

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 07/02/2022

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 DOCUMENT

The Government of the Republic of Uganda's Submissions on Reparations

Source: The Government of the Republic of Uganda

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

1. On 4 February 2021, Trial Chamber IX ('Trial Chamber') convicted Mr Ongwen on 62¹ counts of war crimes and crimes against humanity.²
On 6 May 2021, the Trial Chamber sentenced Mr Ongwen to 25 years of imprisonment.³
On the same day, it also issued an order for submissions on reparations ('Order'), by which order it invited; among others; "The Office of the Prosecutor (the 'Prosecutor') and the relevant authorities of the Republic of Uganda to make submissions of up to 20 pages each on the issues relevant to reparation proceedings in the Ongwen case by 6 September 2021".⁴
2. On 19 July 2021, the Trial Chamber extended the time limit for these observations to 6 December 2021 and subsequently to 7 February 2022 for the Government of Uganda's submissions, in the "Decision on the Victims' Request for an extension of the time limit to submit their observations on reparation proceedings."⁵

II. INTRODUCTION

3. For the most part, the Government of Uganda does not dispute the historical background section to the case as contained in the Trial judgement, even though it finds certain nuances, which suggest that "the war in the north had certain political advantages for the Ugandan Government"⁶ fundamentally objectionable. The Government of Uganda refutes the intimation that it could have callously gained from the exorbitant human and economic cost of this war. The Government's aversion of the devastating rebellion and its impact on the people of Uganda can be seen in the numerous efforts that it devoted to bring it to an end, including holding peace talks with the rebels and granting amnesty to returning former rebels. It is therefore sacrilegious to propose that the Government of Uganda could have stood to gain from the suffering of its nationals, the total

¹ While the Trial Chamber, in its 6 May 2021 Order for Submissions on Reparations, refers to 61 counts, the Trial Judgment actually convicted Mr Ongwen on 62 counts of the 70 charges he was indicted for ; see Situation In Uganda; In The Case Of The Prosecutor V. Dominic Ongwen ; ICC-02/04-01/15-1762-Red 04-02-2021 ; pages 1069-1077.

² Trial Judgment, 4 February 2021 ('Trial Judgment'), ICC-02/04-01/15-1762-Red.

³ Sentence, 6 May 2021, ('Sentence Decision'), ICC-02/04-01/15-1819-Red.

⁴ Order for Submissions on Reparations, ICC-02/04-01/15-1820, para. 5.

⁵ 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.

⁶ Trial Judgment; Situation in Uganda in The Case Of The Prosecutor V. Dominic Ongwen; ICC-02/04-01/15-1762-Red 04-02-2021 9/1077, para 9, page 11.

destruction of economic activity in the region, the upset of social equilibrium, the devastation of cultural and family set-ups, during the period that the region was under siege, which extended to three decades and therefore the Government demands that the honourable Trial Chamber corrects the record on this aspect.

4. The Trial Chamber further observed in the historical background of the judgment that; “ this case concerns events which took place in Northern Uganda between 1 July 2002 and 31 December 2005”⁷. The Government of Uganda associates itself with this view, as the Trial Chamber rightly pointed out; that the crimes which Mr. Ongwen was convicted of, cannot, and must not be divorced from the general context of the armed insurgence that the so called “Lord’s Resistance Army” (LRA) unleashed against the Government and people of Uganda, especially in Acholi, Lango and Teso sub regions from the late-eighties until 2005. For example, the attacks on Pajule, Odek, Lukodi and Abok camps resulted in many direct and indirect victims, as part of a deliberate pattern of criminal activity. It therefore becomes difficult to extract the crimes attributed to Ongwen from the common plan of the LRA rebellion. It was against the background of extensive victimisation of innocent civilians that as a last resort, Uganda took the decision to refer the situation to the Court.⁸

The Government of Uganda makes the following observations pursuant to the Order of 06 May 2021.⁹

III. PRINCIPLES OF REPARATIONS:

In response to the question posed by the Trial Chamber whether or not there is;

5. 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 adopted and expanded in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’);”¹⁰
6. The Government of Uganda submits that the principles on reparations established in the jurisprudence of the Court are relevant to the Ongwen case but the specifics of this case

⁷ Trial Judgment; Situation in Uganda in The Case Of The Prosecutor V. Dominic Ongwen; ICC-02/04-01/15-1762-Red 04-02-2021 9/1077, page 9.

