

## Annex II

### Public

Registry Submissions on Reparations in the *Ongwen* Case

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## Introduction

1. The Registry submits the present report pursuant to paragraph 5(i) of the Order for Submissions on Reparations issued by Trial Chamber IX on 6 May 2021 (“Chamber” and “Order”) in the case of *The Prosecutor v. Dominic Ongwen* (“Ongwen case” and “Case”).<sup>1</sup>
2. The present submissions must be read in conjunction with the Registry Report on the Mapping Exercise (“Mapping Report”)<sup>2</sup> which provides detailed information on, *inter alia*, recent Registry activities in the field by the Victims Participation and Reparations Section (“VPRS” and “VPRS Missions”)<sup>3</sup> and the categories of victims in the Case.
3. The Registry submits that victims must participate in the *i*) design of desired reparations measures, *ii*) the monitoring of their implementation, and *iii*) the evaluation of the impact reparations have.<sup>4</sup> The present submissions are primarily based on the consultations with victims conducted by the VPRS in three sub-regions of Northern Uganda, namely Acholi, Lango and Teso.<sup>5</sup> However, as detailed in the Mapping Report, possibilities to reach out to affected communities and interlocutors in the field have remained limited due to prevailing COVID-related restrictions; consequently, the present submissions do not display all the different voices, views, concerns and needs of victims affected by Mr Ongwen’s crimes. A more representative consultation with victims potentially eligible for reparations in the present Case should

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<sup>1</sup> Trial Chamber IX, “Order for Submissions on Reparations”, 6 May 2021, ICC-02/04-01/15-1820.

<sup>2</sup> Annex I.

<sup>3</sup> Relevant missions conducted together with the Registry staff members from the Uganda Country Office (“CO”) dedicated to VPR assignments.

<sup>4</sup> For victims that are already represented by a common legal representative, such participation will be channelled through the latter; for victims without such representation, it is for the Registry to establish relevant communication and consultation.

<sup>5</sup> Victims from West Nile also took part in the consultations.

ensue, also with a view to a more solid information base for the implementation of reparations.<sup>6</sup>

4. The Registry will address in the present submissions all issues listed in paragraph 5(i) of the Order, to the extent of its expertise, except for: *i*) the “estimated total number of the direct and indirect victims of the crimes for which Mr Ongwen was convicted, who may be potentially eligible for reparations”<sup>7</sup> – as this matter is covered by the Registry’s Mapping Report;<sup>8</sup> and *ii*) the “concrete estimates as to the costs to repair the harms suffered by the victims”,<sup>9</sup> since the Registry considers this to be a matter best addressed by the Trust Fund for Victims (“TFV”) as it is directly related to its reparations mandate.

## I. Principles on reparations<sup>10</sup>

5. The Registry recalls the Appeals Chamber’s decision in the case of the *Prosecutor v. Thomas Lubanga Dyilo* which states that “principles should be general concepts that, while formulated in the light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers.”<sup>11</sup> The principles adopted by the Appeals Chamber in

<sup>6</sup> Legal Representatives’ consultations with their clients especially on the types and modalities of reparations they consider most appropriate, alongside similar Registry efforts with other victims potentially eligible for reparations, may lend themselves to a sampling which in turn could inform the reparations order by the Chamber.

<sup>7</sup> Para. 5(i)(b) of the Order.

<sup>8</sup> Annex I.

<sup>9</sup> Para. 5(i)(h) of the Order.

<sup>10</sup> In response to para. 5(i)(a) of the Order: “the need for the Chamber to consider additional principles on reparations, apart from those already established by the consistent jurisprudence of the Court, as recently adapted and expanded in the case of *The Prosecutor v. Bosco Ntaganda*.”

<sup>11</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Amended order for reparations”, 3 March 2015, ICC-01/04-01/06-3129-AnxA, (“Lubanga Reparations Order”), para 5.

said case ("Lubanga principles"),<sup>12</sup> were adapted and expanded by the Appeals Chamber in the cases of the *Prosecutor v. Germain Katanga*<sup>13</sup> and the *Prosecutor v. Ahmad Al Faqi Al Mahdi*.<sup>14</sup> In the case of the *Prosecutor v. Bosco Ntaganda* ("Ntaganda case"), further principles have been recognised.<sup>15</sup> The Registry submits that the principles adopted in the aforementioned cases fully apply to the present Case. In addition, the Registry would like to make one recommendation regarding the principles related to child victims.

6. In the Registry's view, the principles related to "child victims" recognized in the *Ntaganda* Reparations Order<sup>16</sup> would merit being expanded to more explicitly addressing the category of children of war. These child victims, also referred to in literature as "children born of sexual violence", "children born of wartime rape", "children born in captivity" or "children born in the bush" are, both in terms of their numbers and specific vulnerability a prominent category of direct victims. As such, it appears appropriate that they be specifically

<sup>12</sup> The Registry notes that it has repeatedly disseminated those principles within victims' communities since they were issued and notably the principle according to which "the victims' right to apply for reparations, should that stage be reached, is not conditional upon previous participation in the proceedings, be it at the pre-trial or at the trial stage." See also Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, "Decision Establishing Principles on the Victims' Application Process", 4 March 2015, ICC-02/04-01/15-205, para. 12.

<sup>13</sup> Appeals Chamber, *The Prosecutor v. Germain Katanga*, "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'", dated 8 March 2018 and notified on 9 March 2018, ICC-01/04-01/07-3778-Red.

<sup>14</sup> Appeals Chamber, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, "Judgment on the appeal of the victims against the 'Reparations Order'", dated 8 March 2018 and notified on 9 March 2018, ICC-01/12-01/15-259-Red2.

<sup>15</sup> Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, "Reparations Order", 8 March 2021, ICC-01/04-02/06-2659 ("Ntaganda Reparations Order"), paras. 30-67. The Registry notes that there are pending appeals on the *Ntaganda* Reparations Order (see "Defence Appellant Brief against the 8 March Reparations Order", 7 June 2021, ICC-01/04-02/06-2675, and "Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order", 7 June 2021, ICC-01/04-02/06-2674).

<sup>16</sup> *Ntaganda* Reparations Order, paras. 53-59. Whilst addressing the category of child victims in general, the principles retained by the *Ntaganda* Reparations Order only make specific reference to the category of former child soldiers. The Registry notes however that the category of children born of rape and sexual slavery is explicitly addressed in another section of the *Ntaganda* Reparations Order (paras. 120-123) and that they are considered as direct victims.

- recognized with an express reference in the principles on reparations related to child victims.
7. The Registry notes that the children of war remain a highly marginalised victim category and information available about them comes primarily from the perspective of their mothers, the voices of children themselves remaining largely absent.<sup>17</sup> Scholars argue that the marginalisation of this group stems from the fact that in discourses of the rights of the child and human rights more generally they are used as the evidence of the violations experienced by their mothers.<sup>18</sup>
  8. The Registry submits that in the context of the *Ongwen* case, the category of 'children of war' includes: *i*) children born in captivity to mothers abducted by Dominic Ongwen and the Sinia brigade; and *ii*) children born out of rape and sexual violence committed by the Sinia brigade during the attacks on the four IDP camps and out of sporadic/opportunistic rapes committed in other locations in Northern Uganda between 1 July 2002 and 31 December 2005. The

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<sup>17</sup> J. Neenan, "Closing the protection gap for children born of war - Addressing stigmatisation and the intergenerational impact of sexual violence in conflict", (Women, Peace and Security, London School of Economics, June 2018), <http://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-Children-Born-of-War.pdf>, p. 21. This is often due to the lack of policies and interventions to recognise and address the specific needs of this category of victims around the world. The lack of inclusion of children born of sexual violence in policy making has been attributed to the perceived issue of "lack of data" with these children being a hidden population; ethical concerns about "doing no harm" and fears around breaking "protective silences", which may have deterred action; and "the range of political and cultural taboos and sensitivities children born of sexual violence bring to the surface within conflict states and the international community". See also: E. Dowds, "Children Born of Sexual and Gender-Based Violence in Conflict: Exploring the Boundaries of International Criminal Law", in W. Aschauer, J. Buckley, H. Embacher, A. Lichtblau, D. Steinert, and G. Prontera (eds.), *Children and War Past and Present*, Volume III (Helion, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3190039](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3190039).

<sup>18</sup> C. Carpenter, "Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond", (Columbia University Press, 2010), pp. 1-16. See also E. Rehn and E. Johnson Sirleaf, "Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building", (United Nations Development Fund For Women (UNIFEM), 2002), <https://www.unfpa.org/sites/default/files/pub-pdf/3F71081FF391653DC1256C69003170E9-unicef-WomenWarPeace.pdf>, p. 16: "the children have become a symbol of the trauma the nation as a whole went through, and society prefers not to acknowledge these needs."

