

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-02/04-01/15**

Date: **6 December 2021**

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

Defence Submissions on Reparations

Source: Defence for Dominic Ongwen

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

The Office of the Prosecutor

Karim A.A. Khan, QC, Prosecutor
James Stewart, Deputy Prosecutor
Colin Black

Counsel for the Defence

Krispus Ayena Odongo
Chief Charles Achaleke Taku
Beth Lyons

Legal Representatives of the Victims

Joseph Akwenyu Manoba
Francisco Cox

Common Legal Representative for Victims

Paolina Massidda

The Office of Public Counsel for Victims

Paolina Massidda
Caroline Walter
Orchlon Narantsetseg

The Office of Public Counsel for the Defence

Xavier-Jean Keita

REGISTRY

Registrar

Peter Lewis

Victims and Witnesses Unit

Nigel Verrill

VPRS

Philipp Ambach

I. INTRODUCTION

1. The Appeals Chamber has previously underscored that “[t]he reparation scheme provided for in the Statute is not only one of the Statute’s unique features. It is also a key feature. The success of the Court is, to some extent, linked to the success of its system of reparation.”¹
2. Reparations can assist in promoting reconciliation between the convicted person, the victims of the crimes and the affected communities.²
3. Reparations fulfil two main purposes that are enshrined in the Statute: they oblige those responsible for serious crimes to repair the harm they have caused and enable the Court to ensure that offenders account for their acts.³
4. From the onset it is the Defence submission that before the reparations phase begins, the accused person’s conviction should have been confirmed by the Appeal’s Chamber. Proceeding with the reparation phase during the pendency of an appeal prejudice’s the accused’s rights and raises the victims’ expectations.
5. It is noteworthy that the Court has previously held that nothing in the reparations principles shall prejudice or be inconsistent with the rights of the convicted person to fair and impartial reparation proceedings.⁴

II. PROCEDURAL HISTORY

6. On 4 February 2021, Trial Chamber IX (‘Chamber’) convicted Mr Ongwen of 61 war crimes and crimes against humanity.⁵

¹ Appeals Chamber, *Annex A to Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2* (‘Lubanga Amended Reparations Order’), [ICC-01/04-01/06-3129-AnxA](#), para. 3.

² Trial Chamber I, *Decision establishing the principles and procedures to be applied to reparations*, [ICC-01/04-01/06-2904](#), paras 179 and 193.

³ *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 2; Appeals Chamber, *Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2* (‘Lubanga Judgment on Principles’), [ICC-01/04-01/06-3129](#), para. 65; and Trial Chamber II, *Order for Reparations pursuant to Article 75 of the Statute* (‘Katanga Reparations Order’), [ICC-01/04-01/07-3728-tENG](#), para. 15.

⁴ *Lubanga Amended Reparations Order*, [ICC-01/04-01/06-3129-AnxA](#), para. 49.

⁵ Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf (public redacted version [here](#)).

7. On 6 May 2021, the Chamber sentenced Mr Ongwen to combined joint sentence of twenty-five years.⁶
8. On 6 May 2021, the Chamber issued the *Order for Submissions on Reparations*⁷ in which it, *inter alia*:
 - a. instructed and invited the parties, the Registry, the Trust Fund for Victims ('TFV'), the Office of the Prosecutor ('Prosecutor'), the Republic of Uganda, and persons or organisations authorised to act as *amicus curiae*, to make submissions on a list of issues identified by the Chamber ('submissions on reparations'), by 6 September 2021;⁸ and
 - b. authorised the parties and the TFV to respond to any submissions by 4 October 2021.
9. On 21 May 2021, the Defence filed its Notification of its Intent to Appeal against the whole Trial Judgment.⁹
10. On 28 June 2021, the Defence filed its Notice of Appeal against the sentence.¹⁰
11. On 19 July 2021, the Chamber issued the *Decision on requests for extension of time*,¹¹ *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.
12. On 21 July 2021, the Defence filed its Appeal Brief against the Trial Judgment.¹²

⁶ Trial Chamber IX, *Sentence*, [ICC-02/04-01/15-1819](#).

⁷ Trial Chamber IX, *Order for Submissions on Reparations*, [ICC-02/04-01/15-1820](#).

