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## Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate

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# Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate

Anne Dutton & Fionnuala Ní Aoláin \*

## Abstract

*The practice of international justice has made a significant shift from narrowly focused criminal accountability to a broader and more holistic understanding encompassing the totality of victims' justice needs. In particular, international criminal justice is concerned with victims of mass atrocity crimes, whose needs are profound and whose capacities are limited by the experiences of gross and systematic violence. These needs include individual and communal capacity building to engage in criminal processes as well as remedy and repair in the aftermath of criminal procedures. The Trust Fund for Victims represents, in many ways, the epicenter of this shift in international law practice, as a unique institution that has a central role in providing both an assistance and reparations mandate under the International Criminal Court (Rome) Statute. A clear innovation of the Trust Fund's work is its capacity to be operationalized before a criminal finding is made, providing the means to support victim survivors in situations still under investigation by the Prosecutor. In this capacity, the Trust Fund is priming and creating the conditions conducive to effective participation by victims in the Court's work. This article addresses how well that task has been operationalized in practice by the Trust Fund. In parallel, the assessment has a wider purview by allowing a broad engagement with the challenges, complexities, and realities on the ground that shape the enforcement of reparations for victims, as well as molding institutional responses by intervenors*

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*including the Trust Fund. Given the challenges of successfully implementing reparations there is often little time or capacity to measure (as one goes along) what has worked effectively and what has not. International organizations, states, courts, and civil society have made consistent calls for evidence of success, failure, and/or the value of reparations. At the simplest level, because most human rights and humanitarian law treaties provide for the right to a remedy, assessing if remedies work in practice is critical to understanding if state obligation has, in fact, delivered. This Article provides concrete, contextual, and novel assessment of the delivery of reparations for systematic human rights violations, offering timely and relevant analysis for the International Criminal Court in particular and scholars/practitioners concerned with the conceptualization and delivery of reparations in practice. The analysis and data presented is based on unique access to the Trust Fund's operations combined with on the ground assessment of the programming for assistance and reparations in Northern Uganda. The data underpinning the research findings is singular and makes a new contribution to the literature and practice of international criminal justice.*

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## I. INTRODUCTION

The practice of international justice has made a significant shift from narrowly focused criminal accountability to a broader and more holistic understanding of the totality of victims' justice needs. In particular, international criminal justice is concerned with victims of mass atrocity crimes, whose needs are profound and whose capacities are limited by the experiences of gross and systematic violence. These needs include individual and communal capacity building to engage in criminal processes, as well as remedy and repair in the aftermath of criminal procedures. The Trust Fund for Victims represents, in many ways, the epicenter of this shift in international law practice, as a unique institution that has a central role in providing both an assistance and reparations mandate under the International Criminal Court (Rome) Statute.<sup>1</sup> This research was undertaken to address how well that task has been operationalized in practice by the Trust Fund. In parallel, the assessment has a wider purview by allowing a broad engagement with the challenges, complexities and realities on the ground that shape the enforcement of reparations for victims, as well as molding institutional responses by intervenors including the Trust Fund. Given the challenges of successfully implementing reparations there is often little time or capacity to measure (as one goes along) what has worked effectively and what has not. International organizations, states, courts, and civil society have made consistent calls for evidence of success, failure, and/or the value of reparations.<sup>2</sup> Moreover, the value of evaluation in the practice of transitional justice, international criminal law, and human rights is increasingly recognized.<sup>3</sup> At the simplest level, because most human rights and humanitarian law treaties provide for the right to a remedy, assessing if remedies work in practice is critical to understanding if state obligation has, in fact, delivered.<sup>4</sup> State obligations with

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<sup>1</sup> Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) [hereinafter Rome Statute]. The Rome Statute, art. 68(3) proclaims the principle of victim participation "[w]here the personal interests of the victim are affected."

<sup>2</sup> See, for example, Prosecutor v. Lubanga, ICC-01/04-01/06-3217, Order Pursuant to Rule 103 of the Rules of Procedure and Evidence, ¶¶ 5, 7 (July 15, 2016).

<sup>3</sup> See, for example, Louise Mallinder & Catherine O'Rourke, *Databases of Transitional Justice Mechanisms and Contexts: Comparing Research Purposes and Design*, 10(3) INT'L J. TRANSITIONAL JUST. 492 (2016) (discussing the growth of databases characterizing the implementation of transitional justice in different cases); Oskar N.T. Thoms et al., *State-Level Effects of Transitional Justice: What Do We Know?*, 4(3) INT'L J. TRANSITIONAL JUST. 329 (2010).

<sup>4</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at art. 8 (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 2 ¶ 3, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171; Rome Statute, *supra* note 1 at art. 68, 75; African Charter on Human and Peoples' Rights CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 7.

respect to reparations follow from the essential right to a remedy contained in both human rights and humanitarian law treaties.<sup>5</sup> Delivering remedies in practice has proven challenging for states not only in the provision of adequate resources, but in providing fair, transparent, and accessible processes to victims of serious human rights violations in a consistent and effective way.

#### A. History of the Trust Fund and the Legal Basis for the Assistance Mandate

The Trust Fund was created under the Rome Statute as a unique mechanism “for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.”<sup>6</sup> The Trust Fund has a dual mandate: first, to deliver general assistance to conflict victims without prejudice to ongoing proceedings of the Court, and second, to enforce the reparations orders of the Court.<sup>7</sup> Uniquely, the Trust Fund (TFV) can be put into operation before a ruling is made, and it has the capacity to benefit victim survivors who have not yet gone to Court.<sup>8</sup>

#### B. The Relationship between Reparations and Assistance

Reparations are increasingly part of the package of measures that accompany post-conflict and post-atrocity legal remedy and reform.<sup>9</sup> Restitution has moved to the center of global discussions about remedy based on a recognition that transition requires not only doing something to address the actions of perpetrators, but also to specifically address the needs of victims.<sup>10</sup> Reparations come in multiple forms, ranging from individual financial

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<sup>5</sup> While the term reparation is used in many contexts, in international law it has generally been understood to designate measures to be adopted for the redress of various harms resulting from certain crimes or breaches of state responsibility. The move from state to individual remedy in this context is a significant shift in its own right. Rep. of the Int'l Law Comm'n, 53rd Sess., April 23–June 1, July 2–August 10, 2001, Draft Articles on Responsibility of States for Internationally Wrongful Acts, With Commentaries, U.N. Doc. A/56/10, at arts. 1, 31 (2001) [hereinafter Draft Articles]; Pablo de Greiff, *Justice and Reparations*, in THE HANDBOOK OF REPARATIONS 453 (Pablo de Greiff ed., 2006).

<sup>6</sup> Rome Statute, *supra* note 1, at art. 79(1).

<sup>7</sup> *Id.* at art. 79–80.

<sup>8</sup> *Id.* at art. 79; Rules of Procedure and Evidence of the International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNIIICC/2000/1/Add.1 (2000) [hereinafter ICC Rules of Procedure and Evidence]. At the pre-judgement stage the Trust Fund's role is to provide “assistance”, which does not detract or limit the capacity of any victim to receive reparations following judicial findings in particular cases.

<sup>9</sup> See de Greiff, *supra* note 5, at Introduction, 1–18.

<sup>10</sup> *Id.* at 1–2.

compensation to more innovative forms of group and community compensation of material, social, or financial benefits.<sup>11</sup> Some reparations have no financial component, but are symbolic, demonstrative, or memorial in nature.<sup>12</sup>

Despite a greater commitment to reparations evidenced in both international criminal law<sup>13</sup> and multiple transitional justice processes,<sup>14</sup> there are few examples of functional and well-delivered reparations in practice. The creation of such processes remains a work in progress and the international community continues to grapple with the financial, entitlement, and fairness elements of undertaking reparative work. The lack of good examples of reparations working in practice follows from a dearth of comprehensive reparations programming and the relatively new implementation of reparations in conflict and post-conflict sites.<sup>15</sup>

Reparations are provided for in Article 75(2) of the Rome Statute. The Statute specifically designates that fines, forfeitures, and reparations can be ordered by the Court against convicted individuals.<sup>16</sup> At the heart of the reparations regime envisaged by the Statute is a nexus between the conviction of the individual and compensation to the individuals to whom harm has been caused.<sup>17</sup> The Rome Statute envisages that the Trust Fund will have a role as implementer of select reparations awards ordered by the Court.<sup>18</sup> Broadly, the Fund's work is divided into two parts. Tom Dannenbaum reflects on these rules noting the unique autonomy of the Trust Fund with respect to the funds:

Sub-paragraphs 2-4 of Rule 98 define ways in which the Court interacts with the Fund – 98 (2) providing that the Court can order that awards for reparation against a convicted person be deposited in the TFV for a period of time, 98 (3) enabling the Court to order that a reparations order [sic]

<sup>11</sup> de Greiff, *supra* note 5, at Part II Thematic Studies, 450–698.

<sup>12</sup> *Id.*

<sup>13</sup> See, for example, DINAH SHELTON & THORDIS INGADOTTIR, THE INTERNATIONAL CRIMINAL COURT REPARATIONS TO VICTIMS OF CRIMES (ARTICLE 75 OF THE ROME STATUTE) AND THE TRUST FUND (ARTICLE 79) [sic]: RECOMMENDATIONS FOR THE COURT RULES OF PROCEDURE AND EVIDENCE (Center on International Cooperation at New York University ed., 1999), <http://perma.cc/296T-S9NS>.

<sup>14</sup> See, for example, Maxime Kersh, *The Empowerment of the Crime Victim: A Comparative Study of Victim Compensation Schemes in the United States and Australia*, 24 CAL. W. INT'L. L.J. 345 (1994).

<sup>15</sup> See for example, Julián Guerrero Orozco & Mariana Goetz, *Reparations for Victims in Colombia: Colombia's Law on Justice and Peace*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES, AND CRIMES AGAINST HUMANITY 435, 457–58 (Carla Ferstman et al. eds., 2009).

<sup>16</sup> Rome Statute, *supra* note 1, at 75(2); International Criminal Court Res. ICC-ASP/4/Res.3, annex, Regulations of the Trust Fund for Victims, ¶ 21 (Dec. 3, 2005), <http://perma.cc/WB7M-7T42> [hereinafter Regulations of the Trust Fund for Victims].

<sup>17</sup> Rome Statute, *supra* note 1, at 79; Regulations of the Trust Fund Victims, *supra* note 16.

<sup>18</sup> ICC Rules of Procedure and Evidence, *supra* note 8, at 98.

pursuant to Article 75(2) be executed through the Fund, and 98(4) allowing for and regulating the payment of reparations through the TFV to NGOs . . . The Rules thus provide for a division between funds earmarked for eventual use for reparations, over which the Court retains authority, and “other resources” over which the TFV appears to have greater control. Read in conjunction with Article 79(1), Rule 98(5) provides for a sphere of activity . . . in which the TFV is to act pursuant to the limits defined separately by the [Assembly of States Parties] ASP, with no basis in the Statute or the Rules for ICC oversight.<sup>19</sup>

Complementary to the reparations regime is the assistance mandate of TFV, which enables the Fund to exercise a general assistance mandate in situations under investigation by the International Criminal Court (ICC).<sup>20</sup> After notifying the Court of its intention to provide assistance, the TFV uses voluntary contributions from donors to provide victims and their families with physical rehabilitation, material support, and psychological rehabilitation.<sup>21</sup> This assistance work has been under-examined by scholars and practitioners, both in terms of its singular contribution to holistic justice for victims as well as its relationship to the provision of reparations by the ICC system. This Article gives an insight into the operation and effectiveness of the Trust Fund’s assistance mandate, offering observations on the contributions of assistance to victims as a stand-alone category.

## II. RESEARCH OVERVIEW

### A. The Rationale that Drove this Study

This Article publishes the findings of an investigation of the operation of the Trust Fund’s assistance mandate in Northern Uganda.<sup>22</sup> It identifies

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<sup>19</sup> Tom Dannenbaum, *The International Criminal Court, Article 79, and Transitional Justice: The Case for an Independent Trust Fund for Victims*, 28 WIS. INT’L L.J. 234, 249–50 (2010).

<sup>20</sup> Regulations of the Trust Fund for Victims, *supra* note 16. Part III of the Regulations addresses the “Activities and Projects of the Trust Fund.” The processes for use of the Trust Fund’s resources are set out in Chapter I, Section I, ¶ 42, which frames this responsibility by noting that “[t]he Resources of the Trust Fund shall be for the benefit of victims of crimes within the jurisdiction of the Court, as defined in rule 85 of the Rules of Procedure and Evidence . . . .” Chapter I, Section II, ¶ 43 defines the role of the Trust Fund when resources are collected and transferred through fines and forfeiture. Chapter I, Section III, ¶¶ 47–48 of the Regulations define how “[o]ther Resources of the Trust Fund” will be used.

<sup>21</sup> *Id.* at ¶ 48.

<sup>22</sup> It builds on a longstanding relationship between Professor Ní Aoláin and the Trust Fund. In 2015, Professor Ní Aoláin led an Expert Consultation mandated by the ICC on *Developing the Trust Fund for Victims’ Reparation Draft Implementation Plan for Thomas Lubanga Dyilo Conviction at the International Criminal Court*. Ní Aoláin was also one of a number of interveners in the litigation concerning the implementation of the Reparations Plan prepared by the Trust Fund at the ICC in 2016. See *Prosecutor v. Lubanga*, ICC-01/04-01/06, Trial Chamber II, Order on the Conduct of



successes and limitations in hopes of illuminating best practices on repair, at both a conceptual and operational level, using the assistance mandate as a lever to explore broader themes and practicalities. The assistance mandate provides a valuable case study on the importance of preparing and working with post-conflict communities as they engage in the hard work of post-conflict justice. The lessons learned from assistance implementation in Northern Uganda may provide roadmaps for future assistance mandate work and eventual reparation programs in Uganda and beyond, given broad similarities in the challenges of implementing remedies for victims of serious human rights violations across jurisdictions.

A key driver for this research was the specific request by the International Criminal Court Trial Chamber II to provide evidence of best practice in reparations in prior litigation involving the Trust Fund.<sup>23</sup> As the Trial Chamber II grappled with the implementation of reparations after the conclusion of the criminal findings in the Lubanga Trial, it invited “State[s] and organizations”<sup>24</sup> and stakeholders with “detailed knowledge of the context in which Mr. Lubanga committed the crimes . . . and of the social and cultural groups from which his victims originate,”<sup>25</sup> to provide observations to the Chamber addressing the viability of collective reparations programs for Mr. Lubanga’s victims. The Chamber indicated that it sought further information to shape its judicial approach to collective reparations.<sup>26</sup> Specifically, the Court sought information to inform its judicial decision-making on past and current reparations projects for former child soldiers and on collective reparations.<sup>27</sup> A challenge for the Court, and for those submitting observations to it, was the absence of robust empirical assessments of existing or prior reparations programming. Collective and individual reparations for mass atrocity crimes is a new venture for states and international institutions alike. The measurement of success (or failure) of

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the Hearing to Be Held on 11 and 13 October 2016, ¶ 3 (Oct. 6, 2016); *Prosecutor v. Lubanga*, ICC-01/04-01/06-3251, Trial Chamber II, Order Approving the Proposed Plan of the Trust Fund for Victims in Relation to Symbolic Collective Reparations (Oct. 21, 2016); *see also* *Prosecutor v. Lubanga*, ICC-01/05-01/08-3444, Trial Chamber II, Submission by QUB Human Rights Centre on Reparations Issues Pursuant to Article 75 of the Statute (Mar. 16, 2018).

<sup>23</sup> The Chamber was Presided by Judge Marc Perrin de Brichambaut, with Judge Olga Herrera Carbuccia and Judge Péter Kovács in *Prosecutor v. Lubanga*.

<sup>24</sup> *Prosecutor v. Lubanga*, Order Pursuant to Rule 103 of the Rules of Procedure and Evidence, *supra* note 2, at ¶¶ 5, 7.

<sup>25</sup> *Id.* at ¶ 7; *see also id.* at ¶ 6 (“The Chamber considers that, under the mandate it was granted in the Judgment of the Appeals Chamber of 3 March 2015, and in the light of the information provided to date by the TFV, it lacks the collective reparation projects for the victims of Mr. Lubanga which would allow it to fulfill its mandate.”).

<sup>26</sup> *Id.* at ¶¶ 6–8.

<sup>27</sup> *Id.* at ¶ 8.

such endeavors is hampered both by the lack of longitudinal data, and agreement on what might count as measurements of success or failure.<sup>28</sup> It is further hampered by the existence of few studies with ethically robust validation to ensure that the assessments themselves do not cause further trauma or harm to vulnerable populations. The need for such data, as well as a commitment to ethically sound approaches to assessment prompted this study.

The analysis was also inspired by the theoretical and analytical approach of “critical friendship” between scholars and practitioners and the value of such positioning to good policy outcomes and robust research.<sup>29</sup> The term “critical friendship” was defined by Mackay et al., as an approach to investigation, research and evaluation offering “sympathetic critique and [making] contextual judgment.”<sup>30</sup> The notion of “critical friend” situates this study as taking a middle position between those who strongly critique involvement with and decisions taken by the entity or institution under study and those who unreservedly champion such institutions. The model of “critical friend” characterizes the substance and approach of this study, allowing us to examine the Trust Fund’s work in its realistic, contextual, temporal, and cultural contexts, aware of our own privilege and externalities, mindful of the importance of evaluation, but also attuned to listening and understanding.

