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Bridging the Gap: Reparations in Refugee Camps

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Abstract

The commission of large-scale international crimes (namely, crimes against humanity, war crimes, and genocide) could result in populations fleeing from their homes, seeking protection. There is an increasing number of victims of these crimes who have been forcibly displaced and currently live in settlements widely known as refugee camps. Victims of international crimes have the right to receive reparations for the harm they have suffered. This means that international criminal tribunals, particularly the International Criminal Court, will have to consider reparations for victims in refugee camps in the near future when the victims seek to enforce their right to reparations. To date, the delivery of reparations in these contexts has not been analysed adequately in the academic literature; this is the gap that this article aims to discuss. The article explores the extent to which it is suitable and feasible to deliver reparations in refugee camps. One of the main arguments is that living in a refugee camp could compound the crime-related harm already sustained by victims. This feature, along with the instability of the situation of victims and the infrastructure of the camp, constitute key characteristics of refugee camps and should each be taken into consideration in delivering reparations. As this article suggests, the instability of the victims' situation will inform which modalities of reparations are suitable to be delivered in the context of a refugee camp. Subsequently, the compounded harm and the camp's infrastructure will inform which particular reparative measures, corresponding to each modality, will be suitable and feasible – respectively – to be delivered. The methodology includes desk-based and qualitative research and analysis of primary and secondary sources and case studies.

Keywords: reparations; refugee camps; compounded harm; international crimes

1. Introduction

Forced displacement trends have evolved continuously in recent years, with an impact on people in central and southern parts of Latin America, Africa, and

Asia, and in the recent humanitarian crises in Afghanistan and Ukraine. Of the 103 million forcibly displaced in the world, 74 per cent are hosted in developing countries.¹ Many are placed in refugee camps, which are settlements used to respond to humanitarian emergencies and are intended to host refugees on a temporary basis.² In practice, however, they often become permanent shelters for displaced people.

The number of victims of war crimes, crimes against humanity and genocide, who have been displaced and are now hosted in refugee camps, is constantly growing. The commission of these international crimes may fall within the jurisdiction of the International Criminal Court (ICC), which means that in the foreseeable future the ICC will need to face the challenge of analysing the award of reparations to victims who live in these contexts. As a result, the Trust Fund for Victims (TFV), the body in charge of implementing reparations ordered by the ICC, is likely to be called upon to design and implement reparations plans in refugee camps. This task would create a myriad of challenges arising from the living conditions in camps, the uncertainty of the fate of the victims living in the camps, and the humanitarian assistance already provided therein. It would also raise the question of the extent to which delivering reparations in the camps is suitable and feasible.

While some reparations policies at the domestic level have focused on displaced populations,³ international criminal tribunals have not sufficiently addressed the claims of displaced populations, despite the fact that their statutes include references to the forced displacement of populations as an international crime and that most of the crimes under their jurisdiction could be committed against displaced persons.⁴ Notably, in 2019 the ICC issued the first conviction for forcible transfer and deportation as a crime against humanity and for ordering the displacement of the civilian population as a war crime.⁵

While member states of the ICC have recognised the importance of strengthening the Court's reparations scheme and fortifying the role of the TFV,⁶ no ICC member state has pushed explicitly for an approach in favour of displaced persons who have been victims of ICC crimes. In recent years,

¹ United Nations High Commissioner for Refugees (UNHCR), Refugee Data Finder, 27 October 2022, <https://www.unhcr.org/refugee-statistics>.

² Simon Turner, 'What is a Refugee Camp? Explorations of the Limits and Effects of the Camp' (2015) 29 *Journal of Refugee Studies* 139.

³ For examples in transitional justice contexts see Roger Duthie (ed), *Transitional Justice and Displacement* (Social Science Research Council 2012).

⁴ Statute of the International Criminal Tribunal for the Former Yugoslavia (entered into force 25 May 1993) arts 2(g), 5(d); Statute of the International Criminal Tribunal for Rwanda (entered into force 8 November 1994) art 3(d); Rome Statute of the ICC (entered into force 1 July 2002) 2187 UNTS 90, arts 7.1(d), 8.2(a)(vii), 8.2(b)(viii), 8.2(e)(viii); Statute of the Special Court for Sierra Leone (entered into force 16 January 2002) art 2(d); Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia (entered into force 27 October 2004) arts 5, 6.

⁵ ICC, *Prosecutor v Bosco Ntaganda*, Sentencing Judgment, ICC-01/04-02/06, 7 November 2019.

⁶ United Nations, 'Speakers Urge More Resources for International Criminal Court, Victims' Trust Fund, as President Briefs General Assembly on Record High Caseload, Ongoing Trials', 31 October 2022, <https://press.un.org/en/2022/ga12462.doc.htm>.

human rights lawyers and organisations have been urging the Court to investigate the commission of international crimes against refugees, migrants and asylum seekers.⁷ The ICC has decided to adopt steps to address these concerns; for instance, the Office of the Prosecutor (OTP) has started actively to support investigations into the commission of international crimes against refugees and migrants in Libya.⁸

However, the development of ICC standards regarding the granting of reparations to displaced persons is still very nascent. As part of the relevant proceedings, the ICC has issued reparations orders in four cases, although to date the Court has not implemented any reparations measures for victims who have been forcibly displaced and now live in refugee camps. Indeed, in the reparations draft implementation plan in the case of *Prosecutor v Germain Katanga*, the TFV noted the challenges of implementing a collective reparations programme to benefit victims living in refugee camps because of their limited legal status and residence in these settings, and uncertainty of the approval of the hosting state.⁹ Along with the lack of experience of the ICC in granting reparations in refugee camps, there is increasing pressure from victims' representatives to make known the difficulties faced by victims living in such camps and the importance of the involvement of the ICC in these contexts.¹⁰

While the existing academic literature has not explored whether it is possible for the ICC to implement reparative schemes in refugee camps, this article aims to bridge the gap between the lack of consideration of this question, on the one hand, and the imminence of its practical relevance, on the other. It ultimately aspires to contribute to the discussion of which modalities of reparations, from those ordered by the ICC Trial Chambers following conviction of the perpetrator, would be the most suitable to be delivered in the context of a refugee camp, and subsequently make suggestions pertaining to the specific reparative measures that are most suitable and feasible to be implemented therein. To do so, it suggests that a refugee camp constitutes a unique situation, defined by three key elements. These are (i) the instability of the situation of victims, (ii) the presumed compounded harm suffered as a result of being in a refugee camp, and (iii) the infrastructure of the camp.

⁷ European Center for Constitutional and Human Rights (ECCHR), International Federation for Human Rights (FIDH) and Lawyers for Justice in Libya (LFJL), 'No Way Out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity', November 2021, https://www.ecchr.eu/fileadmin/Publikationen/NO_WAY_OUT_Migrants_and_refugees_trapped_in_Libya_face_crimes_against_humanity_EN.pdf; ECCHR, FIDH and LFJL, 'Situation in Libya – Article 15 Communication on the Commission of Crimes against Migrants and Refugees in Libya, Executive Summary', 19 November 2021, https://www.ecchr.eu/fileadmin/Juristische_Dokumente/20211119_Executive_Summary_Libya_ICC_final.pdf; Mark Kersten, 'It Is Time for the ICC to Address Crimes against Asylum Seekers', *Al Jazeera*, 8 December 2021, <https://www.aljazeera.com/opinions/2021/12/8/it-is-time-for-the-icc-address-crimes-against-asylum-seekers>.

⁸ ICC, 'Statement of the ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor Joins National Authorities in Joint Team on Crimes against Migrants in Libya', 7 September 2022.

⁹ ICC, *Prosecutor v Germain Katanga*, Draft Implementation Plan relevant to Trial Chamber II's Order for Reparations of 24 March 2017, ICC-01/04-01/07, TFV, 25 July 2017, paras 59, 64–67.

¹⁰ See, eg, ICC, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Victims' Joint Request concerning Hearings Outside the Host State, ICC-01/19, 4 August 2020.

Each of these elements will inform the choice of modalities and the corresponding reparative measures that are the most appropriate to be delivered in such an environment.

The research methodology included desk-based doctrinal research and analysis of primary and secondary sources, case studies, and qualitative research in the form of interviews with leading academic experts and humanitarian workers from the United Nations High Commissioner for Refugees (UNHCR) who are currently working in refugee camps. For each case study, the testimonies of UNHCR staff in those locations have been crucial. The academic experts interviewed were persons with experience in refugee law, international criminal law and transitional justice focusing on reparations. The interviews were semi-structured and were conducted online.¹¹

The article is divided into nine sections. Following this introduction, the next section (2) provides an overview of the ICC framework on reparations, with a focus on its principles as these were developed in the Court's case law. Section 3 focuses on the distinct situation of refugee camps by initially analysing the general living conditions therein, and subsequently engaging with the notion of compounded harm that refugees are presumed to have suffered as a result of their stay in the camps. In the following section (4) the article touches upon the difference between reparations and humanitarian aid, and then introduces the three key elements that will inform the delivery of reparations in the refugee camps. The first of these is the instability of the situation of victims (5); this will inform which *modalities* of reparations are most suitable to be delivered in the environment of a refugee camp. The second element is the compounded harm suffered by victims (6); this will inform which *particular reparative measures*, corresponding to each modality of reparations, are the most suitable to be delivered in view of appropriately addressing the harm sustained. The third element is the infrastructure of the camp (7); this will inform which of the above reparative measures are feasible in view of whether they can actually be delivered based on the situation on the ground. The way in which each of these elements will inform the delivery of reparations is analysed in the subsequent three sections. For the purposes of the analysis of feasibility in Section 7, two case studies are examined, corresponding to situations within the jurisdiction of the ICC with a prominent refugee camp component: Myanmar (Bangladesh) and Darfur (Sudan). Lastly, Section 8 discusses the risks and challenges that the TFV should take into consideration in designing its reparations awards; Section 9 concludes the article.

¹¹ To conduct the interviews, an ethical approval application was submitted to and approved by the University of Essex Ethics Committee (ETH2122-0796) in February 2022. The participants did not consent to have their names disclosed for purposes other than the support of the Human Rights Centre Clinic Project 'Delivering Reparations in the Context of Refugee Camps', produced by the authors in their capacity as postgraduate students at the University of Essex, in partnership with the Trust Fund for Victims at the International Criminal Court. This is why in the present article the interviewees are referred to as 'Experts'.

2. The ICC legal framework on reparations

2.1. An overview

Article 75 of the Rome Statute of the ICC vests the Court with the power to make an order specifying appropriate reparations for victims against a convicted person. The statutory purpose of reparations is to ‘oblige those responsible for serious crimes to repair the harm they caused to the victims and ... enable the Court to ensure that offenders account for their acts’.¹² The order for reparations should contain five elements: it must (i) be made against a convicted person; (ii) inform the convicted person of their liability with regard to the reparations awarded; (iii) specify the reasons for the reparations awarded; (iv) define the harm caused to victims (direct and indirect) as a result of the crimes for which the person is accused, along with appropriate modalities of reparations; and (v) identify the eligible victims or the criteria to do so.¹³

Article 75 refers to three modalities of reparations: restitution, compensation, and rehabilitation.¹⁴ However, the list is non-exhaustive and, where appropriate, may include other types of reparation such as those with a ‘symbolic, preventative or transformative value’.¹⁵ Turning first to restitution, this modality aims to restore an individual’s life to how it was before the occurrence of the harm and its consequences. It may include being returned to one’s family, home or previous employment; the provision of continuing education, or the return of lost or stolen property.¹⁶ It may also include restoration of a person’s liberty, identity, citizenship and enjoyment of human rights.¹⁷

Compensation, on the other hand, is an acknowledgement of a person’s suffering as a result of the harm inflicted on them from a gross human rights violation.¹⁸ It consists of the ‘award of monetary funds for an economically

¹² ICC, *Prosecutor v Thomas Lubanga Dyilo*, Amended Reparations Order, ICC-01/04-01/06-3129-AnxA, Appeals Chamber, 3 March 2015, para 2.

¹³ ICC, *Prosecutor v Bosco Ntaganda*, Reparations Order, ICC-01/04-02/06, Trial Chamber VI, 8 March 2021, para 23.

¹⁴ In its orders for reparations, the Court uses the term ‘modalities of reparations’ to refer to each of the reparations categories of restitution, compensation, rehabilitation and symbolic measures. For purposes of consistency, the term ‘modality’ is used in the same way throughout the article. See ICC, *Prosecutor v Ahmad Al Faqi Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, Trial Chamber VIII, 17 August 2017, para 46 (where the Court mentions that ‘Reparations “modalities” are the specific methods identified to address the kinds of harm requiring reparations. With regard to modalities, Article 75 of the Statute gives a non-exhaustive list, including “restitution, compensation and rehabilitation”).

¹⁵ *Lubanga*, Amended Reparations Order (n 12) para 34.

¹⁶ *ibid* para 35.

¹⁷ United Nations General Assembly (UNGA), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (21 March 2006), UN Doc A/RES/60/147, para 19.

