SURVIVOR-CENTRED ICC REPARATIONS FOR VICTIMS OF DOMINIC ONGWEN'S CRIMES

Briefing Paper

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REDRESS
Ending torture, seeking justice for survivors

GULU UNIVERSITY FOR COMMUNITY TRANSFORMATION

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Avocats Sans Frontières ASF

GLOBAL SURVIVORS FUND
FOR AND WITH SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE

WHO WE ARE

Avocats Sans Frontières (ASF) is an international NGO founded in Belgium in 1992. The organisation specialises in defending human rights and supporting access to justice in fragile post conflict countries such as the Democratic Republic of Congo, Central African Republic, Niger, Tunisia, Morocco, and Uganda among others. The Ugandan Field Office was established in 2007. With support from Belgian Development Cooperation, we are currently implementing a Transitional Justice project that seeks to foster civic participation and ensuring that Ugandan decision makers operate a paradigmatic shift towards rule of law and human rights-based democratic governance and inclusive development.

Global Survivors Fund (GSF) was launched in October 2019 by Dr Denis Mukwege and Nadia Murad, Nobel Peace Prize laureates 2018. GSF works with survivors, local partners, technical experts, and government stakeholders to enhance access to reparations for and with survivors of conflict-related sexual violence. We act to provide interim reparative measures when the responsible parties are unable or unwilling to provide reparation. We advocate at the international level for the implementation of reparation programmes. We also guide States and civil society by providing expertise and technical support for designing programmes. Our co-creation and survivors' centred approach aims to return agency and autonomy to those that have been stripped of it and ensures that actions are relevant, impactful, and driven by the aspirations of survivors.

International Federation for Human Rights (FIDH) is an international non-governmental organisation (NGO) composed of 188 national human rights organisations from 116 countries. Since 1922, FIDH has been defending all human rights – civil, political, economic, social and cultural – as set out in the Universal Declaration of Human Rights. One of FIDH's priorities is promoting accountability for serious human rights violations including atrocity crimes, and to support victims' access to truth, justice, and reparation. FIDH engages in extensive documentation and litigation efforts to ensure perpetrators are held accountable and victims receive justice, and closely follows and contributes to the work of the International Criminal Court.

The Institute of Peace and Strategic Studies, Gulu University (IPSS) at Gulu University, is located in Gulu city, in Gulu District, the epic centre for the LRA war led by Joseph Kony and his commanders including Dominic Ongwen, against the Uganda People Defence Force (UPDF). Initially established as a Centre for Conflict Management and Peace Studies (CCMPS) in 2003, it was elevated to an Institute (IPSS) in 2007. Since then, the IPSS responds to the Community challenges as a focal point for intellectual inquiry and action-oriented research on Peace, Conflict and Strategic Studies, Governance and Ethics, Human Rights, and Transitional Justice and any other relevant discipline to the peace-building discourse and Community needs. It collaborates with civil society and community initiatives to enhance the capacities of peace-builders within communities and societies through innovative methods and international cooperation. IPSS offers academic programs including a Bachelor of Arts in International Relations and Security Studies; a Master of Arts in Conflict Transformation Studies; a Master of Arts in Ethics and Governance; and a PhD in Peace Studies by Research.

REDRESS is an international human rights organisation that represents victims and survivors of torture to obtain justice and reparation. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparation. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with State responsibility. Through our survivor-centred approach to strategic litigation we can have an impact beyond the individual case to address the

root causes of torture and to challenge impunity. We apply our expertise in the law of torture, reparation, and the rights of victims, to conduct research and advocacy to identify the necessary changes in law, policy, and practice.

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ACRONYMS

DIP	Draft Implementation Plan
ICC	International Criminal Court
IDP	Internally Displaced Persons
LRV	Legal Representatives of Victims
LRA	Lord's Resistance Army
OTP	Office of the Prosecutor
SGBC	Sexual and Gender-Based Crimes
SGBV	Sexual and Gender-Based Violence
TFV	Trust Fund for Victims
VPRS	Victims Participation and Reparations Section

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EXECUTIVE SUMMARY

©ICC-CPI. Dominic Ongwen during his first appearance hearing at the ICC in The Hague in January 2015.

On 28 February 2024, Trial Chamber IX of the International Criminal Court (ICC or the Court) issued its Reparations Order (the Order) in the case against Dominic Ongwen, awarding reparations to thousands of victims of his crimes.[1] Ongwen is a former commander of the Lord's Resistance Army (LRA) who was found guilty of 61 counts of crimes against humanity and war crimes carried out in northern Uganda between 1 July 2002 and 31 December 2005.

As part of a coalition of 10 Ugandan and international organisations that submitted a third-party intervention (also called an 'amicus brief') to the ICC in February 2022, we welcome the Reparations Order, while also urging for its prompt, effective, and survivor-centred implementation.[2]

1 International Criminal Court (**ICC**), Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Reparations Order, ICC-02/04-01/15-2074 (***Ongwen***).

2 This briefing paper only reflects the views of the authors, and not of all coalition members who submitted the 2022 Amicus brief, nor does it reflect the views of Ugandan victims or survivors. *See* REDRESS, Dominic Ongwen: Ugandan Victims Must Be at the Centre of Reparations Proceedings, 8 February 2022; ICC, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, *Amicus Curiae* brief pursuant to article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence, ICC-02/04-01/15-1971 (**Amicus Brief**), 2 April 2022; and REDRESS, ICC's Largest Ever Reparation Order Paves the Way for Reparations for Ongwen's Crimes, 28 February 2024.

The Ongwen Reparations Order at a glance

This is the largest Reparations Order in the ICC's history, with a total amount of 52,429,000 EUR required to provide reparations awarded to approximately 49,772 direct and indirect victims.

The ICC ordered the following reparations to victims:

- An individual symbolic (not compensatory) payment of 750 EUR to all victims, totalling approximately 37,329,000 EUR.
- Collective, community-based rehabilitation programmes, which might include education, vocational training, or access to healthcare, totalling approximately 15 million EUR.
- Community symbolic and satisfaction measures, such as apologies, monuments, memorial prayers, cleansing ceremonies, reconciliation ceremonies, and other human rights sensitisation activities or trainings, totalling 100,000 EUR.

The ICC Chamber identified community-based reparations as the most appropriate modality to address the multi-layered harms suffered by the victims, and the only viable option for prompt implementation given the overwhelming number of victims.[3]

It ordered the prioritisation of symbolic monetary awards over the implementation of other measures. The ICC also considered that priority should be given to victims in dire need, second priority to vulnerable direct victims, followed by all other vulnerable victims, then all remaining victims.

Finally, the ICC instructed the Trust Fund for Victims (TFV) to design and implement these measures in consultation with victims and present a Draft Implementation Plan (DIP) within six months of the Order.

This briefing paper provides an overview of the Order itself, analyses its key principles and findings, and looks ahead to its implementation.

Key Takeaways of the Ongwen Reparations Order

Through a survivor-centred lens, this paper analyses how the Order:

- Expanded the principles on reparations developed in previous cases to recognise (i) the symbolic (not compensatory) nature of payments that are not proportional or appropriate to address the harm inflicted; (ii) rehabilitation as a measure to improve victims' socio-economic situation in addition to medical or psychosocial needs; (iii) that child victims can encompass not only victims who were children at the time the crimes were committed, but also those who were born as a result of such crimes, i.e. of sexual and gender-based crimes (SGBC) (see section *Victims Born of SGBC as Direct Victims*), as well as the need to adopt the four main principles of the Convention on the Rights of the Child and a child-rights approach.

3 *Ongwen,* para. 579.

- Failed to strengthen complementarity between ICC and domestic reparations, which would have required adopting a positive approach recognising that ICC reparations are not implemented in isolation.
- Took steps to adopt a more consistent approach to reparations, particularly towards a more inclusive and accessible way of identifying victims and streamlining and reducing the burden on victims to prove harm through the 'sample' approach.
- Built on previous Reparations Orders to further develop notions of victimhood and harm, including community and transgenerational harm.
- Reflected progress towards a more strategic and pragmatic approach on the types and modalities of reparations, when ordering collective community-based reparations and determining the order of prioritisation.

