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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

Public

Registry's Additional Submissions on the Mapping Exercise and Reparations

Source: Registry

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

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I. Introduction

1. Pursuant to Trial Chamber IX's ("Chamber") "Order for Submissions on Reparations" issued on 6 May 2021 ("Order of 6 May 2021")¹ and "Decision on the Victims' Request for an extension of the time limit to submit their observations on reparation proceedings" issued on 18 November 2021 ("Decision of 18 November 2021"),² in the case of *The Prosecutor v. Dominic Ongwen* ("Ongwen case" and "Case"), the Registry hereby presents additional submissions on the mapping exercise and reparations.

II. Procedural History

2. In its Order of 6 May 2021 the Chamber, *inter alia*, instructed the Registry to make submissions "as specific as possible and of up to 50 pages" by Monday 6 September 2021, on either or all of the reparations-related issues listed below:³
 - a. 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*;
 - b. 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;
 - c. any legal and factual issues relevant to the identification of eligible victims;

¹ Trial Chamber IX, "Order for Submissions on Reparations", 6 May 2021, ICC-02/04-01/15-1820.

² Trial Chamber IX, "Decision on the Victims' Request for an extension of the time limit to submit their observations on reparation proceedings", 18 November 2021, ICC-02/04-01/15-1910.

³ Order of 6 May 2021, para. 5(i).

- d. any victims or groups of victims who may require prioritisation in the reparations process;
 - e. specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Ongwen was convicted;
 - f. whether recourse to factual presumptions should be considered;
 - g. 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;
 - h. concrete estimates as to the costs to repair the harms suffered by the victims in light of the appropriate modalities for repairing them, including costs of running rehabilitation programmes in the region with the potential to address multi-dimensional harm of individual beneficiaries for the purposes of reparations;
 - i. information as to whether the victims of the crimes for which Mr Ongwen was convicted have received any form of compensation or reparations for the harm suffered as a result of these crimes; and
 - j. any additional information relevant to reparations.
3. The Chamber also instructed the Registry, with the assistance and cooperation of the Legal Representatives of Victims and the Common Legal Representative of Victims (“LRVs”⁴ and “CLR”⁵ respectively) as appropriate, to undertake a comprehensive mapping of direct and indirect victims potentially eligible for reparations in the Case (“Mapping”), identifying: *i*) the main categories of victims; *ii*) their current location; and *iii*) all data that it may be able to obtain regarding the victims’ gender, age group, and particular vulnerabilities which may need to be

⁴ The LRVs team is composed of Mr Joseph Akwenyu Manoba and Mr Francisco Cox.

⁵ The CLR is Ms Paolina Massidda of the Office of Public Counsel for Victims.

taken into account by the Chamber when deciding on the reparations to be awarded.⁶ The Chamber highlighted that the Registry is not expected or encouraged to register applicants or to collect individual applications for reparations, and that full compliance with the ‘do no harm’ principle should be ensured at all times.⁷ The Chamber further stressed the need for full cooperation and combination of the limited resources available between the parties,⁸ the Registry and the Trust Fund for Victims (“TFV”), particularly for the purposes of estimating the total number of victims, as well as for mapping and identifying: *i*) the extent of the harm suffered by the victims; *ii*) the most appropriate types and modalities of reparations; and *iii*) the costs to repair the harm.⁹ The Registry was eventually instructed to submit a progress report on the Mapping by 5 July 2021 and a final report by 6 September 2021.¹⁰

4. On 5 July 2021, the Registry submitted its progress report on the Mapping and a request for an extension by three months (until 6 December 2021) for the submission of its final report on the mapping exercise and its submission on reparations, in light of the COVID-19 related in-country restrictions in Uganda.¹¹
5. On 12 July 2021, the LRVs and the CLR also requested a three month extension to submit their observations on reparations.¹²
6. On 19 July 2021, the Chamber granted an extension of time until 6 December 2021: *i*) for the Registry to file its final mapping report, and *ii*) for the Registry, the parties and the TFV to file their submissions on reparations.¹³

⁶ Order of 6 May 2021, para. 5(iv).

⁷ *Ibid.*

⁸ The Registry notes that in the context of reparations proceedings, the parties are the convicted person (“Defence”) and the victims (represented by the LRVs and the CLR).

⁹ Order of 6 May 2021, para. 7.

¹⁰ Order of 6 May 2021, para. 5(iv) and operative para. 6.

¹¹ Registry, “Registry Progress Report on Mapping and Request for Extension of Time”, 5 July 2021, ICC-02/04-01/15-1863.