¹⁸ ICC, *Prosecutor v Germain Katanga*, Reparations Order, ICC-01/04-01/07-3728, Trial Chamber II, 24 March 2017, para 103 fn 431.

assessable damage',¹⁹ to support self-sustaining programmes to gradually enable victims to become self-reliant.

Rehabilitation is a modality that can take various forms. More specifically, rehabilitation measures are aimed, on the one hand, at addressing the medical and psychological needs of the victim through the provision of healthcare services and psychological assistance (physical and psychological rehabilitation)²⁰ and, on the other hand, at facilitating the victim's reintegration into society through education, vocational training, and sustainable work opportunities (economic rehabilitation and provision of education).²¹

'Symbolic reparations'²² or 'satisfaction', as the term has been used by the ICC in its jurisprudence,²³ include measures that 'acknowledge the violation and aim to safeguard the dignity and reputation of the victim'.²⁴ According to the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, some of these measures include (i) verification of the facts and public disclosure of the truth, (ii) an official declaration or judicial decision restoring the dignity of the victim, (iii) a public apology or commemorations to the victims.²⁵ They may materialise in the form of the perpetrator's apology,²⁶ or a memorial, commemoration or forgiveness ceremony.²⁷ Symbolic reparations may also be appropriate for redressing the harm inflicted upon whole communities.²⁸

Under Rule 97(1) of the Rules of Procedure and Evidence of the ICC, these reparations can be of either an individualised or collective nature. Individual reparations address specifically and directly the harm suffered by the individual. The collective character of reparations, which refers either to their nature or their recipients, benefits the community as a whole or a specific group of victims who receive individualised benefits.

2.2. The difference between modalities of reparations and awards of reparations

Identifying which modalities of reparations are appropriate in a specific case is closely interlinked with the harm caused to the victims as a result of the crime for which the perpetrator is convicted. As the Appeals Chamber of the ICC very explicitly ruled in the *Lubanga* case, 'the appropriateness of a modality of reparations can only be determined by reference to the harms that were caused and which the reparations seek to remedy'.²⁹ However, as the

¹⁹ *Ntaganda*, Reparations Order (n 13) para 202..

²⁰ *Lubanga*, Amended Reparations Order (n 12) para 42.

²¹ *ibid* para 67.

²² *Al Mahdi*, Reparations Order (n 14) para 49.

²³ *Ntaganda*, Reparations Order (n 13) para 88.

²⁴ *ibid*.

²⁵ UNGA (n 17) para 22.

²⁶ *Al Mahdi*, Reparations Order (n 14) para 71.

²⁷ *ibid* para 90.

²⁸ *ibid* para 49.

²⁹ ICC, *Prosecutor v Thomas Lubanga Dyilo*, Judgment, ICC-01/04-01/06 A A 2 A 3, Appeals Chamber, 3 March 2015, para 200.

Chamber further explained, a *modality of reparation* is not the same as an *award for reparation*, as meant by the TFV Regulations.³⁰ While it is the Trial Chamber that will identify and order appropriate modalities of reparations, it is the TFV that will later design awards for reparations based on the modalities ordered by the Court. In fact, the TFV is assigned a 'shaping and defining role with regards to the precise nature of the modalities of the reparations and the methods of their implementation'.³¹ While it is recommended that all the modalities ordered by the Court are reflected in the design of the awards, in a case where a certain modality is not reflected, the TFV would have to provide a relevant explanation.³²

This distinction is particularly important for the purposes of this article. We do not aim to assess the appropriateness of the modalities of reparations ordered; this will be decided by the Court itself, on the basis of the harm caused by the crime and for which the perpetrator is liable. Rather, the purpose of the article is to assess the appropriateness of implementing the modalities of reparations in the context of a refugee camp. In other words, it seeks to provide suggestions to the TFV on which reparations ordered by the Court should be reflected in its design of awards (implementation plan), in terms of how suitable they are to be delivered in refugee camps. At the second stage, the article seeks to provide suggestions pertaining to the particular reparative measures to be delivered to victims living in camps, in terms of both suitability and feasibility.

The characteristics of a refugee camp can be decisive in determining the suitability and feasibility of delivering a certain reparation that has been ordered by the Court. This is because the purpose of reparations is not simply to deliver redress to victims but rather to do so in a meaningful way by being 'responsive to the operational reality in which they take place, and the realities of the harm suffered by victims'.³³ As such, their implementation will be influenced directly by the particular conditions of each case, such as 'existing capacity, infrastructure, resources, security, ongoing ethnic tension and instability, and the period of time that has elapsed since the crimes occurred'.³⁴ This operational dimension of reparations is further understood to signify the 'feasibility of reparations measures to be carried out in a local context conditioned by the specific scope of its service providers, social dynamics and security situation'.³⁵

In the past, the TFV had identified circumstances that could affect implementation of the specific modalities of reparations ordered. These would include the specific security situation of the region,³⁶ the fact that some

³⁰ *ibid.*

³¹ ICC, *Prosecutor v Thomas Lubanga Dyilo*, Filing on Reparations and Draft Implementation Plan, ICC-01/04-01/06-3177-Red, TFV, 3 November 2015, para 110a.

³² *Lubanga*, Appeals Chamber Judgment (n 29) para 200.

³³ *Lubanga*, TFV Filing on Reparations (n 31) para 15.

³⁴ *ibid.*

³⁵ ICC, *Prosecutor v Bosco Ntaganda*, TFV Observations Relevant to Reparations, ICC-01/04-02/06-2476, Trial Chamber IV, 28 February 2020, para 102.

³⁶ *ibid* 107; *Katanga*, TFV Draft Implementation Plan (n 9) para 122.

forms of redress (such as specialised medical and psychological services) may not be readily accessible in all regions,³⁷ and misinformation about the true scope of the reparations award, which may cause resentment and conflict.³⁸ Most importantly, the geographical location of victims has also been a factor considered by the TFV in deciding which modalities are suitable for implementation in a given case.³⁹

A successful delivery programme for reparations will need to consider various factors such as local conditions, the cultural attitude of victims towards money, the social structures of gender, class and age, and access to capital by refugees.⁴⁰ In the end, the success of the reparations programme will be evaluated based on, inter alia, its sustainability – for example, the degree to which the positive effects of the programme continue even after its termination.⁴¹

2.3. The ICC principles on reparations

While the above considerations are of the utmost importance, awards of reparations must also be designed in accordance with the principles of reparations to victims of international crimes, as established by the ICC under Article 75 of the Rome Statute. The principles were introduced in the *Lubanga* amended reparations order,⁴² and were later complemented and elaborated in the *Ntaganda* reparations order.⁴³

According to these principles, direct and indirect victims are to be treated with dignity and granted victim-centred reparations in a non-discriminatory consultative manner, which considers their particular needs and continued vulnerability.⁴⁴

Reparations should refrain from perpetuating discriminatory practices or stigmatisation while, at the same time, ensure that they do not create tensions

³⁷ *Ntaganda*, TFV Observations (n 35) para 107.

³⁸ *Katanga*, TFV Draft Implementation Plan (n 9) para 122.

³⁹ *ibid* para 59.

⁴⁰ Naomi Roht-Arriaza and Katharine Orlovsky, 'A Complementary Relationship: Reparations and Development', Research Brief, International Center for Transitional Justice, July 2009, 3.

⁴¹ ICC, *Prosecutor v Thomas Lubanga Dyilo*, Draft Implementation Plan for Collective Reparations to Victims, ICC-01/04-01/06-3177-AnnA, TFV, 3 November 2015, paras 234–35.

⁴² *Lubanga*, Amended Reparations Order (n 12) paras 6–52.

⁴³ *Ntaganda*, Reparations Order (n 13) paras 15–40; this reparations order was partially reversed and remanded by the Appeals Chamber on 12 September 2022 but it is unclear to what extent the principles have been revoked. The Appeals Chamber did not contest the Principles themselves but found error in the way in which the Trial Chamber (i) failed to make any appropriate determination or provide a reasoned decision in relation to the number of potentially eligible or actual victims of the award; (ii) failed to provide an appropriate calculation or set out sufficient reasoning for the amount of the monetary award against Mr Ntaganda; (iii) did not assess and rule upon the victims' applications for reparations and did not lay out parameters for an assessment of eligibility procedure by the TFV; and (iv) did not provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish this. For the full decision see ICC, *Prosecutor v Bosco Ntaganda*, Judgment on the Appeals against the Decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order', ICC-01/04-02/06 A4-A5, Appeals Chamber, 12 September 2022.

⁴⁴ *Lubanga*, Amended Reparations Order (n 12) paras 12–19.

or animosity among the affected groups.⁴⁵ The delivery of reparations should embody the ‘no harm principle’ in that they should not inflict further harm on the victims themselves or on the society in which they live.⁴⁶ Principles such as ‘best interests of the child’ and ‘gender inclusivity’ also inform the design and delivery of reparations.⁴⁷

Additionally, reparations should be adequate and expeditious, proportionate to the harm suffered, and reflect non-harmful cultural and customary practices.⁴⁸ They should also aim to implement self-sustainable programmes so that the victims and their communities can benefit from them over an extended period of time.⁴⁹

3. Life in a refugee camp

3.1. General living conditions

Settlements for hosting refugees are placed in urban and rural areas.⁵⁰ In urban contexts, humanitarian organisations build shelters or collective centres,⁵¹ whereas refugee camps constitute a crucial part of the humanitarian response in rural settings, mostly during emergencies.⁵² National host governments and humanitarian organisations under the leadership of the UNHCR often administer them, while centralising and guaranteeing the provision of humanitarian assistance therein.

Refugee camps are designed to protect and assist people who have fled from persecution; however, they can also have a negative impact on the lives of refugees.⁵³ The delivery of humanitarian assistance within a refugee camp scheme can reduce the independence of refugees and prolong the trauma of displacement and its consequences.⁵⁴ Commonly, refugees experience many limitations on their rights and freedoms.⁵⁵ While some camps may have an open-entry character, allowing refugees and non-refugees to transit and live together freely, several host countries restrict refugees’ freedom of movement and place restrictions on access to primary services, productive activities, and formal labour employment.⁵⁶

The experience of displacement does not end with allocation to a refugee camp. The design of refugee camps is based on the premise that they are

⁴⁵ *ibid* para 33.

⁴⁶ *Lubanga*, TFV Filing on Reparations (n 31) para 16.

⁴⁷ *Lubanga*, Amended Reparations Order (n 12) paras 24–26.

⁴⁸ *ibid* para 47.

⁴⁹ *ibid* para 48.

⁵⁰ UNHCR, ‘Global Strategy for Settlement and Shelter: A UNHCR Strategy 2014–2018’, 16, <https://www.unhcr.org/media/32280>.

⁵¹ *ibid* 18.

⁵² *ibid* 17.

⁵³ UNHCR, Policy on Alternatives to Camps (22 July 2014), UN Doc UNHCR/HCP/2014/9, 4.

⁵⁴ *ibid*.

⁵⁵ *ibid*.

⁵⁶ *ibid*.

intended to be temporary shelters, even when, in practice, refugees' stay can be prolonged for many years. Depending on the circumstances that led to their displacement, 'protracted refugee situations' – namely when at least 25,000 refugees from the same country of origin have lived in exile for more than five consecutive years without a foreseeable opportunity to access durable solutions⁵⁷ – may occur.⁵⁸

Living conditions inside the camps can deepen the effect of having been forcibly displaced. Refugee camps built around the world are not equal. They can share similarities but also present specificities, which depend on the context and the profiles of the refugees they host. The quality of living conditions could be defined by different factors, including material conditions such as the location and infrastructure of the camp, access to services provided by humanitarian actors, and the relationship with the local host communities. This section will delve into four specific types of living environment: (i) stability and security, (ii) shelter and sanitation, (iii) education and work, and (iv) health.

Stability and security in refugee camps are linked to the camp's location and management, and the characteristics of the population. Refugee camps are typically situated away from capital cities in the host state's poorer regions, with limited security provisions. As places with a concentration of humanitarian aid resources, refugee camps are likely to be targets of armed attacks by external groups or individuals.⁵⁹ The demographic composition of the camp also plays a crucial role in determining the likelihood of security threats.⁶⁰ For instance, a higher number of males living in the camps, in comparison to females, can reduce the probability of an armed attack.⁶¹ The commission of crimes inside a camp's facilities has an impact on stability and security standards. Generally, women and girls tend to encounter greater restrictions in exercising their fundamental rights and being protected from violence.⁶² In the context of forced displacement crises, systems to ensure protection can be weakened and, consequently, the risk of

⁵⁷ UNHCR, Conclusion on Protracted Refugee Situations No. 109 (LXI) ExCom Conclusions (8 December 2009), <https://www.unhcr.org/publications/conclusion-protracted-refugee-situations>. In 2021, approximately 74 per cent of the total refugee population was in a protracted refugee situation. Some examples of these situations are the South Sudanese in Sudan, Central African in Cameroon, Rohingya in Bangladesh, and Syrians in Jordan: UNHCR, Global Trends: Forced Displacement in 2021 (2002), 20, <https://www.unhcr.org/publications/brochures/62a9d1494/global-trends-report-2021.html>.