Looking ahead to implementation, this paper also sets out the elements that we see as key prerequisites for the delivery of survivor-centred reparations in practice, including ensuring that:

- Victims can meaningfully participate in the process. This requires addressing their needs and delivering adequate information, sensitisation, educational and other outreach initiatives, and ensuring adequate legal representation.
- Victims' consultation and participation are meaningful and effective, and that reparations are co-created with survivors and not designed for survivors.
- All stakeholders involved in implementing reparations avoid raising victims' expectations, including by ensuring that victims are well informed about the timing, scope and limitations of the implementation plan.

This paper also raises questions and concerns about how the resources necessary to implement reparations will be secured, and encourages all involved actors to collaborate and make available the necessary support, including adequate funding, to enable the reparations process.

BACKGROUND CONTEXT

©Alamy/ Friedrich Stark. A child made an illustration of the attack of the Lord Resistance Army (LRA) rebels, where Dominic Ongwen was a former commander, to a village in Northern Uganda.

The Conflict in Northern Uganda

Uganda has experienced cycles of conflict dating back to British colonialism, but the conflict in northern Uganda between the LRA and the government of Uganda, which lasted from 1986 to 2006, was one of the most devastating.[4] The United Nations (UN) estimated that the LRA was responsible for more than 100,000 deaths, the abduction of over 30,000 children, and the displacement of 2.5 million people.[5] This conflict was particularly brutal for children, whom the LRA often abducted and forced to serve as child soldiers, and for women and girls, who endured sexual slavery and other forms of sexual and gender-based violence (SGBV).[6]

In the early 2000s, the Ugandan government initiated a peace process by granting amnesties to those who affirmatively denounced rebellion.[7] In 2006, negotiations between the government and the LRA took place in Juba, South Sudan, where both sides agreed to accountability and reconciliation measures. This resulted in the Agreement on Accountability and Reconciliation (2007), which obliged the Ugandan government to adopt a framework that would provide reparations to victims of the conflict.[8]

4 Impunity Watch & REDRESS, Victims Front and Centre, Lessons from Meaningful Victim Participation from Guatemala and Uganda (**Impunity Watch & REDRESS: Victims Front and Centre**), p. 22.
5 United Nations (UN) Meeting Coverage and Press Release, Demanding that Lord's Resistance Army End All Attacks, Security Council Calls for Full Implementation of Regional Strategy in Central Africa, 29 May 2013.
6 Impunity Watch & REDRESS: Victims Front and Centre, p. 22.
7 Opinio Juris, Margaret Ajok, Symposium on Dominic Ongwen Case: Navigating the Complexities of Reparations for Victims of Northern Uganda, 12 April 2024.
8 Ibid.

Over a decade later, in 2019, Uganda adopted the National Transitional Justice Policy which provides for reparations to survivors of the conflict.[9] However, the Ugandan parliament is yet to establish a mechanism for its implementation.[10]

The Case against Dominic Ongwen

The case against Ongwen arose out of the ICC Office of the Prosecutor's (OTP) investigation in Uganda, which lasted nearly 20 years from July 2004 to December 2023.[11]

In total, the OTP issued five arrest warrants against LRA leaders, but obtained custody of only Dominic Ongwen, after he surrendered himself to security forces in the Central African Republic in 2015.[12] Additionally, even though he is not in custody, the ICC will hold a pre-trial hearing *in absentia* to confirm charges against LRA founder and leader Joseph Kony in October 2024.[13]

Ongwen's ICC trial began in December 2016, on 70 charges of war crimes and crimes against humanity committed as a senior commander of the LRA.[14] Charges included a wide range of SGBC, including forced marriage, rape, sexual slavery, enslavement and forced pregnancy, some perpetrated directly by Ongwen.[15] The charges also included crimes of torture, murder and attempted murder, attacks against the civilian population, pillaging, persecution, and destruction of property committed during LRA attacks on four camps for Internally Displaced Persons (IDPs) – Pajule, Odek, Lukodi, and Abok. This variety and number of charges against Ongwen allowed a high number of victims to participate in the case, and eventually be awarded reparations.[16]

On 4 February 2021, Trial Chamber IX found Ongwen guilty on 61 counts of war crimes and crimes against humanity. He was sentenced to 25 years' imprisonment on 6 May 2021.[17] The Appeals Chamber confirmed both the conviction and the sentence on 15 December 2022.[18] Ongwen is currently serving his prison sentence in Norway.[19]

The Trial Chamber issued its Reparations Order on 28 February 2024. The Defence submitted its notice of intent to appeal the Order on 22 April 2024, and also requested a "suspensive effect", or delay of implementation until the Appeals process is complete.[20] In part, the Defence argued that if the TFV began distributing symbolic payments, or if victims benefit from communal reparations, and then the Appeals Chamber overturns the Reparations Order, it would be difficult or impossible to correct, and possibly defeat the purpose of the appeal.[21] The Court rejected the Defence's request to apply a suspensive effect or delay implementation, but did ask the TFV, in the event the Order is overturned or altered as a result of the appeal, to consider covering the cost of any expenses incurred in implementing the Order before the appeals process is complete.[22] This means that implementation may go ahead as per the Order while a decision on the Defence's appeal is pending.

9 Global Survivors Fund (GSF), in collaboration with ICTJ and Women's Advocacy Network (WAN), Uganda Study on Opportunities for Reparations of Conflict-Related Sexual Violence, p. 5.
10 Ibid., p. 5.
11 *Ongwen*, para. 1. The government of Uganda self-referred to the ICC in January 2004; see ICC, Situation in Uganda, ICC-02.04.
12 ICC, Dominic Ongwen transferred to The Hague, 20 January 2015.
13 ICC, Kony Case: Confirmation of charges hearing to commence in absentia on 15 October 2024, 4 March 2024.
14 International Federation for Human Rights (**FIDH**), Dominic Ongwen: Ugandan Victims must be at the Centre of Reparations Proceedings, 8 February 2022.
15 Ibid.
16 *See* Justice in Conflict, What Counts Against Ongwen – Effectiveness at the Price of Efficiency?, 15 April 2016.
17 ICC, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Sentence, ICC-02/04-01/15, 6 May 2021.
18 Ibid.
19 Ibid.
20 ICC, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Defence Notice of Appeal of the Reparations Order dated 28 February 2024 and Request for Suspensive Effect, ICC-02/04-01/15-2084, 22 April 2024, para. 2.
21 Ibid., para. 10.
22 ICC, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request for suspensive effect, ICC-02/04-01/15-2092, 16 May 2024, para. 36.

REPARATIONS AT THE ICC

©ICC-CPI. The ICC was the first international criminal tribunal with a mandate to award reparations to victims.

The ICC was the first international criminal tribunal with a mandate to award reparations to victims.[23] This right of victims to access effective reparations is articulated in Article 75 of the Rome Statute – the ICC's founding treaty –, embodying the international consensus that reparations are vital to address the harms endured by survivors of international crimes and grave human rights abuses.[24] Article 75 provides that the Court: a) must establish principles relating to reparations, and b) may make an order directly against a convicted person specifying appropriate reparations for victims, which can include restitution, compensation, and rehabilitation.

Elements of ICC Reparations Orders

When a defendant is found guilty by a Trial Chamber, composed of three ICC judges, this same Trial Chamber is responsible for issuing a Reparations Order that, based on the facts and judgement of the case, sets out the principles relating to reparations and details the reparations that victims in the case should receive.

23 In this publication we use the terms "victim" and "survivor" interchangeably. We use the term "victim" to be consistent with the language used by the International Criminal Court (ICC). However, in providing commentary, we may also use the term "survivor" to reinforce the self-determination, dignity, and strength of individual victims and to emphasise the possibility of healing and rehabilitation. Our use of the word "survivor" is in no way intended to diminish the legal status of persons as victims of international crimes, either individually or collectively. In this publication we use the term "reparations" (plural) to be consistent with the terminology used by the ICC.

24 *See, e.g.,* International Review of the Red Cross (**ICRC**), Reparation for victims of serious violations of international humanitarian law: New developments, June 2022.