¹² LRVs and CLR, “Victims’ Joint Request for extension of time limit to submit their observations on reparation proceedings”, 12 July 2021, ICC-02/04-01/15-1864.

¹³ Trial Chamber IX, “Decision on requests for extension of time”, 19 July 2021, ICC-02/04-01/15-1865.

7. On 9 November 2021, the LRVs requested an additional three-month extension of the time limit to submit their observations on reparations.¹⁴
8. On 18 November 2021, the Chamber, *inter alia*, partially granted the parties, the Registry, and the TFV an extension of the time limit to make their submissions on reparations, exclusively on issues which required further consultations, until 7 February 2022 and ordered them to provide by 6 December 2021 as much information as possible on either some or all of the issues identified by the Chamber in paragraph 5(i) of the Order of 6 May 2021.¹⁵
9. On 6 December 2021, the Registry submitted a report on the mapping exercise (“Mapping Report”) ¹⁶ and its submissions on reparations (“Registry Submissions”) primarily based on the consultations with victims conducted by the Victims Participation and Reparations Section of the Registry (“VPRS”) and the Registry staff of the Country Office in charge of conducting activities related to victims’ participation and reparations.¹⁷

III. Applicable Law

10. The Registry submits the present filing relevant to reparations in light of article 75 of the Rome Statute, rules 16, 94 and 97 of the Rules of Procedure and Evidence and regulations 86(9) and 88 of the Regulations of the Court, regulation 110(2) of the Regulations of the Registry, and pursuant to the Order of 6 May 2021 and the Decision of 18 November 2021.

¹⁴ LRVs, “Victims’ Request for an extension of the time limit to submit their observations on reparation proceedings”, dated 9 November 2021 and notified on 10 November 2021, ICC-02/04-01/15-1890.

¹⁵ Decision of 18 November 2021.

¹⁶ Registry, “Registry’s Mapping Report and Submission on Reparations”, Annex I, 6 December 2021, ICC-02/04-01/15-1919-AnxI.

¹⁷ Registry, “Registry’s Mapping Report and Submission on Reparations”, Annex II, 6 December 2021, ICC-02/04-01/15-1919-AnxII.

IV. Submissions

11. Since its submissions of 6 December 2021, the Registry conducted one mission in Northern Uganda, between 19 and 22 January 2022 (“VPR Mission”), in order to have further consultations on reparations with former child soldiers, victims of sexual and gender based crimes (“SGBV victims”) and children of war¹⁸ (altogether “thematic crimes victims”). Three focus-group discussions with a total of ninety survivors were organized. The groups were composed of 83 women and seven men from different districts in the Acholi sub-region (i.e. Agago, Amuru, Nwoya, Pader, Lamwo, Kitgum and Gulu districts), with a small representation from the Lira district of the Lango sub-region and the Adjumani and Moyo districts of the West-Nile sub-region. The vast majority of the participants were former abductees in the Sinia brigade, with only a small number who were part of the Gilva brigade or the Control Center of the Lord Resistance Army (“LRA”). The majority of the victims met were recruited within the temporal scope of the *Ongwen* case, whilst a small number of survivors were allegedly abducted in the late 1990’s and managed to escape in the early 2000’s, therefore not qualifying as potential beneficiaries of reparations in the present Case. Only the views of victims potentially eligible for reparations are included in the present report. However, it is important to note that the victims of the Situation, whilst understanding that reparations can only be awarded to victims of crimes for which Mr Ongwen was convicted, warned that this will create tension inside the communities in Northern Uganda and inequality amongst victims, which would negatively impact the reconciliation process or could even lead to confrontations inside and between communities. It is therefore, in their opinion, crucial that victims of the Situation are kept informed on a regular basis about the progress of the reparations proceedings in the Ongwen Case and continue to be consulted, in order to prevent tensions during the implementation

¹⁸ This category of direct victims is also referred to in reports and literature as “children born of sexual violence”, “children born of wartime rape”, “children born in captivity” or “children born in the bush.”

phase. Furthermore, they urge the Court to engage in dialogue with the Government of Uganda and with the international community, both of which have in their view a responsibility to provide reparations and support to all victims of the LRA conflict in parallel to the ICC reparations process.

