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TRIAL CHAMBER IX

Before: **Judge Bertram Schmitt, Presiding Judge**
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN UGANDA

IN THE CASE OF
THE PROSECUTOR v. DOMINIC ONGWEN

Public

***Amicus Curiae* brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence**

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Global Survivors Fund (GSF)
Gulu Women's Economic Development and Globalization (GWED-G)
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REDRESS
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Introduction and procedural history

1. *Avocats sans Frontières* (ASF), Emerging Solutions Africa (ESA), the Essex Transitional Justice Network at the University of Essex, the Global Survivors Fund (GSF), the Gulu Women's Economic Development and Globalisation (GWED-G), the Institute for Peace and Strategic Studies at Gulu University, the International Federation for Human Rights (FIDH), REDRESS, Watye Ki Gen, and the Women Advocacy Network (WAN) (collectively the '*amici*') respectfully make these submissions to Trial Chamber IX ('Chamber') of the International Criminal Court ('Court' or 'ICC') pursuant to the "Decision on the requests for leave to submit *amicus curiae* observations" of 17 June 2021.[1] The *amici* submit these observations to assist the Chamber as requested in the "Order for Submissions on Reparations" issued on 6 May 2021 ('Order').[2]

2. The Chamber has requested submissions on specific issues to ensure fair and expeditious conduct of the reparation proceedings.[3] Following the Chamber's invitation for submissions, the *amici* make the following observations to assist the Chamber:

1. Additional principles on reparations that the Chamber should take into account

a. The Court should apply reparation principles consistently and interpret them in an intersectional way, keeping the centrality of the victim at core

3. The ICC Chambers have developed important principles on the right of victims to reparations under the Rome Statute.[4] While the *amici* commend the work of the Chambers in developing these principles, we note with concern that they have not always been followed when applied to individual cases. Further, the different

[1] Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the requests for leave to submit *amicus curiae* observations, 17 June 2021, ICC-02/04-01/15.
[2] Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Order for Submissions on Reparations, 6 May 2021, ICC-02/04-01/15.
[3] *Ibid*, para. 5.
[4] The Appeals Chamber has clarified the scope of the principles related to standard of causation, as well as to the standard and burden of proof for purposes of reparations (Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgement on the Appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129 ('*Lubanga* Judgement on Principles'), paras. 77-98). Other important principles considered by the Chambers include the principle of dignity, non-discrimination and non-stigmatization; the principle related to beneficiaries of reparations; the principle on accessibility and consultation with victims; the principle related to victims of sexual violence; and the principle on child victims. (Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06-2904 ('*Lubanga* Decision on Principles'), paras. 182-216). In the Ntaganda case, the principle related to accessibility and consultations with victims was expanded, and linked with a victim-centred approach (Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Reparations Order, 8 March 2021, ICC-01/04-02/06-2659 ('*Ntaganda* Reparations Order'), para. 30). It also introduced the principle of 'do no harm' (Ntaganda Reparations Order, ICC-01/04-02/06-2659, para. 51), and developed the principle on gender-inclusive and sensitive approach to reparations and that related to sexual and gender-based violence (Ntaganda Reparations Order, ICC-01/04-02/06-2659, paras. 60-64.)

approaches taken in different cases have impeded the Court so far from establishing a consistent and unified set of standards around ICC reparation principles.

4. In *Lubanga*, for example, Trial Chamber I disregarded the submissions made by many victims requesting individual reparations, in favour of community-based reparations under the argument that those "would be more beneficial and have greater utility than individual awards, given the limited funds available and the fact that this approach does not require costly and resource intensive verification procedures."[5] This approach seemed to respond to efficiency, cost and other considerations, rather than to the needs and expectations expressed by the victims on reparations.[6] Such an approach could lead to re-victimization of victims who participate before the Court, to tell their harms, needs and potential forms of reparation, expecting the Court to take them into account.

5. Further, different Chambers have taken different approaches on some key issues related to reparations. For instance, inconsistent approaches have been adopted when determining victims in the proceedings and assigning different roles in the identification process to the Registry, the Trust Fund for Victims (TFV), the Office of Public Counsel for Victims (OPCV) or the Chamber itself.[7] Further, while some Chambers have allowed additional victims to apply at the reparation phase,[8] others have privileged victims who had previously submitted applications for reparations during the proceedings.[9] In addition to creating uncertainty, the divergence of approaches could negatively impact the accessibility of victims to reparation proceedings and the centrality of victims, which would be at odds with the principles developed by the Court so far. The Court should be mindful of the circumstances and difficulties that victims may face to participate in the proceedings, and adopt a unified approach that gives victims the opportunity to enter the proceedings at the reparation phase.

6. The inconsistencies in the Court's jurisprudence on reparations and the lack of a Court-wide strategy have been pointed by some of the *amici* as one of the challenges that affect the effectiveness of the ICC reparations mandate.[10] Further, the lack of

[5] Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06-2904 ('*Lubanga* Decision on Principles'), para. 274.
[6] L. Moffett, "Meaningful and Effective? Considering Victims' Interest Through Participation at the International Criminal Court", *Criminal Law Forum* 255 (2015); C. Ferstman, "Reparations at the ICC: The Need for a Human Rights Based Approach to Effectiveness", in C. Ferstman, and M. Goetz (eds.) *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place And Systems in the Making*, 2nd edition, Brill (2020) pp. 459-461.
[7] C. Ferstman, "Reparations at the ICC: The Need for a Human Rights Based Approach to Effectiveness", p. 11.
[8] *Ibid*.
[9] Trial Chamber II, *The Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, ICC-01/04-01/07-3728-tENG ('*Katanga* Reparations Order') para. 43.
[10] REDRESS, "No Time to Wait: Realising Reparations for Victims before the International Criminal Court", 2019, pp. 11-16; REDRESS, "Justice for Victims: the ICC's Reparations Mandate", 20 May 2011;

consistency led the Independent Expert Review to note that "[t]he Court's conceptual and procedural processes for reparations are laden with complexity and uncertainty, which gravely affect the victims' rights to meaningful participation and reparations."[11]

7. Reparation principles need to be applied consistently in a holistic and intersectional way on all issues related to reparations to be decided by the Chambers, including on factual and legal issues for the identification of victims, prioritisation of victims, assessment of harm, evidentiary matters and types and modalities of reparations, as well as during the design and implementation of reparations plans. This was recognized in *Ntaganda* when it was noted that due to their "complementary nature", principles on reparations must be "considered as a whole and not in isolation, in order to adequately assess and address the victims' harms in a holistic manner."[12]

8. As such, the *amici* submit that the Chambers should apply reparation principles consistently to develop a practice that truly considers the centrality of victims in this phase of the proceedings.

b. The Court should consider additional principles on promptness and effectiveness of reparations

9. The *amici* note that the Chambers have not fully developed principles related to the right of victims to access reparations which are prompt and effective. In this regard, Trial Chamber VIII noted in *Al Mahdi* that "[i]t is of paramount importance that victims receive appropriate, adequate and prompt reparations."[13] However, the Court has not expanded on the scope and application of these key concepts.