⁵⁸ *ibid.*

⁵⁹ UN Security Council, Resolution 1208 (1998) on the Situation in Africa: Refugee Camps (19 November 1998), UN Doc S/RES/1208, <http://unscr.com/en/resolutions/doc/1208>.

⁶⁰ Richard AI Johnson, 'Refugee Camp Security: Decreasing Vulnerability through Demographic Controls' (2011) 24 *Journal of Refugee Studies* 23.

⁶¹ *ibid.* 43.

⁶² Bart de Bruijn, 'The Living Conditions and Well-Being of Refugees', UN Development Programme, Human Development Reports, Research Paper 2009/25, July 2009, 14, http://www.rojasdatabank.info/HDRP_2009_25.pdf.

sexual and gender-based violence (SGBV) increases.⁶³ Reported cases illustrate that refugee camps are not an exception.⁶⁴

The adequacy of *shelter and sanitation services* is fundamental in reducing exposure to communicable diseases and providing refugees with the means to live in dignity.⁶⁵ However, the physical infrastructure and water supply of camps often become inadequate for displaced populations. This is mainly because refugee camps are considered transitory spaces, and humanitarian organisations are focused on seeking short-term temporary solutions. The adequacy of such services needs to be assessed based on the specific context of a refugee camp and by taking into account various factors, such as climate variations and cultural considerations.

The level of *educational access* is a significant indicator of the quality of life in refugee camps, given that it contributes substantially to the achievement of self-reliance by refugees. It creates human and social capital, and forms the basis upon which children can build their futures and contribute significantly to their communities.⁶⁶ Requirements for access to education vary from camp to camp, although educational services for children are generally free. However, in some camps, such as in Liberia, refugees are asked to pay an annual tuition fee to guarantee their children's access to the school or to cover registration fees.⁶⁷ In others, even when access to education is free, refugees could face financial barriers to covering the cost of school materials, transportation or uniforms.⁶⁸

⁶³ UNHCR, UNHCR Policy on the Prevention of Risk, Mitigation and Response to Gender-Based Violence (2 October 2020), UN Doc UNHCR/HCP/2020/01, <https://www.unhcr.org/5fa018914/unhcr-policy-prevention-risk-mitigation-response-gender-based-violence>. The UNHCR adopts the Inter-Agency Standing Committee (IASC) definition of gender-based violence as 'an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private'; see IASC GBV Guidelines for Integrating GBV Interventions in Humanitarian Action, 2015, Part 1, <https://gbvguidelines.org>.

⁶⁴ See, eg, Awa Mohamed Abdi, 'Refugees, Gender-Based Violence and Resistance: A Case Study of Somali Refugee Women in Kenya' in Evangelia Tastsoglou and Alexandra Dobrowsky (eds), *Women, Migration and Citizenship* (Ashgate 2006) 231; Ulrike Krause, 'Escaping Conflicts and Being Safe? Post-conflict Refugee Camps and the Continuum of Violence' in Susanne Buckley-Zistel and Ulrike Krause (eds), *Gender, Violence, Refugees* (Berghahn Books 2017) 173.

⁶⁵ De Bruijn (n 62) 30. For instance, poor housing in Sierra Leone led to rodent infestation, causing the transmission of Lassa fever among camp residents in 2003: Francesca Fontanini, 'UNHCR Joins Fight against Lassa Fever in Sierra Leonean Camps', UNHCR, 1 April 2003, <https://www.unhcr.org/uk/news/latest/2003/4/3e899b5f4/unhcr-joins-fight-against-lassa-fever-sierra-leonean-camps.html#:~:text=The%20UN%20refugee%20agency%20has,and%20Kenema%20districts%20refugee%20camps>; Phillip Bonner and others, 'Poor Housing Quality Increases Risk of Rodent Infestation and Lassa Fever in Refugee Camps of Sierra Leone' (2007) 77 *American Journal of Tropical Medicine and Hygiene* 169.

⁶⁶ De Bruijn (n 62) 37.

⁶⁷ Naohiko Omata, *The Myth of Self-Reliance: Economic Lives Inside a Liberian Refugee Camp* (Berghahn Books 2017) 23.

⁶⁸ The Lutheran World Federation, 'Rapid Assessment of Barriers to Education in Kakuma Refugee Camp with a Focus on Access and Quality in Primary Education', February 2015, 7,

Limited access to employment and subsequent prolonged dependence on humanitarian aid can increase the chances of developing psychological problems, down-skilling, social isolation, familial tensions, conflicts, and the perpetuation of poverty.⁶⁹ In many contexts, refugees residing in camps do not have authorisation to work formally in the host country, and have to cope with restrictions in establishing their businesses,⁷⁰ or accessing financial capital from formal lending services. These circumstances reduce their opportunities to invest in or expand their economic activities, which in any case are concentrated primarily within the camps. Their success will depend on the needs of the camp and the financial opportunities that refugees might find to make their businesses sustainable and lucrative. The economic incomes and well-being of refugees also depend on their access to financial remittances from abroad.⁷¹

Lastly, forced displacement has an impact on the *physical and mental health* of the affected populations. It does so in various ways, depending on the specific vulnerabilities of the population. The well-being of displaced persons may be affected by the traumatic experiences they have suffered in their countries of origin or the challenging conditions of their journey.⁷² In addition, refugee health can be aggravated by the conditions of the camp settings, where the transmission of infectious diseases (such as diarrhoeal and respiratory infections, malnutrition and malaria) is frequent.⁷³

3.2. *Compounded harm*

In the light of the above, it can be observed that refugee camps offer unique conditions for the victims who live there, which may have varied impacts on them. While the stay at the camp may have a negative effect on the people, factors such as the duration of stay and the quality of services in the camp determine how it may affect them and to what extent.⁷⁴ Factors such as extra-territoriality (as refugee camps are usually created in areas that do not appear on maps), exception (refugee camps are governed by special legal instruments that are different from those of the surrounding area), and social exclusion (as refugees are seen as not belonging to the host community),⁷⁵ all of which

https://kenyadjibouti.lutheranworld.org/sites/default/files/documents/Barriers%20to%20Education%20in%20Kakuma%20Refugee%20Camp%20Assessment_0.pdf.

⁶⁹ Anna-Mara Schön and others, 'Developing a Camp Performance Indicator System and Its Application to Zaatar, Jordan' (2018) 8 *Journal of Humanitarian Logistics and Supply Chain Management* 346, 346–48.

⁷⁰ Omata (n 67) 21.

⁷¹ *ibid* 42.

⁷² Leigh Daynes, 'The Health Impacts of the Refugee Crisis: A Medical Charity Perspective' (2016) 16 *Clinical Medicine* 437.

⁷³ De Bruijn (n 62) 31.

⁷⁴ Interview, Reparations Expert 1, 19 May 2022, ETH2122-0796.

⁷⁵ Michel Agier, 'Introduction: L'Emcampement du Monde' in Michel Agier (ed), *Un Monde de Camps* (La Découverte 2014) 11, 20 (the original French versions of the terms used are 'extraterritorialité', 'l'exception' and 'l'exclusion'); Simon Turner, 'What Is a Refugee Camp? Explorations of the Limits and Effects of the Camp' (2016) 29 *Journal of Refugee Studies* 139.

result from the policies of the host state, are considerations that determine the extent of harm.⁷⁶

The following section argues in favour of adopting a presumption of compounded harm, which may be physical, psychological or economic, and which is added to the crime-related harm already suffered by victims. The section first discusses how staying in a refugee camp can affect its residents, and then explains how the presumption of compounded harm could figure in the reparations framework.

3.2.1. *Impact on mental health*

The experiences of victims in their countries of origin – in addition to the displacement, unstable and unhygienic living conditions in the refugee camps – can lead to various mental health problems.⁷⁷ Studies have found a relationship between the length of stay in a camp and a detrimental impact on the health of its refugees. A study of the Moria refugee camp in Greece suggests that various stressors, coupled with a longer length of stay in the camp, have a negative impact on mental health. These stressors include lack of safety; challenges in accessing water, food, shelter and healthcare; the inability to produce an income; lack of supportive networks; institutional abuse; and uncertainty regarding the length of the asylum procedure.⁷⁸

In a study conducted with Syrian adolescent refugees, it was found, inter alia, that the longer the duration of stay at a refugee camp, the more negative the impact on adolescents.⁷⁹ Longer stays in the camp led to more severe psychological problems and a weaker ‘sense of coherence’, which refers to the cognitive resources one believes can help in coping with stressors.⁸⁰ Another study of the mental health of 148 Rohingya refugees in the Kutupalong and Nayapara camps in Bangladesh revealed that they suffered from high levels of post-traumatic stress disorder (PTSD), depression, somatic issues, and other associated types of functional impairment.⁸¹ In fact, a direct relationship was found between the past trauma and mental health results, although the latter were also affected by daily stressors such as lack of freedom of movement, limited access to food, and concerns regarding safety.⁸² Most importantly, it was found that symptoms of depression were associated with the daily stressors and not the past trauma.⁸³

⁷⁶ Interview, Reparations Expert 1 (n 74).

⁷⁷ Daynes (n 72) 439.

⁷⁸ Willemine van de Wiel and others, ‘Mental Health Consequences of Long-Term Stays in Refugee Camps: Preliminary Evidence from Moria’ (2021) 21 *BMC Public Health* 1290.

⁷⁹ Orna Braun-Lewensohn and Khaled Al-Sayed, ‘Syrian Adolescent Refugees: How Do They Cope during Their Stay in Refugee Camps?’ (2018) 9 *Frontiers in Psychology* 1258, <https://www.frontiersin.org/articles/10.3389/fpsyg.2018.01258/full>.

⁸⁰ *ibid.*

⁸¹ Andrew Riley and others, ‘Daily Stressors, Trauma Exposure, and Mental Health among Stateless Rohingya Refugees in Bangladesh’ (2017) 54 *Transcultural Psychiatry* 304.

⁸² *ibid.*

⁸³ *ibid.*

Overall, a review of 20 studies on mental health outcomes for youth living in refugee camps found a range of maladjustment problems for them such as anxiety, somatic symptoms, depression, and PTSD.⁸⁴

3.2.2. Impact on physical health

There are various health risks in refugee camps associated with water and sanitation, food and nutrition, shelter and non-food items, access to health services and information.⁸⁵ The survival and well-being of refugees in camps is influenced by the quality of humanitarian aid provided to them.

A study has found that in the camps in the Cox's Bazaar district, water safety has been affected as a result of bathing, washing and open defecation in the water sources, with numerous cases of acute water-based diarrhoea and other water-borne diseases causing significant concerns.⁸⁶ It was also found that faecal oral diseases of high contagion, such as hepatitis A and E infections, were also prevalent in the camps.⁸⁷ Similarly, as the quantity of nutritional food and distribution is not guaranteed, there are numerous cases of acute malnutrition.⁸⁸ The study also found that 'overcrowding, indoor cooking practices, and suboptimal shelters constructed with air-impermeable plastic sheets all contribute to fire and injury risks, poor indoor air quality, and the proliferation of infectious diseases such as acute respiratory infections, measles, and tuberculosis within the camps'.⁸⁹

3.2.3. Socio-economic impact

Living in a refugee camp can also have an impact on family life and family structure. Williams has observed that the alteration of the family structure may begin before migration with men staying behind to fight or become labour migrants, thus leading to the majority of refugees in a camp being women and children.⁹⁰ Further, living in refugee camps leads to many losses for the family experience, such as limited privacy and thus straining relations, loss of family members, employment and so on, and changes in the roles of family members.⁹¹

⁸⁴ Nadia Vossoughi and others, 'Mental Health Outcomes for Youth Living in Refugee Camps: A Review' (2018) 19 *Trauma, Violence and Abuse* 528.

⁸⁵ Emily YY Chan, Cheuk Pong Chiu and Gloria KW Chan, 'Medical and Health Risks Associated with Communicable Diseases of Rohingya Refugees in Bangladesh 2017' (2018) 68 *International Journal of Infectious Diseases* 39; see also Charlotte Christiane Hammer, Julii Brainard and Paul R Hunter, 'Risk Factors and Risk Factor Cascades for Communicable Disease Outbreaks in Complex Humanitarian Emergencies: A Qualitative Systematic Review' (2018) 3(4) *BMJ Global Health*, article e000647.

⁸⁶ Chan, Pong Chiu and Chan (n 85).

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.* See also Asterios Kampouras and others, 'Child Morbidity and Disease Burden in Refugee Camps in Mainland Greece' (2019) 6(3) *Children*, article 46, <https://doi.org/10.3390/children6030046>.

⁹⁰ Holly Ann Williams, 'Families in Refugee Camps' (1990) 49 *Human Organisation* 100.