12. The focus-group discussions consisted of two parts: the first part was dedicated to information about the Court and the rights of victims, the current stage of proceedings and the most recent procedural developments in the Case, including the appeal proceedings, as well as information about reparations and the Order of 6 May 2021 and Decision of 18 November 2021. This first part was followed by a question and answer session. The second part of the focus-group discussions was entirely dedicated to consultations on the reparations issues listed in paragraph 5 of the Order of 6 May 2021 and on the impact reparations may have on survivors and their communities.
13. The vast majority of victims indicated that the focus group discussions represented an important opportunity for them to meet with ICC staff, obtain a thorough explanation on the proceedings, have their questions answered and their doubts clarified. This view was also shared by a small number of participants who had the opportunity to watch some screenings of the *Ongwen* trial organized in Gulu town. The victims also welcomed the fact that these discussions allowed them to meet and re-connect with other abductees whom they had not seen since their escape from captivity.
14. The Registry presents below the results of the consultations with the thematic crimes victims met.

a. Identification of victims potentially eligible for reparations

15. Firstly, the thematic crimes victims asked that reparations principles are consistently applied and followed throughout the reparations process and that a victim-centred approach is at the heart of all activities to be conducted. Reparations

are not a form of aid, and they are not humanitarian assistance. It was submitted that victims of this Case have a 'right to reparations'. As such, the entire reparations process must be designed and implemented in a way that positively impacts the life of survivors, the image they have of themselves and their healing process.

16. The survivors consulted emphasised how important it is for them to be able to exercise their right to participate in the current phase of proceedings including by being provided with a forum to share their stories and their views on reparations with the Court and by recounting what they have gone through and how they have and continue to struggle with trauma, disease and poverty. To this end, they believe that the identification and registration before the Court of all victims potentially eligible for reparations is extremely important to ensure that victims' stories will be properly collected and safeguarded.¹⁹
17. The participants asked that they are consulted on the design and implementation of any identification and registration processes. They also expressed a strong interest in supporting the Court, for example as intermediaries, in all initiatives that aim to enable thematic crimes victims become beneficiaries of reparations in the Case. The survivors met argued that victims' associations and the leaders of the victim networks, who are victims themselves, are best placed to assist the Court with the identification and registration of thematic crimes victims.²⁰ The participants added that they have little trust in a number of locally operating NGOs and general local community leaders when it comes to a potential identification of victims and victim groups; it was submitted that this is due to the

¹⁹ The terms 'identification' and 'registration' are used here to capture the participants' wish for a process whereby the existence, harm and needs of potential beneficiaries (be that individually or in a group) are recorded in some form or shape in order to inform potential future reparations directed at them/their communities. No specific administrative process was addressed.

²⁰ The participants specified that thematic crimes victims, especially those who had been abductees in the Sinia brigade, know each other or are in the best position to recognise each other. They share common experiences, they have unique knowledge of dates and locations of attacks and abductions, names of commanders and names used in captivity for abductees; they know the meaning of key words and terminology used in the LRA.

lack of victim-specific information the latter two possess – whereas the aforementioned victim-specific associations and representatives *do* have such information; some participants also mentioned risks of corruption and nepotism.²¹

18. The participants expressed a preference for being registered before the Court in groups, through their victims' associations, and added that individual registration could also be an option for those victims who prefer it. The thematic crimes victims said that, for them, a family-based registration process is not a viable option (and that other group denominators would have to be devised for them), but that other victims, notably those of the attacks on the IDP camps, might prefer it.
19. All survivors met requested that the identification and registration of victims potentially eligible for reparations start without delay. For them, it is paramount that reparations are provided in a timely manner as soon as the Appeals Chamber rules on Mr Ongwen's conviction. They further indicated that it is crucial for them to be the 'owners' of the reparations process, which implies that they should be given an opportunity to express their actual and most pressing needs to inform the types and modalities of reparations to be awarded, before the reparations in the Case are designed and implemented.²²
20. During the discussions, it was also reiterated that many thematic crimes victims have never returned to their original places of residence or have moved away because of the stigma they faced. Victims are therefore scattered all over Northern Uganda, as well as in other neighbouring countries and beyond. It was recommended that Court efforts to reach these victims with reparations measures should start imminently as time and resources will be needed for this exercise.

²¹ It was noted that corruption and nepotism is a risk transcending the relevant individuals and groups mentioned and needs to be tackled by proper auditing and control mechanisms.