10. The right of victims to an effective remedy, including reparations, is included in several human rights treaties,[14] and has been asserted by multiple human rights bodies.[15] The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation recognize that victims of gross human rights violations and serious violations of international humanitarian law have a right to remedies that are "adequate, effective and prompt for harm suffered."[16]

FIDH, "Whose Court is it? Judicial handbook on victims' rights at the International Criminal Court", April 2021, p. 58.

[11] Independent Expert Review of the International Criminal Court and the Rome Statute System. Final Report, 30 September 2020 ('Independent Expert Review of the ICC and Rome Statute System') para. 879.

[12] Ntaganda Reparations Order, ICC-01/04-02/06-2659, para. 30.

[13] Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, ICC-01/12-01/15-236 ('*Al Mahdi* Reparations Order') para. 33

[14] See Article 2(3) of the International Covenant on Civil and Political Rights and Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others.

[15] See for example, Human Rights Committee, *General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the ICCPR*, 26 May 2004, CCPR/C/21/Rev. 1/Add.13, paras. 15-20.

[16] 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 ('*Basic Principles and Guidelines*'), UN General Assembly resolution 60/147, 16 December 2005, 11(b).

11. The Court has already determined that the implementation of reparations "must be consistent with internationally recognized human rights,"[17] and has taken into account the main human rights instruments, as well as the jurisprudence of regional human rights courts in developing reparation principles.[18] As such, the Court shall also consider the principles of promptness and effectiveness when deciding on reparation awards.

12. To date, ICC reparation proceedings have been marred by significant delays and underperformance in the design and implementation of reparation orders.[19] Procedural delays and inconsistent approaches in reparation proceedings affect the rights of victims to access effective and prompt reparations and impact negatively on the legitimacy of the ICC reparations mandate.

13. Thus, reparation proceedings, both substantively and procedurally, should be guided by principles related to promptness and effectiveness of reparations. As such, the Court must ensure that reparations are accessed by victims in a timely manner, that victims are able to participate meaningfully in proceedings, and that the dignity and centrality of victims is truly guaranteed by the Court.

c. The Court should consider the principle of complementarity of reparations

14. We respectfully submit that the Court should add a principle on complementarity between international and domestic reparation remedies.[20]

15. Reparations by the ICC should not be crafted in isolation from other forms of reparation that are taking place, and that could be enhanced or diminished by ICC orders. Equally, they cannot take into account remedies at the domestic level that are not adequate or effective to provide reparations to victims. It is the duty of the ICC to ensure that its assistance and reparations mandates work holistically to identify opportunities and trigger comprehensive forms of reparation for victims. The relevance of this principle is not minor. The Chamber itself is asking *amici* to provide it with information as to whether the victims of the crimes of Mr Ongwen have received any form of reparation for harm suffered as a result of these crimes.

16. In Uganda, both the Juba Agreement on Accountability and Reconciliation (2007)[21] as well as the National Transitional Justice Policy (2019) recognise the right to

[17] *Lubanga* Decision on Principles, ICC-01/04-01/06-2904, para. 184.
[18] *Ibid*, paras. 184-186.
[19] See for example Trial Chamber VIII, The Prosecutor v. Ahmad Al Faqi Al Mahdi, Public Redacted Version of Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations, 12 July 2018, ICC-01/12-01/15-273-Red, paras. 9 and 14. Additionally, as noted by the Independent Expert Review, reparations processes exhibit "profound delays", where victims "wait a lifetime", Independent Expert Review of the ICC and Rome Statute System, para. 879.
[20] L. Moffett and C. Sandoval, "Tilting at Windmills: Reparations and the International Criminal Court," *Leiden Journal of International Law* 34(3) (2021), pp. 749-969 at 766.
[21] Agreement on Accountability and Reconciliation between the government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba (Sudan), 29 June 2007, 5.3, 9.1.

reparation and the need to establish a domestic reparation programme. Equally, there are remedies available before domestic courts to claim reparation. Therefore, a question that arises is how the Court, which is a criminal court adjudicating on criminal responsibility, should take into account these judicial remedies and policy when deciding on reparations. We suggest some principles for the Court to take into account when addressing this point.

17. The interplay between the ICC and domestic remedies, administrative or judicial, is regulated by the principle of subsidiarity.[22] Only when the State shows that adequate and effective remedies are in place to deal with the violations/crimes and to provide reparations to victims, is it possible for an international body to consider relinquishing jurisdiction. However, we would argue that the question should not be one of relinquishing jurisdiction but rather one where 'positive complementarity' should be triggered. As one of the *amici* has argued, "international mechanisms have powers to identify and define the reach and scope of international obligations as well as to foster an environment of compliance with them."[23] Any consideration of subsidiarity should bear in mind not only its negative dimension but also include its positive dimension, that is positive complementarity.[24]

18. Uganda is not a party in the case of *Ongwen* but given the significance of relevant and reliable information for the Court to resolve on reparations, the Court could invite the State to provide it with information on existing adequate and prompt remedies and their effectiveness.[25] If the information is of relevance then positive complementarity could be embraced by the ICC by considering how its own reparation orders could potentially be replicated and/or complemented by national efforts, for example, through a domestic reparation programme or by a decision of a court. This point would also be relevant to the Court's assistance mandate as it could generate complementarity work between assistance and reparations.