⁸ Trial Chamber IX, *Order for Submissions on Reparations*, [ICC-02/04-01/15-1820](#), para. 5 (i), (ii) and (iii). The specific issues identified by the Chamber are: (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* (the 'Ntaganda case'); (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; (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.

⁹ Appeals Chamber, *Defence Notification of its Intent to Appeal the Trial Judgment*, [ICC-02/04-01/15-1826](#).

¹⁰ Appeals Chamber, *Defence Notice of Appeal of the Sentencing Decision*, [ICC-02/04-01/15-1862](#).

¹¹ Trial Chamber IX, *Decision on requests for extension of time*, [ICC-02/04-01/15-1865](#).

13. On 26 August 2021, the Defence filed its Appeal Brief against sentence.¹³
14. On 21 October 2021, the Prosecution,¹⁴ Common Legal Representative for Victims¹⁵ and Legal Representatives for Victims¹⁶ filed responses to the *Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021*.
15. On 26 October 2021, the Prosecution,¹⁷ Common Legal Representative for Victims¹⁸ and Legal Representatives for Victims¹⁹ filed their responses to the *Corrected Version of "Defence Document in Support of its Appeal against the Sentencing Decision"*, filed on 26 August 2021.
16. On 9 November 2021, the Legal Representatives of Victims ('LRVs') submitted the *Victims' Request for an extension of the time limit to submit their observations on reparation proceedings* ('LRVs' Request'),²⁰ requesting an additional three-month extension of the time limit for their submissions on reparations.
17. On 18 November 2021, the Chamber issued its decision on LRVs' Request for extension of time, partly granting the Parties and Participants an extension of the time limit to make their submissions on reparations exclusively on issues which require further consultations, as referred to in paragraph 5(i) of the order, until 7 February 2022.²¹ The Chamber however ordered the parties, the Registry, and the TFV to provide as much information as possible on

¹² Appeals Chamber, *Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021*, ICC-02/04-01/15-1866-Conf (public redacted version [here](#)).

¹³ Appeals Chamber, *Corrected Version of "Defence Document in Support of its Appeals against the Sentencing Decision"*, ICC-02/04-01/15-1871-Conf-Corr (public redacted version [here](#)).

¹⁴ Appeals Chamber, *Prosecution Response to "Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021"* (ICC-02/04-01/15-1866-Conf), ICC-02/04-01/15-1882-Conf (public redacted version [here](#)).

¹⁵ Appeals Chamber, *CLRV Observations on the "Defence Appeal Against the Convictions in the Judgment of 4 February 2021"*, ICC-02/04-01/15-1880-Conf (public redacted version [here](#)).

¹⁶ Appeals Chamber, *Victims' Observations on the "Defence Appeal Brief Against the Convictions in the Judgment of 4 February 2021"*, ICC-02/04-01/15-1883-Conf.

¹⁷ Appeals Chamber, *Prosecution response to Sentencing Appeal Brief*, ICC-02/04-01/15-1886-Conf (public redacted version [here](#)).

¹⁸ Appeals Chamber, *CLRV Observations on the "Defence Appeal of the Sentence"*, ICC-02/04-01/15-1885-Conf (public redacted version [here](#)).

¹⁹ Appeals Chamber, *Victims' Observations on the "Defence Document in Support of its Appeal against the Sentencing Decision"*, ICC-02/04-01/15-1887-Conf.

²⁰ Trial Chamber IX, *Victims' Request for an extension of the time limit to submit their observations on reparation proceedings*, [ICC-02/04-01/15-1890](#) ('LRVs' Request').

²¹ Trial Chamber IX, *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](#), para. 10.

either some or all of the issues identified by the Chamber in paragraph 5(i) of the order, by the original deadline of 6 December 2021.²²

18. On 1 December 2021, the Chamber granted the CLRV a page-limit extension for the CLRV's submissions on reparations from 50 pages to 65 pages.²³ The Chamber also granted the Defence an additional 10 pages to respond to the CLRV's submission on reparations.²⁴

III. SUBMISSIONS

A. THE REPARATIONS PHASE SHOULD NOT CONTINUE UNTIL A FINAL JUDGMENT BY THE APPEALS CHAMBER IS TAKEN

i. Proceeding with the reparations phase before Mr Ongwen's appeal against conviction is disposed of is prejudicial to his rights

