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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

**Victims' Additional Submissions on the Issues Identified by the Trial Chamber
Pursuant to the Forthcoming Order on Reparations, with Confidential *ex parte*
annexes A, B, C and D available to the Registry and Chamber Only**

Source: Legal Representatives of Victims

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

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I. INTRODUCTION

1. The Legal Representatives for Victims (“LRVs”) hereby submit their submissions pursuant to the invitation to make additional submissions by Trial Chamber IX¹ (hereinafter referred to as the Chamber) on identified issues relating to the forthcoming Reparations Order.
2. The LRVs also submits with the present filing annexes which are confidential *ex parte* Registry and Chamber only.
3. The Chamber invited the parties and participants to make additional submissions on the following issues;
 - a) the estimated total number of potential beneficiaries of reparations in the case and the methodology used to make such calculations; and
 - b) issues related to the transgenerational harm, in particular: (i) the scientific basis for the concept of transgenerational harm; (ii) the evidence needed to establish it; (iii) what the evidentiary requirements are for an applicant to prove this type of harm; (iv) the need, if any, for a psychological examination of applicants and parents; (v) the need, if any, to exercise caution in assessing applications based on transgenerational harm; and (vi) whether Mr Ongwen is liable to repair such harm in the specific context of the case.

II. CLASSIFICATION

4. The LRVs have classified annexes A, B, C and D to the present filing as confidential, *ex parte* pursuant to regulations 23 *bis* (1) of the Regulations of the Court, on the basis that they contain identification and contact information on potential beneficiaries including information related to some of the victims participating in the case.

III. PROCEDURAL HISTORY

5. On 12 September 2022, in the case of The Prosecutor v. Bosco Ntaganda (the ‘Ntaganda case’), the Appeals Chamber issued a Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”

¹ Prosecutor vs Dominic Ongwen, *Decision on the Registry Additional information on Victims*, ICC-02/04-01/15-2024, 16 December 2024, para 31

(the ‘Ntaganda Appeals Judgment’).² The Ntaganda Appeals Judgment remanded the matter to Trial Chamber II, as it partially reversed the Reparations Order to the extent that Trial Chamber VI failed to, *inter alia*, (i) ‘make any appropriate determination in relation to the number of potentially eligible or actual victims of the award’; (ii) ‘assess and rule upon victims’ applications for reparations’; and (iii) ‘provide reasons in relation to the concept of transgenerational harm and the evidentiary guidance to establish such harm’.³

6. On 27 September 2022, the Office of the Public Counsel for Victims (‘OPCV’) and the Legal Representatives of Victims (‘LRVs’) submitted a Joint Request in the present case seeking leave to submit supplementary observations on several issues that would arise from the Ntaganda Appeals Judgment (‘Joint Request’).⁴
7. On 7 October 2022, the Defence submitted its response to the Joint Request (‘Response’),⁵ requesting the Chamber to reject it or, should the Chamber decide to entertain further submissions, be granted the right to respond.⁶
8. On 25 October 2022, in the Ntaganda case, Trial Chamber II issued an Order⁷ informing that it had decided to implement the Ntaganda Appeals Judgment by, *inter alia*, (i) assessing and ruling upon a limited but representative sample of victims’ dossiers of a) all victims that had been found eligible to benefit from the Initial Draft Implementation Plan by the Trust Fund for Victims (‘TFV’) and b) a randomly selected group of individuals amounting to 5% of the total universe of victims,⁸ initially divided between victims of the attacks and victims of crimes

² Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Ntaganda Appeals Judgment’), 12 September 2022, ICC-01/04-02/06-2782.

³ Ntaganda Appeals Judgment, ICC-01/04-02/06-2782, p. 11.

⁴ Joint Request on behalf of Victims for Leave to Submit Supplementary Observations on Reparations (‘Joint Request’), 27 September 2022, ICC-02/04-01/15-2011.

⁵ Defence Response to the Joint Request of the Legal Representatives (‘Defence Response’), 7 October 2022, ICC-02/04-01/15-2013.

⁶ Defence Response, ICC-02/04-01/15-2013, para. 20.

⁷ Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Ntaganda Order’), 25 October 2022, ICC-01/04-02/06-2786.

