reparations modalities, as well as observations on the possibility of determining liability by assigning monetary values to

¹² TFV Observations paras 207, 217, 218 – 222.

different types of harm, including through a *pretium doloris* approach. The TFV addresses below these two possible approaches to determining an overall amount of liability. While the first draws on the estimated costs of appropriate reparations measures, the second concerns the monetary assessment of the harm suffered. Both approaches may inform a sufficiently reasoned determination of liability, including, where appropriate, through an assessment *ex aequo et bono*.

**a. ASSESSMENT INFORMED BY THE ESTIMATED COSTS OF REPAIRING HARM
THROUGH APPROPRIATE MODALITIES OF REPARATIONS**

18. The TFV recalls that the Court's jurisprudence has established that the determination of the amount of liability may be based on the estimated cost of repairing the harm suffered by victims. In undertaking this assessment, Chambers have considered various factors, including (i) the type and extent of harm suffered by victims as a result of the convicted crimes; (ii) the estimated number of potentially eligible beneficiaries; (iii) the types and modalities of reparations appropriate in the circumstances of the case, and (iv) the estimated cost of repairing the harm through those reparations.¹³ The methodology and information relied upon have differed across cases, depending on the circumstances and the materials available.

19. In *Ntaganda*, the Chamber relied primarily on the actual and projected costs of rehabilitation programmes implemented in *Lubanga*;¹⁴ in *Ongwen*, it considered the TFV's previous expenditure on assistance programmes in northern Uganda and projections for future reparations;¹⁵ and in *Al Hassan*, it relied on cost estimates informed by the TFV's implementation experience in *Al Mahdi*.¹⁶ The TFV notes that the jurisprudence has established that, while precise calculations are not always available, the amount of liability must be sufficiently reasoned on the basis of the available information.¹⁷

20. The TFV considers that the information provided in the Annex could provide a basis for determining an overall amount of liability informed by the estimated costs of appropriate reparations. In undertaking such an assessment, the Chamber could take into account the available estimates of the number of potentially eligible victims, including ranges where appropriate, the nature and extent of the harm suffered, and the types and modalities of reparations considered appropriate to address that harm.

¹³ See for example *Ongwen* Reparations Order, para. 769; *Al Hassan* Reparations Order, para. 222.

¹⁴ *Ntaganda* Reparations Order, para.241; *Ntaganda* Addendum Reparations Order, paras 328–359.

¹⁵ *Ongwen* Reparations Order, paras 785-796; see also Decision on the Draft Implementation Plan, [ICC-02/04-01/15-2106](#), paras 26-29.

¹⁶ *Al Hassan* Reparations Order, paras 228-241.

¹⁷ *Lubanga* Judgment on the appeals against the Decision Setting the Size of the Reparations Award, paras 89–90; *Ntaganda*, Judgment on the appeals against the Reparations Order, para.749.

21. For individual or individualised measures, the assessment could draw on the estimated number of victims who may require such measures and the indicative costs per beneficiary. For collective measures, it could be informed by the anticipated scale of interventions, including the number of camps or communities or beneficiaries potentially to be reached, and the estimated cost ranges of the relevant activities. The available prices, unit costs and cost ranges could serve as reference points for estimating the resources required for such measures, taking into account reasonable assumptions concerning their scale and implementation.

22. The TFV recalls that it does not have comparable programme-expenditure data from Darfur, as it has not previously implemented reparations programmes in the region. Unlike in *Ntaganda*, *Ongwen* and *Al Hassan*, where the TFV was able to provide financial information drawn from programmes implemented in comparable contexts, there is no equivalent body of TFV expenditure data that could serve as a reliable reference for estimating the cost of repairing the harm, in line with the proposed modalities of reparations. The information obtained from the CLRV and other sources provides important reference points, but the scale and configuration of future interventions remain subject to uncertainty.

23. If the Chamber adopts a cost-of-repair approach, the Chamber could draw on the available estimates and ranges, together with the information concerning the victim population and the proposed reparations modalities, to determine an overall amount of liability, including by adopting an *ex aequo et bono* approach to certain cost assumptions underlying that amount. This would allow the Chamber to take into account measures for which sufficiently precise costs cannot yet be established, while explaining the assumptions and considerations underlying its determination. It would not require the prior development of a fully costed implementation programme.

b. ASSESSMENT INFORMED BY THE MONETARY ASSESSMENT OF HARM

24. As an alternative to determining the amount of liability on the basis of the estimated costs of appropriate reparations modalities, the Chamber may consider a methodology based on the monetary assessment of the harm suffered by victims. While more recent jurisprudence of the Court predominantly relied on estimated costs to repair as described above,¹⁸ monetary assessments of harm have informed the determination of liability in the *Katanga and Lubanga*

¹⁸ See *above* para.18.

cases, and the *Al Mahdi* case in determining, in particular, the harm suffered due to the destruction of the cultural heritage in Timbuktu.¹⁹