19. The Defence notes that in two prior cases, reparations orders have been issued by chambers of this Court after the judgment on conviction has become final. The cases in point are the Katanga Reparations Order²⁵ and Al Mahdi Reparations Order.²⁶ The Defence submits that it is only in exceptional cases that the reparations phase should proceed before the accused's conviction has been confirmed on appeal. For example, this was demonstrated in the *Ntaganda* case, where Trial Chamber VI noted that the mandates of two Judges were coming to an end, including that of the of the Presiding Judge.²⁷ As for the *Lubanga* case, the Defence notes that this was the first reparations order, and this aspect was not interrogated by the parties and participants.
20. The Defence submits that the Chamber should only issue the reparations order, at the earliest, after and taking stock of the Appeals Judgments on Mr Ongwen's conviction and sentence – fulfilling all five elements set out in the *Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations"*.²⁸
21. As much as the Defence concurs with the principle that reparations should be appropriate, adequate and prompt, the Defence maintains that the reparations phase should be

²² *Ibid.*

²³ Email from Trial Chamber IX to Parties and Participants, *RE: CLRV Request for extension of pages for submissions on reparations*, received on 1 December 2021 at 16h57 CET.

²⁴ *Ibid.*

²⁵ *Katanga Reparations Order*, [ICC-01/04-01/07-3728-tENG](#);

²⁶ Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#).

²⁷ Trial Chamber VI, *Reparations Order*, [ICC-01/04-02/06-2659](#), para. 5.

²⁸ *Lubanga Judgment on Principles*, [ICC-01/04-01/06-3129](#), para. 32.

implemented without prejudice to the convicted person's right of appeals. This principle militates in favour of expediting, as much as possible, the reparations process but without unduly raising the victims' expectations before Mr Ongwen's conviction and sentence have been affirmed or overturned on appeal.

ii. Proceeding with the reparations phase before Mr Ongwen's appeal is affirmed will unduly raise victims' expectations

22. The Defence submits that proceeding with the reparations proceedings at this moment in time before Mr Ongwen's conviction and the extent of his responsibility have been finally confirmed might unduly raise the expectations of victims.
23. Therefore, considering the ongoing appeals proceedings and the novelty of the issues in the case as already acknowledged by the Appeals Chamber,²⁹ the Defence deems it appropriate to underscore the risks associated with moving too quickly in the reparations process. This is paramount not only for the wellbeing of potential reparations beneficiaries and to avoid raising their expectations prematurely, but also to avoid the expenditure of scarce resources in endeavours, which might reveal to be unnecessary following the upcoming hearing and subsequent judgment of the Appeals Chambers. The situation would even be worse regarding potential new beneficiaries who are not represented by counsel, which is why the Defence submits that the reparations phase should only be commenced in the event Mr Ongwen's conviction is affirmed by the Appeals Chamber.

iii. The Defence has limited resources to have handle the reparations proceedings concurrently with the appeals phase.

24. The Defence is presently fully committed in the appeals process, having to respond and/or reply to, *inter alia*, the CLRV's and LRVs' submissions on the appeals related to the Trial Judgment and the Sentence, and to the Prosecution Response to Mr Ongwen's Appeal Brief

²⁹ Appeals Chamber, *Order inviting expressions of interest as amicus curiae in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence)*, [ICC-02/04-01/15-1884](#), paras 4 and 19.

against the Trial Judgment and Sentence. The Defence must also prepare for the oral arguments scheduled to take place from 14-18 February 2022.³⁰

25. The Defence therefore submits that considering that the resources available to the Defence at this particular stage are barely sufficient to cope with the above undertakings, the Defence anticipates a situation where it might not have the resources necessary to take all necessary measures required to protect the rights of Mr Ongwen in the event the Chamber decides to continue with the reparations proceedings at this material moment in time.
26. Accordingly, the Defence respectfully invites the Chamber to stay the reparations proceedings at this time until the appeals proceedings are completed, considering the limited resources available to the Defence.
27. From the foregoing defence arguments, the Defence respectfully invites the Chamber to stay the reparations proceedings until Mr Ongwen's appeal against conviction is disposed of in order to safeguard his fair trial rights and above all avoid unduly raising the expectations of the victims.

