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**International
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Date: **7 February 2022**

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

Prosecution's Observations on Reparations

Source: Office of the Prosecutor

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

Mr Karim A. A. Khan QC
Mr James Stewart

Counsel for the Defence

Mr Krispus Ayena Odongo
Chief Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for Participation/Reparation****The Office of Public Counsel for Victims**

Ms Paolina Massida

The Office of Public Counsel for the Defence**States Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section**Victims Participation and Reparations Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Introduction

1. The Prosecution provides these observations to assist the Chamber in determining the reparations phase of the *Ongwen* proceedings.¹
2. *First*, the Chamber should adopt the principles established by the Appeals Chamber in *Lubanga* and supplemented by the Trial Chamber in *Ntaganda*, adapting them to the characteristics of the *Ongwen* case to reflect the harm suffered by the victims of the crimes for which Mr Ongwen was convicted, in particular the harm suffered by victims who were children when the crimes were committed, and the victims of sexual and gender-based crimes (“SGBC”). *Second*, the Prosecution submits that, as in *Ntaganda*, this Chamber should recognise children born of rape, sexual slavery, forced marriage as an other inhumane act and forced pregnancy as direct victims of SGBC perpetrated by Mr Ongwen and members of the Sinia Brigade. *Third*, the Prosecution considers that a combination of individual and collective reparations, or collective reparations with individualised components, are appropriate in the present case. *Fourth*, the Chamber should apply the *Lubanga* approach to determining Mr Ongwen’s liability for reparations, pending the determination of the issue on appeal in *Ntaganda*. The Prosecution otherwise defers to the submissions of the Office of Public Counsel for Victims (“OPCV”) and Legal Representatives of Victims (“LRV”) (together, “Victims”), the Trust Fund for Victims (“TFV”) and Registry as to the estimated total number of victims, the relevant type and scope of harm suffered, the prioritisation of victims, concrete estimates as to the costs to repair the harms suffered, and information as to whether any victims have already received any form of compensation. *Finally*, the Chamber should reject Mr Ongwen’s request to stay the reparations proceedings until the Appeals Chamber’s determination of his appeals against the Trial and Sentencing Judgments.

¹ In response to the invitation by the Trial Chamber: ICC-02/04-01/15-1820 (“[6 May 2021 Order](#)”), para. 5(ii). The Chamber extended the time limit to 7 February 2022 for the Prosecution to file its observations: [ICC-02/04-01/15-1910](#), para. 11.

Submissions

A. Preliminary issue: Mr Ongwen’s request to stay the reparations proceedings should be rejected

3. Mr Ongwen requests the Chamber to stay the reparations proceedings until the Appeals Chamber determines his appeals against the Trial Judgment and Sentencing Judgment. He argues that continuing the reparations proceedings pending resolution of his appeals would be prejudicial to him;² would unduly raise victims’ expectations;³ and would negatively affect the limited resources of the Defence.⁴ Mr Ongwen’s request should be rejected for the following reasons.

4. *First*, victims have the right to prompt reparations.⁵ To that end, reparations proceedings “should advance as efficiently and expeditiously as possible, avoiding unnecessary delays”.⁶ In this case, the crimes for which Mr Ongwen was convicted took place more than 15 years ago, yet most victims have received little-to-no assistance to date,⁷ and, as the Victims and Registry have noted, certain victims require urgent assistance.⁸ Given that the judgments of the Appeals Chamber are generally to be delivered within 10 months of the date of the filing of the response to the appeal brief (meaning an anticipated judgment date of 26 August 2022 in this case),⁹ a suspension of the reparations proceedings pending the determination of Mr Ongwen’s appeals would noticeably impact the expeditiousness of the reparations proceedings, thus harming the victims’ interests to access reparations in a timely manner.¹⁰

² ICC-02/04-01/15-1917 (“[Defence Submissions](#)”), paras. 19-21.

³ [Defence Submissions](#), paras. 22-23.

⁴ [Defence Submissions](#), paras. 24-27.

⁵ ICC-01/04-02/06-2659 (“[Ntaganda Reparations Order](#)”), para. 5.

⁶ [6 May 2021 Order](#), para. 4. *See also* ICC-01/05-01/08-3522 (“[Bemba Reparations Stay Decision](#)”), paras. 18-19.

⁷ ICC-02/04-01/15-1923-Red (“[OPCV Submissions](#)”), para. 112; ICC-02/04-01/15-1919-AnxII (“[Registry Submissions](#)”), paras. 49, 53.

⁸ [OPCV Submissions](#), para. 39; ICC-02/04-01/15-1921 (“[LRV Preliminary Submissions](#)”), para. 65; [Registry Submissions](#), paras. 22-24. *See also* ICC-02/04-01/15-1925 (“[ARLPI Submissions](#)”), p. 5 (item 5(d)).

⁹ The Prosecution’s responses to Mr Ongwen’s conviction appeal and sentencing appeal were filed on 21 and 26 October 2021 respectively.

¹⁰ [Bemba Reparations Stay Decision](#), paras. 18-19.

5. *Second*, and by contrast, the issuance of a reparations order is not prejudicial to the rights of a convicted person irrespective of whether there is an appeal against the conviction decision.¹¹ Given the typically lengthy preparatory phase of the reparations process, it is common practice that reparation proceedings commence after the issuance of the conviction decision. Moreover, the Court’s legal texts permit that reparations proceedings commence, and a reparations order be issued, pending resolution of an appeal against the Conviction Decision.¹² Only the execution of the reparations order will be suspended if the conviction appeal has not been decided first.¹³

6. *Third*, Mr Ongwen’s concerns regarding the lack of Defence resources to concurrently represent him in the appeal and reparations proceedings are unmerited. Mr Ongwen has already filed his appeals briefs, and the hearing in his appeals is scheduled to conclude by 18 February 2022, *i.e.* within two weeks.¹⁴ Moreover, he has already filed his first observations on reparations on 6 December 2021. If the Defence considers it is unable to meet any future deadlines that may be applicable to it in the reparations proceedings, it may make a specific and substantiated request at the appropriate time for an extension of time under Regulation 35 of the Regulations of the Court.

7. Notwithstanding the above, it is important to ensure that the expectations of victims are not unduly raised during the reparations proceedings. Indeed, several Parties and participants have already commented on the difficulties in managing the expectations of victims in this regard.¹⁵ In this context, the Victims, TFV and Registry should ensure that their communications with victims avoid raising any expectations as to their potential eligibility for reparations prior to the issuance of the appeal judgments.

B. Observations on the issues raised by the Trial Chamber

8. The Prosecution provides its submissions below on the issues listed in paragraph 5, subparagraphs (a), (b), (c), (e), (f), (g) and (j) of the 6 May 2021 Order. The Prosecution otherwise defers to the submissions of Victims, TFV and Registry as to the issues listed in

¹¹ [Bemba Reparations Stay Decision](#), para. 15.