Registry takes this opportunity to highlight the additional harm suffered by children born in captivity<sup>19</sup> who spent their formative years with the Lord Resistance Army ("LRA"), deprived of their liberty and exposed to violence, combat and other atrocities.<sup>20</sup>

9. According to scholars and NGO reports, children of war face rampant stigmatisation and rejection from the families and communities of their mothers, on account of being perceived as 'proxy members of the LRA, symbols of misfortune, and stereotyped as violent, unproductive, unequal members of society'.<sup>21</sup> Stigmatisation permeates every level of their post-conflict lives and it is manifested through violence, abuse (physical and verbal) and socio-economic exclusion.<sup>22</sup> It is reported that male children of war are viewed as a threat to resources and inheritance;<sup>23</sup> in the rare instances where their mothers succeed in finding new life partners, the latter force the women to abandon their children born out of sexual violence, who often become street children. They are then perceived as threats to their communities as they engage in illicit or

<sup>19</sup> These children are born in extremely unsafe conditions with many young girls and their babies reportedly dying during birth. Those who survive have no access to medication, proper food, clothes, etc. with women reporting that the only way to cover their babies is to tear their own clothes.

<sup>20</sup> M. Denov, "Children Born of Conflict-related Sexual Violence within Armed Groups: A Case Study of Northern Uganda", in M. Drumbl and J. Barrett (eds.), *Research Handbook on Child Soldiers*, (Edward Elgar, 2019), p. 241. "Moreover, these children may, as they age and grow, engage in many of the war-related activities referred to in the Paris Principles, such as acting as fighters, cooks, porters, spies, medics, messengers and, in addition, they may also be used for sexual purposes.". See also A. Green and M. Denov, "Mask-Making and Drawing as Method: Arts-Based Approaches to Data Collection With War-Affected Children", (*International Journal of Qualitative Methods*, 2019), <https://doi.org/10.1177/1609406919832479>, p 10.

<sup>21</sup> J. Neenan, "Closing the protection gap for children born of war - Addressing stigmatisation and the intergenerational impact of sexual violence in conflict", (*Women, Peace and Security*, London School of Economics, June 2018), <http://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-Children-Born-of-War.pdf>, p. 34.

<sup>22</sup> V. Ladisch and L. McClain Opiyo, International Centre for Transitional Justice, "For Children Born of War, What Future?", 16 June 2015, <https://www.ictj.org/news/uganda-children-born-war-future>.

<sup>23</sup> T. Atim, D. Mazurana, A. Marshak, "Women survivors and their children born of wartime sexual violence in northern Uganda", (*Disasters*, 42, 2018), <https://doi.org/10.1111/dis.12275>, p. 71 See also: B. Rohwerder, "Reintegration of children born of wartime rape", (K4D Helpdesk Report 628, Brighton, UK: Institute of Development Studies, 2019), p. 2.

criminal activities in order to provide for themselves. For female children of war it is reportedly easier to be accepted in their mothers' families and communities in light of their 'marriage potential' but this leads to them becoming victims of early marriage and pregnancy.

10. Secondly, it is reported in various sources that children of war face difficulties in obtaining Ugandan birth certificates and national identity documents and are therefore unable to prove their citizenship and have full access to their civil rights.<sup>24</sup> Lack of identification results in children being unable to register for and attend school, access healthcare and reintegration programs,<sup>25</sup> or exercise their right to vote.<sup>26</sup> Moreover, in Uganda, identity is largely defined by paternal clan membership and this informs access to land, resources and social status. Families and communities are unwilling to accept children of war, as they are

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<sup>24</sup> V. Ladisch, "From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda," (International Center For Transitional Justice, ICTJ, 2015), <https://www.ictj.org/sites/default/files/ICTJ-Report-Uganda-Children-2015.pdf>, p. 17; S. Oola and L. Moffett, "CUL PI BAL" Reparations for the Northern Ugandan Conflict", (Reparations, Responsibility & Victimhood in Transitional Societies, June 2020), <https://reparations.qub.ac.uk/assets/uploads/Uganda-Report-ENG-SP-APPROVED.pdf>, p. 11. Furthermore, according to the information collected during the VPRS missions, the applicable laws and the registration process with the National Identification and Registrations Authority (NIRA) allow for the registration of children whose fathers are unknown; however, it was reported that mothers fear to register their children with "unknown" fathers as they believe they would expose them to monitoring and discrimination. It is for this reason that some mothers declare their brothers or fathers as the fathers of the children of war, but most women in this situation do not have access to any relatives who would allow them to use their identity to register their children born in the bush. The Registry was also informed that those children born outside Uganda (i.e. in Sudan, DRC or CAR) cannot obtain Ugandan birth certificates, which creates further issues in obtaining the national ID card.

<sup>25</sup> M. Schomerus and T. Allen, "A hard homecoming: lessons learned from the reception centre process in northern Uganda: an independent study", (Washington, USA, United States Agency for International Development/United Nations Children's Fund, 2006), [http://eprints.lse.ac.uk/28888/1/\\_lse.ac.uk\\_storage\\_LIBRARY\\_Secondary\\_libfile\\_shared\\_repository\\_Content\\_Schomerus,%20M\\_Hard%20homecoming\\_Schomerus\\_Hard%20homecoming\\_2014.pdf](http://eprints.lse.ac.uk/28888/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Schomerus,%20M_Hard%20homecoming_Schomerus_Hard%20homecoming_2014.pdf).

<sup>26</sup> T. Atim, D. Mazurana, A. Marshak, "Women survivors and their children born of wartime sexual violence in northern Uganda", (Disasters, 42, 2018), pp. S61-S78. <https://doi.org/10.1111/dis.12275>

not considered to be a part of the clan or to have fathers with “tainted” LRA identities.<sup>27</sup>

11. In light of the above, the Registry submits that children of war merit being explicitly mentioned when recalling the reparations principles related to child victims.

## **II. Legal and factual issues relevant to the identification of eligible victims<sup>28</sup>**

12. In the present section, the Registry addresses main challenges envisaged for the identification of victims potentially eligible for reparations. Key recommendations received from its interlocutors are also listed.

### **(i) Identification, registration and legal screening process**

13. The complexity of the present Case also impacts on the identification of eligible victims - in particular in light of the number of crimes for which Mr Ongwen was convicted, the temporal and territorial scope for the thematic crimes (i.e. conscription of children under the age of 15 and their use in hostilities and sexual and gender based crimes), and the number of victims potentially eligible for reparations. The Registry submits that the prior identification, registration and legal screening of victims potentially eligible for reparations (“IRS process”) is generally necessary in order to ensure a comprehensive, meaningful and successful reparations process. However, aware of the very

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<sup>27</sup> Global Survivors Fund – Reparations for survivors of conflict-related sexual violence, Uganda Country Briefing, 27 September 2021, <https://drive.google.com/file/d/15n8h9JTKfa4J4btvkecVMPFrcjibmm7/view>. See also, J. Annan, C. Blattman, K. Carlson and D. Mazurana, “The State of Youth and Youth Protection in Northern Uganda: Findings from the Survey for War Affected Youth (SWAY), phase II, Survey of War-Affected Youth”, 2008, <https://chrisblattman.com/documents/policy/sway/SWAY.Phase1.FinalReport.pdf>.

<sup>28</sup> In response to para. 5(i)(c) of the Order: “any legal and factual issues relevant to the identification of eligible victims.”

high number of victims potentially eligible for reparations in the present Case and the human and financial resources entailed by an individualised IRS process, the Registry believes that a flexible approach attuned to the size of this Case and victim communities should be considered. An identification/registration process catering for household/group submissions could be contemplated in order to join the tenets of (i) sufficient identification of beneficiaries; (ii) appropriate and sensible reparations measures; and, notably, (iii) prompt reparations.

14. At this juncture, the Registry abstains from proposing a more concrete process pending consultations notably with the parties and the TFV on the feasibility of a group process.<sup>29</sup> The Registry (VPRS) stands ready to take the initiative in the design and implementation suggestions of a flexible IRS process in consultation with the parties and the TFV, with the aim of making it meaningful for victims while sustainable for the Court.<sup>30</sup>

#### **(ii) Challenges**

15. Based on all the information gathered to date, the Registry does not anticipate major difficulties in the IRS process of the direct and indirect victims of the attacks on the four IDP camps for which Mr Ongwen was convicted (“Victims of the Attacks”), except that the Court would have to manage in a limited amount of time a very high number of potential new applicants. Crucial work

<sup>29</sup> The VPRS would consult the parties and the TFV on the tool to be used and any specific victim information the TFV may require for the implementation of reparations.

<sup>30</sup> With the rather limited information the Registry currently has at its disposal, it considers that, in terms of time and resources, in the best case scenario, the IRS process would be implemented by four teams, each team composed of 15 local contractors who speak the various local languages and are properly trained by VPRS staff (similar to the teams that collected victim application forms for participation ahead of the start of the pre-trial and trial in the Case) for a period of 1.5-2 years using a household application form for reparations. The IRS process would have value for the victims who will be able to share their story in a meaningful way. Such process would also ensure that victims are solely requested to provide the information strictly necessary to be recognised as reparations beneficiaries and that no unrealistic expectations are generated for new potential applicants. Ideally, the process would also constitute the basis of a memorialization process.

is already carried out in this respect by the Legal Representatives of Victims (“Legal Representatives”), and continuous good cooperation between all actors to the common goal can be expected.