⁸ Uganda made the referral on 16 December 2003, being the first States party to refer a case to the Court.

⁹ Order for Submissions on Reparations, ICC-02/04-01/15-1820, para. 5.

¹⁰ See ; Order for Submissions on Reparations, ICC-02/04-01/15-1820, para. 5.

gives room to the Trial Chamber to consider additional principles on reparations in relation to; the definition of victims, the notion of harm, causal link and liability with the aim of accommodating both direct and indirect victims, whose harm was not necessarily directly occasioned by Ongwen or the result of crimes that he was convicted of, but was part of a pattern of criminality of the LRA as a whole.¹¹

DEFINITION OF VICTIMS

7. The Ongwen judgment is ground breaking on several aspects of law, including, the conviction for forced pregnancy and for a pattern of crimes where not all the perpetrators have been apprehended, prosecuted or convicted, and thus offers an opportunity for the Court as a whole, *to develop* additional principles on reparations beyond the examples mentioned in Article 75 (1) of the Statute, which stipulates that; “the Court would develop “principles relating to reparations or in respect of, victims, including restitution, compensation and rehabilitation”.¹² (emphasis added) Concerning the definition of a victim as the current jurisprudence of the Court stands, the Government of Uganda is of the view that the Trial Chamber departs from the requirement for the harm suffered to be “tied” to a conviction, as it considers this requirement to be inconsistent with the definition of victim, as contained in Rule 85 of the Rules. The definition in Rule 85 restricts itself to the harm suffered “arising out of crimes which are within the jurisdiction of the Court” and does not qualify the requirement with the added prerequisite of a conviction.¹³
8. In the Government Uganda’s observation, the Court should act within the framework of Article 21 of the Statute to incorporate established human rights principles relating to the award of reparations in this case the definition of victim; as contained in the United Nations, General Assembly, 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 in defining victims. (Basic Principles).¹⁴

¹¹ The current réparations principles restrict the award of réparations only in regard to crimes for which a guilty verdict has been entered.

¹² Article 75 of the Rome Statute.

¹³ Rule 85 of the Rules of Procedure and Evidence.

¹⁴ See ; UN Doc A/RES/60/147 (‘UN Basic Principles on Reparations of 2005’), 16 December 2005, Principle 9

9. It is not dispute that victims in this case suffered gross violations of international humanitarian law and human rights, as the judgment in the Ongwen cases has established this beyond reasonable doubt, so it follows that reparations are due as a matter of right. Much as Article 75 (2) of the Statute empowers the Trial Chamber to “order directly against *a convicted person* specifying appropriate reparations to, or in respect of victims, including restitution, compensation and rehabilitation”, there is nothing in this provision that precludes the ordering of reparations to be awarded to all victims of the pattern of crimes that the LRA, (which the Chamber has found Ongwen, to be part of), if in the spirit of Rule 85, such crimes are within the jurisdiction of the Court.
10. There are several pertinent factors in the Ongwen case that give credence to drawing upon Principle 9 of the Basic Principles and these include; the fact that not all other perpetrators have been apprehended, prosecuted or convicted, which conditions if not met, still do not take away victimhood.¹⁵

Principle 9, which defines victims provides;

*“ A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. ”*¹⁶

11. The definition in Principles 9 is relevant to the Ongwen case. In its findings relating to violations perpetrated by the LRA establishment, the Trial Chamber recognises the fact that not all those who contributed to inflicting harm to the victims have been apprehended, prosecuted and convicted. The Chamber did not find Ongwen guilty on all counts he was indicted for even though those crimes occasioned “victimhood”. The Chamber also took note of the familial relationships that several victims, with some of whom Ongwen fathered children, have with him. All these factors considered together favour the “definition of victims” in the Ongwen case to include all victims of LRA crimes, and not only those specifically for which Ongwen was convicted.

¹⁵ See ; UN Doc A/RES/60/147 (‘UN Basic Principles on Reparations of 2005’), 16 December 2005, para. 9.

¹⁶ See ; UN Doc A/RES/60/147 (‘UN Basic Principles on Reparations of 2005’), 16 December 2005, para. 9.