B. SUBMISSIONS ON SPECIFIC ISSUES REQUESTED BY THE CHAMBER

28. Without prejudice to the Defence submissions in the immediate foregoing paragraph for stay of the reparations proceedings pending the conclusion of Mr Ongwen's appeal against his conviction, the Defence makes the following submissions on the issues sought by the Chamber.³¹

*i. 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 Prosecutor v. Ntaganda**

29. The Defence concurs with most of the principles set out in the *Lubanga Judgment on Principles*. However, the Defence takes issue with (i) the procedure set by the Trial Chamber and affirmed later, whereby the number of eligible beneficiaries was estimated on the basis of a sample and documents; and (ii) to a certain extent, the delegation to the TFCV of the decision-making authority on the eligibility of new applicants at the implementation phase of the reparations, without the Defence being involved. The Defence reiterates the aspect that to protect the rights of the convicted person, he must always be consulted.

³⁰ Appeals Chamber, *Order scheduling a hearing before the Appeals Chamber*, [ICC-02/04-01/15-1909](#).

³¹ Trial Chamber IX, *Order for Submissions on Reparations*, [ICC-02/04-01/15-1820](#), para. 5 (i).

30. The Defence contends that participation by new applicant victims for reparations should not in any way undermine the fairness of the proceedings, regardless of the stage of their involvement. Therefore, any new alleged personal harm they suffered as a result of the crimes for which Mr Ongwen has responsibility may constitute fresh allegations which he has the right to defend against, pursuant to Article 67 of the Statute. The Defence submits that it has the right to investigate the allegations set out in the applications for reparations and it should be permitted to introduce evidence and advance submissions in this regard.

ii. Mr Ongwen is himself a victim and is entitled to the privileges accruing to other victims in these reparation proceedings

31. It is trite that in reparation decisions concerning children, the Court should be guided, *inter alia*, by the Convention on the Rights of the Child.³² When dealing with reparations concerning children, the Court must be mindful of the need to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; and armed conflicts.³³
32. The Defence submits that Mr Ongwen is a victim of the crimes he is alleged to have committed. Various international instruments ratified by Uganda offer protection to children from recruitment into armed forces. Having been abducted as a child at the age of 9 years, Mr Ongwen's rights were not protected.
33. Article 4(3) of Additional Protocol II³⁴ to the Geneva Conventions of August 12, 1949 provides that children shall be provided with the care and aid they require, and in particular:
- a. They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
 - b. All appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

³² [Convention on the Rights of the Child](#), adopted and opened for signature, ratification and accession by General Assembly Resolution No. 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49 ('Convention on the Rights of the Child').

³³ *Lubanga Amended Reparations Order*, para. 25.

³⁴ Protocol Additional to the Geneva Conventions of 12 August 1969, and Relating to the Protection of Victims of Non-International Armed Conflicts ([Protocol II](#)), ratified by Uganda on 13/03/1991.

- c. Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;³⁵ and
 - d. The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub paragraph c) and are captured.
34. Articles 6 and 39 of the Convention on the Rights of the Child³⁶ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict³⁷ respectively oblige the government to assist former child soldiers by providing “all appropriate assistance for their physical and psychological recover and social reintegration.”³⁸
35. The Defence submits that if laws of war were meant to protect children from being forcibly recruited into the LRA and forced to engage in hostilities, it is inapposite to suggest that individual liability can then be imposed upon those like Mr Ongwen who were meant to be protected but unfortunately ended up being enslaved by Kony.
36. The Chamber received uncontroverted evidence on how children who were abducted by the LRA and had the fortune of returning home alive were rehabilitated by different reception centres both run by the Government of Uganda and non-governmental humanitarian organisations including but not limited to; GUSCO, World Vision, CARITAS, UNICEF and Rachele. It is therefore the Defence submission that Mr Ongwen should be accorded the same privileges that will accrue to all the other former child soldiers in these reparations proceedings.

iii. 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

37. The Defence submits that the exact number of victims may never be determined given the passage of time and the nature of the crimes committed by the LRA. The situation is exacerbated by the evidence elicited during the trial which revealed that some atrocities were

³⁵ Article 77(2) of the Protocol Additional to the Geneva Conventions of 12 August 1969, and Relating to the Protection of Victims of International Armed Conflicts ([Protocol I](#)) provides for the same protection and was ratified by Uganda on 13/03/1991.