## B. Theory and Applied Methodology

The findings presented in this Article are derived from a series of in-depth, semi-structured interviews with staff of the TFV, the ICC, and the organizations contracted with the Trust Fund to carry out the assistance mandate programming in Northern Uganda (“implementing partners”). Time and resource constraints limited implementing partners interviews to the four organizations based in the town of Gulu: Association of Volunteers in International Service (AVSI) Foundation; Transcultural Psychological Association (TPA) – Uganda; Gulu Women’s Economic Development & Globalization (GWED-G); and the Center for Victims of Torture (CVT). All of

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<sup>28</sup> Kirsten Ainley, *Evaluating the Evaluators: Transitional Justice and the Contest of Values*, 11 INT’L J. TRANSITIONAL JUST. 421, 421–22, 426 (2017) (“A wide range of factors are claimed within the literature to demonstrate the success or failure of TJ mechanisms, with no strategies offered to adjudicate between rival foci and methods of appraisal.”).

<sup>29</sup> LOUISE CHAPPELL, *THE POLITICS OF GENDER JUSTICE AT THE INTERNATIONAL CRIMINAL COURT: LEGACIES AND LEGITIMACY* 9 (2016).

<sup>30</sup> *Id.* (quoting Fiona Mackay & Louise Chappell, *Critical Friends and De(con)structive Critics: Dilemmas of Feminist Engagement with Global Governance and Gender Reform Agendas*, presented at European Consortium for Political Research, 4th European Conference on Politics and Gender (June 11–13, 2015)); see also Fiona Mackay et al., *New Institutionalism Through a Gender Lens: Towards a Feminist Institutionalism?*, 31 INT’L POL. SCI. R. 573, 574–79 (2010).

the on-site research was carried out in the summer of 2017, but extensive preparation and consultation took place throughout autumn 2016 and spring 2017, supported by the Human Rights Laboratory at the University of Minnesota. The laboratory provided interdisciplinary review and critique of the evaluation methodology, ethical dilemmas, as well as the feasibility of the research delivery on the ground in Uganda. We recognize that reliance on Trust Fund partners has methodological and substantive consequences, not least because of the relationships of dependence, funding, and expectations between field implementers and the body prompting the work. We hope our critical approach to both the Trust Fund and its partners ameliorates some of those limitations, but we acknowledge it may not resolve all tensions, biases, or conflicts.

A total of twenty-six people were interviewed in The Hague and Gulu using an interview guide built off of our prior work on reparations and augmented by a comprehensive literature review. The intent was to carry out in-person, individual interviews lasting approximately an hour. However, in three instances, scheduling constraints required conducting interviews in small groups of two to three interviewees. In two different instances, in-person interviews were not possible and the interview was conducted over the phone. Interviews were then recorded, transcribed, and coded to develop the analysis presented here.<sup>31</sup>

The staff of the Trust Fund led recruitment efforts for this project. For each of the four implementing partners, the TFV program manager connected the interviewer to organizational leadership; they then coordinated directly with the interviewer to determine which staff were available and willing to be interviewed. The first priority was interviews with programmatic staff, though interviews with leadership and evaluation staff were also included where possible. With respect to interviews with staff of the Trust Fund and the ICC, the TFV monitoring and evaluation officer identified those individuals whose work was most relevant to the functioning of the assistance mandate in Northern Uganda and facilitated interview arrangements.

The formal interviews were preceded by one week at the ICC in The Hague, reviewing secondary data related to the Uganda assistance mandate. Additional primary data came from two days of field observation with social workers and staff of TPO – Uganda as well as a week of observation at a conference convened by the Trust Fund in Kampala. This conference was a collaborative gathering to discuss and revise the Trust Fund's new performance

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<sup>31</sup> To preserve anonymity, each interviewee has been assigned a letter (for example, Participant "A") which is used when sharing their words in citations throughout this article. Audio recordings, transcripts, and/or general notes on all interviews are available on file with the authors.

monitoring program. All eight implementing partners currently working in the country were in attendance, allowing for informal interactions with implementing partners beyond the four Gulu-based organizations.

The research was further informed by observational and field experience acquired by spending an extended period of time in both The Hague and Gulu. To state the very obvious, both contexts are exceptionally different, offering different cultural and operative constraints, and the observations of institutional context, geography, and situated realities also infuse the analysis and conclusions of this Article.

### C. Ethical Considerations and Limitations

This project presented a variety of ethical considerations. First and foremost were ethical concerns about directly interacting with and interviewing beneficiaries of the assistance mandate.<sup>32</sup> Given the relatively short amount of time spent in-country (and considering the kind of long-term commitment required to ethically engage with traumatized individuals and communities), the lack of pre-existing relationships, the cultural and linguistic limitations of the interviewer, and the nuance required to conduct interviews without raising false expectations or re-traumatizing people, the project did not involve interviews with beneficiaries/victims. Though such interviews would undoubtedly be an invaluable source of information about the efficacy and success of the assistance mandate, it was determined that meeting the ethical requirements for such interviews was outside the scope of this project.<sup>33</sup> Relatedly, time constraints limited the opportunity to obtain viewpoints from other stakeholders in the community—for example, government officials or other nonprofit organizations. As such, this research does not purport to represent an exhaustive study of the perceptions on assistance mandate in the region. By focusing on one group of interviewees—going deep rather than wide—it intends to provide a thorough examination of how those directly involved in the implementation of the assistance mandate view their work.

Prior to all direct interviews, the interviewer explained that responses would be kept confidential and all interviewees gave informed consent to their participation. Despite these procedural precautions, the realities of the situation

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<sup>32</sup> Heather McCosker et al., *Undertaking Sensitive Research: Issues and Strategies for Meeting the Safety Needs of All Participants*, 2 F. QUALITATIVE SOC. RES. 1, 22 (2001); Andrea Doucet & Natasha S. Mauthner, *Knowing Responsibly: Ethics, Feminist Epistemologies and Methodologies*, in ETHICS IN QUALITATIVE RESEARCH 122, (Miller et al. eds., 2d ed. 2012).

<sup>33</sup> Because interviews were only conducted with programmatic staff, the Institutional Review Board of the University of Minnesota classified this project as exempt research after a complete preliminary institutional review board (IRB).

bear consideration—including that interviews with implementing partners occurred at the request of a major funder. Notwithstanding the interviewer's explanation that she did not work for the Trust Fund, it is possible that the perceived close relationship between the interviewer and the Trust Fund influenced the answers given during the interview.<sup>34</sup> Additionally, in light of the relatively small number of interviewees and the distinctive program models of each implementing partner, it is likely that some interviewees felt that, even with anonymized data, their answers could be traced back to them. Responses may also have been colored by the general difficulty of providing objective self-evaluation.

There are inherent challenges when researchers from another culture attempt to observe and analyze the happenings of a different society. The interviewer was of a different race and class than the vast majority of interviewees and several interviewees completed the interview in a non-primary language (English).<sup>35</sup> Though the interviewer attempted to mitigate these factors, power dynamics and mistaken assumptions on the part of the interviewer surely influence the findings of this project. Finally, this project is a relatively brief look, undertaken by outsiders, at a region that is enormously complex. The investigators endeavor to provide an analysis reflective of the diversity and history of the Gulu district, but the risk of oversimplification remains.

#### D. Brief History of the Conflict

Without digressing to a historical treatise of the conflict between the Lord's Resistance Army (LRA) and the government in Northern Uganda, a couple of significant factual matters are notable.<sup>36</sup> The origins of the conflict, which

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<sup>34</sup> Tina Miller & Linda Bell, *Consenting to What? Issues of Access, Gate-Keeping and 'Informed' Consent*, in Miller, ETHICS IN QUALITATIVE RESEARCH, *supra* note 32, at 61–75.

<sup>35</sup> SVERKER FINNSTRÖM, *LIVING WITH BAD SURROUNDINGS: WAR AND EXISTENTIAL UNCERTAINTY IN ACHOLILAND, NORTHERN UGANDA* (2003); see Shannon Speed, *At the Crossroads of Human Rights and Anthropology: Toward a Critically Engaged Activist Research*, 108 AM. ANTHROPOLOGIST 66 (2006) (discussing issues of colonization between the researcher and the researched); *Social Identity and Power in Researcher-Researched Dynamics*, in DONNALYN POMPPER, PRACTICAL AND THEORETICAL IMPLICATIONS OF SUCCESSFULLY DOING DIFFERENCE IN ORGANIZATIONS (INTERNATIONAL PERSPECTIVES ON EQUALITY, DIVERSITY AND INCLUSION, VOL. 1) 25 (1st ed., 2014) (discussing power differences between the researcher and the researched); Niamh Mulcahy, *Narrating Developmental Disability: Researchers, Advocates, and the Creation of an Interview Space in the Context of University-Community Partnerships*, 11(2) INT'L J. OF QUAL. METHODS 165, 166–67 (2012) (discussing perceptions of the external researcher); Richard Hugman et al., *When 'Do No Harm' Is not Enough: The Ethics of Research with Refugees and Other Vulnerable Groups*, 41 BRIT. J. SOC. WORK 1271 (2011) (discussing the ethical principle of 'do no harm' in research).

<sup>36</sup> See generally A. B. K. KASOZI, *THE SOCIAL ORIGINS OF VIOLENCE IN UGANDA, 1964-1985* (1994) (discussing the conflict as relevant to the experiences of persons living through the conflict in Northern Uganda).

primarily took place from 1986 to 2008, can generally be traced back to colonial times and the divide and conquer strategies deployed by British colonizers that deepened divisions between ethnic groups.<sup>37</sup> The British colonizers encouraged internal geographical boundaries (here North-South binaries), ethnic distinctions, and pursued strategies of economic and political favoritism among local populations.<sup>38</sup> Colonialism also established and solidified socio-economic rifts and promoted militarism. This was then compounded by corrupt and neglectful presidential politics in the post-colonial era.<sup>39</sup> Post-colonial governance was characterized by coups (for example, Colonel Idi Amin's rise to power) that instigated an era of ingrained violence, systemic human rights violations, and brutal civil war.<sup>40</sup> Northern Uganda played a pivotal role in these upheavals, providing military backbone to various uprisings as well as being a battleground in the literal sense.<sup>41</sup> The emergence of the LRA from prior iterations, drawing on a spiritual movement (inspired by a young woman called Alice Auma) and led by Joseph Kony was the result of complex infighting among various non-state actors groups in the region. It was sustained by long-standing anti-government sentiment in Northern Uganda and in particular the Acholi homelands.<sup>42</sup> Kony consolidated his leadership in the early 1990s, and led a violent, increasingly disparate band of irregulars committing widespread human rights and humanitarian law violations.<sup>43</sup> The violent and unrestrained response of the government resulted in sustained violations perpetrated by state actors, encircling and creating further misery for the civilian population.<sup>44</sup> The violence was defined by systematic attacks on civilians, the widespread use of sexual violence against men and women, the forcible recruitment of child soldiers, torture, disappearances and wide-scale violations of a range of fundamental human rights.<sup>45</sup> It is this complex history of war, and explicitly its most recent iteration with the LRA, that led to the ICC's legal intervention,

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<sup>37</sup> KASOZI, *supra* note 36, at 17–29.

<sup>38</sup> *Id.* at 22–26.

<sup>39</sup> See Hema Chatlani, *Uganda: A Society in Crisis*, 37 CAL. W. INT'L.L.J. 277, 279 (2007).

<sup>40</sup> *Id.* at 280.

<sup>41</sup> *Id.*

<sup>42</sup> Chatlani, *supra* note 39, at 281–285.

<sup>43</sup> *Id.*

<sup>44</sup> See, for example, TIM ALLEN, TRIAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE LORD'S RESISTANCE ARMY 41–52 (Zed Books, 2006); Adam Branch, *The Responsibility to Protect: What is the Basis for the Emerging Norm of R2P?*, THINK AFRICA PRESS (Nov. 6, 2012), <http://perma.cc/PME2-QR44>; CHRIS DOLAN, SOCIAL TORTURE: THE CASE OF NORTHERN UGANDA, 1986–2006 (Nov. 6, 2009).

<sup>45</sup> Allen, *supra* note 44, at 17, 53–71, 113–14; Dolan, *supra* note 44, at 39–61.

spurred by the Ugandan government's invitation to exercise Court jurisdiction over crimes committed during the conflict in Northern Uganda.<sup>46</sup>

### E. Brief Introduction to the Implementing Partners and Their Operations

The implementing partners interviewed for this project all maintain regional offices in the town of Gulu, the capital of Gulu District, and carry out programming in villages throughout both Gulu District and neighboring districts. Since 2015, the principle focus of the assistance mandate program in Northern Uganda has been to provide physical and psychological rehabilitation programming; however material assistance (for example, livelihood activities, Village Savings and Loan Associations (VSLA)) remain an important aspect of projects.<sup>47</sup>

Many of the implementing partners interviewed for this research use a similar programmatic framework for delivering psychological or physical rehabilitation. In general, work commences in a new community with a community mobilization, wherein staff work with local leaders to encourage local people to attend an information session. These sessions, often called “community sensitizations,” introduce the assistance mandate work and the eligibility requirements for services—most notably, the requirement that the person must have suffered harm after July 1, 2002, the date the Rome Statute establishing the ICC went into force. The community sensitization also includes preliminary psychoeducation about trauma and begins community dialogue about stigma and conflict experiences.

After the sensitization, the implementing partners invite those people who think they may be eligible and in need of services to contact them, at which point the implementing partners complete intakes and screening protocols. Most implementing partners providing psychological rehabilitation do so via a form of group cognitive behavioral therapy (CBT), a standardized treatment protocol able to be delivered to groups of approximately fifteen people meeting once a week for about ten weeks.<sup>48</sup> The Center for Victims of Torture (CVT) follows a similar group therapy schedule, but employs its own standardized group

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<sup>46</sup> Allen, *supra* note 44, at 82.

<sup>47</sup> Press Release, International Criminal Court, The Trust Fund for Victims Launches New Assistance Projects in Northern Uganda, ICC-TFV-20150703-PR1126 (July 3, 2015), <http://perma.cc/L33E-CVHA>; see also *Integrated Physical and Psychological Rehabilitation Assistance for Victims in Northern Uganda*, REQUEST FOR EXPRESSION OF INTEREST, EOI 124415 (Feb. 8, 2018).

<sup>48</sup> See generally Andrew C. Butler et al., *The Empirical Status of Cognitive-Behavioral Therapy: A Review of Meta-Analyses*, 26 CLINICAL PSYCHOL. REV. 17 (2006) (summarizing the literature on treatment outcomes of CBT).

treatment protocol.<sup>49</sup> In many cases, beneficiaries who qualify for services also have the option of receiving individual or family therapy as needed. For those beneficiaries needing physical rehabilitation, the implementing partners have limited funding to refer people to health centers or hospitals for surgeries. After the group sessions conclude, the implementing partners conduct at least one or more formal follow-up engagements, though securing these subsequent meetings can sometimes be challenging.

In addition to the psychological services described above, TPO also runs a clinic outreach program. Once a month, TPO brings two doctors from the regional hospital in Gulu to a rural health center where the doctors spend a day meeting with beneficiaries who could benefit from psychotropic medication in addition to therapy. While the doctors are meeting with beneficiaries individually, TPO staff conducts intakes and provides psychoeducation to those waiting. If a person receives a prescription, drugs purchased by TPO are provided that same day.

CVT also plays a unique role in the psychological rehabilitation work. CVT's project in Northern Uganda originally focused solely on capacity-building. CVT staff spent several years providing training and supervision to the staff of other nonprofits, including other implementing partners, to improve the standards of psychological care available in the region. In 2015, CVT expanded to also provide its own direct group and individual services, but capacity-building remains an important part of its work.<sup>50</sup>

One of the interviewed implementing partners, AVSI, provides physical rehabilitation in the form of prosthetics and orthotics.<sup>51</sup> Now in partnership with the Ugandan government, AVSI runs the Gulu Regional Orthopedics Workshop (GROW), which is one of the few facilities in Uganda capable of manufacturing artificial limbs.<sup>52</sup> When a beneficiary comes to GROW, AVSI social workers provide the first phase of intervention, helping the person work through the psychological challenge of living with a disability.<sup>53</sup> The beneficiary then works with GROW technicians and physical therapists to fit and begin to use the artificial limb.<sup>54</sup> After the person returns home, a team consisting of a technician, physical therapist, and social worker travel out to see him or her after three

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<sup>49</sup> *Healing the Wounds of Torture*, THE CENTER FOR VICTIMS OF TORTURE, <http://perma.cc/9JTX-SDGT>.

<sup>50</sup> *See Uganda: Healing in Northern Uganda*, THE CENTER FOR VICTIMS OF TORTURE, <http://perma.cc/236K-Y2YW>.

<sup>51</sup> AVSI, AVSI FOUNDATION IN UGANDA 13 (2016), <http://perma.cc/2E7G-UM74>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> AVSI, *supra* note 51, at 11.



months for an initial assessment of functioning and to perform any adjustments needed.<sup>55</sup>

## F. Explanation of Key Questions

Driven by the broad goals outlined in Part II.A, the interviews sought to elucidate the efficacy and success in practice (at the granular level) of assistance mandate programs provided by the International Criminal Court's Trust Fund for Victims in Northern Uganda—and thus identify successes and challenges currently facing the program. Questioning was intended to focus on the particulars and practicalities of implementation at the ground level. This kind of analysis could be reduced to a box-ticking exercise (counting how many services, events or interventions were delivered), but this kind of numerical count was not the object of the exercise. Rather, the goal was to collect a sense of the lived experience of delivering services, engaging with clients, and noticing the effects of the programming as well as to draw out self-reflection from the providers as much as possible. From this, the interviews provided a basis to assess the extent to which the Trust Fund for Victims is discharging its assistance mandate as set out in the Rome Statute of the International Criminal Court.

