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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

**Joint Submission by the United Nations on Reparations pursuant to Rule 103 of the Rules
of Procedure and Evidence**

Source: The United Nations

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

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I. Introduction

1. The United Nations respectfully transmits the present joint submission (“Submission”) in the reparations phase of the case of *The Prosecutor v. Dominic Ongwen* (Case No. ICC-02/04-01/15) pursuant to the Decision of the Trial Chamber IX (“Chamber”) of the International Criminal Court (“ICC” or “Court”) dated 6 May 2021, on behalf of the following United Nations entities: (i) The Office of the United Nations High Commissioner for Human Rights (“OHCHR”); (ii) The Office of the United Nations Special Representative of the Secretary-General on Children and Armed Conflict (“OSRSG-CAAC”);¹ (iii) The Office of the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict (“OSRSG-SVC”); and (iv) The United Nations Entity for Gender Equality and Empowerment of Women (“UN Women”) (collectively, “the United Nations”).

II. Procedural History

2. On 4 February 2021, the Chamber found Mr. Ongwen guilty of a total of 61 crimes comprising crimes against humanity and war crimes, which were committed in Northern Uganda between July 2002 and December 2005. These convictions included sexual and gender-based crimes (“SGBC”) and the conscription and use of children in hostilities, perpetrated both by Mr. Ongwen personally and through his actions and leadership role in the Lord’s Resistance Army (“LRA”) and specifically the Sinia brigade.² On 6 May 2021, Mr. Ongwen was sentenced to 25 years of imprisonment.³ The Chamber authorized the commencement of the reparations phase of these proceedings and, further to the Chamber’s Order for Submissions on Reparations of 6 May 2021,⁴ the

¹ In its application for leave to file *amicus curiae* submissions of 4 June 2021 (ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Application by the United Nations for leave to make submissions pursuant to Paragraph 5(iii) of the “Order for Submissions on Reparations” of 6 May 2021, Article 75 of the Rome Statute and Rule 103 of the Rules of Procedure and Evidence, 4 June 2021 (‘*United Nations Amicus Request*’), the United Nations noted that additional Offices, Funds, Programmes and Representatives may contribute to the joint submissions of the United Nations (see para 2). In the Chamber’s Decision on the requests for leave to submit *amicus curiae* observations, 17 June 2021 (‘*Ongwen Decision on leave to amicus curiae*’), the Chamber permitted these potential additions (see para. 2 *et seq.*). The OSRSG-CAAC is also contributing to this joint Submission.

² ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, 4 February 2021 (‘*Ongwen Trial Judgement*’).

³ ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Sentence Judgement, 6 May 2021 (‘*Ongwen Sentence Judgement*’).

⁴ ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Order for Submissions on Reparations, 6 May 2021 (‘*Ongwen Order for Submissions*’), para. 5(iii).

United Nations requested leave to file a joint *amicus curiae* submission, which the Chamber granted on 17 June 2021.⁵

III. Overview of the United Nations Submission

3. In accordance with the issues highlighted in paragraphs 5(i)(a), (c), (e), (g) and (j) of the Chamber's Order, this Submission focuses on the following matters: (A) specifications of the types and extent of the harm suffered by the victims; (B) key aspects of effectiveness of reparations; (C) types and modalities of reparations in Northern Uganda; and (D) reparations in the *Ongwen* case within a wider context.
4. The Submission focuses particularly on the right to remedy and reparations of child victims of conscription and use in armed hostilities, and victims of the SGBC committed directly and indirectly by Mr. Ongwen.⁶ It provides contextual information that is illustrative of the harms suffered by victims and the nature of the reparation measures suitable to address these harms. Indeed, the number of victims of the crimes committed by the LRA in Northern Uganda from 1 July 2002 to 31 December 2005 is arguably higher than the number of victims participating in the proceedings before the Court in the *Ongwen* case.⁷ This Submission is based on interviews conducted by OHCHR and UN Women in 2019 and 2020 with a broad group of victims of SGBC committed by members of the LRA ("Interviews"),⁸ including, but not limited to, victims of crimes committed by Mr. Ongwen, directly or indirectly, and/or the Sinia Brigade. While mindful of the causal link required for awarding reparations,⁹ the United Nations considers that the information received from this larger sample of victims will provide useful contextual information for the Court's consideration of the principles and issues relevant to reparations in this case. The Submission also takes into consideration relevant international human rights norms and standards, including on reparations,¹⁰

⁵ United Nations Amicus Request; *Ongwen Decision on leave to amicus curiae*.

⁶ Enslavement, torture, rape, sexual slavery, forced pregnancy, forced marriage, outrages upon personal dignity.

⁷ *Ongwen Trial Judgement*, para. 2798.

⁸ Interviews by OHCHR were conducted with sexual violence victims in the Acholi, Lango, Teso and West Nile regions in 2019-2020. UN Women and a partner also carried out a mapping exercise, including surveys, in 2019-2020 of 2,804 formerly abducted women, girls and children born in captivity, in the Acholi sub-region (districts of Gulu, Kitgum, Omoro, Pader, Nwoya, Amuru, Agago and Lamwo). The text refers to 'interviews' without distinction.

⁹ ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, Case no. ICC-01/04-01/06-3129-AnxA, 03 March 2015, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, (*Lubanga Appeal on Reparations*), paras. 80-81.

¹⁰ On reparations, see 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 of 16 December 2005 (*Basic Principles*). On the normative framework applicable in Uganda, see International

ICC rules and jurisprudence,¹¹ good practices identified by international mechanisms¹² and United Nations guidance.¹³ This Submission contains recommendations to bring to the attention of the Court good practices at the international level as well as the outcome of interviews with victims and witnesses conducted by the United Nations.