⁸ The total universe of victims in the Ntaganda case was composed of (i) all victims who participated in the trial proceedings, including those found not to be eligible by the Registry, but excluding the individuals who also qualify as victims in the Lubanga case and all 69 victims already found eligible for the IDIP purposes, as the later will be necessarily assessed and not randomly selected; and (ii) all non-participating victims who had submitted long forms to the Registry within the context of the mapping exercise. See Ntaganda Order, ICC-01/04-02/06-2786, para. 26, footnote 67.

against child soldiers;⁹ and (ii) requesting submission from the parties and participants, including the Victims Participation and Reparations Section ('VPRS') and the TFV, on issues related to, inter alia, transgenerational harm.¹⁰

9. On 16 November 2022, the Chamber informed the parties, participants, and the Registry that it is considering to proceed in the present case in a similar fashion as the way Trial Chamber II is proceeding in the Ntaganda case.¹¹ To this end, it ordered the Registry, through the VPRS, to provide information regarding: a) the total number of applications for participation and/or reparations received in the case; and b) the total representation, within the applications received, regarding gender, age, and the main groups of the victims of the case, namely: (i) victims of the attacks at or near the IDP camps of Pajule, Odek, Lukodi, and Abok; (ii) victims of sexual and gender-based crimes; and (iii) victims of the crimes of conscription and use of child soldiers.¹²
10. On 22 November 2022, the Registry submitted the requested information on victims' applications in the case file ('Additional Information').¹³
11. On 16 December 2022, the Chamber issued its decision on the Registry Additional Information on Victims¹⁴ and invited the LRVs, OPCV, Defence, OTP, Registry and TFV to make additional submissions within 60 days from the notification of the decision on identified issues in its decision.¹⁵

IV. SUBMISSIONS

a) The Estimated Total Number of Potential Beneficiaries of Reparations in the Case and the Methodology used to make such Calculations:

i. Residents of Former IDP Camps

⁹ Ntaganda Order, ICC-01/04-02/06-2786, para. 34.

¹⁰ Ntaganda Order, ICC-01/04-02/06-2786, paras 39-40.

¹¹ E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01.

¹² E-mail from Trial Chamber IX Communications, 16 November 2022, at 15:01.

¹³ Registry Additional Information on Victims ('Registry Additional Information'), 21 November 2022 (notified on 22 November 2022), ICC-02/04-01/15-2019.

¹⁴ Decision on the Registry Additional Information on Victims, 16 December 2022, ICC-02/04-01/15-2024.

¹⁵ ICC-02/04-01/15-2024, para. 31

12. The LRVs recall that they represent victims with status before the Court from the three charged locations of Abok, Lukodi and Odek.
13. The LRVs submit that from their interactions and engagements with intermediaries located in the areas of the former IDP camps of Abok, Lukodi and Odek, they asked the intermediaries to recreate lists of individuals and their household members who lived in the respective camps at the time they were attacked by the LRA.
14. The Intermediaries were asked to recreate these lists by consulting with the former camp leaders and or officials as well as any records available including any lists previously used by the World Food Program for its food distribution in the IDP camps. As a result of this exercise, the lists generated of potentially eligible beneficiaries for reparations in the case have been processed by the LRVs from raw data to excel sheets. The potentially eligible beneficiaries are all individuals who lived in the respective IDP camps at the time of the attacks . A copy of the recreated list for each IDP Camp is attached hereto marked Confidential *ex parte* **Annex A- Abok; Annex B- Lukodi** and **Annex C- Odek**. The annexes are submitted “Confidential *Exparte*.”
15. The LRVs submit that, based on the data retrieved in the process of recreating the IDP camp lists, the estimated numbers of the potentially eligible beneficiaries for reparations identified by the LRVs, and excluding the participating victims identified that are represented by the LRVs, are as follows:

ITEM	IDP CAMP LOCATION	POTENTIALLY ELIGIBLE BENEFICIARIES (APPROX.)
01	Abok	10, 347
02	Lukodi	2012
03	Odek	1972

16. The LRVs would like to emphasize that the lists, while comprehensive, are not conclusive and some further improvement on the data may be needed to provide more concrete estimates of the potential beneficiaries that are the victims of the IDP camp attacks in Abok, Lukodi and Odek.