## III. DEFINING ASSISTANCE MANDATE SUCCESS

In discharging its mandate, the Trust Fund has been active in several countries where the ICC is involved; utilizing its second mandate of awarding general assistance, not reparations, the Trust Fund is providing a broad range of support.<sup>56</sup> The assistance mandate has been premised on working with local organizations, victim survivor groups, women's associations, faith-based organizations, and village savings and loans associations as well as international non-governmental organizations.<sup>57</sup>

The TFV self-reports that it is reaching more than 104,000 beneficiaries in two situations currently under ICC investigation through rehabilitation assistance projects in Northern Uganda and the Democratic Republic of Congo.<sup>58</sup> Activities were planned in the Central African Republic, but were

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<sup>55</sup> *Id.*

<sup>56</sup> Regulations of the Trust Fund for Victims, *supra* note 16, at Part III, Chapter I, Section III, "Other Resources of the Trust Fund."

<sup>57</sup> INTERNATIONAL CRIMINAL COURT TRUST FUND FOR VICTIMS, NEWSLETTER #3, 11 (May 2017).

<sup>58</sup> Press Release, International Criminal Court, ICC Trust Fund for Victims Assists over 80,000 Victims, Raises Reparations Reserve, ICC-TFV-20120323-PR780 (Mar. 23, 2012), <http://perma.cc/568L-MQA2>.

suspended due to security concerns in 2013.<sup>59</sup> The TFV prioritized four areas in its initial assistance mandate work: (1) justice and reconciliation; (2) health and well-being; (3) social support and integration; and (4) material security.<sup>60</sup> While these priorities have evolved over time, in part due to financial and operational constraints, they provide a window into the broad set of needs that emerge in the assistance framework. The TFV views gender as a cross-cutting theme across these priority areas.<sup>61</sup> Based on Articles 6, 7, and 8 of the Rome Statute (formally recognizing that categorization into highly singular groups of victim status has many pitfalls), the TFV identifies the following groups as priorities:

- Victims of sexual and gender-based violence
- Widows/widowers
- Former child soldiers and abducted youth
- Orphans and vulnerable children<sup>62</sup>

One of the unique aspects of the ICC system is its dual commitment to criminal accountability and concurrently to the rights and needs of victims. The Trust Fund represents a unique institutional innovation, not least because it can be operationalized before a ruling is made, providing the capacity to benefit victim survivors in situations still under investigation and pending before the Court. This institutionalizes the understanding that effective participation in international criminal justice processes requires *prior* support and prior capacity building for affected individuals and communities. As the sites of ICC investigation reveal,<sup>63</sup> victims are often found in the most marginalized and vulnerable communities, with limited education, health, and social capital; the assistance mandate levels the playing field slightly.

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<sup>59</sup> Press Release, International Criminal Court, Following Mr. Bemba's Acquittal Trust Fund for Victims, ICC Decides to Accelerate Launch (June 13, 2018), <http://perma.cc/2DXP-F68Q> ("In 2013, the Fund was close to launching the assistance mandate programme in CAR focused on SGBV victims, but activities were suspended and eventually cancelled due to the security situation.").

<sup>60</sup> TRUST FUND FOR VICTIMS, REVIEWING REHABILITATION ASSISTANCE AND PREPARING FOR DELIVERING REPARATIONS: PROGRAMME PROGRESS REPORT 3–4 (2011), <http://perma.cc/4DR5-N9TM>. In Northern Uganda emphasis had been placed on economic empowerment and reconstructive surgery and in DRC psychological support and counseling. However, after the suspension of material support these priorities have been re-shaped.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 5.

<sup>63</sup> See ICC, SITUATIONS UNDER INVESTIGATION, <http://perma.cc/DX8V-E38M>.

## A. Reparation Scales

### 1. The individual is the foundational scale of the Trust Fund's work.

A focus on the individual is at the heart of the international criminal justice enterprise as it is individuals who experience and live with the consequences of harm. The necessity of individual remedy is at the heart of international human rights law standards. Crucially, most human rights and humanitarian law treaties provide the right to a remedy. These treaty obligations include processes that are supported by procedural rights to a fair hearing and fair process.<sup>64</sup> In the context of gross violations of human rights and humanitarian law, rehabilitation and guarantees of non-repetition have emerged as vital elements of remedy in practice. The other core elements of reparations include recognition of restitution, compensation, and satisfaction.

Soft law standards have emerged more recently to complement and augment these treaty standards. The *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* is an important recent contribution to the consolidation of reparations practice regarding the rights of the individual in the aftermath of mass atrocity.<sup>65</sup> The *Basic Principles* underscore obligations in relation to the delivery of justice to victims post-conflict including, inter alia, ensuring “effective access to justice”<sup>66</sup> and the provision of “effective remedies to victims, including reparation.”<sup>67</sup> In parallel, the individual's right to acknowledgement and individual recognition is a critical takeaway from the jurisprudence of international human rights' bodies and the practice of various transitional justice mechanisms.

The Trust Fund's approach in its assistance mandate evidences a strong commitment to mirroring relevant best practices endorsed by the *Basic Principles*. This is most potently illustrated by the centrality of individual victims. The broad definition of “victim” encompassed by the assistance mandate reflects the approach of the *Basic Principles*.<sup>68</sup> The *Basic Principles* state that “victims are persons who individually or collectively suffered harm” and defines the term

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<sup>64</sup> *Neumeister v. Austria*, App. No. 1936/63, 1 Eur. H.R. Rep. 91, ¶¶ 22–25 (1974).

<sup>65</sup> G.A. Res. 60/147, *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*, U.N. Doc. A/RES/60/147, at 3 (Dec. 16, 2005) [hereinafter *The Basic Principles*].

<sup>66</sup> *Id.* at ¶ 3(c).

<sup>67</sup> *Id.* at ¶ 3(d).

<sup>68</sup> *The Basic Principles*, *supra* note 65, at ¶ 8; *Regulations of the Trust Fund for Victims*, *supra* note 16, ¶¶ 42, 46 (citing to Rules of Procedure and Evidence 85).

“victims” to include “the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or prevent victimization.”<sup>69</sup> Further, the *Basic Principles* affirm that rehabilitation “should include medical and psychological care as well as legal and social services.”<sup>70</sup> That commitment is echoed in the Trust Fund’s commitment to addressing material, physical, and psychological harms.<sup>71</sup> As seen in the Trust Fund’s fieldwork approach set out below, rehabilitation could also be conceived of as including broader victim empowerment through education and adopting a rights-based framework within which to situate a victim’s understanding of the harm inflicted upon him or her.

## 2. The Trust Fund engages with the family and community scales of reparations.

Another important element of the approach to the assistance mandate, one that is also intrinsically relevant to the delivery of reparations, is how to address and manage collective harms, collective experiences, and community needs. Systematic human rights and humanitarian law violations represent a complex blend of physical, moral, emotional, and social harms that are both individual and collective with immediate and intergenerational impacts.<sup>72</sup> This dual reality of collective and individual experience is also found in the *Basic Principles’* acknowledgment that “victims” are “persons who individually or **collectively** suffered harm . . .”<sup>73</sup>

The notion of collective harm reflects not only individual experiences of violence and harm but affirms people’s layered and multiple identities. It also affirms that in all cultures and contexts (including in Northern Uganda) community is a necessity, an identity, and an inescapable reality of daily life. Importantly, gross and systematic violations of human rights are often intended to destroy communities and groups, creating harm that is communal and shared. In this context, individual remedy alone misses a crucial aspect of the reparative needs of community and an important symbolic need, felt at multiple levels. Hence, the Trust Fund’s work at the community level is not an added “extra,” but rather an essential and logical response to the harm experienced by the communities it serves. This critical dimension of harm has often been overlooked by international human rights bodies whose focus and jurisprudence

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<sup>69</sup> The Basic Principles, *supra* note 65, at ¶ 8.

<sup>70</sup> *Id.* at ¶ 21.

<sup>71</sup> Regulations of the Trust Fund Victims, *supra* note 16, at ¶¶ 48, 50(a)(i).

<sup>72</sup> See Nathaniel Vincent Mohatt, et al., *Historical Trauma as Public Narrative: A Conceptual Review of How History Impacts Present-Day Health*, 106 SOC. SCI. MED. 128 (2014).

<sup>73</sup> The Basic Principles, *supra* note 65, at ¶ 8 (emphasis added).

has primarily addressed individual harms over many decades. The centrality of the communal, and the necessity of working through the community in light of the nature of the harms being addressed is amply illustrated by the interviews that form the basis of this research.

### 3. The Trust Fund also works on a governmental scale.

Though not as readily apparent from the text of the assistance mandate, work with the Ugandan government is an important part of the assistance mandate. The vital services provided by the assistance mandate should formally be the responsibility of the Ugandan government.<sup>74</sup> The physical and psychological care of Ugandan citizens should not rest on an international entity and nonprofit organizations. Interviewees at all levels described efforts to ensure the successful operation of the assistance mandate did not allow the government to excuse its failure to provide a basic standard of care to its citizens. The situation in Northern Uganda exposes the tension between the obligations of the state and its inability or unwillingness to uphold those obligations, a tension that pervades much reparations practice throughout the globe.<sup>75</sup> As such, work with the government to increase its own capacity and accountability is an important level of engagement for a successful assistance mandate, but comes with its own complexities to ensure a parallel level of state responsibility and engagement.

## B. TFV Evaluation Practices

Evaluating the overall impact of the assistance mandate is complicated by the reality—widely affirmed by the implementing partners—that rehabilitation is more appropriately thought of as an ongoing process than as a quantifiable end-state; this makes defining “success” very difficult.<sup>76</sup> Acknowledging this complexity, the Trust Fund has undertaken an overhaul of its evaluation

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<sup>74</sup> Uganda has signed the Covenant on Economic, Social and Cultural Rights (ratified 1987) which mandates that the State provide a minimal threshold of health and education rights for citizens. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. *See also*, Econ. & Soc. Council, Comm. on Econ., Soc., and Cultural Rts., Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic Social and Cultural Rights, U.N. Doc. E/C.12/UGA/1 (Dec. 5, 2013).

<sup>75</sup> Lauren Marie Balasco, *Reparative Development: Re-Conceptualising Reparations in Transitional Justice Processes*, 17 J. CONFLICT, SEC. & DEV. 1, 2 (2017).

<sup>76</sup> TFV Monitoring & Evaluation Conference, Kampala, Uganda (July 4, 2017) (discussing psychological indicators) (notes on file with authors)

program in recent years, so as to better capture the *impact* of the assistance mandate, rather than just its *outputs*.<sup>77</sup>

For the first seven years of the program in Uganda, the Trust Fund used a quarterly reporting template to collect basic statistics on the beneficiaries, including their age, sex, and type of assistance received (for example, physical or psychological rehabilitation). Implementing partners were also asked to complete a general narrative on the achievements and challenges of their work over the quarter and mark their progress on the objectives identified in their grant proposal. This evaluation scheme had several limitations. The key pragmatic challenge was varying degrees of compliance and consistency among implementing partners, attributed in part to the open-ended structure of the narrative portion. Relatedly, the evaluation format was highly focused on outputs and the use of terms without clear definitions (for example, what does “psychological rehabilitation” mean?) limited the utility of these reports in evaluating how well the assistance mandate as a whole was working.<sup>78</sup>

Recognizing these limitations, the Trust Fund embarked on an ambitious overhaul of its evaluation program.<sup>79</sup> The new performance monitoring plan seeks to improve both the consistency and quality of information captured in the quarterly reports while better aligning the evaluation indicators with the Trust Fund’s strategic goals.<sup>80</sup>

As such, the performance monitoring plan is intended to provide significantly more structure and guidance to implementing partners. Though it continues to track outputs, the Trust Fund strives to capture more of the overall outcomes associated with specific interventions. To this end, the Trust Fund hosted a gathering of all implementing partners in Kampala in July 2017, setting aside a week to discuss the best way to develop a standardized protocol to track progress towards the amorphous ultimate goals of physical and psychological “rehabilitation.”<sup>81</sup> In addition to the challenges of evaluating improvements in individuals, efforts to obtain an overall sense of the Trust Fund’s impact in the region are complicated by the enormous difficulties of ascertaining the full extent of the harms suffered. The Trust Fund’s willingness to struggle with

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<sup>77</sup> For example, knowing many people completed psychological programming (output) versus knowing the effect of such programming on individual well-being (impact).

<sup>78</sup> Interview with Participant A, in The Hague, Netherlands (June 21, 2017) (notes on file with authors).

<sup>79</sup> *Id.*; see also TRUST FUND FOR VICTIMS, TFFV STRATEGIC PLAN 2014-2017, Annex 1, Global Performance Monitoring and Evaluation Plan (2016) [hereinafter Strategic Plan] (on file with authors).

<sup>80</sup> Strategic Plan, *supra* note 79, Annex 1.

<sup>81</sup> TFFV Monitoring & Evaluation Conference, *supra* note 76.

translating amorphous ideals of healing and recovery into a standardized evaluation method that captures the contextualized impact of its work is commendable.

This research sought to ascertain how those involved in the mandate personally understood and evaluated their work. The goal of the interviews was to capture at a relatively intuitive level how those implementing the assistance mandate programming on the ground knew when their work was successful. As such, the indicators described in the subsequent section are generally ill-suited for inclusion in a standardized evaluation program. They are not presented with the goal that they could be directly incorporated into such a standardized protocol, but rather to provide additional perspectives on the assistance mandate. These indicators are presented in hopes of sparking a greater understanding of the elusive definition of a “successful assistance mandate,” as well as shaping international law discourses concerning the scope of implementation of reparations broadly defined.

1. The indicators should not be considered in isolation.

As in other post-conflict contexts, the complex nature of the harms inflicted in Northern Uganda means physical rehabilitation, for example, is never as simple as merely providing a person with an artificial limb.<sup>82</sup> While the goals of the assistance mandate are framed at the individual level, the scope of the trauma endured by the region demands significant work at the family, community, and national levels in order to provide meaningful, sustainable services to individuals.<sup>83</sup> Interviewees expressed an awareness of, and appreciation for, the multiple identities of each individual, explaining that remedying the harms suffered by individuals necessarily includes an examination of how those harms have impacted an individual’s identity as a relative or community member as well as that individual’s personal well-being.<sup>84</sup> The

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<sup>82</sup> Interview with Participant K, in Gulu, Uganda (June 30, 2017) (“First of all, you know, when we talk about ‘restore hope,’ the limb alone cannot restore hope. That’s why there’s importance in the talking aspect, the counseling aspect. And then we don’t end there.”) (transcript on file with authors).

<sup>83</sup> Interview with Participants E, F, & G, in Gulu, Uganda (June 29, 2017) (“So you give psychoeducation to the families as well, tell them the importance of their member of that family taking that medicine . . . Some of them initially, before—you know, if someone is not well informed, they don’t have the awareness for something, they don’t value it. So when you—you do work. You tell them the benefits of them supporting that member to take that medicine [and then] it comes easier for them to support them.”) (Participant F speaking) (transcript on file with authors).

<sup>84</sup> *Id.* (“[R]emember, when you’re not psychologically okay it affects you in a lot of ways. Relationships within your family, your household. With the community . . . Because if you’re not

importance of this multilevel perspective is particularly pronounced in light of the heavy stigmas associated with past experiences of forced abduction or sexual violence, as well as stigmas around mental illness or physical disabilities.<sup>85</sup> These dynamics present enormous complications for individual healing and reintegration into family and community life and must be addressed in order to see quality of life improvement and, ideally, some forms of healing.

This ecological understanding of the harms suffered during the conflict is why implementing partners make their initial outreach at the community level, via the sensitization conversations.<sup>86</sup> These conversations are a critical first step towards future work with individuals as the psychoeducational content serves the twin goals of helping individuals identify trauma symptoms in themselves while simultaneously educating other community members about the realities of the often-stigmatized conflict experiences. The implementing partners see the necessity—even from this initial interaction—in speaking to both individuals and the broader community.<sup>87</sup> As described more fully in the review of the indicators of success below, both the TFV and implementing partners see success at the individual level as necessarily requiring success at other levels of work. Though this analysis presents the derived indicators divided by level of intervention, their interdependence should not be underestimated. The same is true for the discrete indicators *within* each level of work: success on one indicator often prompts improvements on others.

### C. Indicators of Success in Individuals

Interviewees described a variety of changes they saw in individual beneficiaries when their programming was working well. As is the case with all

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better, you can't take care of yourself, you can't take care of your family, you can't live well in the community.").

<sup>85</sup> See generally SEXUAL VIOLENCE IN CONFLICT ZONES: FROM THE ANCIENT WORLD TO THE ERA OF HUMAN RIGHTS (Elizabeth D. Heinemann ed., 2011); Press Release, Security Council, Security Council Presidential Statement Condemns Sexual Violence in Conflict, Post-Conflict Situations, Urges Complete, Immediate Cessation of Such Acts, U.N. Press Release SC/10555 (Feb. 23, 2012), <http://perma.cc/Z7UF-X4W8>.

<sup>86</sup> Interview with Participant K, *supra* note 82 (“[W]e also do what we call a community dialogue, community sensitization. We realized that before Trust Fund intervened in the past years, [a] majority of our beneficiaries were living in stigma . . . So we mobilize community members, some of our beneficiaries and we talk about the project. We talk about TFV, we introduce TFV, what they do, and how we do our selection and who can benefit and what service we are there to provide.”).