IV. Observations

A. Specifications of the types and extent of harm suffered by the victims

5. The Submission refers to three categories of victims: (a) direct victims of SGBC, including children; (b) children of victims of SGBC born during captivity and (c) direct victims of conscription and use of children in armed hostilities. In addition, relatives of deceased SGBC victims, as well as persons exercising *de jure* or *de facto* parental authority over these victims' children may also be eligible for reparations.
6. Notwithstanding individual experiences, some general characterisations can be drawn to identify the prevailing forms of harm experienced by these three categories of victims. The following elements reflect the descriptions expressed by Northern Ugandan victims in the interviews conducted and illustrate the type and extent of harm they suffer.

A.1. Forms and extent of harm suffered by direct victims of SGBC, including children

7. Many of the SGBC for which Mr. Ongwen was convicted, including enslavement, torture, rape, sexual slavery, and forced pregnancy, occurred in the context of forced

Covenant on Civil and Political Rights, of 16 December 1966 ('ICCPR'); Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 ('CEDAW'); International Covenant on Economic, Social and Cultural Rights of 3 January 1976 ('ICESCR'); Convention on the Rights of the Child of 20 November 1989 ('CRC') and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 12 February 2002 ('CRC-OPAC').

¹¹ ICC Rules of Procedure and Evidence; ICC, *The Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, *Order for Reparations*, 24 March 2017 ('*Katanga Reparations Order*'); ICC, *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06, *Order for Reparations*, 8 March 2021 ('*Ntaganda Reparations Order*'), *inter alia*.

¹² CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations of 18 October 2013 ('*CEDAW GR 30*'); Report of the Special Rapporteur on violence against women its causes and consequences on the topic of reparations to women who have been subjected to violence in contexts of both peace and post-conflict, of 23 April 2010, A/HRC/14/22 ('*SR-VAW report on reparations*'); Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on adopting a gender perspective in the conceptualization, design and implementation of national transitional justice strategies and mechanisms of 17 July 2020, A/75/174 ('*SR-TJRG report on gender in transitional justice*'); Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on practical experiences of domestic reparation programmes of 11 July 2019, A/HRC/42/45 ('*SR-TJRG report on reparation programmes*'); Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, on the participation of victims in transitional justice measures, of 27 December 2016, A/HRC/34/62 ('*SR-TJRG report on participation*'); *inter alia*.

¹³ Guidance Note of the United Nations Secretary-General on Reparations for Conflict-Related Sexual Violence of 2014 ('*SG Guidance Note*'); and Office of the United Nations High Commissioner for Human Rights, Analytical study focusing on gender-based and sexual violence in relation to transitional justice of 30 June 2014, A/HRC/27/21 ('*OHCHR Analytical Study*'). See also Security Council resolution 2467 (2019).

marriage, which the Court examined as a crime against humanity for the first time. The Court found that many girls and young women were abducted by the LRA in their formative teenage years, and most were held in captivity and forced marriages for five to six years.¹⁴

8. All crimes leave physical and mental pain and trauma, but the uniquely gendered and highly stigmatized nature of SGBC poses specific challenges to victims. United Nations-led mapping exercises carried out in Uganda indicate that women and girl victims of SGBC and their children continue to experience physical and psychological consequences, coupled with extreme social stigma and isolation.¹⁵ Victims of forced marriage reported experiencing physical and sexual violence, psychological trauma and stigma - which is common to most victims of SGBC - in addition to a unique harm to their social reputation and livelihood because of their 'marriage' and affiliation to their 'husbands' and to the LRA. Interviews demonstrate that the impacts of forced marriage are particularly felt in a community in which, under local customs, a woman's access to social and economic capital, including land, is tied to her husband. Moreover, victims of forced marriage and forced pregnancy reported experiencing financial hardship and loss, as they often carry the financial burden of their children alone.
9. The results of a mapping of more than 2,800 women and girls who had been abducted in Northern Uganda's Acholi sub-region showed that 61.8 per cent of them did not currently have access to land and only 11.4 per cent had received post-primary education. This situation, paired with prevailing discrimination in access to land,¹⁶ which is essential for livelihood in Acholi's agricultural society, and social ostracization, has severely limited the ability of victims to provide for themselves and their children. Many participants in the mapping exercise cited an inability to afford school fees for their children as a primary ill effect of the war and their victimhood on their lives.
10. In addition, the violence endured by SGBC victims, many of them at a very young age, has had long-term impacts on their physical health, leaving some of them with a disability as well as sexual and reproductive health challenges, including risk of contracting HIV and other sexually transmitted infections. Many victims reported fear and reluctance to seek out timely medical care for health concerns due to trauma and fear of re-traumatisation or stigma, for example, if they had to explain how the health

¹⁴ *Ongwen Trial Judgement*, paras. 2202-2274.

¹⁵ See fn. 8.

¹⁶ CEDAW/C/UGA/CO/7, paras. 39 and 41.

issue originated or why they did not seek support earlier. Some victims, especially those who suffered bullet wounds, were reluctant to seek medical care for fear of being arrested and charged with participating in rebel activities.

11. The mental health consequences of the SGBC committed by Mr. Ongwen are severe and long lasting. These effects were recounted by the victims in the trial proceedings, which vividly depict the daily violence and dehumanization women and girls experienced while in captivity.¹⁷ The psychological trauma from personal experiences of violence and from witnessing violations against family members, friends and acquaintances, often for years, have had an enduring impact on victims and their families. Following release from captivity, this trauma is often compounded by the subsequent social isolation and stigmatization imposed by victims' relatives, their communities and society. Damage to mental health has further impacts on victims' ability to work and provide for themselves and their children.
12. Some SGBC victims in Northern Uganda reported suffering from infertility. Global research has analysed the negative impact of sexual violence on women's fertility, including how trauma impacts their desire to be sexually active, eventually interfering with their ability to become pregnant, and how the physical damage to reproductive organs impacted their ability to carry a healthy pregnancy to term. Infertility has proven social and mental health impacts, such as social stigma, low self-esteem, anxiety, emotional stress, depression, divorce, and violence.¹⁸
13. When assessing the specific harms suffered by victims of forced pregnancy, it is important to give due consideration to the known harmful consequences of bearing unwanted pregnancies, including on the victim's mental health, amounting in some cases to cruel, inhuman or degrading treatment.¹⁹ Forced pregnancies of girls under fifteen entail additional health-related risks, including death for the mothers and the newborns, higher risk of placenta tears, obstruction at the time of delivery, obstetric fistula and death.²⁰

¹⁷ ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, Transcript of Trial Hearing, Preliminary Matters, 7 December 2016, ICC-02/04-01/15-T-27-ENG ET WT 07-12-2016 1/76 SZ T.