16. However, as regards the identification of former child soldiers, victims of sexual and gender based crimes (“SGBV victims”) and children of war (altogether “Thematic Crimes Victims”), the Registry believes that victims can prove particularly difficult to identify/register in light of the fact that (i) relevant documentation is hard to find, not least also due to the lapse of time,<sup>31</sup> and (ii) in the present Case, victims have to provide some information as to the perceived perpetrator specific to their harm in order to qualify for reparations.
17. On this last item, the Registry recalls that, according to rule 94(d) of the Rules of Procedure and Evidence, a victim’s request for reparations shall contain “[...] *to the extent possible [emphasis added]*, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm.” However, during the temporal and territorial scope of the Case, all four LRA brigades committed crimes similar to those for which Mr Ongwen was convicted. Therefore, in order to ensure that only victims of crimes committed by Mr Ongwen receive reparations, clear information about the perpetrator needs to be established.
18. In order to facilitate the identification of the Thematic Crimes Victims, the Registry attempted to map out the attacks conducted by the Sinia brigade and tried to clarify the route of the Sinia brigade in Northern Uganda in the time between 1 July 2002 and 31 December 2005. In doing so, the Registry consulted the Office of the Prosecutor, the Legal Representatives, various external interlocutors, and victims potentially eligible for reparations (who spent long periods of time in the Sinia brigade) met during the VPRS Missions. Based on

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<sup>31</sup> See Mapping Report, para. 29.

all information collected to date,<sup>32</sup> the Registry concluded that it is extremely difficult, if not impossible, to establish such a route, given the irregular movements of the Sinia brigade and the fact that its three battalions (Oka, Siba and Terwanga) often acted separately and covered different locations simultaneously.<sup>33</sup> Moreover, it was reported that often, bigger attacks (i.e. the attack on the Pajule IDP camp) were planned jointly by different LRA commanders and each of the brigades provided soldiers who conducted the attacks jointly.

19. Another aspect brought to the Registry's attention during the VPRS Missions is that, as a result of the fact that Mr Ongwen occupied different positions within the LRA before he became the commander of the Sinia brigade,<sup>34</sup> he may not have been present during all incidents/attacks and victims might not know who ordered their abduction. Moreover, even if some attacks were conducted by the commander of one of the four brigades alone, it was reported to the Registry

<sup>32</sup> Including the various documents on the record of the Case the Registry has been granted access to. See LRVs, "Victims' Request for Authorisation to Disclose Confidential Information in the Record of the Case to the Registry for the Purpose of Mapping of Potential Victims Eligible for Reparations", 27 July 2021, ICC-02/04-01/15-1867; Trial Chamber IX, "Decision on the Victims' Request for Authorisation to Disclose Confidential Information in the Record of the Case to the Registry for the Purpose of Mapping of Potential Victims Eligible for Reparations", 30 July 2021, ICC-02/04-01/15-1869; Registry, "Registry Request for Access to Prosecution Documents", 15 September 2021, ICC-02/04-01/15-1872 and Trial Chamber IX, "Decision on the Registry Request for Access to Prosecution Documents", 23 September 2021, ICC-02/04-01/15-1875.

<sup>33</sup> It was also reported during the VPRS missions that the three Sinia battalions often moved separately in order to best avoid the Uganda Peoples' Defence Forces ("UPDF").

<sup>34</sup> The Registry recalls the Chamber's findings according to which: "[a]t the beginning of the period relevant for the charges, on 1 July 2002, Dominic Ongwen was battalion commander, in charge of the Oka battalion of Sinia brigade. Dominic Ongwen was promoted to the rank of major on 1 July 2002. In October or November 2002 Dominic Ongwen was injured and placed in sickbay until around mid-2003. From at least December 2002 onwards, he again exercised his authority as battalion commander. In April 2003, Dominic Ongwen was briefly arrested by Vincent Otti. The arrest did not interrupt the exercise of his authority for any significant period. On 17 September 2003, Joseph Kony appointed Dominic Ongwen as second-in command of the Sinia brigade. On 15 November 2003, Joseph Kony promoted Dominic Ongwen to the rank of lieutenant colonel. On 4 March 2004, Joseph Kony officially appointed Dominic Ongwen as brigade commander of Sinia brigade. Dominic Ongwen remained Sinia commander until 31 December 2005, and further. On 30 May 2004, Joseph Kony promoted him to the rank of colonel, and sometime in late 2004 to the rank of brigadier." See Trial Chamber IX, "Trial Judgment", 4 February 2021, ICC-02/04-01/15-1762-Red ("Trial Judgment"), paras. 134-138.

that abductees from different abduction sites were thereafter grouped together and distributed to all four brigades.

20. During the two VPRS Missions, the Registry collected, from former child soldiers conscripted in the Sinia brigade and SGBV victims, names of locations and relevant dates when Mr Ongwen and the Sinia brigade were present in Northern Uganda, and it will continue to do so in the future. This information may be useful during any forthcoming victim identification process as authorized by the Chamber.

### **(iii) Recommendations**

21. When inquiring as to the best way forward for the identification, registration and legal screening of the Thematic Crimes Victims, the following recommendations were made to the Registry by various victims, intermediaries and other interlocutors consulted:
  - identification should be carried out in a diligent manner and in direct collaboration with relevant victim groups/associations, representatives and other local/regional actors.<sup>35</sup> Their constituencies' knowledge of the Sinia brigade will be key in conducting interviews in safe places selected by the survivors themselves;
  - many Sinia abductees who spent longer periods of time in the bush know one another and are best placed to support the Court with the identification of other Sinia abductees;
  - former and current local leaders, particularly 'Local Council ("LC") 1s' and 'LC2s', should play a role in corroborating narratives and identifying

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<sup>35</sup> During its two missions, the Registry identified around 15 victim committees from four different sub-regions in Northern Uganda. Some of these committees are also part of bigger trans-regional victims' associations/networks.

- victims/victim groups potentially eligible for reparations, including (i) abductees who upon return were not accepted by their family and community, and, importantly, (ii) family members of abductees who never returned;
- cultural and religious leaders should also be consulted as they have a wealth of information regarding the people abducted from their communities. Furthermore, peace commissioners,<sup>36</sup> who were trained to reconcile abductees with their communities, should also be consulted;
  - in order to minimize the potential for confusion on the ground as to *who* would be a potential beneficiary in the *Ongwen* proceedings (i.e. concerning abductees from other LRA brigades or other military groups than Mr Ongwen's), a verification mechanism should be put in place (i.e. individuals could be asked to provide specific information such as names of their battalion, commanders or names given in the bush, key words or code names and/or certain relevant incidents);
  - the identification process should be designed in a way that takes into account the difficulties faced by victims who spent shorter periods of time in the Sinia brigade (e.g. less than a year) to remember details such as dates, places they spent their captivity in, names of commanders, battalions, brigades, code words and information about the structure of the Sinia brigade;
  - smaller scale or scattered abductions also took place along the route of the Sinia brigade (i.e. outside major attacks); however, information about these

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<sup>36</sup> According to the information received, there are two peace commissioners in each sub-county.

incidents is expected to be extremely limited, which is an additional difficulty the identification process should account for;

- most long-term abductees met (i.e. one year or more) have reportedly spent time in at least three or four LRA brigades (most of the time with them being shifted from brigade to brigade without prior notice); it is difficult for these individuals to determine the exact periods of time spent in a specific brigade; however, the individuals consulted could remember the place and general dates of their abductions and release/escape as well as the countries they were in during the abduction (mostly South Sudan, the Democratic Republic of the Congo, Central African Republic and, in a small number of cases, the Republic of Chad);
- the specific stigma and practical difficulties faced by children of war (i.e. their lack of documentation and the extreme poverty the orphans live in) should also be considered when designing the identification and registration process;
- the overwhelming majority of women abducted by the LRA were subjected to sexual and gender based violence, but sexual violence is often not mentioned in conversations/interviews until full confidence with the interviewers is achieved. Many women will not want to come forward as their new husbands or communities do not know about their past. It is therefore very important to allow victims to come forward in their own time;
- when designing the identification process, it should also be taken into account that there is a sizeable number of men subjected to sexual violence,

with men being even more reticent to talk about the harm suffered as a result of these crimes for fear of being seen as “less of a man”;<sup>37</sup>

- efforts should also be made to reach out to victims who moved away from their communities;
- the IRS process should avoid creating further victimisation and tensions between victims and their communities. Some victims belong to survivor groups, they are friends – the ICC process should avoid creating and/or deepening tensions and estrangements;
- direct victims are the ones who can and should identify the indirect victims;
- special consideration needs to be given to two categories of indirect victims: *i*) the families of those abductees who never returned from captivity and for whom it would be extremely difficult, if not impossible to name the brigade or commander responsible;<sup>38</sup> and *ii*) the wives and children left behind by former child soldiers in other countries.

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<sup>37</sup> See also P. Schulz, “Examining Male Wartime Rape Survivors’ Perspectives on Justice in Northern Uganda”, (*Social and Legal Studies* 29, no. 1), February 2020, <https://doi.org/10.1177/0964663918822158>.