<sup>87</sup> Interview with Participants U & V, in Gulu, Uganda (July 13, 2017) (“Stigmatization is one of the psychological challenges that people are mentioning. If you follow our client’s files, it is so rampant. But we also do address it. We do address it at all these levels, we address at the [community] sensitization level.”) (Participant U speaking) (transcript on file with authors).



levels of work, these indicators of individual success range from relatively concrete to somewhat abstract. Interviewees indicated they generally knew their rehabilitative programming was working well when individual beneficiaries were able to:

- Connect with others. Many interviewees described beneficiaries as living in physical or social isolation from others prior to the TFV interventions, a common reaction to trauma.<sup>88</sup> As the assistance mandate programming took hold, interviewees saw people taking steps to reduce their isolation and actively seeking to rebuild relationships with relatives and the broader community.<sup>89</sup> Interviewees also noticed a change in how beneficiaries communicated with NGO staff; for example, making more eye contact and engaging in conversation willingly. For many beneficiaries, this increased openness included a new ability to disclose experiences from the conflict that the beneficiaries had previously been unable to share with others.<sup>90</sup>
- Participate in economic activity. Though the current assistance program does not focus on material assistance, several projects (TPO and GWED-G) contained positive and sustainable livelihood aspects such as VSLA. Many interviewees reported that they knew a beneficiary had made significant improvements when he or she was able to begin working. More than its economic benefits, work was described as a dignifying experience. It was also a particularly positive force in decreasing the experience of stigma; a person's ability to engage in productive work defied the stigmatizing narrative and earned the person respect.<sup>91</sup>
- Accept themselves and their past experiences. Self-acceptance was an important indicator of success because the prevalent stigmatization of

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<sup>88</sup> See Jill Stauffer, *Introduction*, in *ETHICAL LONELINESS: THE INJUSTICE OF NOT BEING HEARD* 1 (2018) (discussing the problem of ethical loneliness, “the isolation one feels when one, as a violated person or as one member of a persecuted group, has been abandoned by humanity, or by those who have power over one’s life’s possibilities.”).

<sup>89</sup> Interview with Participant J, in Gulu, Uganda (June 30, 2017) (“So that’s the change we see. Someone who we saw miserably there, almost not liking to see people. You bring him here, you go back and find him laughing, chatting with the colleagues.”) (transcript on file with authors).

<sup>90</sup> Interview with Participant I, in Gulu, Uganda (June 29, 2017) (“And I have had clients who—I will never forget it, had just a terrible rape story and she’s crying, crying, crying, and in the end she says ‘I have never in twenty-four years told anyone this. No one knows this. Twenty-four years! Not her parents, not her husband, not her family, not her friends. No one.’”) (transcript on file with authors).

<sup>91</sup> Interview with Participant J, *supra* note 89 (“And now [he] starts something small which earns him money. He’s a changed person . . . That’s where the community will accept, say ‘Oh, this man or this woman has value.’”).

those with mental illness, disabilities, or abduction histories often includes significant internalized stigmatization.<sup>92</sup> As beneficiaries learned more about mental illness or the involuntariness of the abductions, for example, they were increasingly able to accept themselves and their past experiences. This change helped beneficiaries stop blaming themselves for the harms they experienced and increased their willingness to accept the services offered by the assistance mandate.<sup>93</sup> In many cases, this new self-acceptance helped beneficiaries take on more leadership roles or speak publicly about what they experienced.<sup>94</sup>

- Feel a restored sense of hope. One significant indicator of successful programming was a renewed belief among beneficiaries that there were still things worth living for and a lessening of the general sense of hopelessness lingering since the conflict.<sup>95</sup> Interviewees routinely described how people who had previously seemed “stuck” in the past began to plan for the future. This reemergence of hopefulness was also expressed as a growing belief that something could be done to alleviate the physical and psychological pain with which they had been living—that there was a possibility of improving and it was worth a try.<sup>96</sup>
- Increase their use of healthy coping mechanisms. The success of the assistance mandate is also evidenced by a change in how beneficiaries handled stressful situations. Many interviewees pointed to people’s ability and willingness to use skills in self-regulation (for example, breathing exercises) that they learned in CBT groups. Beneficiaries reported that they were able to stay calm in emotionally charged

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<sup>92</sup> Interview with Participant R, in Gulu, Uganda (July 10, 2017) (“In the beginning . . . the person he might first of all stigmatize himself.”) (transcript on file with authors); Interview with Participant K, *supra* note 82 (“More especially the fact that the persons, our beneficiaries were not just *born* with this disability. You know? You are not born with disability. And they—themselves, is not very easy to accept that ‘Now, I am the way I am.’”).

<sup>93</sup> Interview with Participants U & V, *supra* note 87 (“After sharing with them, [you can see] their eyes. They can begin to imagine: ‘Oh, I was not—I never intended—I was forced to do it—I was abducted.’ So after that they will come to have self-confidence that ‘[i]t was not my fault.’”) (transcript on file with authors).

<sup>94</sup> Interview with Participant B, in The Hague, Netherlands (June 23, 2017) (“You have these big community meetings under the mango tree and everything. These people come forward and talk about themselves. They would never do that if they were still in that position of being a victim, being stigmatized, everything. They would never do that.”) (transcript on file with authors).

<sup>95</sup> Interview with Participant S, in Gulu, Uganda (July 10, 2017) (“We had war. People just completely lost hope, completely. What I look at as something very important, as value: people’s hope is coming back gradually.”) (transcript on file with authors).

<sup>96</sup> Interview with Participant I, *supra* note 90 (“They’re not alone and [they] see ‘okay, this is something that I’m having, it’s not that I’m crazy, but this is something and there’s a solution for it.’”).

situations and were able to use dialogue to resolve conflicts and difficulty rather than violence.<sup>97</sup>

- Experience fewer/lesser symptoms of mental illness. In addition to the indicators described above, interviewees felt that reduced symptoms of mental illness—primarily symptoms of post-traumatic stress disorder and major depressive disorder—was a key indicator of success. For example, many interviewees observed improvements in personal hygiene, mental clarity, and focus among beneficiaries.<sup>98</sup> They noted decreases in the incidence of suicidal thoughts, nightmares, and somatic symptoms. Many noticed a reduction in substance abuse, which in most cases was considered a response to unresolved war trauma.
- Improve their physical health. For those implementing partners providing physical rehabilitation, a key indicator of success in program delivery was improvements in physical health. Interviewees noted a range of improvements, from increased mobility after the receipt of a prosthetic limb to reduced pain from bullet-removal surgeries. In most cases, these positive indicators led to an overall increase in a person's day-to-day functionality and often a corresponding improvement in mental health.

#### D. Indicators of Success in Families

As presented by the interviewees, the following were common themes that emerged from the interviews in response to the question: what does it look like when rehabilitative programming is working well for families? Interviewees indicated they generally knew their rehabilitative programming was working well when they observed:

- Decreased stigma within families. Prior to the interventions of the assistance mandate, the stigmas associated with sexual violence, previous experiences of abduction, and/or mental illness were a significant source of family tensions for many beneficiaries.<sup>99</sup> One

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<sup>97</sup> Interview with Participant H, in Gulu, Uganda (June 29, 2017) (“They have been able to know how to cope up with, like: ‘[When] I’m called an LRA, I know how to handle such, I know how to take it.’”) (transcript on file with authors).

<sup>98</sup> Interview with Participants X & Y, in Gulu, Uganda (July 13, 2017) (“[At the start] they are so controlled and they are not able to—they are not able to relax . . . So afterwards you find that they are able to shift, to be flexible, to move. And even the skin has changed, the hygiene.”) (Participant Y speaking) (transcript on file with authors).

<sup>99</sup> Stigma for survivors of conflict-related sexual violence remains an (often) insurmountable obstacle to reintegration and rehabilitation. See generally Jocelyn Kelly et. al., *Rejection, Acceptance and the Spectrum Between: Understanding Male Attitudes and Experiences Towards Conflict-Related Sexual Violence in Eastern Democratic Republic of Congo*, 17 BNC WOMEN’S HEALTH 1 (2017).

indicator of success for families was reduced stigma between family members and an understanding that, notwithstanding the beneficiary's experiences, he or she was still part of the family. In some cases, this decreased stigmatization was evidenced by family members who had previously been unwilling to provide at-home care to beneficiaries becoming more accountable for the well-being of their relatives. Others reported seeing the family return to treating the beneficiary as they would other family members.<sup>100</sup>

- Improved family relationships. Many interviewees described general improvements in the relationships among family members, including an increase in the use of conversations or family meetings to resolve conflicts instead of fighting.<sup>101</sup> In some cases, interviewees observed beneficiaries directly teaching their relatives the coping skills learned in CBT that the beneficiaries had found especially useful.<sup>102</sup> These improvements were particularly evident in parent-child dynamics. As the parent-beneficiary improved his or her individual well-being he or she enjoyed increased parenting capacity and stronger relationships with his or her children.<sup>103</sup>
- Reconciliation of spouses. One indicator of successful programming was the desire of previously separated spouses to reconcile.<sup>104</sup> Multiple interviewees described how many husbands or wives had left their spouses when the demands of caring for them became too great or when they felt they could no longer maintain a relationship with them. Interviewees felt the impact of the assistance mandate programming on family relationships was evident where these spouses indicated a desire to reconcile after seeing changes in their former partners.<sup>105</sup> We

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<sup>100</sup> Interview with Participant K, *supra* note 82 (“A lot of our principles we employ . . . even in the families, we reinforce that this child should be taken care of just like any other person in this family. You don’t even want to overprotect . . . Normally. Treat normally.”).

<sup>101</sup> Interview with Participant Y, *supra* note 98 (“Some of them go and they come and tell us: ‘I had an issue with my son, I sat him down and talked to him—and this is what I never used to do.’ [Or] ‘I was able to contain this argument and not fight and this is what would never happen.’”).

<sup>102</sup> *Id.* (“With the information, the knowledge, and the skills that they have got through the therapy, they’re able to give it out to other people, [saying] ‘We went and did the exercises with our children, and they were so excited.’”).

<sup>103</sup> Interview with Participant F, *supra* note 83 (“You find that their impact is coming even to the children. The children are living happily, they are all going to school. They are having, enjoying family.”).

<sup>104</sup> *Id.* (“As I talk now, all of their women have come back because [their men] are now doing well—they’ve got treatment and their life is going on.”).

<sup>105</sup> Interview with Participant H, *supra* note 97 (“In her new home, people have accepted now what happened. The challenge she’s having is that her former husband wants her back with the

acknowledge that longer-term assessment would be needed to qualify the substance and durability of such reconciliations and the reduction of sexual and gender-based violence over the long haul, given the pernicious effects of trauma on relationship stability and family life over a lifetime.

- Increase in economic power. Interviewees noted the improved economic power of families as one indicator of success at the family level, which was usually the result of a beneficiary being able to return to work.<sup>106</sup> In addition to the pragmatic benefits of higher incomes, greater economic power was seen as improving family relations as the additional income reduced stress and increased respect for the contributing family members.<sup>107</sup> Increased economic power also helped the family provide their children educational opportunities, a point of pride and a demonstration of a functional family unit that was one of the most commonly noted indicators of success among interviewees.

#### E. Indicators of Success in Communities

As presented by the interviewees, the following were common themes that emerged from the responses to the question: what does it look like when rehabilitative programming is working well for communities? Interviewees indicated they generally knew their rehabilitative programming was working well when they observed:

- A culture of togetherness: One key indicator of community-level improvement was a change in the overall culture of the community. Specifically, interviewees described how they saw community sensitization and group dialogues carried out as part of the assistance mandate transform the practices and mindset of the community by promoting reconciliation and togetherness rather than conflict and division.<sup>108</sup> The lessening of stigmas and the reacceptance of beneficiaries were important elements of this change. Community members began

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children. So, we have had this where the husband comes and tells us that ‘What you people did with my wife, I’m so grateful, but if you could also help me get her back.’”)

<sup>106</sup> Interview with Participant Q, in Gulu, Uganda (July 10, 2017) (“[The] individual, when somebody is treated, he gains his ability to do the normal work and the income is raised and it—the family becomes happy, so there is union, family unity.”) (transcript on file with authors).

<sup>107</sup> Interview with Participant E, *supra* note 83 (“Because [before] you can’t even participate in economic activity. And in a way, humanly, your husband may look at you as if you are lazy.”).

<sup>108</sup> Interview with Participant D, in Gulu, Uganda (June 28, 2017) (“One thing was first to change the attitude of the community. So instead of going for violence, say ‘Let us calm down, see other aspects of development, and maintain humanity.’ That was quite hard.”) (transcript on file with authors).

perceiving beneficiaries as *part* of their community, rather than as dangerous or worthless people who should be kept separate.<sup>109</sup> In another context, interviewees observed community members turning to dialogue grounded in mutual respect to resolve current land conflicts.<sup>110</sup>

- Supportive communities: In addition to changes in the general culture, interviewees also described examples of community members helping each other out as evidence of success.<sup>111</sup> Often building off of the therapy groups or VSLA networks cultivated as part of the assistance mandate, interviewees saw people taking care of each other and reaching out to support their neighbors with both economic and emotional support.<sup>112</sup>

## F. Indicators of Success in Implementing Partners

Though this was not a specific question asked of interviewees, many described indicators of success related to the leadership and capacity of the implementing partners themselves. As described in the following indicators, a successful assistance mandate thus strengthens the capacity of local organizations to provide long-term leadership and services in their communities. In fragmented post-conflict societies, where governance capacity is often limited, this form of capacity building supports and enables civil society—an important dimension of conflict prevention in the short, medium, and long-term.<sup>113</sup>

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<sup>109</sup> *Id.* (“Yes, the community must accept: that one is still a part of them.”); Interview with Participant B, *supra* note 94 (“[I]n these types of crimes which are mass crimes, crimes against humanity, war crimes, there’s always individual harm you can’t escape that, but the harm transcends also the individual level. It really affects—and that’s often the purpose of these crimes—to break down family, to break down communities, to really destroy the enemy in this way also.”).

<sup>110</sup> Interview with Participant S, *supra* note 95 (“You cannot conflict over land when you’re in the same group.”).

<sup>111</sup> Interview with Participant E, *supra* note 83 (“They are now joining hands together to support one another. And I’m happy that they’re not only supporting the members in the group, they’re even supporting the needy people which are not there within the group.”).

<sup>112</sup> Interview with Participant O, in Gulu, Uganda (July 10, 2017) (“Right now when we receive phone calls from our [community] network it’s that: ‘Somebody’s been raped but we reported the case to police and we have also made sure they are following up with the survivor.’ It’s different than when there were people in front of our gate [and] they came [to us] because somebody is raped.”) (transcript on file with authors); Interview with Participant H, *supra* note 97 (“[O]ne of the CBT groups—they’re like: ‘We identified some members and they have been getting medication, we have been basing on the knowledge and the counseling we have gotten from you people, through the CBT session, we have started also meeting them on a weekly basis. And also trying to deliver this information and the knowledge that you people guided us.”).

<sup>113</sup> Hugh Miall, *Conflict Transformation: A Multi-Dimensional Task*, BERGHOF RESEARCH CENTER FOR CONSTRUCTIVE CONFLICT MANAGEMENT (Aug. 2004), <http://perma.cc/M8XK-NREK>.

- Implementing partners seen as trusted leaders: Interviewees described a variety of ways the implementing partners have taken on leadership roles in the region, speaking to the credibility of the organizations and the efficacy of their programming. For example, other nonprofits routinely reach out to the implementing partners when they need help mobilizing people for their own programming.<sup>114</sup> CVT holds a unique role as an implementing partner that explicitly focuses on capacity-building, but other implementing partners reported that they were also asked to provide trainings to other NGOs and government entities. Relatedly, individual beneficiaries often approach implementing partners for referrals to organizations that meet needs which fall outside the scope of the assistance mandate, demonstrating the trust built between implementing partners and local communities.<sup>115</sup>
- Increasing professionalization of implementing partners: Through partnership with the TFV, some implementing partners reported increased capabilities in evaluation, financial auditing, and organizational skills.<sup>116</sup> This professionalization of implementing partners is critical for providing services sustainably, not only because it strengthens civil society, but also because it ensures the effective use of resources.<sup>117</sup>

## G. Indicators of Success in Government

As with the indicators relating to implementing partners, this was not a specific question asked of interviewees. However, the importance of government empowerment and accountability emerged as a common theme in the responses regarding requirements for the sustainable success of the

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<sup>114</sup> Interview with Participant F, *supra* note 83 (“When some people now want to meet, meet the members in the field, they will ask you: ‘When is TPO organizing something?’ Because they know [with] TPO, you’ll get the community.”).

<sup>115</sup> Interview with Participant R, *supra* note 92 (“You become more of a point of reference and you find that people feel your presence. And if you are sometimes not there they will say—like, today if I was here, you will see people [elsewhere] calling saying ‘Tomorrow, we need to come for referral.’”).

<sup>116</sup> Interview with Participant B, *supra* note 94 (“It’s the same with these smaller organizations, we invest in these small organizations which really hinge on the energy and drive of certain individuals. But if they don’t evolve into organizations that actually can carry that as an organization, rather than just to be driven by the energy [it will not work for the assistance mandate].”).

<sup>117</sup> *Id.* (“Now to go from one-year contracts, but to have multiyear contracts and partnerships that last beyond, some lasted even seven years . . . They evolve with us and we are building their capacity also to do things that they never were able to do so before so that was, I think, a very important element of what we are doing in the assistance mandate.”).

assistance mandate.<sup>118</sup> Long-term programmatic success depends on the ability of the Ugandan government to provide funding or services similar to those currently provided by the TFV.<sup>119</sup> As such, a successful assistance mandate fosters accountability and builds capacity in the government during its operation—rather than allowing its presence to displace the government’s sense of responsibility to its citizens.<sup>120</sup> We acknowledge that this is a complex line to draw, not least because the assessment of governmental capacity is deeply contested and displacement itself is hard to measure given the high level of governmental paralysis, corruption, and ineffectiveness. Nevertheless, the main takeaway from this indicator is the importance of implementing partners being aware of the problems of displacement and proceeding with caution to prevent the abdication of state responsibilities.