¹⁸ WHO, *Fact sheet on infertility*, 2020.

¹⁹ CEDAW GR 35, para. 18. See also United Nations Human Rights Committee, *Mellet v. Ireland*, Comm. No. 2324/2013, CCPR/C/116/D/2324/2013 (2016), para. 7.3.

²⁰ UNFPA, *Girlhood Not Motherhood*, pp. 9-10. See also CEDAW General Recommendation 31 on harmful practices, para. 22; CEDAW General Recommendation 24 on the right to health, para. 12 (b); and OHCHR report to the United Nations Human Rights Council, *Preventing and eliminating child, early and forced marriage*, 2 April 2014, A/HRC/26/22, para. 23.

A.2. Forms and extent of harm suffered by children of victims of SGBC born in captivity

14. The violence and traumatic consequences endured by victims can be passed on to their descendants, resulting in an intergenerational cycle of harm that affects newer generations' emotional behaviours, attachment and wellbeing, in line with the notion of transgenerational harm developed by the Court.²¹ The Interviews highlight that the impact of captivity on victims and their children remains pronounced, as they experience continuous and long-term harms.
15. Twenty per cent of the respondents of the 2019 survey in Northern Uganda (561 women) returned from captivity with at least one child, and some respondents had as many as six children.²² While most of these children were conceived through rape in the context of forced marriages, some respondents reported conceiving children through consensual relationships. After release from captivity, many women and girls had other children.²³
16. Those women and girls who conceived children while in captivity reported that they and their children faced increased levels of stigma associated with their abduction, the rapes and other forms of sexual violence, and them conceiving children as a result. They also reported social and family pressure forcing them to choose between abandoning their children and remaining in the community or having to leave with their children. Many decided to leave the family land and house to continue to care for their children.
17. SGBC victims reported that many of their children are denied access to land, discriminated against by community members, or outright rejected. They suffer acute psychological harm due to stigmatization, social isolation and lack of livelihoods. Several victims reported that, in the absence of mental health care, educational opportunities and livelihood support for them and their families, many of their children have resorted to substance abuse, criminality and violent behaviors – manifesting intergenerational forms of harm.
18. Many of these children have no legal identity and no official identity documents, as they never had access to birth registration or face other obstacles to have the Ugandan or other nationality recognised by the authorities. Several victims indicated that their children could not obtain national identification cards. They explained that local authorities showed misunderstanding of applicable laws by requiring the father's

²¹ *Ntaganda Reparations Order*, paras. 73-74.

²² See fn. 8.

²³ Among the 2,896 respondents, there were 1,467 children born after release from captivity.

identity as a condition in order to register a birth. Some resorted to providing fake names as their children's father. Moreover, many women who gave birth in neighbouring countries could not confer their Ugandan nationality to their children, who are stateless as a result. Legal identity is an essential requirement to access basic social services and formal education in Uganda. Many respondents reported challenges in accessing education for their children, due to a lack of identity documents and economic resources to pay for schooling.

A.3. Forms and extent of harm suffered by direct victims of conscription and use of children in armed hostilities

19. The United Nations Secretary-General reported that between 2002 and 2005, systematic abuses against children were committed by the LRA in Northern Uganda, including the continuous abduction of children for their use as combatants and as sexual slaves.²⁴ Reports of the Secretary-General show that, once recruited, boys and girls were often subjected to other abuses, including rape and other forms of sexual violence, that the risk of being wounded and killed was extremely high and that many were forced to commit violent acts. As it has been documented by the Court, children forcibly recruited into the Sinia brigade were often kept in captivity, beaten and subjected to cruel physical and psychological coercion methods and a violent disciplinary regime used by the LRA to ensure obedience and compliance.²⁵ These children remained in that situation for a prolonged period, amounting in some cases to years.
20. The Court has previously found that child victims of conscription and their use in hostilities experience an immediate state of anxiety and sadness linked to the separation from their families and the rupture of their lives, provoking 'long-term psychological impact, including depression, dissociation, suicidal or violent behaviour that tend to persist, potentially for the remainder of the individual's life.'²⁶ Such behaviours often lead to rejection from their families and their marginalization from societies.
21. In the *Ongwen* case, boys and girls conscripted and used during armed hostilities endured the same forms and extent of the above-mentioned harms. In addition, while many children have been demobilised, they have reportedly often been rejected by their

²⁴ See Secretary-General annual reports on children and armed conflict covering the period from 2002 and 2005: A/61/529-S/2006/826, paras. 107-111; A/59/695-S/2005/72, paras. 50-53; A/58/546-S/2003/1053, paras. 22, 26, 32, 34, 63. These recruitments were perpetrated in a methodical way as an 'organization-wide policy', shared and supported by Dominic Ongwen (*Ongwen Trial Judgment*, paras. 2312-2313).

²⁵ *Ongwen Trial Judgment*, paras. 129-132.

²⁶ *Ntaganda Reparations Order*, para. 164.

communities and have settled in urban and peri-urban areas, where they lack safety networks and are at higher risks of developing addictions and engaging in petty crimes.²⁷

22. Pursuant to article 8 of the Rome Statute, the Court has jurisdiction in respect of the war crime of conscripting or using children under the age of fifteen years. It is noted that applicable international human rights law prohibits the recruitment and use of children under the age of eighteen by armed groups.²⁸ Although recognizing that children older than fifteen years do not qualify as victims for the purposes of this crime within the meaning of article 8 of the Rome Statute, a comprehensive human rights-based and victim-centred approach to reparations calls for recognition of harms suffered by all children under the age of eighteen. The harms suffered by children between fifteen and eighteen as a result of the crimes in question are analogous to and consistent with the harms experienced by children under fifteen.²⁹ The United Nations notes the importance of providing assistance to all such individuals.

