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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 Redacted Version of ICC-02/04-01/15-2031-Conf

**CLRV Submissions on transgenerational harm
and estimated number of potential beneficiaries for reparations**

Source: Office of Public Counsel for Victims

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I. INTRODUCTION

1. The Common Legal Representative of Victims (the “CLR”) files her observations on the issue of transgenerational harm and on the estimated number of potential beneficiaries for reparations, pursuant to the Decision of Trial Chamber IX (the “Chamber”) issued on 16 December 2022.¹

2. In particular, the Chamber instructed the two teams of Legal Representatives of Victims, the Prosecutor, the Trust Fund for Victims (the “Trust Fund”), the Registry and the Defence to submit additional observations on the following matters:

(a) The estimated total number of potential beneficiaries of reparations in the case and the methodology used to make such calculations; and

(b) Issues related to the transgenerational harm, in particular: (i) the scientific basis for the concept of transgenerational harm; (ii) the evidence needed to establish it; (iii) what the evidentiary requirements are for an applicant to prove this type of harm; (iv) the need, if any, for a psychological examination of applicants and parents; (v) the need, if any, to exercise caution in assessing applications based on transgenerational harm; and (vi) whether Mr Ongwen is liable to repair such harm in the specific context of the case.²

3. The CLR notes that the two leading schools of thought regarding the scientific basis for transgenerational transmission of trauma agree on the existence of a relationship between the traumatic events that the parents suffered and certain behaviours showed by children who were not personally exposed to the same events. In fact, the scientific debates are nowadays limited to the question of how the trauma is passed on from one generation to the other(s). Therefore, the CLR considers unnecessary to establish whether in the specific circumstances of this case the trauma

¹ See the “Decision on the Registry Additional Information on Victims” (Trial Chamber IX), [No. ICC-02/04-01/15-2024](#), 16 December 2022.

² *Idem*, para. 31.

was passed on socially, epigenetically or in both ways. Accordingly, the Chamber should merely acknowledge the existence of the transmission of harm from one trauma-exposed generation to another and devise relevant reparations.

4. The CLRV recalls the need to establish a presumption of transgenerational harm for all the children of direct victims of the case. Such presumption is necessary and appropriate to the particular circumstances in which victims were both at the time of the commission of the crimes and at present. Establishing said presumption meets the balance of probabilities standard as applied by the Chambers in other reparations proceedings, as well as the criteria of reasonableness and appropriateness set by the Appeals Chamber.

5. Moreover, it has been established at the required standard, that Mr Ongwen is the proximate cause of the transgenerational harm suffered by the children of the direct victims of the case. He must therefore be held liable.

6. On the estimated number of potential beneficiaries, the CLRV reiterates that - in light of the unprecedented geographical, temporal and material scope of the case - it is expected that an extremely high number of potential beneficiaries (in the figures of thousands) will manifest themselves as the reparations proceedings progress, information is conveyed to the affected communities and implementation of the reparations begins.

7. Lastly, the CLRV notes that the estimates provided by the Registry concerning victims of the thematic crimes are too conservative and do not reflect the full extent of the victimisation. Accordingly, she posits that a more accurate estimate will only be achieved at the time of the implementation of reparations and once the Trust Fund will assess the eligibility of each victim.

II. SUBMISSIONS

A. ISSUES RELATED TO TRANSGENERATIONAL HARM

1. The scientific basis for the concept of transgenerational harm

8. Clinicians, physicians and specialists agree that heightened levels of distress and psychopathology are found in children of victims of trauma, even when the children themselves were not personally exposed to traumatic stress. This phenomenon was first observed in relation to the children of Holocaust survivors and it resulted in a testable and verified model of the mechanisms by which the traumas they experienced impacted the functioning and well-being of future generations of offspring.³

9. As observed by Trial Chamber II in the *Katanga* case, this finding led scientists to research how the trauma suffered by parents was transmitted to their children.⁴ Academic literature reveals two leading schools of thought regarding the scientific basis for transgenerational transmission of trauma. The first one relies on the social transmission theory, which focuses on the impact of the upbringing and emotional learning on the child's emotional development.⁵ Over time, the second school of

³ See DANIELI (Y.), NORRIS (F. H.), & ENGDahl (B.), "[Multigenerational legacies of trauma: modelling the what and how of transmission](#)", *American Journal of Orthopsychiatry*, Vol. 86(6), 2016, pp. 639-651. See also, YEHUDA (R.), HALLIGAN (S. L.) & BIERER (L.M.), "Relationship of parental trauma exposure and PTSD to PTSD, depressive and anxiety disorders in offspring", *Journal of Psychiatric Research*, Vol. 35, 2001, pp. 261-270; and YEHUDA (R.), DASKALAKIS (N.P.), BIERER (L.M.), BADER (H.N.), KLENGEL (T.), HOLSBOER (F.), & BINDER (E.B.), "[Holocaust exposure induced intergenerational effects on FKBP5 methylation](#)", *Biological Psychiatry*, Vol. 80(5), 2016, pp. 372-380.

