

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



**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**

**Victims' Preliminary Submissions on Reparations**

**Source:** Legal Representatives of Victims

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court***  
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## I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”) hereby submit their submissions on reparations pursuant to the ‘Order on Reparations’<sup>1</sup> (hereafter referred to as the “Order”), the ‘Decision on requests for extension of time’,<sup>2</sup> and the ‘Decision on the Victims’ Request for an Extension of the time limit to submit their observations on reparations proceedings’<sup>3</sup> (hereafter referred to as the “Decision on Request for an Extension of time”).
2. Trial Chamber IX (hereafter referred to as “Chamber” or “the Chamber”) ordered the parties to provide as much information as possible on either some or all of the issues identified by the Chamber in paragraph 5(i) of the Order.<sup>4</sup> Taking into consideration the parameters laid out by the Chamber in the Decision on Request for an Extension of time and the ongoing Covid-19 pandemic restrictions currently being implemented in Uganda, the LRVs hereby submit their observations on the following issues:
  - a) The need for the Chamber to consider additional principles on reparations, apart from those already established by the jurisprudence of the Court, as recently adapted and expanded in the case of the *The Prosecutor v. Bosco Ntaganda*;
  - b) Any legal and factual issues relevant to the identification of eligible victims;
  - c) Any victims or groups of victims who may require prioritisation in the reparations process;
  - d) Whether recourse to factual presumptions should be considered; and
  - e) Any additional information relevant to reparations.
3. The LRVs will provide their full and complete submissions the issues listed below on or prior to the 7 February 2022 deadline:
  - (a) 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;
  - (b) specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Ongwen was convicted;
  - (c) the types and modalities of reparations appropriate to address the harm suffered by the victims of the crimes for which Mr Ongwen was convicted;

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

<sup>2</sup> Decision on requests for extension of time, 19 July 2021, ICC-02/04-01/15-1865.

<sup>3</sup> Decision on the Victims’ Request for an Extension of the time limit to submit their observations on reparations proceedings, 18 November 2021, ICC-02/04-01/15-1910.

<sup>4</sup> *Ibid*, p.7.

- (d) concrete estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them; and
- (e) 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.

## II. PROCEDURAL HISTORY

4. On 6 May 2021, the Chamber issued the Order,<sup>5</sup> in which it, *inter alia*, instructed the parties to make their submissions on specific issues pertaining to reparations proceedings by 6 September 2021.<sup>6</sup>
5. On 9 June 2021, the Chamber was reconstituted as a result of the replacement of Judge Raul C. Pangalangan with Judge Chang-ho Chung.<sup>7</sup>
6. On 5 July 2021, the Registry filed its Progress Report on Mapping and Request for Extension of Time.<sup>8</sup>
7. On 12 July 2021, the LRVs and Office of Public Counsel for Victims (“OPCV”) filed a Joint Request for extension of time limit to submit their observations on reparation proceedings,<sup>9</sup> taking into consideration the ongoing Covid-19 pandemic restrictions in place in Uganda.
8. On 19 July 2021, the Chamber issued its ‘Decision on requests for extension of time’,<sup>10</sup> *inter alia*, extending the time limits for the submissions on reparations until 6 December 2021 and for responses to such submissions until 10 January 2022.
9. On 9 November 2021, the LRVs requested a three-month extension of the 6 December deadline to submit their submissions on reparations.<sup>11</sup>
10. On 18 November 2021, the Trial Chamber where it partially granted the parties, Registry and the TFV an extension of the time limit to make their submissions on reparations exclusively

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<sup>5</sup> *Supra* note 1.

<sup>6</sup> *Ibid*, para. 5 (i).

<sup>7</sup> The Presidency, Decision replacing a judge in Trial Chamber IX, 9 June 2021, ICC-02/04-01/15-1851.

<sup>8</sup> Registry Progress Report on Mapping and Request for Extension of Time, 5 July 2021, ICC-02/04-01/15-1863.

<sup>9</sup> Victims’ Joint Request for extension of time limit to submit their observations on reparation proceedings, 12 July 2021, ICC-02/04-01/15-1864.

<sup>10</sup> Decision on requests for extension of time, 19 July 2021, ICC-02/04-01/15-1865.

<sup>11</sup> Victims’ Request for an extension of the time limit to submit their observations on reparations proceedings, ICC-02/04-01/15-1890.

on issues which require further consultations, as referred to in paragraph 5(i) of the Order, until 7 February 2022.<sup>12</sup>

### III. SUBMISSIONS

**(a) The need for the Chamber to consider additional principles on reparations apart from those established by the Court’s jurisprudence, including in *The Prosecutor v. Bosco Ntaganda* (the ‘*Ntaganda* case’)**

11. Article 75(1) of the Statute provides that: ‘[t]he Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.’ On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.<sup>13</sup>
12. Trial Chamber VI (hereafter referred to as the “*Ntaganda* Chamber” or “Trial Chamber VI”) in *Ntaganda* adopted the thirteen principles identified by the Appeals Chamber in the *Lubanga* case, as adapted in the *Katanga* and *Al Madhi* cases. In addition, the *Ntaganda* Chamber also identified six additional principles that they felt were necessary in light of the specific circumstances of the *Ntaganda* case.
13. In particular, the new principles (hereafter referred to as the “*Ntaganda* reparations principles” or “*Ntaganda* principles”) included: (a) ‘Do no harm’; (b) Gender-inclusive and sensitive approach to reparations; (c) Principle related to Sexual and Gender-Based violence; (d) Prioritisation; (e) Transformative reparations; and lastly (f) No over-compensation.
14. Overall, the LRVs submit that the *Ntaganda* reparations principles<sup>14</sup> articulate a victim-centered approach geared towards repairing the harm caused to victims. However, the LRVs have some additional observations to make regarding some of the principles espoused by the *Ntaganda* Chamber that take into account the specific circumstances and context of victims participating in the present case, and that may be applicable in future cases before the Court.

<sup>12</sup> Decision on the Victims’ Request for an extension of the time limit to submit their observations on reparation proceedings, ICC-02/04-01/15-1910.

<sup>13</sup> Further provisions on a right to a remedy for victims of violations of international human rights law are found in article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 39 of the Convention on the Rights of the Child, article 24 of the International Convention for the Protection of All Persons from Enforced Disappearances. Regional instruments also include relevant provisions, such as article 7 of the African Charter on Human and Peoples’ Rights, article 25 of the American Convention on Human Rights, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>14</sup> Reparations Order, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2659, 8 March 2021, paras 28-103 (hereafter referred to as “*Ntaganda* Principles” or the “*Ntaganda* Reparations Order”).