12. The strict application of the principles “already established by the consistent jurisprudence of the Court, as recently adopted and expanded in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’)”¹⁷ restricting the award of reparations to only crimes that Ongwen was convicted of and which have a direct causal link to the harm suffered, would leave out many victims of LRA crimes and cause disgruntlement in the community as many victims would not comprehend the intricacies of why some victims and not all are considered eligible recipients of reparations. Reparations are supposed to aid the reconciliation of the affected community and not to divide it, which is what will happen if the current jurisprudence is followed.
13. In this regard, the Government of Uganda submits that in addition to the identifiable direct victims of the crimes that Ongwen was convicted of, (some of whom participated at different stages of the proceedings,) a broad perspective of victimhood arising from the insurgency as a whole (LRA crimes), which are within the jurisdiction of the Court should be applied. This approach would recognise the large geographical area where the victims are located and the large number of victims involved.

INDIRECT VICTIMS

14. It follows that the Trial Chamber should in this broad perspective of defining victimhood include; the Government of Uganda and many other Ugandans who indirectly suffered “harm in intervening to assist victims in distress or to prevent victimisation”.¹⁸ The protracted war that the Ongwen case is an offshoot of, permeated the entire nation; and although Northern and Eastern Uganda bore the brunt of it no Ugandan emerged unscathed. The loss of lives and harm emanating from the Government’s un avoidable diversion of human and financial resources intended for other crucial sectors, such as the educational, health, economic, social and infrastructure sectors, in order to quell the insurrection, must be considered. Not only governmental establishments were affected but cultural, religious establishments and others were harmed and many still suffer from the effects of the three-decade war. Intervention to prevent victimisation or to assist those who had suffered harm took various forms, including the development of specialised Government programmes, interventions of

¹⁷ See ; Order for Submissions on Reparations, ICC-02/04-01/15-1820, para. 5.

¹⁸ See definition of victims, Principle 8 UN Doc A/RES/60/147 (‘UN Basic Principles on Reparations of 2005’), 16 December 2005.

religious, cultural institutions and civil society, all of whom are indirect victims of LRA violations. This interpretation of victimisation to recognise the indirect victims would be consistent with the Lubanga reparation principles, which recognises victims who suffered harm when assisting or intervening to prevent further victimisation.

15. The Government of Uganda however seeks to make a distinction between the Lubanga notion of harm and the indirect victims' principle¹⁹; which still requires a causal link to be made between the harm suffered and the crimes for which there is a conviction. Accordingly the Government of Uganda contends, that the requirement for a conviction and a causal link between the victim and the individual against whom the award is made is incompatible with Principle 9 of the Basic Principles.²⁰ Under this provision, a victim is one, "regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted", making the proof of victimisation the only contingency for awarding reparations. In the present case, the Chamber has proved beyond reasonable doubt that Ongwen was part of the LRA and that alone justifies awards for victimisation arising out of LRA atrocities.
16. Conversely, where the harm suffered directly impacted victims in an individual manner for example in the case of the victims of sexual and gender based crimes or child soldiers, it would be recommended that reparations principles, specific victims, or group of victims as applied in the Lubanga case, would be most appropriate.²¹ For example, the several women who were forceful "married" to Ongwen and forcefully bore him children must be awarded individual reparations. So the should the children born under these circumstances be awarded individual reparations.

¹⁹ Lubanga Judgment on Principles, ICC-01/04-01/06-3129, para. 80.

²⁰ UN Doc A/RES/60/147 ('UN Basic Principles on Reparations of 2005'), 16 December 2005.

²¹ Prosecutor v. Thomas Lubanga Dyilo, 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, 3 March 2015, ICC-01/04-01/06-3129; Annex A, Order for Reparations (amended) ('Lubanga Appeal Judgment Principles'), ICC-01/04-01/06-3129-AnxA, paras 6-52.