⁴ See the "Public Redacted Version of Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018" (Trial Chamber II), [No. ICC-01/04-01/07-3804-Red-tENG](#), 19 July 2018, paras. 11-13 (the "*Katanga* Decision on Transgenerational Harm").

⁵ See CALICIS (F.), "[La transmission transgénérationnelle des traumatismes et de la souffrance non dite](#)", *Thérapie Familiale*, Vol. 27, 2006/3, pp. 229-242. See also, BOSQUET ENLOW (M.), EGELAND (B.), CARLSON (E.), BLOOD (E.), & WRIGHT (R.), "[Mother-Infant Attachment and the Intergenerational Transmission of Posttraumatic Stress Disorder](#)", *Development and Psychopathology*, Vol. 26(1), 2014, pp. 41-65. Subsequently, the study of intergenerational trauma expanded to the experiences of groups others than Holocaust survivors and their family, such as Asian-Pacific Islanders who experienced cultural trauma; BITH-MELANDER (P.), CHOWDHURY (N.), JINDAL (Ch.), & EFIRD (T.J.), "[Trauma](#)

thought relying on the epigenetic transmission theory emerged. This theory, complementary to the social transmission one, rather than contradictory, attributes the intergenerational transmission to the trauma-related neurobiological and psychophysiological alterations that are passed from one generation to the next.⁶ Said theory provides a biological explanation for the intergenerational transmission of trauma and traumatic stress. As research developed, it was further showed that intergenerational trauma is transmitted not only to the second,⁷ but also to the third generation.⁸

10. These two schools of thought converge on the existence of a relationship between the traumatic events that the parents were exposed to and the behaviour of the children who were not personally exposed to the same traumatic experience. The scientific debates are therefore limited to the question of **how** the trauma is passed on from one generation to the other(s) without questioning the fact that it gets transmitted.⁹

[affecting Asian-Pacific Islanders in the San Francisco Bay area](#)", *International Journal of Environmental Research and Public Health*, Vol. 14(9), pp. 1053 *et seq.*; and survivors of political violence among others; and WEINGARTEN (K.), "[Witnessing the effects of political violence in families: Mechanisms of intergenerational transmission and clinical intervention](#)", *Journal of Marital and Family Therapy*, Vol. 30(1), 2004, pp. 45-59.

⁶ See YEHUDA (R.), DASKALAKIS (N.P.), BIERER (L.M.), BADER (H.N.), KLENGEL (T.), HOLSBOER (F.), & BINDER (E.B.), *op. cit. supra* note 3, pp. 372-380. See also, BALE (T.E.), "Epigenetic and transgenerational reprogramming of brain development", *Nature Reviews Neuroscience*, Vol. 16, 2015, pp. 332-344; BALE (T.E.), BARAM (T.Z.), BROWN (A.S.), GOLDSTEIN (J.M.), INSEL (T.R.), MCCARTHY (M.M.), NEMEROFF (C.B.), & NESTLER (E.J.) "Early life programming and neurodevelopmental disorders", *Biological Psychiatry*, Vol. 68(4), 2010, pp. 314-319; and BANGSER (M.), "Obstetric fistula and stigma", *Lancet*, Vol. 367(9509), 2006, pp. 535 *et seq.*

⁷ See GRUNBERG (K.) & MARKERT (F.), "A psychoanalytic grave walk- scenic memory of the Shoah. On the transgenerational transmission of extreme trauma in Germany", *American Journal of Psychoanalysis*, Vol. 72(3), 2012, pp. 207-222.

⁸ See WINSHIP (G.) & KNOWLES (J.), "The trans-generational impact of cultural trauma: linking phenomena in treatment of third generation survivors of the Holocaust", *British Journal of Psychotherapy*, Vol. 13(2), 1996, pp. 259-266.

⁹ The CLRV underlines that, in comprehensively reviewing the relevant literature, Trial Chamber II in the *Katanga* case rightfully observed – in relation to the epigenetic theory – that what remains open is **how** exactly the **unconscious** trauma of a PTSD parent can be transmitted to his or her child, but that the very existence of the phenomenon is no longer disputed. See the *Katanga* Decision on Transgenerational Harm, *supra* note 4, para. 12.

11. In the present case, the transmission of trauma from one generation to the next was confirmed by four experts called to testify at trial respectively on: (i) mental health outcomes of rape and other forms of sexual violence, forced marriage and forced pregnancy;¹⁰ (ii) psychological, social, developmental and behavioural consequences of enlistment, conscription and use of children under the age of 15 to participate actively in hostilities;¹¹ (iii) the interplay of Acholi culture with traumas and Post-Traumatic Syndrome Disorder, in particular on the impact of loss of traditions on the individual's and community's development, as well as on Acholi cultural approaches to crimes and traumas;¹² and (iv) the assessment of the physical, material and psychosocial effects of the attacks on Odek, Lukodi and Abok IDP camps.¹³

12. All four experts provided detailed information on the trauma suffered by victims of the LRA in Northern Uganda during the period of the charges, on its impact on their offspring and on how the effects of those crimes materialise on the community as a whole, including on the next generations.¹⁴ Additionally, the existence of the phenomenon of transgenerational harm has already been acknowledged in the context of different cases before this Court.¹⁵

¹⁰ Expert witness PCV-001. See UGA-PCV-0001-0020 (Report). See also, the Transcript of the hearing held on 14 May 2018, [No. ICC-02/04-01/15-T-175-Red-ENG WT](#) (“[T-175](#)”).