ii. Victims of Thematic Crimes

17. The LRVs further recall that Mr. Dominic Ongwen was charged¹⁶ and convicted for the thematic crimes of sexual and gender based crimes and conscripting and use in hostilities of children under the age of 15¹⁷ within the charged period of 1st July 2002 and 31st December 2005.
18. The LRVs submit that in his testimony for the Prosecution, witness P-0422, Professor Tim Allen, acknowledged that it was very difficult to estimate the number of people abducted from northern Uganda but that the numbers were in their thousands he suggested.¹⁸ The witness further commented that the number of 66,000 given by researchers Christopher Blattman and Jeannie Annan of abducted people was a fair and accurate number.¹⁹
19. In its report²⁰ on the mapping exercise, the Registry also noted that amongst the interlocutors engaged, it was not in a position to generate any reliable numbers of potentially eligible beneficiaries for reparations arising from the thematic crimes²¹ but recommended that it and the LRVs be allowed to continue to generate more information in this regard.²²
20. In a report to the Parliament of the Republic of Uganda on the performance of the Amnesty Commission from 2002 to 2008²³, it was noted that as of 16th April 2010 some 12,772 former LRA fighters had been demobilised. The LRVs note that this number represents those that went through the amnesty process alone. Many other abducted individuals did not go through the formal reporting and demobilisation processes such as witness V-0002²⁴ moreover it is also impossible to assess how many of these would have been under the command of the Mr. Dominic Ongwen during the charged period.
21. Through engagements with participating victims, the LRVs have documented some 327 individuals potentially eligible for reparations as victims of thematic

¹⁶ Trial Judgment, ICC-02/04-01/15-1762-Conf 04-02-2021, para. 33.

¹⁷ ICC-02/04-01/15-1762-Conf, pg 1068-1077.

¹⁸ ICC-02/04-01/15-T-28-ENG ET WT 16-01-2017, pg 60.

¹⁹ ICC-02/04-01/15-T-28-ENG, pg 62.

²⁰ ICC-02/04-01/15-1919-AnxI 06-12-2021

²¹ ICC-02/04-01/15-1919-AnxI, para. 49-54.

²² ICC-02/04-01/15-1919-AnxI, para. 55.

²³ Office of the Clerk to Parliament, "Report of the Standing Committee on Commissions, Statutory Authorities and State Enterprises on the Performance of the Amnesty Commission from 2002-2008, March 2010, pg 5. <https://www.parliament.go.ug/cmris/browser?id=14006fa6-4346-4714-af7c-073398a045bf%3B1.0>

²⁴ ICC-02/04-01/15-T-171-Red-ENG WT 01-05-2018.

crimes. These individuals are known in person by some of the participating victims represented by the LRVs. The LRVs submit to the Chamber this list of individuals as Confidential *ex parte* **Annex – D – Potential Thematic Crimes Victims**.

22. Taking the above into consideration and mindful of the total estimates offered by the Registry in its mapping report, the LRVs submit that the Chamber has no real and practical approximate estimate number of victims of thematic crimes to inform its deliberation of the appropriate reparations for such victims.
23. The LRVs are thus inclined to request authorisation to generate information on the group of victims falling under the thematic crimes in lieu of a deliberate mapping exercise which would be the ideal course of action.

b) Issues Related to the Transgenerational Harm, in Particular:

(i) *The Scientific Basis for the Concept of Transgenerational Harm;*

24. Studies have shown that the scientific basis for transgenerational harm derives from the interaction between phenotypic variation in individuals, the environment and genetic variations to create an epigenetic state that persists across generations. In one such study it has been stated that;