B. Key aspects of effectiveness of reparations

23. Article 75(1) of the Rome Statute provides non-exhaustive list of the types of reparation that the Court can order, including restitution, compensation, and rehabilitation. International instruments and the Court's jurisprudence also contemplate the elements of satisfaction and guarantees of non-repetition.³⁰ This section outlines some key aspects that merit especial attention in order for reparations to be considered full and effective, in light of the unique experiences and needs of the victims in this case and building on lessons learned from field experiences.
24. It is recommended that the reparations be comprehensive in the types of harms they address,³¹ proportional to the gravity of the harm,³² and consider adverse impact on the

²⁷ OHCHR, *"The Dust Has Not Yet Settled", Victims' Views on The Right to Remedy and Reparation, A Report from the Greater North of Uganda*, 2011, pp. 85-89.

²⁸ CRC-OPAC, Article 4.

²⁹ Report of the expert of the Secretary-General, Ms. Graça Machel submitted pursuant to General Assembly resolution 48/157, *Impact of armed conflict on children*, A/51/306, 26 August 1996. See also, United Nations University study, *Cradled by Conflict*, 2018.

³⁰ *Basic Principles*, paras. 22 and 23. See also Human Rights Committee, *Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, 30 November 2016, CCPR/C/158. On satisfaction, see *Ntaganda Reparations Order*, para. 88. On non-repetition, see ICC, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No.: ICC-01/12-01/15, *Reparations Order*, 17 August 2017, para. 67.

³¹ *SR TJRG report on reparation programmes*, para. 45.

³² *Basic Principles*, para. 18.

victims' enjoyment of economic, social and cultural rights as harms that need to be remedied.³³

25. Given the seriousness of the harms inflicted on victims in this case, the combination and interplay of different forms of reparation is necessary.³⁴ This case requires combining individual, collective, material and symbolic benefits in order to maximize the possibilities of redress for a larger number of victims.³⁵ In the *Ntaganda* case, the Court awarded 'collective reparations with an individualised component'.³⁶ This approach seems well suited for the context of reparations of victims identified in this Submission. While collective reparations facilitate the recognition and reparation of collective harms, can prevent stigma and re-victimisation,³⁷ and can help re-build victims' self-confidence and agency, it is also important that collective reparation measures in this case include some individualised component that is adjusted to the specific harms suffered and the needs of each victim.³⁸ Due to deeply rooted gender inequality and patriarchal attitudes, specific safeguards are needed to ensure that collective reparations and reparation measures that result in greater access to economic resources for the family or the community, equitably benefit women and men.³⁹
26. It is recommended that reparation processes integrate gender and age-sensitive perspectives throughout their design, implementation and evaluation. This requires consistency and quality in the delivery of services, to be provided by multi-disciplinary teams of professional women and men with expertise to work with victims of mass atrocity crimes, including sexual violence, and with child victims, to prevent further harm and re-victimization.⁴⁰ Integrating a gender perspective requires giving due consideration to prevalent, pre-existing and exacerbated gender inequalities⁴¹ with the aim to address and remove structural factors that led to the violence experienced by women and girls.⁴² Child-sensitive reparations are grounded in the principle of the best

³³ *SR-TJRG report on gender in transitional justice*, para. 34.

³⁴ *SG Guidance Note*, p. 6.

³⁵ *SR-TJRG report on gender in transitional justice*, para. 27.

³⁶ *Ntaganda Reparations Order*, para. 186.

³⁷ *SR-TJRG report on gender in transitional justice*, para. 35.

³⁸ *OHCHR Analytical study*, para. 53.

³⁹ *SG Guidance Note*, p. 7.

⁴⁰ *SG Guidance Note*, p. 19.

⁴¹ CEDAW GR 30, para. 79; *SR-TJRG report on gender in transitional justice*, para. 41.

⁴² *SR-VAW report on reparations*, para. 31. Similarly, *SR-TJRG report on gender in transitional justice*, para. 29; CEDAW GR No. 30, para. 79, and *Ntaganda Reparations Order*, para. 66.

interest of the child, their right to be heard, and children's evolving capacities, considering their 'circumstances, age, and level of maturity'.⁴³

27. Furthermore, victims' participation and consultation are paramount. Victims are uniquely placed to understand their needs and the obstacles they are likely to face, and thus, their views and needs inform the whole process. In addition, victims' participation provides a form of recognition as rights holders, which can help them become visible and gain a place in the public sphere frequently denied to them.⁴⁴ This is particularly important when designing collective reparations, to ensure individual victims do not feel excluded or marginalized.⁴⁵ It is essential to create the necessary conditions for victims to participate, including by creating a safe and confidential environment. In designing consultation initiatives, the United Nations notes the importance of taking into account major obstacles faced by women and girls regionally, and indeed globally, in terms of inclusion, security and protection, accessibility, and access to information.⁴⁶
28. Diversity in victims' experiences and circumstances require individualised approaches. Consultations can aim at tailoring the services to their specific needs, for instance on the type of psychosocial support, medical services, medicine or treatment, or to the type and level of education or vocational training that would best meet their needs. Similarly, it is important that victims be regularly consulted during the implementation of reparations to assess their effectiveness and introduce necessary adjustments.
29. A human rights-based approach to reparations entails making sure that all victims who experience harm obtain redress. To this end, gender and age-sensitive standards of proof facilitate victims' realisation of their right to a remedy. The United Nations submits that the application of age and gender-inclusive approaches, as undertaken in the *Ntaganda* case,⁴⁷ is important in the identification of eligible victims. These include acknowledging the difficulties victims can face in obtaining evidence,⁴⁸ especially in cases of SGBC,⁴⁹ accepting victims' coherent and credible accounts as sufficient evidence to establish their eligibility as victims on a balance of probabilities, even in the absence of supporting documents,⁵⁰ and to accept the presumption of harm in cases of

⁴³ *Ntaganda Reparations Order*, paras. 54-58.