#### IV. STRENGTHS OF THE ASSISTANCE MANDATE

In addition to questions regarding the indicators of a successful assistance mandate, interviewees were asked questions about the strengths and challenges of the current assistance mandate program. The strengths described below were identified most often as key elements contributing to the overall success of the assistance mandate. Given the distinct roles of the TFV and the implementing partners, this Section will divide the responses into two sections: strengths related to the Trust Fund and strengths related to the implementing partners. However, the partnership model of the assistance mandate means that the

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<sup>118</sup> Interview with Participant P, in Gulu, Uganda (July 10, 2017) (“We keep also bringing in the aspect that the government is responsible to provide services for war victims.”) (transcript on file with authors).

<sup>119</sup> Interview with Participant B, *supra* note 94. (“[W]e will never be able as a fund to reach all of these victims, but we do have a responsibility of advocacy and to advocate with the government. Not necessarily to have reparations programs, but really to strengthen your line ministries. Your ministry of health, your ministry of education, to have them build the capacity to address these issues in the long term.”).

<sup>120</sup> Interview with Participant Q, *supra* note 106 (“Then our other role is to explain to the local authorities what the project is doing so that they also understand. Because we are complementing the effort of the local government. Therefore, they play a big role, and we also play a big role. We want the project to be owned by them so we must also support and help them.”); Interview with Participant O, *supra* note 112 (“[W]e want to ensure that people are able to direct what they really want and sustain, scale up, you know, and begin to make demands for government to fix the gaps in programming. And that’s why last time when the ICC President came and we went to the field together with the TFV Board, the beneficiaries talked so strongly and they said ‘See what the ICC is giving us.’ There’s a guy who got up and said: ‘They spend over 30 million shillings on my hip relocation but I asked myself what if TFV is not there? This is supposed to be given by government.’ And then to the government officials that were there, the beneficiary got up and said: ‘What have you done so far in this program?’”).



strengths of the implementing partners routinely inform the strengths of the Trust Fund and vice versa.

### A. Strengths Related to the Trust Fund

1. The design and unique services of the TFV's program as well as the TFV's long-term presence in Northern Uganda contribute to its success as a reparative program.

The core strength of the Trust Fund's assistance mandate work in Northern Uganda is the unique and effective design of its program. That design involves an iterative process of engagement by TFV staff with local interlocutors to better respond to the needs and challenges of the local people.<sup>121</sup> The TFV stressed the capacity of its design and implementation to evolve and be responsive to local challenges, needs, and experiences. Interviewees from both the TFV and the implementing partners agree that the assistance mandate fills a major gap by providing services that would not otherwise exist in the region.<sup>122</sup>

With respect to timing, the assistance mandate funding entered the region at the close of the conflict before significant development work began and when the vast majority of international aid agencies were starting to leave.<sup>123</sup> Thus, the assistance mandate occupied a unique space between humanitarian/emergency response organizations and development agencies. The implementing partners noted the importance of the timely entry of the assistance mandate funding as the departure of other donors had many worried that they would have to cease their operations. While this finding is specific to Northern Uganda, the pattern of agency departure is similar across post-conflict transition sites, affirming the potential importance of the Trust Fund's intermediate role in multiple sites. Relatedly, the Trust Fund's relatively long-term presence in the region has contributed greatly to its success because the length of time required to build relationships with communities is necessary to deliver truly rehabilitative programming.

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<sup>121</sup> Interview with Participant M, in Kampala, Uganda (July 5, 2017) (“The desk review [of a planned assistance mandate] has to be substantiated by firsthand information, so this is where the field mission/assessment . . . takes place . . . We come up with a mission plan, we try to develop local contacts . . . meetings take place with government, with local NGOs, with victims’ associations, victim’s groups, with anybody who has been involved.”) (transcript on file with authors).

<sup>122</sup> Interview with Participant T in Gulu, Uganda (July 11, 2017) (describing the TFV focus on holistic mental health programming as unique in Uganda) (notes on file with authors); Interview with Participant N, in Kampala, Uganda (July 7, 2017) (notes on file with authors).

<sup>123</sup> Interview with Participant J, *supra* note 89 (“By the time TFV came to give us support, other donor friends, they had left because the war had ended. So when the war ended, there were little resources to run the workshop. It was almost on the verge of collapsing.”).

The success of the assistance mandate also relies on the unique services it provides. The assistance mandate is rehabilitative in nature and operates from a perspective of remedying a *harm* rather than addressing a need.<sup>124</sup> This foundational difference ensures that services focus on addressing the root causes of the suffering experienced by beneficiaries. Implementing partners described this focus as significantly more effective than the focus of other needs-based programs.<sup>125</sup> For example, one interviewee described the limitations of previous funding which focused on improving school attendance rates for children but did not address any of the underlying harms causing the absenteeism. When the assistance mandate arrived, the implementing partners were able to focus on remedying the physical and psychological effects of the conflict which they viewed as the “real” problem.<sup>126</sup> Indeed, the assistance mandate’s implementing partners are still among the very few organizations in the region that offer this kind of conflict-focused rehabilitative service.<sup>127</sup>

The importance of a focus on remedying harms was also emphasized by many other interviewees, who described the pointlessness of providing aid or job training without first addressing the lingering impact of the conflict.<sup>128</sup> Overall, the interviewees agreed that the assistance mandate is delivering the right services at the right time and is an effective reparative program.

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<sup>124</sup> Telephone Interview with Participant M (July 20, 2017) (“But in asking questions, we do not approach the question from the perspective of the *need*, but of the *harm*. We are not asking ‘What are your needs?’ We are looking at their harm. And this already allows you to place a conversation . . . in a different perspective. I’m not looking at what you need. I’m looking at what you suffered. And based on what you suffered, we can build up a program.”) (transcript on file with authors).

<sup>125</sup> Interview with Participant B, *supra* note 94 (“[T]he assistance mandate, even if it’s not reparations—judicial reparations—per se, it does have a reparative purpose . . . it really fits within the Rome Statute but it sets us apart also [from] more generic humanitarian and development aid, post-conflict development that you might see.”).

<sup>126</sup> Interview with Participants E, F, & G, *supra* note 83 (Participant G speaking).

<sup>127</sup> Interview with Participant I, *supra* note 90 (“[O]ne thing that I think is important to note is that TFV is also one—I don’t want to say only, because I don’t know all the donors—but one of the fewer donors that actually provides money in really just this. Because they are really focused on rehabilitation in a psychological sense and I think that’s very good. And it’s always difficult to get it together: what donors can offer and what on the ground is needed. There always needs to be restrictions which is extremely hard . . . TFV is a very remarkable donor. It’s a very good fund.”).

<sup>128</sup> Interview with Participant H, *supra* note 97 (“[I]f you haven’t sorted out my mental problem and you give me animals to keep—definitely I will slaughter them! But people are taken through CBT, they [sic] know ‘This is our group’s thing, it helps us. This is how we should live.’ The person has been healed psychologically, the person has been healed mentally. Now they have this approach, knowing: ‘This is what I should do.’”).

2. The collaborative nature of the Trust Fund allows it to evolve and expand its operations.

The collaborative nature of the Trust Fund's operational engagement is a foundational strength for the assistance mandate. From the beginning of the assistance mandate program, the Trust Fund has relied on the knowledge and the input from affected communities in designing its program, resulting in the strong design of the Uganda assistance mandate.<sup>129</sup> That collaborative and participatory approach is a model of best practice, one to be emulated in other instances of national level implementation of reparations and support to victim survivors. The design was also aided by the broad scope of the assistance mandate, which allows the Trust Fund significantly more latitude than, for example, designing mechanisms for reparations programs which must be responsive to particular convictions.<sup>130</sup>

Due to its collaborative nature, the Trust Fund has been able to make improvements and course corrections as needed over the years based on feedback from the implementing partners.<sup>131</sup> The Trust Fund was also collaborative in its approach to the TFV monitoring and evaluation program. For example, in July 2017, the Trust Fund convened a multiday workshop for all implementing partners in Northern Uganda to request input on the proposed evaluation monitoring plan and to involve the partners in the development of the details of the plan.<sup>132</sup>

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<sup>129</sup> Interview with Participant N, *supra* note 122; ICC, TRUST FUND FOR VICTIMS (TFV) BACKGROUND SUMMARY (Aug. 2008), <http://perma.cc/PY23-4H4A>. *See also* TFV Strategic Plan 2014-2017, *supra* note 79.

<sup>130</sup> Interview with Participant C, in The Hague, Netherlands (June 23, 2017) (“[The assistance mandate] allows for a much more broad [sic] intervention, rather than a piecemeal and very limited intervention . . . I’ll give you *Lubanga* [reparations] as an example . . . in terms of what the conflict was about you have all types of ethnic divisions, you have a great deal of societal cohesion falling apart. But Mr. Lubanga was convicted of recruiting child soldiers. Period. And that means in terms of peacebuilding exercises, in terms of community reconciliation about the conflict that he was obviously a part of, that can only occur under the assistance mandate.”) (transcript on file with authors).

<sup>131</sup> Interview with Participant Z, in Gulu, Uganda (July 13, 2017) (“[E]very time TFV has—Scott, specifically, been great on believing and supporting. Whatever I was moving, TFV was supporting . . . they’ve been very supportive and so much trust in our work. And so that’s how we are continuing developing. Trying to do every time better.”) (transcript on file with authors).

<sup>132</sup> Interview with Participant M, *supra* note 121 (“[W]e work with victims—with them and for them and the ‘with them’ I want to stress it because it’s not something that’s designed in an artificial setting in the Hague where we think. We do what we must do with this and we invest funds to bring up the capacity and build the capacity to have these possibilities like you are seeing this week, for implementing partners to come together to discuss among themselves. This place, also along the lines of sustainability, we won’t be around forever and then these organizations, if they can benefit from anything from us and then develop their own links among themselves, then it’s

This collaborative mindset has also strengthened the relationships of implementing partners whose contacts were not necessarily formalized before the assistance mandate.<sup>133</sup> Many interviewees greatly appreciated the professional support<sup>134</sup> and networking opportunities they received from other implementing partners. In this way, the Trust Fund plays a role in convening a network of organizations that together made a collective impact in the region.<sup>135</sup> While the scale of this effect requires measuring the development of such relationships, particularly in a highly fragmented and dysfunctional political context, it underscores the downstream positive benefits of local-international relationships that are genuinely committed to dialogue and collective work.

The Trust Fund's focus on working with partner organizations to strengthen capacity-building is another example of its collaborative nature.<sup>136</sup> The Trust Fund seems to be careful when selecting its implementing partners, prioritizing (among other factors) the organization's proven track record of success in the region, expressly avoiding work with "suitcase" NGOs or those with insufficient ties to the region.<sup>137</sup> Though many implementing partners are

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good. Then we'll leave and we'll leave knowing that we've left behind something that can make a difference.").

<sup>133</sup> Interview with Participant B, *supra* note 94 ("So that's the kind of thinking that's going into the selection. You need to build—you know, these organizations they know each other. It's a small world. So use that. Use that and not have them siloed in contracts but use the capability.").

<sup>134</sup> Examples of professional support included shared trainings or supervision sessions. Interview with Participant I, *supra* note 90 ("CVT is actually, of course, also mental health so we work closely with them. Our social workers are actually right now getting a training from their staff.").

<sup>135</sup> Interview with Participant B, *supra* note 94 ("You're using all kinds of qualities [among the implementing partners] that are complementary that really—you have a network of which the outcome is bigger than the components you have inside.").

<sup>136</sup> Telephone Interview with Participant M, *supra* note 124 ("During the workshop in Kampala they mentioned, I don't remember who, but they said 'You know, most of these agencies whether it's the UN or big international organizations that give money, they fund organizations, they're not interested in doing that much of in-depth work with implementing partners.' They have money, they need somebody on the ground to implement some projects. They sign a contract, they give it, they perform a little evaluation afterwards and that's it.").

<sup>137</sup> *Id.* ("[The Trust Fund] work[s] with implementing partners that are based—if they are not local, like originally from the country, they must have been based there for a number of years that allows them to have knowledge of the situation where they work and this criteria has always been there."); Interview with Participant N, *supra* note 122; *see also* Prosecutor v. Lubanga, Case No. ICC-01/04-01/06-3177, Annex A: Trust Fund for Victims Draft Implementation Plan for Collective Reparations to Victims (Mar. 3, 2015); *See also* Prosecutor v. Lubanga, Case No. ICC-01/04-01/06-3273, Annex A: (Draft) SCOPE OF WORK Collective Reparations Projects in Relation to the Conviction of Thomas Lubanga Dyilo Before the International Criminal Court, 20–21 (Feb. 13, 2017) (describing the three documents that potential applicant organizations in the DRC must provide in response to an RFP: 1. NGO registration in the country, 2. At least two years of work and two projects showing relevant work experience in the country, and 3. A recent audit report of the organization).

already highly professional organizations, the Trust Fund is willing to help smaller, community-based organizations to further build their operations.<sup>138</sup> Ensuring the Trust Fund is collaborating with professional organizations capable of, for example, passing audits and meeting grant reporting requirements is important for the Trust Fund's own accountability and it is also relevant to the longevity of the implementing partners. The neglect of the northern region of Uganda by the national government means any available funding in the short-term is likely to come from international sources (and that connection to international sources remains precarious and subject to a multitude of external factors). When the Trust Fund helps implementing partners improve their organizational capacity, it also expands their capacity to seek out other grants and thus to ensure their survival when the assistance mandate comes to a close. For example, a current implementing partner—Gulu Women's Economic Development and Globalization (GWED-G)—began its relationship as a subgrantee of a different implementing partner. As its organizational capacity improved, GWED-G was eventually able to apply for assistance mandate funding in its own right; it has since become a large nonprofit that has successfully attracted several international donations and expanded its services.<sup>139</sup>

## B. Strengths Related to the Implementing Partners

1. The basis of the implementing partners' strengths is the trust they establish with the community.

Without exception, the implementing partners all stated that they prioritized building trust with the communities in which they worked and saw this as a fundamental prerequisite to successfully carrying out their program.<sup>140</sup>

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<sup>138</sup> Interview with Participant Q, *supra* note 106 (“[The TFV-funded project] saw us doing the work very well, they gave us the trainings in every aspect. Resource mobilization, resource management, financial accountability, leadership, all of it. They really built our capacity . . . We started with a small amount and every year it doubled. So from three subcounties, we are now in 18 subcounties, which means we are in four districts.”).

<sup>139</sup> Interview with Participant O, *supra* note 112 (“[W]e started partnering with [a different nonprofit], to implement the TFV projects because we had registered a huge number of people who needed corrective surgery, psychosocial redress, they needed some activity that promotes a peaceful coexistence, environment in their own community. So after doing [that] project for some time we realized our potential working with war victims. Then when TFV advertised we decided ‘let's go alone.’ So that's how now we are direct partner.”).

<sup>140</sup> Interview with Participants E, F, & G, *supra* note 83 (“Working with [volunteers in the villages] makes it easier for you to enter into a certain community. Because when you go to a community for the first time, they don't know you. And the first thing will be that they will first resist. Remember, mental health generally is a taboo in African traditional society. People don't like being open about mental illness. But working with the [volunteers] . . . it becomes a bit easier for us to reach the communities.”) (Participant F speaking).

Building this trust is critically important in the context of Northern Uganda because of the widespread skepticism toward the primary services offered by the implementing partners: therapy and surgery. This skepticism is compounded by the deep stigma and shame surrounding issues of mental health, disability, sexual violence, and abduction during the conflict.<sup>141</sup> Additionally, interviewees mentioned that many people formed bad impressions of NGOs during the years of conflict and immediately afterwards;<sup>142</sup> the general belief was that NGOs made many promises but never delivered results.<sup>143</sup> NGO fatigue is a consistent feature of many post-conflict environments, compounding the challenges of post-conflict reconstruction in fragile, insecure, and economically devastated countries. For all these reasons, building trust with potential beneficiaries is a crucial first step toward program delivery. Additionally, it serves as a means to restore broader civil society capacity and maintain the possibility of more broadly-based reconstruction in partnership with local communities. Without trust, many people would not be willing to come forward and request services.<sup>144</sup>

Interviewees described four key factors that have helped them establish this trust. First, the vast majority of the implementing partners' staff are themselves Ugandans from the northern region.<sup>145</sup> The shared cultural background and language is highly valuable, and interviewees routinely noted that it gave them an inherent level of credibility and trust with the

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<sup>141</sup> Interview with Participant D, *supra* note 108 (“Some of them after they lose a limb, they don't want to come to GROW because they'll be exposed when they do the assessment. Some of them are saying ‘Why are you asking all of this, where I come from—why all of this?’”).

<sup>142</sup> See generally SÉVERINE AUTESSERRE, PEACELAND: CONFLICT RESOLUTION AND THE EVERYDAY POLITICS OF INTERNATIONAL INTERVENTIONS (2016) (discussing the impact that the practices of individual organization members can have on the effectiveness of reparative work).

<sup>143</sup> Interview with Participant R, *supra* note 92 (“[There were] the interventions that many others have been promising: ‘We shall work on you, victim.’ They say ‘Ah, just like those ones who have been talking to us but they failed, maybe you will also go for us and fail.’”).

<sup>144</sup> Interview with Participant V, *supra* note 87 (“Those who are more affected and those who are really perpetrators, they cannot easily trust. They have that doubt that ‘Are they going to use maybe this to either arrest me or to get more information about me?’ Because they know very much about ICC and the rest . . . they cannot easily open up freely. At least after building more trust then they can open up.”); Interview with Participant U, *supra* note 87 (“And the origin of this being a bit skeptical from the clients who are perpetrators is about the brainwashing that has taken place during captivity. You find such a person might have been in captivity for two years. And there the commanders and the LRA were brainwashing them of ‘Don't trust anyone, you go back home, even if you go back home they'll just deceive you for a while and then they arrest you, they kill you, all those.’”).