<sup>38</sup> The Registry notes that according to the information received during the VPRS Missions, many abductees from the Teso sub-region drowned in the swamps and it is very difficult to establish the identity of those who died and, consequently, to identify their family members.

### III. Prioritisation<sup>39</sup>

- 22. The Registry consulted all its interlocutors<sup>40</sup> on whether priority should be given to certain victims or groups of victims who are in a particularly vulnerable situation or who require urgent assistance.<sup>41</sup>
- 23. In some cases, the question was answered with hesitation at first, on account of the fact that all categories of victims suffered so much harm and deciding whose suffering should be prioritised could upset and hurt other victims. Some interlocutors warned that such an approach to reparations could have the unintentional consequence of creating resentment and further stigmatisation of those being prioritised, unless prioritisation is decided in a transparent way and based on undeniably urgent needs (i.e. individuals who are in need of immediate medical care to survive or those who are not able to afford their most basic needs such as housing, food and school fees for children). In this last regard, reports on the matter suggest that targeted reparations based on identifiable and obvious needs can be more effective and less stigmatizing.<sup>42</sup>
- 24. During the consultations, the following vulnerabilities were mentioned (in no particular order):<sup>43</sup>

<sup>39</sup> In response to para. 5(i)(d) of the Order: “any victims or groups of victims who may require prioritisation in the reparations process.”

<sup>40</sup> Victims potentially eligible for reparations, intermediaries, representatives of civil society, national and international organizations, etc.

<sup>41</sup> It is acknowledged that the Legal Representatives may have crucial submissions to make on this topic on account of consultations with their extensive client groups. Relevant submissions should therefore be read in conjunction. In addition, through its various long-standing assistance programmes, the TFV may have developed an important knowledge base, too.

<sup>42</sup> See, *inter alia*, J. Annan, C. Blattman, R. Horton, “The State of Youth and Youth Protection in Northern Uganda: Findings from the Survey for War Affected Youth”, (Survey of War Affected Youth, September 2006), <https://chrisblattman.com/documents/policy/sway/SWAY.Phase1.FinalReport.pdf>, p. 81: “[m]oving from a system of circumstantial categorisation to one based on specific, easily identified, and acute needs promises more effective and less stigmatizing targeting of assistance”.

<sup>43</sup> The Registry notes that there are no significant differences in the categories of victims considered as most vulnerable by the different interlocutors consulted (i.e. Victims of the Attacks, Thematic Crimes Victims, local authorities and representatives of national and international organisations).

- *Victims with i) serious physical injuries/disabilities/missing body parts; ii) severe mental issues and psychological trauma and iii) other urgent medical needs*, which partially or fully impair their capacity to work and provide for themselves and their families. The majority of the victims and other interlocutors consulted during the VPRS Missions mentioned physical ailments such as severe chest pains affecting those who were forced to carry heavy loads for extremely long distances and periods of time. Women, men and children with HIV were also mentioned in various meetings as being particularly vulnerable, as well as victims of rape who need urgent fistula operations and victims who still have bullets or shrapnel in their bodies;
- *Victims whose family members were killed or abducted and never returned, especially elderly parents, widows, widowers and orphans*. It was mentioned that, because of the extreme poverty in Northern Uganda, worsened by the Covid-19 pandemic<sup>44</sup> and climate change,<sup>45</sup> the communities do no longer have resources to provide for these individuals who are completely abandoned and cannot afford catering for their most basic needs;
- *Survivors of sexual violence, both women and men, as well as children of war*, are a category of victims mentioned most often as being extremely vulnerable. The majority of these individuals were exposed to an environment of abuse, violence and fear and they now live with guilt and shame, rejected and stigmatised by their families and communities. The majority of them have no access to shelter, land and education and

<sup>44</sup> The Registry notes that according to the Uganda National Survey Report 2019/2020, [UGANDA NATIONAL HOUSEHOLD SURVEY 2019/2020 REPORT \(ubos.org\)](http://ubos.org/), the poverty rate in Uganda is estimated at 20.3% with Acholi being the most impoverished sub-region (68% poverty rate in 2020 from 33% in 2017) followed by Karamoja (68%). The Lango sub-region is 6<sup>th</sup> on the list (23%), Teso on the 7<sup>th</sup> place (22%) and West Nile – number 8 (17%).

<sup>45</sup> Which highly impacted farming and agriculture.

have no perspective of finding life partners with whom they can re-build their lives. According to the information received, an extremely small number of women who return with children born in captivity manage to find partners who accept to marry them and, in almost all cases, the new husbands force the women to abandon their children born in the bush, which adds a new layer of stigma. Many of these children end up on the streets, with no identity documents and no access to any services, unemployed, involved in illicit or criminal activities and without any life prospects.<sup>46</sup>

#### **IV. Types and extent of harm suffered**

25. With respect to the harms reported by victims participating in the trial proceedings (“Participating Victims”), the Registry recalls that, in its legal assessment of applications for participation in the proceedings, it has categorised the type of harm as material, physical or psychological. In a limited number of cases, the Registry has categorised the alleged harm as *substantial impairment of fundamental rights*: where the alleged crimes appeared to have interfered with a child’s rights to education and family life, with the fundamental rights to liberty and security of the person, or with the associated right of persons deprived of their liberty to be treated humanely.<sup>47</sup> The Registry further recalls that the short simplified two-page application form for

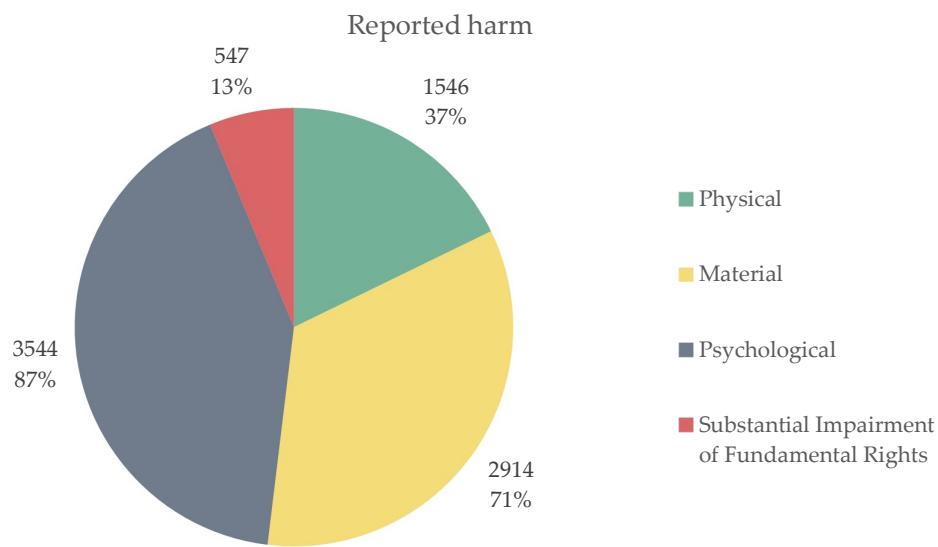
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<sup>46</sup> The youth, particularly those orphaned, were often mentioned as a category of victims that require massive support; see already *supra*, at para. 9.

<sup>47</sup> Registry, “First Report on Applications to Participate in the Proceedings”, 2 September 2016, ICC-02/04-01/15-530, para. 26.

participation used in the *Ongwen* proceedings<sup>48</sup> did not contain any reparations-related questions; therefore the information included in the forms of the Participating Victims might not have allowed for a nuanced analysis and reporting of all the different types of harm suffered by the victims.<sup>49</sup>

26. Nevertheless, the basic information with respect to harm that was captured in the application forms of Participating Victims is presented in the graphs below for the Chamber's consideration.<sup>50</sup>



<sup>48</sup> Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 4 March 2015, ICC-02/04-01/15-205, paras. 14-15 and p. 18.

<sup>49</sup> It was also reported by multiple sources that a large number of Participating Victims who were victims of sexual violence during the attacks on the four IDP camps did not open up about these crimes when they filled in the application forms. Furthermore, the Registry recalls that it performed its legal assessment at the pre-trial and trial stages under extremely tight deadlines. Consequently, having to make strategic choices and prioritize efficiencies, the Registry did not perform a comprehensive legal processing of the applications. As long as, from the information included in the application form, the Registry could assess the application as falling in the scope of the case based at least on one type of harm, not all harms mentioned in the form were necessarily systematically listed in VAMS.

<sup>50</sup> Other graphs are included in the Mapping Report to the extent that they may lend themselves as a potential basis for a sampling exercise which allows to extrapolate from data presently on file to victim categories (by harm/crimes) and other issues noted in para. 5(iv) of the Order.

*In Numbers:*

	Percentage**	Count
Physical <sup>51</sup>	37%	1,546
Material <sup>52</sup>	71%	2,914
Psychological <sup>53</sup>	87%	3,544
Substantial Impairment of Fundamental Rights	13%	547
Total*		8,004

\*The numbers reported are higher than the number of participating victims because victims often report more than one type of harm.

\*\*Percentages are calculated based on the total number of participating victims (4,095).