15. Firstly, regarding the beneficiaries of reparations, the LRVs strongly support the *Ntaganda* Chamber’s position that all victims are to be treated fairly and equally during the reparations process, irrespective of whether they participated in the trial proceedings,<sup>15</sup> and that reparations need to address any underlying injustices and avoid replicating discriminatory practices that predated the commission of the crimes.<sup>16</sup>
16. With regards to a *Victim-centered approach: Accessibility and consultations with victims*, the Chamber in *Ntaganda* held that ‘[t]he Court should consult with victims on issues relating to, *inter alia*, the identity of the beneficiaries and their priorities. *Wherever possible*, it should also consult with victims as to the modalities of reparations to be awarded.’<sup>17</sup> However, the LRVs contend that victims must be consulted on the modalities of reparations to be awarded as a matter of right and not ‘wherever possible’. Given that the modalities of reparations may include measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, which may incorporate, when appropriate, a symbolic, preventative, or transformative value, such consultations on the modalities of reparations can only better inform the work of the Trust Fund for Victims (“TFV”) in implementing reparations awards and at the same time, manage the expectations of victims by seeking their input on potential modalities of reparations. As such the LRVs support the meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations. The ownership of the process by victims will ensure that reparations have the intended impact, and potentially minimize any concerns regarding the inaccessibility of reparations and potential they have to exclude or marginalize any group of victims. Furthermore, the LRVs submit that consultations must be swift and take place in an efficient manner as there is an element of victim fatigue regarding consultations, taking into consideration the lapse of time between when the crimes occurred and the trial proceedings.
17. The LRVs fully concur with the principle of ‘*do no harm*’ adopted by the Chamber in *Ntaganda* and posit that indeed this principle is particularly important when: conducting victim identification and eligibility screening; developing reparations orders and plans; and lastly carrying out approved reparations measures. In addition, the LRVs submit that any lasting impacts or legacies of reparations measures that are implemented should also adhere to the “do no harm” principle. For example, the long-term impact of reparations programmes implemented by the TFV should not result in or lead to secondary traumatization or

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<sup>15</sup> *Ntaganda* Principles, para. 41.

<sup>16</sup> *Ntaganda* Principles, para. 44.

<sup>17</sup> *Ntaganda* Principles, emphasis added, para. 48.

create/exacerbate security concerns or tensions among communities. In contrast to *Ntaganda*, in the *Ongwen* case the ethnicities of the victims participating in this case or potentially eligible for reparations do not create similar concerns of division or tension. However, it is important to bear in mind the relatively narrow scope of the *Ongwen* case, when the entirety of the conflict between the LRA and the Government of Uganda is taken into consideration. As such, there will be potentially hundreds of thousands of people who were victims of the acts carried out by the LRA, but who will not be eligible for reparations given the narrow scope of the case which only concerns four attacks carried out by Dominic Ongwen's Sinia Brigade in four locations. Therefore, the LRVs submit that it will be crucial for reparations processes to adhere to the principle of 'do no harm,' particularly in the context of victims who are eligible for reparations within the confines of the *Ongwen* case, and those who are not eligible for reparations but are located in the same communities and suffered similar forms of harm at the hands of the LRA.

18. With regards to Child victims, LRVs similarly concur with the *Ntaganda* Principles relating to the need to take account the age of victims who were children at the relevant time and their needs pursuant to rule 86 of the Rules,<sup>18</sup> as well as the need to take into account a gender-inclusive and sensitive approach.
19. To this end there are similarities that arise in the present case and *Ntaganda* in relation to the rehabilitation of former child soldiers, and in this respect, the LRVs fully endorse the *Ntaganda* principles as they relate to the importance of rehabilitation and reintegration of former child soldiers into society, as well as the importance of ensuring that reparations for children (or those who were children at the relevant time) address the loss of their life plan.
20. However, the LRVs submit the specificities of the *Ongwen* case warrant that particular attention be paid to the gendered dimensions of the harm suffered by children, particularly in the context of forced wives, as well as children born out of rape who face similar issues of stigma as former child soldiers. Therefore, the LRVs submit, that in addition to the needs of victims who were children at the time of the crimes, the inclusion of children born out of rape as a result of the crimes in question must also be considered in the identification of beneficiaries and the implementation of reparations programmes.
21. The particular needs and experiences of children should be granted special consideration; as should be additional rights they carry. Participation of child victims needs to be carefully managed, taking into account their age, abilities, intellectual maturity and evolving

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<sup>18</sup> *Ntaganda* Principles, para. 53.

capacities, and in a manner that does not risk further harm or trauma. Child victims should be allowed to express their views freely in all matters affecting them. Bearing in mind that girls are one of the groups most adversely affected by conflict-related sexual violence and face discrimination, special care should be taken to ensure that their rights are protected. Access to adequate psychological support and treatment and to health services is also required to promote free and meaningful participation of survivors in the process and to ensure that it is a beneficial rather than a harmful experience.

22. With regards to a *Gender-inclusive and sensitive approach to reparations*, the LRVs fully support the principle that '[A] gender-inclusive and sensitive approach or perspective should guide the design and implementation of reparations at the Court and every step of the reparation process'<sup>19</sup> and that a 'gender-inclusive and sensitive perspective should integrate intersectionality as a core component.'<sup>20</sup> The LRVs wholeheartedly agree with this principle and reiterate the *Ntaganda* Chamber's assertion that affirmative action should be taken at every stage of the reparations process in order to ensure the participation of marginalized groups or persons depending on the victim's sex or gender identity.<sup>21</sup> The LRVs further submit that in addition to the victim's sex or gender identity, any other intersecting factors such as a victim's social or political identity must also be taken into account in order to prevent any discrimination against them during the reparations processes. In this respect, of particular importance is to ensure affirmative action for women and girls, especially those who may be in 'lower' social position due to their income, standing in society and/or literacy level. Therefore, in line with international human rights standards, the LRVs submit that reparations towards victims must be fulfilled without discrimination on the basis of sex, gender identity, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability or any other status.<sup>22</sup>
23. Regarding the principle concerned with *Sexual and Gender-Based violence*, the *Ntaganda* Chamber has affirmed that '[A]ll victims, regardless of their sex and gender expression or identity, may be affected by sexual and gender-based crimes.'<sup>23</sup> The LRVs fully endorse this principle and agree that reparations for victims of sexual and gender-based violence, including those against children, must reflect the multifaceted harm suffered by victims, including the harm suffered by their relatives and communities. Although it may be harder to

<sup>19</sup> *Ntaganda* Principles, para. 60.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ntaganda* Principles, para. 61.