<sup>145</sup> Interview with Participant Q, *supra* note 106 (“[I]f people see their son and daughter working, doing the work, then they feel ‘This is, this son is telling me the truth.’”).

beneficiaries.<sup>146</sup> A key element of this approach is to avoid the insidious manifestation of neo-colonial power-relationships in humanitarian intervention settings. Moreover, there is increasing recognition that the wholesale importation of western therapeutic models to non-western post-conflict settings without awareness of adaptation to cultural variations is both insensitive and ill-fitting to the trauma and needs of local populations. Bespoke local interventions, spearheaded by locally trained experts is not only ethically and culturally appropriate but more likely to deliver sustained individual and community recovery in the long run.

In the context of the programming described here, the shared cultural background was particularly helpful when introducing new concepts like group therapy to the community. When possible, the staff participated in the daily lives of the communities in which they worked, for example attending funerals or spending time in the market to further develop rapport and trust with community members. Additionally, the implementing partners always collaborated with local leaders to facilitate their entry into the communities.<sup>147</sup>

Second, the results of the assistance mandate program are visible, which is particularly helpful in differentiating the TFV-funded projects from those of past NGOs.<sup>148</sup> As described in the preceding Section, many of the indicators of success in individuals are changes easily noticed by other members of the community: a renewed ability to participate in community life, an end to isolation, better hygiene and social skills, and new engagement in economic activity. These visible results lent credibility to the implementing partners' assertions that surgery and therapy worked, while distinguishing the assistance mandate from other programs where the results were never felt in the community.<sup>149</sup>

Third, the long-term presence of the implementing partners and the assistance mandate project in the region was universally mentioned as a valuable factor in building community trust. This was particularly true as the visible

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<sup>146</sup> Interview with Participant V, *supra* note 87 (“[W]hat motivates them so much for them to trust [us]—we model to them the experience that we underwent. So when ‘These people, they also experienced the same traumatic experience that we had. So we are now the same.’ So they can begin to open up easily.”).

<sup>147</sup> Interview with Participant Y, *supra* note 98 (“Actually, we begin by informing—like I said, we get a contact person or a facilitator or a community leader to inform the members.”).

<sup>148</sup> Interview with Participant K, *supra* note 82 (“I don't remember which district but there was a leader that commented: ‘AVSI, for us, we know how you do your work. You are not just people whose results of work is not seen. It is seen. Not like this where [they] say: ‘We are doing this, this, this, this—and you don't see.’”).

<sup>149</sup> Interview with Participant Q, *supra* note 106 (“You know why I like this project? Because it talks by itself. The result can be seen. Somebody has been in this condition. Now, from that condition, he is now like this. So there's no doubt about it.”).

changes of the first beneficiaries to complete the programming often encouraged previously hesitant members of the community to reach out for services themselves. The fact that the implementing partners did not depart from the region after conducting one cycle of therapy groups was critical in helping the Trust Fund reach some of the more reluctant—and often the most seriously affected—members of the community while demonstrating its genuine commitment to the region. Furthermore, the long-term investment allowed the development of sufficient trust to enable people to speak about particularly stigmatized topics. For example, one interviewee described how it took nearly two full years of outreach and sensitization work for people to begin coming forward for services related to sexual violence.<sup>150</sup>

Finally, interviewees highlighted the importance of managing the community's expectations when recruiting and explaining their program. This was particularly important when explaining the seemingly arbitrary eligibility criteria imposed by the Rome Statute. Because the Rome Statute took effect on July 1, 2002, the Court's jurisdiction (and thus the Trust Fund's programming) only covers harms occurring after that date, while the conflict in Northern Uganda began in the late 1980s. Moreover, differentiating the Trust Fund's work from that of the ICC was necessary for the Trust Fund to build relationships and establish its own *bona fides* with local communities as many expressed dissatisfaction with the pace and substance of international criminal justice.<sup>151</sup> Similarly, staff are very direct about the lack of financial assistance provided, emphasizing from the beginning that the only services the people will receive are physical and psychological services.<sup>152</sup> This honesty and transparency help avoid misunderstandings while building trust.

## 2. The effective outreach strategies of the implementing partners help build credibility with communities.

Effective outreach is critical to ensuring that the assistance mandate programming reaches the people it intends to serve. However, outreach is

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<sup>150</sup> Interview with Participant P, *supra* note 118 (“It takes a while! In year one—because we have just started now the third year of implementation—in year one, it wasn’t easy. To the extent that we even sat and said ‘Are these people there or not?’ [Now] we have a list of those who have now come up and registered with the subcounty based facilitator . . . and it is because of the intensive sensitization.”).

<sup>151</sup> Interview with Participant N, *supra* note 122; Interview with Participant V, *supra* note 87 (“[Beneficiaries who were perpetrators] know very much about the ICC . . . so they fear, ‘Could be that I was given letter of amnesty, are they going—I mean, are they trying maybe to bring us so they arrest me because of what I have been doing?’ So they have that fear.”).

<sup>152</sup> Interview with Participant Z, *supra* note 131 (“[Y]ou have to learn to say to the client, ‘I can see that you need for the school fees for your child, it's so important, so difficult for you. But I have to tell you, that at the end of our sessions, still you will be as poor economically as we started.’”).



complicated by the stigma and general skepticism of the services offered as well as the challenges posed by the restrictive eligibility criteria of the Rome Statute. In response, the implementing partners have learned to use a variety of strategies to effectively spread the word about their work. Many of these strategies, described below, serve to build credibility via partnerships with local leaders and mitigate the “outsider” status of the implementing partners.

- Collaboration with previous beneficiaries: The most effective messengers in sharing information about the programming were often previous beneficiaries who had positive experiences with the assistance mandate. In many instances, this word of mouth recruiting happened spontaneously, unprompted by the implementing partners.<sup>153</sup> This collaboration was particularly helpful in dispelling some of the skepticism and stigma regarding the programs offered.<sup>154</sup>
- Coordination with local government: All implementing partners prioritized building relationships with local government leaders, relying on them to convey their messages. In particular, implementing partners often partnered with leaders at the Local Council 1 (“LC1”) level, a highly local level of the government. The LC1s are expected to have relationships with all their constituents and thus could provide insights about potential beneficiaries and pre-existing relationships that were critical in mobilizing people to attend outreach sessions.<sup>155</sup> Strong relationships with local governments were also important to prevent any suspicion or problems with the implementing partners’ presence in the villages.<sup>156</sup> We suspect that such “political” cultivation may come with its

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<sup>153</sup> Interview with Participant U, *supra* note 87 (“[A]nother link that is helping us that I’ve observed is other clients that we have been with them in the past do go and share about us to other community members . . . Then they come back and say ‘Wow, I shared with the people in such-and-such a parish and they are really interested and they are in need.’ So we go there.”).

<sup>154</sup> Interview with Participant W, in Gulu, Uganda (July 13, 2017) (“[T]he clients that participated in the previous cycle mobilized people to participate now in our activities. And generally the reason that they give as the point for coming is they see the change in their friend or relative or somebody told them that when they received the service their life changed. So they’ve come to see if their life can as well change.”) (transcript on file with authors).

<sup>155</sup> Interview with Participant P, *supra* note 118 (“We have the facilitator who is based at the subcounty. But now, as I was saying, if this is the subcounty with four parishes, every parish has four villages, and every village has the LC1. So you find if we are coming to a specific village the SCBF still links up with the LC1 because the LC1 of the village knows his people very well. Household by household. So they help us a lot in the mobilization of these community members. But we are also very, very careful in dealing with them because we know some of them can, they can influence the system.”).

<sup>156</sup> Interview with Participant Q, *supra* note 106 (“What we do in every project that GWED-G gets, GWED-G signs MOU with the local government at district level. By doing so, you are creating a relationship where the leaders feel that you don’t leave them out. They feel that they are very

own complexities and compromises and surmise that further study would reveal the extent to which it poses substantial challenges to the integrity of the implementing partners' work.

- Partnership with local staff and volunteers: The pragmatic challenges of distance, travel time, and limited staff capacity make it difficult for the implementing partners to develop and maintain relationships in all of the regions in which they work. In response, many of the implementing partners have developed networks of local volunteers to assist with outreach and mobilization.<sup>157</sup> These local contacts also serve as important sources of knowledge about the people in the community who might benefit from the assistance mandate and continue the sensitization work while the Gulu-based staff are away.<sup>158</sup>
- Clear management of expectations: In addition to cultivating relationships with those in the community, managing expectations about eligibility for the assistance mandate and the kinds of services offered was critical for effective outreach.<sup>159</sup> This focus on realism and

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important. And they are owners of the programs that operate in their district. Our entry point is the local leaders, briefing them and accepting us because if you don't do it, you become their enemy number 1: 'Why are you doing it in secret?'").

<sup>157</sup> Interview with Participant F, *supra* note 83 (“[I]hose people are eager to work with us because they see the benefits within their community. They actually volunteer to work with us . . . [The volunteers talk] about what TPO is doing, how TPO is supporting the communities, telling people in case you have such-and-such a problem you can talk to TPO. They are like a linkage between us and the community.”); Interview with Participant E, *supra* note 83 (“And we pick in different categories [of volunteers] because . . . they also have different areas of operations. Like religious leaders, they meet people in different places. Sometimes they are called for a wedding, prayers, funerals, worship, church, and other things. So at the end of those activities they bring in the activity of TPO.”); Interview with Participant O, *supra* note 112 (“The other thing is that we learned to build, put a lot of resources into our community network. Which is at the grassroots level. In this project it's called 'community-based facilitator.' You go to garden where people are farming in groups [sic] you pick also your hoes and go farm with them. You begin to introduce yourself 'I'm a referral actor in case there's a problem in your community you come to me, but these are the issues, what do you think about this?'”).

<sup>158</sup> Interview with Participant H, *supra* note 97 (“[O]n several occasions we have identified people for support based on recommendations from [local volunteers] because they live exactly with—they live in the same place with these people . . . It is very hard for me to know that this person went through the war. But the villagers they know this person was abducted, they stayed in the bush for this period of time, this person within this community always has these kind of challenges . . . Now basing on referrals after identifying these people, the [local volunteers] with the social workers form up these groups. Then, again, we go deep into assessing.”).

<sup>159</sup> Interview with Participant K, *supra* note 82 (“We even tell them that 'We are coming for A-B-C-D. This is what we are coming for.' But you know, expectations of the community. You find that turn-out is really great and then during the dialogue through their questions you'll realize that you're not meeting their expectations. Someone is saying 'Yes, me, I thought you were bringing for us something else, maybe like seeds. I thought you were bringing seeds. You just want to talk?

pragmatism can be very difficult with highly traumatized communities and individuals whose needs are great and who may view external entities as having more capacity and resources than they actually do. Yet, the necessity of this transparency cannot be overstated. It is critical for ethical honesty and for leveling the playing field between the victim and the provider. Notably, clearly emphasizing the eligibility criteria from the beginning—particularly the July 1, 2002, cutoff date—helped implementing partners focus their outreach on those who would ultimately be eligible for individual services.

### 3. The implementing partners' programs are designed specifically for the Ugandan context.

Building on the strengths inherent in the design of the assistance mandate itself, one of the core strengths of the implementing partners' work is the steps they have taken to ensure their programs are well-suited for the Ugandan context.<sup>160</sup> This strength has several facets which are described below.

- **Long-term commitments:** In light of underlying stigma and the general skepticism of the program, interviewees reported that it usually took a while for people to feel comfortable coming forward for help.<sup>161</sup> Once people do come forward, the rehabilitative process for individuals, families, and communities is not a quick process.<sup>162</sup> The nature of the work and the context requires a long-term commitment to the region in

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You just want to talk. How can this talking help us? I am hungry. Can this talking give me food?”).

<sup>160</sup> Interview with Participant I, *supra* note 90 (“And of course, I mean, there are flaws. But I think we've really—in my old organization I wasn't so sure if we actually were making a difference. And here, I really, I really feel we're doing something.”); *Programming Guiding Principles*, THE TRUST FUND FOR VICTIMS, <http://perma.cc/D5D6-RXSD>; THE TRUST FUND FOR VICTIMS, STRATEGIC PLAN 2014-2017 SUMMARY (2014), <http://perma.cc/CPS2-MDKR>; Jennifer McCleary-Sills & Stella Mukasa, *External Evaluation of the Trust Fund for Victims Programmes in Northern Uganda and the Democratic Republic of Congo: Towards a Perspective for Upcoming Interventions*, INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (2013).

<sup>161</sup> Interview with Participant D, *supra* note 108 (“Initially, actually, it was not easy [for people to talk about the trauma]. It was not easy and, how do you say, we're going for over ten years with it. Going gradually.”); Interview with Participant U, *supra* note 87 (“And one thing we always find with them is that when you go for the first time they tend to think that what we don't provide is what they want. They want the school fees, they want the seeds, they want these other things. But now, due to our continuous intervention and interactions, they begin to realize that ‘I think these people are real’ and are ready for psychotherapy.”).

<sup>162</sup> Interview with Participant W, *supra* note 154 (“[I]n terms of openness, some cultures do not recommend very wide openness about private life experiences to a stranger or to somebody you met two, three times. That is something that you have to consider as you make the assessment, as you go through the whole process. There are a number of clients who only really reveal the very challenges that brought them to therapy maybe in the fifth session.”).

order to see results.<sup>163</sup> As such, the implementing partners have prioritized long-term investment and quality services in those areas in which they work, rather than providing brief services to a larger region.<sup>164</sup>

- Awareness of cultural attitudes: Interviewees described a variety of ways in which underlying cultural attitudes were deeply problematic in obtaining successful individual outcomes. For example, work with former child soldiers required doing a significant amount of work to help both former child soldiers and their families recognize that the child did not want to be abducted and that their participation in the conflict was not a conscious choice.<sup>165</sup> In other examples, in order to successfully provide a person with a prosthetic limb, the implementing partners first had to address the stigma of disability. Physical rehabilitation required significant pre-work to assuage the general fear of surgical operations.<sup>166</sup> The implementing partners recognize the inescapable connection between these attitudes and sustainable success for individual beneficiaries, allowing them to design a holistic approach to the Ugandan context.<sup>167</sup>

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<sup>163</sup> Interview with Participant F, *supra* note 83 (“People stayed in camps for over twenty years. In fact, according to research, Northern Uganda lost a whole generation because of the war. A whole generation was lost. So bringing that back takes a lot.”).

<sup>164</sup> Interview with Participant D, *supra* note 108 (“Normally [when] you start again the dialogue, it's like a swarm of bees, again you are provoked . . . And that's why normally it takes three even four months. You do this; after, then you go again; like that, you go back. After the group, then you go to the [other] extremes, to the individual—and that's actually the approach they use now, it's still happening. And I would say it's working well now.”)

<sup>165</sup> Equally complicated and much less spoken of is the evidence that some families ‘handed over’ their children to armed groups for a variety of reasons not all of which were coercion-based. *See Children as Soldiers, in THE STATE OF THE WORLD'S CHILDREN 1996, UNICEF (1996)* <http://perma.cc/V2ML-LBDN> (“In Myanmar, parents volunteer their children for the rebel Karen army because the guerrillas provide clothes and two square meals a day . . .”); Esha Chhabra, *How Do Children End Up as Child Soldiers?*, TAKE PART (Oct. 15, 2015) <http://perma.cc/L74X-N4S7> (“Parents see [their children becoming child soldiers] as a way to make money too.”) (quoting Eric Stover, professor at the University of California, Berkeley); *Use of Child Soldiers Particularly Abusive*, UN Expert Testifies, UN NEWS (Jan. 7, 2010), <http://perma.cc/3HA2-STUN>.

<sup>166</sup> Interview with Participant Q, *supra* note 106 (“There are some of these persons who have fears. And they'll look at their situation and they say ‘If I go and am operated, I may die.’ So my role is to help this person understand and take a decision. Either to go or not. But in what—my aim is this person needs to forget about the fear and get treatment.”).

<sup>167</sup> Interview with Participant H, *supra* note 97 (“I'm not saying that [the stigma] totally is gone but it's just at a lower scale now, due to the community dialogue, the sensitization—the interventions that we have done in the communities to most of these LRA abductees . . . In case of any circumstance, like I give an example where one, we lost three weeks ago, we lost one of our CBT members that graduated. And all the CBT members within that subcounty came in to support in

- Use of multi-level interventions: Relatedly, most implementing partners reported that their work was effective in part because they were able to work on multiple levels (for example, individual, family, community) simultaneously.<sup>168</sup> Community education on the experience of being a former child soldier or mental illness was seen as critical to the well-being of individual beneficiaries. The implementing partners not only prepared individual beneficiaries to return to community life but they also prepared the community to receive the individual beneficiaries back.
- Flexibility in program design: Many interviewees noted the importance of flexibility in program design given the complex social dynamics lingering in communities.<sup>169</sup> For example, one implementing partner offers the option of group or individual therapy sessions, which may be particularly helpful when a beneficiary feels uncomfortable in a group setting or when the person was a perpetrator of violence during the conflict. Others have learned the importance of crafting groups to not include relatives or allowing for modifications to the standardized CBT protocol when necessary (for example, by eliminating the writing-based elements of treatment).<sup>170</sup> These and other changes have emerged from the implementing partners' years of experience doing this work; the continued openness and willingness to adapt programming and learn from past mistakes is a key strength.
- Singular area of expertise versus holistic program offerings: There was some difference in opinion among the interviewees regarding whether the better program design was one that incorporated multiple services (for example, physical and psychological services) or one that focused solely on a single offering. In particular, CVT attributed its program successes to its singular focus on psychotherapy, which allowed them to

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the burial, buying coffin, giving food, they support until the burial. So in such a way of togetherness there's this aspect of reduced stigma because you know at the end of the day 'I'm not alone.'").