19. The *amici* do not suggest that the ICC should lower applicable international standards in detriment of victims or to relieve its reparations mandate by delegating it to national authorities. We, however respectfully suggest that positive complementarity could generate a harmonious co-existence of different reparations regimes (civil/criminal/administrative and international/national), augmenting the possibility that victims who suffer serious international crimes secure reparation as well as preventing horizontal inequalities across victims of the same violations and

[22] C. Correa, S. Furuya and C. Sandoval, *Reparation for Victims of Armed Conflict*, Cambridge University Press (2020) p. 181.
[23] *Ibid*, p. 186.
[24] This concept is for example present at the Office of the Prosecutor, *Prosecutorial Strategy 2009-2012*, 11 February 2010, p. 17.
[25] This is contemplated by the Rules of Procedure and Evidence of the Court (Rules of Procedure and Evidence, Rule 103(1)).

situations.[26] An area where positive complementarity could take place is in relation to prioritisation of victims of Sexual Gender Based Violence (SGBV) and children born out of war, key victims at stake in this case, but also recognised in the Juba Agreement and Transitional Justice Policy as key when considering reparations.

d. The Court should consider the adoption of a victim-centred methodology for the design, identification and implementation of reparations orders

20. The need for victims' participation derives from a victim-centred approach, one of the key principles on reparations as identified by the Court. The operationalisation of this principle "requires full and meaningful consultation and engagement with victims, giving them a voice in the design and implementation of reparations programmes and allowing them to shape the reparation measures according to their needs."[27] Therefore, victims should be engaged from the start in any reparation process and should participate in all its phases, including during the identification of victims and harms, and design, implementation, monitoring and evaluation of reparations.[28]

21. The importance of victims' participation is supported by the following considerations: First, it derives from the right to reparations, as opposed to humanitarian or other types of assistance that are needs-based. In the reparation process, victims are not passive beneficiaries, but right-holders, and active participation recognises them as such.[29] Second, it contributes to the recognition of victims' agency. Third, it fosters victims' ownership, increasing the legitimacy of the process. Fourth, it ensures reparation measures are adequate and effective, in line with victims' needs and have a long-lasting and sustainable effect. Victims are best placed to determine what forms of reparations are suited for them and to express how their different identities and discrimination intersect and amount to different experiences of harm and perceptions on adequate repair.[30] Finally, participation guarantees that reparation measures match the context of victims and have the intended impact, without exposing them to further harm and victimization.[31]

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[26] L. Moffett and C. Sandoval, "Tilting at Windmills: Reparations and the International Criminal Court," pp. 1-21.

[27] Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda,* Reparations Order, 8 March 2021, ICC-01/04-02/06-2659 ('*Ntaganda* Reparations Order'), para. 45.

[28] United Nations, *Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence*, June 2014, p. 10; *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, paras. 45-49.

[29] Human Rights Council, Report of the Special Rapporteur on the Promotion of Truth Justice, Reparation, and Guarantees of Non-repetition, *Participation of victims in transitional justice measures*, 27 December 2016, A/HRC/34/62, para. 81.

[30] S. Gilmore, J. Guillerot, and C. Sandoval, *Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes*, Reparations, Responsibility and Victimhood in Transitional Societies, March 2020, p. 15.

[31] For example, in some contexts compensation for victims of conflict-related sexual violence can be understood as similar to a dowry, interpreted as if the victim had willingly consented to a sexual relationship in exchange for money, or suggest that a relationship occurred apart from any coercive element. The Prosecutor v Bosco Ntaganda, *Annex 2 to the Registry Transmission of Appointed Experts' Reports*, 30 October 2020, ICC-01/04-02/06-2623-Anx2-Red2 (*Ntaganda* Second Expert Report), paras. 66-67; and P. Schulz ''Luk pe Coo,' or Compensation as Dowry? Gendered Reflections on Reparations

22. It has been argued that consulting victims of certain crimes, especially SGBV, might stigmatise them or may not be possible as they are unlikely to come forward. However, victims themselves have been insistently vocal about their willingness to participate in reparation processes and to actively contribute to the design of individual and collective measures.[32] In the experience of the GSF, one of the *amici*, their participation has proven to be far from stigmatising. To the contrary, for victims, already stigmatised and rejected by their family and community, participation has allowed them to regain a sense of power over their lives and future.

1. A truly victim-centred methodology

23. We respectfully submit that a victim-centred methodology should consider the following. First, victims need to be in a position that enables them to meaningfully and effectively participate and to have the required capacity, time and space, as well as physical and mental strength. For that purpose, the Court should, as a first step consult survivors and other stakeholders on what is needed for them to participate meaningfully and effectively before engaging on substantive conversations on reparations, and put in place the required practical enabling measures and adequate support (e.g. psychosocial support, information about services, care provision for children, transportation allowances). When designing such measures, attention should be paid to victims in situation of special vulnerability.[33] In many contexts, it is essential to reinforce existing groups or structures so that victims can establish safe and familiar forums for dialogue where they can discuss and articulate their needs before engaging with the Court.

24. Further, the Court should ensure victims have clarity, understanding and knowledge about their right to a remedy and reparation, and information on the scope and limitations of the ICC reparations system. This requires specifically tailored informative, educational, sensitisation and outreach sessions[34] to be conducted before and in parallel to the participation process. These sessions should be accessible to victims.[35] To ensure outreach is done in an appropriate manner, the Court can consult victims on adequate strategies (e.g. suitability of social media, radio broadcast, SMS

for Conflict-Related Sexual Violence against Men,' *International Journal of Transitional Justice*, 12(3) 2018, 537–548.

[32] Illustratively, it was precisely the claim for survivor-centred reparations from the network of survivors SEMA and the commitment of Dr Mukwege and Ms Nadia Murad which prompted the creation of the Global Survivors Fund.

[33] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 46.

[34] These sessions should cover the meaning of reparations, the difference between reparations and humanitarian or other types of assistance, relevant requirements and procedures as well as the different types, forms and modalities through which reparations have been materialised, both at the ICC and in other contexts, and the mandate, powers and limitations of the jurisdiction of the ICC.

[35] *Ntaganda* Second Expert Report, ICC-01/04-02/06-2623-Anx2-Red2, para. 18.

messaging or newspaper notices). In parallel to the sessions, the Court should ensure that the Registry and the TFV clarify procedures as soon as possible for victims.[36]

25. Second, participation modalities should be designed using a localised approach and be open to bottom-up suggestions from survivors. Whilst certain features of survivors' engagement, such as compliance with the "Do No Harm" principle, might be universal, the way in which these elements are operationalised may differ from one context to another. For this reason, the methodology should not be defined before starting a dialogue with victims and affected communities; it shall avoid paternalistic approaches that aim at validating or confirming preconceptions about what victims are assumed to consider as appropriate measures. This requires, for instance, to duly consider their traditional ways of healing, leadership, and knowledge.