LIABILITY

17. The Government of Uganda reiterates the relevance of Principle 9 in considering the link between liability and reparations. In determining the principles to be applied, in this case, the Court should take into consideration the fact that not all LRA Commanders have been apprehended, prosecuted and convicted, and recall that even though Ongwen was convicted on 62 counts, he was not found guilty on all counts. Victimhood cannot be taken away by the mere absence of conviction, nor the failure to apprehend all those responsible for causing harm. This approach would be consistent with Principle 9 cited above.²²
18. The Government of Uganda is not unmindful of Rule 85²³ and the notion of personal harm, causal link and conviction, so far applied and recently reaffirmed in the Ntaganda case.²⁴ Neither is the Government of Uganda oblivious of the defendant's rights; however it considers that the Chamber should adopt the "but-for" standard of causation as to the relationship between the crimes and the harm, with due regard to the specific and distinctive circumstances of this case, (the Ogwen case and LRA relationship) as the Lubanga principles require paying due regard to each case's circumstances.²⁵ This approach should enable the Trial Chamber to depart from the finding in the Lubanga case that affirmed that; " *...the reparations order must not go beyond the crimes for which he or she was convicted,*"²⁶ a stance which in our view is at odds with Principle 9 of the Basic Principles.²⁷ Article 75 (2) of the Statute, which provides-

*"The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation."*²⁸ There is nothing exclusive about the order for reparations being restricted **ONLY** to crimes the individual is convicted of, but the fact that the individual

²² UN Doc A/RES/60/147 ('UN Basic Principles on Reparations of 2005'), 16 December 2005.

²³ Rule 85 of the Rules of Procedure and Evidence.

²⁴ Lubanga Judgment on Principles, ICC-01/04-01/06-3129, para. 184.

²⁵ Lubanga Judgment on Principles, ICC-01/04-01/06-3129, para. 81.

²⁶ Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable'; ICC-01/04-01/06-3466-Red 18-07-2019 1/137 NM A7 A8, para 90.

²⁷ A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or **convicted** and regardless of the familial relationship between the perpetrator and the victim.

²⁸ Article 75(2) of the Statute

is convicted. This gives room for reparations for crimes forming part of the pattern of those crimes that the individual is convicted of, in this case, crimes resulting from the harm the LRA inflicted.

19. Considering Ongwen's relationship with the LRA and the specific circumstances of this case, hinging the award of reparations to conviction would negate the innovation of the reparations regime at the Court and reduce it to a typical criminal court like the ad hoc international criminal tribunals. In any case, the appeals Chamber has previously ruled that "[...] *in principle, the question of whether other individuals may also have contributed to the harm resulting from the crimes for which the person has been convicted is irrelevant to the convicted person's liability to repair that harm. While a reparations order must not exceed the overall cost to repair the harm caused, it is not, per se, inappropriate to hold the person liable for the full amount necessary to repair the harm*".²⁹ There can be no other way of reading this finding than, that Ongwen should be held liable for the full amount necessary to repair the harm that the LRA inflicted, other co-perpetrators being indentified notwithstanding.

20. The Appeals Chamber has been emphatic that the focus should be on the cost to repair the harm, rather than the role (liability) of the convicted person. This principle was reiterated in the Katanga case when it held; "*...nevertheless, the focus in all cases should be the extent of the harm and cost to repair such harm, rather than the **role of the convicted person***".³⁰

21. Moreover, the Government of Uganda avers that the precedent established in the Lubanga appeal judgement is of significant relevance to apportioning liability in this case. This precedent gives the Trial Chamber the discretion to **apportion liability**, depending on the circumstances of the case. For the Ongwen situation, the Trial Chamber should consider the total harm suffered as a result of crimes for which the LRA is culpable and not specifically those attributed to Ongwen. In Lubanga's case, the Appeals Chamber dismissed Lubanga's appeal which was based on the argument that other perpetrators had been identified so he could not be held accountable for crimes that others had been found to be culpable for. Lubanga argued that the Trial Chamber

²⁹ Katanga Judgment on Reparations, para. 178.

³⁰ 6 Katanga Judgment on Reparations, para. 180

erred by holding him accountable for the **totality of harm** caused to victims, in light of the existence of other, identified, co-perpetrators. Although the Appeals Chamber acknowledged that Bosco Ntaganda had been recently convicted of crimes for which Lubanga was also convicted (enlistment, recruitment and use of children under 15 year-old to actively participate in hostilities), it dismissed Lubanga's argument on this point.³¹ For the Ongwen case, it should suffice to establish harm suffered as a result of crimes that the LRA perpetrated, which are within the jurisdiction of the Court, to be eligible for reparations, and not only the 62 counts for which convictions were entered.