<sup>168</sup> Interview with Participant K, *supra* note 82 (“[W]hat happens during follow-up, we interact again with the family members and the community members where this person has been reintegrated. We check the condition of the limb, if it needs some minor repair, on-spot repair we can do.”).

<sup>169</sup> Interview with Participant Y, *supra* note 98 (“[W]e emphasize a lot, even if the person, even if you are in a group you can be free to choose to also have at the same time individual session so that you are able to handle what you are not able to handle in the group.”).

<sup>170</sup> Interview with Participant W, *supra* note 154 (“Let me use this example of CBT—cognitive behavioral approach. It has a recommended practice of, for example, a client having to write, keep record of personal diary of symptoms, which you will see that can be really very helpful to a number of clients. But then—especially when you work with individual clients—but then, either this client doesn't know how to write or knows how to write but the culture of writing is not his—writing is not a habit to him.”).

develop an expertise and credibility while ensuring that only those beneficiaries who truly wanted that particular kind of help participated in their programs. By contrast, others thought the strength of their programs was in their ability to offer cross-cutting services.<sup>171</sup>

- Commitment to program evaluation and evolution: Implementing partners all acknowledge the value of regular program evaluation and devote staff time and resources to ensuring that regular program evaluations take place.<sup>172</sup> While all implementing partners make formal reports to the Trust Fund at periodic intervals, interviewees also described other ways in which they immediately applied their findings by making changes to their programs.<sup>173</sup> For example, feedback from beneficiaries prompted TPO Uganda to change the locations of its clinical outreach program after learning that beneficiaries were finding it too difficult to routinely travel to the town of Gulu to receive medication.
- Focus on program sustainability: Interviewees are acutely aware that the assistance mandate is a time-limited program and are thus invested in building independent, sustainable programs.<sup>174</sup> For some, this means developing formal partnerships with the government, while for others it means getting involved in advocacy and lobbying efforts to increase funding for services in the region.<sup>175</sup> Interviewees also noted an

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<sup>171</sup> Interview with Participant E, *supra* note 83 (“So I could say that this positive impact has come as a result of TFV because it has a combination—the physical, the drug for mental, and CBT, the livelihood.”); Interview with Participant H, *supra* note 97 (“[M]y major interest when I joined the project I just got so much excited about it, integration. Because on several occasions I’ve been with other organizations, you find that there’s only CBT. But TFV has been integrating physical rehabilitation, bringing the issue of medicine, and bringing the aspect of the psychological support through CBT, that is a very good approach.”).

<sup>172</sup> Interview with Participant H, *supra* note 97. (“You know with the information it can help us in a lot of ways. You can change interventions in case I realize that what “I’m doing is not helping, what should I do?” We have tools for assessing the quality of work.”).

<sup>173</sup> Interview with Participant O, *supra* note 112 (“We do also consult people to give us feedback on how our performance [sic] and we are very, very open. So that’s why, in most cases we call ourselves that we are a learning institution because the learning doesn’t stop.”).

<sup>174</sup> Interview with Participant E, *supra* note 83 (“And we are very encouraging the [group members] to keep on visiting one another and we have instilled into them the sustainability. Whether we are already done with the CBT, for them they should not stop. They should continue with it.”); Interview with Participant I, *supra* note 90 (“Because we are now buying everything, we are supplying to the health centers, and the government is basically not doing anything. So that is not sustainable because we might go away, we might not get donor opportunities anymore from TFV, so what happens to all those people? So [we] have been working on a more sustainable way that we want to start implementing [called] a drug bank.”).

<sup>175</sup> Telephone Interview with Participant M, *supra* note 124 (“Okay, at least with GROW, there’s the workshop, there’s a hospital. The government of Uganda might not really be totally supportive.”).

additional, program sustainability-related benefit of working with local staff and volunteers: some of those who have developed skills and training through the assistance mandate plan to continue the work in their communities when the Uganda assistance mandate closes.<sup>176</sup>

4. Partnerships with local officials and with other implementing partners contribute to the outreach and the efficiency of the assistance mandate.

As with the Trust Fund, the implementing partners approach their work with a mindset of partnership and collaboration. One important collaboration is with the Ugandan government officials in the region.<sup>177</sup> In general, this involves the implementing partners providing regular information to local officials about the operations of the program and includes the local officials assisting with mobilization and outreach. In addition to helping with outreach, this partnership reduces the risk of government pushback or objection to the presence of the implementing partners in the villages, which could be a significant obstacle to effective programming.<sup>178</sup> However, making the work in the community dependent on political agreement comes with some obvious risks and challenges, including the risks of political commodification and the challenge of navigating between different political entities with highly divergent views.

Interviewees noted that this inclusive approach with local officials served as a signal to the government that it should be responsible for providing these services. The perception was that if the officials felt they played a role in the assistance mandate program, they may be more willing to take ownership in the

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But what we tried to do also through our assistance mandate is to build this type of link with the government so that at a certain point, hopefully they *can* take over. Or support, if they cannot take over, continue supporting.”); Interview with Participant O, *supra* note 112 (“But it’s the same group of people who needed compensation and reparation from government. It shouldn’t be the responsibility of the Trust Fund to begin to give material support, which is a government responsibility.”).

<sup>176</sup> Interview with Participant S, *supra* note 95 (“First of all, what I looked at as strength, the kind of structures that GWED-G have. Because I am based in the community. And there’s no way out. I’m not going to be—I will remain there. I am a trained person now on counseling techniques, how to link them to other facility, health facilities. So even if GWED-G is no longer there, we are there in the community. We are there to support our people, even if the project is not there, we are there.”).

<sup>177</sup> Interview with Participant K, *supra* note 82 (“We don’t just go and enter into the community. We first go to the district leaders, we report our presence, like the district health officer, maybe the political wing. Then we go to the subcounty, and then from the subcounty we go down to the parishes and then the villages.”).

<sup>178</sup> Interview with Participant I, *supra* note 90 (“You have to be very careful that you’re not stepping on the toes of the government so it’s very important to have good ties with them because no matter what you want to do you always have to let them know.”).

future—particularly once they saw how much constituents appreciated the program. We agree that this is an effective strategy for maintaining long-term programs and persuading local officials to take greater responsibility for their constituents.

Another important partnership which contributes to the success of the assistance mandate is the collaboration between the implementing partners themselves. The partners work together in a variety of ways to provide services as efficiently as possible. For example, when two implementing partners realized they were operating in the same subcounty, they divided the territory between themselves to avoid the duplication of services. Many partnerships are formed between implementing partners that provide physical rehabilitation and those that provide psychological rehabilitation. This collaborative approach extends to the broader network of NGOs in the region, as beneficiaries who need services not covered by the assistance mandate can be referred to the NGOs that do provide those services. NGO coordination meetings and coalitions also helped implementing partners share information and identify areas of growing needs and future work.

Many interviewees described how their program evolved in response to feedback from beneficiaries, volunteers, and other community leaders. Indeed, the partnerships between the Trust Fund itself and the implementing partners is an important source of mutual learning and development.<sup>179</sup> The collaborative conference hosted by the Trust Fund in Kampala to both share the revised performance monitoring plan with the implementing partners and solicit their feedback on how to more accurately evaluate the work of the assistance mandate is just one example of this exchange.

5. Implementing partners promote staff well-being and invest in their development to ensure long-term staff retention and productivity.

Implementing the assistance mandate is incredibly emotional and difficult work which carries a high risk of burnout as well as the accompanying risk of a high turnover rate and substandard work.<sup>180</sup> This risk is particularly heightened

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<sup>179</sup> Interview with Participant K, *supra* note 82 (“Some of the questions [asked by beneficiaries] that we feel we do not have the answer to—we imagine that someone maybe down there would help us, so we throw it back. Then maybe someone can help us, we are not just here to answer because we are not teaching, we are not teaching here, we are just trying to converse and see how we can make our community a better community to live in. No, not teaching. Not teaching. They end up teaching us.”); see, for example, Béatrice Pouligny, *Civil Society and Post-Conflict Peacebuilding: Ambiguities of International Programmes Aimed at Building ‘New’ Societies*, 36 SECURITY DIALOGUE 495 (2005) (discussing the challenge of working in post-conflict sites).

<sup>180</sup> Interview with Participant I, *supra* note 90 (“We cannot help everyone. And, of course, that’s something that, for social workers, is very difficult. We come [sic] there and we have to decline people who really need our help.”).



when the staff members have lived through the conflict themselves and are contending with their own trauma and post-conflict readjustment as they work to support others. Given the importance of trust and relationship-building in carrying out the assistance mandate, having consistent, long-term staff members is very important to the success of the program. As such, one important organizational strength among implementing partners is the genuine desire to support their staff.<sup>181</sup> The implementing partners have worked to develop cultures of self-care, mutual support, and clinical supervision to promote staff well-being.<sup>182</sup> Relatedly, there is an ongoing investment in training and skills-building that prevents burnout by ensuring staff are equipped to perform the difficult work with which they are tasked.

## V. KEY CHALLENGES FACING THE ASSISTANCE MANDATE

Over the course of the interviews and field observations, several key challenges facing the assistance mandate in Northern Uganda emerged. As with the strengths, the challenges facing the Trust Fund and the implementing partners are distinct but related. Many of these challenges are simply realities that neither the Trust Fund nor the implementing partners can resolve. As such, the following challenges are not presented as a list of suggested changes but rather as a reflection of the current situation on the ground facing those who implement the assistance mandate.

### A. Challenges Facing the Trust Fund

#### 1. The Trust Fund's relationship with the ICC creates both legal and political obstacles to the Trust Fund's work.

While the Trust Fund's position within the ICC has obvious and significant value, implementing rehabilitative programs within the strictures of a system that at its core is a criminal legal system is a challenge. On a procedural level, the ICC processes that govern Trust Fund operations (for example, the selection of implementing partners) were originally designed for a very different context than the world occupied by the Trust Fund.<sup>183</sup> For example, the Procurement Review

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<sup>181</sup> Interview with Participant Z, *supra* note 131 (“I realized that one of the conditions to empower an organization to provide services is they need to have paid staff. And staff who are not in condition of starving or maybe underfed or more vulnerable than the client themselves.”).

<sup>182</sup> Interview with Participant F, *supra* note 83 (“When you experience something very traumatic in your work, you have somewhere to vent, always have meetings with clinical psychologist, every Monday, where you can share with her and help you process. You can come across a serious case and you come back home and you have nightmares. Someone can [tell] you something so, so traumatizing.”).

<sup>183</sup> Regulations of the Trust Fund for Victims, *supra* note 16.

Committee (PRC) of the ICC must give the final approval for the award of grants to the chosen implementing partners.<sup>184</sup> However, the PRC is staffed by ICC employees who often have no experience with rehabilitative program design.<sup>185</sup> Thus, the Trust Fund finds itself in the position of having to work within a system not designed for the kind of programs it supports. The Trust Fund must navigate both the ICC and the reality on the ground to deliver the assistance mandate, but the fit is not always perfect.<sup>186</sup> Some interviewees indicated that, given the small size of the Trust Fund in comparison to the ICC, there is a lack of understanding of its role among Court personnel. As such, Trust Fund staff must not only carry out their own work but must also translate it and advocate for its role within the ICC. This translation work can be demanding and take away much needed personnel and administrative capacity from the day-to-day work of the Trust Fund.

The relationship with the ICC has the potential to present another kind of challenge on the ground, depending on the local perception of the Court's activities.<sup>187</sup> In Northern Uganda, the Court initially had a mixed reception due to prosecutorial strategy and the methodology being used in the field by criminal investigators and prosecutors which complicated the Trust Fund's early work.<sup>188</sup> Though not necessarily the case in Uganda, the relationship with the Court may also limit which nonprofit organizations are able and willing to contract with the Trust Fund due to the often-politicized nature of ICC involvement in a particular jurisdiction. Though the relationship with the ICC can present a challenge to the Trust Fund, many interviewees described how the Trust Fund's work in the region helped improve the perception of the ICC over time.<sup>189</sup> In the

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<sup>184</sup> Administrative Instruction, International Criminal Court, Composition and Terms of Reference for the Procurement Review Committee, ¶ 3.2, ICC/AI/2004/004 (2004).

<sup>185</sup> Interview with Participant M, *supra* note 121 (“And on top of that you go and defend [to the PRC] and people don't understand [sic] they say ‘Why did you need three years to provide psychological rehabilitation, can't you do just six months?’”).

<sup>186</sup> *Id.* (“It's a bit of applying knowledge that you get from both sides to make things happen because it is—there's a reality of the Trust Fund, one foot is in the field, the other is in the ICC.”).

<sup>187</sup> *Id.* (“What is difficult is, I mean it's always the same thing I've noticed in Congo, what is difficult is you never know the level of information that people have. And so even if you stress that you are part of the ICC but you are not doing the, you are not here to interview for the case—that can be difficult. And maybe people they have already preconceived ideas, sometimes it's difficult to convey the message.”).

<sup>188</sup> Interview with Participant N, *supra* note 122.

<sup>189</sup> Interview with Participant C, *supra* note 130 (“[T]hat's another aspect of what the assistance mandate can do, is it can, in some ways, inoculate issues of jealousy or misunderstanding as to ‘why them, why this side,’ you know, particularly when you're talking about conflicts that involve different ethnic groups where the charges against one side occur years before the charges against the other side . . . that is where I think there's a real value [in the assistance mandate] to the Court just—not just the TFV, but the Court itself. Because we are a criminal court, I think it's valuable

authors' view, it is not clear that the ICC fully appreciates the extent and scope of the Trust Fund's contribution to its success and its acceptance.

2. The Trust Fund has limited resources and capacity but is expanding its operations in other regions.

The expansion of the Trust Fund's work presents a pragmatic challenge for the organization. The Trust Fund is in the process of opening a new assistance mandate in the Cote d'Ivoire while continuing its work in both Uganda and the Democratic Republic of the Congo.<sup>190</sup> Simultaneously, it is considering reinstating the Central African Republic program, which was suspended for security concerns in 2013, and expanding to Mali.<sup>191</sup> The ICC has started to reach the reparations stage of its cases and has now issued reparations orders in three cases—activating the Trust Fund's responsibilities under its reparations mandate for the first time.<sup>192</sup> Though the Trust Fund is a part of the ICC, it does not receive any funding from the Court to carry out its work and must raise funds from donor governments.<sup>193</sup> Despite its limited resources, the Trust Fund has accomplished a great deal to date, evidenced by the success of the assistance mandate in Northern Uganda. However, the increasing demands placed on the Trust Fund present a significant challenge for future work, and require greater attention by states and by the ICC Chambers as they oversee the Trust Fund's implementation processes.

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to the prosecutor that the assistance mandate exists because I would hope that it would alleviate some of the political pressures.”); Interview with Participant U, *supra* note 87 (“It has been very clear. And, of course also the authenticity of what we do, yeah, it is also giving a credit to the ICC itself. Because you don't see ICC as a prosecutor and purely coming to prosecute.”).

<sup>190</sup> Press Release, International Criminal Court, Trust Fund for Victims Decides to Launch Assistance Programme in Côte d'Ivoire, U.N. Press Release ICC-TFV-20170517-PR1304 (May 17, 2017), <http://perma.cc/9RGJ-9CAU> (stating that the ICC will launch a new assistance program in Côte d'Ivoire “to provide physical, psychological rehabilitation and material support for the benefit of victims of crimes.”).

<sup>191</sup> Press Release, Following Mr. Bemba's Acquittal, *supra* note 59; Statement by Trust Fund for Victims Board of Directors: Under the Rome Statute, Reparative Justice Provides Undeniable Value to Victims, International Criminal Court (Sept. 14, 2018), <http://perma.cc/NUV7-3Y3Y>.

<sup>192</sup> *Reparations Orders*, THE TRUST FUND FOR VICTIMS, <http://perma.cc/S72K-6HGN>.

<sup>193</sup> Frédéric Mégret, *Justifying Compensation by the International Criminal Court's Victims Trust Fund: Lessons from Domestic Compensation Schemes*, 36 BROOK. J. INT'L L. 123, 125–26 (2010) (noting that the TFV receives “voluntary contributions from governments, international organizations, individuals, and corporations,” which are stored in a separate account from that of the Court directed reparations and which may be “awarded at the Fund's discretion.”).

## B. Challenges Facing the Implementing Partners

1. There is an overwhelming need for the finite services of the implementing partners as well as a growing problem of hunger.

The primary challenge noted by interviewees was the significant need for the services offered by the implementing partners. Even a decade after the conclusion of the active fighting, war-related trauma remains a serious issue with very few treatment options available in the region. Indeed, the assistance mandate is one of the very few sources of funding purely dedicated to rehabilitating the lingering war trauma—and as the providers of this kind of care, the implementing partners' staff are acutely aware of the extent of the need that they are unable to meet.<sup>194</sup> This issue underscores the obvious point that harm and trauma occasioned by serious violations of international law may require sustained, long-term, and perhaps lifelong interventions. This situation requires a different approach to the scale and scope of the costs and commitments of rehabilitation.

This need becomes more evident as the implementing partners become more effective at mobilization and outreach. Many interviewees noted that the implementing partners are reaching the point where their outreach has encouraged more potential beneficiaries to come forward than they have the capacity to serve.<sup>195</sup> This dynamic is particularly pronounced at the end of a grant cycle, after the outreach and community education has had time to reach its full impact. In addition to the obvious hardship of people not having access to needed services, there is also an emotional toll on the staff who witness the scope of the suffering and who must turn away people who are seeking their services due to lack of capacity. Aware that the assistance mandate cannot alone address all of the remaining needs in the region, most implementing partners focus their work on specific villages or areas that suffered the most during the

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<sup>194</sup> Interview with Participant I, *supra* note 90 (“[W]e try to deal with it by referring it to other programs—of course we're very much aware of what the programs are on the ground but those other programs are either government programs or NGOs who are not so specialized in mental health. There are not many who are so specialized in mental health.”); Interview with Participant H, *supra* note 97 (“[W]e support victims for physical rehabilitation but now you find that within the communities, Lakwana, according to the budget supports only six people. But it is having a list of people. Awach is supposed to bring seven. The person, the social worker, have a list of people who have identified with this complication with around ninety-eight people. But out of only that, seven people.”).