¹¹ Expert witness PCV-002. See UGA-PCV-0002-0076 (Report). See also, the Transcript of the hearing held on 15 May 2018, [No. ICC-02/04-01/15-176 ENG ET WT](#) (“[T-176](#)”).

¹² Expert witness PCV-003. See UGA-PCV-0003-0046 (Report). See also, the Transcripts of the hearing held on 23 and 24 May 2018, [No. ICC-02/04-01/15-T-177-ENG ET](#) and [No. ICC-02/04-01/15-T-178-ENG ET WT](#) (“[T-177](#)” and “[T-178](#)”).

¹³ Expert witness V-0001. See UGA-V40-0001-0010 (Report). See also, the Transcripts of the hearing held on 4 May 2018, [No. ICC-02/04-01/15-T-174-ENG ET WT](#) (“[T-174](#)”).

¹⁴ See the testimony of PCV-001 at [T-175](#), page 23 and 28-29 and his Report at UGA-PCV-0001-0020 at pages 31-32. See also, the testimony of PCV-002 at [T-176](#), pp. 22-25 and his Report at UGA-PCV-0002-0076 at 0101; the testimony of PCV-003 at [T-177](#), pp. 30-31 and his Report at UGA-PCV-0003-0046; and the testimony of V-01 at [T-174](#), pp. 30-31 and the Report at UGA-V40-0001-0010 at page 0146.

¹⁵ See the *Katanga* Decision on Transgenerational Harm, *supra* note 4, paras. 11-13. See also, the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, paras. 182-183(vi) (the “*Ntaganda* Reparations Order”). This part of the *Ntaganda* Reparations Order was remanded to the Trial Chamber (see the “Judgment on the appeals against the decision of Trial Chamber VI of 9 March 2021 entitled ‘Reparations Order’”, [No. ICC-01/04-02/06-2782 A4 A5](#) (Appeals Chamber), 12 September 2022, paras. 471-481 and 575-578 (the “*Ntaganda* Appeals Judgment”).

13. In light of the undisputed recognition of the transmission of trauma from trauma-exposed parents to their children, the CLRV considers unnecessary to establish whether in the specific circumstances of this case the trauma was passed on socially, epigenetically or in both ways. She submits, in this regard, that the Chamber should merely acknowledge the existence of the transmission of harm from one trauma-exposed generation to another¹⁶ and devise the relevant reparations accordingly.

2. Establishing transgenerational harm in the *Ongwen* case

a) *Appropriateness of resorting to presumptions*

14. The CLRV recalls *in toto* her previous submissions on the *rationale* underpinning recourse to presumptions.¹⁷

15. Presumptions can be resorted to when the circumstances are such that adducing evidence in a form other than by providing a coherent and credible narrative would prove nearly impossible.¹⁸ In fact, the use of factual presumptions is particularly valuable in cases of mass victimisation; when considerable time has elapsed since the events; and when the events themselves have had as one of their consequences the destruction of most of the documentation that could be used in the context of reparations proceedings.

16. Presumptions have been largely applied in previous reparations proceedings before this Court. The CLRV, therefore, submits that there is no reason to depart from said approach when considering transgenerational harm in the present case.

¹⁶ See the *Katanga* Decision on Transgenerational Harm, *supra* note 4, para. 14.

¹⁷ See the “Common Legal Representative of Victims’ Submissions on Reparations”, [No. ICC-02/04-01/15-1923-Conf](#), 7 December 2021, paras. 55-68 (the “CLRV First Submissions on Reparations”).

¹⁸ See the *Ntaganda* Reparations Order, *supra* note 15, paras. 141-147 and the *Ntaganda* Appeals Judgment, *supra* note 15, p. 11. See also, the “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3278-tENG](#), 24 March 2017, paras 57-61; and the “Public redacted version of “Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable””, [No. ICC-01/04-01/06-3379-Red-Corr-tENG](#), 21 December 2017, para. 185.

b) *Presumption on transgenerational harm*

17. The CLRV reiterates her previous submission¹⁹ and posits that the Chamber should establish a presumption of transgenerational harm for all the children of direct victims of the case. As observed *supra*, the two leading theories on transgenerational trauma complement each other and reinforce the direct applicability of this notion through two distinct processes in which trauma is transmitted. All scholars who studied the intergenerational transmission of trauma, regardless of their fields of expertise, have found that this phenomenon is more likely to happen than not in contexts of extreme violence and in cases of mass atrocities.

18. In other words, in context of mass-victimisation, it is more likely than not that transgenerational harm occurs for the children of direct victims. In fact, this reality has been progressively acknowledged by several courts confronted with similar situations of mass-victimisation. Notably, the Inter-American Court of Human Rights recognises that situations of mass violence lead to multi-faceted harm including transgenerational harm.²⁰ Additionally, research has shown that even unconscious trauma experienced by the parents can be passed on to the children.²¹

¹⁹ See the CLRV First Submissions on Reparations, *supra* note 17, paras. 55-68, in particular para. 67. See also, the “Victims’ Preliminary Submissions on Reparations”, [No. ICC-01/15-02/04-1921](#), 6 December 2021, paras. 47-64.