MODALITIES OF REPARATIONS

22. The Government of Uganda is of the view that in addition to the forms of reparations listed under Article 75 of the Statute; (restitution, compensation, and rehabilitation) which have been affirmed in the emerging jurisprudence of the Court,³² the Trial Chamber should include satisfaction in the award.³³ In particular, a public apology and an accurate account of the violations should be ordered, as well as memorials to commemorate the impact of the war in Northern and Eastern Uganda should be appropriate.

Gender-sensitive reparations

23. The Government of Uganda is emphatic of on the need to adopt reparations that are gender sensitive. This would be consistent with the United Nations Secretary General's guidance on dealing with sexual and gender balanced violence in conflict situations which provides that; "gender-sensitive reparations [should] take into account pre-existing gender relations and power imbalances to ensure a fair assessment of the harm inflicted upon women and men, [and] equal access to and benefits from reparation programmes for both women and men"³⁴

Transformative, Fair and non-discriminatory Reparations

³¹ Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable, ICC-01/04-01/06-3466-Red ; 18 July 2019, paragraphs 308-09.

³² Lubanga Appeal Judgment Principles, ICC-01/04-01/06-3129, para. 36-38.

³³ UN Doc A/RES/60/147 ('UN Basic Principles on Reparations of 2005'), 16 December 2005, Principle, Principles 21 & 22.

³⁴ See UNITED NATIONS, "Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence", June 2014, para 4-5.

24. The Government of Uganda submits that adopting reparations that are transformative in nature would contribute to restoring a semblance of normality to a region whose social and cultural coherence were severely damaged during the war. All victims should be treated equally with no distinction made on the basis of age, gender or social status. The award should be in accordance with the United Nations guiding principles, which provide; “Reparations should strive to be transformative, including in design, implementation and impact”.³⁵ The Government of Uganda considers the following modalities of the reparations key;

COLLECTIVE vs INDIVIDUAL REPARATIONS

25. The Trial Chamber must by now be familiar with Uganda’s social structure, which is more communal than individualistic. Clans identify families, with all members of the clan considered close family members. The western perspective of a nuclear family is alien to Ugandan culture and accommodating relations who played a role in protecting the victims from harm, or supported them after they had been harmed would be more appropriate. In many situations where individuals who were directly harmed, resulting in death, disability or any other form of physical or psychological impairment, the responsibility of supporting or taking care of surviving elderly parents, orphans and widows fell on members of the extended family; otherwise known as “clan mates”. In the Government of Uganda’s view thus, a reparations approach that recognises the delicate balance between direct harm that individuals suffered and a structure that is Government led but people-centric should be applied in the designing of the reparations. Other than particular cases of victims of sexual and gender based violence, child soldiers and victims of relatives who were murdered, reparation awards should be collective for the benefit of all affected communities, with the ultimate goal of rebuilding the regions. This would be appropriate given the enormity of the number of eligible victims, would be grounded in Rule 98(3) of the Rules, and would take forms that do not necessarily require identifying individual victims.³⁶ The modalities applied in the Lubanga and Ntaganda cases is relevant to the present case.

Sexual Violence”, June 2014, para 4-5.³⁵ See UNITED NATIONS, “Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence”, June 2014, para 4-5.

³⁶ See Rule 98(3) of the Rules of Procedure and Evidence.

REPARATIONS Vs SYMBOLISM

26. In accordance with Principle 15 of the Basic Principles,³⁷ reparations should be adequate, effective and prompt. While the reparations so far ordered before the Court have been calculated to repair the harm suffered by the victims³⁸, the enormity of the victims involved in the cases that have come before the Court, and the indigence status of the convicted persons, it has meant that the actual reparations involving compensation have remained symbolic and far from being adequate or effective. Throughout the period of the insurgency and after the cessation of active combat activities, the Government of Uganda acted in accordance with Principle 16 of the Basic Principles.³⁹ The Government of Uganda recommends that programmes, such as those initiated through the Trust Fund for Victims's (TFV) secondary mandate be adopted in repairing the harm suffered.
27. The Government of Uganda recognises the role and contribution which cultural and religious organisations, civil society, national and international, non-governmental organisations, including the Trust Fund for Victims in providing assistance to the victims of the LRA war over the years. With the exception of specific cases that required medical, psychological or some other intervention, such as reconstructive surgery, most of the assistance, if not all, has been collective in nature and this intervention has succeeded in transforming, rebuilding and rehabilitating the affected communities. The Government of Uganda asserts it's obligation to oversee the reparations programmes as it continues to work with all cooperating partners, and will not under any circumstances abdicate its responsibility to non-governmental institutions, as "The Foundation for Justice and Development Initiatives (FJDI) and the War Victims and Children Networking (WVCN)" have proposed.⁴⁰