25. An assessment based on the cost of harm could take into account the different aspects of harm resulting from the convicted crimes, including physical and psychological harm, loss of life and loss of property. It could also consider the moral and collective harm suffered by the affected communities, including the disruption of community life, the loss of livelihoods and the long-term consequences of displacement extending over more than 20 years, insofar as found attributable to the convicted person. These consequences may extend to subsequent generations, including through reduced educational opportunities for children born after the commission of the crimes.²⁰

26. The assessment of certain forms of harm could draw on figures already before the Chamber. The GCC has proposed monetary amounts for loss of property and other forms of harm, which could serve as reference points.²¹

27. Psychological and moral harm are more difficult to quantify, including in national legal systems, and no similarly established monetary figures are available to assess their full extent. The Chamber would need to weigh this harm, together with the moral and community harm suffered by victims and their communities, in its assessment *ex aequo et bono*. In this regard, the TFV reiterates its previous observations concerning the extensive moral and community harm resulting from the crimes, both among the Fur, Zaghawa and Masalit communities as a whole,²² or among members of the communities of the four case locations.²³

28. The Chamber could also consider undertaking a more differentiated monetary valuation exercise, including through the *pretium doloris* methodology proposed by the Defence. The TFV recognises that establishing reference amounts for different categories of harm may promote consistency and equal treatment among similarly situated victims. In this context, the TFV recalls the diversity and cumulative character of the harm suffered and recalls the observations of the GCC concerning the cultural significance of, and the inappropriateness of

¹⁹ *Katanga* Reparations Order, paras 190-239, 264; *Lubanga* Corrected version of the Decision Setting the Size of the Reparations Award, paras 259, 279-280; *Al Mahdi* Reparations Order, paras 109-134 (in particular para.116).

²⁰ See TFV Observations, para.74.

²¹ GCC Observations on Reparations, *e.g.* para. 8 (approximately USD 10,000 per family for loss of property), para. 10 (USD 10,000 per person to restore land for agricultural use), para.12 (USD 15,000 for victims of torture left disabled) and para. 16 (approximately USD 15,000 for victims of rape); etc.

²² TFV Observations paras 67 – 70.

²³ TFV Observations, paras 57 – 66.

assigning monetary values to, certain forms of harm in Darfur.²⁴ The TFV considers that such a differentiated approach may be particularly relevant where a more individualised assessment and recognition of the different forms of harm suffered by victims is appropriate, without necessarily requiring individualised reparations.

VI. CONSIDERATIONS RELEVANT TO THE DETERMINATION OF LIABILITY AND POSSIBLE FURTHER ASSESSMENTS

29. The TFV considers that, under either approach, the absence of comprehensive cost estimates or precise monetary valuations of the harm suffered does not preclude the Chamber from establishing a sufficiently reasoned amount of liability that they consider appropriate in the circumstances of the case and in light of the modalities of reparations ordered. The Chamber could distinguish between elements that are sufficiently established and those that remain subject to uncertainty and, where appropriate, assess the latter *ex aequo et bono*, drawing on the available estimates, ranges and other reference points, while explaining the basis for its assessment.

30. Should the Chamber consider that further information is required before it can make such an assessment, the TFV suggests two possible ways forward:

31. *Use of Experts:* The Chamber could commission an independent expert to obtain further estimates of the cost of repairing the harm suffered by victims or, alternatively, an assessment of the monetary value of the harm, including by reference to the amounts proposed by the GCC or the *pretium doloris* methodology suggested by the Defence. In considering such an appointment, the Chamber would need to first identify the specific aspects of the liability assessment such as e.g. the possible costs of return or the harm suffered due to the destruction of property, on which basis then an expert could assist in addressing them.

32. *Two-phased approach for the Reparation Order:* The Chamber could also consider a sequenced approach to the determination of reparations and liability. Under such an approach, the Chamber would first issue a Reparations Order establishing the relevant parameters for reparations, including number of victims, conditions for eligibility and the relevant modalities for reparations, while determining the amount of liability in a subsequent decision. Such an

²⁴ GCC Amicus Curiae Observations on Reparations, see paras 5 – 6 (in relation to killings, killing of leaders), para. 10 (on displacement)l see also CLRV’s additional submissions on Reparations (“CLRV’s additional submissions”), paras 4, 29, 31.

approach was applied in *Lubanga*, where the amount of liability was determined separately from the earlier Reparations Order, with both decisions subject to appeal.²⁵

33. In this case, the approach would allow the principal reparations parameters to be established and subject to judicial review without awaiting a more detailed assessment of liability. This would allow further information to be obtained within the framework of the other key parameters of reparations already established by the Chamber, in particular the modalities of reparations. It would also provide further opportunities for victims and affected communities, including those remaining displaced, to participate in the development and prioritisation of specific measures and activities within the modalities ordered by the Chamber. Such consultations could inform the scope and scale of the measures, taking into account the needs and priorities of the affected communities, and thereby provide a more concrete basis for estimating their costs.