³⁶ *Convention on the Rights of the Child*, ratified by Uganda on 17/8/1989.

³⁷ [Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts](#), ratified by Uganda on 6/5/2002.

³⁸ *Ibid*, Article 6(3).

committed by the Uganda Peoples Defence Forces during the attacks on the four crime sites to wit Pajule, Lukodi, Abok and Odek internally displaced peoples' camps.

iv. Legal and factual issues relevant to the identification of eligible victims

38. Temporal jurisdiction of the case. The Defence submits that only victims who suffered harm arising from the crimes for which Mr Ongwen was convicted during the temporal jurisdiction of the case (*i.e.* between 1 July 2002 and 31 December 2005) should be eligible for reparations in this case.
39. Participating victims already admitted and represented by both the LRVs and CLRVs should be eligible for reparations upon fulfilling the modalities set by the Chamber.
40. For the proper identification of the eligible victims, the Defence invites the Chamber to set parameters regarding the identification documents to be furnished for those eligible, including, for example, national identity cards, passports and/or recommendations from area Local Councils.
41. The Defence would further wish to comment and persuade the Chamber on the aspect of defining an indirect victim in light of the crimes convicted by Mr Ongwen on attacks against the IDP camps, as well as conscription and use of child soldiers. On this point, the Defence notes the principles determined by the Appeals Chamber in the *Luganda Amended Reparations Order* in the context of the *Lubanga* case where the Appeals Chamber clarified that indirect victims include:
 - a. the family members of direct victims,
 - b. anyone who attempted to prevent the commission of one or more of the crimes under consideration,
 - c. individuals who suffered harm when helping or intervening on behalf of direct victims, and
 - d. other persons who suffered personal harm as a result of these offences.³⁹
42. The Defence disagrees with the second category of indirect victims. Rule 85(a) of the Rules of Procedure and Evidence ("Rules") defines 'victims' as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." Rule

³⁹ *Lubanga Amended Reparations Order*, para. 6(b).

85(a) applies to both direct and indirect victims. The harm suffered by victims must be personal, direct or indirect, and caused as a result of the crimes for which Mr Ongwen has been convicted.

43. Accordingly, the Defence submits that the indirect victims who may be granted reparations from Mr Ongwen are limited to:
- a. Direct family members of direct victims;
 - b. Individuals who suffered harm when helping or intervening on behalf of direct victims; and
 - c. Other persons who suffered personal harm as a direct result of these offences.

v. Victims or groups of victims who may require prioritisation in the reparations process

44. The Defence notes that all victims are to be treated fairly and equally.⁴⁰ However, priority may need to be given to certain victims who are in a particularly vulnerable situation or require urgent assistance.⁴¹ As such, the Court may adopt measures in order to guarantee equal, effective, and safe access to reparations for particularly vulnerable victims.⁴²
45. The Defence submits that priority may be given to individuals who require immediate physical and/or psychological medical care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers.

vi. Whether recourse to factual presumptions should be considered

46. The following factual presumptions could be made:
- a. That there are victims of each of the crimes confirmed in the Judgment;
 - b. That to date, more men than women have come forward as former child soldiers and as victims of the attacks;
 - c. That the majority of victims are extremely poor and do not occupy positions of influence within their communities, save some exceptions; and

⁴⁰ Lubanga Amended Reparations Order, para. 12.

⁴¹ Trial Chamber I, *Decision establishing the principles and procedures to be applied to reparations*, [ICC-01/04-01/06-2904](#), para. 200; Lubanga Amended Reparations Order, para. 19; Katanga Reparations Order, para. 310; and Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 140.