⁹¹ *ibid.*

Additionally, for various reasons refugees struggle to pursue livelihoods. Some of these are anti-migrant attitudes in the host country, limited access to resources and loss of human and social human capital, which further lead to poverty and vulnerability.⁹² Loss of livelihood or economic activities and restrictions in the refugee camp can exacerbate the harm suffered by victims. Refugees are put in a position in which they are dependent on humanitarian actors; this, in turn, risks having a negative impact on their mental and physical health and planning for their future.⁹³ Further, past traumas resulting from conflict and displacement coupled with the restrictions of the camp (such as loss of livelihood) compound their experiences and perpetuate gendered disparities.⁹⁴

3.2.4. *Presumption of compounded harm*

Taking the above into consideration, one could come to the conclusion that merely living in a refugee camp can cause harm to a person.⁹⁵ When this person is also a victim of an international crime and has already suffered related harm, their presence in the refugee camp will only exacerbate the crime-related harm in a way that either magnifies the existing harm or creates a new type of harm. It is therefore reasonable to suggest that living in a refugee camp can compound the harm already suffered as a result of the ICC crime, thus leading to a presumption of compounded harm for these victims.

It is emphasised that the way in which the concept of ‘presumption of compounded harm’ is employed in this article differs substantially from the way in which it has been used by the ICC in the past. In previous jurisprudence the Court had presumed the existence of harm suffered by victims as a result of the crime, in order to establish the liability of the perpetrator to rectify it. The Court adopted this approach where proof of the link between a certain manifestation of the harm (for example, psychological harm) and the crime itself could not easily be established.⁹⁶ However, in this case the presumption of compounded harm refers to a factual concept which does not relate to the liability of the accused or the modalities of reparations that will be ordered,

⁹² UNHCR, ‘Livelihood Programming in UNHCR: Operational Guidelines’, 2012, 7, <https://www.unhcr.org/4bfd17c9.pdf>.

⁹³ Sarah J Hoffman and others, “‘Sleeping in a Boundary’ Constructing the Meaning of Health in a Refugee Camp” (2019) 40 *Health Care for Women International* 744.

⁹⁴ *ibid.*

⁹⁵ Confirmed in Interview, Reparations Expert 3, 19 May 2022, ETH2122-0796; Interview, Reparations Expert 2, 18 May 2022, ETH2122-0796.

⁹⁶ ICC, *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v Thomas Lubanga Dyilo*, Decision Setting the Size of the Reparations Award, ICC-01/04-01/06, Trial Chamber II, 21 December 2017, paras 180–85; ICC, *Projet de plan de mise en œuvre des réparations accordées aux victimes à titre collectif présenté en exécution de l’ordonnance de réparation modifiée rendue le 3 mars 2015 dans l’affaire concernant Thomas Lubanga Dyilo*, Reparations Implementation Plan, TFW, ICC-01/04-01/06, 1 February 2016, paras 71–80; ICC, *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07, Trial Chamber II, 24 March 2017, paras 57–61; ICC, *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v Bosco Ntaganda*, Reparations Order, Trial Chamber VI, ICC-01/04-02/06, 8 March 2021, paras 136–47.

but instead is relevant at the stage of formulating and delivering the awards of reparations. This is because, as mentioned above, reparations should be delivered in a way that is responsive to the realities of the harm suffered by victims. For the purposes of our analysis, it is important to distinguish between two different cases: the first being where the crime itself has caused the displacement of the victims; the second is where the victims were displaced and settled in a refugee camp for reasons outside the control of the perpetrator.

A. Direct nexus between living in a refugee camp and the crime itself

Under the Rome Statute, displacement of populations can amount either to a crime against humanity⁹⁷ or a war crime.⁹⁸ In these two cases, as well as in any other case in which a causal link is found between an ICC crime and the subsequent displacement that led to victims settling in a refugee camp, the additional harm caused by staying there could be considered a consequence of the crime itself. This means that, to the extent that the proximate cause test is satisfied,⁹⁹ the Trial Chamber would need to take this additional harm into account when ordering reparations against the convicted person in the first place.

B. No nexus between living in a refugee camp and the crime itself

However, if no such causal link can be established between the crime itself and confinement in the refugee camp, the additional harm suffered by the victims arising from their presence there cannot be taken into account by the Trial Chamber when ordering reparations, given that the latter are determined on the basis solely of the crime-related harm.

This does not mean, though, that the notion of compounded harm becomes obsolete. On the contrary, it will be relevant when the TFV formulates the reparations awards, which, as seen, need to be informed by the needs and realities of harm experienced by the victims at the time of delivery of the reparations. Typically, a significant amount of time will have elapsed between commission of the crime and actual delivery of the reparations. This necessarily means that what a specific victim may need at the time of the award (for instance, 20 years after the crime) may no longer correspond to what they lost back then as a result of the crime.

By way of illustration, an indiscriminate attack against a civilian population, as a war crime, may have caused a specific victim to suffer a broken leg. In the immediate aftermath of the attack, this victim would have needed a plaster cast for it to heal. However, the person is displaced, for reasons not pertaining to the crime itself, and forced to live in a refugee camp where the fracture is not addressed. By the time the ICC reparations are to be delivered years later,

⁹⁷ Rome Statute of the ICC (n 4) art 7(2)(d).

⁹⁸ *ibid* art 8(2)(e)(viii).

⁹⁹ *Lubanga*, Amended Reparations Order (n 12) para 59; *Ntaganda*, Reparations Order (n 13) paras 132–33; the ‘proximate cause’ is legally sufficient to result in liability, assessing, *inter alia*, whether it was reasonably foreseeable that the acts and conduct underlying the conviction would cause the resulting harm.

the condition of the leg has become worse because of inadequate medical care at the refugee camp, reaching the stage where a plaster cast would be of no benefit. In this case, merely providing a plaster cast as a measure of the rehabilitation ordered by the Court would not help the victim at all. Rather, surgery or the provision of a wheelchair as a reparative measure might be more appropriate.

Consequently, at the time of delivering the reparations ordered, the victim's harm should be taken into account in its totality: that is, as harm caused directly by the crime, compounded by the harm caused in the refugee camp. To better understand the extent to which a victim's harm has been compounded, it is imperative that victims are included at the stage of consultations preceding the draft of the TFV's implementation plan concerning the awards of reparations ordered by the Court.

4. Delivering reparations in the context of refugee camps

4.1. Reparations and humanitarian assistance

Before proceeding to analyse which reparations are the most appropriate to be delivered in the context of refugee camps, it should be stressed that reparation measures are distinct from the humanitarian assistance programmes to which people have access in such camps. While it is true that the two can overlap or share some similarities in practice, their respective purposes cannot be equated.

Humanitarian assistance is aimed primarily at addressing the general humanitarian needs of refugees. These programmes consist of a variety of supporting measures such as legal assistance, shelter, food, healthcare, child protection services, education and vocational training, and community services. These measures range from those that are implemented with urgency in the context of emergencies, to those aimed at creating durable solutions in the long term.

It should be noted, however, that in refugee camps there is usually a power imbalance between humanitarian actors such as international organisations and non-governmental organisations (NGOs), on the one hand, and refugees, on the other,¹⁰⁰ with the latter feeling disempowered. This is true especially where implementation of humanitarian assistance is poorly executed and leads to reduced agency and increased dependency of refugees. On the contrary, providing reparations to refugees for harm they have sustained as a result of the ICC crime could restore their ownership of their life,¹⁰¹ given that reparations by nature are intended to have transformative value and empower victims.¹⁰² As such, contrary to humanitarian aid, reparations require a deeper understanding of the harm and its subsequent consequences. Particularly, collective reparations have the potential to initiate the rebuilding of community ties¹⁰³ and begin to re-establish community empowerment.

¹⁰⁰ Interview, Reparations Expert 4, 8 June 2022, ETH2122-0796.

¹⁰¹ *ibid.*

¹⁰² Interview, Reparations Expert 3 (n 95).

¹⁰³ Interview, Reparations Expert 4 (n 100).

Overall, humanitarian assistance programmes assist, whereas reparations carry reparative value. Victims living in camps should be made aware of when they are beneficiaries of humanitarian assistance and when they have been awarded the latter,¹⁰⁴ with camp-based organisations and community leaders supporting this process. Recognising the delivery of reparations as a process that is different from the implementation of humanitarian assistance projects is relevant because, in this manner, refugees can benefit from the reparative value of reparations.

4.2. *The implementation of reparations awards in camps*

As mentioned above,¹⁰⁵ in designing awards for reparations, the TFV should take into account several factors and dimensions. Gender, local culture, empowerment of victims, and prevention of future harm are only some of these elements.¹⁰⁶ On the other side, there are various challenges that need to be addressed, such as identification of potentially eligible victims.¹⁰⁷ While the importance of these considerations is recognised, for the purposes of this article the focus is exclusively on the factor of ‘refugee camps’. The following sections will zero in on how the unique situation of a refugee camp can inform the design and implementation of reparations awards to victims living therein.

It is the suggestion of these authors that, for the purposes of delivering reparations, the unique situation of a refugee camp is reflected in three elements. The first of these is the instability of the victim’s situation: that is, the uncertainty (high or low) of whether the victim will leave the refugee camp and when. The second, as discussed, is the harm that a victim may experience simply by living in a refugee camp, and which adds to the crime-related harm already suffered, leading thus to compounded harm. The third element is the infrastructure of the refugee camp and the services already provided there.

As will be analysed, each of these elements will inform the design and delivery of reparation awards in different ways. The high or low certainty of victims leaving the refugee camp in the foreseeable future will determine which reparations, from those ordered by the Court, should be reflected in the reparations awards; in other words, which modalities are suitable to be implemented in the context of a refugee camp. Once this assessment is made, the TFV will then need to consider the nature of these modalities: that is, which are the most appropriate reparative measures to address the specific needs that have arisen from the harm suffered. This is where the other two elements – the notion of compounded harm and the camp infrastructure – become relevant. The former will determine which reparative measures are the most *suitable* to be delivered in view of appropriately addressing the specific harm suffered, while the latter will inform the *feasibility* of such measures – that is, if they can actually be delivered on the ground.

¹⁰⁴ Interview, Reparations Expert 3 (n 95).

¹⁰⁵ Section 2.2 above.

¹⁰⁶ *Lubanga*, TFV Filing on Reparations (n 31) para 210.

¹⁰⁷ *ibid* paras 33–42.

5. Instability of the situations of victims and suitable modalities of reparations

The degree of certainty of leaving or not leaving the refugee camp is an important factor to consider in delivering reparations. Knowing the status of individual victims is necessary in order to ensure that the latter can make use of the reparations awarded to them. For instance, delivering an award that requires its use in the camp loses its value as soon as the victim leaves, thus rendering it useless. Consequently, it is imperative that the TFV assesses the degree of certainty of departure from the camp by consulting with relevant actors, such as governments in the host country and humanitarian organisations, and taking into consideration the actual stage of resettlement procedures.

First, it should be stressed that there are various ways through which a person may leave the camp. These range from refugees leaving the camp of their own volition, without the support of any organisation, to leaving through a UNHCR-assisted process of a durable solution. For instance, a refugee may leave the camp in search of work or because life outside the camp is preferable.¹⁰⁸ Such cases depend on many factors, including the structure of the camp, and are thus so unpredictable that they cannot be exhaustively documented or discussed in this article.

On the other hand, durable solutions are the primary mechanisms which with the UNHCR helps refugees to achieve a secure protection status, ensuring them access to their rights on a lasting basis.¹⁰⁹ They include voluntary repatriation to the country of origin, third-country resettlement, and local integration in the country of asylum.¹¹⁰ However, refugees often struggle to access at least one of these processes, which are, in general, lengthy and require various actors and stakeholders to come together. As such, the certainty of leaving the refugee camp can hardly be measured given that even where these procedures are already under way, it can take years before a refugee is actually resettled.¹¹¹ In the meantime, it is important for refugees to be self-reliant, have their harm addressed and needs met.

For the purposes of this article, a distinction is made between a high degree of certainty of leaving the refugee camp and a low degree of certainty. Each degree will inform differently the decision of the TFV in terms of which modalities, from those ordered, are the most suitable to be implemented. The modalities to be examined here are those recognised by the Court in its Statute and jurisprudence: restitution, compensation, and rehabilitation (physical and psychological, educational and economic), as well as symbolic measures.

¹⁰⁸ UNHCR (n 53) 4.

¹⁰⁹ Frances Nicholson and Judith Kumin, *A Guide to International Refugee Protection and Building State Asylum Systems*, Handbook for Parliamentarians No 27 (Inter-Parliamentary Union and UNHCR 2017) 228, <https://www.unhcr.org/3d4aba564.pdf>.

¹¹⁰ *ibid.*

¹¹¹ Interview, Humanitarian Actor, 24 May 2022, ETH2122-0796.

5.1. High certainty of leaving the refugee camps

5.1.1. Refraining from delivering reparations

In a case where the certainty of departing from the camp is assessed as high, there are two suitable options in terms of delivering reparations. The first is to not deliver reparations at all and wait for the resettlement, integration or repatriation procedure to be completed. While feasible, this option is far from optimal given that any kind of delay compounds the harm already suffered by the victims and perpetuates feelings of being left unacknowledged.¹¹² It would also be practically more difficult, expensive and inefficient to track down where victims go once they leave the camps.