¹² [Bemba Reparations Stay Decision](#), paras. 14-15.

¹³ [Bemba Reparations Stay Decision](#), para. 15.

¹⁴ ICC-02/04-01/15-1909 (“[Hearing Scheduling Order](#)”), para. 6.

¹⁵ [Defence Submissions](#), paras. 22-23; [OPCV Submissions](#), para. 24; ICC-02/04-01/15-1920 (“[TFV Submissions](#)”), paras. 56-57; [Registry Submissions](#), para. 36

paragraph 5, subparagraphs (d), (h) and (i) of that order.¹⁶

Issue (a): The Chamber should amend and/or supplement the principles established by the Appeals Chamber in *Lubanga* and *Ntaganda* to reflect the characteristics of the *Ongwen* case

9. The “Principles on Reparations” established by the Appeals Chamber in *Lubanga*¹⁷ and as further supplemented by the Trial Chamber in *Ntaganda*¹⁸ are generally applicable in this case. Nevertheless, the Chamber should develop and/or supplement these principles to adapt them to the characteristics and needs of the victims of the crimes for which Mr Ongwen has been convicted,¹⁹ in particular, to fully apprehend the multifaceted and far-ranging consequences of the various crimes committed.

10. Child victims: The *Ntaganda* Trial Chamber recognised as a distinct principle the status of children under the age of 15 years who were enlisted/conscripted and used to participate actively in hostilities in that case.²⁰ The Prosecution considers that this principle should be developed and expanded to apply to the unique context of child victims in this case, which went beyond child soldiers. Indeed, a distinctive feature in this case is the large number of children who suffered a diverse range of harms as a result of the crimes committed by Mr Ongwen and the Sinia Brigade. For example, the Trial Chamber found that children were also amongst the victims of the attacks by the LRA on the camps for internally displaced persons (“IDPs”).²¹ Children were abandoned by their mothers who had been abducted by the LRA.²² Some children were thrown into burning houses along with other civilians,²³ and those who survived required extensive treatment and continue to endure pain today.²⁴ Small children, including babies, were thrown into the bush because

¹⁶ [6 May 2021 Order](#), paras. 5(d) (“any victims or groups of victims who may require prioritisation in the reparations process”), 5(h) (“concrete estimates as to the costs to repair the harms suffered by the victims [...]”), 5(i) (“information as to whether the victims of the crimes for which Mr Ongwen was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes”).

¹⁷ [ICC-01/04-01/06-3129 \(“Lubanga First Reparations AD”\)](#); [ICC-01/04-01/06-3129-AnxA \(“Lubanga Amended Reparations Order”\)](#), paras. 1-52. *See also* [ICC-01/04-01/07-3728 \(“Katanga Reparations Order”\)](#), paras. 29-30; [ICC-01/12-01/15-236 \(“Al Mahdi Reparations Order”\)](#), paras. 26-50.

¹⁸ [Ntaganda Reparations Order](#), paras. 30-103.

¹⁹ [Lubanga Amended Reparations Order](#), para. 5.

²⁰ [Ntaganda Reparations Order](#), paras. 53-59.

²¹ [ICC-02/04-01/15-1819-Red \(“Sentencing Judgment”\)](#), para. 189.

²² *See e.g.* [ICC-02/04-01/15-1762-Red \(“Trial Judgment”\)](#), paras. 167, 173, 187, 1565, 1820; [Sentencing Judgment](#), para. 207.

²³ *See e.g.* [Trial Judgment](#), para. 184; [Sentencing Judgment](#), para. 231.

²⁴ [Sentencing Judgment](#), para. 231.

they were crying and making it difficult for their mothers to carry looted goods.²⁵

11. The Chamber also found that during the attacks, children under the age of 15 were abducted by the Sinia Brigade, forced to carry looted goods and many used to actively participate in hostilities or serve as escorts to the Sinia Brigade.²⁶ This placed the children in the line of fire and exposed them to death and injuries.²⁷ The children were also exposed to extremely harsh treatment in the camps of the Lord's Resistance Army ("LRA"). They were kept in captivity with cruel methods of physical and psychological coercion, including beatings and violent initiation rituals that were designed to prevent their escape and ensure obedience.²⁸ They were subjected to the LRA's violent disciplinary regime,²⁹ and were prevented from forming relationships with other victims, thus increasing their mental suffering and feeling of abandonment.³⁰ Some abducted girls were subjected to sexual and gender-based violence.³¹ Other girls who were not considered mature enough to become a so-called 'wife' were used as household servants, referred as *ting tings*.³²

12. Children were also born in captivity to women abducted by the Sinia Brigade and thus exposed to the dangers of armed conflict.³³ Children who were born as a result of SGBC perpetrated by members of the LRA, particularly those who were born out of forced marriage as an other inhumane act, suffered complex emotional and psychological effects³⁴—children who are usually considered only as the 'consequences' of SGBC and not adequately regarded as individual victims in their own right.

13. In this context, the Prosecution concurs with the Registry's submission that the *Ntaganda* principles on child victims should be expanded to address the category of "children of war", which, in the context of this case, would also encompass children born in captivity to women abducted by Mr Ongwen and the Sinia Brigade, and children born out of rape, sexual slavery, forced marriage as an other inhumane act and forced pregnancy

²⁵ See e.g. [Trial Judgment](#), para. 187; [Sentencing Judgment](#), para. 233.

²⁶ See e.g. [Trial Judgment](#), paras. 129, 163, 171-172, 182, 184, 222-225, 1236, 1433, 1701, 1883, 2310-2402, 2415.

²⁷ [Trial Judgment](#), paras. 224, 2395-2402, 3102.

²⁸ [Sentencing Judgment](#), para. 360.

²⁹ [Sentencing Judgment](#), para. 360.

³⁰ [Sentencing Judgment](#), para. 362.

³¹ See e.g. [Trial Judgment](#), paras. 217, 2248-2255, 2273.

³² See e.g. [Trial Judgment](#), paras. 212, 2248-2255, 3086; [Sentencing Judgment](#), para. 354.

³³ See e.g. [Trial Judgment](#), paras. 2068-2070, 2271; [Sentencing Judgment](#), para. 85.