²² On the issue of identifying and consulting relevant victim communities potentially eligible for reparations, some of the participants asked the Registry: "how would you know who we are? How would you know what we need? How would you know if the reparations awarded have helped address the harm we suffered?"

b. Types and modalities of reparations

21. The large majority of the survivors consulted expressed their preference for monetary compensation, either individually or in community savings programs. The participants stated that they are best placed to invest any money awarded in order to cover their most pressing needs (*e.g.* buying land, starting small businesses, covering medical costs and school fees for their children).
22. Many participants opposed the idea of collective reparations without any individualisable effects as they considered that this would prevent the ‘real’ victims of the Case to have the array of harms suffered fully addressed. It was also submitted that caution is warranted with the involvement of relevant actors (including NGOs and other associations) in the implementation of (collective) reparations, out of concerns regarding corruption and nepotism. One example provided was that of a school that was opened in Gulu town for children of war; some of the participants reported that when they tried to enrol their children in said school, they were told the school was already full, and after only a few years the school was permanently closed again.
23. Some of the victims consulted said that obtaining property rights over land is their highest priority, as land issues continue to be the most pressing problem for returnees and especially for the children of war.²³ Other participants said they need support for the education of their children,²⁴ whilst mentioning that most former abductees are not seeking to obtain formal or technical education for themselves. The survivors consulted also mentioned the need for reparations measures aimed at recognizing the suffering of the thematic crimes victims, including that of male

²³ As previously reported in the Registry’s Submissions, para. 10, 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 not considered to be a part of the clan or to have fathers with “tainted” LRA identities.

²⁴ It was submitted that this support should not be limited to only one or two years of schooling, but it should cover the studies up to the university levels in order to offer to the beneficiaries the perspective of a real future.

survivors of sexual violence, as well as that of men who are single parents of children of war, and at removing the stigma associated to their condition.

24. The survivors highlighted that reparations proceedings should be formal, transparent and solely focused on repairing the harm suffered by the victims. Other considerations, such as cultural and spiritual local beliefs, should not play a role in determining reparations measures, as they can lead to the exclusion or discrimination against certain categories of victims (i.e. women, children of war, etc.), and could place too much power in the hands of the cultural and spiritual leaders.

c. The role Mr Ongwen could play during the reparations phase

25. During the discussions, Mr Ongwen's potential role in reparations proceedings was addressed. A small number of participants said that an apology from Mr Ongwen for the harms inflicted on the victims subject to his conviction would be beneficial. However, they stressed that the potential apology should not impact the execution of his sentence and that Mr Ongwen has to serve the entirety of his prison sentence.
26. With respect Mr Ongwen's access to any individualised data from potential reparations beneficiaries in the future,²⁵ participants raised concerns as in their understanding the judgment of the Chamber outlines the crimes for which reparations can be sought and that Mr Ongwen has no further role to challenge that.

²⁵ See Defence, "Defence Submissions on Reparations", ICC-02/04-01/15-1917, 6 December 2021, para. 31.

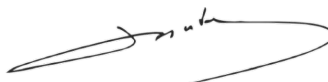
d. Outreach

27. The focus-group discussions highlighted that the majority of the thematic crimes victims met still have very limited knowledge and understanding of how the Court works, the rights of victims before the Court and the Ongwen Case; consequently, they expressed the wish that the Court continues to inform them of the process. Also more broadly, participants asked that more information campaigns and follow-up meetings are organized in order to address rumours and misconceptions and to pave the way for a peaceful and meaningful reparations implementation phase.
28. All victims consulted asked to receive regular feedback on all procedural developments. They also expressed great interest in attending similar focus-group discussions, as opposed to more public settings, ideally every three months, in order to receive information directly from the Court and to keep the Registry informed about their situation and struggles.
29. In light of the foregoing, the Registry submits that consultations with victims should continue in all the locations in Northern Uganda affected by the LRA conflict.²⁶ This would serve to disseminate accurate and complete information to victims and victim communities on one hand, and to refine the mapping results to date through the collection of further information and (statistical) data in the coming months which will in turn assist the TFV in its efforts to award reparations to victims of the Case.

²⁶ From the information received during the focus-group discussions, it was confirmed that thematic crimes victims are spread all over Northern Uganda. A large number of abductions by the Sinia brigade took place in the Acholi sub-region, mainly in the districts of Kitgum and Pader but also in Agago, Nwoya, Lamwo and Gulu districts. The Sinia brigade was also active in the Lango sub-region, notably in the Oyam, Otuke, Alebtong, Lira and Apac districts, and the Teso sub-region - Amuria, Kaberamaido, Kapelebyong, Katakwi and Soroti districts. Abductions were also reportedly carried out in West-Nile sub-region, specifically in the Moyo and Adjumani districts, as well as in the Busia district and other locations in the Karamoja sub-region.

V. Conclusion

30. The above findings should be read in conjunction with the findings presented in the Mapping Report and the Registry Submissions filed on 6 December 2021.
31. The Registry stands ready to assist the Chamber with any further analysis and information, including through further periodic reports on its activities and data collection.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 7 February 2022

At The Hague, the Netherlands