As established by the Appeals Chamber, all Reparations Orders issued by the ICC must include, at a minimum, the following five elements:[25]

a) Personal liability: the Order must be issued against the convicted person, and only for the crimes that the person has been convicted of.

b) Victims: the Order must either identify the eligible victims or set out the criteria for eligibility, indicating the characteristics of the categories of eligible victims.

c) Harm: the Order must define the kinds of harm caused to both direct and indirect victims as a result of the crimes committed by the convicted person.

d) Types and modalities: the Order must define and justify the forms of reparations awarded to victims, including whether they are awarded on an individual, collective, or individual and collective basis, and provide instructions for the implementation of the types of reparations ordered, including any orders on prioritisation.

e) Amount of liability: the Order must assess the convicted person's liability for the reparations awarded, including any shared liability with others, with reference to the mode(s) of liability the conviction was based on.

ICC Reparation Orders issued to date

- The Prosecutor v. Thomas Lubanga Dyilo (*Lubanga)*- the Democratic Republic of the Congo (DRC)
- The Prosecutor v. Germain Katanga *(Katanga)*- DRC
- The Prosecutor v. Bosco Ntaganda *(Ntaganda)* - DRC
- The Prosecutor v. Ahmad Al Faqi Al Mahdi *(Al Mahdi)* - the Republic of Mali
- The Prosecutor v. Dominic Ongwen *(Ongwen)* - Uganda

ICC Reparations Actors

In addition to the Chamber, OTP, and Defence, there are several actors involved in the processes relating to reparations at the ICC. These include:

ICC Reparations Actors	Mandate & Details
The Victims Participation and Reparations Section (VPRS)	Part of the Registry of the ICC, the VPRS is responsible for assisting victims in applying for reparations and was ordered by the *Ongwen* Chamber to identify potential beneficiaries and carry out eligibility assessments.

25 *Ongwen,* para. 89.

Office of Public Information and Outreach (PIOS)	Also part of the ICC Registry, the PIOS conducts outreach and public information relating to the Court's work. It currently operates in 16 countries, including Uganda, where it has been communicating developments in the *Ongwen* case with affected communities.
The Trust Fund for Victims (TFV)	The TFV was created alongside the Court to implement ICC-ordered reparations, and to complement awards through voluntary contributions where a convicted person lacks the financial means to cover them. It also has a parallel "assistance mandate" to provide physical, psychological, and material support to victims and their families in ICC "situation" countries, outside the context of specific cases. Since 2008, the TFV has implemented a programme of assistance for the benefit of victims in northern Uganda. In *Ongwen* the Chamber has instructed the TFV to prepare a DIP. Once approved, the implementation plan will be executed by the TFV. The TFV may also decide to mobilise resources to complement the liability of the convicted person.
Legal Representatives of Victims (LRV)	Victims are entitled to participate in ICC proceedings through a legal representative, including in any proceedings relating to reparations. For this purpose, victims have the right to choose an LRV. However, where there are a large number of victims, the Court may order a common legal representative to be appointed. In the *Ongwen* case, 2,564 victims chose to be represented by Joseph Akwenyu Manoba, a Ugandan lawyer, and by Francisco Cox.
Office of Public Counsel for the Victims (OPCV)	The OPCV was established to provide assistance and support to victims and to external LRVs appointed by victims and can be appointed by a Chamber to represent victims in proceedings. In the *Ongwen* case, the OPCV was appointed to represent 1,501 victims.

Does the ICC Take a Survivor-Centred Approach to Reparations?

Victims have the right to prompt, adequate, and effective reparations under international law.[26] To be effective, reparations processes must be truly transformative, and must facilitate survivor participation and co-creation, both in the design and implementation stages.[27]

The ICC reparations system has garnered both positive and negative feedback regarding its effectiveness, including from TFV staff and the LRVs, and from experts from academia, civil society, and the legal field. While the ICC's efforts to adopt a survivor-centred approach by holding consultations with victims have been commended, concerns have been raised regarding the complexity and protracted nature of reparations processes at the Court, and the limited tangible outcomes (including actual reparations) for victims.[28] Experts have also criticised the lack of consistency in the ICC's approach to reparations, for example, in identifying victims and establishing harms (see section *Expanding the Principles of Reparations*).

26 *See, e.g.,* the UN Basic Principles and Guidelines on the Rights to a Remedy and Reparation foro Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (**UN Basic Principles on Reparations**), 15 December 2005; FIDH, Bridging the gap between the International Criminal Court, Victims, and Civil Society, 14 December 2023.

27 REDRESS, A Survivor-Centred Approach to Seeking Reparation for Torture (**REDRESS: Seeking Reparation for Torture**), February 2024; see also: FIDH, Making victim-centred justice work at the International Criminal Court, 30 November 2023. We understand that the TFV has successfully begun implementing reparations in the *Al Mahdi* case through programs that allow victims to determine the type, objectives, and forms of symbolic reparations that matter to them.

28 REDRESS, No Time to Wait: Realisations for Victims before the International Criminal Court, (**REDRESS: No Time to Wait**), 2019, p. 10.

Since 2019, the ICC has made progress in the implementation of reparations, which as of 2024 have benefitted 297 victims in the *Katanga* reparations programme; 1,324 of 2,471 eligible former child soldiers in the *Lubanga* reparations programme; and 1,689 victims who have received individual reparations to date in the *Al Mahdi* case, the collective component of which is ongoing and set to conclude by the end of 2025.

Judicially, the ICC has taken steps to address concerns and improve the delivery of survivor-centred reparations. For instance, in *Ntaganda,* the ICC endeavoured to prioritise the rights, needs, and dignity of victims. The *Ntaganda* Reparations Order, issued in March 2021, included provisions for reparations for SGBC and developed key novel principles of reparations, widely acknowledged as a "marked step" towards a victim-centred approach to reparations.[29] In the *Ongwen* case, the ICC further developed some of its principles on reparations (see section *Towards a More Consistent Approach to Reparations*).

Given the complex nature of reparations, practical challenges to realising the full scope of survivors' rights to reparations persist, and potential solutions to address these challenges continue to be developed. This publication aims to contribute to the thinking around key areas of survivor-centred reparations with a view to encouraging further improvements.

29 Essex Law Research Blog, Dr. Marina Lostal, The Ntaganda Reparations Order: a marked step towards a victim-centred reparations legal framework at the ICC, 1 June 2021.

THE ONGWEN REPARATIONS ORDER THROUGH A SURVIVOR-CENTRED LENS

©ICC-CPI. Judges of the ICC Trial Chamber during their visit at the attack sites in Northern Uganda in 2018 where they met with community leaders after hearing the Prosecution's evidence in Dominic Ongwen's trial.

This section analyses the *Ongwen* Reparations Order through a survivor-centred lens. It focuses on how the Order:

- Expands the principles on reparations previously developed by other ICC chambers;
- Fails to fully address the need for complementarity between ICC and domestic reparations;
- Adopts a more consistent approach to reparations by the Court, particularly on identification of victims and establishing harm;
- Builds on previous reparations orders to further develop notions of victimhood and harm, including community and transgenerational harm; and
- Takes a more strategic and pragmatic approach on the types and modalities of reparations.

Expanding the Principles of Reparations

According to Article 75 of the Rome Statute, the Court must establish the principles on which it is acting before issuing decisions on reparations. The *Ongwen* Chamber adopted the principles developed in *Ntaganda* wholesale and expanded them slightly. The *Ntaganda* principles, themselves building on the three previous reparations proceedings, include: do-no-harm; ensuring dignity, non-discrimination, and non-stigmatisation; considerations related to child victims and SGBC; adopting a victim-centred approach focused on accessibility and consultations with victims; and adopting a gender-sensitive and inclusive approach to reparations.[30] In addition, the *Ntaganda* principles established that reparations should be proportional, prompt, adequate, and transformative, and that priority should be given to the most vulnerable victims.[31]

The Trial Chamber in *Ongwen* received numerous suggestions for adding new principles from the LRVs, TFV,[32] *amici* and the Ugandan government, but in the end, in its Reparations Order amended just two of the principles.