<sup>22</sup> United Nations, Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence, June 2014, available at: <https://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

<sup>23</sup> *Ntaganda* Principles, para. 64.



ensure that victims of sexual and gender-based violence (“SGBV”) come forward and participate in reparations processes due to the possibility of stigma and ostracism, the LRVs believe that a well thought-out reparations programme will ensure that victims will be able come forward and claim reparations where eligible. In addition, the LRVs fully support the principle that evidentiary standards and procedures should be sensitive to the difficulties of victims of SGBV, especially in the context of the *Ongwen* case where the crimes took place more than fifteen years ago, to obtain evidence and documentation which may be unavailable or have been destroyed.<sup>24</sup> As such the LRVs endorse the *Lubanga* jurisprudence which affirmed that ‘a balance of probabilities’ test is sufficient and proportionate to establish the facts that are relevant to an order of reparations when it is directed against the convicted person.<sup>25</sup> The LRVs further submit that it is of utmost importance that reparations processes for victims of SGBV do not reinforce pre-existing discriminatory practices. In addition, the LRVs submit that although the scope of the current cases confines harm relating to SGBV to women and girls, and not boys and men, victims of SGBV must also include children born as a result of pregnancy from rape in the context of the *Ongwen* case as highlighted above.<sup>26</sup>

24. With regards to prioritisation, the LRVs concur with the *Ntaganda* principle relating to *Prioritisation*, and submit that although all victims are to be treated fairly and equally,<sup>27</sup> there may be a need to afford priority to certain victims who are particularly vulnerable and who require urgent assistance, such as persons who require immediate physical and/or psychological medical care, victims with disabilities, the elderly, victims of SGBC, victims who are homeless or experiencing financial hardship, as well as children born out of rape, and former child soldiers.<sup>28</sup> Indeed, the elderly victims eligible for reparations in this case are particularly vulnerable. These individuals suffered various harms as a result of the attacks on the respective IDP camps and at present many of them are unable to access decent shelter as they are unable to construct housing for themselves due to its labour intensive nature. Relatedly, their ability to support themselves is severely limited because they cannot physically engage in farming activities due to its overly physical nature.

25. In relation to *Transformative reparations*, the LRVs agree with the *Ntaganda* Chamber that reparations have the potential to be transformative and can assist in overcoming structures of

<sup>24</sup> *Ntaganda* Principles, para. 67.

<sup>25</sup> *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06-2904, Trial Chamber I, 7 August 2012, para. 253.

<sup>26</sup> United Nations, Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence, June 2014, available at: <https://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>.

<sup>27</sup> *Lubanga* Amended Reparations Order, ICC-01/04-01/06-3129-AnxA, para. 12.

<sup>28</sup> *Ntaganda* Principles, para. 93.

inequality and discrimination. The *Ntaganda* Chamber stated that '[t]he transformative purpose of reparations aims at producing both a restorative and a corrective effect and to promote structural changes, dismantling discriminations, stereotypes, and practices that may have contributed to create the conditions for the crime to occur'.<sup>29</sup>

26. The LRVs submit that this principle is imperative in order to transform the lives of victims who suffered not only physical harm during the attacks in Lukodi, Odek, Abok and Pajule, but also suffer the continuing effects of these violations, including the loss of their homes and property. It is crucial, therefore, that reparations set out to transform the lives of victims by purposively responding to the dehumanisation, destruction of dignity, and the abuse of their right to life and livelihoods. In addition, the LRVs submit that transformative reparations must strongly emphasized to target the experiences of victims of sexual violence, which is related to the principle concerned with SGBV. As highlighted in the evidence presented by the LRVs, women were significantly more likely to have been present during the LRA attacks on civilians, and they were twice as likely to have a member of the LRA commit a sexual act against them or forced them to engage in a sexual act.<sup>30</sup>
27. Sexual violence often results from and perpetuates patterns of pre-existing structural subordination, gender prejudice and discrimination for both men and women. Therefore, reparations should strive to have a transformative effect on these inequalities, rather than reinstate or reinforce the structural conditions within society that uphold such practices and beliefs and that inform the perpetration of sexual violence. Furthermore, reparations have the potential to trigger important changes even if they alone cannot transform the root causes of conflict-related sexual violence or the structural conditions that made such violence possible. Therefore, the LRVs submit that designing reparations, including their specific modalities, should be guided by their potential to be transformative, fulfilling the right of victims to have a guarantee of non-repetition. Given the importance of transformative reparations for victims of SGBV, the LRVs believe that it is particularly important to emphasize the connection between transformative reparations and victims of SGBV. Indeed, the Nairobi Declaration states that 'reparation must go above and beyond the immediate reasons and consequences of the crimes and violations; they must address structural inequalities that negatively shape women's and girls' lives.'<sup>31</sup> To this end, the LRVs are still in the process of conducting consultations with their clients in order to ascertain whether women-centred economic

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<sup>29</sup> *Ntaganda* Principles, para. 94.

<sup>30</sup> UGA-V40-0001-0010, p. 22.

<sup>31</sup> Nairobi Declaration on the Right of Women and Girls to a Remedy and Reparation (2007), Principle 3(h).

compensation, including access to productive resources or credit may assist in enhancing women's economic empowerment and autonomy and therefore be transformative.

28. In relation to the principle of *No over-compensation*, the LRVs agree with the *Ntaganda* Chamber that reparations may neither 'enrich' nor 'impoverish' the victim, but adequately repair the harm caused, to the extent possible and deter future similar behaviour from the accused and other LRA commanders.<sup>32</sup> The LRVs have no additional submissions to make regarding this principle.

### ***Additional Proposed Principles***

29. The Chamber convicted Dominic Ongwen of 61 counts of crimes against humanity and war crimes. Mr Ongwen exercised his right not to testify which has excluded the possibility of providing information regarding the whereabouts of victims of enforced disappearance abducted by the LRA as a political organisation with a military wing,<sup>33</sup> and more specifically Ongwen's Sinia Brigade.
30. The Trial Chamber, in its Judgment found that the LRA and Sinia Brigade in particular targeted civilians for abduction to replenish its fighting force.<sup>34</sup> The Chamber also found that Dominic Ongwen personally issued threats to LRA members that they would be killed if they attempted to escape and ordered killings of abductees in front of the LRA members to illustrate this threat.<sup>35</sup> Furthermore, the Trial Chamber also found that Dominic Ongwen participated as an indirect co-perpetrator with Joseph Kony and other Sinia Brigade leadership in the abduction of civilian women and girls to serve as 'wives of members of Sinia brigade and as domestic servants',<sup>36</sup> and that Dominic Ongwen participated as an indirect co-perpetrator in the abduction and conscription and use of children in armed hostilities.<sup>37</sup>
31. The above conduct of Dominic Ongwen has resulted in the fact that there are large numbers of persons who were abducted by the LRA, and in particular, by the Sinia Brigade between 1 July 2002 and 31 December 2005, that remain missing and their whereabouts and status is unknown by their surviving family members.