⁴² Lubanga Amended Reparations Order, para. 19

- d. Most of the victims who suffered harm for crimes for which Mr Ongwen was convicted for are Acholi and Langi.

vii. 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 individualized components, the appropriate modalities to be included therein, and whether certain modalities can be expeditiously implemented

47. Rule 98(3) of the Rules provides the factors that are relevant for a determination as to whether a collective award is ‘more appropriate’, namely, ‘the number of victims and the scope, forms and modalities of reparations’.⁴³ Pursuant to Rule 97(1) of the Rules, reparations can be individual or collective. These types are not mutually exclusive and can be awarded concurrently.⁴⁴ When it is appropriate to award both types of reparations concurrently, individual and collective reparations should, to the extent possible, aim to complement and reinforce one another.⁴⁵
48. Individual reparations are those where the ensuing benefit is afforded directly to an individual to repair the harm the person suffered as a consequence of the crimes for which the defendant was convicted, conferring upon a victim a benefit to which they are exclusively entitled.⁴⁶ Individual reparations should be awarded in a way that avoids creating or adding tensions and divisions within the relevant communities.⁴⁷
49. Collective reparations refer to their nature (type of goods or services distributed or mode of their distribution) or their recipients (communities or groups).⁴⁸ They differ from individual reparations in that they benefit a group or category of persons who have suffered a shared harm.⁴⁹
50. There are primarily two forms of collective reparations.⁵⁰ The first category of collective reparations (‘community reparations’) is intended to benefit the community as a whole and

⁴³ *Lubanga Judgment on Principles*, para. 148(d) and (e).

⁴⁴ *Lubanga Amended Reparations Order*, para. 33; *Katanga Reparations Order*, paras 256 and 283; Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 45.

⁴⁵ UNSG, Guidance Note, Guidance note of the Secretary-General : reparations for conflict-related sexual violence, [ST/SG\(02\)/R425](#), principle 3, p. 7.

⁴⁶ *Katanga Reparations Order*, para. 271

⁴⁷ *Lubanga Amended Reparations Order*, para. 33.

⁴⁸ *Katanga Reparations Order*, para. 273 (referring to HR Council, Report on Reparation, [A/69/518](#), para. 38).

⁴⁹ *Katanga Reparations Order*, para. 275. See also Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), paras 59 and 67.

⁵⁰ *Katanga Reparations Order*, para 278.

does not specifically address individual members thereof.⁵¹ The second category (‘collective reparations with individualised components’) focuses on the individual members of the group. Although they are collective in nature, they result in individual benefits to respond to the needs and current situation of the individual victims in the group.⁵²

51. The Defence notes that Mr Ongwen was convicted for crimes resulting from the four attacks on internally displaced peoples’ camps, direct and indirect sexual and gender-based crimes as well as conscription and use of child soldiers to participate in hostilities. The Defence therefore maintains that collective reparations with individualised components may be appropriate in the circumstances.
52. The ‘modalities’ of reparations are the specific means identified to address the types of harm subject to reparations.⁵³ Article 75 of the Statute sets out a non-exhaustive list of modalities, including restitution, compensation, and rehabilitation.⁵⁴
53. The Defence notes that by definition, restitution is not possible in the current case.⁵⁵
54. Compensation is a form of economic relief, consisting usually in the award of monetary funds or any other act ordered by the Court, as payment for the damages suffered.⁵⁶ It can pertain to pecuniary and non-pecuniary losses.⁵⁷ It is a substitute remedy provided as a means of redress when there is no way to undo the effects of the violation through other measures. Compensation by itself cannot restore or replace rights that have been violated.⁵⁸ The Defence

⁵¹ *Katanga Reparations Order*, para. 279, indicating that ‘[f]or example, the building of a school or hospital may be of general help to the community [...]; some modalities of collective reparations, such as symbolic reparations in the form of a memorial, provide an inherently collective benefit of sharing memory and may not be conceived in individual terms’.

⁵² *Katanga Reparations Order*, para. 280, indicating that ‘[t]hat could be said of healthcare which is provided to all members of the group but which is specialized and addresses each victim individually’.

⁵³ Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 46.

⁵⁴ Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 46. *See also Katanga Reparations Order*, para. 297.

⁵⁵ Restitution is directed at the restoration of an individual’s life, restoring the victim to the original situation, whenever possible, including a return to one’s family, home, previous employment, providing continuing education, or the returning of lost or stolen property. (*Lubanga Amended Reparations Order*, para. 35; UNGA, Basic Principles on Reparations, UN Doc [A/RES/60/147](#), para. 19; ACtHPR, *Mbiankeu Geneviève v. Cameroon*, Decision, 1 August 2015, Communication No. 389/10, para. 131).