26. For the engagement to be meaningful it is essential that there is a genuine information sharing[37] between the ICC and the victims. In this sense, the Chamber should not only ensure victims' concerns are heard but also that participation is in line with the 2009 ICC Strategy in Relation to Victims.[38]

27. Third, an intersectional and gender-sensitive approach should be adopted when designing the methodology.[39] Victims' harms, needs, and perceptions, including sensitivities associated with sexual violence,[40] can differ based on diverse factors. Consequently, attention to potential group dynamics should be paid when engaging with victims.[41] As noted in *Ntaganda*, "consultations should include 'gender- and ethnic-inclusive programmes' that take into account the legal, cultural, economic, and other obstacles victims may face in coming forward and expressing their views."[42]

28. Fourth, the selected modalities of participation should not lead to unnecessary exposure, traumatisation, re-victimisation and stigmatisation. The Court should define together with survivors adequate measures to avoid these risks and operationalise the "Do No Harm" principle, designing a methodology that allows them to engage in the process voluntarily without real or perceived risks of harm. Particular attention should be paid to victims of SGBV, "who may feel stigmatised,

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[36] FIDH, *Whose Court is it? Judicial handbook on victims' rights at the International Criminal Court*, April 2021, p. 62.
[37] See M. Pena and G. Carayon, 'Is the ICC Making the Most of Victim Participation?,' *The International Journal of Transitional Justice* 7 (2013) p. 518-535.
[38] Assembly of States Parties, *Report of the Court on the strategy in relation to victims*, 10 November 2009, ICC-ASP/8/45, para. 22.
[39] This is in line with the principle established by this Court on gender-inclusive and sensitive approach to reparations *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, paras. 60-62.
[40] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 47.
[41] One strategy that has been requested in some contexts is grouping survivors in non-mixed spaces to ensure they have the chance to speak comfortably about their distinct needs. In the experience of the GSF, male survivors of CRSV have expressed in some contexts the desire to discuss their needs in groups where no female survivors are present. Similarly, young survivors have noted that due to power dynamics, they might not feel comfortable to express themselves if they are grouped with older survivors.
[42] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 47.

socially excluded or psychological harmed, for example, by providing private, discreet forums."[43] In these instances, survivor groups and local actors can be consulted on "camouflaging strategies,"[44] with a view to ensure victims can safely come forward.

29. Finally, participation processes need to include measures for managing expectations, to avoid leading to disappointment and diminishing confidence within survivor groups or between survivors and institutions involved. A proper mapping of potential expectations and an assessment of how to effectively balance them should be conducted together with survivors and other local stakeholders.

2. The importance of the process itself

30. Although the process of designing and implementing reparations has often received less attention than the outcomes, it is crucial to revert this tendency. As stated in *Ntaganda*, "the process of obtaining reparations should in itself be empowering and transformative and give victims the opportunity to assume an active role in obtaining reparations."[45]

31. The importance of the process, and its participatory and victim-centred nature, is supported by the following. First, for reparations to be truly transformative, victims' agency should be recognised during the whole process.[46] Second, if the process is truly participatory, reparations are more likely to be sustainable in the long term. As a by-product of bringing victims together, existing networks are often strengthened and new ones emerge. Such structures can contribute not only to the monitoring, evaluation or follow-up of reparations, but they can also become a platform for victims to articulate and advocate for their rights. This is particularly useful given that the Court does not have the mandate to commit to long-term reparation efforts.

3. From consultation to co-creation

32. Mere consultation of victims during the reparation process is not sufficient, as victims are key stakeholders to define modalities of engagement and reparation measures. By shifting the paradigm of victims' participation from consultation to *co-creation*, the current interpretation of the victim-centred approach is expanded, and reparation measures are not designed *for* victims, but *together with* them. If the Chamber wants to adopt this paradigm shift, victims should not only be involved throughout the different phases of the reparation process, but should also be granted a significant and active role (e.g. facilitators of discussions with other victims, staff

[43] *Ntaganda* Second Expert Report, ICC-01/04-02/06-2623-Anx2-Red2, para. para. 11.
[44] S. Gilmore, J. Guillerot, and C. Sandoval, *Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes*, p. 33.
[45] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 95.
[46] See R. Uprimny Yepes, 'Transformative Reparations of Massive Gross Human Rights. Violations: Between Corrective and Distributive Justice', *Netherlands Quarterly of Human Rights* 27 (2009) 625-647, p. 638; and A. Saris and K. Lofts, 'Reparation Programmes: A Gendered Perspective', in C. Ferstman, M. Goetz, and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff (2009) p. 93.

members or special advisors), and be adequately assisted by the legal representatives of their choice.

2. Any legal and factual issues relevant to the identification of eligible victims

33. The Chamber should regard the specific factual circumstances of certain groups of victims when considering their identification as eligible beneficiaries of reparations and, in particular, the evidence required to establish the causal link between the crime and the harm suffered. We submit that among other groups, the Chamber should consider the situation of children born out of sexual and gender-based crimes, as well as victims who have been displaced, as stated below.

a. Children born out of sexual and gender-based crimes

34. Dominic Ongwen was convicted of 61 counts of war crimes and crimes against humanity, including 19 counts specific to 11 charges of sexual and gender-based violence, among them rape, sexual slavery, enslavement and forced pregnancy.[47] As a result of these crimes, most of the formerly abducted women who have come back to their communities have done it with children born while in captivity and who lack identity documents.[48] There is no comprehensive data on the exact number of children born of sexual violence during the war between the LRA and the UPDF. In 2018, the Justice Law and Order Sector (JLOS) of Uganda carried out a pilot study on the birth registration of children born of war in Northern Uganda. It established that there are approximately 4.000–6.000 of these children in the Acholi sub-region of Northern Uganda.[49] Obtaining identification documents both at regional and national level is still a challenge to many of them, which means they are legally non-existing. Despite JLOS announcement in 2018 that resources would be allocated to register and provide birth certificates to these children, little progress has been made so far.[50] The lack of identification documents prevents them from accessing education and job opportunities, obstructs their proper reintegration in society and leaves them in a position of exclusion and vulnerability.[51]

35. We ask the Chamber to follow the standard set in *Ntaganda*, in which Trial Chamber VI considered that "recognising children born out of rape and sexual slavery as direct rather than indirect victims, is an acknowledgement of the particular harm they suffered and may constitute an adequate measure of satisfaction, in addition to