Firstly, in relation to the types and modalities of reparations, the Chamber added nuances to how the Court defines several of the internationally accepted forms of reparation.[33] As regards rehabilitation, the Chamber noted that this can encompass not only medical and psychological care, but also measures aimed at improving victims' socio-economic situation, seeking to enable the maximum possible self-sufficiency and vocational ability, facilitating their inclusion and participation in society.[34] According to the Chamber, these measures may include housing, social services, vocational training and education, micro-credits, income generating opportunities, and sustainable work.[35] This addition to the principles allowed the Chamber to order measures aimed at improving the economic situation of individual victims, despite the Chamber ordering mainly collective measures. This approach reflects the practical outcomes of the *Lubanga* Order, where rehabilitation measures were also envisioned and designed to address economic hardship.[36]

The Chamber also added a nuance regarding the definition of compensation as a form of reparation. Recalling that compensation is aimed at addressing harm in a proportional and appropriate manner, it concluded that payments that are not proportional and appropriate to address the harms inflicted on victims cannot be regarded as compensation, but only as symbolic measures.[37] The Chamber then ordered a payment of 750 EUR to each eligible victim in a context where determining the value of all harm would be almost impossible (see section *Justifying the Types and Modalities of Reparations*).[38]

Finally, as regards types of reparation, the Chamber commented on the meaning of measures of satisfaction and guarantees of non-repetition, stating that such measures can be included as appropriate modalities of reparations, particularly in the context of collective reparations. The Chamber then ordered a range of such measures as part of its collective reparations award (see section *Justifying the Types and Modalities of Reparations*).

30 *Ongwen,* para. 57.
31 Ibid., para. 57; *see* ICC, Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda* (***Ntaganda***), Reparations Order, ICC-01/04-02/06-2659, 8 March 2021, paras 30-98.
32 *See generally* ICC, Trust Fund for Victims' Final Observations on Reparations, ICC-02/04-01/15-1992, 7 March 2022.
33 According to the UN 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, these are: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. UNHRC, UNGA 60/147, 15 December 2005, paras 18-23.
34 *Ongwen,* para. 78.
35 Ibid., para. 78.
36 ICC, Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo,* Order for Reparations (Amended), ICC-01/04-01/06-3129, para. 67.
37 *Ongwen*, para. 78.
38 Ibid., para. 621.

The second principle the Chamber adjusted was the principle regarding child victims, which it decided to broaden due to the extensive way in which children were affected by Ongwen's crimes.[39] The Chamber specified that the principle encompassed not only victims who were children at the time the crimes were committed, but also those who were born as a result of such crimes, i.e. of SGBC (see section *Victims born of SGBC as direct victims*).[40] The Chamber also recognised the importance of considering the gender of child victims in relation to the differential impact of crimes on girls and boys.[41] Further, it decided to adopt the four main principles of the Convention on the Rights of the Child (non-discrimination, the best interests of the child, the right to life, survival, and development, and the right to be heard), and a child-rights approach which recognises children as right-holders entitled to protection.[42]

These developments are welcome insofar as they can help ensure that reparations are better tailored to the specific needs of children and acknowledge the unique and enduring impacts of these crimes, including for those born as a result of SGBV.

Positive Complementarity: A Missed Opportunity

ICC Reparations Orders apply the ICC's legal framework and can only be awarded in respect of the crimes the ICC itself has found an accused guilty of.[43] Nonetheless, ICC reparations are not developed or implemented in a vacuum and should not be crafted in isolation from those reparations proceedings not associated with the Court, including at the national level, that could be either enhanced or diminished by ICC Orders. Therefore, effective cooperation is essential for the successful implementation of reparations.[44]

In our *amicus* brief, we encouraged the Chamber to take a "positive complementarity" approach in order to generate a "harmonious co-existence of different reparations regimes", arguing that this would ensure that the ICC works in a holistic manner to identify opportunities to deliver comprehensive reparations to victims, in collaboration with domestic procedures.[45] This would have entailed the Court actively inviting Uganda to provide information regarding domestic reparations already in place, and consider how its own reparations efforts could be complemented by national efforts.[46] The adoption of a principle on complementarity was also supported by the TFV and the LRVs.[47]

It is disappointing that the *Ongwen* Chamber did not take the opportunity to adopt a principle on complementarity as such, an omission which it justified on the basis that ICC Reparations Orders are limited to the scope of the judgment and tied to the specific harm caused by the convicted person.[48]

39 Ibid., para. 79.
40 Ibid.
41 Ibid., para. 80.
42 Ibid., paras 79-81.
43 ICC, Rome Statute, Article 75 states: "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".
44 *See* Article 75(4) and (5) allowing the Court to involve states in securing resources for reparations and requiring States parties to "give effect to a [reparations] decision". ICC, Rome Statute, Article 75(4), (5).
45 Amicus Brief, para. 19. In the context of the ICC, positive complementarity entails cooperation to promote national proceedings, where the OTP encourages genuine national proceedings when possible, by inviting States to participate in a system of international cooperation. This principle is derived from respect for State sovereignty, concern for sustainability, and practical considerations recognising the limits of ICC resources. *See* Max Planck Encyclopaedia of Public International Law, Positive Complementarity, October 2018.
46 Ibid. The government of Uganda did submit an Amicus brief to the court in which it stated it did not have yet a program in place through which reparations could be awarded to victims. ICC, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen,* The Government of Uganda's Submission on Reparations, ICC 02/04-01/15-1978, 7 February 2022, para. 39.
47 *Ongwen*, paras 44, 46.
48 Ibid., paras 49-50.

However, the Chamber did recall that the Order is without prejudice to Uganda's responsibility to protect and repair its nationals affected by the conflict.[49] The Chamber also directly addressed victims who will not receive reparations through the *Ongwen* case, and acknowledged their suffering.[50] Further, it underscored the complementary nature of reparations and victims' right to reparations under international criminal law, which it acknowledged was the source and origin of the right to obtain reparations before the Court.[51]

In recognising the importance of complementarity, the Chamber encouraged the TFV to work with relevant stakeholders as it develops the DIP.[52] The Chamber also noted Uganda's international legal obligations to cooperate with the TFV and other actors to support and facilitate the effective implementation of reparations.[53] Lastly, the Chamber noted that it was cognisant of the importance and merit of moving towards a more complementary reparations process and regime, indicating a willingness to more explicitly centre complementarity in the future.

Towards a More Consistent Approach to Reparations

Inclusive and Accessible Ways of Identifying Victims

As stressed in our *amicus* brief, the inconsistent approach the Court has taken towards identifying victims eligible for reparations in different cases has made the process confusing and complicated. In addition to creating uncertainty, such divergence can hinder victims' access to reparations.[54] Given the reality that victims may face varied challenges to participate in the proceedings, the Court should adopt approaches that maximise the opportunities for victims to apply for reparations throughout the proceedings, including at the reparations phase.

Victims may, as per article 68(3) of the Rome Statute, participate in every stage of the proceedings, and may submit a written application for reparations at any stage of the proceedings.[55] Some victims indicate their wish to apply for reparations when they apply to participate in pre-trial or trial proceedings through a legal representative, while others apply after the trial is over if an accused is convicted and the case enters a reparations phase.[56] Trial Chambers may also award reparations to victims who have not submitted applications.[57]

In practice, the ICC has adopted inconsistent approaches to identifying victims, for instance assigning roles to the Registry, the TFV, or the Chamber itself.[58] For example, in the *Lubanga* case, the Court accepted written applications for reparations at different stages of the proceedings collected by the VPRS, the LRVs, and the TFV, with each using different methods.[59] The Trial Chamber then accepted additional beneficiaries during the implementation phase, when reparations were being delivered to victims.[60] Conversely, in *Al Mahdi*, the Trial Chamber did not require victims to submit applications for reparations at all, and instead relied on the TFV to identify beneficiaries during the implementation phase.[61]

49 Ibid., para. 50.
50 Ibid., para. 51.
51 Ibid., para. 48.
52 Ibid., paras 52-53.
53 Ibid.
54 Amicus Brief, para. 5.
55 REDRESS, Making Sense of Reparations at the International Criminal Court (**REDRESS: Making Sense of ICC Reparations**) 20 June 2018.
56 Ibid.
57 Ibid.
58 Ibid.
59 REDRESS: Making Sense of ICC Reparations.
60 Ibid.
61 Ibid.