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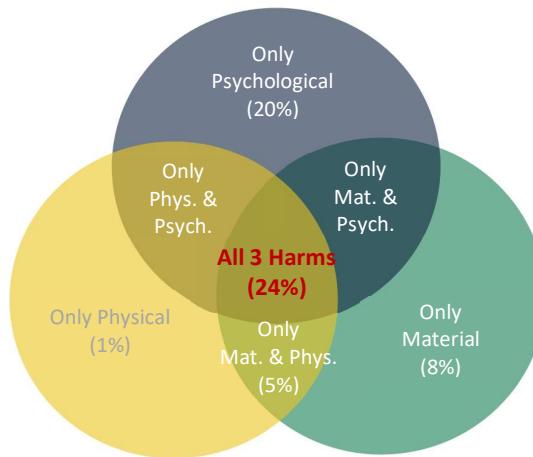
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<sup>51</sup> Examples of reported physical harm: victim beaten by rebels and his shoulder was broken; victim complains of back and chest pain as he had to carry heavy loads (50kg) on his head and back while running during his abduction; victim was shot in his leg and he is now weak and cannot walk long hours; victim was slapped and pricked on thighs, back and bottom by the rebels. She was covered in blood and could not walk anymore. She was taken to the hospital. She has scars on her body and lost hearing; victim's forehead and right thigh are covered in scars left by bomb splinters; victim was severely beaten and brought to the hospital unconscious; victim still has waist, back and chest pain and her daughter complains about waist pain following abduction and carrying heavy loads; victim was badly beaten and has scars on her body; victim's hearing effected as a result of the shootings.

<sup>52</sup> Examples of reported material harm: victim's livestock was shot dead and food was looted; victim's property was all looted and victim struggled to pay the medical treatment needed for his wife after her return from abduction; inability to pay school fees after the death of the victim's father and having to take care of the mother, who became weak as a result of the attack; victim is in charge of his brother's children following his death; victim's hut, utensils and clothes were burnt.

<sup>53</sup> Examples of reported psychological harm: victim witnessed the attack and saw many dead bodies, some being chopped into pieces - as a result of which he has recurrent nightmares of dead bodies; victim misses her daughter who was abducted and never returned – what hurts the most is that she does not know whether her daughter is alive or dead; victim is scared because of all the deaths she witnessed; victim is emotionally disturbed, trembles in fear when she hears of rebels; victim felt humiliated when she was forced to undress in front of a young rebel who beat her severely.

### Combination of harms reported



*In numbers:*

	Percentage*	Count
Only Physical	1.2%	48
Only Material	7.6%	310
Only Psychological	20.1%	824
Only Physical & Material	4.7%	193
Only Physical and Psychological	7.5%	309
Only Material and Psychological	34.6%	1,415
All 3 harms (Physical, Psychological and Material)	24.3%	996
Total	100%	4,095

*\*Percentages are calculated based on the total of 4,095 participating victims. On the graph they are presented without decimals (approximates).*

- Largest group (34.6%) reported having suffered material and psychological harm.
- Second largest group (24.3%) reported having suffered all three types of harm.

27. Based on all the information on file and received during the consultations, the Registry provides the following general overview of the types of harm victims suffered and continue to suffer from:

i. *Direct victims of thematic crimes*

- ***Physical harm*** that may result from: (i) torture, mutilation, shootings (e.g. many individuals reportedly still have bullets and shrapnel in their bodies), beatings (e.g. 100 strokes for ‘registration’ in the LRA upon abduction; 150 strokes for attempted escape), rituals aimed at making them forget about their families and homes (e.g. forced to inhale or drink toxic substances which caused dizziness and severe headaches); (ii) chest pains resulting from carrying heavy loads; (iii) (recurrent) rape and/or torture, including male sodomy; (iv) HIV and other sexually transmitted diseases;
- ***Psychological harm*** that may result from: (i) exposure to an environment of violence, fear and threats (e.g. some individuals were forced to kill their own parent, siblings or other abductees, in some instances they were also forced to eat the dead bodies); (ii) psychological disorders, such as, *inter alia*, suicidal tendencies, depression, dissociative behaviour; (iii) difficulties in controlling aggressive impulses; (iv) trauma caused by separation from their families; (v) trauma caused by inability to reintegrate in society;<sup>54</sup>
- ***Material harm*** that may be the result of: (i) lack of access to resources, shelter and land, amongst other reasons, due to discrimination rooted in cultural norms for women who have children out of wedlock; (ii) inability to provide for the victims’

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<sup>54</sup> Some of the former child soldiers met, who spent more than 10 years in captivity, explained that should they have known how difficult their lives will be upon return as a result of the stigma, rejection and lack of opportunities, they would have likely continued to live in the bush, where after all this time, they were at least able to provide for their most basic needs.

basic needs and those of their children born from sexual violence;

- *Substantial impairment of fundamental rights* that may result from: (i) deprivation of physical liberty; (ii) interruption or loss of schooling and/or vocational training or professional opportunities;
- *Social harm* that may result from: (i) break-up of family unit; (ii) rejection by family and community upon return; (iii) unwanted pregnancy; (iv) stigmatisation; (v) non-development of 'civilian life skills'; (vi) difficulties in obtaining identity documents (for children of war); (vii) loss of childhood or severe diminution of prospects for personal development and a dignified life; (viii) difficulties in finding partners to start a new life.

*Indirect victims of thematic crimes*

- *Psychological harm* that may result from: (i) separation from their children/relatives and by being left without any information about them for a long time, if not indefinitely; (ii) development of psychological disorders;
- *Material harm* that may result from the loss of help and support from the abducted person;
- *Social harm* that may result from the break-up of family unit;
- *Transgenerational harm* passed onto the direct victims' children, as well as onto next generations.

*ii. Direct Victims of the Attacks on the IDP camps*

- *Physical harm* that may result from: (i) physical injuries and scarring resulting from the attacks on civilian population, rape, torture, including male sodomy, outrages upon personal dignity

and enslavement; (ii) HIV and other sexually transmitted diseases; (iii) chest pains resulting from carrying heavy loads.

- ***Psychological harm*** that may result from: (i) trauma of the attacks, rape, torture, outrages upon personal dignity, enslavement; (ii) loss of family members who were killed or abducted; (iii) loss of property; (iv) development of psychological disorders, such as, *inter alia*, suicidal tendencies, depression, dissociative behaviour;
- ***Material harm*** that may result from: (i) loss and/or destruction of property; (ii) loss of cattle and other livestock; (iii) inability to work because of physical injuries; (iv) loss of earning; (v) lack of economic opportunities; some people reported having to sell their land in order to cover for their most basic needs, which is extremely traumatic in the Acholi culture; (vi) loss of the help and support of the killed/abducted family members; (vii) the business communities were also severely affected;
- ***Substantial impairment of fundamental rights*** that may result from: (i) interruption or loss of schooling and/or vocational training; (ii) deprivation of liberty;
- ***Social harm*** that may result from: (i) break-up of family unit; (ii) unwanted pregnancies; (iii) widows and widowers report difficulties in providing for their children needs and education, as a result of which the latter started drinking, committing robberies and stopped playing their traditional role inside the families, which affected the family and community fibre and structure;<sup>55</sup> (iv) rejection by families and communities of rape victims who

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<sup>55</sup> The generation of children who were between 6 and 12 years of age at the time of the attack are seen as having no future as the traditional wealth of the area was completely destroyed in the attacks.

could not remarry and live by themselves in extreme poverty; (v) loss or severe diminution of life prospects.

*iii. Indirect Victims of the Attacks on the IDP camps*

- **Psychological harm** that may result from the loss/rape/torture of family members;
- **Material harm** resulted from the loss of the help and support of the killed/abducted person;
- **Social harm** as a result of the break-up of family unit;
- **Transgenerational harm** passed onto the direct victims' children, as well as onto next generations.

28. With respect to transgenerational harm, the Registry recalls the definition retained by Trial Chamber VI in the *Ntaganda* case<sup>56</sup> and its findings that "children of the direct victims may have suffered transgenerational trauma regardless of the date when they were born, if they can show that their harm is a result of the crimes for which Mr Ntaganda was found guilty", and that "although children born out of rape are considered direct victims, they may have also suffered transgenerational harm as indirect victims."<sup>57</sup>
29. The Registry submits that the above-mentioned findings are fully applicable in the present Case; consequently, the children of both direct Victims of the Attacks and of direct Thematic Crimes Victims may be presumed to have suffered transgenerational harm. The Registry further suggests that

<sup>56</sup> *Ntaganda* Reparations Order, para. 73: "Transgenerational harm refers to a phenomenon, whereby social violence is passed on from ascendants to descendants with traumatic consequences for the latter. It is characterised by the existence of an intergenerational cycle of dysfunction that traumatised parents set in motion, handing-down trauma by acting as violent and neglectful caretakers deforming the psyche and impacting the next generation. Traumatised parents, who live in constant and unresolved fear, unconsciously adopt a frightening behaviour. This affects their children's emotional behaviour, attachment, and well-being, increasing the risk that they will suffer post-traumatic stress disorders, mood disorders, and anxiety issues. It is argued that the noxious effects of trauma may be transmitted from one generation to the next, with a potential impact on the structure and mental health of families across generations."