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[47] Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Judgement, 4 February 2021, ICC-02/04-01/15-1762-Red ('*Ongwen* Trial Judgement'), pp. 1042-1063.
[48] Not only women but also men were victim of SGBV crimes. There are cases of men raising children born out of war as single parents, facing rejection and stigma from their families and communities.
[49] The pilot study has not been made public but national media has largely reported about it in Uganda. See e.g. T.R. Kirabira and L. Choukrone, 'Uganda : how to bring justice for thousands of children born of war', *The Conversation*, 1 December 2020.
[50] See 'Uganda: how to bring justice for thousands of children born of war'.
[51] V. Ladisch, *From Rejection to Redress : Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda*, International Centre for Transitional Justice, October 2015, p. 17; GSF, *Reparations for Survivors of Conflict-Related Sexual Violence. Country Briefing: Uganda*, September 2021, p. 6.

other forms of reparations that may be awarded to them."[52] The Chamber should recognize as direct victims those children born from victims of forced marriage, forced pregnancy, torture, rape, sexual slavery and enslavement, for which Ongwen was convicted, both for direct and indirect perpetration of the crimes.[53]

36. Further, the Chamber shall consider the specific harms caused to children born of war as a result of violations committed directly and indirectly by Ongwen, both in relation to direct and indirect harm (i.e., harm caused to their mothers and other relatives). Finally, the Chamber must take into account the possible lack of identity documents and other types of evidence when establishing the eligibility of children born of war as beneficiaries, and apply an approach that recognizes the difficulties they may face in establishing the causal link. The Chamber would be encouraged to apply a presumption that all children born from victims of rape, forced marriage, torture, sexual slavery, enslavement and forced pregnancy are direct victims too.

b. Victims displaced out of the geographical jurisdiction of the crimes committed

37. Ongwen was convicted for attacks against the civilian population on the IDP camps of Pajule (10 October 2003), Odek (29 April 2004), Lukodi (on or about 19 May 2004) and Abok (8 June 2004). However, since the cessation of fire in the region, many victims have relocated to different parts of the country and others may have sought asylum outside the country. Victims of other crimes for which Ongwen was convicted have also relocated to other areas or countries.

38. One of the challenges the Court might face in the case is how to identify potential beneficiaries who are outside the geographical area where the crimes took place, whether inside or outside Uganda. Even though the right to reparations is not contingent on residence in the place where the crimes occurred, victims who are displaced face significant obstacles, including the lack of information on reparation proceedings, socioeconomic challenges, stigma and safety concerns, among others.[54] We submit that a comprehensive outreach strategy, both inside and outside Uganda, will be key to ensure the accessibility of victims to reparation proceedings,[55] through a

[52] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 123.

[53] Mr Ongwen was only convicted for direct perpetration of forced pregnancy in relation to 7 victims, yet he was convicted for all other SGBV crimes both directly and indirectly. In this regard, in *Ntaganda*, Trial Chamber VI noted that even though it made a finding in relation to only 3 victims who were raped and subjected to sexual slavery, this was not representative of the number of female victims subjected to these crimes by the armed group. *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 119.

[54] *The Prosecutor v. Germain Katanga*, Redress Trust observations pursuant to Article 75 of the Statute, 15 May 2015, ICC-01/04-01/07-3554, ('*Katanga* Redress Trust observations'), paras. 56-58. In relation to the situation in Uganda, see: Stuck in the camps with nowhere to go', *Daily Monitor*, 13 February 2010; Etienne Salborn, *Prerequisites of return and reintegration for internally displaced persons in Northern Uganda*, 2010; Melissa Parker and others, 'Legacies of Humanitarian Neglect: Long Term Experiences of Children Who Returned from the Lord's Resistance Army in Uganda' 15 *Conflict and Health* (2021) p. 43.

[55] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, paras. 46 and 47.

combination of traditional and new media, through consular services, regional and international organizations, and other pro-active measures.[56]

39. Yet, given the difficulties that displaced victims face to access ICC proceedings, there is a chance that not all of them will be able to apply to participate in reparation proceeding within the prescribed timeframe. Thus, the Court might need to consider ordering the establishment of a mechanism, with certain requirements, so that the TFV and/or the Registry can identify additional beneficiaries of some of the reparation orders made by the Chamber in this case.[57] Such mechanism would allow the identification of displaced victims to access certain reparation measures to which they are entitled even post reparation order.

40. Finally, the Court should take into account the particular challenges faced by displaced victims when considering the modalities for reparations. For example, reparations should not be contingent on the return of victims to Uganda.[58]

3. Any victims or groups of victims who may require prioritisation in the reparations process

41. The Court established in the *Ntaganda* case that, "[w]hen determining priorities, attention should be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers."[59] Given the types of victimization in the present case, the *amici* submit that this criteria is also applicable to the *Ongwen* case.

42. Additionally, the Chamber might want to establish other priority factors based on the existence of "recurring harms" identified by the Chamber during the reparation proceedings. Following this approach, the Chamber would be able to identify and address types of harms that affect a significant number of victims or certain groups, for example the lack of identity documents for children born of war, the need of urgent medical and psychosocial assistance to victims of SGBV, and the lack of independent access to land for women, especially those returning with children born out of war.[60]

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[56] *Katanga* Redress Trust observations, ICC-01/04-01/07-3554, paras. 59-62.

[57] This practice is supported by precedents in other international courts and reparation mechanisms. See *Katanga* Redress Trust observations, ICC-01/04-01/07-3554, paras. 74-78. See for example the case of El Mozote v. El Salvador where the Inter-American Court applied the exception of article 35.2 of its Rules of Procedure, to include victims that had not been duly identified before the Court by the Commission or the legal representatives of the victims. The Court asked El Salvador to put in place a robust registration system for victims so that they could benefit from the reparations ordered by the Court. IACtHR, *Massacres of El Mozote and nearby places v. El Salvador*, Judgement (Reparations and Costs), 25 October 2012, Series C No. 253, para. 310.

[58] *Katanga* Redress Trust observations, ICC-01/04-01/07-3554, paras. 64-73.

[59] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, paras. 92-93 and 214.

[60] M. Parker *et al*, 'Legacies of Humanitarian Neglect: Long Term Experiences of Children Who Returned from the Lord's Resistance Army in Uganda' 15 *Conflict and Health* 43 (2021); GSF, *Country Briefing: Uganda*, p. 3.

4. Specification of the types and extent of the harm suffered by the victims of the crimes for which Ongwen was convicted

43. The victims of the case suffered different types of harm including material, psychological, physical, community/cultural, and intergenerational harm. The *amici* support the use of a sampling method to identify the harms and submit that the Chamber identifies the types of harms suffered by victims, including as a minimum the different victim groups derived from the categories of crimes.

a. The use of samples to identify harms

44. The *amici* concur with the Experts' report on reparations in the *Ntaganda* case that references the widespread use of samples and the importance that such samples be representative of the victim population.[61] Here, the creation of a sample from each of the victims groups should include representatives from the following categories: (1) direct victims of crimes, such as those who survived attempted murder, rape, torture, or enslavement, or those whose property was destroyed; (2) indirect victims of crimes who suffered harm as a consequence of the crimes or who witnessed other victims' suffering; (3) family and community members who were psychologically or materially impacted by the death, suffering, or other harms caused to direct victims.