Aristotle, Lamarck, Darwin and many others thought that an important way to transmit phenotypes from one generation to the next involves inheritance of characteristics that are acquired with environmental exposures and life experiences [1,16,17]. This controversial proposal fell out of favor after a series of papers successfully argued for 'hard' (Mendelian) inheritance rather than 'soft' (epigenetic) inheritance [18–20]. However, increasing evidence now shows that phenotypic variation can sometimes occur when environmental factors and genetic variants in previous generations create an epigenetic state that persists across generations in individuals who are not directly exposed to that environment or who do not inherit the original genetic variant [21–26]. In some cases, environmental exposures lead to heritable epigenetic changes, a phenomenon that we term 'transgenerational environmental effects'. In other cases, the original genetic variant is sufficient to initiate epigenetic inheritance (transgenerational genetic effects). In addition, environmental effects can lead to heritable epigenetic changes only in genetically predisposed individuals (trans-generational gene–environment interactions). Similarly, interactions can occur between genetically

determined epigenetic states in parents and conventional genetic variants in offspring (transgenerational epistasis).²⁵

25. A related study notes that *Many exposures during development are mediated by maternal phenotype and reflect stresses to which mothers were originally exposed²⁶. According to the authors, exposure to conflict may affect subsequent generations. The authors of this study submit that;*

Recent work has emphasized that maternal physiology and behavior can buffer their offspring against ecological stresses, but this is only partial [15], such that exposure to conflict in one generation may potentially propagate adverse effects to subsequent generations. Epigenetic modifications to DNA expression have emerged as key biological mechanisms contributing to such intergenerational transmission, although direct transmission of epigenetic marks themselves appears rare and the primary impact of maternal phenotype is its influence on de novo marks in the offspring [16,17].²⁷

26. The LRVs submit that in yet another study it is argued that whilst there is no exposures widely accepted to cause transgenerational epigenetic effects in humans, there is none the less some evidence of epigenetic effects observed in human beings.²⁸ The authors of this study trace transgenerational epigenetic inheritance to evidence of DNA methylation.²⁹

27. According to this school of thought, transgenerational epigenetic inheritance is strongly linked to intergenerational equity.³⁰ The authors of this study argue that;

The most fascinating issue in transgenerational epigenetic inheritance is intergenerational equity, defined as "the inherent relationship that each generation has to other generations, past and future, in using the common patrimony of natural and cultural resources of our planet". Each generation is considered a custodian of the planet for future generations, and each generation is

²⁵ Vicki R Nelson and Joseph H. Nadeau, "Transgenerational Genetic Effects", Epigenomics. 2010 December; 2(6):797–806.doi:10.2217/epi.10.57. available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3720237/pdf/nihms385215.pdf>

²⁶ Devakumar *et al*, The intergenerational effects of war on the health of children, BMC Medicine 2014, 12:57. <http://www.biomedcentral.com/1741-7015/12/57>

²⁷Devakumar *et al*, *Ibid*, pg 2.

²⁸Mark A. Rothstein, Heather L. Harrel and Gary E. Merchant, "Transgenerational epigenetics and environmental justice", Environmental Epigenetics, 2017, Vol 3, No. 3, pg 1. [Transgenerational epigenetics and environmental justice | Environmental Epigenetics | Oxford Academic \(oup.com\)](https://academic.oup.com/epigenetics/article/3/3/1/2777777)

²⁹ Mark A. Rothstein *et al*, *ibid* pg 2.

³⁰ Mark A. Rothstein *et al*, *ibid*, pg 7.

charged with leaving the planet in no worse condition than when it was received. According to Rawls, any generation's expectations and responsibilities should be evaluated by using a "veil of ignorance" as to its actual place in the sequence of generations. Intergenerational equity has been applied to several difficult environmental issues, such as the disposal of nuclear waste, extinction of species of plants and animals, climate change, overpopulation, and destruction of natural resources [1]. It has been asserted that if humankind has a responsibility, among other things, to refrain from activities that endanger future generations of wildlife, then the responsibility also extends to environmental harms that damage the genomes and epigenomes of future generations of humans. In essence, current exposures would cause epigenetic harms, with the result that adverse health effects would be inherited by future generations through transgenerational epigenetics.