<sup>57</sup> *Ntaganda* Reparations Order, para. 182.

transgenerational harm is not limited to the first generation of indirect victims (i.e. children of direct victims) but that it may also be passed on to the next generation (i.e. grandchildren of direct victims) – not least because they will suffer from the trauma that the relevant parent will be struggling with for many years. This submission is supported by, *inter alia*, the information collected during the VPRS Missions and by the experts' report submitted in the *Ntaganda* case, according to which, rape “[...]can lead to feelings of shame, guilt, self-blame, identity crises, and frustration at continuing to be labelled a victim of sexual violence *nearly two decades after the events [emphasis added]*.<sup>58</sup>

## V. Factual presumptions<sup>59</sup>

30. Considering the difficulties victims of mass crimes face in producing documents in support of their victim status and harms suffered as a result of the crimes for which a perpetrator is convicted, the Registry supports recourse to factual presumptions in the present case, as also previously done in other cases before the Court.<sup>60</sup> Moreover, given the nature and impact of the types of harm and levels of trauma victims in the present Case suffered, it is important that the

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<sup>58</sup> *The Prosecutor v. Bosco Ntaganda*, “Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare”, dated 30 October 2020 and notified on 3 November 2020, ICC-01/04-02/06-2623-Anx2-Red2, para. 54.

<sup>59</sup> In response to para. 5(i)(f) of the Order: “whether recourse to factual presumptions should be considered.”

<sup>60</sup> *Ntaganda* Reparations Order, paras. 37, 141-147; Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo* “Corrected version of the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, 21 December 2017, ICC-01/04-01/06-3379-Red-Corr-tENG, paras. 180-185; *Lubanga* Amended Reparations Order, para. 7; Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations”, 12 July 2018, ICC-01/12-01/15-273-Red, para. 60; Trial Chamber II, *The Prosecutor v. Germain Katanga*, “Order for Reparations pursuant to Article 75 of the Statute”, 24 March 2017, ICC-01/04-01/07-3728-tENG, (“*Katanga* Reparations Order”), paras. 57-61 and 84.

Court remains flexible in assessing relevant information at its disposition in order not to place the burden of proof on victims.<sup>61</sup>

31. Firstly, the Registry proposes the following three presumptions to be applied in the present case: *i*) the presumption that all women and girls abducted are SGBV victims;<sup>62</sup> *ii*) the presumption that all children under the age of 15 who were abducted and never returned are victims of the crime of conscription/use of child soldiers,<sup>63</sup> and *iii*) the presumption that all residents of the four IDP camps attacked by Mr Ongwen (Lukodi, Abok, Odek and Pajule) and all other individuals who were present in the camps at the time of the four attacks are victims of, at a minimum, the crimes of attack against civilian population and persecution.<sup>64</sup>
32. Furthermore, all presumptions of harm approved by Trial Chamber VI in the *Ntaganda* case should also apply in the case at hand: *i*) presumption of physical, psychological and material harm for former child soldiers, SGBV victims and

<sup>61</sup> See also R. Carranza, C. Correa, and E. Naughton, "Forms of Justice, a guide to designing reparations application forms and registration processes for victims of human rights violations", (International Centre for Transitional Justice), 2017, <https://www.ictj.org/publication/forms-justice-designing-reparations-forms-and-processes>, p. 7: "Without completely dispensing with ways to prevent fraud, what matters most in designing reparations forms is that they ask for the minimum level of information needed to determine a victim's eligibility without placing undue burdens on the victim, while at the same time offering a sense that justice is being done. In other words, while reparations laws and policies will often speak of "victims" and "violations" or even "crimes," the reparations forms do not need to apply judicial standards of proof. Instead, it may be more appropriate to uphold administrative standards that are more in line with the resources [of a government] (given the often large number of victims and the scale of violations) and the capacity of victims to meet."

<sup>62</sup> According to all information available, the overwhelming majority of women abducted by the LRA were subjected to sexual and gender based violence. However, many of these women do not come forward to talk about the sexual violence as their (new) husbands/communities do not know about their past. It was also brought to the Registry's attention by multiple interlocutors that a large number of Participating Victims suffered harm as a result of sexual violence.

<sup>63</sup> The Registry notes that in some cases abducted children might have been killed/died soon after the abduction, without being fully operationalised in the LRA and used as child soldiers. However, the act of conscripting a person is fulfilled with the transfer into the sphere of control of the military body, e.g. the moment the person physically transfers to the conscripting entity – which would happen through the act of abduction by LRA elements.

<sup>64</sup> See Trial Judgment, para. 3116, Counts 1, 10 (Pajule IDP Camp); 11, 23 (Odek IDP Camp); 24, 36 (Lukodi IDP Camp); and 37, 49 (Abok IDP Camp).

indirect victims who are close family members of former child soldiers and SGBV victims;<sup>65</sup> *ii)* presumption of physical and psychological harm for the direct Victims of the Attacks on the IDP camps;<sup>66</sup> and *iii)* presumption of psychological harm for the indirect victims of murder and those who lost their home or material assets with significant impact in their lives.<sup>67</sup>

33. Additionally, the following presumptions of harm should also be recognized by the Chamber in the present Case: *i)* presumption of physical, psychological and material harm for children of war; *ii)* presumption of psychological harm for indirect victims - close relatives of direct Victims of the Attacks against civilian population in the four IDP camps; *iii)* presumption of transgenerational harm for all children and grandchildren<sup>68</sup> of the direct victims in the present Case.

## **VI. Types and modalities of reparations<sup>69</sup>**

34. In the present section, the Registry includes the views and concerns on the types and modalities of reparations collected during the two VPRS Missions and concrete suggestions for reparations per category of victims.<sup>70</sup>
35. Following a victim-centred approach and the correlated principle of victim consultation, the Registry considers that the types and modalities of reparations are best defined on the basis of a representative sample of victims

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<sup>65</sup> *Ntaganda* Reparations Order, paras. 141 to 145.

<sup>66</sup> *Ntaganda* Reparations Order, para. 146.

<sup>67</sup> *Ntaganda* Reparations Order, para. 147.

<sup>68</sup> See *supra*, para. 29.

<sup>69</sup> In response to para. 5(i)(g) of the Order: “types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Ongwen was convicted. In particular, the suitability of collective reparations with individualised components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented”

<sup>70</sup> As with the previous section, the Registry considers that the Legal Representatives will be in a privileged position to speak to the most appropriate types and modalities of reparations for their clients. Together with the present Registry submissions, the relevant findings may lend themselves as a sample for extrapolation to the overall victim community.

communicating their needs and preferences to the Judges, either through their legal representatives and, for the new potential applicants, also via the Registry. As shown in its Mapping Report and also mentioned above, during the two VPRS Missions, the Registry met only a limited number – thus not a representative sample - of victims potentially eligible for reparations. Some of them shared their views, reported below, on the types of reparations that would, according to them, benefit the most the different categories of victims potentially eligible for reparations. Therefore, the Registry considers that this information should be viewed in conjunction with the Legal Representatives' submissions, and be further corroborated in a more extensive victim consultation exercise through the IRS process as referred to above.<sup>71</sup>

#### **(i) Views and concerns**

36. As a general remark, the Registry notes that many victims met believe that, in terms of reparations, the Court can deliver more than it is likely able to do. Expectations related to reparations are huge. Therefore, constant interaction with victims and victim communities is necessary in order to disseminate correct information about the Court and its statutory limitations, including the limited means at the disposition of the TFV. During the VPRS Missions, it was mentioned that particularly in the Teso and Lango sub-regions knowledge levels on the ICC and its reparations mandate differ. Continuous Registry efforts to explain and inform are made to ensure that the reparations process is transparent and avoids deepening divisions between victims and their communities.
37. All victims and other interlocutors consulted underlined the need for holistic reparations measures which can address all the different layers of needs and repair the complex and multifaceted types of harm suffered by the different

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<sup>71</sup> See *supra*, paras. 13-14.

categories of victims. For example, a child of war may need food, shelter, medical treatment, ID documents, access to formal or technical education, access to land, as well as psychosocial support in order to deal with the stigma and discrimination faced within his or her family and community. The reparations measures awarded to this child need to take into account the complexity of the situation in order for the child to be able to fully enjoy said reparations – giving access to education to a child born in captivity who is homeless and struggles daily to secure food and who, moreover, does not have the ID documents needed to enrol into said school will not (fully) benefit that child.