5.1.2. Suitability of compensation

The second option is to deliver reparations in the form of compensation. Given the imminence of departure, this modality would appear to be the most suitable. A monetary award is by nature a measure with high flexibility, which allows the victim to make use of the award regardless of the geographical stability of their situation. Also, compensation would allow for a more cost-efficient reparations programme. Given the high costs of maintaining and operating infrastructural and service-related facilities within the camps, with these investments being lost once refugees are relocated or repatriated,¹¹³ delivering compensation would avoid situations where victims leave the camp before they can utilise or access the full scope of the reparations awarded.

5.1.3. Suitability of other modalities

Once the victims have been permanently resettled elsewhere or repatriated, the TFV then can consider the possibility of delivering further reparations under relevant health and economic rehabilitation programmes. This will also depend on the assistance that victims received or will receive as being part of a resettlement programme. Otherwise, should the TFV assess that such programmes are not feasible because of the different locations of the victims then, in addition to the previously delivered monetary award, a symbolic monetary sum could be provided to compensate for the lack of access to the other reparations to which victims would have an established right.¹¹⁴

An interesting alternative, which in a way combines the two options, is to use the money that would be the object of compensation to fund resettlement schemes in the third state that has agreed to admit the victims as refugees with permanent residence status. However, the sustainability of this option is contested given that resettlement is not usually a mass process, and it is always conducted on the basis of individual assessment, with refugees being resettled in different states based on their particular profile and needs, as well as the pre-conditions set by the receiving country. This means that victims are bound to end up in different states, so the allocation of funds by

¹¹² Interview, Reparations Expert 1 (n 74).

¹¹³ UNHCR (n 53) 5.

¹¹⁴ *Katanga*, TFV Draft Implementation Plan (n 9) para 61.

the TFV to each of these states could prove cost-inefficient and challenging, given that this 'investment' would benefit only a small number of victims. Additionally, in practice, resettlement is highly certain only when the person and their dependants (if applicable) are at the final stage of travel arrangements, which means that the TFV cannot be engaged beforehand but only when the resettlement procedure is almost completed.

Even if the above 'hurdles' were to be overcome, there would still be challenges related to the selectivity of victims, which the state would be required to meet for resettlement to be within the limits of reparation. If the scheme is non-existent at state level, the TFV would only have leverage to fund such a resettlement scheme for victims who have suffered harm as a result of the prosecuted crime. This may create tensions and real grievances by other members of the camp. As this is a very high risk and source of further harm, the proposed alternative could be proposed only if the TFV is ready to complement said resettlement scheme with an assistance programme that would also cover the non-case victims.

5.2. Low certainty of leaving the refugee camps

Contrary to the above, if the possibility of leaving the camp is assessed as low, then, for the purposes of delivering reparations, the situation should be treated as 'permanent'. In the *Katanga* case, for instance, some of the victims had refugee status and were on a waiting list to be resettled in Europe or in the United States. As it was not clear at which stage of the process these individuals were and whether they would be resettled soon, the TFV decided to include them in the reparations programme for the country in which they were located at that point in time.¹¹⁵

In other words, what the TFV did was to assess the certainty of whether victims with refugee status would leave the place where they lived and, concluding that such certainty was low – or in any case unclear – it decided to proceed with the reparations programme as it would normally do in cases where relocation of victims is not an issue. Drawing from that case, it would seem logical to suggest that where it is uncertain or unclear whether and when victims will leave the refugee camp, their situation should be treated as 'permanent' for the purposes of reparations programmes. In such cases, the fact that victims remain in a refugee camp does not exclude by and in itself the consideration of a certain modality as suitable to be delivered therein. Of course, as will be demonstrated, other factors will inform such suitability in the context of a refugee camp.

5.2.1. Suitability of restitution

Turning first to restitution, given the nature of the crimes over which the ICC has jurisdiction and the nature of the harm inflicted as a consequence of these crimes, *restitutio in integrum*, more often than not, is unachievable in some cases.¹¹⁶ As such, whether this modality can be reflected in the reparation

¹¹⁵ *ibid* para 63.

¹¹⁶ *Ntaganda*, Reparations Order (n 13) para 83.

awards will depend primarily on the crime committed and the nature of the harm suffered.

Specifically, where the commission of the crime resulted in the displacement of victims and their presence in a refugee camp, then one of the first steps towards restitution would be to facilitate the return of these victims to their country of origin. Following this, the TFV could then assess the appropriateness of more specific measures included in the notion of restitution, such as return to one's family, home or previous employment, or the returning of lost or stolen property.¹¹⁷ However, given that the delivery of this modality, by its nature, would start outside the refugee camps, its further examination exceeds the scope of this article. Measures related to economic restitution, which is indeed possible even in the context of a refugee camp, will be examined under the subsection of economic rehabilitation.

5.2.2. Suitability of compensation

As far as compensation is concerned, the suitability of delivering this modality in the context of refugee camps would depend primarily on the duration of the victims' stay therein. For instance, where the duration is long, meaning that a significant period of time has elapsed since the alleged crimes were committed, it could be assumed that 'the loss caused by the crime will either have been already replaced, or a coping mechanism found'.¹¹⁸ This is particularly relevant in the case of refugee camps where humanitarian actors are already active and rehabilitation mechanisms are already established. As such, the delivery of monetary awards would appear to be the most suitable modality.

In addition, with a few exceptions, living conditions in refugee camps are not always optimal and humanitarian needs remain quite high despite the humanitarian assistance provided. In such a case, a monetary award is a suitable measure given the 'flexibility' associated with it, in the sense that it rests upon victims to decide where to allocate this money, based on their particular and more pressing needs.¹¹⁹ In any case, monetary compensation via cash transfers can prove to be a viable option to reach people more easily who are in fragile and conflict-affected areas.¹²⁰

5.2.3. Physical and psychological rehabilitation

In relation to rehabilitation, in its physical and psychological form, the suitability of providing this modality to victims will depend primarily on the extent to which their harm has already been addressed by humanitarian actors operating in the camps. In general, though, even where rehabilitative services have already been established in the camps by humanitarian actors, these will usually be addressing the 'primary needs' of individuals and not the 'hard core'

¹¹⁷ *ibid.*

¹¹⁸ Ntaganda, TFV Observations (n 35) para 104.

¹¹⁹ Center for Global Development, 'Doing Cash Differently: How Cash Transfers Can Transform Humanitarian Aid: Report of the High-Level Panel on Humanitarian Cash Transfers', September 2015, 13, <https://cdn.odi.org/media/documents/9828.pdf>.

¹²⁰ *ibid* 14.

psychological harm and stigma associated with some of the crimes.¹²¹ In such a case, psychological rehabilitative measures will prove to be not only suitable but also necessary.

In some cases, though, even these 'primary needs' are left unaddressed, especially if the existing health infrastructure in the camps is of poor quality. It is important then to provide physical rehabilitation given that the latter aims to restore the victims' capacity to 'pursue occupational interest and, to become self-reliant and productive members of their family and community'.¹²² However, should the lack of available specialised services on the ground prove to be significant, the TFV may not be able to address appropriately every kind of injury sustained.¹²³

5.2.4. Education

As discussed, rehabilitation can also take the form of education and skills-centred training. The latter is suitable for victims to the extent that the purpose of the reparatory programme is to enable them to become self-reliant. An educational setting may 'indirectly support participation in the labour market and camp-based economies ... [and] play a crucial role in minimizing the likelihood of poverty when they [refugees] resettle outside of the refugee camp'.¹²⁴ In any event, though, and in the light of the added value that ICC reparations should have, the appropriateness of the aforementioned modality will eventually depend on the existing educational arrangements in the field given that delivery of education in refugee camps is usually one of the primary goals of the mandate of humanitarian actors.¹²⁵

Another factor that will inform the suitability of this modality is the period of time that has elapsed since the commission of the alleged crimes. Where an extended amount of time has passed, education may not be suitable, in that the children who were victims of the alleged crimes and were forced subsequently to flee from their country have now become adults. In that case, vocational training programmes and income-generating activities would appear to be more appropriate. Education may still be relevant, though, for the offspring of the initial victims given that sometimes the latter, when they perceive their lives to be broken beyond hope, tend to prefer and request assistance only for their children.¹²⁶

5.2.5. Economic rehabilitation

As far as rehabilitation in its economic form is concerned, in the context of refugee camps this is by far a suitable modality. Individuals in camps are

¹²¹ Interview, Reparations Expert 1 (n 74).

¹²² *Lubanga*, TFV Draft Implementation Plan (n 41) para 159.

¹²³ *ibid* para 157.

¹²⁴ Hoffman and others (n 93) 745.

¹²⁵ UN, 'Global Compact on Refugees', December 2018, para 68, <https://www.unhcr.org/5c658aed4>.

¹²⁶ Edda Kristjansdottir, 'International Mass Claims Processes and the ICC Trust Fund for Victims' in Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill 2009) 167, 184.

typically faced with long-term unemployment and prolonged dependency on external aid,¹²⁷ with situations of exacerbated poverty and acute malnutrition being prevalent. In such cases, economic rehabilitation – in the form of cash grants, for instance – would allow victims to establish small enterprises as a long-term income-generating activity, leading to increased access to food for themselves and their families.¹²⁸

Such a micro-credit scheme is an efficient way of linking reparations with sustainable development.¹²⁹ Establishing such systems would be of high relevance and of significant help as it would allow victims to acquire skills and experience that they could also put into use after having left the camps.¹³⁰ It is true that the economic instability and general uncertainty of a refugee's situation do not allow for traditional approaches of microfinance to be adopted.¹³¹ Nevertheless, past endeavours of such micro-credit schemes in refugee camps are a strong indicator that this system can succeed even in these conditions.¹³²

Refugees who are not considered to be appropriate candidates for micro-credit could be supported with small livestock programmes. These would be easier to manage within the confined area of a camp but would rely upon the particular setting of the camp, which should be suitable for the choice of animals.¹³³ In any case, the 'specific market circumstances' in and around the camp should be considered,¹³⁴ as well as any micro-credit schemes and relevant programmes already established by humanitarian actors. Whether refugees have rights to land should also be a factor to be taken into account.¹³⁵

5.2.6. Symbolic measures

Last but not least, reparations of a symbolic nature are, in the majority of cases, a suitable modality regardless of the location of victims. This is because such reparations are closely related to the dignity of the victims, who should feel

¹²⁷ Schön and others (n 69) 348.

¹²⁸ ACF International, 'South Sudan: Cash Grants to Support Income Generating Activities', January 2012, 3, <https://www.calpnetwork.org/wp-content/uploads/2020/01/ACF-South-Sudan-Case-Study-Jan-2012.pdf>.

¹²⁹ Pubudu Sachithanandan, 'Reparations for Victims and Sustainable Development' in Marie-Claire Cordonier Segger and Sébastien Jodoin (eds), *Sustainable Development, International Criminal Justice, and Treaty Implementation* (Cambridge University Press 2013) 242, 252.

¹³⁰ Interview, Reparations Expert 1 (n 74).

¹³¹ Timothy H Nourse, 'Microfinance for Refugees, Emerging Principles for Effective Implementation', 2003, <https://www.unhcr.org/3fc47f78d.pdf>.

¹³² Karen Jacobsen and others, 'Using Microenterprise Interventions to Support the Livelihoods of Forcibly Displaced People: The Impact of a Microcredit Program in IDP Camps in Lira, Northern Uganda' (2006) 25 *Refugee Survey Quarterly* 23, 28–29; Nourse (n 131) 2.

¹³³ Karen Jacobsen, 'Microcredit and Other Loan Programs in Protracted Refugee Situations: Lessons from the Alchemy Project', Feinstein International Center, April 2004, 5, <https://www.alnap.org/system/files/content/resource/files/main/jacobsen-microcredit-and-other-loan-programs-in-protracted-refugee-situations-lessons-from-the-alchemy-project%2C.pdf>.

¹³⁴ ICC, *Prosecutor v Ahmad Al Faqi Al Mahdi*, Updated Implementation Plan, ICC-01/12-01/15-291-Red3, TFV, 14 October 2019, para 129.