In yet another related study, it has been suggested that whilst genetic traits has been the usual process to explain transgenerational harm, new research points to the transference of disorders from one generation to another by reason of how the human body responds to environmental factors. The author of this study states that;

Epigenetics is the study of gene regulation and although it has not replaced the importance of the study of genetics, which reached cult status with the mapping of the human genome in 2003, in recent years it has emerged as a significant area of scientific focus. Epigenetics places an emphasis on gene interactions with the environment, among other things, and the way these interactions cause some genes to turn off and others to turn on. This has been identified through a number of mechanisms including the study of DNA methylation, an epigenetic mechanism that influences whether a gene is switched on or off. Importantly for this discussion, the DNA methylation that inhibits or propels gene processes may be passed on from one generation to the next. Fox Keller describes this as "a shift in focus away from the basic constituents of living cells (e.g., DNA, RNA, protein, metabolites, etc.) and toward the basic processes and activities in which these constituents are involved." The significant element of this research, however, is that the transference of "disorders" from one generation to the next, rather than being determined by genetic traits, can be traced instead to the way the body responds to environmental factors where the "environment" is construed broadly as capturing not just the material world but the psychosocial as well. The impact of this discovery has encouraged a dialogue between scholars in the fields of law,

anthropology, sociology, and science precisely because the object of study is what Grear has called “bio- and sociomateriality...”³¹

(ii) The Evidence Needed to Establish it:

28. The evidence needed to establish transgenerational harm it is submitted is located in the means of scientific processes within the human body.³² The said scientific processes however must be placed within specific contexts including environmental exposure and genetically based physiological stresses. They assert thus;

Disease, dysfunction and other forms of phenotypic variation are clues to normal biological processes. But what is the relevance of transmitting epigenetic information across generations under normal conditions? Perhaps the basis involves short-term adaptive responses to environmental exposures and genetically based physiological stresses. During the lifetime of an individual, environmental exposures lead to homeostatic responses based on standard physiological principles. These responses, which can include changes in gene expression, can then revert to the normal state after the environmental stress has passed. Similarly, long-term environmental changes can lead to evolutionary adaptations based on changes in DNA sequence. However, during the intermediate term, over several generations, perhaps organisms have evolved epigenetic mechanisms to transmit adaptive gene expression profiles from one generation to the next to provide progeny an advantage over individuals who are not similarly ‘pre-adapted’. Under this scenario, changes in gene expression that provide good responses for the parental generation may be appropriate for progeny if the stress conditions persist, and can readily revert and further adapt depending on environmental state. In this context, genetic variants and environmental exposures may represent similar kinds of physiological stresses demanding similar kinds of epigenetic responses. Obviously, this view of heritable epigenetic changes is reminiscent of the original idea of ‘inheritance of acquired characteristics’.³³

29. In a study of survivors and descendants of Armenian genocide, it was found that the respondents offered responses depicting; avoidance and repression, outrage and anger, revenge and restitution, reconciliation and forgiveness; and

³¹ Isabel Karpin, “Vulnerability and the Intergenerational Transmission of Psychosocial Harm”, Emory Law Journal, Vol. 67 Issue 6, [2018], pg 1122.

<https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1061&context=elj>

³² Nelson and Nadeau, *ibid* See discussion on genetic factors; Gene Environment interactions; Gene – Gene Interactions; Frequency, Magnitude and Persistence; and Mechanisms.

³³ Nelson and Nadeau, *Supra*.

resignation and despair; and explanation and rationalisation. The study suggests as follows;

Miller and Miller [19] found six major responses of survivors and descendants to the Armenian Genocide: (1) avoidance and repression; (2) outrage and anger; (3) revenge and restitution; (4) reconciliation and forgiveness; (5) resignation and despair; and (6) explanation and rationalization. Interestingly, second- and third-generation descendants of Armenian Genocide survivors were more likely to report anger and despair, while immediate survivors reported more feelings of avoidance, repression, and desire for forgiveness. In their interviews, survivors linked the denial of the genocide as the most important impediment to their reconciliation. Importantly, survivors shared a theme of powerlessness in the current political context, centered around lack of recognition, as directly connected to the dehumanization and degradation they faced during the genocide. Since current descendants respond most with anger as they continue to suffer the consequences and bear the responsibility of the genocide, it can be suggested that the lack of recognition and reparations has a long-lasting impact on the collective psyche of the Armenian community.³⁴

30. The LRVs submit that the evidence needed to establish transgenerational harm need not necessarily stem from the conflict environment exposure alone but also the physiological stresses the survivors of the crimes encountered which may be passed on to the descendants of the survivors of the crimes for which Mr. Dominic Ongwen was convicted.