Thus, over time, there has been a notable transition away from collecting applications for reparations during the early stages of proceedings, with the Court occasionally determining victims' eligibility independently or supplementing applications with additional beneficiaries identified by various entities.[62]

The 2020 International Expert Review of the ICC recognised this inconsistency in identifying victims eligible for reparations.[63] The group of experts recommended that VPRS carries out the identification and determination of eligibility of victims, reasoning that the TFV does not have the capacity to do so.[64]

In recent Reparations Orders, including *Ongwen*, Chambers have sought ways to address the challenge of identifying the victims eligible for reparations, while avoiding making a closed list of beneficiaries at the time they issue the Reparations Order. By establishing eligibility criteria and allowing for flexibility in estimating the number of eligible victims, Chambers enable victims to continue to be considered for reparations during the implementation stage.

The *Ongwen* Order established the criteria for eligibility for reparations, rather than determining the eligible victims. According to the Order, individuals eligible for reparations must be direct or indirect victims of a crime for which Ongwen was convicted by the ICC.[65] The Chamber has preliminarily identified 49,772 eligible victims and expects this number to significantly increase as the VPRS continues to identify eligible victims during implementation,[66] with this identification process instructed to be completed within two years of the Reparations Order.[67] By adopting the same approach used in *Ntaganda*, the *Ongwen* Chamber has taken a positive step towards a more consistent and inclusive approach to victim identification.

Streamlining and Reducing the Obstacles of Victims to Prove Harm: The 'Sample' Approach

One of the elements ICC Chambers are required to include in a Reparations Order is a definition of the kinds of harm caused to both direct and indirect victims as a result of the crimes committed by the convicted person. The different types of harm experienced by victims, including physical, moral, material, community, or transgenerational harm, will inform what forms of reparations are most appropriate for the Chamber to award. Again, the ICC has not always adopted a consistent approach for establishing harm. In *Ntaganda,* the ICC decided to adopt a new approach, considering a representative sample of individual applications as a means of identifying the harms suffered by the universe of potential victims.[68]

In *Ongwen,* the Chamber adopted a similar approach to *Ntaganda* and based its assessment of harm on a "limited but representative" sample of victims' dossiers, amounting to approximately 5% of the universe of potential victims.[69] The Chamber ruled that the sample of 205 victims selected by the VPRS was sufficiently representative in terms of gender, age, kind of harm and crimes suffered.[70]

While assessing the representativity of the sample of victims is beyond the scope of this briefing paper, we generally welcome the sample methodology in cases involving a large number of victims such as in *Ongwen*. As noted in a report by the International Federation for Human Rights (FIDH):

62 Carla Ferstman, Reparations at the ICC: The Need for a Human Rights Based Approach to Effectiveness in C. Ferstman and M. Goetz (eds) *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, 2nd edition, Brill (2020), pp. 459-461.
63 Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report, 20 September 2020, p. 285, paras. 871 *et seq.*
64 Ibid., para. 872.
65 *Ongwen,* para. 455.
66 Ibid., para. 579.
67 Ibid., para. 813.
68 Ibid., paras 11-12.
69 Ibid., para. 427.
70 Ibid., para. 12.

> **[r]ather than an individual assessment of applications, practice shows that the use of a sample is more appropriate, to gain an understanding of the type of victimisation and the needs and wishes of a group of victims, in order to make wider recommendations based on this sample, while consulting victims more generally.[71]**

This approach in such cases should also serve to reduce the burden on victims to provide evidence of harm since it enables the Court to identify presumptions of harm that can be made for certain categories, thereby helping to make reparations more accessible. Overall, in massive victimisation cases, the endorsement of the *Ntaganda* approach in *Ongwen* is a positive development and a hopeful sign that the ICC may adopt it as a standard approach.[72]

Advances in the Notions of Victimhood and Harm

The *Ongwen* Chamber included several rulings on victimhood and harm that help reduce the burden on and recognise the varied types of harm suffered by victims. Such pronouncements can potentially constitute a form of satisfaction in themselves and contribute to making reparations truly reparative.[73] Here we highlight several advances relating to recognition of victims born of SGBC as direct victims, the contextual understanding of the family, presumptions of harm, community harm, and transgenerational harm. Although these principles are not novel to the *Ongwen* case, by reinforcing and developing them in the Order, the *Ongwen* Chamber helps to ensure that future Chambers will follow suit.

Victims Born of SGBC as Direct Victim

It is positive that the *Ongwen* Order – building on the ICC's previous caselaw – recognised children born out of forced marriage, forced pregnancy, rape, and sexual slavery, committed directly and indirectly by Ongwen, as direct rather than indirect victims.[74]

Such recognition acknowledges the challenges faced by children born of war in accessing reparations as well as the harms they suffered. As noted in our *amicus* brief, child victims are extremely vulnerable and the lack of identity documents hampers their access to basic services and livelihood opportunities.[75] When expanding the principles of reparations (see section *Expanding the Principles of Reparations*), the Chamber stated that children should be assisted to gain access to all the rights guaranteed in the Convention on the Rights of the Child, including birth registration, basic health, education and social welfare, as these are essential to their recovery and full reintegration into society.[76]

Indirect Victims: Contextualising the Concept of Family

Equally positive is the Order's adoption of a culturally sensitive concept of family when identifying indirect victims. As noted by the LRV, the TFV, and Uganda, the understanding of the family in Acholi cultural practice and in Uganda broadly is different to the western conception of family, and may include extended family members, community members, and others.[77]

71 FIDH, Whose Court is it? Judicial Handbook on Victims Rights at the ICC, June 2021, p. 63.
72 While the 'sample' approach in *Ongwen,* and in other cases involving a large number of victims, in other cases, it may in fact be more appropriate and restorative to assess victims' harms on an individual basis, thus giving survivors the opportunity to tell their stories.
73 *See* REDRESS: Seeking Reparation for Torture.
74 *Ongwen*, para. 125.
75 Amicus Brief, para. 19.
76 *Ongwen*, para. 83.
77 *Ongwen*, para. 129. This approach, which recognises indirect victims, is also relevant in other contexts, given the nature of the crimes under the ICC's jurisdiction and their impact as some of the most serious crimes under International law.

The Chamber therefore decided that the delivery of reparations to indirect victims will not be based on nuclear family units. Rather, to establish victimhood, potential indirect victims will need to demonstrate a "close personal relationship" to a direct victim; [78] and to establish harm, they will need to demonstrate that they suffered personal harm as the result of a crime suffered by this same direct victim and committed by the convicted person.[79]

Presumptions of Harm

Recognising the extensive victimisation and multi-layered harms in this case, the *Ongwen* Chamber employs presumptions to support the connection between specific crimes and the harms suffered by victims.

As highlighted in our *amicus* brief, this approach alleviates some burdens faced by certain categories of victims, including children born of war, displaced victims, and victims of SGBC, to prove the harm they suffered once they have established that they are eligible victims.[80] The Chamber acknowledges several times, for instance, the significant difficulties faced by victims in producing documents and other evidence to prove both the crimes themselves and the harm suffered.[81]

A summary of the different types of harm that the Chamber presumed for each category of victim can be found on page 196 of the *Ongwen* Reparations Order.

Community Harm

The Trial Chamber recognised that the crimes committed by Ongwen caused harm to communities in two contexts.

First, the Order notes the harm caused as a result of the attacks on the four IDP camps, where communities as a whole suffered as a result of pillaging and the destruction of food supplies and aid.[82] This destruction, the Chamber found, also prevented the community from engaging in and performing traditional rituals and customs.[83] For example, some members of the camps were unable to bury their missing family members in accordance with culturally prescribed rituals, which they believe causes these spirits to grow angry as they are trapped between worlds.[84]

Second, the Chamber recognised harm caused to the entire community of victims, due to disruption of family structures and of "the social fabric in which the affected communities of victims functioned".[85] This harm included the separation of family units due to deaths or abductions or rejection of family members, as well as disruption of responsibilities and duties within communities.[86]

By recognising these types of harm, the Order centres the importance of community in Uganda, and paves the way for the TFV to create reparations programmes that adequately address the needs of victims at the community level.