³⁴ See e.g. [Sentencing Judgment](#), paras. 290, 292.

committed by Mr Ongwen and members of the Sinia Brigade.³⁵

14. The adoption of a specific principle recognising the unique and vulnerable position of all child victims in this case will thus shape a reparations process that recognises them as agents of their own development, and takes into account their needs and priorities.³⁶ In particular, while Mr Ongwen’s crimes occurred over 15 years ago, it is important to take a multi-generational view to understand how the crimes affected the victims as children at the time, how they continue to be affected, and how it has affected their families and communities.³⁷

15. Mr Ongwen himself recognises the special status of child victims (specifically, child soldier victims), but submits that he should be afforded the same privileges that will accrue to the other former child soldiers in these reparations proceedings.³⁸ It is unclear how Mr Ongwen contends that these privileges should apply to him given that, unlike his victims, he was convicted of 61 war crimes and crimes against humanity (comprising 62 counts) as an *adult perpetrator*. Indeed, as the Trial Chamber observed, while Mr Ongwen was well aware of the suffering of the child soldiers which he himself had been subjected to several years earlier and fully appreciated its wrongfulness, he “did nothing to spare similar experiences to other children after him, but, on the contrary, wilfully sustained and contributed to perpetuate the systemic, methodical and widespread abduction, integration and use as fighters of [a] large number of children by the LRA”.³⁹ Moreover, in arguing that individual liability cannot be imposed upon him when the laws of war were meant to protect him from being abducted by the LRA as a child,⁴⁰ Mr Ongwen re-litigates the question of his liability for the charged crimes—a question which was determined by the Trial Chamber and is the subject of his appeal against the Trial Judgment, and which has no bearing on the reparations order. His submissions in this regard should be dismissed.

16. SGBC victims: Another particular aspect of this case, similarly to *Ntaganda*, is the

³⁵ [Registry Submissions](#), paras. 6-8.

³⁶ UNICEF, “Innocenti Working Paper: Children and Reparation: Past Lessons and New Directions”, June 2020 (“[UNICEF Working Paper](#)”), p. 26.

³⁷ [UNICEF Working Paper](#), p. 20.

³⁸ [Defence Submissions](#), paras. 31-36.

³⁹ [Sentencing Judgment](#), para. 370.

⁴⁰ [Defence Submissions](#), para. 35.

large number of victims of SGBC.⁴¹ The principles on reparations should fully apprehend the diverse and far-ranging consequences of SGBC suffered by Mr Ongwen’s victims, as well as the sensitivities and stigmas attached to them.⁴² Consequently, a culturally appropriate and gender-sensitive approach at all stages of the reparations procedure⁴³ is necessary to adequately identify the multifaceted harm suffered by the victims of these crimes, to satisfactorily measure these harms,⁴⁴ and to design types and modalities of reparations that effectively address them.⁴⁵ This includes recognising that evidentiary standards and procedures should be sensitive to the difficulties faced by victims of SGBC in coming forward with their claims and producing evidence and documentation.⁴⁶ Such an approach is appropriate as it acknowledges the challenges for victims in providing details of their traumatic experiences after a significant passage of time when their memories may have faded—factors that chambers have taken into account even at trial in this and other cases.⁴⁷ In this context, as the Trial Chamber found in *Ntaganda*, an intrinsically consistent, credible and reliable account from a victim of SGBC may have sufficient probative value, in light of the circumstances of the case, to satisfy the burden of

⁴¹ The Trial Chamber found that while it was not possible to make precise findings as to the number of victims of SGBC indirectly perpetrated by Mr Ongwen and his co-perpetrators, there were over one hundred victims during the charged period: [Trial Judgment](#), paras. 213-219; [Sentencing Judgment](#), para. 331. In addition, Mr Ongwen was convicted of SGBC as a direct perpetrator in relation to seven victims: [Trial Judgment](#), paras. 3026, 3034, 3043, 3049, 3055, 3062, 3068.

⁴² [Ntaganda Reparations Order](#), paras. 63-67; United Nations, Guidance Note of the Secretary General: Reparations for Conflict-Related Sexual Violence, June 2014 (“[UN Guidance Note](#)”), pp. 2-3 and 19 (on rehabilitation). *See also* [OPCV Submissions](#), para. 19.

⁴³ Although the Appeals Chamber in *Lubanga* already required a gender-inclusive approach ([Lubanga Amended Reparations Order](#), para. 18) and bore in mind the gender and age aspect in several principles (*see e.g.*, paras. 17-19), additional and more detailed principles are necessary to fully capture and address the consequences of these crimes.

⁴⁴ [UN Guidance Note](#), pp. 5, 17 (on compensation). Sexual violence can cause, among other consequences, loss of income and have serious consequences for the income potential of the victims. However, the damage may be difficult to quantify considering that often traditional women’s work is at home looking after the family.

⁴⁵ [UN Guidance Note](#), p. 17.

⁴⁶ [Ntaganda Reparations Order](#), para. 67, citing [Lubanga Second Reparations AD](#), fn. 376; [Lubanga Amended Reparations Order](#), para. 65 (fn. 37).

⁴⁷ [Trial Judgment](#), para. 258 (“Witnesses who suffered trauma or were children at the time of the events may also have had difficulty in providing a coherent and complete account, and the Chamber made appropriate allowance for imprecisions or contradictions. The Chamber was also mindful—and has taken due account—of the fact that, given the significant passage of time in this case, the memory of some witnesses may have faded with regard to certain details”), *see also* para. 427; ICC-01/04-02/06-2359 (“[Ntaganda TJ](#)”), para. 79 (“Some witnesses were very young at the time of the events and/or suffered trauma and therefore may have had particular difficulties in providing a coherent, complete, and logical account. If these or other potential reasons existed that may have affected a witness’s evidence, the Chamber has taken this into account in its overall evaluation of the evidence in question”).

proof even in the absence of supporting documents.⁴⁸

Issue (b): Estimated total number of direct and indirect victims who may be potentially eligible for reparations

17. The number of potentially eligible beneficiaries of reparations may be calculated based on a series of factors including: the number of individual applicants, the number of victims at the time the crimes were committed, and the number of victims likely to come forward to benefit from the reparations programmes during the implementation stage.⁴⁹ It is not a precondition to the issuance of the reparations order for the Chamber to determine the number of potential beneficiaries nor to identify them.⁵⁰ Accordingly, the Chamber may either choose to identify in the reparations order the victims eligible to benefit from reparations (and rule on the applications for reparation under rule 94 if it decides to request them), or more appropriately if the Chamber orders collective reparations,⁵¹ set out the criteria of eligibility for such victims in the Reparations Order and entrust the TFV to identify the beneficiaries at the implementation stage.⁵² The OPCV appears to endorse the latter approach given the large number of potential beneficiaries in this case.⁵³

18. The Trial Chamber's chosen approach will depend on the characteristics of each case,⁵⁴ as demonstrated by various ICC Chambers.⁵⁵ For example, an application-based

⁴⁸ [Ntaganda Reparations Order](#), para. 67.

⁴⁹ [Ntaganda Reparations Order](#), para. 230.