²⁰ See IACtHR, *Gómez Palomino v. Peru*, [Judgment \(Merits, Reparations, and Costs\)](#), 22 November 2005, para. 146: “[t]he Court takes into account that serious violations of human rights as that at issue in the instant case, leave lingering after-effects on the victims and next of kin directly harmed, which also affect the new generations. Thus, the predicament of the current generations, directly affected by the violation of their human rights, affects future generations in different ways” (emphasis added). See also, IACtHR, *Tibi v. Ecuador*, [Judgment \(Preliminary Objections, Merits, Reparations and Costs\)](#), 7 September 2004, paras. 161 and 205, and the Separate Concurring Opinion of Judge Sergio García-Ramírez, paras. 91-93; IACtHR, *Río Negro Massacres v. Guatemala*, [Judgment \(Preliminary Objection, Merits, Reparations, and Costs\)](#), 4 September 2012, para.162. In relation to sexual violence, see IACtHR, *Rosendo Cantú et al. v. Mexico*, [Judgment \(Preliminary Objection, Merits, Reparations, and Costs\)](#), 31 August 2010, paras. 138, 139, and 257, in which the Inter-American Court of Human Rights acknowledged the inter-generational consequences on a few months old child of the rape suffered by her mother.

²¹ See KELLERMANN (N.), [“Epigenetic transmission of Holocaust Trauma: Can nightmares be inherited?”](#), *Israel Journal of Psychiatry and Related Sciences*, Vol. 50(1), 2013, pp. 33-39.

19. In the *Lubanga* case, the Court-appointed expert Dr Schauer, in addressing the transgenerational nature of the harm, underlined the existence of an intergenerational cycle of dysfunction that traumatised parents set in motion, with a transgenerational handing-down of trauma owing to the fact that violent and neglectful caretaker-models deform the psyche and can also impact on the next generation.²² Traumatized parents, who live in constant and unresolved fear, unconsciously adopt a frightening behaviour. This affects the child's emotional behaviour, attachment and well-being, increasing the risk that offspring will suffer post-traumatic stress disorder, mood disorders and anxiety issues themselves.²³ There is a cascading impact from each direct victim onto their children who then became indirect victims of the events.

20. In the present instance, the case record is replete with evidence demonstrating the mass-victimisation and the extremely violent *modus operandi* of the LRA, as well as the cruelty employed by Mr Ongwen himself in the commission of the crimes. To exemplify, regarding crimes committed during the attacks - such as the crime of murder and attempted murder - victims were not only shot but also burned alive or

²² See the "The Psychological Impact of Child Soldiering", [No. ICC-01/04-01/06-1729-Anx1](#), 25 February 2009, annexed to the "Report of Ms. Elisabeth Schauer following the 6 February 2009 'Instructions to the Court's expert on child soldiers and trauma'", [No. ICC-01/04-01/06-1729](#), 25 February 2009, pp. 26-27: "*Internalized effects of violent and neglectful caretaker-models deform the psyche and can also act out on the next generation. [...] Violence and trauma at the time of parents' childhood may result in problematic attachment relationships that have long-term consequences for mental health and interpersonal relationships on the side of their children. An intergenerational cycle of dysfunction is set in motion. [...] [C]hildren of survivors can be equally affected by their parents' symptoms of numbing and avoidance, which are associated with substantial decrements in parent child relationship quality and prevent normal emotional expression and closeness. [...] Studies on fathers' who have experienced numerous war events show that feelings of detachment and numbing can carry over to their children, leading to behavioural problems in the child. Based on the vulnerability of surviving a war or growing up in a post-conflict setting, children in turn might also become more vulnerable to forces that instigate violence*".

²³ See YEHUDA (R.), and BIERER (L.M.), "Transgenerational Transmission of Cortisol and PTSD Risk", *Progress in Brain Research*, vol. 167, 2007, pp. 121-135. See also, BOSQUET (E.M), EGELAND (B.), CARLSON (E.), BLOOD (E.), and WRIGHT (R.), *op. cit. supra* note 5, pp. 41-65; and HUMAN RIGHTS WATCH, [I Just Sit and Wait to Die: Reparations for Survivors of Kenya's 2007-2008 Post-Election Sexual Violence](#), February 2016, p. 61.

beaten to death, both during the attacks²⁴ and once abducted in the LRA ranks.²⁵ Mr Ongwen and his soldiers killed babies, young children, adults, elderly, handicapped and ill people in front of harmless family members.²⁶ Regarding the crime of enslavement, the abductees were under constant threat of beating and death;²⁷ and the acts of torture committed on child-soldiers and other abductees were of unspeakable brutality often committed in front of others to instil fear.²⁸ Similarly, the crimes committed against abducted girls and women and against children abducted and used as soldiers were characterised by their extreme brutality.²⁹ Mr Ongwen's former "wives" were all subjected to beatings and cruel and violent acts, either directly perpetrated by the convicted person³⁰ or ordered by him, under his sight.³¹ On a daily basis, they were all forced to participate in violent acts, have repeated non-consensual sexual intercourses and perform various other duties in the household.³² They were

²⁴ See the "Trial Judgment" (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Conf](#) and [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021, paras. 197, 2977 and 2981 (Abok); 182 and 2931 (Lukodi) (the "Judgement").