78 Ibid., para. 132.
79 Ibid.
80 Amicus Brief, paras 52-58.
81 *Ongwen,* para. 191.
82 Ibid., para. 248.
83 Ibid., para. 394.
84 Ibid.
85 Ibid., para. 407.
86 Ibid.

Transgenerational Harm

Transgenerational harm, understood as the transmission of trauma from one generation to the next, can take many forms, including mental distress, financial or other material difficulties, lack of access to education, and social exclusion and stigma.

In *Ntaganda*, reparations were allocated due to transgenerational harm for the first time. Building on this, the *Ongwen* Order acknowledges the enduring impact of violations that perpetuate cycles of vulnerability and marginalisation across generations,[87] noting that "children of victims of unimaginable atrocities may also experience personal suffering, even if they did not personally experience the atrocities that caused the trauma".[88]

In *Ongwen*, the Chamber recognised that transgenerational harm significantly affects children born of SGBC and children of direct victims.[89] The Chamber found common characteristics among these groups of victims, such as the potential transmission of trauma through epigenetics and the increased risk of mental health issues among children of individuals suffering with post-traumatic stress disorder.[90] Additionally, it acknowledged that children of victims are less likely to be enrolled in school as compared to their peers.[91]

Demonstrating the high importance it affords this issue, the Chamber listed children born of SGBC among the groups to be prioritised in the delivery of reparations, due to the severe social, economic, and environmental impact they likely face.[92]

Nonetheless, the Chamber did not go as far as it could have in expanding reparations for transgenerational harm. It declined to establish a presumption of moral harm and transgenerational harm for all children of direct victims, as the LRVs advocated,[93] or a presumption of transgenerational harm for all children and grandchildren of direct victims in the case as advocated for by the Registry.[94] In doing so, it cited a lack of sufficient information to reach conclusions on such presumptions, as well as concern raised by the defence about the need to prove the nexus between the harm suffered by the direct victim and the transgenerational harm.[95] Additionally, the Chamber restricted victims of transgenerational harm to children of direct victims, requiring proof that the direct victim suffered harm as a result of the crimes for which Ongwen has been convicted, and that the person is the child of the direct victim. As such, the Chamber did not address transgenerational harm among broader family units recognised earlier in the Order.[96]

87 International Center for Transitional Justice, From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda, 27 October 2015, p. 20.
88 *Ongwen,* para. 207.
89 Ibid., para. 413.
90 Ibid., para. 411.
91 Ibid., para. 253.
92 Ibid. The Chamber also noted victims in immediate need of physical, psychosocial or medical care, with disabilities and the elderly, SGBC victims, and former child soldiers as priority groups. Ibid., para. 655.
93 Ibid., para. 184.
94 Ibid., para. 554.
95 Ibid., paras 554-555.
96 Ibid., para. 206.

Signs of a More Strategic and Pragmatic Approach to Reparations

Justifying the Types and Modalities of Reparations

In the *Ongwen* Order, the Chamber adopted a more pragmatic approach than previous ICC Chambers did, particularly in its determination of the appropriate types and modalities of reparations. The Chamber cites the "overwhelming" number of eligible victims, as well as the interests of promptness, efficiency, and effectiveness as key considerations.[97] It refers to challenges and delays in assessing and implementing reparations in previous cases as lessons justifying a different approach.[98]

For example, the Chamber decided to balance victims' desire for individualised reparations with the financial and practical constraints faced by the TFV and the Court.[99] Despite the victims' overwhelming preference for individualised reparations, the Chamber said it did not consider it feasible to deliver such measures promptly and effectively due to the large number of victims in this case.[100] Taking into account the TFV's limited resources, the judges noted that implementing individualised measures would be time-consuming, financially and administratively burdensome, and could potentially take decades on top of already lengthy trial and appeal proceedings.[101] This delay, according to the Chamber, would hinder their transformative impact, and might violate the "do no harm" principle, causing confusion and frustration among victims.[102] In reaching this conclusion the Chamber reflected on the experience of the *Lubanga* case, where the ICC estimates that only half of the total number of victims are benefitting from reparations due to delays in its delivery.[103]

Based on these considerations, the *Ongwen* Chamber opted for collective community-based reparations, focusing on rehabilitation programmes to address the multi-layered harms endured by the large number of victims. The Chamber ruled that rehabilitation programmes would be the most appropriate type of reparations, as they could reach a larger number of victims and improve their socio-economic conditions, aiding in rebuilding their lives and restoring independence.[104] It further noted that such programmes should be designed and implemented in close consultation with victims.

However, recognising victims' expectations and preferences to receive monetary awards, the Order included symbolic payments of 750 EUR to all eligible victims which, as already noted, the Chamber specifically insisted were not compensatory since they do not address harm in a proportionate and appropriate manner.[105] The Chamber lists a number of reasons for this, including the difficulty in determining the value of harm in each case; the objective of enabling victims to address their basic needs to put them in a better position to engage in consultations about the other forms of reparations; the principle that all victims are to be treated equally; and the interests of avoiding tensions between victims.[106]

This approach is contrasted with standard payments of 250 USD awarded to individual victims in *Katanga*,[107] which were described by that Chamber as "a symbolic award of compensation" and *Al-Mahdi*, where the Chamber

97 Ibid., paras 577-578.
98 Ibid.
99 Ibid., paras 579-580.
100 Ibid., para. 561.
101 Ibid., para. 578.
102 Ibid., para. 577-578.
103 *Ongwen,* paras 578-579.
104 *Ongwen*, para. 616.
105 *Ongwen*, paras 71(v) and 621.
106 Ibid., paras 622-632.
107 ICC, Trial Chamber II, *The Prosecutor v. Germain Katanga,* Order for Reparations, ICC-01/04-01/07-3728, 24 March 2017, para. 300.

granted individualised reparations for certain victims who suffered specific material or moral harm.[108] In both cases, individualised reparations were first deposited with the TFV, and distributed to victims pursuant to the ICC Rules of Procedure and Evidence 98(1) and (2).

Finally, the Chamber also ordered a range of community-based symbolic or satisfaction measures, such as apologies, memorials, and ceremonies.[109] These measures, like the symbolic payments, aim to recognise the victims' suffering and violations, and to safeguard their dignity.[110]

In conclusion, the *Ongwen* Chamber seems to have applied a more strategic and practical approach, recognising the challenges of delivering reparations experienced in previous cases, and considering such challenges in the type of reparations ordered. While the challenges involved in assessing and implementing individual reparations in ICC cases are significant, it is regrettable that the Court appears to simply accept these issues as somehow inevitable, rather than making more effort to craft new strategies.

Indeed, in our *amicus* brief, we suggested that the Court might address the challenges posed by individualised reparations by crafting collective reparations with an individualised component reflecting relevant views of victims about what they want and need.[111] Such an approach may have the effect of enhancing the productivity and functionality of individual victims, thereby illustrating the link between individual and community healing. In their submission on reparations, the CLRV's echoed this proposal, and suggested that the "individualised component" of collective reparations might include: financial aid, to be used for different purposes, including returning to their towns or (re) building their houses; accessing long-due medical and psychological support; burying their loved ones who were abducted by the LRA and those who either have disappeared or were brutally murdered by the LRA; completing their education or the education of their children for whom they could not provide as a result of the crimes for which Ongwen was convicted; accessing vocational training and starting an income generating activity.[112]

It remains to be seen how survivors will respond to the decision to deliver collective community-based reparations (instead of individual reparations), and to prioritise the symbolic payment of 750 EUR. In any event, it will be essential that, to the best of its ability and within the scope of the Order, the TFV considers and addresses victims' concerns.

Prioritisation and Promptness

While the Order emphasises promptness as a principle of reparations, the Chamber took nearly three years to issue the Order following Ongwen's conviction.