⁴⁴ *SR-TJRG report on participation*.

⁴⁵ *SG Guidance Note*, p. 7.

⁴⁶ For good practices, see *SR-TJRG report on gender in transitional justice* and OHCHR, *Protection of victims of sexual violence: lessons learned. Workshop report*, 2019.

⁴⁷ *Ntaganda Reparations Order*, paras. 67 and 139.

⁴⁸ *Ntaganda Reparations Order*, para. 77.

⁴⁹ *Ntaganda Reparations Order*, paras. 67 and 139.

⁵⁰ *Ntaganda Reparations Order*, para 67. Similarly, *SR-TJRG report on reparation programmes*, para. 57.

‘physical, psychological, psychiatric, and social consequences (ostracisation, stigmatisation and social rejection), both in the immediate and longer term’ suffered by victims of rape and sexual slavery.⁵¹ The United Nations also submits that there would be merit in considering expanding the types of presumable harm to include harm to victims’ sexual and reproductive health. For instance, SGBC victims who are now HIV positive, or affected by other sexually transmissible infections, may not be able to provide supporting evidence to establish that they did not have this condition before being abducted or that they did not contract it after their release or escape.

30. It is important that registration processes to receive reparations include flexible timeframes, considering that some SGBC victims may require more time than others to come forward and submit a formal claim. This can be due to stigma, to the need of prior medical, psychosocial or material support for victims to feel ready and safe to speak, or to victims’ mistrust of authorities and institutional processes.⁵²
31. Proactive efforts are needed in this case to reach out to groups of victims in a situation of special vulnerability.⁵³ A non-exhaustive list of victims in vulnerable situations includes those who are orphan children or children abandoned by their parents, are illiterate, live with a disability, are in detention, are without housing, live with an addiction to drugs or alcohol, are engaged in other dangerous activities including sex work, live in exile or abroad and may not have equal access to information, or are victims of other nationalities who are now refugees in Uganda. Furthermore, some women described that they had been forced to commit crimes as part of the coercive environment they experienced during captivity⁵⁴ and now self-identified as perpetrators.
32. Moreover, children who may be responsible for committing violations, regardless of (proven or alleged) affiliation to the LRA and regardless of the role they played in the conflict, should be considered primarily as victims, not only as perpetrators.⁵⁵ As a result, they might be entitled to reparations on the basis of their victimisation and subsequent harm, given the direct and serious impact the conflict has had on their physical and emotional well-being.

⁵¹ *Ntaganda Reparations Order*, para. 145.

⁵² *SR-VAW report on reparations*, para. 24.

⁵³ *SR-TJRG report on reparation programmes*, para. 54.

⁵⁴ *Ongwen Trial Judgement*, Section IV.C.10.ii.d.

⁵⁵ The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (*‘the Paris Principles’*), February 2007, principle 3.6.

33. It is paramount that reparations be effectively accessible to victims. A higher poverty rate, a lack of legal and economic autonomy, exclusion from public and political life and pejorative attitudes towards women are some of the obstacles most commonly faced by women in obtaining justice.⁵⁶ Addressing obstacles related to illiteracy, limited access to information, lack of knowledge or mistrust in authorities require outreach and awareness-raising activities.⁵⁷ Information about their right to reparation, available programmes and registration processes could be disseminated through oral and written platforms, involving local civil society and community leaders, including women leaders and women's civil society organizations, using gender and age-appropriate language and, when necessary, in local languages. Supportive spaces run by trusted, neutral and discreet community workers,⁵⁸ confidentiality protection and the involvement of staff trained in dealing with victims of mass atrocity crimes are essential to create a safe environment that prevents re-victimization, stigma or reprisals and encourages victims of SGBC and children to come forward.⁵⁹
34. As much as possible, it is recommended to avoid processes that force persons to self-identify, or to be identifiable by others, as 'victims of sexual violence' or 'child soldiers' in order to gain access to reparations. Instead, broader categories such as 'parents', 'single mothers' or 'children impacted by the armed conflict' can be used.⁶⁰ It is important that the location of the services respond to the needs of victims, and that the same standard of care is available for victims living in rural and urban areas. When transportation to access services is necessary, the provision of or compensation for transportation costs, childcare options and loss of income have to be considered.⁶¹ Lack of identification documents and/or Ugandan nationality cannot be an obstacle to access reparations, especially for children born in captivity. Children can be represented by their parents or legal guardians when claiming reparations and, depending on their evolving abilities, be heard and consulted with directly.

⁵⁶ *SR-TJRG report on gender in transitional justice*, para. 46.

⁵⁷ *SR-TJRG report on reparation programs*, para. 53.

⁵⁸ *Ibid*, para. 116.

⁵⁹ *OHCHR Analytical Study*, para. 47.

⁶⁰ *OHCHR Analytical Study*, para. 48.

⁶¹ *SG Guidance Note*, p.11.

C. Types and modalities of reparations in Northern Uganda

35. Without prejudice to the State's obligations to realise economic, social and cultural rights for its population,⁶² victims are entitled to reparations in light of their unique circumstances.⁶³ This section includes concrete suggestions on the reparation measures that may be appropriate in this specific case, based on interviews with victims⁶⁴ as well as through a comparative analysis from other contexts.
36. **Health services:** It is important that victims who suffer physical harm have access to physical and mental health services that are available, accessible, acceptable, of good quality⁶⁵ and free from stigma. Needs reported by victims include, as necessary, diagnostic testing, one-time and long-term treatments, check-ups, medicines and medical aids and devices, including for chronic conditions. They also cover surgery for bullet wounds and other physical injuries, including reconstruction of reproductive organs, artificial replacement and plastic surgery; services for gynecological and non-gynecological health issues originated as a result of sexual violence;⁶⁶ and services for other health issues, such as treatment for chronic pain as a result of the harm suffered. Building on the Court's recognition of victims' right to personal and reproductive autonomy,⁶⁷ it would be important to consider including in the health services accessible to victims, access to a range of sexual and reproductive health services and information,⁶⁸ including maternal health services, contraceptives and diagnoses and treatment for sexually transmitted infections and HIV/AIDS.
37. Many victims assert that public health services are either unavailable, unaffordable⁶⁹ or inaccessible to them due to their lack of identification documents, the need to travel long distances by bicycle or foot, the mobility impairments suffered by persons with disabilities or the resulting loss in income. The public healthcare system in Uganda is

⁶² ICESCR. See also Section D below.