45. FIDH, one of the *amici*, has highlighted the importance of using samples to identify harms *in lieu* of other methods, in a recent report on victims' rights at the ICC.[62] The report explains that using a sample of victims is more appropriate than practicing individual assessments, given the lack of feasibility to conduct a large number of individual assessments and the risk of widespread re-traumatisation that may amount to "harassment" of victims. Nevertheless, some victims do want to tell their stories, even when they have already done so in the past and found the process dignifying and reparative. The report notes that the experts in the *Ntaganda* case who used a sampling method to identify harms recommended a "wider use of sampling at an earlier stage of the reparation procedure."[63]

b. International standards on intergenerational trauma

46. The ICC jurisprudence has considered categories of harm such as physical, psychological and material harm.[64] However, it has been less explicit on others, such as community or cultural harm, and intergenerational harm.

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[61] *Ntaganda* First Experts' Report, ICC-01/04-02/06-2623-Anx1-Red2, para. 40, fn 61, quoting H. Das and H. Van Houtte, *Post-War Restoration of Property Rights under International Law*, Volume II: Procedural Aspects, Cambridge University Press (2008).
[62] FIDH, *Whose Court is it? Judicial Handbook on Victims Rights at the ICC*, June 2021, p. 63.
[63] *Ibid.*
[64] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, paras. 68-77.

47. The legal concept of transgenerational or intergenerational harm describes it as the harm suffered as a consequence of transgenerational transmission of trauma.[65]

48. The *amici* submit that the Chamber should consider transgenerational harm in the Ongwen case, including in relation to children born of war, as well as other victims who are first and second generation of direct and indirect victims of the case. A study carried out by ICTJ in 2015 noted the severe consequences of sexual violence for mothers, their children and other caretakers that support them.[66] The rejection and stigma they face sometimes started with the grandmothers, victims themselves of rape and who also gave birth to children, and cascaded to their children and grandchildren. There is a cumulative effect of violations that "reinforces the intergenerational cycle of vulnerability, abuse and marginalisation."[67]

c. Types of harms suffered by the victims of the crimes for which Dominic Ongwen was convicted

49. The decision convicting Ongwen provides a comprehensive list of the crimes for which he was charged.[68] The *amici* submit that the harms can be derived from this decision and be categorized according to the charges brought against him[69]: (1) harms suffered during the attacks on various camps; (2) harms suffered from sexual and gender-based crimes perpetrated by Ongwen; and (3) the use of children in hostilities. These harms will not be elaborated as they have been clearly identified in the Victims' Joint Submission and by the Chamber itself in the Trial Judgement. Therefore, the *amici* focus on addressing the harms suffered by children born of war.

50. As submitted above, the *amici* argue that the Court should consider children born of war as direct victims and consider the specific harms suffered by them. One of these harms is the right of children to identity. International human rights law has recognised and protected the right to a name and identity of children.[70] Of particular importance for the *Ongwen* case is article 6 of the African Charter on the Rights and Welfare of the Child (ratified by Uganda in August 1994), where the right to a name and registration after birth is recognised.[71]

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[65] S. Busi, 'La reconnaissance d'un préjudice transgénérationnel une fois encore évincée par la Cour pénale internationale', *La Revue des Droits de l'Homme*, Actualités Droits Libertés, July 2019. See also Annexe Publique submitted by the victims' counsel in the *Katanga* case, ICC-01/04-01/07-3788-Anx 13-04-2018 2/5 NM T; *Katanga* Reparations Order, ICC-01/04-01/07-3728-tENG, paras. 73, 132.

[66] V. Ladisch, *From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda*, p. 20.

[67] *Ibid*.

[68] *Ongwen* Trial Judgement, ICC-02/04-01/15-1762-Red.

[69] This would follow the convention used by the First Experts Report on Reparations in the *Ntaganda* case (*Ntaganda* First Experts' Report, ICC-01/04-02/06-2623-Anx1-Red2).

[70] See UN Convention on the Rights of the Child, articles 7 and 8; American Convention on Human Rights, article 18, and European Convention on Human Rights, article 8; International Covenant on Civil and Political Rights, article 24.

[71] This right has also been recognised by international and regional courts: Inter-American Court, *Gelman v. Uruguay*, Judgement (Merits and Reparations) 24 February 2011, Series C No. 221, paras. 120-123 ; *Las Dos Erres Massacre v Guatemala*, Judgement (Preliminary Objections, Merits, Reparations and

51. An important aspect of the harm suffered by the affected communities as a result of forced pregnancy and children born out of rape in the case is the loss of identity for many children and the subsequent inability to be legally recognised citizens.[72] The harm continues for them as lack of registration translates into lack of access to education, health and other social services that are fundamental to fulfil basic human rights.[73] It is for this reason that these identity related harms should be taken into consideration by the Chamber when identifying harms and ordering reparations.

5. Whether recourse to factual presumptions should be considered

52. The *amici* submit that the Court should avail itself of the application of factual presumptions to establish harm in relation to some direct and indirect victims. Given the extent of victimization in the *Ongwen* case,[74] the use of factual presumptions could expedite the identification of beneficiaries and the link between specific crimes and the harms suffered in relation to some victims. Additionally, the application of certain presumptions can ease the hardships faced by some groups of victims to prove harm, such as children born of war, displaced victims and victims of sexual and gender-based violence.

53. We submit that in the present case the Chamber should consider: a) presumptions that apply to the eligibility of victims; and b) presumptions on moral, physical and material harm to certain victims.

a. Presumptions on the eligibility of victims

54. Considering the challenges faced by children born of war to prove their eligibility for reparations, the Chamber should apply a presumption that children born from women victims of sexual and gender-based crimes for which Ongwen was convicted either directly or not directly, should be considered direct victims for the purpose of reparations.

b. Presumptions on harm

55. Considering the scope of victimization in the present case, the Chamber shall apply the standard established in *Ntaganda*, of presuming certain harms in relation to

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Costs) 24 November 2009, Series C No. 211, paras. 192-193; ECtHR, *Godelli v. Italy*, Judgement, 25 September 2012, Application No. 33783/09, para. 58; ECtHR, *Mikulić v. Croatia*, 7 February 2002, Application No. 53176/99, paras. 64-65; ECtHR, *Genovese v. Malta*, 11 October 2011, Application No. 3124/09, para. 33 ; and African Committee of Experts on the Rights and Welfare of the Child, *Institute for Human Rights and Development in Africa and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v. the Government of Kenya*, Decision No 002/Com/002/2009, 22 March 2011, para. 69.