<sup>32</sup> *Ntaganda* Principles, para. 99.

<sup>33</sup> *Trial Judgment*, ICC-02/04-01/15-1762-Conf, 4 February 2021, paras 123-133.

<sup>34</sup> *Ibid.*, para. 129.

<sup>35</sup> *Ibid.*, para. 133.

<sup>36</sup> *Ibid.*, paras 212-221.

<sup>37</sup> *Ibid.*, paras 222-225.

32. The LRVs therefore suggest a *principle on the right to truth and provision of an accurate account of the violations that occurred in reparations processes*,<sup>38</sup> so that family members of persons who were abducted and whose whereabouts and status is presently unknown are entitled, as part of their reparations, to know the truth about the fate or the whereabouts of their loved ones or their remains. Indeed, the right to the truth- in relation to human rights violations is widely recognized in international law. For example, the Inter-American Court on Human Rights has stated that the right to truth/to know what happened is an autonomous right under Article 13 of its Statute (right to access to information.)
33. The right to know what happened to a victim of abduction is closely related to the right to know what happened to a victim of enforced disappearance as emphasized by the UN Human Rights Committee.<sup>39</sup> The victims' right to truth about the status of their loved one is thus an important part of reparations.
34. The LRVs submit that out of 2605 victims represented by them a significant number reports having a missing family member or a close relative:
- i) 237 participating victims report to have a missing family member;
  - ii) 129 participating victims report a missing close relative;
  - iii) 04 participating victims report missing both a family member and a close relative.
35. The distribution by location of these participating victims is the following:
- Abok:
- i) 85 victims report missing one or more family members
  - ii) 64 victims report missing close relatives
  - iii) 4 victims report missing a family member and a close relative;
- Lukodi:
- iv) 64 victims report missing one or more family members
  - v) 34 victims report missing one or more close relatives;
- Odek:
- vi) 86 victims report missing one or more family members
  - vii) 31 victims report missing one or more close relative.

<sup>38</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res 60/147 of 16 December 2005, para. (h).

<sup>39</sup> REDRESS, Reaching for Justice: The Right to Reparation in the African Human rights System, (October 2013), p 31 citing the UN Human Rights Committee in the case of *Maria del Carmen Almeda de Quinteros et al v. Uruguay*, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990).

36. The LRVs submit that these and other victims that will participate during the reparations phase are entitled to know the truth about their missing family members or relatives as part of the reparations.
37. Secondly, the LRVs propose the ***Principle of Confidentiality*** with respect to reparations. The LRVs submit that confidentiality at all stages of the reparation process is essential to encourage victims to come forward, to have faith and engagement in the process and to protect them from further harm. This is particularly important for victims of SGBV who may not have even disclosed the harm that they suffered to close family members and may be hesitant to come forward in order to claim reparations for this particular crime. Given the stigma associated with being a 'forced wife' in the *Ongwen* case, this is particularly important in order to ensure that victims are able to come forward. However, this proposed principle is also important in order to minimize division and tensions within the broader victim community in northern Uganda. As stated previously by the LRVs, there is a high potential for division and animosity between victims of LRA crimes who fall within the scope of the *Ongwen* case and are eligible for reparations, and those large numbers of victims who also suffered at the hands of the LRA, but do not fall within the scope of the case. Therefore, the LRVs submit that discretion and confidentiality will be of utmost importance in the implementation of reparations in order to prevent animosities, and in particular in relation to individual reparations awards, should they form the modalities of reparations in this case. The LRVs are also mindful that confidentiality will have to be balanced with the Principle of Accessibility that they propose below.
38. Lastly, the LRVs submit that the Chamber could consider the ***Principle of Access to Information on Reparations***. Reparations must be accessible. Awareness- raising on the right to reparation and outreach are essential in order to ensure that victims are aware of their rights and the processes taking place to deal with their harm. The provision of adequate information through accessible means to victims in all relevant areas is crucial to ensure meaningful participation and accessibility to reparations. Ensuring accessibility further requires adequately identifying the legal, cultural, economic and other obstacles found by victims, as well as their concerns, including lack of security conditions, economic resources and fear of retaliation or ostracism. Furthermore, outreach should take place in a language and through means that victims, literate or not, can understand and relate to and in a culturally appropriate manner. A mapping of the existing networks and organizations supporting victims is important to support these efforts. Awareness-raising should also, however, manage victims' expectations. Measures must be taken to ensure that victims can

participate in the reparation process in ways that are acceptable to their culture and religion. For example, women and girls, in some contexts, are not accustomed to speaking publicly. They need an adequate and supportive environment to share their experiences, in full confidentiality if required. Lastly, participation and consultation processes should also be designed taking account of child care obligations and other responsibilities that women have, as well as limitations regarding mobility, including costs associated with it.

**(b) Legal and factual issues relevant to the identification of eligible victims**

39. In the *Lubanga* case, the Trial Chamber held that for a natural person to qualify as a victim for the purposes of reparations under rule 85(a) of the Rules of Procedure and Evidence (“RPE”), he or she must provide identification, and sufficient proof of the harm suffered and of the causal nexus between the crime and the harm.<sup>40</sup> As such ‘reparations orders are intrinsically linked to the individual whose criminal liability is established in the conviction and whose culpability for those criminal acts is determined in a sentence.’<sup>41</sup> Furthermore, eligibility for reparations must be determined in reference to the territorial, temporal, and subject matter scope of the crimes for which Dominic Ongwen was convicted as laid out in the Judgment.<sup>42</sup>

40. In the present case, the LRVs submit that the presumption of harm is sufficient when a person can establish, on the balance of probabilities that he or she was a victim of a crime within the parameters of the conviction. That is that they suffered direct or indirect harm as a result of one of the attacks on Lukodi, Abok, Odek and Pajule IDP camps at the relevant time of the attacks.

41. Victims eligible for reparations may be direct or indirect victims. The LRVs submit that any natural and legal person is eligible for reparations as a direct victim if they can demonstrate, on a balance of probabilities, that they suffered harm as a result of the crimes for which Dominic Ongwen was convicted of as laid out in the Judgment.<sup>43</sup>

42. With regards to Sexual and Gender-Based Crimes (“SGBC”), Dominic Ongwen was found guilty of rape, sexual slavery, forced pregnancy and torture as war crimes and crimes against

<sup>40</sup> Public Redacted Corrected version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable (Trial Chamber II), No. ICC-01/04-01/06-3379-Red- Corr-tENG, 21 December 2017 (“Lubanga 2017 Decision on Reparations Award”), para. 40.