⁶³ *Basic Principles*, para 18.

⁶⁴ See fn. 8.

⁶⁵ OHCHR Fact Sheet No. 31 on the right to health, p. 4.

⁶⁶ For examples on the wide range of health issues that can be caused as a result of sexual violence see OHCHR and United Nations Mission in South Sudan (UNMISS), *Access to health for survivors of conflict-related sexual violence in South Sudan*, May 2020. These include serious injuries such as lacerations, fractured bones, vaginal tearing, injury to the cervix, traumatic fistula (which results in the uncontrolled leakage of urine and/or faeces) and permanent damage to the reproductive organs; miscarriages; chronic pain; and sexually transmitted infections.

⁶⁷ *Ongwen Trial Judgement*, para. 2717.

⁶⁸ See ICESCR, General comment No. 22 (2016) on the right to sexual and reproductive health, 2 May 2016, E/C.12/GC/22.

⁶⁹ Accessing healthcare in Uganda is comparatively expensive. A comparative study found that Ugandans paid some of the highest out of pocket expenses in the region. Dowhaniuk, N. (2021): *Exploring country-wide equitable government health care facility access in Uganda*. International Journal for Equity in Health, 20(1), 38–19.

under-resourced.⁷⁰ There is a shortage of trained medical and healthcare professionals and adequate equipment, particularly in rural areas.⁷¹ Health centres frequently experience shortages of essential drugs and have limited access to clean water, electricity, and internet connectivity. Collective reparation measures could address these obstacles by enhancing the capacities and equipment of local healthcare services. Compensation for travel expenses and possible loss of income when seeking medical services could be provided.

38. ***Mental health and psychosocial support services:*** Nearly all victims interviewed identified the need for psychological support as one of their most urgent priorities, for themselves and their children. In addition, psychosocial support provided at an early stage of the reparation process may be a catalyst for them to take full advantage of other rehabilitative services⁷² and to participate actively in the design, implementation and evaluation of reparation measures. Attending to the victims' reported needs, mental health and psychosocial support services will have to address the long-term effects of psychological trauma, including depression, anger management, violence, drug or alcohol dependence, as well as services for suicide prevention. In addition to being available to SGBC victims, including children, services could also be available to their descendants. Indeed, interviewees note that seeing their children's mental health improve, overcoming addiction and breaking cycles of violence, can provide satisfaction to the direct victims.
39. While several victims reported having received psychological support and counseling from a variety of civil society organizations and international agencies, this assistance has dwindled over the years, leading many of them to feel helpless. Mental health is not recognized as an integral part of the public health care services, resulting in a lack of skilled mental health professionals, most of which are concentrated in urban areas far outside the reach of victims living in rural areas. Collective reparation measures could address these obstacles. Access to free and long-term, gender- and age-appropriate mental health and psychosocial support services, tailored to the cultural context, could be coupled with other measures that further restore victims' agency and autonomy

⁷⁰ Funding consistently falls far short of the Abuja Declaration target of 15% of the annual budget. In the 2020/21 budget, the spending on the health sector was 5.1%, UNICEF, *Uganda 2020 Budget Brief No. 2020/3*.

⁷¹ The ratio of skilled health professionals was estimated at 0.168 physicians per 1,000 people in 2017 and 1.238 nurses and midwives per 1,000 people in 2018, both below the WHO minimum goal of 2.3 health workers per 1,000 people. World Bank, *World Health Organization's Global Health Workforce Statistics*.

⁷² *Ntaganda Reparations Order*, para. 204.

through social reintegration, education and income-generating opportunities. It is important that accessibility and availability of these services, including in rural areas, and adequate qualifications of professionals providing these services meet the minimum requirements of quality services.

40. ***Access to birth registration, legal identity documents and nationality:*** Victims' statements highlight that the fulfilment of their right to legal personality is critical for their recognition as rights-holders and to access public services. In this regard, the cooperation of the Government of Uganda is key. It is important that the prompt issuance of legal identity documents be carried out without imposing unreasonable conditions on victims, such as requiring displaced women and children to return to their area of original residence to obtain certain documents.⁷³ Access to administrative procedures to update civil status, including widowhood, divorce, and second marriages, even if the statutory deadlines have expired, could be facilitated. Free legal aid⁷⁴ could be provided for victims who need to initiate legal processes, including, proceedings aimed at establishing the identity of the fathers and to claim paternity recognition, custody and child support. Training could be provided to public servants on the legal requirements to register births and grant nationality.
41. ***Social reintegration measures:*** Measures could be developed to promote the safe and voluntary reintegration of victims into their communities.⁷⁵ Such measures could address the stigmatization and marginalisation suffered by victims as a result of social constructions about gender roles that lead to victim-blaming narratives, as well as a result of their former association with the LRA. Gender stereotypes and stigma around women's sexuality and 'purity',⁷⁶ and their autonomy to decide about the number and spacing of children as well as stigma faced by persons with disabilities could also be addressed. Moreover, reintegration measures could promote and create a safe and empowering environment for children's and women's active participation in their communities. The conflict has led many women to become publicly and politically active for the first time in their lives. Encouraging this agency constitutes a form of

⁷³ CEDAW GR 30, para. 61.

⁷⁴ *Basic Principles*, in their para. 20 (e) provide that compensation should include 'costs required for legal or expert assistance'. However, given the situation of poverty, marginalisation and remoteness in which most victims are, they are likely to be eligible for free legal aid.