38. The need for sustainable reparations was also stressed: reparations must be monitored and followed-up on in order to ensure their success. In the above-mentioned example, if the child is awarded free education for one year as a reparations measure, a monitoring process must be put in place in order to ensure that said child is not stigmatised by the teachers or bullied by his or her peers, and that he or she is sufficiently fed on a daily basis in order to be able to fully benefit from the education received.<sup>72</sup> To this end, interlocutors and survivors consulted mentioned that discussing standards and modalities for cooperation, prior to implementing reparations, with governmental bodies, but also national and international organisations is key for ensuring the sustainability of the reparations measures to be implemented.
39. Some interlocutors stressed the need for a wide scope of the reparation programs aimed at addressing multiple different types of harm suffered, as opposed to the very limited scope of the measures implemented by some organisations to date (i.e. exclusively medical assistance or education fees).
40. Other interlocutors highlighted the importance of reparations measures being decided upon and awarded transparently, without discrimination and without

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<sup>72</sup> Training for teachers and other staff on dealing with stigma and trauma was also recommended by interlocutors.

creating a hierarchy of victims (i.e. victims of SGBV crimes perpetrated directly by Mr Ongwen should be awarded the same reparations measures as victims of SGBV crimes not directly perpetrated by him).

41. The need for special reparations programs for children of war was also mentioned in various meetings. Such programs could promote (i) eradicating stigma, (ii) community sensitisation to the trauma and difficulties faced by this category of victims, (iii) mechanisms to construct a positive identity, and clarify their legal and social status.
42. With regard to the application of individual reparations, collective reparations or both,<sup>73</sup> the Registry observed during the VPRS Missions that there is insufficient understanding as to what each category entails and that the notion of ‘collective reparations with an individual component’ is particularly difficult to convey. Most of the victims met expressed a preference for financial individual compensation that would enable them to become financially independent and self-reliant. When asked why, the majority said that victims suffered harm individually and the particular types of harm they suffered might be different than that suffered by other victims. The need for appropriate tools for victims to gain (better) access to education, income generating activities, human rights, and justice was also mentioned by a number of the individuals consulted. It was also recommended that skill-building trainings should be decided upon after a market study to assess which activities would be necessary and sustainable in any given community, and should be accompanied by a (small) start-up capital and/or tools needed to practice said skills. Some interlocutors stated that the

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<sup>73</sup> On the present topic, the Registry maintains its views previously expressed in the context of other cases before this Court that individual and collective approaches to reparations are complementary and, if awarded together, should work in conjunction in a way that is most appropriate in the circumstances of each case. See Registry, *The Prosecutor v Bosco Ntaganda*, “Registry’s Observations on Reparations”, 28 February 2020, ICC-01/04-02/06-2475-AnxI, para. 53 and Registry, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Registry’s observations pursuant to Trial Chamber VIII’s Decision ICC-01/12-01/15-172 of 29 September 2016”, 2 December 2016, ICC-01/12-01/15-193-AnxI-Red, para. 39.

collective impact of the crimes should also be considered when designing the awards. Reparations measures that benefit entire communities, such as healthcare, rehabilitation and education services were also supported.

43. Some interlocutors commented that these services fall under the Government's responsibility and they should be put in place for the entire population of the country. Others highlighted that such reparations measures could never succeed without cooperation from the Government. A limited number of individuals among those consulted stressed that given the magnitude of the victimisation throughout Northern Uganda during the two-decades long war between the LRA and the Government, individual reparations for only the victims of Mr Ongwen are not appropriate or feasible and that only collective reparations should be awarded.
44. The need for reparations measures that would also take into account traditional practices was also stated (for example, income generating activities would take into account the local traditions and family structures/roles). Many of the individuals consulted highlighted the special importance that land has in all the different cultures in Northern Uganda and that modern tools and technical assistance with farming should be awarded as a reparations measure.
45. Symbolic reparations in the form of apologies, especially from the Ugandan government for the suffering victims endured and for the failure to protect its citizens, memory centres and monuments, are also supported.<sup>74</sup>
46. Finally, many of the individuals consulted raised the issue of the lack of trust in the entities that might play a part in implementing any reparations measures

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<sup>74</sup> During the VPRS missions, it was brought to the Registry's attention that in Obalanga (Amuria sub-county, Teso sub-region) a monument was erected to commemorate victims of the massacre committed by the LRA on the trading centre. One of the victims consulted mentioned that building a shelter to protect the monument and making it attractive for tourists who are on their way to the Kidepo National Park would elevate the profile of the community and attract more tourists. Moreover, it was indicated that building a clean space for tourists' stop-over and a guided tour of the monument and its surroundings would also have a positive economic impact on the community.

awarded in the Case and insisted that reparations should be directly implemented by the Court, without the involvement of governmental or non-governmental bodies in order to avoid bureaucracy, delays and lack of transparency. Moreover, the former child soldiers, SGBV victims and children of war consulted, insisted that they continue to be rejected by and marginalised in their communities; therefore, if reparations are implemented at the community level, Thematic Crimes Victims would most likely be excluded. They also indicated that, in turn, if it were only them to receive reparations (or as a priority), this would create further rejection and resentment from their communities.<sup>75</sup>

#### **(ii) Types of reparations**

47. In the table below, the Registry lists the reparations measures mentioned during the consultations conducted in the two VPRS Missions:

<b>Victim category</b>	<b>Type of reparations wanted</b>
<b>SGBV Victims</b>	Land (highest priority), housing, livestock; Educational programmes/ vocational trainings tailored to adults who could not complete their education because they were abducted by the LRA (i.e. catering, tailoring, hairdressing, farming, etc.) accompanied by a market survey on types of activities per location, practical advice and a (small) capital to buy/rent tools needed to perform said activities; Specific livelihood initiatives (i.e. micro-credits programmes ran by survivors); Health care (i.e. fistula operations, HIV treatment, etc.);

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<sup>75</sup> During one meeting, the Registry was informed that in a 2015 housing project implemented in the Teso sub-region which only benefitted a small number of victims from one community, the new huts were set on fire/destroyed before the completion of the project.

	<p>Psychosocial counselling;</p> <p>Individual monetary compensation as a form of recognition of the individual harm they suffered;</p> <p>Community sensitisation programs aimed at raising awareness and combating stigmatisation;</p> <p>Specialized reparations package for their children (health, nutrition, education) – reparations for women should always include specific measures for their children.</p>
<b>Children of War</b>	<p>Assistance in obtaining birth certificates and national ID documents;</p> <p>Access to land, housing;</p> <p>Formal education and/or vocational training to ensure development of their personalities, talents, and abilities;<sup>76</sup></p> <p>Health care;</p> <p>Psychosocial counselling;</p> <p>Support to the paternal family in order to encourage reconciliation and help fathers accept children of war;</p>

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<sup>76</sup> The Registry notes that according to a 2021 US AID report (Uganda: Nutrition Profile, [https://www.usaid.gov/sites/default/files/documents/tagged\\_Uganda-Nutrition-Profile.pdf](https://www.usaid.gov/sites/default/files/documents/tagged_Uganda-Nutrition-Profile.pdf)) almost one-third of children under five years in Uganda are stunted. According to the World Health Organization (<https://www.who.int/news/item/19-11-2015-stunting-in-a-nutshell>) “stunting is the impaired growth and development that children experience from poor nutrition, repeated infection, and inadequate psychosocial stimulation. Children are defined as stunted if their height-for-age is more than two standard deviations below the WHO Child Growth Standards median. Stunting in early life -particularly in the first 1000 days from conception until the age of two - impaired growth has adverse functional consequences on the child. Some of those consequences include *poor cognition and educational performance [emphasis added]*, low adult wages, lost productivity and, when accompanied by excessive weight gain later in childhood, an increased risk of nutrition-related chronic diseases in adult life.” The Registry therefore submits that this aspect should be considered when designing educational measures for children born out of rape and for the indirect victims in the Case – children and grandchildren of indirect victims.

	Community sensitisation programs aimed at raising awareness and combating stigmatisation and marginalisation.
<b>Former Child Soldier</b>	<p>Land (highest priority), housing, livestock;</p> <p>Individual monetary compensation;</p> <p>Educational programmes/ vocational trainings tailored to adults who could not complete their education because they were abducted by the LRA accompanied by a market survey on types of activities per location, practical advice and a (small) capital to buy/rent tools needed to perform said activities;</p> <p>Economic empowerment; tools to become self-sufficient; employment;</p> <p>Health care (i.e. bullets and/or shrapnel removal, HIV treatment);</p> <p>Psychosocial counselling (reintegrating services; addictions treatment);</p> <p>Community sensitisation programs aimed at raising awareness and combating stigmatisation and marginalisation.</p>
<b>Victims of the Attacks</b>	<p>Land;</p> <p>Livestock;</p> <p>Individual monetary compensation;</p> <p>Building schools and vocational skills training centres;</p> <p>Building hospitals (the Gulu referral hospital is too far from the location of the four former IDP camps);</p> <p>Health care;</p> <p>Psychosocial counselling (for trauma resulted from the attack against the civilian population; specialized programs for youth who have no access to education, employment or resources and are restless, idle and susceptible to violence and other destructive behaviours);</p>

	<p>Community sensitization programs aimed at raising awareness and combating stigmatisation and marginalisation of SGBV victims, children born in the bush and former child soldiers;</p> <p>Opening memory centres and/or building monuments to commemorate the Victims of the Attacks (however, monetary compensation preferred to monuments).</p> <p>Assistance with moving the remains of the individuals killed in the attacks to their original places of residence.</p>
<b>Indirect Victims</b>	<p>Building housing for orphans and widows/widowers;</p> <p>Psychosocial counselling;</p> <p>Financial compensation for those who lost loved ones;</p> <p>Opening memory centres and/or building monuments to commemorate the victims.</p>