⁵⁰ [Ntaganda Reparations Order](#), para. 231.

⁵¹ In *Lubanga*, the Appeals Chamber found that the Trial Chamber was not required to rule on the individual applications for reparations because a collective award was made pursuant to rule 98(3): [Lubanga First Reparations AD](#), paras. 148-157.

⁵² [Ntaganda Reparations Order](#), para. 105; [Lubanga First Reparations AD](#), para. 205. See also para. 32; [Katanga Reparations Order](#), para. 293; [Al Mahdi Reparations Order](#), para. 104.

⁵³ [OPCV Submissions](#), paras. 16, 35.

⁵⁴ ICC-01/04-01/06-3466-Red (“[Lubanga Second Reparations AD](#)”), paras. 86-87, 142.

⁵⁵ In *Katanga*, the Trial Chamber identified a bounded set of 297 victims (out of 341 applicants) entitled to reparations ([Katanga Reparations Order](#), paras. 33, 168-80); in *Al-Mahdi*, the Trial Chamber rejected the arguments that harm and associated liability could only be determined on the basis of the 139 individual victim applications before the Chamber, and that the Chamber needed to identify and approve the victim beneficiaries and delegated the identification of the victims to the TFV ([Al Mahdi Reparations Order](#), paras. 144-46); in *Lubanga*, Trial Chamber II individually reviewed 473 identified victims' eligibility to access collective reparations. However, rather than limit its assessment to these identified individuals, Trial Chamber II determined that the identified victims comprised only a sample of a larger pool of people who could be entitled to reparations (ICC-01/04-01/06-3379-Red-Corr-tENG (“[Lubanga Second Reparations Order](#)”), paras. 232-235, 239-244); in *Ntaganda*, the Trial Chamber found that victims eligible to receive reparations were not limited to those who may have requested reparations or were allowed to participate in the trial proceedings, but instead encompassed a much greater number of potential victims, noting that estimates ranged from at least 1,100 to 100,000 across all locations affected by Mr Ntaganda's crimes ([Ntaganda Reparations Order](#), paras. 190, 246). For a comparative analysis of the different reparation proceedings at the ICC, see *EJIL: Talk*, [Five Procedural Takeaways from the ICC's 18 July 2019 Lubanga Second Reparations](#)

approach could be appropriate in cases where there are a small number of victims and it is clear that nearly all have filed requests for reparations.⁵⁶ Conversely, in other cases with a large number of victims, such as in *Ntaganda* and *Lubanga*, this approach may not be suitable as it would fail to reflect the totality of harm caused since not all potential beneficiaries would come forward before the Chamber issues the reparations order.⁵⁷ Moreover, waiting for all victims to apply would delay the issuance of the reparations award.⁵⁸ Considering the characteristics of this case, in particular the large number of potential beneficiaries of reparations⁵⁹ and the difficulty in ensuring that all potential beneficiaries come forward within a reasonable time period, the Prosecution concurs with OPCV that the Chamber may wish to follow the *Ntaganda* approach and set out the criteria of eligibility for potential beneficiaries of reparations.

19. If the Chamber elects to rely on estimates as to the number of victims who may be potential beneficiaries of reparations, it must endeavour to obtain an estimate that is as *concrete as possible*, based on a sufficiently strong evidential basis, with any uncertainties resolved in favour of Mr Ongwen.⁶⁰

20. The Prosecution defers to the Victims, TFV and Registry as to the estimated number of victims who may benefit from reparations in this case. It notes that 4,095 victims are already authorised to participate in the proceedings,⁶¹ most of whom would appear to be eligible for reparations.⁶² The Prosecution also observes that the Trial Judgment and the Sentencing Judgment provide guidance to identify many victims of Mr Ongwen's crimes.

[Judgment; Formal, Functional, and Intermediate Approaches to Reparations Liability: Situating the ICC's 15 December 2017 Lubanga Reparations Decision](#); and [The Ntaganda Reparations Order: a marked step towards a victim-centred reparations legal framework at the ICC](#).

⁵⁶ [Lubanga Second Reparations AD](#), para. 86.

⁵⁷ [Lubanga Second Reparations Order](#), paras. 232-235, 239-244; [Ntaganda Reparations Order](#), paras. 190, 246.

⁵⁸ [Lubanga Second Reparations AD](#), paras. 79, 81, 92.

⁵⁹ The Registry found, in conducting its mapping exercise, that the approximate number of victims of the attacks on the IDP camps range between 41,000 to 50,000 individuals, and the rough estimate for victims of thematic crimes is 10,250 individuals: ICC-02/04-01/15-1919-AnXI ("[Registry Mapping Report](#)"), para. 31. The OPCV estimates that the victims number in the several thousands: [OPCV Submissions](#), para. 16. The TFV notes that the 4095 participating victims—most of whom it expects would be eligible for reparations—must be the starting point for estimating the number of potential victims, which remains uncertain at this point: [TFV Submissions](#), paras. 44-45.

⁶⁰ [Ntaganda Reparations Order](#), para. 230.

⁶¹ [6 May 2021 Order](#), para. 3.

⁶² [TFV Submissions](#), para. 44.

These decisions identify some of the victims or the groups to which they belonged⁶³ and describe the temporal and geographical parameters within which the crimes were committed.⁶⁴

Issue (c): Legal and factual issues relevant to the identification of eligible victims

21. Standard of proof of the causal link and causation standard: The applicant victims have the burden of proving the link between the crimes for which Mr Ongwen was convicted and the harm they suffered. The “appropriate” standard—and also what is “sufficient” for an applicant to meet the burden of proof—will depend upon the circumstances of the specific case, including with reference to difficulties encountered by the victims in obtaining evidence in support of their claim, such as the destruction or unavailability of evidence.⁶⁵ Given the fundamentally different nature of reparations proceedings, the standard need not be the criminal standard of proof “beyond reasonable doubt”⁶⁶ and it may generally be appropriate to require proof on the “balance of probabilities”, as in the prior cases.⁶⁷

22. In particular, in light of the principle of gender-inclusivity and sensitivity, the balance of probabilities test in relation to SGBC may be satisfied by the victim’s provision of a coherent and credible account to establish their eligibility as victims of SGBC.⁶⁸ Similar allowance should be afforded to child victims.⁶⁹ Such victims may face difficulty in proving their claims as, due to the constant movement of the LRA while in the bush, these victims may have lost their attachment to the concept of time in the bush—a factor the Trial Chamber made allowance for when hearing this case.⁷⁰ In addition, the Prosecution concurs

⁶³ See e.g. [Trial Judgment](#), paras. 2826, 2829, 2839, 2878, 2882, 2895, 2902, 2931, 2935, 2938, 2948, 2955, 2977, 2981, 2984, 2994, 3001, 3026, 3034, 3043, 3049, 3055, 3062, 3068, 3102; [Sentencing Judgment](#), paras. 154, 158, 163, 176, 185, 188, 190, 197, 201, 207, 226, 228, 230, 233, 235, 243, 248, 262, 266, 268, 270, 277, 281, 284, 331, 368.