[72] J. Neenan, "Closing the Protection Gap for Children Born of War: Addressing Stigmatisation and the Intergenerational Impact of Sexual Violence in Conflict", LSE, Centre for Women, Peace and Security, 2017, p. 35.

[73] V. Ladisch, *From Rejection to Redress : Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda*, p. 17; GSF, *Country Briefing: Uganda*, September 2021, p. 6.

[74] The Ongwen case has seen the highest number of victims participating in trial proceedings (4,095 victims) before the ICC to this date, and it is likely that it will also see the highest number of participating victims in reparations proceedings.

victims whose eligibility has been proven.[75] In *Ntaganda*, material, physical and psychological harm was presumed in relation to child soldiers and direct victims of rape and sexual slavery, as well as the indirect victims who are close relatives of direct victims of those crimes.[76] It was considered that family members for the purposes of presuming harm are understood to be all those within the same household.

56. In the present case, the above-mentioned presumptions should be applied to direct victims including child soldiers, victims of sexual and gender-based crimes for which Ongwen was convicted directly or not directly, as well as children born out of those crimes. They should also apply to indirect victims who are close relatives of those direct victims. Yet, the Chamber must be mindful to consider close relatives that might not be living in the same household as the direct victims, given the stigmatization and exclusion of some categories of victims (such as children born of war, who are often not welcome to live with their mothers and in their original communities).[77]

57. Additionally, in the *Ntaganda* case, Trial Chamber VI presumed physical and psychological harm for direct victims of attempted murder and direct victims of the crimes committed during the attacks, who personally experienced the attacks.[78] Further, it presumed psychological harm for victims who lost their home or material assets with a significant effect on their daily life, and indirect victims who are close family members of direct victims of murder.[79]

58. In the present case, the Chamber should presume physical and psychological harm for direct victims of the crimes committed during the attacks to Pajule (10 October 2003), Odek (29 April 2004), Lukodi (on or about 19 May 2004) and Abok (8 June 2004) camps, and crimes committed against civilians thereafter as included in the judgement. The Chamber should presume psychological harm for victims who experience material loss with significant impact on their daily lives. The Chamber should also presume psychological harm of close family members of the direct victims of murder, torture, and other grave crimes committed in the camps and/or thereafter for which Ongwen was convicted.[80]

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[75] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 143.
[76] *Ibid*, para. 145.
[77] Ladisch, From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda, pp. 17-20.
[78] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 146.
[79] *Ibid*, para. 147.
[80] This presumption should not be limited to the relatives of victims who suffered murder, but also those who suffered other grave violations. See ACHPR, *Norbert Zongo et al. v. Burkina Faso*, Judgment on Reparations, 5 June 2015, Application No. 013/2011, para. 55; IACtHR, *Case of Myrna Mack Chang v. Guatemala*, Judgement (Merits, Reparations and Costs), 25 November 2003, Series C No. 101, para 243; IACtHR, *Case of Maritza Urrutia v. Guatemala*, Judgement (Merits, Reparations and Costs), 27 November 2003, Series C No. 103, para. 169; IACtHR, *Case of the Pueblo Bello Massacre v. Colombia*, Judgement (Merits, Reparations and Costs), 31 January 2006, Series C No. 140, para. 257; IACtHR, *Case of Chitay Nech et al v. Guatemala*, Judgement (Preliminary Objections, Merits, Reparations and Costs), 25 May 2010, Series C No. 212, para. 276; IACtHR, *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*,

6. Information as to whether the victims of the crimes for which Ongwen was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes

59. The Juba Agreement on Accountability and Reconciliation (2007) provides that reparations are to be delivered to victims of gross violations of human rights, both at the individual and collective levels. More than a decade later, in 2019, a National Transitional Justice Policy (NTJP) was adopted by the Government of Uganda, designed to address justice, accountability and reconciliation needs of post-conflict Uganda. However, to this date, no progress has been made regarding its implementation. For the launching of the different mechanisms envisaged in the NTJP, legislation is required that has not been adopted by Parliament.[81]

60. One of the mechanisms envisaged in the NTJP, is a "well-developed reparations programme." While the NTJP refers to a broad understanding of the beneficiaries of future reparations, as well as the different potential modalities beyond restitution and compensation, it is not clear to what extent the reparations programme will be established in line with international standards. Therefore, it is not possible at this point to assess whether it constitutes and adequate, prompt, and effective remedy for victims. The NTJP places important emphasis on non-monetary compensation, including symbolic reparations. While standards allow for symbolic measures as reparation,[82] reparations should be proportionate to the gravity of the violations and the harm suffered.[83] In addition, they should be prompt, which is not the case, 15 years after the end of the conflict.

61. At the administrative level, to date, the government of Uganda has mainly offered support to conflict affected parts of the country, including Northern Uganda, via humanitarian and development programmes.[84] Some victims of the conflict have received one-off compensation for their livestock losses by the government; such as in the case of the Acholi War Debt Claimants, who sued the government, seeking compensation for livestock and other property destroyed during the war and reached an out of court settlement.[85] Others have obtained partial support through development programmes.[86] These programmes, however, have failed to adequately

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Judgement (Preliminary Objections, Merits, Reparations, and Costs) 24 November 2010, Series C No. 219, para. 235.

[81] S. Nakirigya, 'Northern leaders urge govt on transitional justice Policy', *Daily Monitor*, *2 May 2021*.

[82] Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Order for Reparations, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para 67.

[83] *Basic Principles and Guidelines*.

[84] For example, the Peace Recovery and Development Plan, the Northern Uganda Social Action Fund, Operation Wealth Creation and the District Discretionary, and Equalisation Grant.

[85] Anthony Wesaka, 'Govrmen releases Shs10b to compensate Teso, Lango war claimants,' *Daily Monitor*, 8 January 2021; 'Cattle compensation: MPs query attorney general's list', *The Independent*, 15 September 2021.