²⁵ *Idem*, paras. 188 and 7545 (after the Lukodi attack).

²⁶ See the Judgement, *supra* note 24, paras. 187, 202 ("*The LRA attempted to kill abductee Gwentorina Akite, an elderly woman. They had abducted her from the camp and forced her to carry heavy loads, including at one point two goats. When she could no longer bear the weight, an LRA fighter beat and strangled her and cut her with a machete. LRA fighters passing her on the road hit her. She was left for dead but managed to crawl back home to the camp*"), 1513, 1516, 1521 ("*P'Oyoo Lakoch testified that an elderly couple was shot dead inside their home*"), 1567, 1579, 1767 ("*P-0187 testified that the LRA burnt 'Georgina' Angom. P-0187 testified that Georgina Angom was an elderly sickly woman who could not run.*"), 1773, 1821, 1827 ("*P-0187 also testified that the LRA fighters would just pick up the babies and throw them away because the babies were crying and the LRA were concerned that the babies would be heard and they would be followed*"), 1954, 1955, 1990 and 2938.

²⁷ *Idem*, para. 2711 ff, and 2839.

²⁸ *Idem*, paras. 321, 2840, 2896, 2949, 2995, 3053 and 3083. See also, the "Common Legal Representative of Victims' Closing Brief", [No. ICC-02/04-01/15-1720-Conf](#), 18 February 2020, paras. 48-52 (the "CLRVR Closing Brief"). A public redacted version was filed on 24 February 2020. See [No. ICC-02/04-01/15-1720-Red](#).

²⁹ See the CLRVR Closing Brief, *supra* note 28, paras. 81-92, 93-109 and 110-118.

³⁰ See the testimony of P-0226 ([T-9](#), p. 19 lines 11 - 21).

³¹ *Idem*, ([T-9](#), p. 5 line 8 – p. 6 line 1).

³² See P-0226 recalling a time when "*They selected a number of girls, each girl was given a stick, you're asked to beat the soldier and once you're done you move on and the next person does the same. [...] It was a heavy stick. I had to use both my hands. [...] When I hit him, I got blood splattered on my clothes. [...] Dominic, and the other commander were sitting on a chair. [...] It was near. He said that if anyone refused to beat the soldier, then the person will be killed like the soldier.*" She also specified: "*I was forced. The reason why I did accept was because I was forced to kill. I had no choice. [...] I suppressed this memory because I was forced to kill. I was forced to kill, and I did not want to constantly think about the killing*" ([T-8](#), p. 62 line 8 – p. 64 line 24; and [T-9](#), p. 60 line 19 – p. 62 line 11). Similarly, P-0235 was asked to participate in the killing of two soldiers who had tried to

living in constant fear, thinking of their home, missing their loved ones, and worrying about their fate and the fate of the children they gave birth to in the bush.³³ Mr Ongwen was extremely cold and cruel in executing the LRA's policy of brutality.³⁴ The evidence in the case record shows that he was ruthless towards defenceless civilians and people surrounding him, including his forced "wives", escorts and soldiers in the Sinia brigade.

21. In conclusion, the CLRV posits that presuming intergenerational harm is appropriate and necessary given the vulnerable situation in which victims found themselves at the time of the commission of the crimes and in which they are at present. In light of the specific findings pertaining to the crimes for which Mr Ongwen was convicted, as well as the factual and expert information available before the Chamber on the corresponding harm, said presumption meets the balance of probabilities standard as established by the Chambers in other reparations proceedings and conforms with the relevant criteria of reasonableness and appropriateness set by the Appeals Chamber.³⁵

22. In particular, the Appeals Chamber considered that *"resort to factual presumptions in reparations proceedings is within a trial chamber's discretion in determining 'what is 'sufficient' for purposes of an applicant meeting the burden of proof'. [...] In light of the above, the Appeals Chamber emphasises that the reasonableness of a factual presumption drawn by a trial chamber in reparation proceedings will depend upon the circumstances of the case"*.³⁶

escape and she could not bring herself to do it ([T-17](#), p. 24 line 16 – p. 25 line 20, referring to her written statement UGA-OTP-0240-0003, at para. 40).

³³ See P-0236's victim application a/02149/16, p. 1, question 2. See also, P-0214 ([T-15](#), p. 26 lines 8 - 16).

³⁴ See P-0018 ([T-68](#), p. 58 line 18 – p. 60 line 6); P-0410 ([T-151](#), p. 61 lines 16 – 24); P-0187 ([T-164](#), p. 18 lines 7 – 16) and ([T-165](#), p. 31 lines 6 – 21); P-0142 ([T-71](#), p. 18 lines 17 – 21); and P-0269 ([T-85](#), p. 26 line 23 – p. 27 line 17).