(iii) What the Evidentiary Requirements are for an Applicant to prove this Type of Harm;

31. In a study of vulnerability and intergenerational transmission of psychosocial harm, the role of the environment and social relationships that the individual engages with, it is submitted, plays a significant role in the resultant harm that one experiences. This study suggests as follows;

A fundamental fact of the human condition is that we are embedded in our environment, not just materially but psychologically and socially, and in a complex web of relationships to others. The affective environment in all its

³⁴ Alissa Der Sarkissian and Jill D Sharkey, Transgenerational Trauma and Mental Health Needs among Armenian Genocide Descendants, International Journal of Environmental Research and Public Health, (2021). Int. J. Environ. Res. Public Health 2021, 18, 10554. <https://doi.org/10.3390/ijerph181910554> citing Miller, D.E.; Miller, L.T. Survivors: An Oral History of the Armenian Genocide; University of California Press: Berkeley, CA, USA, 1993.

*dimensions is not just a physical location but also a psychosocial space. The scientific literature that examines the intergenerational effects of stress that I turn to below should, in my view, be read in light of this understanding of the environment. It should be recognized that people exist in a web of political, social, psychological, and material relationships, sometimes operating unequally and unfairly.*³⁵

32. The LRVs therefore submit that the evidentiary requirements to prove this harm as established by the several studies include a number of factors namely the environment exposures; physiological stresses; psychosocial spaces and the relationships which the primary victim of experiences at a specific time in their life time.

33. In the context therefore of the case against Mr. Dominic Ongwen in which he was convicted by the Chamber for crimes against humanity and war crimes, the environment exposures; physiological stresses; psychosocial spaces and relationships include:

- i. The conflict environment against a civilian population.
- ii. Violence perpetrated against individuals resulting in physical and nonphysical harms such as attacks, killings, torture, carry of heavy loads of looted items, destruction of livelihoods and other properties etc.
- iii. The perpetration of sexual and gender based crimes.

34. Witness V-0001 while responding to the question on the criteria of determining access to education for children of survivors testified as follows;

*...And as you will note, what I was referring to is the first two bars on the graph, on the figure which is the 5 to 10 years old. You know that the attack happened in 2004, so 8 clearly this population were born after the attack, because they are 5 and 10 years old. They were not present at that time. But as you can note, their level of education is still -- I mean their level of school enrolment is still significantly lower compared to those in the general population. And so for us we conclude that it's clearly an aspect of the intergenerational effects even on those children who were not there during the attack, that they continue not to, you know, enjoy their opportunity to go through school.*³⁶

³⁵ Isabel Karpin, *ibid*, pg 1118.

³⁶ ICC-02/04-01/15-T-174-ENG ET WT 04-05-2018, pg 31.

35. The LRVs further recall the testimony of witness V-0001 and her co-expert report admitted in the record of the case to the effect that victims suffered a multiplicity of crimes and or a combination of crimes. The multiplicity of crimes it is submitted proffer the conflict environment, the violence, torture and sexual and gender based crimes inflicted on the survivors. The expert report states as follows;

Even more telling is that 50 percent of respondents in the Victimization Assessment Survey experienced 6 or more alleged war crimes and crimes against humanity and 25 percent experienced at least 9 alleged war crimes and crimes against humanity (Figure 2). This clearly demonstrates that the alleged war crimes and crimes against humanity clustered during the attacks, so that that multiple violations of international criminal law were occurring against individuals and their households during the LRA attacks on the three IDP camps.³⁷

(iv) The Need, if any, for a Psychological Examination of Applicants and Parents;

36. The LRVs submit that the Chamber ought to adopt and rely on presumptions of harm in addressing the issue of psychological examination of applicants and their parents.

37. The reasons for proposing the assumption of presumptions for psychological harm lies in the violent nature of LRA attacks on the IDP camps and the vulnerability of the victims during the attack. The LRVs also rely on a study of trauma among Genocide survivors, where it was found amongst Holocaust survivors and their descendants that the incidence of depression, anxiety, and paranoia was in high levels. The authors of this study argue that;

Transgenerational trauma is the transference of emotional, physical, mental, spiritual, and social distress that, when untreated, can be compounded within and across generations among either an individual family or a community [4]. A meta-analysis examined the mental health impact of Holocaust survivors and their descendants and included 55 studies with children of survivors and seven studies with grandchildren of survivors [5]. They found higher levels of depression, anxiety, and paranoia for children and grandchildren of survivors as compared to various types of control groups, including descendants of

³⁷ICC-02/04-01/15-T-174-ENG ET WT 04-05-2018: See UGA-V40-0001-0010, pg 26.