⁵⁶ *Lubanga Amended Reparations Order*, para. 40; Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 47; ACtHPR, [Comparative Study on the Law and Practice of Reparations for Human Rights Violations](#), September 2019 (‘Comparative Study on Reparations’), p. 51.

⁵⁷ European Commission (‘EC’), [Strengthening Victims’ Rights: from Compensation to Reparation](#), March 2019 (‘Report on Reparations’), p. 3; ACtHPR, *Comparative Study on Reparations*, p. 52; IACtHR, *Case of Velásquez Rodríguez v. Honduras. Judgment (Reparations and Costs)*, 21 July 1989, Series C No. 7 (‘Case of Velásquez Rodríguez v. Honduras’), para. 26.

⁵⁸ ACtHPR, *Comparative Study on Reparations*, p. 51; and EC, *Report on Reparations*, p. 3.

notes that compensation in this case can be awarded to victims of both direct and indirect sexual and gender violence crimes.

55. Rehabilitation measures are aimed at addressing the medical and psychosocial conditions of the victims.⁵⁹ It is crucial to provide victims with opportunities for rehabilitation.⁶⁰ Rehabilitation may include, for instance, medical services and healthcare, psychological, psychiatric, and social assistance, as well as any relevant legal and social services.⁶¹ This can be made to the victims of the four IDP camps.

viii. 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

56. The Defence has no estimate on this matter but reserves the right to comment on the estimates given by the Parties and Participants.

ix. 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

57. The Defence has no comment on this matter but reserves the right to comment on the submissions given by the Parties and Participants.

x. Any additional information relevant to reparations

58. Registration of potential new beneficiaries. The Defence submits that the concept of a "victim" under Rule 85 of the Rules should apply to any individual who benefits from reparations, and that in order to receive an award, it is necessary to submit an application form pursuant to Rule 94 of the Rules and Regulation 88 of the Regulations of the Court. It is argued that the victim must have suffered personal harm, whether direct or indirect, that is

⁵⁹ Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 48. See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3, [CAT/C/GC/3](#), 13 December 2012, para. 11; IACtHR, [Annual Report, 2011](#), p. 19; UNGA, Basic Principles on Reparations, UN Doc [A/RES/60/147](#), para. 21; ACtHPR, *Comparative Study on Reparations*, p. 55.

⁶⁰ ACtHPR, *Comparative Study on Reparations*, p. 55.

⁶¹ Trial Chamber VIII, *Reparations Order*, [ICC-01/12-01/15-236](#), para. 48. See also UNGA, Basic Principles on Reparations, UN Doc [A/RES/60/147](#), para. 19; *Lubanga Amended Reparations Order*, para. 42; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3, [CAT/C/GC/3](#), 13 December 2012, para. 11; ACtHPR, *Comparative Study on Reparations*, pp. 56-58, and the references contained therein.

linked to the charges against the accused. The defence also contends that a victim who has already received compensation should not receive a further award, or "double reparations". This is because some victims have benefited from projects set up by NGOs that target certain groups of people, especially former child soldiers.

59. The Defence further submits that the victims who wish to receive reparations should provide evidence of the harm they have suffered, along with a link to the crimes established in the Article 74 Decision. The Defence suggests the Chamber should apply a "balance of probabilities", as opposed to a "*prima facie*", standard of proof. The defence highlights that the Extraordinary Chambers in the Courts of Cambodia requires proof on a balance of probabilities. On the basis that Article 67 of the Statute and the Rules apply to all stages of the proceedings, it is submitted that the Defence should be permitted to cross-examine any witnesses who are called, present evidence and challenge the credibility of the evidence relied on in support of the applications for reparations.

C. Reparations orders should be through the Trust Fund for Victims and not against Mr Ongwen

60. Mr Ongwen was already declared an indigent person and has been receiving legal assistance through the Court's legal aid policy. He has no assets or property that can be used for the purposes of reparations. Therefore, any reparations orders should be through the TFV.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 6th day of December, 2021

At Kampala, Uganda