MITIGATING CIRCUMSTANCES

28. As has been the case throughout the Trial, it is anticipated that Ongwen will plead mitigating circumstances of his having been abducted as a child and recruited in the

³⁷ UN Doc A/RES/60/147 ('UN Basic Principles on Reparations of 2005'), 16 December 2005, Principle, 15.

³⁸ The Trial Chamber in the Lubanga case awarded réparations of \$10,000,000 but as Lubanga was indigent,

³⁹ UN Doc A/RES/60/147 ('UN Basic Principles on Reparations of 2005'), 16 December 2005, Principle 16.

⁴⁰ See Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute and rule 103 of the Rules, para 22 (d).

rebel movement involuntarily. The Government of Uganda maintains that the historical background of his inscription in the rebel movement is regrettable but reparations are not punishment but intended to repair the harm that victims suffered as the Appeals Chamber has consistently held. “...the primary consideration is the extent of the harm and cost it takes to repair that harm. Criteria such as the gravity of the crimes or mitigating factors such as characteristics personal to the convicted person are not relevant to this question. The goal of reparations is not to punish the person but indeed to repair the harm caused to others”.⁴¹ It is therefore important that, as already submitted, reparations are not tied to conviction but to the harm suffered both individually and collective.

SUSTAINABLE REPARATIONS

29. The Government of Uganda recommends that reparations adopted should not be mere symbolic handouts of temporary and token relief aid but should include an element of sustainability. Programmes that should equip the victims to transform their lives and make up for the lost decades should be considered.

30. 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

As explained above, the war permeated the entire Northern and part of Eastern Region and any attempts to lift out a few individuals as direct victims is only likely to stir up controversy and pit victims against each other. For this reason, the Government of Uganda would recommend using the current statistics which places the total population in the victim region at 1,470,554 for the Acholi Region, 2,362,569 for the Teso Region and 2,131,495⁴² for the Lango Region as of 2014.

31. c. any legal and factual issues relevant to the identification of eligible victims;

Disruption of services and impact of providing documentary evidence: The Government of Uganda informs the chamber that the displacement that resulted from the insurgency made it difficult to continue the registration of births, marriages and deaths, and naturally the issuance of legal documents to attest to those three cycles of life. It would not be uncommon to find that most victims would not have birth, marriage

⁴¹ Uganda Bureau of Statistics 2016, *The National Population and Housing Census 2014 – Main Report*, Kampala, Uganda

⁴² Ntaganda Reparations Order, ICC-01/04-02/06-2659

or death certificates. Additionally, until August 2014, Uganda did not issue national identification cards and only men who were taxable would have had some form of recognised tax identification cards as of 2001. Many victims may therefore not be able to provide any formal documentary evidence to prove identification. Furthermore, most deaths in Uganda are not registered, except for the few deaths that occur in hospitals, so death certificates as proof of death are not available in many cases. Letters from Local Council Chairpersons, baptism or confirmation certificates may serve as alternative proof of identification.

32. d. any victims or groups of victims who may require prioritisation in the reparations process

Although the war affected the entire Northern region as a whole, women, girls and boys were brutally targeted. The Government of Uganda recommends paying particular attention to victims of sexual and gender based violence, many of whom were left battling sexually transmitted infections such as HIV and hepatitis. Special attention should be made to former female LRA abductees and the children born in captivity, termed “bush children”. These are children that were born as a result of repetitive rapes and the mothers would most of the time not even know who the fathers are. The mothers require medical and psychological treatment to deal with the trauma of the suffering they have undergone and the stigma of being bush wives. These mothers require assistance to fend for their families. The men who were forcefully recruited in the rebel group also require priority, as they are social misfits who committed serious crimes against many people, including members of their own families. Lastly, in Uganda, we do not have a well developed social security system for later years but the elderly rely on their children and grand-children for later days care. Elderly members of the community whose children were murdered during the war should be prioritised.