*American-born Jewish grandparents and pre- or post-war non-survivor immigrants. The results suggest that symptoms of unresolved trauma can be passed down to descendants directly, through symptoms such as familial conflict or parental substance use, or indirectly, such as through epigenetic transmission due to changes in how genes are expressed.*³⁸

38. Dominic Ongwen was charged and convicted for several crimes against humanity and war crimes as confirmed including (i) *crimes committed within the context of four specific attacks against the camps of Internally Displaced Peoples (hereinafter: "IDP") of Pajule, Odek, Lukodi and Abok, including attacks against the civilian population, murder, attempted murder, torture, enslavement, outrages upon personal dignity, pillaging, destruction of property and persecution; (ii) sexual and gender-based crimes directly committed by Mr Ongwen against seven women who were abducted and placed into his household, including forced marriage as a form of other inhumane acts, torture, rape, sexual slavery, enslavement, forced pregnancy and outrages upon personal dignity; (iii) other sexual and gender-based crimes, not directly committed by Mr Ongwen, including forced marriage as a form of other inhumane acts, torture, rape, sexual slavery and enslavement; and (iv) the crime of conscription and use in hostilities of children under the age of 15.*³⁹

39. The LRVs submit that the above crimes for which Mr. Ongwen was convicted provide an "exposure environment" for the manifestation of conflict on the first part and "physiological stresses" on the other in accordance with the study of transgenerational harm by the authors discussed herein above. In this regard the LRVs submit that there is ample evidence on the record of the Court to show that a number of victims suffer psychosocial harms from experiencing the LRA attacks.⁴⁰ The LRVs accordingly recall the testimony of witness V-0002 who

³⁸ Alissa Der Sarkissian and Jill D Sharkey, Transgenerational Trauma and Mental Health Needs among Armenian Genocide Descendants, *International Journal of Environmental Research and Public Health*, (2021). *Int. J. Environ. Res. Public Health* 2021, 18, 10554. <https://doi.org/10.3390/ijerph181910554> citing

Lurie-Beck, J.K. The Differential Impact of Holocaust Trauma Across Three Generations. Ph.D. Thesis, Queensland University of Technology, Brisbane City, QLD, Australia, 2007.

Blake, G.; Watson, E. Unravelling the complex mechanisms of transgenerational epigenetic inheritance. *Curr. Opin. Chem. Biol.* 2016, 33, 101–107. [CrossRef]

O'Neill, L.; Fraser, T.; Kitchenham, A.; McDonald, V. Hidden burdens: A review of intergenerational, historical and complex trauma, implications for indigenous families. *J. Child Adolesc. Trauma* 2018, 11, 173–186. [CrossRef]

³⁹ Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment", ICC-02/04-01/15-2022-Conf 15-12-2022, para. 28.

⁴⁰ ICC-02/04-01/15-T-174-ENG ET WT 04-05-2018.

testified about his ordeal during and upon his return from captivity and experiences at school.⁴¹

40. Accordingly, the LRVs posit that considering that the Appeals Chamber confirmed the conviction of Mr. Dominic Ongwen by the Trial Chamber on 61 counts of war crimes and crimes against humanity, therefore where a victim *prima facie* shows that the harm suffered derives from one or more of the crimes for which Mr. Ongwen has been convicted, it is sufficient in and of itself for the Chamber to make a finding of a presumption of harm and therefore unnecessary to subject victim applicants and their parents to psychological examination.