Nevertheless, the Chamber was clearly trying to inject a greater sense of urgency and encouraged promptness during the implementation of reparations. As noted above, it instructed the identification of victims be completed within two years, noting it was paramount that the eligibility process be executed within a reasonable time frame.[113] It also asked the TFV to prepare its DIP within six months, in a format intended to reducing the time needed to prepare and review it;[114] and stated that its own role would be restricted to high level and limited oversight during implementation.[115]

108 ICC, Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, 17 August 2017, paras 78, 81.
109 Ibid., para. 635.
110 Ibid., para. 78.
111 Amicus Brief, para. 67.
112 ICC, Trial Chamber IX, Common Legal Representative of Victims' Submissions of Reparations, ICC-02/04-01/1501923, 7 December 2021, para. 75.
113 *Ongwen*, para. 813.
114 *Ongwen*, paras 800-802.
115 *Ongwen*, para. 41.

Additionally, the Chamber did follow the precedent set in *Ntaganda* and adopt the principle of prioritisation, giving priority to victims in a particularly vulnerable situation or requiring urgent assistance. It established the order of prioritisation as follows:[116]

Order of prioritisation among victims ordered by the Chamber:

1. Vulnerable victims in dire need of urgent assistance, including victims experiencing life threatening needs, with immediate needs for physical and/or psychological medical care, and those facing life endangering financial hardship.
2. Vulnerable direct participating victims, in recognition of the effort it took for them to participate in the trial, and the importance of that participation.
3. All remaining vulnerable victims.
4. All remaining victims.

The Chamber further instructed the TFV to prioritise the symbolic payments over collective rehabilitative programmes, on the basis it can start to make the symbolic payments immediately - as soon as it has the available funds -, whereas other measures will need to wait for consultations into their design.[117]

Earlier, during the trial phase, the Chamber rejected a request by the LRVs to issue an order of interim measures to address the needs of victims requiring urgent psychological, medical, or other support.[118] The Chamber found it premature to order reparations to individual victims before a Reparations Order had been issued against the convicted person, and that it had no power to order the TFV to use its 'other resources' in a specific manner (a position also taken by other chambers of the Court).[119]

116 *Ongwen,* paras 655-662.
117 *Ongwen*, paras 806, 822.
118 *See* ICC, Trial Chamber IX, Decision on the 'Victims' Request for Urgent Support to Victims presenting with Mental Health Challenges and Other Victims Requiring Urgent Medical Intervention', ICC-02/04-01/15-2061, 29 September 2023.
119 Ibid., para. 14.

LOOKING FORWARD: WHAT SURVIVOR-CENTRED IMPLEMENTATION OF REPARATIONS WOULD LOOK LIKE

©Alamy/Zuma Press. Inc Members of one of the communities affected by the LRA conflict in Gulu listen to the ICC verdict broadcast on Dominic Ongwen case.

We are pleased that the *Ongwen* Order highlights the importance of centring victims. In adopting the *Ntaganda* principles on reparations, it endorses the principle on a victim-centred approach, which requires full and meaningful consultation and engagement with victims, giving them a voice in the design and implementation of reparations programmes and allowing them to shape the reparations measures according to their needs.[120]

The *Ongwen* Chamber specifies that it must consult with victims regarding the nature and methods of implementation of the collective community-based reparations, and consider victims' views and proposals when designing projects.[121] Further, the TFV must ensure that consultations are conducted in compliance with the principles on reparations, including: do no harm, accessibility and meaningful participation, respect for diversity, and consideration of gender-specific needs. It should also take into account any obstacles victims may face in coming forward and expressing their views.

120 *Ntaganda*, paras 45-49.
121 *Ongwen*, para. 799.

While welcoming these provisions, we regret that the Chamber declined to take the opportunity to elaborate further on the scope of the principle on a victim-centred approach, as suggested in our *amicus* brief, noting that the current principle already comprehensively addresses and incorporates such considerations.[122] As the focus now moves to implementation, it will be essential for all those involved in the delivery of reparations in practice – the TFV, VPRS, LRVs and Ugandan civil society – to ensure a victim-centred methodology building on the principles and the instructions set out by the Chamber. [123]

As stated in *Ntaganda* "the process of obtaining reparations should in itself be empowering and transformative and give victims the opportunity to assume an active role in obtaining reparations".[124] In order to be truly transformative, reparations processes should recognise survivors' agency and facilitate effective survivor participation to ensure the sustainability of measures.[125]

Looking ahead to implementation of the *Ongwen* Reparations Order, therefore, we set out below the elements that we see as key prerequisites for the delivery of survivor-centred reparations, based on the principles already identified in our *amicus* brief and acknowledged by the Chamber. Subsequently, we pose some questions and raise some concerns about how the resources necessary to implement reparations will be procured.

Survivor Participation and Consultation

When designing reparations, the very first step, before substantive conversations on reparations, should be to consult victims on what they need in order to participate meaningfully and effectively in the process.[126] For this purpose, it may be necessary for the Court, including the TFV, VPRS, and PIOS to put in place practical enabling measures, such as psychosocial support, information about services, care provision for children, and transportation allowances, paying special attention to the specific needs of victims with vulnerabilities.

Second, it will be important to ensure that victims have clarity, understanding, and knowledge about their right to reparation as well as the scope and limitations of the Order and of the ICC reparations system. As noted in our *amicus* brief, this requires specifically tailored informative, educational, sensitisation, and outreach sessions before and during survivors' participation.[127] The Court, and those it is working with, should consult victims on the best methods to conduct such outreach initiatives.

This outreach should be accessible to victims. As noted by Stella Lanam, Founder of War Victims and Children Networking (WVCN), a community-based organisation open to female victims of the LRA war, and herself a war survivor and one of Dominic Ongwen's forced wives:

> **"We also think that it is important for the Trust Fund to try to reach as many of us as possible. When they hear from different victims, it allows them to better understand how to put together a programme that works well for all of us. But some of us live far away or have injuries, so the Trust Fund has to work out how we can be included in the meetings.[128]**

122 *Ongwen*, para. 76.
123 We are aware that the TFV has begun consultations with victims groups in Uganda.
124 Amicus Brief, para. 30; *Ntaganda*, para. 95.
125 Amicus Brief, para. 31.
126 Amicus Brief, paras 23-28.
127 Amicus Brief, para. 24.
128 Opinio Juris, Stella Lanam, Symposium on Dominic Ongwen Case: The Beginning of Hope for Some and Questions for Others, 12 April 2024.

Third, it is essential that an intersectional and gender-sensitive approach is adopted when preparing for any engagement with victims, to take into account any obstacles victims may face in coming forward and expressing their views, not least because of the prominence of SGBV in this case.[129] Further, the Court must ensure that engagement of victims in the process must not lead to unnecessary exposure, traumatisation, re-victimisation or stigmatisation of survivors and communities. This must involve defining measures together with survivors: while the applicability of the "do no harm" principle is universal, its application in practice can vary according to the context.[130]

It follows that the methodology of survivor engagement should be flexible and developed through a dialogue with victims and affected communities, avoiding paternalistic approaches that impose ideas or make assumptions about what reparations measures would be appropriate. Survivor groups and local actors can advise on strategies that enable victims to come forward in a safe manner.

Particular attention should be paid to victims of SGBC, due to the intersectional harm they may have suffered, and the stigma, social exclusion, and other sensitivities associated with sexual violence. It will be key to ensure their full participation, involvement, representation, and inclusion, to value their lived experiences and respond to the intersecting harms they suffered.

Consequently, both the measures of reparations and the methodology for its implementation must be based on a gender-sensitive approach. This requires a gender-lens consideration of "the legal, cultural, economic, and other obstacles victims face in coming forward and expressing their views".[131] Reparations must offer pathways to reintegration of women who continue to suffer from stigma and exclusion.

From Consultation to Co-creation

As recalled in our *amicus* brief, mere consultation of victims during the reparation process is not sufficient; it is necessary to shift the paradigm of victims' participation in reparations processes from consultation to co-creation, so that the reparations ordered are not designed *for* victims, but *together with* them.[132]

In her recent blog Stella Lanam expressed concern about the sustainability of community-based reparations after the TFV, which has maintained an uninterrupted presence in Uganda since 2008, leaves the country.[133] To ensure sustainability, it is essential that the TFV, LRVs, VPRS and others involved work *with* victims to create programmes that victim communities have the ability, resources, and desire to sustain. To do so, victims must be granted a significant and active role in designing, deciding on forms of implementation, and overseeing community-based reparations within the limits of the Reparations Order. Survivor co-creation also ensures that measures are carefully tailored to their needs.