[86] International Centre for Transitional Justice, *Building Blocks for Reparations Providing Interim Relief to Victims Through Targeted Development Assistance*, September 2020.

consider and address the needs of victims.[87] While such programmes can play a valuable role in ensuring peace and recovery, they do not amount to justice and/or reparations, as they do not require a harm and responsibility acknowledgement, and thus blur the nexus between harm suffered, responsibility and reparations. Such *ad hoc* practices also risk discriminating between victims by offering compensation or support to some but not others.[88]

62. As to reparations at the judicial level, the International Crimes Division (ICD) of the High Court of Uganda was set up in 2008 to prosecute grave crimes.[89] Its Statute and Rules of Procedure and Evidence provide for the ICD's mandate to order a convicted accused to provide compensation to its victims.[90] Yet, the ICD has not passed a single judgement on individuals charged with international core crimes. To date, only one case is pending before the ICD,[91] against Thomas Kwoyelo, a former member of the LRA. The case has been dragging on for more than 10 years since his arrest and the trial has been adjourned indefinitely due to the COVID-19 pandemic.[92] Furthermore, his potential conviction would only have the potential to contribute to reparations for victims of crimes committed by Kwoyelo and only those for which he has been charged. The indictment against him concerns 'all attacks by the LRA which took place in Kilak County, Amuru District between 1987 and 2005',[93] which differ from the geographical areas in which Ongwen committed the crimes for which he was sentenced.

63. Attempts have also been made to obtain reparations before Civil Courts, under Section 197 of the Magistrates Courts Act,[94] which provides that compensation can be awarded in case of harm. Nevertheless, some of the civil society attempts to this end have proven unsuccessful.[95]

64. To date, most concrete efforts towards rehabilitation and/or reparation have come from the civil society sector. Thanks to the efforts of WAN, the Ugandan

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[87] *Ibid*.
[88] *Basic Principles and Guidelines*, 25.
[89] G. Matsiko, '12 Years On, Uganda's International Crimes Division Has Little To Show', *Justiceinfo.net*, 9 March 2020.
[90] The Judicature (High Court) (International Crimes Division) Rules, Rule 48 – Reparation and compensation, Uganda.
[91] Another case has been opened against Jamil Mukulu, a rebel leader of the Allied Democratic Forces (ADF), who is accused of launching a rebellion against the government and terrorising people in Rwenzori region in western Uganda before establishing his base in eastern DR Congo. On 28 May 2020 his bail application was referred to the ICD ('Mukulu's bail application referred to ICD', Daily Monitor, 28 May 2020). The trial started in January 2021 but was adjourned with no further news ('Jamil Mukulu trial pushed to March', The Independent, 29 January 2021.
[92] L. Owor Ogora, 'Kwoyelo Trial Suspended Due to COVID-19',*International Justice Monitor*, 26 March 2020.
[93] The International Crimes Division Of The High Court Of Uganda, *Prosecutor v Kwoyelo Thomas Alias Latoni*, Amended Indictment.
[94] *Magistrates Courts Act*, Chapter 16, Uganda, Section 197.
[95] Impunity Watch and REDRESS, *Victims Front and Centre. Lessons on Meaningful Victim Participation from Guatemala and Uganda*, p. 46.

Parliament adopted a motion in 2014 recognizing the specific needs of victims of SGBV in terms of reparations, taking up the three main demands of the collective: access to education for children born out of rape, medical care, and economic support through financial support for productive activities.[96] Yet, to date, the motion has not resulted in any tangible action being taken.

7. Types and modalities of reparation

65. The Chamber asks for the suitability of collective reparations in the case. We respectfully consider that such approach might be suitable for some of the victims but not necessarily for all. In relation to those for whom it might be suitable, because they are found in the same place, share a similar form of victimisation or harm as a result of the same attack, it is important for the Chamber to fully uphold the right to reparation that each of them has, which according to this Court "ought to be proportionate to the harm, injury, loss, and damage as established by the Court."[97]

66. Upholding this right implies the identification and recognition of individual and collective harms in the order of reparations, as well as forms of reparation that are adequate, prompt and effective to address those harms.[98] Recognition, as a form of satisfaction, is an essential reparation measure to which the Court can contribute and which can allow the victims to experience other forms of reparation as truly reparative. The acknowledgment of harms and reparations due, means that victims will know that they are getting reparations be it from the individual perpetrator and/or the TFV, and not some form of assistance, development project or work that the State ought to do to comply with other international obligations.

67. Equally important is the need to consider the suitability of different forms of reparation bearing in mind the right and the reparations principle upheld by this Court, that victims ought to participate "in the design and implementation of reparations programmes and allowing them to shape the reparation measures according to their needs."[99] While there are clear legal limitations as to what the Court can provide as reparations, victims' participation might allow the Court to craft collective reparations with an individualised component that reflect relevant views of victims about what they want and need, the likelihood of implementation, and the context in which those reparations would have to be materialised.

68. Also, in the *Ongwen* case there are multiple victims, many of which are yet to be identified. These facts both advocate in favour and against collective reparations with individualised components. It is clearly in favour of victims who have not yet

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[96] Women's Advocacy Network, *Petition By Women's Advocacy Network To The Parliament Of The Republic Of Uganda Seeking Its Intervention In Addressing Issues And Challenges Faced By War Affected Women In The Acholi Sub Region*, 24 February 2014.
[97] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 89.
[98] *Basic Principles and Guidelines.*
[99] *Ntaganda* Reparations Order, ICC-01/04-02/06-2659, para. 45.

been identified as it means that they could potentially benefit, at least, from the collective/community form of reparation. It is against, for example, victims who have been displaced, as it is not known where they are, so the effectiveness of a collective approach might be doubtful. In such circumstances it might be more suitable to establish a process of identification of victims post judgment, as mentioned above.[100]

69. Further, given the importance of rehabilitation and restitution such as access to quality mental and physical health services as well as to education, it is important that the delivery of such services is truly dependent on harm suffered by victims.[101] As for education, be it for children or adults, it is important that if such a measure is ordered, it is clearly distinguished from education as a human right and as a form of development, by providing victims with elements of education that go beyond. For example, access to primary education is a right, and access to an education facility is both a right and part of development, but the provision of a stipend for children to buy books, access to quality food during school time, or accelerated learning programmes for victims would be reparations.[102]

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Submitted on behalf of the following persons and organisations:

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Dated this 04 February 2022
At Kampala (Uganda) and The Hague (The Netherlands)

[100] See para. 39.
[101] In Colombia, for example, under Law 1448 of 2011 measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict (*Victims and land restitution law*).
[102] GSF, *Country Briefing: Uganda*, p. 3.