³⁵ See the "Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled 'Order for Reparations pursuant to Article 75 of the Statute'" (Appeals Chamber), [No. ICC-01/04-01-07-3778-Red A3 A4 A5](#), 9 March 2018, para. 77: *"On appeal, bearing in mind the standard of review, a party challenging a factual presumption must demonstrate that no reasonable trier of fact could have formulated the presumption in question in light of the particular set of circumstances in that case"* (the "Katanga Reparations Appeal Judgment").

³⁶ *Idem*, paras. 75-76.

23. In the present case, the time elapsed since the commission of the crimes combined with the widespread lack of records and the *modus operandi* of the crimes committed by Mr Ongwen, would render it unmanageably cumbersome, if at all possible, to require every applicant to adduce the proof showing transgenerational harm. In the absence of a presumption in this regard, it would thus be nearly impossible to establish the transgenerational harm for each victim. More importantly, failing to presume the transgenerational harm would amount to completely disregard an essential aspect of the victimisation suffered in this case. Thus, a pragmatic approach should be adopted whereby transgenerational harm is presumed with regard to all children of direct victims.

24. In addition, in the *Ntaganda* case, the Trial Chamber found that psychological harm could be presumed for virtually all direct victims of the attacks, all victims of sexual and gender-based crimes and all former child soldiers.³⁷ This finding was not disturbed on appeal,³⁸ accordingly there is no reason to depart from this approach. In fact, the presumption that the victims' psychological harm is passed on to their offspring is supported by the evidence adduced at trial and tested against the standard of beyond reasonable doubt. Such evidence shows precisely that in context of mass-victimisation - as the one prevailing in Northern Uganda during the period of the charges - intergenerational transmission of trauma is more likely than not to have occurred.³⁹ As such, this is sufficient to meet the applicable evidentiary standard of balance of probabilities required at the reparations stage. This conclusion also conforms with the finding that the crimes for which Mr Ongwen has been convicted -

³⁷ See the "Reparations Order" (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, paras. 141-147.

³⁸ See the *Ntaganda* Appeals Judgment, *supra* note 4, p. 11.

³⁹ See the testimony of PCV-001 at [T-175](#), page 23 and 28-29 and his Report at UGA-PCV-0001-0020; the testimony of PCV-002 at [T-176](#), p. 22 and his Report at UGA-PCV-0002-0076 at 0101; the testimony of PCV-003 at [T-177](#), pp. 30-31 and his Report at UGA-PCV-0003-0046.

committed with extreme violence and brutality - created a coercive and threatening environment conducive to extreme psychological sufferings.⁴⁰

25. Further, even though they were not prompted to do so, a number of victims spontaneously described the effects of the crimes suffered on their children. In this regard, [REDACTED].⁴¹

26. Similarly, witness P-0374 (also victim a/2111/16) testified that at the time of her testimony she had four dependents aged between 4, 18 and 22 years, but that she not have the capacity to take care of them because she was abducted at a very young age. She was not raised to be a responsible person. Yet, she keeps trying her best because she does not have any other way out. She just has to struggle to carry with her life.⁴² The phenomenon is so widespread that even applications randomly selected for the purpose of the sample contain references to the inability of direct victims to relate and raise their children. For instance, a/01566/16 referring to her daughter who was abducted and stayed in captivity for many years indicated in her application: *"I am burdened looking after my grandchildren since my daughter cannot manage to look after them alone"*.⁴³

27. These testimonies are congruent with the experts' findings. In fact, PCV-001 noted in his report that: *"These symptoms [for anxiety disorders] not only affect the individual but have repercussions for family and community. For example, children of mothers*

⁴⁰ See the "Sentence" (Trial Chamber IX), [No. ICC-02/04-01/15-1819-Conf](#) and [No. ICC-02/04-01/15-1819-Red](#), (the "Sentencing Decision") and the "Partly Dissenting Opinion of Judge Raul C. Pangalangan", [No. ICC-02/04-01/15-1819-Anx](#), 6 May 2021, paras. 82, 189, 301, 336-338 and 340. See also, the "Victims' Joint submissions on sentencing", [No. ICC-02/04-01/15-2808](#), 1 April 2021, paras. 76-77 concerning the high number of victims. The findings of the Trial Chamber were undisturbed on appeal: see the "Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled 'Trial Judgment'" (Appeals Chamber), [No. ICC-01/04-01/15-2022-Red A](#), 15 December 2022; and the "Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled 'Sentence'" (Appeals Chamber), [No. ICC-02/04-01/15-2023 A2](#), 15 December 2022.

⁴¹ [REDACTED].

⁴² See the testimony of P-0374 (a/2111/16), ([T-150](#), pp. 19-21).