33. f. whether recourse to factual presumptions should be considered;

The Government of Uganda submits that the Chamber should, adopt a similar approach as was applied in the Ntaganda case, whereby; “based on Chamber’s findings regarding the suffering experienced by close family members of direct victims of murder, and those who lost their home or material assets with significant impact in their lives, did not consider that it is necessary to scrutinise the specific psychological harm alleged by those victims...but presumed psychological harm for (i) victims who lost their home or material assets with a significant effect on their daily life; and (ii) indirect victims who

are close family members of direct victims of murder ...”.⁴³ From the historical background of the Trial judgment, it is clear that the Chamber should be able to presume certain facts in relation to the harm suffered, based on the evidence admitted during the trial and findings made in the judgment.

34. Examples of factual presumptions include; **(i) Prevalence of sexual and gender based crimes.** One of the characteristics of the harm suffered as a result of the crimes that Ongwen was convicted of are the various forms of sexual and gender based crimes. In determining the reparations to be awarded to the many victims, who are spread over a large region, the Chamber should bear in mind the impact of these crimes on the victims as outlined in the United Nations’ Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence “impact of conflict-related sexual violence, compounded by the stigma attached to it, [which] often prevents victims from seeking or obtaining redress, including for fear of being ostracised by families and communities as a result of disclosing the facts, or of being further victimised by insensitive authorities or institutions”.⁴⁴

35. (ii) **The difficulty in obtaining evidence and legal documents:** These are necessary to prove the birth, marriage or death of family members, and have implications on determining eligibility to receive reparations; As explained above, formal identification documents covering the period of the conflict is missing for most victims.

(iii) **the social structure of family,** which includes extended family members.

(iv) **Protracted nature of the war and victimisation:** This conflict went on for three decades, resulting in psychological harm suffered by children who were abducted and ended up losing three decades of their lives with no education, gender and sexual based violence towards the young women who were abducted and had children during captivity, the death of individuals who were abducted during the conflict and have not been heard from.

36. **g. 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;**

⁴³ Ntaganda Reparations Order, ICC-01/04-02/06-2659, paragraphs 145-147

⁴⁴ UNITED NATIONS, “Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence”, June 2014.

37. Without prejudice to other post conflict reconstruction measures implemented by Government of Uganda in the Northern and Eastern Regions, the cost of government's economic recovery, resettlement, rehabilitation etc interventions under the PRDP Programme alone is estimated at USD: 606,000,000 (United States Dollars: Six Hundred and Six Million) and the DINU Budget is also estimated at Euro : 25, 852,174 €.The Court may be guided by the budgets of the various programmes that have occurred in Uganda.

38. h. 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

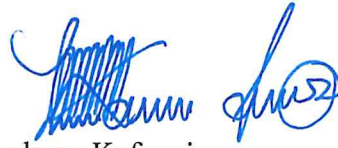
39. The Government of Uganda informs the Court that we currently do not have, in our judicial system, a victims' programme through which reparations can be paid, so no formal reparations have been awarded to the victims of the LRA war. However, the Government of Uganda has endeavoured to establish national programmes for rebuilding the region and has also provided assistance to rehabilitate the victims, as the majority of perpetrators liable for the harm suffered had not been apprehended and the few who were apprehended are either still on trial (Kwoleyo) or were unable or unwilling to contribute to repairing the harm that they had cause. The programmes included;

- (i) The Peace Recovery and Development Plan (PRDP), which was designed to provide a Government-led and harmonised approach to recovery efforts in Northern Uganda, relative to the ad hoc provision of support during the years of insurgency, while also addressing the drivers and consequences of conflict. The PRDP provides a framework against which all development actors, government and non-government, are expected to align their interventions in the Northern Region. The Peace, Recovery and Development Plan (PRDP) was launched and started in October 2007 and implemented under two phases PRDP- 1 in the FY 2009/ 2010 – FY 2011/ 2012, PRDP-2 FY 2012/ 2013 – FY 2014/ 2015 and PRDP-3 was implemented from July 2015- June 2020. The four core objectives of PRDP are:

- (a) consolidation of state authority;
- (b) rebuilding and empowering communities ;
- (c) revitalization of the northern economy; and
- (d) peace building and reconciliation.