<sup>41</sup> *Lubanga* Judgment on Principles, ICC-01/04-01/06-3129, para. 65; *Lubanga* Amended Reparations Order, ICC-01/04-01/06-3129-AnxA, para. 20.

<sup>42</sup> Trial Judgment, ICC-02/04-01/15-1762-Conf, f February 2021.

<sup>43</sup> *Ibid*, pp. 1068-1077

humanity, forced marriage and enslavement as crimes against humanity, and outrages upon personal dignity as a war crime. In this regard, the LRVs support the *Ntaganda* Chamber's finding that children born as a result of rape and sexual slavery may qualify as direct victims, as the harm they suffered is a direct result of the commission of the crimes of rape and sexual slavery, and not as indirect victims.<sup>44</sup>

43. Therefore, the LRVs posit that victims/children born out of rape as a result of the crimes of rape, sexual slavery, forced pregnancy and forced marriage must be allowed to qualify as direct victims as an acknowledgement of the particular harm that they suffered.
44. In relation to indirect victims, the LRVs submit that similarly to other cases before this Court, the concept of family in many African countries, including Uganda, encompasses both the nuclear family and the extended family and that the requirement of the existence of a harm, rather than how close or distant the family member is from the direct victim is what must be stressed.<sup>45</sup> Furthermore, the LRVs agree with the *Ntaganda* Chamber's finding that 'the concept of indirect victims shall not lead to the discrimination of individuals on the basis of birth or marital status.'<sup>46</sup> Put simply, any indirect victim must only have to demonstrate that they suffered harm as a result of the commission of a crime against the direct victim. Furthermore, the LRVs submit that those who were forced to witness certain acts, as was prevalent in the LRA, must be eligible for reparations as indirect victims.
45. With respect to the evidentiary criteria in place during reparations proceedings, the LRVs submit that the Chamber should follow the established 'balance of probabilities' test as the appropriate standard of proof in reparations proceedings.<sup>47</sup> Given the difficulties faced by victims in producing relevant documents, for example – forms of identification, the LRVs suggest, as held by the *Ntaganda* Chamber, that 'victims may use official or unofficial identification documents, or any other means of demonstrating their identities.'<sup>48</sup> Furthermore, as noted by the same Chamber, the 'balance of probabilities' test in relation to sexual crimes must take into account the additional difficulties that these victims face in obtaining or producing evidence to demonstrate that they were victims of SGBC, and

<sup>44</sup> *Ntaganda* Order on Reparations, paras 120-123.

<sup>45</sup> Public redacted 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", *The Prosecutor v Germain Katanga*, ICC-01/04-01/07-3778-Red A3 A4 A5, 8 March 2018, para. 115.

<sup>46</sup> *Ntaganda* Reparations Order, para. 126.

<sup>47</sup> *Lubanga* Amended Reparations Order, ICC-01/04-01/06-3129-AnxA, para. 65; *Katanga* Reparations Order, ICC-01/04-01/07-3728, paras 49-51; *Al Mahdi* Reparations Order, ICC-01/12-01/15-236, para. 44; *see also* Public redacted 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", *The Prosecutor v Germain Katanga*, ICC-01/04-01/07-3778-Red A3 A4 A5, 9 March 2018, para. 42.

<sup>48</sup> *Ntaganda* Reparations Order, para. 137.

therefore ‘the victim’s coherent and credible account shall be accepted as sufficient evidence to establish their eligibility as victims on a balance of probabilities.’<sup>49</sup> The LRVs fully support this position.

46. Indeed, the LRVs submit that reparations proceedings require a less exacting standard of proof than trial proceedings and victims will face difficulties in producing relevant information such as diplomas, identity cards, medical records and other relevant official documents. Furthermore, in relation to SGBC, rule 63 (4) of the RPE stresses the additional difficulties that victims of these crimes may face in obtaining or producing evidence to demonstrate that they were victims of rape, forced marriage, and/or sexual slavery. Therefore, the LRVs, suggest that the Chamber adopt the same reasoning given by the *Ntaganda* Chamber which considered that ‘the victim’s coherent and credible account shall be accepted as sufficient evidence to establish their eligibility as victims on a balance of probabilities.’<sup>50</sup>

### **c) Recourse to factual presumptions**

47. In relation to factual presumptions, the LRVs support the position taken by the Appointed Experts in the *Ntaganda* case that ‘an individual assessment of each victim’s harm and the extent of the harm is neither feasible nor desirable’ and that harm must be presumed.<sup>51</sup> Requiring each victim eligible for reparations to prove specific harms that she or he suffered as a result of the crimes that form the basis of the conviction, and then subjecting each possible harm to a separate assessment by the Registry or Chamber is wholly unfeasible given the circumstances of the case, the lapse of time between when the crimes took place and the conviction, and the difficulty in obtaining relevant documentation. Furthermore, such an assessment would be exceptionally burdensome and onerous to victims, and could inadvertently cause discrimination between victims who would be able to supply such information, and those who would not be also to do so.
48. Furthermore, the LRVs submit that this is particularly even more burdensome for victims of SGBC who were often in the bush for many months, and even years in the case of forced ‘wives’, and therefore would have almost no means of documenting their experiences or providing evidence given their inability to seek medical assistance even for the slightest of ailments, let alone SGBC, whilst in the bush. Furthermore, the time that has elapsed between the crimes that occurred and the current proceedings means that even where victims were

<sup>49</sup> *Ntaganda* Reparations Order, para. 139.

<sup>50</sup> *Ntaganda* Decision on Reparations, para. 139.

<sup>51</sup> Experts Report on Reparation, No. ICC-01/04-02/06-2623-Anx1-Red2, 3 November 2020, p.107, para. 8.



able to pass through reception centres such as the Gulu Support and Children Organisation (‘GUSCO’), it is very possible that they would not be able to access their records, assuming that their records are still in existence and recorded the entirety of the harm that they suffered. In addition, it must be taken into account that many returned abductees did not always pass through these reception centres and therefore will have no documentary evidence of the harm that they suffered whatsoever. Lastly, reparations processes requiring proof of harm may be overly disadvantageous to women, given that they are disproportionately affected by SGBC,<sup>52</sup> and particularly so in the context of the *Ongwen* case.