⁶⁴ [Trial Judgment](#), paras. 34-36.

⁶⁵ [Ntaganda Reparations Order](#), paras. 76-77; [Lubanga First Reparations AD](#), para. 81. See [OPCV Submissions](#), para. 58; [LRV Preliminary Submissions](#), para. 23; [Registry Submissions](#), p. 15, para. 21.

⁶⁶ [Lubanga Amended Reparations Order](#), para. 22.

⁶⁷ [Ntaganda Reparations Order](#), para. 136; [Lubanga First Reparations AD](#), para. 83; [Lubanga Amended Reparations Order](#), para. 65; ICC-01/04-01/07-3778-Red (“[Katanga Reparations AD](#)”), para. 42.

⁶⁸ [Ntaganda Reparations Order](#), para. 139.

⁶⁹ As stated above, the Prosecution considers that child victims in this case encompasses children abducted by Ongwen and the Sinia Brigade, child victims of the attacks on the IDP camps, and children born in captivity to mothers who were abducted by the Sinia Brigade or who were born out of SGBC committed by Ongwen and the Sinia Brigade: see above paras. 10-13. See also by analogy [Trial Judgment](#), para. 258; [Ntaganda TJ](#), para. 79.

⁷⁰ [Trial Judgment](#), paras. 258, 328, 486, 504.

with the Registry that allowance should be made for the fact that victims who spent time in different LRA brigades may not recall the precise time period that they were with the Sinia Brigade.⁷¹

23. The standard of causation must likewise be determined in light of the particular circumstances of a case.⁷² Thus, the Chamber should consider the difficulties in linking the harm suffered to the crimes considering the multi-layered nature of the harms, the fact that the harms may have merged with other instances of harm and the time elapsed. As in prior cases, the Chamber may also want to require a “but for” and “proximate cause” relationship.⁷³

24. Mr Ongwen claims that the Defence should be permitted to “cross-examine” any witnesses who are called by victims who wish to receive reparations, present evidence and challenge the credibility of the evidence relied upon by the victims in support of their applications for reparations.⁷⁴ However, although a convicted person must have a meaningful opportunity to challenge the information on the basis of which a reparations award will be made against him or her,⁷⁵ Mr Ongwen’s requested approach appears disproportionate given the different purpose and characteristics of the reparations proceedings and would unnecessarily delay the reparation proceedings.⁷⁶

25. Direct and indirect victims: Victims eligible for reparations are those who have suffered harm as a result of the crimes for which Mr Ongwen was convicted.⁷⁷ They can be direct victims (those whose harm was the result of the commission of the crimes) and indirect victims (those who suffered harm as a result of the harm suffered by direct

⁷¹ [Registry Submissions](#), para. 21.

⁷² [Ntaganda Reparations Order](#), para. 76; [Lubanga First Reparations AD](#), para. 80.

⁷³ [Ntaganda Reparations Order](#), para. 132; ICC-01/04-01/06-2904 (“[Lubanga First Reparations Order](#)”), para. 250 upheld in [Lubanga First Reparations AD](#), paras. 124-129 and [Lubanga Amended Reparations Order](#), para. 59; [Katanga Reparations AD](#), para. 49; [Al Mahdi Reparations Order](#), para. 44.

⁷⁴ [Defence Submissions](#), para. 59.

⁷⁵ [Lubanga Second Reparations AD](#), para. 256.

⁷⁶ Cf. [Lubanga Second Reparations AD](#), para. 255 (recalling that the principle of proportionality applies to reparation proceedings and that, for example, redactions can be applied after a proper balancing exercise of the different interests at stake).

⁷⁷ [Ntaganda TJ](#), para. 1199.

victims),⁷⁸ and may include both natural and legal persons.⁷⁹

26. In addition, the Trial Chamber in *Ntaganda* determined that children born out of rape and sexual slavery may qualify as *direct* victims as “the harm they suffered is a direct result of the commission of the crimes of rape and sexual slavery”.⁸⁰ While Mr Ntaganda has appealed this finding, and his appeal is pending,⁸¹ the Prosecution nonetheless considers that the *Ntaganda* Trial Chamber’s approach is applicable and appropriate in this case. Children of war who were born out of the crimes of rape, sexual slavery, forced marriage as an other inhumane act and forced pregnancy are in a unique position, with the crime profoundly impacting their lives and relationships with other family members, and exposing them to stigmatisation and marginalisation on the same scale as their mothers, and former child soldiers.⁸² Recognising these children as direct—rather than indirect—victims acknowledges the devastating and life-long consequences and legacy of these crimes. Moreover, as acknowledged by the TFV, in the context of this case it is necessary to recognise these children as victims, regardless of the nature of any familial relationship with their perpetrators, and whether or not they still live with the perpetrators or are provided for by them.⁸³

27. The categories of *indirect* victims identified by the Appeals Chamber in *Lubanga* and *Ntaganda* also appear applicable to this case,⁸⁴ namely: (i) family members of direct victims; (ii) anyone who attempted to prevent the commission of one or more of the crimes under consideration; (iii) individuals who suffered harm when helping or intervening on behalf of direct victims; and (iv) other persons who suffered harm as a result of the crimes.⁸⁵ In addition, the Prosecution concurs with the Registry that, due to the transgenerational impact of the harm caused by rape, causing *inter alia* feelings of shame, guilt, self-blame, identity crises and the frustration of continually being labelled a victim of sexual violence,

⁷⁸ [Lubanga Amended Reparations Order](#), para. 6. *See also* para. 7 on the need to consider the applicable social and familial structures in defining “family”. On the definition of direct and indirect victims, *see* ICC-01/04-01/06-1813 (“[Lubanga Indirect Victims Decision](#)”), para. 44.

⁷⁹ Rule 85(b); [Lubanga Amended Reparations Order](#), para. 8.

⁸⁰ [Ntaganda Reparations Order](#), para. 122.

⁸¹ ICC-01/04-02/06-2675 (“[Ntaganda Reparations Appeal](#)”), paras. 107-108.

⁸² [LRV Preliminary Submissions](#), para. 20; [TFV Submissions](#), para. 21.

⁸³ [TFV Submissions](#), para. 21.

⁸⁴ [Ntaganda Reparations Order](#), para. 124; [Lubanga Amended Reparations Order](#), para. 6; [Katanga Reparations Order](#), para. 39.