34. However, while bringing some additional certainty and clarity, a two-phased approach would entail additional procedural steps with implications for judicial economy and the timely implementation of reparations.²⁶

VII. ADDITIONAL CONSIDERATIONS CONCERNING THE IMPLEMENTATION OF REPARATIONS

35. *Effect of liability amount on implementation:* Regardless of the method chosen by the Chamber to quantify liability, the TFCV respectfully submits that the assessment of liability and the implementation of reparations serve distinct purposes and should not be conflated. The liability determination is a judicial exercise aimed at quantifying the convicted person's responsibility on the basis of assumptions, projections, and available information at a given point in time about either cost of harm or cost to repair. By contrast, implementation is a forward-looking process directed at giving practical effect to the Chamber's reparative objectives and addressing victims' actual circumstances. It follows that the cost of repair or cost of harm used as a basis for determining liability is not necessarily equivalent to, nor determinative of, the costs that may ultimately be required to implement reparations effectively.

²⁵ In *Lubanga*, Trial Chamber I issued its Decision establishing the principles and procedures to be applied to reparations on 7 August 2012. On 3 March 2015, the Appeals Chamber issued its Judgment on the appeals against that decision, together with the Amended Order for Reparations. On 15 December 2017, Trial Chamber II issued its Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable. On 18 July 2019, the Appeals Chamber issued its Judgment in relation to Trial Chamber II's 'Decision Setting the Size of the Reparations Award.

²⁶ *Al Hassan* Reparations Order, para.192; *Ongwen* Reparations Order, para. 76 (on Promptness and Effectiveness of Reparations); *Ntaganda* Reparations Order, para.89.

36. Considering this, the TFV respectfully submits that any estimates or parameters relied upon by the Chamber to quantify liability should be understood as forming part of the methodology for assessing liability not be transposed into prescriptive allocations among reparative measures, nor treated as binding parameters for implementation. As submitted at the oral hearing, the TFV therefore requests the Chamber to determine an overall amount of liability without prescribing fixed allocations among particular reparations modalities or measures, in particular rehabilitation and satisfaction or symbolic measures, other than any specific monetary awards ordered. Such allocations could constrain the ability to implement reparations in a manner that is responsive to the realities encountered on the ground and could ultimately impede the effectiveness of the reparations programme. Preserving a clear distinction between the methodology used to assess liability and the arrangements required for implementation would ensure that reparations remain faithfully directed towards the Chamber's reparative objectives, while allowing implementation measures to be calibrated to the actual circumstances of victims and carried out under the Chamber's continuing oversight. This would not prevent the Chamber from identifying and explaining the estimates and assumptions underlying its determination of liability, but would avoid their translation into binding allocations for implementation.

37. *Administrative and Support Costs:* The TFV recalls that in its Observations it has deconstructed costs, making a differentiation between Category C and D costs.¹ The TFV distinguishes between Category C costs, which are necessary to implement reparations modalities, and Category D costs which are costs that the TFV incurs in the specific context of this programme, such as costs relevant to implementing the programme in line with the principles of reparations (e.g. gender-sensitivity). The TFV has posit that Category C costs part of the liability amount to the extent that they are necessary for the delivery of the reparations measures ordered. Category D costs should be identified separately, allowing the Chamber to determine their appropriate treatment.

38. In this regard, the TFV respectfully submits that the amount of liability, insofar as the Chamber adopts a cost-of-repair approach, would encompass all costs that are necessary to deliver the reparative measures ordered by the Chamber. Reparations are not limited to the value of benefits received by victims in the abstract; rather, they comprise the practical measures required to repair harm. Where such measures take the form of medical care, psychological rehabilitation, livelihood support, community infrastructure, cultural preservation, or other services, the costs of personnel, security, monitoring, and other implementation requirements are integral components of the reparative intervention. A contrary

approach would risk creating an artificial distinction between reparations and the means necessary to provide them. The proper inquiry is therefore not whether a cost is paid directly to victims, but whether it is reasonably necessary for the implementation of the reparations measures required to repair the harm identified by the Chamber.

39. *Sequenced approach to implementation:* Sequenced implementation may be required in light of the current constraints on access to affected communities and the uncertainty surrounding return. As discussed at the oral hearing,²⁷ the TFV envisages commencing with reparative measures that can feasibly be delivered in the near term, while progressively developing a more comprehensive programme as conditions permit. This could include, where feasible, community rehabilitation measures in camps inside and outside Darfur, rehabilitation measures for victims of specific crimes, and symbolic and satisfaction measures. To facilitate this approach, the TFV may submit successive Draft Implementation Plans for the Chamber's review and approval, enabling reparations to begin without undue delay while ensuring that the programme remains responsive to evolving security, access, and operational conditions, as well as to consultations with victims and other relevant stakeholders.

VIII. CONCLUSION

40. In conclusion, the TFV respectfully requests the Trial Chamber to take these Observations into account when considering the Reparations Order in this case and affirms its commitment to provide further observations as requested.



Deborah Ruiz Verduzco
Executive Director, Trust Fund for Victims

Dated this 23rd of October 2026

At The Hague, The Netherlands

²⁷ Reparations Hearing, 8 September 2026, ICC-02/05-01/20-T-168, p.55, lns 12 – 23; p.71, line 22 – p.72, line 11; p.83, lns 2 – 8.