¹³⁵ *Katanga*, TFV Draft Implementation Plan (n 9) para 64; Interview, Reparations Expert 1 (n 74).

that their suffering and harm is being acknowledged.¹³⁶ This is especially relevant for victims living in refugee camps given that the protracted period spent there may lead them to believe that the harm caused to them by the alleged crimes has been forgotten. It is worth noting that victims find it ‘considerably more difficult to begin the healing process if the responsible individuals cannot be identified and punished for their crimes’.¹³⁷

6. Compounded harm and suitable reparative measures

Once the TFV has assessed which *modalities* of reparations are the most suitable to be delivered in the environment of a refugee camp, the next step would be to define the precise nature of these modalities – that is, how they will appear for the victims. In other words, the TFV will need to suggest the most appropriate *measures* through which each modality will be delivered. In the *Lubanga* case, for instance, the TFV assessed that, contrary to compensation,¹³⁸ rehabilitation was suitable to be delivered¹³⁹ and proceeded to suggest a holistic programme of psychosocial interventions such as a life skills programme, group-counselling programme and community dialogue programmes.¹⁴⁰

These measures, along with others proposed by the TFV in that case, were aimed at mitigating the negative impacts associated with the harm suffered by the victims as a result of the crime.¹⁴¹ In other words, it was the harm that was determinative in the choice and development of the particular measures under each modality of reparation. This is better demonstrated in the TFV’s implementation plan in the *Katanga* case. The TFV took into consideration the four modalities of reparations ordered by the Court and, after making no comments on any potential unsuitability, it proceeded to categorise the harm suffered by the victims and propose specific measures tailored to the harm.¹⁴² For example, the Trial Chamber had ordered education assistance as one of the modalities, which the TFV translated into a certain level of school fees for a maximum of two children for two years.¹⁴³ This amount differed depending on the category of harm: one category related to harm suffered from loss of the home and livestock and general moral harm; another related to harm suffered from loss of immediate family members and general moral harm.¹⁴⁴

As such, the modalities ordered by the Court need to be operationalised by being translated into appropriate measures tailored to the harm. This harm is that caused by the crime. However, as already discussed, the manifestation of a crime-related harm may have transformed and deepened if the harm was left

¹³⁶ Interview, Reparations Expert 1 (n 74).

¹³⁷ Yael Danieli, ‘Massive Trauma and the Healing Role of Reparative Justice: An Update’ in Ferstman, Goetz and Stephens (n 126) 38, 42.

¹³⁸ *Lubanga*, TFV Filing on Reparations (n 31) paras 194–203.

¹³⁹ *ibid* para 207.

¹⁴⁰ *Lubanga* TFV Draft Implementation Plan (n 41) para 112 and subsequent.

¹⁴¹ *ibid* paras 112, 157.

¹⁴² *Katanga*, TFV Draft Implementation Plan (n 9) paras 84, 99.

¹⁴³ *ibid* para 99.

¹⁴⁴ *ibid*.

unredressed,¹⁴⁵ or, as this article suggests, if the crime-related harm was compounded by harm suffered as a result of the victim's stay in the refugee camp. Consequently, when deciding the specific measures corresponding to each modality of reparations ordered, the TFV will need to take into account the harm caused to the victim in its *totality* in order to deliver reparations that are actually proportionate to the victim's harm, which may have been transformed since the time of commission of the crime.

In other words, the victim's compounded harm will inform which particular reparative measures are the most suitable to be adopted by the TFV, with the aim of appropriately addressing it. As per the example given above,¹⁴⁶ where a victim's leg injury was not addressed in the immediate aftermath of a war crime, and worsened during the victim's stay in a refugee camp as a result of inadequate healthcare, then the most suitable rehabilitative measure would no longer be a mere plaster cast but, more appropriately, surgery or a wheelchair. As such, the compounded physical harm requires the adoption of a different rehabilitative measure from that which might have been suitable originally. The extent to which delivery of such a measure is feasible – that is, the extent to which it can actually be delivered – will depend on the camp infrastructure, as is analysed in the next section.

At this point, it should be reiterated that a key element in understanding the precise and potentially transformed nature of crime-inflicted harm is to include the victims in the consultation process prior to designing the reparations awards. The Appeals Chamber in the *Lubanga* case was explicit in that the TFV was 'instructed to take into account the views and proposals of victims regarding the appropriate modalities of reparations and programmes that in the view of the Trust Fund should be a part of any reparations awarded'.¹⁴⁷ This is absolutely justified given that reparations need to correspond to the realities of the harm suffered by the victims and their particular needs. As such, victims have a central role in the process of designing the reparations awards as they can provide significant insights into their *current* situation and needs regarding how best to redress the (now compounded) crime-related harm in the camps.¹⁴⁸

7. Infrastructure of the camp and feasible reparative measures

When the TFV decides the most suitable reparative measures to be delivered, based on the (compounded) harm suffered by the victims, it is also necessary to assess the extent to which delivery of these measures is feasible. In other words, it should be examined whether these measures are able to be delivered based on the existing structures and services in the refugee camps. In the case of *Lubanga*, for instance, while the TFV had assessed that rehabilitation was a suitable modality to be delivered, and that physical rehabilitation

¹⁴⁵ Subsection 3.2.4. See also *Lubanga*, TFV Filing on Reparations (n 31) para 9 (where this assertion is mentioned explicitly).

¹⁴⁶ Subsection 3.2.4.

¹⁴⁷ *Lubanga*, Amended Reparations Order (n 12) para 79.

¹⁴⁸ *Katanga*, TFV Draft Implementation Plan (n 9) para 3.

initiatives should be developed as suitable reparative measures to respond to the consequences of the crimes, it subsequently referred to the poor health infrastructure in Ituri and concluded that it would provide for rehabilitative services for victims 'in accordance with the capabilities and facilities present' therein.¹⁴⁹

For the purposes of the feasibility analysis, this article will examine two different refugee camp contexts and how the services provided therein can inform the choice of the specific reparative measures that are the most feasible to be delivered. The first context is the settlements located in the Cox's Bazar district, in which Rohingyas refugees are living. In this framework the ICC is conducting an investigation into the alleged crimes committed within its jurisdiction in *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*. The investigation is focusing on the alleged commission of deportation and persecution as crimes against humanity against the Rohingya population.¹⁵⁰

The second context is the refugee camps in East Chad, which are hosting Sudanese refugees from Darfur. The situation in Darfur has caused large-scale internal displacement as well as a refugee crisis, with victims fleeing to neighbouring states, including Chad.¹⁵¹ The United Nations Security Council had taken note of the Report of the International Commission of Inquiry on Darfur to the Secretary-General and, in 2005, referred the situation in Darfur to the ICC for crimes committed since 1 July 2002, making it the first ICC investigation on the territory of a non-state party.¹⁵² The investigations focused on allegations of war crimes, crimes against humanity, and genocide.¹⁵³

7.1. Case Study I: Situation in Myanmar/Bangladesh and the refugee camps in Cox's Bazar

7.1.1. General situation

Ninety-seven per cent of Rohingya refugees living in Bangladesh are hosted in the 33 refugee camps located in Cox's Bazar,¹⁵⁴ one of the poorest districts in the country.¹⁵⁵ Generally, Rohingya refugees need authorisation to leave the

¹⁴⁹ Lubanga, TFV Draft Implementation Plan (n 41) para 157.

¹⁵⁰ ICC, *Decision pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, ICC-01/19, 14 November 2019.

¹⁵¹ UN Security Council (UNSC), Report of the International Commission of Inquiry on Darfur to the Secretary-General (1 February 2005), UN Doc S/2005/60, 3.

¹⁵² UNSC Resolution 1593 (31 March 2005), UN Doc S/RES/1593.

¹⁵³ ICC, *Situation in Darfur, Sudan*, ICC-02/05, March 2005, <https://www.icc-cpi.int/darfur>.

¹⁵⁴ UNHCR, 'Operational Data Portal – Refugee Situations (Bangladesh)', 9 June 2022, <https://data.unhcr.org/en/country/bgd>.

¹⁵⁵ UNHCR, 'The Displaced and Stateless of Myanmar in the Asia-Pacific Region: An Overview of the Current Situation for Rohingya and Other Persons of Concern from Myanmar and UNHCR's Response Across the Region', 21 January 2021, 4, <https://reporting.unhcr.org/sites/default/files/The%20Displaced%20and%20Stateless%20of%20Myanmar%20in%20the%20Asia-Pacific%20Region%20-%20January%202021.pdf>.

camps.¹⁵⁶ Moving from one camp to another for family visits, or to complete community support activities such as teaching, is possible with authorisation.¹⁵⁷

In May 2022, more than 130 United Nations agencies, national and international NGOs were providing humanitarian assistance to Rohingyas in the camps and the host communities in the Cox's Bazar district.¹⁵⁸ Refugees received food assistance through e-vouchers, which can be used to buy food in outlets located in the camps.¹⁵⁹ Despite the implementation of specific projects for providing well-qualified food and nutrition services, food provisions in most of the camps might not be sufficient to comply with requirements for a healthy and balanced diet.¹⁶⁰ The lack of sustainable livelihoods does not allow all refugees to earn enough money to cover their nutritional needs on their own. Washing, sanitation, and hygiene facilities have been built in most of the camps.¹⁶¹

Humanitarian organisations run healthcare facilities in the camps.¹⁶² Primary and secondary healthcare services cover child health, sexual and reproductive health, mental health and psychosocial support.¹⁶³ Specialised services outside the camps are also available, following assessment by health actors working in the camps.¹⁶⁴ Nevertheless, there are still serious difficulties with the provision of medical aid in the camps, such as difficulties in accessing healthcare services because of language barriers and lack of information,¹⁶⁵ and complaints about discrimination and mistreatment from health workers.¹⁶⁶ As the supply of medicines is limited and inadequate to treat complex and serious diseases,¹⁶⁷

¹⁵⁶ Interview, UNHCR Office in Cox's Bazar, 27 June 2022, ETH2122-0796.

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

¹⁵⁹ World Food Programme (WFP), 'WFP Bangladesh Country Brief: May 2022', https://docs.wfp.org/api/documents/WFP-0000140752/download/?_ga=2.214103191.1453376078.1656528645-477615344.1656528645.

¹⁶⁰ Burma Human Rights Network, 'We Also Have Dreams: Ongoing Safety and Quality of Life Issues for Rohingya Refugees in Bangladesh', 8 February 2022, 11, <https://www.bhrn.org.uk/en/report/1191-we-also-have-dreams.html?fbclid=IwAR3hz08RCrxglVBazKtbjOZMwXAQHIV047kZM7zMZZ3F6T3Du2ArTazH-jQ>.

¹⁶¹ Inter Sector Coordination Group, 'Joint Response Plan (JRP) Implementation Update Rohingya Humanitarian Crisis, October–December 2021', 6 March 2022, 5, <https://reliefweb.int/report/bangladesh/rohingya-humanitarian-crisis-joint-response-plan-implementation-update-october>; International Organization for Migrations (IOM), 'IOM Bangladesh: Rohingya Humanitarian Response: Monthly Situation Report', January 2022, 6, <https://reliefweb.int/report/bangladesh/iom-bangladesh-rohingya-humanitarian-crisis-response-monthly-situation-report-10>.

¹⁶² UNICEF, 'Bangladesh Humanitarian Situation Report No. 58', 1 January–31 December 2021, 3 <https://reliefweb.int/report/bangladesh/bangladesh-humanitarian-situation-report-no-58-1-january-31-december-2021#:~:text=As%20of%2031%20December%202021,among%20refugees%20in%20the%20camps>.

¹⁶³ IOM (n 161) 1.

¹⁶⁴ Interview, UNHCR Office in Cox's Bazar (n 156).

¹⁶⁵ Amnesty International, 'Let Us Speak for Our Rights: Human Rights Situation of Rohingya Refugees in Bangladesh', 15 September 2020, 6–7, <https://www.amnesty.org/en/documents/asa13/2884/2020/en>.

¹⁶⁶ *ibid* 11.

¹⁶⁷ Burma Human Rights Network (n 160) 13.

in some cases refugees seek paid health assistance outside the camps, which means that they first need a permit from the camp administration to leave the facilities.¹⁶⁸

The law prohibits Rohingya children from attending public or private schools outside the camps.¹⁶⁹ Following agreement with the government of Bangladesh, the UNHCR and the United Nations Children's Fund (UNICEF) launched the 'Myanmar Curriculum Pilot', an education programme covering grades 1 to 9.¹⁷⁰ There are several beneficiaries from learning centres supported by the UNHCR and UNICEF.¹⁷¹ In parallel, community groups, organised refugees and *madrassas* implement informal learning opportunities, although girls are unable to access some of these alternative programmes.¹⁷² For this reason, home-based schools represent an opportunity for girls to receive education. These schools are also of particular significance for adolescents who are too old to attend lessons at the learning centres, do not receive secondary-level education,¹⁷³ and have access only to social clubs in which they learn how to read and write, and practical skills.¹⁷⁴ The Bangladeshi government has restricted some community-based learning facilities, which used to be operated by an informal network of Rohingya volunteer teachers,¹⁷⁵ and which allowed access to education for children with disabilities, adolescent girls, young mothers, and pre-kindergarten children.¹⁷⁶

Diverse challenges on limited access to the right to protection against various forms of violence, criminality and insecurity have been identified in the camps. Children face outbreaks of disease, malnutrition, and risks of suffering different types of violence.¹⁷⁷ In particular, there has been an increase in the number of reports of missing children linked to human trafficking for labour and sexual exploitation.¹⁷⁸ Women are exposed to discrimination, forced marriage, kidnapping, trafficking, sexual harassment, abuse or other forms of SGBV, and an overall lack of security and protection inside their homes and

¹⁶⁸ Amnesty International (n 165) 17.

¹⁶⁹ Human Rights Watch, 'Bangladesh: Rohingya Refugees Students Expelled – Ensure Formal Education is Available to All Children', 1 April 2019, <https://www.hrw.org/news/2019/04/01/bangladesh-rohingya-refugee-students-expelled>.