⁸⁵ [Lubanga Amended Reparations Order](#), para. 6(b); [Ntaganda Reparations Order](#), para. 36.

the children of victims born out of rape should also be considered as indirect victims.⁸⁶

28. As Chambers have previously found, in determining whether a person is a family member of a direct victim (and thus a potential indirect victim), the Chamber should consider the social and familial structures applicable in the factual context of the case, bearing in mind that the concept of “family” may have many cultural variations.⁸⁷ A ‘close personal relationship’ with a direct victim is one way in which an applicant can prove the harm suffered and that the harm resulted from the crimes of the convicted person; thus, it is not relevant whether the family member is close or distant to the direct victim in the abstract, as long as the indirect victim can demonstrate that they have suffered personal harm as a result of the commission of the crime committed against the direct victim.⁸⁸ The Trial Chamber should adopt the same understanding it expressed in the Trial Judgment regarding the concept of extended family in Acholi cultural practice.⁸⁹

29. While Mr Ongwen disagrees with the second category of indirect victim identified in *Lubanga* (i.e. any person who attempted to prevent the commission of one or more of the crimes under consideration),⁹⁰ he provides no reason or justification for this disagreement. In any event, it is not the categorisation of indirect victim that matters; rather, what is relevant is that the victim, regardless of the nature of their involvement and exposure to the crime, is able to demonstrate that the harm they suffered was personal, and caused by the crimes for which Mr Ongwen was convicted, to the requisite standard of proof.⁹¹ This may of course include persons who attempted to prevent the commission of one or more crimes under consideration.

⁸⁶ [Registry Submissions](#), paras. 28-29.

⁸⁷ [Ntaganda Reparations Order](#), paras. 37; [Lubanga Amended Reparations Order](#), para. 7.

⁸⁸ [Ntaganda Reparations Order](#), para. 125. *See also* ICC-01/04-01/06-1432, para. 32 (“[Lubanga Victims Participation AD](#)”) where the Appeals Chamber found that the relation between parents and children is an example of “close personal relationship”. This finding does not exclude other relations which, considering the circumstances of the case and context, also may constitute “close personal relationships”. *See also* [Katanga Reparations Order](#), para. 113.

⁸⁹ [Trial Judgment](#), para. 483 (fn. 837).

⁹⁰ [Defence Submissions](#), paras. 41-43.

⁹¹ [Ntaganda Reparations Order](#), para. 128.

30. In addition, collective reparations may also be awarded to a community, understood as a group of victims,⁹² as long as there is a sufficient causal link between the harm suffered by members of that community and the crimes for which Mr Ongwen is found guilty.⁹³

Issue (e): Specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Ongwen was convicted

31. As the Appeals Chamber has noted, “harm” may be understood as “hurt”, “injury” or “damage”.⁹⁴ In its nature, the harm may be “material”, “physical” or “psychological”.⁹⁵ Natural persons may suffer direct or indirect harm, and legal persons may suffer direct harm.⁹⁶ In all cases, the harm must be “personal to the victim” in the sense that the victim was (or still is) himself or herself adversely affected by it, although not necessarily uniquely so.⁹⁷ When assessing the extent of harm suffered, Chambers must take into account the various permutations and combinations of the different layers of harm.⁹⁸ Thus, Chambers have previously identified a range of harms including material,⁹⁹ psychological,¹⁰⁰ physical,¹⁰¹ and psychosocial harm (due to separation/exclusion from and the disintegration of families and communities);¹⁰² reduced standard of living, interruption of schooling and vocational training and the non-development of “civilian life skills”;¹⁰³ loss of childhood and loss of life-plan;¹⁰⁴ and the transgenerational harm of the children of direct victims.¹⁰⁵ The Prosecution defers to the submissions of the Registry, OPCV and LRV to assist the Chamber in determining the specific type and the extent of the harm suffered in

⁹² See e.g., ICC-01/12-01/15-171 (“*Al Mahdi Judgment and Sentence*”), paras. 78-80.

⁹³ [Lubanga First Reparations AD](#), paras. 211-212, 214. Other members of the affected communities could benefit from activities undertaken by the TFV in relation to its assistance mandate. See [Lubanga First Reparations AD](#), para. 215 and [Lubanga Amended Reparations Order](#), para. 55.

⁹⁴ [Ntaganda Reparations Order](#), para. 68; [Lubanga Amended Reparations Order](#), para. 10.

⁹⁵ [Ntaganda Reparations Order](#), para. 68; [Lubanga Amended Reparations Order](#), para. 10.

⁹⁶ Rules Procedure and Evidence (“RPE”), rule 85(b).

⁹⁷ [Ntaganda Reparations Order](#), para. 75; [Lubanga Amended Reparations Order](#), para. 10.

⁹⁸ [Ntaganda Reparations Order](#), para. 71.

⁹⁹ [Ntaganda Reparations Order](#), para. 183; [Lubanga Amended Reparations Order](#), para. 58; [Katanga Reparations Order](#), paras. 193-222; [Al Mahdi Reparations Order](#), paras. 60-67, 72-76.

¹⁰⁰ [Ntaganda Reparations Order](#), para. 183; [Lubanga Amended Reparations Order](#), para. 58; [Katanga Reparations Order](#), paras. 227-236; [Al Mahdi Reparations Order](#), paras. 84-89.

¹⁰¹ [Ntaganda Reparations Order](#), para. 183; [Lubanga Amended Reparations Order](#), para. 58; [Katanga Reparations Order](#), paras. 223-226.

¹⁰² [Ntaganda Reparations Order](#), para. 183; [Lubanga Amended Reparations Order](#), para. 58.

¹⁰³ [Ntaganda Reparations Order](#), para. 183; [Lubanga Amended Reparations Order](#), para. 58; [Katanga Reparations Order](#), para. 139.

¹⁰⁴ [Ntaganda Reparations Order](#), para. 183.

¹⁰⁵ [Ntaganda Reparations Order](#), para. 183.

this case.¹⁰⁶

32. In the Reparations Order, the Chamber should clearly define the harm suffered by direct and indirect victims that have resulted from the crimes for which Mr Ongwen has been convicted.¹⁰⁷ As to the scope of harm, the Chamber may either choose to itself assess and determine the extent of the harms suffered (with or without the assistance of experts¹⁰⁸) and to specify the size and nature of the reparations award in the Order¹⁰⁹ or instead, may delegate such an assessment to the TFV and only set out the criteria to be applied by the TFV in making this assessment.¹¹⁰ Given the large extent of victimisation in this case, the latter approach may be more appropriate and efficient. The Chamber will then approve the TFV's Draft Implementation Plan.¹¹¹

Issue (f): Whether recourse to factual presumptions should be considered

33. The Trial Chamber may rely upon factual presumptions to consider certain facts to be established to the requisite standard of proof, where applicants lack direct proof.¹¹² Recourse to factual presumptions may alleviate the burden on victims to establish their claims to reparations, avoid re-traumatisation and thus would be consonant with the “do no harm” principle endorsed by the *Ntaganda* Trial Chamber.¹¹³ Factual presumptions may be particularly relevant in this case where, due to the attacks committed by Mr Ongwen and the Sinia Brigade, victims lost important documents such as diplomas, identification and other documents that might have assisted them in establishing their claims to reparations.