## VII. Assistance/reparations programs implemented in Northern Uganda<sup>77</sup>

48. The Registry believes that the Ugandan authorities are best placed to inform the Chamber, in their submissions on reparations, as to any compensation, reparations and assistance measures implemented to date by the Government. Similarly, the TFV has managed multiple successful assistance projects in Northern Uganda for years and will be best positioned to report thereon.
49. However, from the information collected during the mapping exercise and through its open source research, the Registry concludes that, to date, there has

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<sup>77</sup> In response to para. 5.(i)(i) of the Order: “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;”

been no comprehensive reparations program implemented in Northern Uganda.<sup>78</sup>

50. The agreement on accountability and reconciliation between the Ugandan Government and the LRA,<sup>79</sup> signed after the Juba Peace Talks, contains provisions on reparations for victims.<sup>80</sup> Furthermore, in 2019 the Government of Uganda issued the ‘National Transitional Justice Policy’ (“TJ Policy”). According to policy priority area 5, the “Government shall establish and implement a reparations program for victims affected by conflict. In doing this, Government shall consider interim, short term reparations.”<sup>81</sup> The TJ Policy further details the issues that reparations should address and the subsequent steps to be taken in order to achieve said reparations programme, including legislation to be enacted. A December 2020 bulletin mentions that the draft national Transitional Justice Bill was being prepared<sup>82</sup> and a country-wide consultation and dissemination of the National Transitional Justice Policy was to commence “very soon”.<sup>83</sup>

<sup>78</sup> S. Oola and L. Moffett, “CUL PI BAL” Reparations for the Northern Ugandan Conflict”, (Reparations, Responsibility & Victimhood in Transitional Societies), June 2020, <https://reparations.qub.ac.uk/assets/uploads/Uganda-Report-ENG-SP-APPROVED.pdf>, p. 13.

<sup>79</sup> United Nations, Security Council, *Annex to the letter dated 16 July 2007 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council*, 17 July 2007, S/2007/435, [https://peacemaker.un.org/sites/peacemaker.un.org/files/UG\\_070629\\_AgreementonAccountabilityReconciliation.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/UG_070629_AgreementonAccountabilityReconciliation.pdf).

<sup>80</sup> According to Clause 9 of the agreement: “9.1. Reparations may include a range of measures such as: rehabilitation; restitution; compensation; guarantees of non-recurrence and other symbolic measures such as apologies, memorials and commemorations. Priority shall be given to members of vulnerable groups. 9.2. The Parties agree that collective as well as individual reparations should be made to victims through mechanisms to be adopted by the Parties upon further consultation. 9.3. Reparations, which may be ordered to be paid to a victim as part of penalties and sanctions in accountability proceedings, may be paid out of resources identified for that purpose.”

<sup>81</sup> Ministry of Internal Affairs, National Transitional Justice Policy (NTJP), June 2019, [https://drive.google.com/file/d/1zbqYZgRVpUpDrQUTM5c\\_GeMsuItrB9O2/view](https://drive.google.com/file/d/1zbqYZgRVpUpDrQUTM5c_GeMsuItrB9O2/view), p. 20.

<sup>82</sup> The JLOS bulletin, Special edition on transitional justice, December 2020, <https://jlos.go.ug/index.php/document-centre/jlos-bulletin-1/430-jlos-bulletin-special-edition-on-transitional-justice-december-2020/file>, p. 16.

<sup>83</sup> *Ibid.*, p. 14. To the best of the Registry’s knowledge, this consultation has not yet started.

51. The Registry notes that several assistance and recovery programs were reportedly established by the Government. However, according to various reports, these programs were “oblivious to the unique experiences and needs of victims of gross human rights violations;”<sup>84</sup> they lacked “a victim-centred approach [and] do not address victims’ most pressing needs;”<sup>85</sup> and “the rigid identification requirements lead to the exclusion of victims, especially formerly abducted people—including women survivors of conflict-related sexual violence and their children born of war—who have difficulty obtaining official identification documents and are therefore unable to prove their citizenship.”<sup>86</sup> Moreover, “there is limited data on the number of victims and the extent of harm they suffered [...] currently, local governments do not have the names of victims, including missing persons, or information on how people suffered during the conflict.”<sup>87</sup>
52. The reported insufficient national enactment of reparations in Northern Uganda seems to have also hindered the ability of non-governmental and community based organisations to secure the necessary assistance to implement their programs.<sup>88</sup> Many organisations reportedly lack human and

<sup>84</sup> S. Kasande Kihika and E. Kallweit, “Building Blocks for Reparations Providing Interim Relief to Victims Through Targeted Development Assistance International Center for Transitional Justice”, (International Center for Transitional Justice, ICTJ, September 2020), [https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_Uganda\\_InterimRelief\\_Web.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_Uganda_InterimRelief_Web.pdf), pp. 2 and 23.

<sup>85</sup> *Ibid.*, p. 35.

<sup>86</sup> *Ibid.*, p. 24.

<sup>87</sup> *Ibid.*, p. 28. During the VPRS Missions it was also mentioned that some of the measures implemented were inappropriate in the local context; one example provided was that of an electric mill offered to a group of former child soldiers in Pajule that could never be used as, at the time, there was no electricity in Pajule, and the beneficiaries ended up spending money in trying to utilise the mill, but to no avail.

<sup>88</sup> See M. Wierda, E. Stover and E. Baines, “War-Affected Children and Youth in Northern Uganda: Toward a Brighter Future. An assessment report”, (Chicago: John D. & Catherine T. MacArthur Foundation), 2006,

[https://humanrights.berkeley.edu/sites/default/files/publications/uganda\\_report.pdf](https://humanrights.berkeley.edu/sites/default/files/publications/uganda_report.pdf). This 2006 report provides an assessment of 68 international aid agencies and nongovernmental and community based organisations on the ground in the affected areas in Uganda that have been involved in reparations or rehabilitation of war affected youth. The report contains details on the number of recipients per program and the main need addressed by said organisations. It is important to note that

financial resources and weak inter-organisational coordination further prevents organisations from reaching victims and responding to their needs in full.<sup>89</sup>

53. All interlocutors consulted stated that some minimal assistance projects by either the Government or non-governmental organisations, including rehabilitation centres, were implemented presently in Northern Uganda. Most of the projects mentioned by interlocutors offered assistance with: family reintegration, medical assistance (i.e. bullet and shrapnel removal surgeries, prosthesis, etc.), psycho-social counselling (i.e. through storytelling, singing, dancing), skills training (i.e. tailoring), school fees for primary education (but for a limited amount of time with no proper follow-up and children were forced to drop out of school when the fees were no longer paid), de-mining (i.e. the Pajule area), etc. However, the consensus was that any assistance received was extremely limited and only an insignificant number of the LRA victims has benefitted from these programs to date.<sup>90</sup>

## VIII. Additional Observations<sup>91</sup>

54. In the present section, the Registry proposes brief submissions on the potential role the Ugandan authorities may play in a future reparations implementation.
55. The Registry notes that cooperation from States is a key facet of the Statute and is fundamental to reparations proceedings.<sup>92</sup> It also notes Trial Chamber II's ruling that "[a]n order for reparations does not [...] relieve States Parties of the

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the report was drafted and published in 2006, so it is likely that some organisations or programs mentioned are no longer operative, and the harm suffered by victims has evolved.

<sup>89</sup> *Ibid.*, pp. 15-16. For a list of all non-governmental and community based organisations, as well as international aid programs in the affected areas of Uganda, see pp. 38-39 of the report.

<sup>90</sup> Not necessarily victims of Mr Ongwen and the Sinia brigade.

<sup>91</sup> In response to para. 5.(i)(j) of the Order: "any additional information relevant to reparations."

<sup>92</sup> *Katanga Reparations Order*, para. 324; Permanent Court of International Justice (PCIJ), *Factory at Chorzow (Germany v. Poland)* (Jurisdiction), Judgment No.8, 26 July 1927; *see also* UN Principles on Reparations 2005, principle IX, para. 15.

responsibility to award reparations to victims pursuant to other treaties or domestic legislation.”<sup>93</sup>

56. In this vein, the Registry envisages two ways in which the Government of Uganda can support the reparations proceedings in the present Case: *i*) cooperate with the Court in the *Ongwen* reparations process by, *inter alia*, making available information necessary for the identification of victims potentially eligible for reparations, run sensitisation campaigns for local and national authorities in order to facilitate victims’ access to information, identification documents, land etc., run awareness and attitude change campaigns in the affected communities to address stigma and promote the inclusion of those individuals left aside; ensure sustainability of reparations measures to be implemented; and *ii*) adopt comprehensive reparations legislation, including laws aiming at ensuring the guarantee of non-repetition and start a parallel reparations process for all war affected individuals in Northern Uganda in order to avoid creating a ‘hierarchy of victims’ between the victims of Mr Ongwen and the other victims of the war and resulting tensions.

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<sup>93</sup> *Katanga* Reparations Order, para. 323.