¹⁷⁰ *ibid.* Grades 6 to 9 are typically intended for children from 11 to 14 years. Because Rohingyas are behind in their education level, children enrolled in these grades are aged 14 to 16 years.

¹⁷¹ Interview, UNHCR Office in Cox's Bazar (n 156).

¹⁷² *ibid.*

¹⁷³ Human Rights Watch, 'Bangladesh: Rohingya Refugee Schools Face Closure – Tens of Thousands of Students Will Lose Access to Education', 18 December 2021, <https://www.hrw.org/news/2021/12/18/bangladesh-rohingya-refugee-schools-face-closure>.

¹⁷⁴ Interview, UNHCR Office in Cox's Bazar (n 156).

¹⁷⁵ Habibu Rahman, 'Rohingya Refugee Children Are Being Denied an Education', *The Diplomat*, 3 September 2021, <https://thediplomat.com/2021/09/rohingya-refugee-children-are-being-denied-an-education/>.

¹⁷⁶ Inter Sector Coordination Group (n 161).

¹⁷⁷ UNICEF (n 162).

¹⁷⁸ Sarah Ferguson, 'Children Are Disappearing in Bangladesh', UNICEF, 10 January 2020, <https://www.unicefusa.org/stories/children-are-disappearing-bangladesh>.

in the camps.¹⁷⁹ There are significant concerns about safety and security in the camps as a result of acts involving criminal gangs, militant groups, and security forces. Several refugees have been victims of murder, extrajudicial executions, and disappearances.¹⁸⁰

The risk of monsoons, dry-season fires and other natural disasters is permanent in Cox's Bazar. Fire incidents are an iterative and increasing problem, which not only affect the lives and security of people staying in the refugee camps but also cause significant damage to households and camp facilities.¹⁸¹ They may reduce the impact of implementing humanitarian assistance programmes and increase the humanitarian needs of refugees.

7.1.2. Feasibility of reparative measures

Rohingya refugees will live in the Bangladesh Cox's Bazar district for the foreseeable future as there are no conditions for their safe return to Myanmar. It should be noted, however, that some have been relocated to the island of Bhasan Char.¹⁸² Bangladesh national authorities do not allow Rohingya refugees to integrate locally into host communities, and have restricted their possibilities of seeking other durable solutions, such as third-country resettlement schemes.¹⁸³ These factors should be taken into consideration in delivering reparative measures and assessing their feasibility.

7.1.3. Feasibility of compensation-related interventions

Compensation through cash-based interventions could empower Rohingyas in a context where they face restrictions on their freedom. The positive aspect of providing cash to refugees as a measure of repairing the physical or moral harm they have suffered is that it recognises their agency to decide how they wish to use the money.

However, some types of cash-based intervention may not be feasible in Cox's Bazar. Major difficulties in the implementation of cash-based interventions could arise in that most refugees are not familiar with specific types of money transfer. During the COVID-19 pandemic, for instance, mobile money was beneficial and used especially between the host community to avoid direct contact and reduce the possibilities of contagion, while, in the camps, access to mobile data and telecommunications was restricted.¹⁸⁴ As

¹⁷⁹ Burma Human Rights Network (n 160) 30.

¹⁸⁰ Human Rights Watch, 'World Report 2022', 73, <https://www.hrw.org/world-report/2022>. 'Seven Killed in Rohingya Refugee Camp Attack: Bangladesh Police', *Al Jazeera*, 22 October 2021, <https://www.aljazeera.com/news/2021/10/22/bangladesh-rohingya-refugee-camps-seven-killed-police#:~:text=Attackers%20have%20killed%20at%20least,AFP%20news%20agency%20on%20Friday>.

¹⁸¹ *ibid.* More than 100 fire incidents damaged UNICEF services facilities in 2021 and IOM centres at the start of 2022; see, eg, UNICEF (n 162) and IOM (n 161).

¹⁸² UNHCR, 'UNHCR Bangladesh Operational Update – May 2022', 22 June 2022, <https://data.unhcr.org/en/documents/details/93812>.

¹⁸³ UNHCR (n 155) 6.

¹⁸⁴ Save the Children, 'COVID-19: Access to Full Mobile Data and Telecommunications in Myanmar and Bangladesh Is Essential to Save Lives', 16 April 2020, <https://www.savethechildren>.

there is no full access to mobile phones in the camps,¹⁸⁵ the use of mobile money is not feasible. On the contrary, using most traditional forms of cash-based intervention, such as cash or vouchers for goods or services, would be more appropriate.¹⁸⁶

In scenarios where cash-based interventions may be feasible according to the above, they might still not be sustainable if delivered for redressing the harm of loss of earnings and employment opportunities. This is because refugee access to labour markets remains restricted.

Similarly, if cash-based interventions are provided to cover the expenses of accessing medical services, the low availability and quality of these services in the camps should be taken into account to assess whether such measure offers reparative value. In these circumstances, a more feasible option would be to redress the harm through rehabilitation measures, which can help to improve the quality standards on access to health, such as building more adequate health facilities, and increasing the number of specialised staff to treat specific diseases. Security safeguards must be put in place because of the generalised situation of insecurity in the camps.

7.1.4. Feasibility of rehabilitative measures

The quantity and quality of medical services provided in Cox's Bazar camps might not be enough to redress the harm to victims of specific crimes such as SGBV or torture. While humanitarian actors have increased the available health services in the camps, these services lack specialised staff and technology. Establishing more advanced health facilities to rehabilitate victims could have added value individually. It would also have a positive impact on the rebuilding of the Rohingya community as a whole, mainly because the increase in the number of highly qualified medical services in the camps would benefit not only victims but the whole community living there and new refugees who will arrive later.

In terms of education, Rohingya children in the camps have only minimal access to educational programmes. Most challenges are related to inadequate learning space, lack of adequate educational curriculum and teaching staff, language and cultural barriers, and psychosocial needs.¹⁸⁷ As explained above, girls may face more severe challenges in accessing education. There are no higher-education programmes in Cox's Bazar camps. Some refugees have access to the Coursera platform, which allows them to access some educational programmes online.¹⁸⁸ However, internet availability in the camps is extremely limited, as well as access to computer centres or even mobile devices.¹⁸⁹

[net/news/covid-19-access-full-mobile-data-and-telecommunications-myanmar-and-bangladesh-essential-save](https://www.unhcr.org/news/covid-19-access-full-mobile-data-and-telecommunications-myanmar-and-bangladesh-essential-save).

¹⁸⁵ Interview, UNHCR Office in Cox's Bazar (n 156).

¹⁸⁶ *ibid.*

¹⁸⁷ M Mahruf C Shohel, 'Education in Emergencies: Challenges of Providing Education for Rohingya Children Living in Refugee Camps in Bangladesh' (2020) 13 *Education Inquiry* 105.

¹⁸⁸ Interview, UNHCR Office in Cox's Bazar (n 156).

¹⁸⁹ *ibid.*

The main income-generating activities within the camps are cash-for-work and refugee volunteer programmes.¹⁹⁰ A small percentage of refugees may work at host community businesses or refugee-owned businesses, or generate income through self-employment.¹⁹¹ Economic rehabilitative measures would help to further develop the existing income-generating schemes. However, the current legal framework and the willingness of the host state to facilitate the development of refugees' micro-businesses within and outside the camps should be taken into consideration.

7.1.5. Feasibility of symbolic measures

Rohingya refugees have already asked the ICC to move the trial proceedings to the camps,¹⁹² which has a significant symbolic value. While, in general, symbolic measures could be considered feasible for delivery within the structure of the camps, the limited space and the dispersion of refugees in 33 camps should be considered. In any case, their implementation must be in line with the views of the government as the latter has prohibited the construction of specific shelters and buildings in the past.¹⁹³

Some recent initiatives to protect Rohingya culture have marked a vital precedent, such as the Rohingya Cultural Memory Centre, launched by the International Organization for Migrations (IOM) and the refugee community. This includes a digital space that aims to preserve Rohingya cultural practices and strengthen the Rohingya identity.¹⁹⁴ Refugee artists in the camps have participated in the collection, producing cultural artefacts and artwork.¹⁹⁵ They have also been enrolled in a cultural programme designed to support them in exploring innovative techniques and developing new skills.¹⁹⁶ This initiative has also encompassed creating a cultural centre in the middle of the camps, where the community has access to various facilities, including a cultural learning centre, workshops, exhibitions, and other community-based art and cultural activities.¹⁹⁷

Adopting any symbolic measure is recommended because it encounters the potential for acknowledging the harm suffered collectively. Its redress is key to the protection of the Rohingya heritage because the destruction of communities is prolonged after the displacement and during life in the camps.¹⁹⁸

¹⁹⁰ UNHCR, 'The Impact of Financial Assistance through Volunteer Programmes in Cox's Bazar Refugee Camps', June 2022, <https://reliefweb.int/report/bangladesh/impact-financial-assistance-through-volunteer-programmes-coxs-bazar-refugee-camps-june-2022>.

¹⁹¹ *ibid.*

¹⁹² ABC, 'Rohingya Refugees' Lawyers Lobby for International Criminal Court To Sit in Asia', RNZ, 1 September 2020, <https://www.rnz.co.nz/news/world/424979/rohingya-refugees-lawyers-lobby-for-international-criminal-court-to-sit-in-asia>.

¹⁹³ Interview, Reparations Expert 4 (n 100).

¹⁹⁴ IOM, 'New Cultural Memory Centre Ensures Continuity of Rohingya Heritage', 26 May 2021, <https://www.iom.int/news/new-cultural-memory-centre-ensures-continuity-rohingya-heritage>.

¹⁹⁵ *ibid.*

¹⁹⁶ *ibid.*

¹⁹⁷ For more information on this see the Rohingya Cultural Memory Centre website at: <https://rohingyaculturalmemorycentre.iom.int/detail.aspx?lang=en&area=blog&cid=1&bid=110&pid=2>.

¹⁹⁸ Interview, Reparations Expert 4 (n 100).

Symbolic measures may be digital or on site, depending on conditions on the ground.

7.2. Case study 2: The Darfur situation and the refugee camps in East Chad

7.2.1. General situation

Chad is an 'arid, low-income, and land-locked country'¹⁹⁹ with protracted food insecurity, and 'one of the lowest human development indicators'²⁰⁰ globally. The country is also one of the world's most vulnerable to climate change²⁰¹ and, in 2022, it was classified as a high-risk country in terms of risk assessment for humanitarian crises and disasters.²⁰²

Chad is hosting around 370,000 Sudanese refugees from Darfur, the majority of whom arrived in the country following the conflict in the early 2000s. They are settled mainly in 13 refugee camps and one site in the eastern regions of Ennedi-Est, Wadi Fira, Ouaddai, Sila and Salamat, close to the country's border with Sudan.²⁰³ So far, the level of humanitarian needs of these people remains very high, given the limited access to income-generating opportunities, health and potable water,²⁰⁴ food insecurity and the outdated infrastructure of the camps.²⁰⁵ In addition, the level of poverty among the refugee population is quite high,²⁰⁶ while the delivery of humanitarian aid is still a challenge given the state of the country's road and airport infrastructure.²⁰⁷ As a consequence, delivery of food and medicines is complicated.²⁰⁸

In December 2020, a National Law on Asylum was adopted, creating a favourable framework for refugees in terms of access to education and self- or wage-earning employment.²⁰⁹ In terms of education, Chad has taken several initiatives towards a refugee-friendly education policy, such as elevating

¹⁹⁹ WFP, 'Chad Country Brief, April 2021', 14 May 2021, 1, <https://reliefweb.int/report/chad/wfp-chad-country-brief-april-2021>.

²⁰⁰ UNHCR, 'Refugee Policy Review Framework: Country Summary as at 30 June 2020', 24 March 2022, 1, <https://reliefweb.int/report/chad/chad-refugee-policy-review-framework-country-summary-30-june-2020-march-2022>.

²⁰¹ Barney Thompson, 'Climate Change and Displacement', UNHCR UK, 15 October 2019, <https://www.unhcr.org/uk/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html>.

²⁰² European Commission, Disaster Risk Management Knowledge Centre (DRMKC), Inform Risk Model Map 2022, <https://web.jrc.ec.europa.eu/dashboard/INFORMRISKCOUNTRYPROFILE2023/?no-header=1&v-vISO3=AFG&no-scroll=1>.

²⁰³ UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Aperçu des besoins humanitaires 2020: Tchad', 12 February 2020 (in French), 27, <https://reliefweb.int/report/chad/tchad-aperu-des-besoins-humanitaires-2020-janvier-2020#:~:text=Environ%20761%20000%20personnes%20sont,pour%20leur%20int%C3%A9gration%20socio%2D%C3%A9conomique>; Interview, Humanitarian Actor, 24 May 2022, ETH2122-0796.

²⁰⁴ UN OCHA, *ibid* 48.

²⁰⁵ *ibid* 27.

²⁰⁶ UNHCR, 'Global Compact on Refugees: Indicator Report', 16 November 2021, 46, https://www.unhcr.org/global-compact-refugees-indicator-report/wp-content/uploads/sites/143/2021/11/2021_GCR-Indicator-Report_spread_web.pdf.