49. The LRVs reserve their submissions on the modalities of reparations until the 7 February deadline laid out by the Chamber, however, in the event that collective reparations are solely or jointly awarded to victims, the necessity of proving specific harms becomes even more debatable. In such a context, requiring a detailed individual claim from each victim outlining and documenting the harm that they suffered would result in ‘unnecessarily protracted, complex and expensive litigation.’<sup>53</sup>
50. The LRVs agree with the position taken by the *Ntaganda* Chamber that the presumption of harm is sufficient when the person establishes on the balance of probabilities that he or she was a victim of a crime within the parameters of the conviction and the number of potential beneficiaries ‘is such that meticulous review and individual decisions on each and every beneficiary in the way this has, for instance, been done in the *Katanga* case, is not feasible.’<sup>54</sup>
51. The LRVs further propose, in line with the jurisprudence laid out in *Ntaganda* that where applicants for reparations lack direct proof as per rule 94(1)(g) of the RPE, which is applicable to proceedings relating to individual reparations, factual presumptions should be relied upon in order to consider certain fact/s to be established to the requisite standard of proof.<sup>55</sup> Indeed, as noted in the *Lubanga* case, ‘any child who was conscripted or enlisted into an armed group or who participated in combat suffers psychologically, as well as in a physical and material sense.’<sup>56</sup>
52. Furthermore, the LRVs submit that certain types of harm may be presumed, once a victim has proven, on a balance of probabilities standard to be a victim of the crimes for which Mr.

<sup>52</sup> United Nations Office on Drugs and Crime (UNODC), Handbook on Gendered Dimensions of Criminal Justice Responses to Terrorism, Vienna, 2019, p. 188.

<sup>53</sup> Public redacted 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”, *The Prosecutor v Germain Katanga*, ICC-01/04-01/07-3778-Red A3 A4 A5, 8 March 2018, para. 64.

<sup>54</sup> *Ntaganda* Reparations Decision, para. 48.

<sup>55</sup> *Ntaganda* Decision on Reparations, para. 141.

<sup>56</sup> *Lubanga* Decision on the Size of Reparations Award, ICC-01/04-01/06-3379-Red-Corr-tENG, para. 180

Ongwen was convicted. For example, psychological harm or victims who may have suffered material harm, without personally experiencing the attacks. In any event, the LRVs submit that given the parameters of this case, there will be very few or negligible numbers of victims who only suffered material harm without personally being at the sites of the IDP camps where the attacks took place. In addition, the LRVs submit that victims who were not yet born at the time of the attacks could be potential victims of intergenerational harm depending on their relationship with a victim who experienced the attacks personally- or a direct victim.

53. In addition, Trial Chamber II also found that owing to their close personal relationship with the direct victim, indirect victims ‘suffered personally in an emotional, material and, in some cases, a physical sense as a result of the direct victim’s enlistment’<sup>57</sup> and that there was ‘no need to scrutinize the specific harm alleged by each potential eligible victim, and applied a direct presumption of harm to each direct and indirect victim once child soldier status and close personal relationship with a child soldier was established on a balance of probabilities.’<sup>58</sup> The LRVs submit that the same reasoning should be applied in the present case with respect to former child soldiers, persons who were abducted by the Sinia Brigade, victims of rape, forced marriage, forced pregnancy and sexual slavery, and their close family members or those persons to whom they had a close relationship, beyond the confines of their immediate family. As such material, physical, and psychological harm must be presumed for (i) former child soldiers; (ii) direct victims of SGBC for which Dominic Ongwen was convicted; (iii) persons who were abducted by Dominic Ongwen’s Sinia Brigade and (iv) indirect victims who are close family or bear a close relationship to direct victims who were former child soldiers, and victims of SGBC, and persons abducted by the Sinia Brigade.
54. The LRVs further submit that physical, psychological and material harm must be presumed for victims of the attacks on each of the IDP camps that form the basis of this case. Persons who witnessed these attacks (including those who were not eventually abducted) had to witness acts of murder, attempted murder, and other acts of physical harm, or indeed were subject to these violations themselves. In addition, most if not all of these victims had their possessions looted by members of the Sinia Brigade. As such, the LRVs posit that it should not be necessary to scrutinize the specific psychological and material harm alleged by these victims once their eligibility has been established on a balance of probabilities. Furthermore, psychological harm must also be presumed for (i) victims who lost their homes or material

<sup>57</sup> *Lubanga* Decision on the Size of Reparations Award, ICC-01/04-01/06-3379-Red-Corr-tENG, para. 180.

<sup>58</sup> *Lubanga* Decision on the Size of Reparations Award, ICC-01/04-01/06-3379-Red-Corr-tENG, para. 185.

assets; (ii) indirect victims who are close family members or have a close relationship with direct victims of murder or attempted murder.

55. Furthermore, the LRVs submit that at the time of the LRA attacks on Lukodi, Abok and Odek IDP camps, victims participating in these proceedings, as well as non-participating victims had as a result of the insecurity caused by the LRA left their own villages and were living in government established IDP camps, supposedly for their protection, notwithstanding that the LRA successfully attacked and perpetrated crimes and for which the Chamber has since convicted Dominic Ongwen. The LRA perceived camp residents to be associated with the government of Uganda.<sup>59</sup>
56. The LRVs recall the findings of the Chamber that movement to the IDP camps was often carried out in haste and on the orders of UPDF due to the insecurity created by the LRA activities.<sup>60</sup> Residents of the camps were often given short notice to swiftly move to the said camps and therefore without sufficient time to pack and carry all their belongings with them to the IDP camps. Individuals, therefore, left a number of personal and household items in their village homes, which in some cases were burned or looted by either the LRA or the UPDF.
57. The circumstances of life in the camps has been described by Prosecution witness P-0422, Professor Tim Allen, whose research suggested concentration of people in the IDP camps; People lived next to open sewers, resulting in the prevalence of excess mortality and infectious diseases.<sup>61</sup> Through consultations with the participating victims the LRVs have been further told that most households owned livestock and other domestic animals such as chicken and goats because these were sources for livelihoods since the bulls were used to plough fields for food and the rest were easily converted to cash through sale to address particular needs.
58. The LRVs have been informed that in moving into the IDP camps a number of people moved along with herds of their livestock which were kept on the periphery of the IDP camps, whilst goats and chicken were kept outside of the individual dwelling places tied to trees supporting the dwelling houses. During the time people lived in the IDP camps the Christian Children's Fund (CCF) ran a project for orphans and children with disabilities in specific parishes in the then Gulu District, wherein a cow was given to orphaned children and this was another source of livestock to community members in the Camp.

<sup>59</sup> Trial Judgment, ICC-02/04-01/15-1762-Conf, f February 2021, paras 139-141.