¹⁰⁶ In *Lubanga*, the Appeals Chamber noted that a Trial Chamber need not limit to the harms identified in the Judgment and Sentencing Decision and could make findings of harms for which reparations may be awarded in the Reparations Order based on evidence under regulation 56, evidence provided by experts, Parties and participants in a reparations hearing or written submissions, or evidence contained in rule 94 applications: [Lubanga First Reparations AD](#), para. 185.

¹⁰⁷ [Lubanga First Reparations AD](#), paras. 181, 184.

¹⁰⁸ [RPE](#), Rule 97(2).

¹⁰⁹ [Lubanga First Reparations AD](#), fn. 231.

¹¹⁰ [Lubanga First Reparations AD](#), paras. 183-184.

¹¹¹ On the Trial Chamber's approval of the Draft Implementation Plan, see [Regulations of the Trust Fund for Victims](#), regulations 54-57 and 69. Although in *Lubanga* the Trial Chamber only awarded collective reparations, the Appeals Chamber indicated that this approach was also possible for individual reparations: [Lubanga First Reparations AD](#) para. 183.

¹¹² [Ntaganda Reparations Order](#), para. 141; [Katanga Reparations AD](#), paras. 75-76.

¹¹³ [Ntaganda Reparations Order](#), paras. 51-52 (stating that, as a principle, reparation measures should themselves do no harm, that access to justice and reparations by victims should not lead to further or secondary victimisation, and that this principle should have particular application when, *inter alia*, conducting victim identification and eligibility screening).

34. As in *Ntaganda*, the Prosecution considers that it would be appropriate in this case to presume:

- material, physical and psychological harm for (i) former child soldiers (ii) direct victims of rape, sexual slavery, forced marriage as an other inhumane act and forced pregnancy; and (iii) indirect victims who are close family members of direct victims of the crimes against child soldiers and SGBC;¹¹⁴
- at least physical and psychological harm for the direct victims of the crimes committed during the attacks on the four IDP camps;¹¹⁵ and
- psychological harm for (i) victims who lost their material assets with a significant effect on their daily life; and (ii) indirect victims who are close family members of direct victims or murder.¹¹⁶

35. The Prosecution otherwise defers to the Victims, TFV and Registry as to any further factual presumptions that may be appropriate in this case.

Issue (g): Types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Ongwen was convicted

36. The Prosecution defers to the Victims, the TFV and Registry to assist the Chamber in determining the appropriate types and modalities of reparations in this case.¹¹⁷ However, and in light of the criteria set out in rules 97(1) (scope and extent of damage) and 98(3) (number of victims, forms and modalities of reparations may make a collective award more appropriate), the Chamber should at least consider the following factors:

- the large number of victims who may apply for—and be entitled to—reparations (as noted above, 4,095 victims have been authorised to participate

¹¹⁴ [Ntaganda Reparations Order](#), para. 145;

¹¹⁵ [Ntaganda Reparations Order](#), para. 146.

¹¹⁶ [Ntaganda Reparations Order](#), para. 147.

¹¹⁷ In the Reparations Order, the Chamber must at a minimum identify the modalities of reparations that are appropriate to the circumstances of this case. If the Chamber chooses not to determine the nature and size of the award for reparations in the Order, the TFV will design the award at the implementation stage on the basis of the modalities identified by the Chamber in the Order: [Lubanga First Reparations AD](#), para. 200. This would apply in the event of individual and collective reparations through the TFV pursuant to rule 98(2) and (3).

in the proceedings—almost twice the number of participating victims in *Ntaganda*);¹¹⁸

- the large number of victims identified by the Chamber in the Trial Judgment and Sentencing Judgment;¹¹⁹ and
- the serious, multiple, long-lasting and diverse consequences of the harms inflicted upon the victims of conflict-related sexual violence and on child victims of the crimes, as well as the persons deprived of the love and care of their relatives, expelled from their homes, enslaved and/ or made to witness the destruction of their property and looting of their belongings.

¹¹⁸ In *Ntaganda*, 2,121 victims participated in the trial proceedings: [Ntaganda Reparations Order](#), para. 234.

¹¹⁹ Pajule IDP camp: At least 15,000 to 30,000 people lived in the camp at the time Mr Ongwen and the Sinia Brigade committed attacks against the civilian population; there were at least 4 victims of murder; hundreds of civilians were tortured and enslaved; and there was widespread pillaging involving a large amount of victims: [Sentencing Judgment](#), paras. 150, 154, 158, 163, 170. Odek IDP camp: At least 2,000 to 3,000 people lived in the camp at the time Mr Ongwen and the Sinia Brigade committed attacks against the civilian population; there were 52 victims of murder; there were 10 victims of attempted murder; there were multiple victims of torture; there were 40 victims of enslavement and more than 2 victims of outrages upon personal dignity: [Sentencing Judgment](#), paras. 185, 188, 192, 195, 197, 207. Lukodi IDP camp: A large number of civilians lived in the camp at the time Mr Ongwen and the Sinia Brigade committed attacks against the civilian population: [Trial Judgment](#), para. 1644. There were 48 victims of murder; there were 11 victims of attempted murder; a number of civilians were tortured; 29 civilians were enslaved; there was a considerable amount of pillaging; and 210 civilian huts were destroyed: [Sentencing Judgment](#), paras. 226, 230, 233, 235, 238, 243. Abok IDP camp: An estimated 7,000 to 13,000 people lived in the camp at the time Mr Ongwen and the Sinia Brigade committed attacks against the civilian population; there were 28 victims of murder; there were 4 victims of attempted murder; a number of civilians were tortured and many were enslaved; there was a considerable amount of pillaging; and several hundred civilian houses were destroyed: [Sentencing Judgment](#), paras. 259, 262, 266, 268, 270, 273, 277. SGBC directly perpetrated by Mr Ongwen: There were 5 victims of forced marriage as an other inhumane act; 4 victims of torture; 4 victims of rape; 4 victims of sexual slavery; 3 victims of enslavement; 2 victims of forced pregnancy; and 2 victims of outrages upon personal dignity: [Trial Judgment](#), paras. 3026, 3034, 3043, 3049, 3055, 3062, 3068. SGBC not directly perpetrated by Mr Ongwen: There were over 100 abducted women and girls in Sinia Brigade who were subjected to forced marriage as an other inhumane act, torture, rape, sexual slavery and a number of these abducted girls were subjected to enslavement: [Trial Judgment](#), paras. 3070, 3703, 3080, 3082, 3086. Conscription of children under the age of 15 years and their use to participate actively in hostilities: A large number of children were victims: [Trial Judgment](#), para. 3102.