<sup>195</sup> Interview with Participant E, *supra* note 83 (“And then another challenge is that due to our wide sensitization of the TPO activities, the people who comes [sic] for a drug during the clinic outreach, it is now too many. We started with about forty. But now, as we talk, in Lakwana last month it was 190—”); Interview with Participant F, *supra* note 83 (“196. It was so overwhelming.”).

conflict while simultaneously encouraging greater government investment in rehabilitation programs. However, the need for services is so great that some interviewees reported people moved into regions covered by the implementing partners just to receive services.

In addition to the need for physical and psychological rehabilitation services, the general poverty of the region adds another dimension of challenge.<sup>196</sup> In particular, hunger is increasing across the region as climate change reduces crop yield to dangerously low levels.<sup>197</sup> This hunger interferes with both physical healing and psychological interventions, diminishing the effectiveness of the assistance mandate programming.<sup>198</sup> The implementing partners have adopted various strategies to mitigate the impact of hunger, including scheduling program activities at a time when people are more likely to have eaten some food, but it remains a significant challenge.

## 2. Grant restrictions prevent implementing partners from reaching many people who need their services.

The strict eligibility date for the assistance mandate—requiring that the harm occurred after July 1, 2002—was identified as a significant challenge by virtually all interviewees.<sup>199</sup> This matter of timelines poses a broader challenge for the international criminal justice and transitional justice fields.<sup>200</sup> The terms

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<sup>196</sup> Interview with Participant E, *supra* note 83 (“And then another challenge is that when I talk about the physical rehabilitation it is only catering for treatment and drugs. That is surgery, and then drugs after the surgery. But the review is not included. So sometimes you find that the surgery is done, the drug is given and the doctor is telling the patient to come after two weeks. And the budget for that patient is now not there. So you find that the transport cost and other things for review is not there. And you find at the end of the day, some of the patient who cannot afford coming to the doctor again, they remain with that surgery and the drug given. No coming for a review.”).

<sup>197</sup> Interview with Participants E, I, & T, in Awach Subcounty, Uganda (July 12, 2017) (notes on file with authors); See Joseph Kamara & Andre Renzaho, *The Politics of Food and the Fight Against Hunger: Reflections and Lessons from Uganda*, 14 AFR. J. FOOD, AGRIC., NUTRITION & DEV. 9016 (2014); *Uganda: Hunger Stalks North East*, 50 AFR. RES. BULL. 20018 (2013).

<sup>198</sup> Interview with Participant I, *supra* note 90 (“For example, now, one of the big challenges that we're also seeing is that there's a lot of famine. It's very difficult. Because I mean you go and do your counseling session when people haven't eaten and their mind is somewhere else because the children are at home crying. What are you going to reach with your—and what is the solution? Are you providing food? But that takes away the strength of the counseling.”).

<sup>199</sup> Interview with Participant E, *supra* note 83 (“You know, the war started in about 1989. And, the effect started coming from that age, from that year. And when we look at the Rome Statute, 2002, it means we are leaving many behind. And others they have a serious condition, which you see and you really sympathize but they are not the conditions of the project.”).

<sup>200</sup> Valérie Rosoux, *Time and Reconciliation: Negotiating with Ghosts*, in *TIME AND TEMPORALITY IN TRANSITIONAL AND POST-CONFLICT SOCIETIES*, 17–34 (Natascha Mueller-Hirth & Sandra Rios Oyola eds., 2018) (discussing time in post-conflict negotiations and reconciliation, the “ripeness”

of reference for many criminal and reparative processes are often arbitrary, may not correspond to the totality of the harms experienced, and will often leave out victims groups whose sole basis for exclusion from remedy is that they fall on the wrong side of an arbitrary date. It is very difficult for staff to implement this provision, given the significant need of those who were harmed prior to 2002 and the dearth of other options available in the region.<sup>201</sup> The implementing partners have gone to great lengths to ensure that this seemingly arbitrary divide in eligibility does not create tensions within the community.<sup>202</sup> Their primary strategy is clearly and consistently announcing the time requirement and managing expectations in its initial contacts with a community. However, the cutoff remains a challenge.<sup>203</sup>

Another challenge arising from the limitations of the assistance mandate is the end of the material assistance funding. The Trust Fund recently phased out material assistance in light of the difficulty of proving that the primarily economic harms being remedied were traceable to the conflict after so many

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of a conflict, and the non-linearity of reconciliation shaped by a plurality of interests and multiple time frames); see also Alexander Laban Hinton, *Transitional Justice Time: Uncle San, Aunty Yan, and Outreach at the Khmer Rouge Tribunal*, in *id.* (arguing that transitional justice time is premised on a teleological transformation and liberal democratic outcome that erases historical complexities and effaces local understandings); Sandra Rios Oyola, *Peace Processes and Social Acceleration: The Case of Colombia*, in *id.* (arguing that social and political peace processes operate on two different timelines and that the latter tries to accelerate the former).

<sup>201</sup> Interview with Participant P, *supra* note 118 (“You know there's always that tendency, that temptation; for example, you are based in that same location and you are working with the people you know. So there's that temptation of kind of leaning, eh? You say oh, all right, 'You're in your own subcounty.' Because at that time of recruitment, we emphasize the fact that the facilitator must come from that particular subcounty. So dealing with people you know, it's not easy. They also face that challenge.”).

<sup>202</sup> *Id.* (“When you go to a community of mobilized war victims, there are so many. There are even those who suffered atrocities before 2002 and they also have the—they are critical, their cases are critical in nature . . . We are facing it, it is not easy but we constantly keep telling people that every project has a timeframe and limitation. Then secondly we keep also bringing in the aspect that the government is responsible to provide services for war victims, that we are only complementing what they do.”); Interview with Participant S, *supra* note 95 (“This is why we have actually come out with the sensitization. Because the issue of sensitization addressed the problem of maybe creating differences [based on the 2002 eligibility criteria]. That: ‘These people are benefitting, how about us who are not benefitting?’ So it is really very important to sensitize them to let them know how the project is being implemented.”).

<sup>203</sup> Interview with Participant I, *supra* note 90 (“It's really tough. I mean the [social workers] have a big heart for these communities, they work with them every day, they drive 40 minutes every day to go over bad roads to meet these people. And to some they have to say ‘no.’ ‘No, you are not getting medication; no, you are not getting physical treatment; no, you are not getting psychological treatment.’ It's really tough.”); Interview with Participant U, *supra* note 87 (“I remember one of the clients asked: ‘Do you mean that you people are coming strictly for people who have suffered from 2002? Are they different from us? Are they a different tribe?’ That was a question. So that becomes a very challenging aspect.”).

years. However, most implementing partners view the return to economic productivity as an integral part of rehabilitation. Contributing to the community through work is seen as an important way to sustain the improvements made during treatment as beneficiaries regain a sense of dignity and purpose. Additionally, as the material assistance benefit was usually distributed to groups after they completed CBT, much of its perceived value was in maintaining the group structure and cohesion beyond the weeks of therapy. Interviewees described how when groups had a reason to continue meeting after the conclusion of therapy, the group members would engage in informal mutual support of each other.<sup>204</sup> As such, the end of material assistance is seen as a challenge to the sustainability of the psychological and physical rehabilitation efforts.<sup>205</sup>

A final challenge with the assistance mandate grants themselves is the duration of the granting period. It is difficult to see the positive impact of the assistance mandate work in a single year, given both the pace of the work and the importance of building relationships and trust with the community prior to delivering services.<sup>206</sup> Interviewees also noted that the inherent uncertainty of the grant funding sometimes presented difficulties in retaining staff and providing uninterrupted services as the end of the grant cycle approached. In recognition of these challenges, the Trust Fund in 2015 lengthened its grant cycle from an annual process to a three-year term; the 2018 RFP tender will enact a 5-year grant cycle. This change is widely seen as providing a more realistic timeframe given the scale of the assistance mandate, but grants of even longer duration would be welcomed, a change the Trust Fund is currently considering.

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<sup>204</sup> Interview with Participant F, *supra* note 83 (“I think TFV stopped last winter [the material support] . . . But what we've seen on the ground, that livelihood support helps in keeping the cohesion. So that people continue having that extra support . . . After meeting them, there's nothing that brings them together. Everyone will go their own way and they'll start having the same problems. But the ones who are keeping together [for material support], they're healing, the relapses are not there.”).

<sup>205</sup> Interview with Participant I, *supra* note 90 (“[I]t's actually a sustainable approach for counseling as well. They've met each other through counseling, they know how to talk to each other because they've learned that. And because they still need to meet each other for this VSLA or this pig project or whatever, they keep an eye on each other. And actually I think, I would love to do research on it, but I think the relapse rate is much lower.”).

<sup>206</sup> Interview with Participant H, *supra* note 97 (“When you want to assess impact, impact evaluation, it is a long period of time. It is not like ‘I finished the CBT today, after two month I am going to assess impact.’ That is not right. I have to assess impact after some period, maybe 2 years, 3 years, 4 years.”).

3. Many services require ongoing treatment but cannot be provided after the assistance mandate ends.

While all interviewees were acutely aware of the importance of building sustainable programs, many of the services currently provided would not be able to continue without the assistance mandate. This was a key area of concern for interviewees and was especially problematic for those working with interventions that inherently require ongoing adjustment and adaptation (such as the provision of prosthetic limbs). For these services to retain their efficacy into the future, there must be the capacity for long-term service provision.<sup>207</sup> Though implementing partners have made efforts to encourage government ownership and investment in physical and psychological rehabilitation, the government is still not ready to manage the program.<sup>208</sup> Developing the sustainability of the program remains a key challenge for the implementing partners, particularly given the understanding that the assistance mandate funding will not exist in perpetuity. This is a challenge beyond the day-to-day capacity of the Trust Fund and requires sustained political commitment by donor governments and a clear political internalization of the value added from the Trust Fund's work.<sup>209</sup>

4. Reliance on government partnerships compromises the work and the objectives of the implementing partners.

Though government partnerships are an important source of collaboration for implementing partners, the relationships are not without their challenges. Relying on government actors for help with the mobilization and outreach work leaves the implementing partners with less control over the process. Though many local officials are eager to help with the assistance mandate and do much to move the projects forward, others fail to uphold their outreach commitments, causing the implementing partners to delay planned work. In response to these

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<sup>207</sup> Interview with Participant J, *supra* note 89 (“[T]he challenge, it would be on after the end of the project. That's when the challenge would be. For the clients who are now walking on their prosthetic, time will come, they will go back to crutches.”).

<sup>208</sup> Interview with Participant K, *supra* note 82 (“But also at a higher level, AVSI headquarters at the higher level, with the Ministry of Health, they're trying to have some meetings on sustainability. Sustainability. It is only Trust Fund. ‘Government, what is your contribution? What is the contribution?’ But I wouldn't say that we are optimistic.”); Interview with Participant D, *supra* note 108 (“Then I would say another challenge is really sustainability and networking with the government projects. The government projects tend to come in a crisis and are not well-planned . . . Like we are doing an agriculture component which covers all of this. The government also comes with Operation Wealth Creation, but the way they're doing it is not correct. They come with seeds, but the mindset, identification, training, it's not there.”).

<sup>209</sup> Interview with Participant Z, *supra* note 131 (“What other challenges? Another challenge that I see in terms of sustainability is the fact that even the government has no plan, no attention or consideration for psychological counseling services.”).



challenges, implementing partners have developed a variety of strategies, including (diplomatically) increasing their oversight of the elected officials conducting outreach work.

As noted above, one growing concern about government partnerships is the politicization of the assistance mandate.<sup>210</sup> Implementing partners have observed that the political affiliation of the elected official sometimes influenced which individuals were connected with the implementing partners. This has prompted some implementing partners to broaden their outreach partnerships to include less-political entities (for example, village health teams). In other cases, government leaders attempted to use their position of power to exploit the system. For example, interviewees described officials attempting to get services for their relatives who did not meet the assistance mandate eligibility criteria. Broader issues of corruption and inefficiency are a particular challenge for those implementing partners that have formal partnerships with the government for service provision.

5. Pragmatic challenges such as long travel time increase the risk of burnout and hinder access to rural communities.

Many of the challenges identified by interviewees were the simple but serious difficulties of traveling to the beneficiaries. One of the most common issues interviewees identified is that people with the greatest need for services often live in deeply rural areas. The travel time to reach these places requires staff to work extremely long days, increasing risk of burnout—or is simply impractical. The poor infrastructure in much of the northern region further complicates travel plans because the mud roads are impassable when it rains. This is particularly problematic when implementing partners need to rely on hired cars for transport, as drivers are unwilling to put much strain on their vehicles. In addition to the scheduling complications, interviewees linked the pragmatic challenges of access to the importance of building trust with communities: cancelling plans at the last minute weakens credibility and the perception of the organization as a nonprofit that keeps its word.

6. Continued tensions in the community slows the progress of the work of the assistance mandate.

As a final challenge, interviewees described how their work to address historical harms is complicated by ongoing tensions within communities.<sup>211</sup> Most

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<sup>210</sup> Interview with Participant K, *supra* note 82; Interview with Participant D, *supra* note 108.

<sup>211</sup> Ongoing political instability continues to characterize political life in Uganda, with a lack of accountable democracy and profound rule of law deficits. See *Freedom in the World 2018: Uganda*, FREEDOM HOUSE, <http://perma.cc/9HM9-2G8W>.

significantly, this includes the ongoing problem of stigmatization.<sup>212</sup> While interviewees have seen some improvement, reducing stigma requires lengthy, sustained engagement on multiple levels. As such, many of the beneficiaries who come forward to receive services still face harassment and stigmatization for doing so.

In addition to stigma, other sources of community tension complicate the work of the assistance mandate. Land conflicts were the predominant issue that often encroached on discussions in group sessions, but interviewees mentioned that domestic violence and substance abuse—which are often viewed as resulting from unresolved trauma—were also prevalent.<sup>213</sup> Though the resolution of land conflicts is outside the scope of the assistance mandate, such issues could not be ignored in the group therapy sessions given their effect on group dynamics. While implementing partners referred such issues to other community leaders for resolution, these issues and other disruptions in the social fabric remain after the war, complicating the work of the assistance mandate.

## VI. CONCLUSION

This study presents a unique snapshot of the work of the Trust Fund for Victims, a unique and understudied international organization. The ICC constitutes an experiment in delivering international justice to the world's most marginalized and vulnerable populations. Only countries that are “unwilling or unable” to deliver justice find themselves subject to the ICC's oversight.<sup>214</sup> Each institutional entity within the ICC's institutional framework is an essential partner in that endeavor. For better or worse, the Trust Fund's work has received less attention and assessment than other parts of the architecture. This analysis fills that gap.

This analysis offers a set of grounded insights, based on direct fieldwork with the Trust Fund's partners, pointing to the value and necessity of the assistance mandate. It reveals new ways to understand “repair and remedy” in local contexts, where resources are limited and justice is delayed or partial. It draws attention to the intrinsic value of engaging communities that have experienced sustained and horrific human rights violations when criminal legal process is triggered by the ICC's engagement. By preparing those communities well, building capacity, resilience and engagement with those individuals who are

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<sup>212</sup> See, for example, Sarah Kihika Kasande, *In Uganda, Confronting Stigma is Key to Preventing Impunity for Sexual Violence in Conflict*, ICTJ (Sept. 18, 2017), <http://perma.cc/5BUJ-E6BS>.

<sup>213</sup> Most of the land conflicts involved boundary disputes among returnees. These disputes are difficult to resolve given that many of the landowners were killed during the conflict and the disputes are among descendants.

<sup>214</sup> *How the Court Works*, INTERNATIONAL CRIMINAL COURT, <http://perma.cc/MCB9-T9XJ>.

the witnesses and victims enabling the work of the Court, the enterprise of international criminal justice is likely to be more successful in practice. To date, much of the work on the interface between criminal justice processes and reparations has taken a distinctly linear view of the relationship between them, generally that criminal justice comes first and reparation follows sequentially. What this assumption misses are the limitations that exist for individuals and communities to “do” criminal justice well, when the consequences of human rights and humanitarian law violations are severe and persistent. In our analysis, the assistance mandate is a vital intermediate engagement with the victims of systematic human rights violations, preparing them to better engage with the demands of international criminal justice—in addition to the benefits of beginning the healing process earlier. What this means in practice is that the earlier the intervention which engages directly with trauma and the direct physical and psychological legacies of violence for victims will be more likely to ensure that victims can move forward positively with their lives. Moreover, the research results suggest that this intermediate engagement means victims will be better placed physically, psychologically and communally to receive reparations (should they follow from perpetrator convictions). This step-by-step and holistic approach to international criminal justice has a better chance in our view of delivering justice in a way that is meaningful to affected communities and individuals. Our analysis enables us to better appreciate the value of interdisciplinary engagement in post-conflict sites and the intrinsic necessity of knitting together economic, social, psycho-social, and legal responses to extreme violations of human rights and humanitarian law. While the work of the Trust Fund has obvious limitations (also evidenced by this study), it provides innovation, attention to locality and privilege, and offers knowledge-sharing in a fair and transparent way. Such models are a rarity in international law practice, and deserve greater attention and acknowledgement when they do their work well.