⁴³ See a/01566/16's victim application, page 1. See also, victim application a/02099/16 (also P-0330), p. 6; victim application a/02119/16 (P-0214), p. 1; and victim application a/01421/16, p. 1.

with panic disorder are 6.8 times more likely to develop the disorder, and children of mothers with phobic disorders are 3.1 times more likely to be diagnosed with the disorder at some point in their life.”⁴⁴ “Similar to anxiety disorders, the presence of depressive and mood disorders extends beyond the individual victim; research suggests that children of depressed mothers have a lifetime prevalence rate of depression between 20% and 41 %. Children of depressed mothers also experience mental and motor developmental issues, self-regulation problems, and increased negative affect”.⁴⁵ In relation to sexual violence specifically, the expert stated that it “causes terror and destabilization by undermining feelings of individual and community safety and security. [...] This effect may become a chronic state. A sense of safety and security is a basic human need that is essential for individuals to perform their daily functions and to engage in activities that promote growth and development. When an individual does not perceive that she or he is safe, basic daily activities such as feeding, sleeping, and self-care are undermined and dysregulated. When this occurs, higher-level pursuits—such as taking care of others, gaining employment, and pursuing an education—are also threatened and rendered more challenging, if not impossible”.⁴⁶ Similarly, in relation to victims who were forced to live in IDP camps, PCV-003 underlined that the camps were overcrowded; people lost family cohesion and connectedness; fathers lost their position in the society and in life; culturalisation of children disappeared.⁴⁷

28. The evidence available on the case record also establishes to the required standard that the crimes committed by Mr Ongwen and his co-perpetrators were of extreme violence and cruelty, occurred on a very large scale and caused multi-layered harms to the victims. As such, it is more likely than not that the crimes committed by the convicted person left lingering effects not only on the direct victims, but also on the future generations. This is exacerbated by the fact that the vast majority of victims have not received any psychological support since the crimes were committed.

⁴⁴ See the PCV-0001 Report, *supra* note 10, pp. 2 and 12.

⁴⁵ See the PCV-0001 Report, *supra* note 10, pp. 13. See also, the PCV-0002 Report, *supra* note 11, pp. 26-28 and 51 and his testimony at [T-176](#), pp. 22-23.

⁴⁶ See the PCV-0001 Report, *supra* note 10, p. 8.

⁴⁷ See the PCV-0003 Report, *supra* note 12, p. 6 and his testimony at [T-177](#), pp. 71-81. See also, the testimony of P-0422 ([T-28](#), p. 103); and the testimony of V-0004 ([T-173](#), pp. 9-11).

29. Since the evidence in the present case proves at the required standard that direct victims passed on their trauma to their offspring, the CLRV posits that there is no need to subject the victims or their parent(s) to a psychological examination. In addition, the passage of time is such that a late psychological evaluation of the person concerned in 2023 (or later) would not be conducive, also taking into account the specific cultural context. As explained by PCV-003, in the Acholi culture many of the topics connected to traumatic events suffered cannot be touched upon and discussed other than privately or through the use of silence as a way of communicating.⁴⁸ In the same vein, PCV-001 testified that trauma might not manifest in ways that make it readily identifiable.⁴⁹

30. Finally, in relation to the Chamber's query on the need to exercise caution when assessing applications based on transgenerational harm, the CLRV notes that this issue would not arise if a presumption of transgenerational harm is established. In any event, recognising that transgenerational harm can be presumed would not automatically amount to indiscriminately awarding reparations. As for any other type of harm presumed by the Chamber, the situation and needs of each victim will have to be assessed at the implementation stage of reparations.

3. Mr Ongwen can be held liable for transgenerational harm

31. The CLRV argues that it has been established at the required standard that Mr Ongwen is the proximate cause of the transgenerational harm suffered by the children of the direct victims. As such, Mr Ongwen has to be held liable.

32. In the practice of the Court, *"the standard of causation is a 'but/for' relationship between the crime and the harm"*, which requires *"that the crimes for which [an accused] was convicted were the 'proximate cause' of the harm for which reparations are sought"*.⁵⁰ Said standard of causation does not require that the act posed by the convicted person is

⁴⁸ See the testimony of PCV-003 at [T-177](#), pp. 33-37 and 43-45.

⁴⁹ See the testimony of PCV-001 at [T-175](#), p. 25.

⁵⁰ See the *Ntaganda Appeals Judgement*, *supra* note 4, paras. 565-569.

the **sole** cause of the harm but only that the latter could “reasonably foresee” that his or her crime would cause the harm and that said crime is “closely connected” and “significant enough” to have caused the harm.⁵¹

33. On the issue of whether Mr Ongwen could have reasonably foreseen the harm caused, the CLRV recalls that in the *Katanga* case, the Trial Chamber found that the modest contribution of the convicted person to the crime under article 25(3)(d) of the Statute – namely, the provision of weapons to the militia which attacked Bogoro⁵²– prevented it from finding that the standard of causation for transgenerational harm was met. Indeed, such a limited contribution could not enable the chamber to determine that Mr Katanga could have reasonably foreseen that the initial act he posed would have led to transgenerational harm of the children of the direct victims of the attack.