²⁰⁷ UN OCHA (n 203) 18.

²⁰⁸ *ibid* 18.

²⁰⁹ UNHCR (n 200) 2.

refugee camp schools to the rank of official Chadian public schools.²¹⁰ However, access to education by refugee girls is limited.²¹¹ Overall, the primary and secondary education provided in the East Chad camps is well designed and implemented, with a good system of exams in place.²¹² In terms of refugee access to higher education, while there is in place a system of scholarships enacted by actors in the field, these are often limited in number and there are cases where only half the tuition can be covered, with refugees not being able to afford the other half.²¹³

In terms of employment, even before the adoption of the new asylum law, refugees – as in the case of all foreigners in Chad – in theory had access to private sector employment under specific conditions. There was also legislation in place allowing them to create and own a business in their own name, although there is no data available on refugees owning their own businesses in Chad.²¹⁴ In practice, refugees do not yet have access to bank accounts, but after the executive decree is issued for the new law, such access will be granted and refugees will be able to apply for jobs.²¹⁵ In general, though, young people are faced with a lack of job opportunities, a problem that is common even for locals.²¹⁶ Farming is not enough to become self-reliant and the geographical setting (the desert) limits the available options.²¹⁷ For girls, there are some income-generating activities, such as sewing, in which they are involved.²¹⁸

7.2.2. Feasibility of reparative measures

While it is true that by 2018 the UNHCR had facilitated the voluntary return back to Darfur of some Sudanese refugees living in Chad,²¹⁹ the exacerbated security situation in the region has halted this progress. The military coup of October 2022, along with constant attacks and renewed violence, have created anew a hostile environment,²²⁰ which does not allow for safe repatriation, at least not in the foreseeable future. On the other hand, the new asylum law that Chad has passed creates a favourable environment for refugees and attests to the willingness of the host state to integrate them into the local society.

²¹⁰ *ibid* 10.

²¹¹ *ibid* 13.

²¹² Interview, Humanitarian Actor (n 111).

²¹³ *ibid*.

²¹⁴ UNHCR (n 200) 8.

²¹⁵ Interview, Humanitarian Actor (n 111).

²¹⁶ *ibid*.

²¹⁷ *ibid*.

²¹⁸ *ibid*.

²¹⁹ UNHCR, 'First Darfur Refugee Returns from Chad', 20 April 2018, <https://www.unhcr.org/news/briefing/2018/4/5ad9a4604/first-darfur-refugee-returns-from-chad.html>.

²²⁰ Agence France-Presse, 'Clashes in Sudan's Darfur Kill More Than 100', *VOA News*, 13 June 2022, <https://www.voanews.com/a/clashes-in-sudan-s-darfur-kill-more-than-100-/6616442.html>; Marc Espanol, 'Wave of Atrocities in Darfur Tarnishes Sudan's Coup Authorities', *Al-Monitor*, 16 May 2022, <https://www.al-monitor.com/originals/2022/05/wave-atrocities-darfur-tarnishes-sudans-coup-authorities>; France 24, 'Violence in Sudan's Darfur Lays Bare Deepening Crisis', 19 February 2022, <https://www.france24.com/en/live-news/20220219-violence-in-sudan-s-darfur-lays-bare-deepening-crisis>.

These factors should be taken into consideration in delivering reparations and assessing their feasibility.

7.2.3. Feasibility of compensation-related interventions

More specifically, the fact that victims living in the East Chad camps will soon gain access to bank accounts renders feasible the option of compensation through cash grants. This is because refugees will have a secure way of receiving and safekeeping the money. It should also be noted that regardless of having access to bank accounts, money transfers nowadays can take place through mobile apps or direct distribution of cash. The latter might appear precarious, but so far has worked successfully in the case of the East Chad camps, without any security problems arising.²²¹

7.2.4. Feasibility of rehabilitative measures

The feasibility of delivering physical and psychological rehabilitative measures will depend on the existing health infrastructure of the camps. So far, each camp is equipped with a small hospital (*centre de santé*) with one doctor, nurses, a midwife, and refugees who have been trained and are occupied there on a voluntary basis.²²² There is also one psychologist per camp.²²³

There are already facilities for the delivery of primary and secondary education. Given that many young people wish to pursue further studies at university level but the number of scholarships is limited, an appropriate measure would be to subsidise, wholly or partly, those young people who wish to go to university but lack the means to do so.

In terms of income-generating activities, some schemes have already been implemented in the camps, but youth unemployment is still very high. Economic rehabilitative measures would help to further develop the existing income-generating schemes. They could take the form of a micro-credit system, established in cooperation with partners on the ground. The development of such a system would be feasible in the light of both the favourable framework proposed by the new asylum law in terms of access to employment and bank accounts,²²⁴ and the 'strong ethnic and cultural ties and common traditions'²²⁵ shared between the refugees and the local population. However, the climate and frequent natural disasters should be taken into account in order to assess the viability of future enterprises that victims living in these camps may wish to establish.

7.2.5. Feasibility of symbolic measures

Lastly, the feasibility of delivering community-oriented symbolic measures is contested because the victims of the 2003 Darfur conflict are dispersed in 13 camps and one site across East Chad. Eventually it will depend on the

²²¹ Interview, Humanitarian Actor (n 111).

²²² *ibid.*

²²³ *ibid.*

²²⁴ UNHCR (n 200) 2.

²²⁵ *ibid.* 4.

particular measures sought by the victims, given that the issuing of a public apology by the perpetrator(s) and/or a decision by the ICC, for instance, are symbolic measures that can be delivered regardless of the geographical situation of the victims.

8. Risks and challenges

When delivering reparations in refugee camps, there may be particular challenges or risks that need to be taken into consideration. These are, *inter alia*, (i) social animosity, (ii) security concerns, (iii) limited opportunities to invest an award of money, (iv) gender dynamics, and (v) state cooperation.

Turning first to the risk of *social animosity*, this is present where only certain groups of individuals are entitled to reparations. In the context of a community with close ties between its members, such distinctions can lead to the recipients of reparations being perceived as privileged and eventually being alienated.²²⁶ Also, the fact that refugee camps may host refugees of different ethnicities, only some of whom are entitled to reparations, elevates significantly the risk of social animosity. For instance, East Chad camps host Sudanese refugees not only from the 2003 conflict in Darfur, into which the ICC has opened an investigation, but also from the renewed and constant conflicts in the region,²²⁷ while refugees from the Central African Republic, Nigeria and Cameroon are also living in these camps.²²⁸ A way of minimising such risks would be to initiate meaningful and representative consultation through the already existing forums in the camps.²²⁹ Involving victims in the relevant proceedings and providing them with detailed explanations could significantly reduce misunderstandings,²³⁰ while it could also be an effective means of managing their expectations.

This social animosity could easily lead to *security issues*. Victims in receipt of monetary compensation may become the target not only of other individuals inside the camp who did not equally receive compensation, but also of the local population. The protracted presence of refugees has put pressure on the already poor natural resources of the region, with tensions being created between the host population and refugees.²³¹ As such, the delivery of monetary awards to refugees could easily be perceived as unfair and lead to further conflict. However, the possibility of attacks against refugees, as a result of cash

²²⁶ Ntaganda, TFV Observations Relevant to Reparations (n 35) para 105; Roht-Arriaza and Orlovsky (n 40) 3.

²²⁷ UNHCR, 'Darfur Clashes Displace Thousands', 7 December 2021, <https://www.unhcr.org/news/briefing/2021/12/61af220d4/darfur-clashes-displace-thousands.htm>; UNHCR, 'Chad Emergency Update', 18 August 2020, 1–2, <https://data.unhcr.org/en/documents/details/78717>; UNHCR, 'Chad Emergency External Update (Ouaddai Province, Eastern Chad)', 7 June 2021, 1, <https://reliefweb.int/report/chad/chad-emergency-external-update-ouaddai-province-eastern-chad-07-june-2021>.

²²⁸ UNHCR, 'Chad Situation Map of Persons of Concern to UNHCR', March 2022, 1, <https://data.unhcr.org/en/documents/details/92004>.

²²⁹ Interview, Reparations Expert 3 (n 95).

²³⁰ Interview, Humanitarian Actor (n 111); Interview, Reparations Expert 1 (n 74).

²³¹ Interview, Humanitarian Actor (n 111).

distributions, should not be a factor that hinders compensatory awards. Such conflicts may be inevitable, but refugees are better placed to assess the best way of overcoming them.²³²

Another challenge to be taken into consideration is the *limited opportunities to invest*, which might exist in or around refugee camps, the money received as compensation or in the context of micro-credit programmes. In any case, the viability of certain business plans on which the money received can be invested will depend on factors such as the market and climate conditions, as well as the favourable or otherwise legal framework in the host country.

Gender dynamics and inequalities can also present challenges in the award of compensation. Refugee camps often accommodate individuals who have fled from patriarchal societies in which women are barred from accessing financial resources, even if they are in their name. As such, it is highly probable that even where women are identified as victims entitled to compensation, this money might easily end up being appropriated by the husband or the male relative. This possibility should be considered, with the TFV carefully considering how it can deliver compensation in a way that ensures equal access to reparations and does 'not reinforce pre-existing discriminatory patterns'.²³³

Last but not least, the fact that some refugee camps may be located in the territory of states that are not parties to the Rome Statute can create challenges in terms of *state cooperation* necessary for reparations. While state parties are obliged to cooperate with the Court, including at the stage of reparations,²³⁴ non-state parties are not bound to do so.²³⁵ However, similar to rule 87(5) of the Rome Statute – based on which a non-state party may be called to provide assistance for the purposes of investigation and prosecution following an ad hoc agreement – at the reparations stage also such arrangements could take place and be supported by additional diplomatic efforts.

9. Conclusion

This article has attempted to further the discussion of which reparations would be the most appropriate to be delivered to victims of Rome Statute crimes living in refugee camps. The starting points for this were the ICC legal framework and principles on reparations, as well as the unique situation of refugee camps, as reflected in three key elements. These are (i) the instability of the situation of victims, (ii) the compounded harm sustained as a result of their presence in a refugee camp, and (iii) the camp infrastructure.

As discussed, each of these elements has a different impact on the design of reparations awards for victims living in refugee camps. Once the Court has identified and ordered appropriate modalities of reparations, it is for the TFV to design awards for reparations based on the modalities ordered. The process could very broadly be described as a two-level process.

²³² Interview, Reparations Expert 4 (n 100).

²³³ *Ntaganda*, Reparations Order (n 13) para 66.

²³⁴ Rome Statute (n 4) art 75(4).

²³⁵ Vienna Convention on the Law of Treaties (entered into force 27 January 1980) art 34 (states that a treaty does not create obligations or rights for a non-state party without its consent).

The TFV first will have to assess which of the modalities ordered are the most suitable to be delivered in the context of the refugee camp. It will decide so by taking into consideration the instability of the victims' situation: that is whether there is a high or low certainty of their leaving the camp. If their departure is imminent, then compensation would appear to be the most suitable modality. Alternatively, if the possibility of their leaving the camp is low, then all modalities of reparations could be suitable, each to a higher or lesser extent. In any case, it is advisable that reparations are delivered as soon as possible to prevent further perpetuation of harm, while taking into account the various challenges that are present in a refugee camp.

Once this assessment has taken place, the TFV will need to reflect upon the nature of the suitable modalities. It will need to assess which are the most appropriate measures, corresponding to each modality, to be adopted, in terms of suitability and feasibility. For the assessment of suitability, it is suggested that the TFV will need to consider the harm caused to victims as it has been compounded as a result of their stay in the camp. This article suggests that the camp-related harm should be presumed based on the impact that residing in a camp can cause to victims' physical and mental health and their socio-economic lives. Taking this into consideration is imperative in delivering reparations that are responsive to the realities of the victims' harm as it has been transformed.

At the same time, the TFV will need to assess whether the reparative measures chosen for best addressing the victims' (compounded) harm are also feasible or practical to be delivered in the environment of the camp. For this, it needs to ensure that the camp infrastructure and services allow for the actual implementation of such measures on the ground. To better demonstrate the element of feasibility, two cases were examined corresponding to situations under the jurisdiction of the ICC with a prominent refugee camp component: Myanmar/Bangladesh and Darfur/Sudan.

As the harm needs to be addressed to prevent further exposure and help victims to cope with the consequent trauma, reparations should be implemented in the camps without delay. Humanitarian organisations in the field may help with their previous expertise. Community leaders and members should be involved in consultations and participatory dialogue, empowering their demands and providing a better understanding of the situation in the camps.

At this stage, it would be crucial to ensure the participation of victims themselves and their representative organisations. Consulting meaningfully with them is an indispensable element in the design and award of reparations. Every situation, every camp and every type of harm are different and subjective. The purpose of reparations, first and foremost, is to provide redress that is meaningful and corresponds to the realities of the victims' harm. Consequently, consultation with victims is of the utmost importance and it is they who should be leading the process, more so in the unique context of refugee camps.

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