⁷⁵ *The Paris Principles*, principle 3.3.

⁷⁶ *SR-VAW report on reparations*, para. 50.

rehabilitation that transforms women's status and their traditional roles in society and empowers young people to take positive and active roles in their communities.⁷⁷

42. Rehabilitation programs are strengthened with appropriate involvement of communities.⁷⁸ Interviews suggest that community-led approaches for reconciliation, such as the Mato-oput in Acholi culture, which includes community-level ceremonies and rites that 'reconcile' perpetrators and victims or 'cleanse' the perpetrator can be used to facilitate victims' reintegration. It should, however, be noted that non-Acholi victims may not be able to participate in Mato-oput rites and the appropriate community-led approaches could be identified. It is important that any initiative to foster reintegration through traditional rites be carefully designed to ensure that they are victim-centered, gender-sensitive and age-appropriate and that they properly recognize women's leadership and agency.
43. **Education:** Education can promote victims' social inclusion and empowerment and can constitute part of a collective reparations package.⁷⁹ Such a package might include literacy, formal primary and secondary schooling, higher education, non-formal education and vocational training. Bridging programmes to facilitate victims resuming formal education despite having missed several school years could be designed. Ultimately, to be transformative, education could be aimed at increasing autonomy and opportunities for the victims. Therefore, training to improve their financial literacy and income-generating skills could be offered. It is important that educational and training opportunities be tailored to victims' specific circumstances and wishes and avoid deepening gender stereotypes about the types of work and employment that are socially acceptable for women and girls. In order to enhance access to education, the provision of waivers or scholarships that cover tuition fees, transport, clothing, books, materials, full board and other related expenses could be considered.
44. **Livelihood and economic opportunities:** Victims in Northern Uganda expressed a strong need for reparations in the form of livelihood and income-generation. A transformative approach to reparations includes generating economic opportunities for female victims, even when they were previously denied them.⁸⁰ Employment, skills training and economic empowerment can contribute to restore a sense of agency and

⁷⁷ *Ibid.*, para 57.

⁷⁸ *The Paris Principles*, principle 7.39.

⁷⁹ *SR-TJRG report on reparation programmes*, para. 103.

⁸⁰ *SR-VAW report on reparations*, para 57.

reintegration of victims in the community.⁸¹ Victims' testimonies also show that access to productive assets is crucial. This includes access to capital, investment and entrepreneurship opportunities, access to land, including collective land, cattle and livestock, tools and seeds, water and electricity. Moreover, recruitment of victims into public offices and/or institutional mechanisms that implement reparations could be promoted, including by offering training programs to meet the required qualifications.

45. ***Access to land:*** Women in Uganda suffer gender-based discrimination in access and ownership of land and property titles.⁸² As described above, interviews showed that the situation is even more acute for SGBC victims. Hence, reparations could include measures that provide or facilitate victims' access to land. Given that most land parcels in Northern Uganda are part of community land, the involvement of traditional clan or community leaders may be necessary. Efforts are needed to ensure that their involvement do not perpetuate gender-based discrimination. Access to land could be complemented with training programmes on land productivity⁸³ and with financial support and free legal aid to initiate administrative and legal proceedings that result in victims' access to land, for example in relation to land-grabbing disputes or inheritance-related claims.⁸⁴ Assistance programmes that support formal and informal justice systems could contribute to ensure that land dispute resolution processes are fair, impartial and non-revictimizing, are in line with the principle of due process, and are gender and age sensitive.⁸⁵
46. ***Monetary compensation:*** Individualized reparations can also include pecuniary compensation for the material and moral harms suffered, such as psychological harm and the disruption of life plans.⁸⁶ Notwithstanding in-kind payments as part of other reparation measures, a monetary payment could be provided, even if only amounting to a 'symbolic award' for its potential to help victims become financially independent.⁸⁷ Such award can be in the form of a lump-sum or of a pension. While pensions can address some of the money management challenges described below, a lump-sum payment can allow victims and their children to initiate life-enhancing projects⁸⁸ and

⁸¹ *SR-TJRG report on gender in transitional justice*, para. 39, and *SR-VAW report on reparations*, para 57.

⁸² CEDAW/C/UGA/CO/7 para. 42. See also *SR-VAW report on reparations*, para. 52.

⁸³ *SG Guidance Note*, p. 15-16.

⁸⁴ *Ibid.*

⁸⁵ CEDAW GR 30, para. 80.

⁸⁶ *Ntaganda Reparations Order*, para 72.

⁸⁷ *Katanga Reparations Order*, para. 300.

⁸⁸ *SR-VAW report on reparations*, para. 50-54.

provide the opportunity to re-settle elsewhere.⁸⁹ Payments can be made in cash, virtual deposits or formal deposits in bank accounts. In deciding the most appropriate payment form, attention must be given to the formal and informal obstacles that victims may face in accessing, managing and keeping money. These include difficulties in having a bank account, especially when they lack official identification documents.⁹⁰ Interviews with victims and previous experiences manifest the existence of risks linked to the payment of compensation, such as communities, families or relatives taking control over the money to the detriment of the victims or rejecting victims once the compensation package has been exhausted. Safeguards and consultations with victims are needed in this regard. Special mechanisms for paying compensation to child victims must be designed to ensure that funds are either held in a trust until the child reach the age of majority, and/or are used in their best interest and can be accounted for by a legal guardian.⁹¹

47. ***Satisfaction measures:*** Satisfaction measures aim at restoring victims' dignity and reputation.⁹² They can include public statements, truth-telling initiatives, official apologies, commemorative events, renaming of streets and public facilities, establishing remembrance days, building monuments, museums and memorials, as part of collective reparations packages. It is important that victims be consulted on the forms that are most meaningful and appropriate for them. These steps can contribute to society's awareness of the crimes committed by Mr. Ongwen and ensure that victims play an active role within their communities.⁹³ In relation to memorialization, several monuments have already been built in Northern Uganda. However, several victims expressed concerns regarding their sustainability, as most of them have been donor-led initiatives.
48. To avoid potential ostracization, it is important that satisfaction measures do not require singling out individual victims,⁹⁴ yet they could allow it, if victims so wish. Attention must be given to ensure that victims of all parties to the armed conflict find satisfaction. Satisfaction also involves establishing outreach and promotional programmes to inform victims of the outcome of the trial against Mr. Ongwen, as the judgment serves as a validation of their suffering, promoted truth-telling and held him accountable for the

⁸⁹ *SG Guidance Note*, p.17.