34. In stark contrast with the *Katanga* case, Mr Ongwen was found guilty for his essential contribution to the plan of attacking and destroying four IDP camps perceived as “enemy” towns,⁵³ raising an army of children and controlling them by using extremely violent methods,⁵⁴ and abducting women and girls for the purpose of forcing them to become wives of LRA soldiers.⁵⁵ The particular cruelty of the acts committed by Mr Ongwen was noted by the Chamber multiple times, in particular in the Sentencing Decision.⁵⁶ Accordingly, it can be concluded that the convicted person could have reasonably expected, and in fact he intended, that his crimes would lead to trauma beyond the direct victims.

⁵¹ See the *Katanga* Decision on Transgenerational Harm, *supra* note 4, paras. 16-17.

⁵² See the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3436-ENG](#), 7 March 2014, p. 658.

⁵³ See the Judgement, *supra* note 24, paras. 140, 150-154, 165-169, 181-188 and 195-199.

⁵⁴ *Idem*, para. 222.

⁵⁵ *Idem*, paras. 212 and 215.

⁵⁶ See the Sentencing Decision, *supra* note 40, for instance, paras. 130, 172-173, 189, 205 and 227. These findings were not disturbed on appeal.

35. Moreover, the crimes that Mr Ongwen committed are closely connected to and significant enough to have caused the harm. In particular, the closer the child's date of birth is to the date of the crimes for which Mr Ongwen was convicted, the higher the likelihood that the parents' trauma was passed on. This is even more so in respect of children born out of rape.⁵⁷

36. Finally, given the specific circumstances of the present case no other events could have broken the chain of causation. In fact, considering the development of the conflict in Northern Uganda and its protracted time, the likelihood that a trauma suffered by the direct victim arises out of events that preceded the crimes for which Mr Ongwen was convicted is extremely unlikely. In the same vein, any trauma that a victim might have suffered prior to the period of the charges is unlikely to be significant enough to outweigh the impact of the extremely violent crimes suffered by victims during the period charged and for which Mr Ongwen has been found guilty.

B. ESTIMATED POTENTIAL NUMBER OF BENEFICIARIES

37. In relation to the potential number of beneficiaries, the CLRV recalls her submissions on the factors to be taken into account to reach a reliable estimate.⁵⁸ At the time of said submissions, in December 2021, she had already identified 1,351 potential new beneficiaries. A further review of the data in her possession shows at least another 100 beneficiaries - including the persons acting on behalf of victims who were minor at the time of the application, who also qualify as direct victims and who did not file an application on their own. These identification efforts are nonetheless preliminary, the estimate remains very conservative as it only encompasses individuals who could be identified as of December 2021.

⁵⁷ In this respect, the CLRV recalls her submissions according to which children born of rape should be considered as direct victims. This finding was made in the *Ntaganda* case and the Appeals Chamber did not disturb said finding (see the *Ntaganda* Appeals Judgement, *supra* note 15, paras. 652-661). See also, the CLRV First Submissions on Reparations, *supra* note 17, para. 21; and the "Victims' Preliminary Submissions on Reparations", *supra* note 19, para. 42.

⁵⁸ See the CLRV First Submissions on Reparations, *supra* note 17, paras. 16, 24-28.

38. In light of the unprecedented geographical, temporal and material scope of the case, it is expected that an extremely high number of potential beneficiaries (probably thousands)⁵⁹ will manifest themselves, as the reparations proceedings progress, information is conveyed to the affected communities and implementation of reparations begins. In this respect, the CLRV concurs with the Registry that a reasonable estimates of the number of victims present in the IDP camps at the time of the attacks ranges between 41,000 and 50,000 individuals.⁶⁰

39. However, the CLRV considers the estimates provided by the Registry on the number of victims of the thematic crimes (former child soldiers, victims of sexual and gender-based crimes and children born out of rape) too conservative as they do not reflect the full extent of the victimisation.⁶¹ In fact, the Registry also noted that the existing records do not account for children who never returned, or only account for certain types of abductees (for instance those who went through reception centres).⁶²

40. Therefore, the CLRV is of the opinion that the Chamber should not rely on the current estimate of potential beneficiaries among the victims of the thematic crimes. However, she does not favour a further mapping at this stage of the proceedings. In fact, said exercise - while causing delay in the reparations process - it is not likely to generate more accurate data than the ones provided so far by specialised LRA experts, and reviewed by the Registry to reach such a conservative estimate. Instead, the CLRV posits that a more accurate estimate will only be achieved at the time of the implementation of reparations, once the Trust Fund will assess the eligibility of each victim.

⁵⁹ See the “Victims’ Joint submissions on sentencing”, [No. ICC-02/04-01/15-2808](#), 1 April 2021, paras. 76-77.

⁶⁰ See the [Annex I](#) to the “Registry’s Mapping Report and Submission on Reparations”, [No. ICC-02/04-01/15-1919](#), 6 December 2021, paras 31, 33-35 (concerning Lukodi), paras. 36-38 (concerning Odek), paras. 39-42 (concerning Abok) and 43-45 (concerning Pajule).

⁶¹ *Idem*, paras. 49-56.

⁶² *Idem*, para. 52.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a prominent initial "P" and a long horizontal stroke at the end.

Paolina Massidda

Dated this 20th day of February 2023

At The Hague (The Netherlands)