<sup>60</sup> Trial Judgment, ICC-02/04-01/15-1762-Conf, f February 2021, paras 1172, 1384-1386, 1643-1644, 1858-1859.

<sup>61</sup> Transcript of Witness, UGA-OTP-P-0422, Professor Tim Allen, ICC-02/04-01/15-T-28-ENG ET WT, 16 January 2017, pp. 103-105.

59. The LRVs also recall the findings of the Chamber that the LRA in attacking the IDP camps intended to loot civilian food, abduct children including boys and girls as well as cause destruction of life.<sup>62</sup>
60. The LRVs have established from their clients that attacks on the respective IDP camps did not make the situation any better for camp dwellers as most houses in the camps were torched and burnt to ashes by the LRA and a lot of unprecedented destruction and personal harm was occasioned to not just the individual dwelling place but to the individual dwellers of the IDP camps as well.
61. The destruction and harm occasioned includes: total destruction to the contents of the humble dwelling places including academic documents, veterinary records relating to treatment of livestock, medical records, hard cash; loss of life in the burning houses; life threatening burns inflicted on some individuals locked up in the burning houses; abductees were forced to carry heavy loads for considerably long distances without rest thereby sustaining permanent physical injuries and some abductees released whilst others remain missing up until today; loss of livestock, goats and chicken; mental and psychological torture resulting from the attack on the respective IDP camps and individual experiences from the attack.
62. In the ensuing attack on the IDP camps, many individuals running for safety from the LRA attackers sustained a number of physical injuries including gunshot wounds, fractures to limbs both hands and legs as well as to other body parts arising from falling over and/or tripping over.
63. The successful LRA attacks on the respective IDP camps forced camp dwellers to abandon the IDP camps for fear of a repeat attack and they therefore relocated. In the case of Lukodi, residents of the IDP camp ended up in Gulu town. In all the three attacks, neither the camp leaders, the UPDF nor other authorities of the Government of Uganda took the initiative to document the destruction occasioned to individual dwellers of the respective IDP camps and the individual harm that they suffered.
64. Owing to the above factors the LRVs invite the Chamber to adopt and have recourse to the following factual presumptions:
- i) *Missing and Unknown Status of Abducted Individuals*: An unknown number of children and young adults were abducted on the day the respective IDP camps were attacked by the LRA fighters for which Dominic Ongwen was convicted, and these

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<sup>62</sup>Trial Judgment, ICC-02/04-01/15-1762-Conf, 04 February 2021, paras 144-204

children and adults are known to and can be identified by their parents and relatives. Parents and relatives presume that these children and adults are dead since no information about them has been shared by returning abductees over the years.<sup>63</sup> The Chamber is invited to make a factual finding of missing and unknown status of persons abducted from the IDP camps on the respective day of attack and a presumption of death given the amount of time that has elapsed since their abduction/disappearance.

- ii) *Loss of Livestock*: Individuals owned livestock, goats and chicken as a source of wealth and livelihood prior to moving to the IDP camps and whilst they lived in the IDP camps. The livestock, goats and chicken were either shot, looted or burnt next to the homes of camp residents in the IDP camps by the LRA attacking fighters as they could not be rescued in the course of the attack.
- iii) *Loss of Property*: Individuals owned houses and household properties including clothes, cooking utensils, beddings, furniture, money in cash, academic and other official documents such as relating to purchases, as well as treatment of livestock, etc., prior to the LRA attacks on the respective IDP camps. These items were all destroyed and/or lost in the fire when the grass thatched houses in the IDP camps were torched by the attacking LRA fighters. Other items lost in such fires include personal items such as bicycles for some individuals. There is no official list of individuals whose houses were torched or of the properties destroyed in the fire that gutted houses in the IDP camps.
- iv) *Physical Injuries and Disability*: A number of individuals who prior to the attack on the respective IDP camps, were healthy individuals capable of earning a livelihood through cultivation of fields suffered and sustained permanent physical injuries rendering them disabled and unable to perform physical labour as a way of life. These injuries include: non-fatal bullet damage to parts of the body severally; third to second degree burns; fractures to limbs.
- v) *Sexual and Gender Based Violence*: A number of women resident in the IDP camp prior to the attack by LRA fighters were healthy individuals on the day of the attack on the respective IDP camps and suffered from sexual abuse by some of the LRA attacking fighters including being raped with blunt objects like mingling

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<sup>63</sup> Professor Tim Allen during his testimony at pages 60-63 confirmed the works of Christopher Blattman and Jeannie Annan who suggest that one fifth of male abductees out of the estimated 66000 abducted never returned. See: transcript of Witness, UGA-OTP-P-0422, Professor Tim Allen, ICC-02/04-01/15-T-28-ENG ET WT, 16 January 2017, pp 60-63.

sticks and combs. These women sustained and live with these injuries that were not reported and or documented by any authorities.

- vi) *Psychological Trauma and Mental Disease*: A number of individuals who prior to the attack on the IDP camps did not suffer from any form of known mental and psychological harm; in the post the attack period presently suffer from psychological trauma and other mental diseases.
- vii) *Incapacitation*: A number of individuals who prior to the attack on the respective IDP camps had spouses and children and were able to sustain themselves and their families thanks to spousal support and their children. However, after the attacks conducted by Dominic Ongwen's Sinia Brigade, they have lost their children and/or spouses rendering them destitute. These individuals who are presently very elderly are incapacitated by old age and other injuries sustained during the LRA attacks and are dependent on well-wishers for their livelihoods.
- viii) *Children Born in Captivity*: There are numerous women who were abducted and returned from abduction with pregnancies and/or children and these children are not recognised as entitled to the mother's family property and therefore are at risk financially, as well as of losing their inheritances.
- ix) *Loss of Unborn Children*: There are several women who suffered miscarriages as a result of accidental falls in the course of running for safety.

**d) Victims or groups who may require prioritisation in the reparations process**

65. The LRVs submit that in line with the principle on prioritization espoused by the *Ntaganda* Chamber, there are certain victims and victim groups who will require priority in the reparations process. These suggestions are based on the urgent and immediate needs that are required by these victims in order to function in their daily lives. Indeed, there are victims who are particularly vulnerable and who require urgent assistance.

66. Although the *Ntaganda* Chamber articulated that some of these vulnerable groups may include victims with disabilities, the elderly, victims of SGBC, victims who are homeless or experiencing financial hardship, as well as children born out of rape, and former child soldiers, the LRVs submit that prioritization must take place in a holistic and well thought out manner.