41. The LRVs recall and invite the Trial Chamber to follow the decision of the Appeals Chamber for the holding and proposition that;

*In reparations proceedings, the Appeals Chamber has stated that ‘what is [...] “sufficient” for purposes of an applicant meeting the burden of proof will depend upon the circumstances of the specific case’. The Appeals Chamber considers that the trial chamber enjoys a certain amount of flexibility in the assessment of claims that have been submitted. In this regard, an assessment of the ‘sufficiency’ of the evidence is not limited to the evidence submitted by the victim in question. Rather, corroboration may come from extrinsic evidence, including the testimonial and documentary evidence entered into the record and the statements of other victims in their requests. In the exercise of its discretion, a trial chamber may consider that a victim’s account has sufficient probative value in light of the totality of the evidence so as to find that the allegations therein satisfy the burden of proof, even in the absence of supporting documents. A trial chamber may also consider the significance of the allegation sought to be proven. In this respect, some allegations are critical to the overall assessment of the person’s eligibility and, unless they are otherwise corroborated, the trial chamber may decline to find the person eligible without documentation supporting those allegations.*⁴²

(v) ***The Need, if any, to Exercise Caution in Assessing Applications Based on Transgenerational Harm;***

42. The LRVs acknowledge that the study and concept of transgenerational harm is still evolving. The LRVs also acknowledge that during the trial of Mr. Dominic Ongwen witness V-0001 in her expert report led evidence on transgenerational

⁴¹ ICC-02/04-01/15-T-171-Red-ENG WT 01-05-2018.

⁴² Judgment on the appeal 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 Para. 203.

harm to confirm that victims indeed encounter this harm. The witness's experts' report indicates that the legacy of crime can be felt by generations to come and these are manifested in socio-economic forms. The authors of the expert report note as follows;

A report compiled by the International Center for Transitional Justice on the legacy of LRA-perpetrated sexual violence focused on affected women and their children and provided deep insight into the contextual reality of their lives:

In a cultural and social context that discriminates against children born out of wedlock and/or as a result of sexual violence and rejects those associated with rebel groups, the initial crime of sexual violence by members of armed groups leading to motherhood has reverberations that will be felt for generations to come. Without targeted support, mothers and their children born of sexual violence are set on a trajectory of poverty, discrimination, violence and mounting obstacles to having their rights respected.⁴³

43. A presumption of harm as submitted previously is particularly instructive in these proceedings. The LRVS accordingly submit that the conflict exposure environment and psychological space within which individuals interacted leading to the crimes for which Mr. Ongwen was convicted outweigh the need for the application of caution by the Chamber in its deliberation.

(vi) ***Whether Mr Ongwen is Liable to Repair such Harm in the Specific Context of the Case.***

44. The LRVS submit that Mr. Dominic Ongwen is liable to repair transgenerational harm owing to the fact that a victim applicant ought to show generally that the harm suffered has a causal link to the harm suffered by the primary victim of the crimes for which Mr. Ongwen was convicted.
45. The LRVS submit that whilst they have been able to make submissions on the issues relating to transgenerational harm as above, the Chamber would benefit greatly if it invited experts on the subject of transgenerational harm to sufficiently explore the scientific and legal issues herein.

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⁴³ ICC-02/04-01/15-T-174-ENG ET WT 04-05-2018: See UGA-V40-0001-0010 citing Ladisch, V. (2015). From rejection to redress: Overcoming legacies of conflict-related sexual violence for women and their children in Northern Uganda. International Center for Transitional Justice: Uganda.

46. The LRVs note that notwithstanding that Mr. Dominic Ongwen was convicted for the two thematic crimes of recruiting children to engage in hostilities on the first part and for sexual and gender based crimes on the second part committed within the scope of the case namely 1st July 2002 and 31st December 2005 there is no reliable evidence in the record of the case or elsewhere from which to identify the estimate number of victims of these crimes for purposes of informing the Chamber's deliberation of the appropriate reparations for this group of victims.
47. The LRVs accordingly invite the Chamber in line with the Registry report to authorise both LRVs teams to undertake field missions to generate information on victims of thematic crimes in order to inform the Chamber on estimates in lieu of a deliberate mapping of this group of victims.
48. The LRVs similarly invite the Chamber if inclined to consider inviting experts on transgenerational harm to further expound on the subject in order to inform its decision.

Respectfully Submitted



JOSEPH A. MANOBA



FRANCISCO COX

DATED this 17th day of February 2023

At Kampala, (Uganda) and Gulu (Uganda)