- (ii) Cattle Restocking Program, the Government of Uganda implemented a cattle restocking programme under the Peace Recovery and Development Plan (PRDP). The initiative was coordinated by the Office of the Prime Minister (OPM) and was intended to help hundreds of vulnerable, low income and poverty stricken households to enjoy better livelihood. The programme was necessary following the destocking of livestock as resulting from civil unrest and cattle rustling. The programme's objectives have been to-
- (a) increase the level of agricultural productivity of poor households;
 - (b) meet income and asset needs of the poorest of the poor ; and
 - (c) improve nutritional and food security of poor rural households.
- (iii) Compensation for the war debt claimants. The government has adopted a direct approach in compensating the war debt claimants and as of September, 2021 the Government had verified a total of 16,946 claimants in Acholi Region in Northern Uganda from the Districts of Gulu, Omoro, Agago, Nwoya Kitgum, Amuru and Lamwo. Some of these have received compensation for the livestock lost during the times insurgency in the region occasioned by armed groups such as, the Lord's Resistance Army. After numerous consultations and valuation the compensation amounts per head of cattle lost have since been revised from UGX: 600,000/= (170\$) to UGX: 1,000, 000/= (300\$).
- (iv) Northern Uganda Social Action Fund (NUSAF). The Northern Uganda Social Action Fund was an affirmative action framework to Northern Uganda implemented by Government of Uganda through Office of the Prime Minister. The Programmes of NUSAF 1, 2 and 3 were designed for the social-economic recovery of the Northern and Eastern Regions of Uganda that were affected by actions of the Lord's Resistance Army during the armed conflict. The central project development objective for the projects was to provide effective income support to and build the resilience of poor and vulnerable households in Northern and Eastern Uganda. The collective approach was also adopted by the government of Uganda in implementing NUSAF programmes. The NUSAF Programmes were implemented between 2003 and March 2021.

- (v) Development Initiative for Northern Uganda (DINU), is a Government of Uganda programme supported by the European Union and supervised by Office of the Prime Minister which started in December 2017 – June, 2022. DINU was designed to consolidate stability in Northern Uganda, eradicate poverty and under nutrition and strengthen the foundation for sustainable and inclusive socio-economic development. Government of Uganda partnered with the United Nations Capital Development Fund (UNCDF) and European Union for the implementation the DINU components. It is funded under the 11th European Development Fund (EDF) with a budget of around €26 million, this flagship programme is designed with a collective approach to consolidate stability in Northern Uganda, eradicate poverty and under-nutrition and strengthen the foundations for sustainable and inclusive socio-economic development. The programme is benefiting approximately thirty three (33) districts with a total population of over seven (7) million people. The objective of the programme is to reduce the development gap between Northern Uganda and the rest of the country by focusing on three areas Nutrition and Food Security, Road Infrastructure and Good Governance.
- (vi) Northern Uganda Reconstruction Project (NURP). The 1992-1997 NURP was a regionally targeted, multi-sectoral project covering ten Northern Uganda Districts. It was intended to address the imbalance in recovery assistance to the Northern districts recognized by the Government as “disadvantaged from the beginning”. World Bank approved a credit of US\$71.2 million from May 5th 1992 to 30th September 1998. Co-financing was provided by the Government of the Netherlands (US\$6.5 million) and DANIDA (US\$2.1 million). Counterpart funding by Government of Uganda was US\$15.9 million.
- (vii) Further, the President of Uganda invited an international organisation (Dutch based) that specialises in reconstructive surgery called “Interplast”, who carried out reconstructive surgery on many victims who had been maimed, repairing the lips and ears that had been chopped off by LRA rebels, provided orthopaedic equipment and constructed a prosthetic limb making factory in Gulu District Northern Uganda.



Jackson Kafuuzi
Deputy Attorney General;

On behalf of The Government of the Republic of Uganda

Dated this 07th day of February, 2022

At Kampala, Uganda