67. As such the LRVs submit that the most vulnerable victims must be eligible for reparations on an immediate basis. This would include victims that due to their life circumstances, are

particularly vulnerable. For example, those who have current serious medical conditions (whether chronic or related to disease or illness), including potentially life-threatening conditions or as a result of SGBC; victims who are unable to have access to decent housing or shelter which seriously impacts their dignity and potentially their survival; and lastly victims who are in severe financial need which could potentially have an impact on their day-to-day survival or the ability to feed themselves or their families.

68. Therefore, the LRVs submit that these victims must have priority in any reparations processes, followed by elderly victims, victims of SGBC, former child soldiers, and children born out of rape.
69. The LRVs submit that they have during their most recent consultations with participating victims encountered a number of individuals who require prioritisation in the reparations process. Whilst the individuals encountered may at present be only a handful owing to the limited time the LRVs have had to engage with the majority of the participating victims, it is anticipated that more individuals could be identified for prioritisation where engagement with the LRVs continues on a rolling basis.
70. These individuals require prioritisation because they are vulnerable and the vulnerability is by reason of the continuous nature of the harm they suffered as well as their lack of financial and other means to remedy the impacts of the harm sustained individually.
71. The LRVs wish to note that some of these individuals at the time of applying for participation appear not to have been comfortable and confident in revealing their complete account of their respective victimisation to VPRS team however through the trust built over time, these individuals have been able to disclose to the LRVs the extent of victimisation encountered with the LRA fighters on the day the respective IDP camps were attacked.<sup>64</sup>
72. The LRVs identify the following categories of victims for prioritisation;

*i) Victims of SGBC:*

Under this category there are a number of women who were subjected to SGBV including being raped using blunt objects such as with a food mingling stick and comb. These women continue to live with the injuries and the impact of the injuries sustained from the SGBC occasioned on them as well as the trauma of the entire ordeal. These victims have informed the LRVs they are unable to raise the resources

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<sup>64</sup> The LRVs note that the situation where individuals describe additional experiences was described by Professor Tim Allen at page 72 of the transcript of his testimony. (ICC-02/04-01/15-T-28-ENG ET WT 16-01-2017) and therefore does not suggest that the individual is not reliable.

required to obtain proper medical attention and seek the Court's intervention to remedy their present situation.

**ii) *Elderly victims:***

This category of victims includes individuals who lost spouses and children upon whom they depended for livelihood support. In their present situation in life these individuals suffer immediate risk and threat to their lives posed by inability to generate a livelihood and decent shelter.

**iii) *Victims and or survivors of third degree burns and other injuries:***

This category of victims includes individuals who at the time of the LRA attacks on the IDP camps for which Dominic Ongwen was convicted were: shot at but survived; locked in the burning thatched homes and sustained third to first degree burns to their bodies; in running for safety from the attacking LRA fighters suffered fractures and injuries to limbs as a result of accidental falls and from loss of balance or were pushed and fell in detrimental ways; and carried extremely heavy loads and sustained beatings and injuries to the body and chest leading to disability.

**iv) *Child headed families and children born in captivity:***

This category of victims includes individuals whose parents are deceased and lack an elderly figure to support the children in generating a livelihood and ensuring their rights including the right to decent shelter. This category also includes children born in captivity (in the bush). Such children are stigmatized and often not recognised by the family members of the child's mother and therefore not entitled to benefit from the mother's family land resources owing to the patriarchal nature of the society and the ongoing land conflicts that characterize the return to communities.<sup>65</sup> Notwithstanding the effects of the Covid-19 pandemic, which led to the closure of schools, most of these children do not enjoy any protection from their families and society in general.

73. The LRVs will compile and furnish a list of all individuals falling under these categories to the Chamber which shall be filed as an annexure in the filing due on 7 February 2022.

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<sup>65</sup> The issue of prevalence of rejection and stigmatisation was discussed by Professor Tim Allen at page 73-85 of the transcript of his testimony. Professor Allen emphasized its effects especially on women. See: Transcript of Witness, UGA-OTP-P-0422, Professor Tim Allen, ICC-02/04-01/15-T-28-ENG ET WT, 16 January 2017, pp. 73-85.



**(e) Any additional information relevant to reparations**

***Administrative Reparation Not to Preclude Access to Reparations***

74. As the Chamber is aware, the TFV has implemented activities in Uganda under its assistance mandate for a number of years including surgical repairs for victims with various health needs; provision of prosthetic limbs for persons that suffered loss of their natural limbs in the course of the armed conflict; counselling related activities etc.
75. The LRVs submit that whilst none of the victims they represent has had access to the above assistance mandate activities during the course of the trial proceedings against Dominic Ongwen, owing to the TFV partners' deliberate decision not to extend such services to participating victims as a measure to mitigate any potential for the Defence to accuse witnesses of being influenced by the said activities to testify against the now convicted Dominic Ongwen;<sup>66</sup> the fact of the provision of these activities to the rest of the victims communities should not be applied to deny victims their rights to reparation.
76. The LRVs are fortified in this submission by the UNSG Guidance Note 9 (notwithstanding its focus on conflict related sexual violence):

Nevertheless, administrative reparations programmes should not preclude victims of conflict-related sexual violence from obtaining reparations through courts; all victims should have access to effective judicial remedies which include adequate, prompt and full reparation for the harm suffered. Domestic or international courts should take into account and complement reparations awarded by administrative reparations programmes when deciding on redress for victims of conflict-related sexual violence.

Ensuring effective access to judicial remedies may require assistance and support to complainants as well as the removal of barriers to access to justice, including discriminatory barriers particularly affecting women. Effective judicial remedies also require that decisions of judicial bodies are executed without unreasonable delay.<sup>67</sup>

77. The LRVs submit that as a principle administrative reparations and/or assistance pursuant to TFV's assistance mandate activities should not be considered as precluding access to

<sup>66</sup> The LRVs were informed by ICC Trust Fund Partners during consultations at offices of the respective partners to establish how participating victims with medical and other needs can access services offered by the said ICC Trust Fund Partners; that one of the considerations to guide their activities was not to provide any support to victims participating in proceedings.

<sup>67</sup> Guidance Note of the Secretary General: Reparations for Conflict-related Sexual Violence (June 2014), p. 2, available at <https://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>.

reparations. These will go a long way in ensuring that victims of serious crimes falling under the jurisdiction of the court can enjoy the right to reparations as well established human right.<sup>68</sup>

Respectfully submitted by:



Joseph A. Manoba



Francisco Cox

Dated this 6<sup>th</sup> day of December 2021  
At Kampala (Uganda) and Santiago (Chile)

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<sup>68</sup> *The Prosecutor v Thomas Lubanga Dyilo*, Decision establishing principles and procedures to be applied to reparations, ICC-01/04-01/06, 7 August 2012, para. 185.