37. Because of the foregoing, a combination of individual and collective reparations, complementing each other,¹²⁰ and including at least compensation,¹²¹ rehabilitation¹²² and, if possible, restitution,¹²³ appears suitable to address the consequences of the crimes for which Mr Ongwen has been convicted.¹²⁴ Alternatively and as in *Ntaganda*, the Chamber may award collective reparations with individualised components—*i.e.* reparations that are collective in nature but result in individual benefits—to respond to the needs and current situation of the individual victims in the group.¹²⁵ The Chamber’s determination in that case was based on, *inter alia*, the occurrence of group victimisation beyond individual levels of harm, which shaped and transcended individual damage, rendering the complete patterns of harm greater than the sum of individual harms.¹²⁶

38. The Prosecution concurs with the OPCV and TFV that collective reparations with individualised components may also be suitable in this case, and with the OPCV and TFV’s further proposal that individual reparations may be more appropriate for the seven victims of SGBC directly perpetrated by Mr Ongwen and their children.¹²⁷ If the Chamber

¹²⁰ [UN Guidance Note](#), p. 7.

¹²¹ Compensation may be an adequate mode of reparation for the victims of this case, considering the physical and/or mental harm suffered; material damage; loss of earnings; lost opportunities; costs of legal or other relevant experts, medical services, psychological and social assistance. See [Lubanga Amended Reparations Order](#), para. 40. See also United Nations, 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, 16 December 2005 (“[UN Basic Principles](#)”) principle 20; [UN Guidance Note](#), pp. 16-17. Compensation should be considered when (i) the economic harm is sufficiently quantifiable; (ii) an award of this kind would be appropriate and proportionate, bearing in mind the gravity of the crimes and circumstances of the case; and (iii) is feasible in view of the availability of funds: [Ntaganda Reparations Order](#), para. 85.

¹²² Rehabilitation measures, which are aimed at addressing the medical and psychosocial conditions of the victims, also appear adequate in this case and could include, *inter alia*, the provision of medical services and healthcare, psychological, psychiatric and social assistance and any other relevant legal and social services. See [Ntaganda Reparations Order](#), para. 87; [Lubanga Amended Reparations Order](#), para. 42. See also [UN Basic Principles](#), para. 21; [UN Guidance Note](#), pp. 18-19; Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 14 October 2014 (“[Special Rapporteur Report](#)”), paras. 35-37.

¹²³ [Lubanga Amended Reparations Order](#), paras. 35-36. See also [UN Basic Principles](#), principle 19 and [UN Guidance Note](#), pp. 15-16. The Prosecution defers to expert submissions on the feasibility of restitution in this case. Although theoretically feasible for pillaging and destruction of property, the context and the time elapsed may make restitution impossible. In *Lubanga*, the TFV considered that restitution was not feasible. See ICC-01/04-01/06-3177-Red (“[Lubanga TFV Submissions](#)”), paras. 191-193.

¹²⁴ The Trial Chamber may want to further explore with the Victims the adequacy of other modalities of reparations, such as symbolic measures of satisfaction (apologies, commemorations and/or the building of monuments). These measures have been rarely used specifically to help repair the harm caused to victims of conflict-related sexual violence and, when they have been used, they have often reinforced existing stereotypes. See [UN Guidance Note](#), pp. 17-18.

¹²⁵ [Ntaganda Reparations Order](#), paras. 81, 186-188.

¹²⁶ [Ntaganda Reparations Order](#), paras. 186-189.

¹²⁷ [OPCV Submissions](#), paras. 75, 78-80; [TFV Submissions](#), paras. 108-111.

considers awarding individual reparations to the victims of SGBC directly perpetrated by Mr Ongwen, the Prosecution concurs with the Registry that it would be important to ensure that the reparations are not viewed by the victim community as creating a hierarchy of victims (e.g. as between the victims of SGBC directly perpetrated by Mr Ongwen and those indirectly perpetrated by him),¹²⁸ and do not create or add to tensions or divisions within the relevant communities.¹²⁹ Measures should be decided upon and awarded transparently, and without discrimination.

Issue (j): Any additional information relevant to reparations

39. Mr Ongwen's liability: The convicted person's liability for reparations must be proportionate to the harm caused, in the specific circumstances of the case.¹³⁰ In *Lubanga*, the Appeals Chamber held that the convicted person's liability must also be proportionate to, *inter alia*, his participation in the commission of the crimes for which he was found guilty.¹³¹ However, the Trial Chamber in *Ntaganda* took a different approach, finding that the convicted person's form of participation in the crimes and the contributions of other persons, organisations or States to the crimes is irrelevant to this determination.¹³² This is because the Chamber found that Mr Ntaganda and his co-perpetrators were jointly liable *in solidum* to repair the full extent of the harm caused to the victims.¹³³ This approach is now the subject of an appeal filed by Mr Ntaganda which is pending before the Appeals Chamber,¹³⁴ and the Appeals Chamber's determination of the appeal is expected to provide further clarity on the applicable law. Until the Appeals Chamber renders its decision, the Prosecution considers that the Appeals Chamber's previous jurisprudence in *Lubanga* remains authoritative. In any event, in this case, due to Mr Ongwen's wide-ranging essential contributions to the 61 crimes for which he was convicted as an indirect co-perpetrator but also as direct and indirect perpetrator under article 25(3)(a), and the serious, multiple, long-lasting and diverse consequences of the harms inflicted by the crimes, Mr Ongwen's liability for reparations will be substantial and higher than Ntaganda's liability of USD 30

¹²⁸ [Registry Submissions](#), para. 40.

¹²⁹ [Ntaganda Reparations Order](#), para. 79.

¹³⁰ [Ntaganda Reparations Order](#), para. 96; [Lubanga Amended Reparations Order](#), para. 21.

¹³¹ [Lubanga First Reparations AD](#), para. 118.

¹³² [Ntaganda Reparations Order](#), paras. 96, 98, 217.

¹³³ [Ntaganda Reparations Order](#), paras. 219, 221.

¹³⁴ [Ntaganda Reparations Appeal](#), paras. 255-256.

million, even if limited to his participation in the crimes.

Conclusion

40. The Prosecution respectfully requests the Chamber to consider these observations.



Karim A.A. Khan QC
Prosecutor

Dated this 7th day of February 2022
At The Hague, The Netherlands