⁹⁰ *SR-VAW report on reparations*, para 53.

⁹¹ *SG Guidance Note*, p. 17.

⁹² *Ntaganda Reparations Order*, para. 88.

⁹³ *Ibid.*, para. 207.

⁹⁴ *SG Guidance Note*, p. 8.

harms caused. Mr. Ongwen may also contribute to this process by way of a voluntary apology to individual victims or to groups of victims, on a public or confidential basis.

D. Reparations in the Ongwen case within a wider context

49. In countries devastated by armed conflict, States' fragile institutions, weak economies, scarce resources, lack of basic infrastructure and reconstruction and development challenges can compromise victims' right to full reparations.⁹⁵ When developing a reparation package in Northern Uganda, this reality cannot be overlooked. To be truly effective⁹⁶ and transformative, victims' legal entitlement to reparations (individual or collective) would need to be combined with, rather than replaced by, development measures for two main reasons. First, due to the dire poverty in which victims find themselves and their perception that they are not able to access basic goods and services, most victims identified material assistance as a top priority in terms of rehabilitation and reintegration. Second, the effective implementation of some reparation measures depends on the existence of adequate infrastructure and quality services. While collective reparations can overcome some infrastructure challenges, they are not suited to address, in and of themselves, the full range of development needs, and they may carry risks of neglecting victims' right to receive redress based on their unique experience. For example, as a collective reparation measure with an individualized component, the Chamber may wish to consider ordering the construction of health centers in rural areas where victims reside, while providing priority and free-of-charge access to victims identified in the *Ongwen* case. Yet, such facilities will require additional investments to maintain and operate on a continuing basis into the future, including provisions of running water, electricity and communications, and roads for access and delivery of supplies. Each of these elements warrants prioritisation in wider development and international cooperation programmes, and these linkages will accordingly require the attention of the Government of Uganda and its development partners in the international community.
50. For the reparations in the context of the *Ongwen* case to reach full potential, links could be made with programmes undertaken by the Government of Uganda in the area of transitional justice.⁹⁷ For example, reparations can play a preventive role by

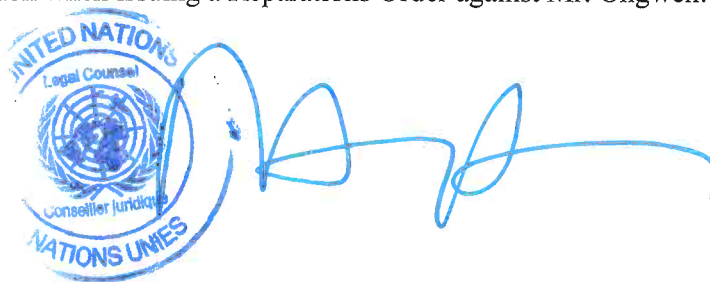
⁹⁵ *SR-TJRG report on reparation programmes*, para. 106. See also *SR-VAW report on reparations*, para. 18.

⁹⁶ *Basic Principles*, para 2(c) (noting, *inter alia*, that reparations should be adequate, *effective* and prompt).

⁹⁷ A National Transitional Justice Policy was passed in 2019 by the Government of Uganda. However, no measures to implement it have been taken to date.

incorporating ‘guarantees of non-recurrence’ that allow for systematic changes and long-lasting transformations.⁹⁸ These can be achieved through a range of institutional, societal, cultural, and individual interventions,⁹⁹ including institutional and legislative reforms,¹⁰⁰ vetting processes, training of public sector personnel¹⁰¹, psychosocial support,¹⁰² trauma counselling, memorialization¹⁰³ and cultural initiatives, and educational programs that address gender inequality and other root causes of conflict and reinstate trust in public institutions.¹⁰⁴ Following recent jurisprudence in which the ICC ordered effective measures to guarantee non-repetition,¹⁰⁵ the *Ongwen* case presents an opportunity for the Court to build on its jurisprudence and consider more wide-reaching remedies.

51. The United Nations respectfully requests the Chamber to consider the observations in this Submission when issuing a Reparations Order against Mr. Ongwen.



Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel
on behalf of

The High Commissioner for Human Rights;
The Special Representative of the Secretary-General on Children and Armed Conflict;
the Special Representative of the Secretary-General on Sexual Violence in Conflict;
The Executive Director of UN-WOMEN

Dated this Friday, 4 February 2022

At New York, United States of America

⁹⁸ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 7 September 2015, A/HRC/30/42 paras. 23, 27.

⁹⁹ See, *ibid* paras. 38-76, 77-92, 92-102.

¹⁰⁰ Inter-American Court of Human Rights (I/A Court H.R.), *Trujillo Oroza v. Bolivia*. Reparations and Costs, 27 February 2002, para. 91.

¹⁰¹ I/A Court H.R., *Caracazo v. Venezuela*. Reparations and costs, 29 August, 2002, para. 143.4 (b); *inter alia*.

¹⁰² I/A Court H.R., *Barrios Altos v. Peru*. Reparations and Costs, 30 November 2001, para. 50.3; *inter alia*.

¹⁰³ I/A Court H.R., *Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and costs, 22 September 2009, para. 201; *inter alia*.

¹⁰⁴ I/A Court H.R., *Barrios Altos v. Peru*. Reparations and Costs, 30 November 2001, para. 50.4.

¹⁰⁵ ICC, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No.: ICC-01/12-01/15, Reparations Order, 17 August 2017, para. 67.