The TFV will also need to consider best practice in survivor co-creation and participation in cases involving a large number of survivors. Attention must be paid to dynamics among survivor groups, including survivors of the conflict who will not be eligible to receive reparations in this particular case.

129 Amicus Brief, para. 27, citing *Ntaganda*, para. 47.
130 Amicus Brief, para. 28.
131 *Ntaganda*, para. 47.
132 Amicus Brief, paras 30-31.
133 Stella Lanam, Symposium on Dominic Ongwen Case: The Beginning of Hope for Some and Questions for Others, 12 April 2024.

Responding to Victims' Expectations

To avoid disappointment and maintain trust among survivor groups, the implementation plan must include robust mechanisms for sustaining clear and consistent communication, and for responding to victims' expectations.

The Court, including the PIOS and the TFV need to clearly communicate to survivors the scope and limitations of the Order, the process of identification, and determination of eligibility, as well as the practical constraints the TFV faces in delivering reparations in practice. It is crucial to provide victims with realistic timelines for when they can expect to receive reparations, and to anticipate and communicate any potential challenges or delays in the process.

Additionally, as emphasised by the Chamber, the Court, including the TFV, must ensure that communities in Uganda understand that reparations will be provided only to victims of Ongwen's crimes, not to all victims of LRA violence.[134] A sensitive approach is essential to prevent friction and ensure harmonious relations among the different victim groups, including those who will not benefit from reparations in this case.

Legal Representation of Victims during the Implementation Phase

Finally, we are disappointed to see that the Chamber considers that no legal representation of victims is required during the eligibility assessment and during the implementation of reparations, on the basis this is an administrative process outside judicial proceedings. The Chamber recognised, however, that general legal support might be needed (and provided by OPCV) for victims during the eligibility phase. In addition, we consider that the ICC sections and the TFV involved in the implementation phase must ensure victims are able to voice their concerns and bring them to the attention of the Chamber if and when needed, especially if the terms and scope of the Reparation Order is breached at any point. The LRVs are vital for staying in touch with victims, submitting updated lists and contact details of victims to the TFV, and communicating up-to-date information on victims' needs and harms to the Court. The LRVs also act as a bridge, particularly in terms of conveying victim's concerns on any disfunctions observed during the implementation phase.

LRVs rely on the Court's legal aid scheme to finance legal representation of victims. A new Legal Aid Policy, adopted at the Assembly of State Parties in November 2023,[135] divides the reparations phase into the litigation phase and the implementation phase, which begins after the Court has issued its final Reparations Order.[136] During the implementation phase, resources for the LRVs are limited to a lump sum (total overall maximum) of 60,000 EUR payable to only one of the LRV teams, without considering the number of victims or the complexity of issues.[137] This was criticised by a civil society letter based on interviews with seven LRVs, which stressed the essential role of continued legal representation during the implementation of reparations, and called for the policy to allow for additional resources based on objective criteria and needs in order for victims to be properly represented especially during lengthy and complex cases.[138]

134 *Ongwen*, para 63(ii). In a blog piece reflecting on the Order, one victim writes: "In addition, one of the biggest concerns is that the individual reparations may cause tension between people in the same community and between different communities. Now, everyone wants to be a victim of Ongwen or will claim to be in an attempt to get something. Since the ICC decision was handed down, I have been to communities in Amuru district, Gulu, Kitgum and Pader to speak to victims there. The community members were very confused by the decision, particularly the fact that only Ongwen's victims were entitled to reparations. We are doing our best to sensitise them, including through radio programmes, but this is not enough." Stella Lanam, Symposium on Dominic Ongwen Case: The Beginning of Hope for Some and Questions for Others, 12 April 2024.

135 ICC, Assembly of States Parties, Draft Legal aid policy of the International Criminal Court, 22 November 2023.

136 Ibid., para. 41.

137 Ibid., para. 68.

138 Women's Initiatives for Gender Justice, FIDH and Redress, Joint Letter to ICC States Parties and the Registry, 17 October 2023. In this regard, in the Lubanga case, which is at the third year of implementation, more than a thousand victims are still waiting for reparation and have seen their right to legal representation limited. This deprives victims of having adequate legal representation in a phase of proceedings that is complex and lengthy.

Funding the Delivery of Reparations

All ICC organs including the TFV, the Chamber, the LRVs, and the Registry, including VPRS and PIOS play critical roles in implementing the *Ongwen* Reparations Order, and all face significant resource limitations. For instance, in 2019, the TFV has acknowledged the challenges it faces, citing a "significant workload, the complexity of proceedings, the need to identify more and diverse resource opportunities, contextual challenges, and collaboration with many different actors".[139] Despite these challenges, the TFV has successfully begun implementing reparations in several contexts.

In order to implement the *Ongwen* Order, significant fundraising on the part of the TFV will be required. Besides the 52 million EUR for the reparations themselves, the TFV needs additional funding for staff time and other resources to implement the various components of the Order. Even after the DIP is approved and delivery of reparations begins, operationalising and monitoring compliance locally will require staff time and funding for years to come.

States and other funders can donate directly to the TFV – the ICC has explicitly requested financial support to ensure the implementation of the Order, and the TFV has launched an urgent funding appeal for 5 million EUR to launch the reparations program.[140] Finally, the Assembly of States Parties is able to allocate money to the TFV directly.[141] In general, States Parties to the Court have the responsibility to facilitate all aspects of its operation, including the delivery of reparations. Given the scope of reparations in the case, the contributions of States Parties and other donors will greatly impact on the promptness of the implementation, and eventually the effectiveness of the reparations ordered. By providing timely financial support, States can contribute to ensuring that victims receive the justice and reparations they are entitled to, reflecting the States' commitment to accountability and reparations under the ICC Rome Statute.

Additionally, the VPRS has been given a significant role in identifying potential beneficiaries and carrying out eligibility assessments and will require adequate staff and other resources to do so. Yet the VPRS's resources are already stretched: an FIDH report highlights the increased strain on its resources, noting that even though the number of victims participating in ICC proceedings has more than tripled since 2012, the VPRS has faced a reduction in resources both at the ICC's headquarters and in-country, with its budget reduced by 100,000 EUR, not accounting for inflation.[142]

The ICC Registry, overall, has a significant responsibility to ensure the PIOS and VPRS have the resources and tools to implement the Reparation Order effectively, and that the TFV has adequate support that facilitates its work. This might include improving and facilitating procurement processes, security, travel services and other essential services.

In *Ongwen*, the Court as a whole will need to take additional measures to ensure the Order is implemented in a survivor-centred manner and that reparations are delivered effectively.

139 Luke Moffet, Tilting at windmills: Reparations and the International Criminal Court, Leiden Journal of International Law, 21 May 2021, p. 768, quoting ICC-ASP/18/14, 26 July 2019, Annex 1, p. 4.

140 ICC, Trial Chamber IX, *The Prosecutor vs. Dominic Ongwen,* Summary of the Reparations Order of 28 February 2024, p. 13; ICC Trust Fund for Victims issues its First Urgent Funding Appeal of EUR 5 million to launch a reparation program for Victims of Dominic Ongwen, 27 June 2024.

141 *See* assembly of States Parties, Resolution 6, para. 2(d).

142 FIDH, The Rome Statute at 25: Making Victim-Centred Justice work at the ICC, 30 November 2023, pp. 6-7.

CONCLUSION

The Reparations Order in the case against Dominic Ongwen marks a significant step in the ICC's efforts to deliver justice and provide redress to victims of grave international crimes. Victims of the conflict in northern Uganda have long awaited reparations, and this Order paves the way for those affected by Ongwen's crimes to receive the redress they are entitled to. By addressing immediate needs and fostering long-term healing, the reparations process can help restore the dignity and independence of survivors within affected communities.

A survivor-centred approach is crucial. Transparent communication, adequate legal representation, active and meaningful participation of and co-creation with survivors, as well as a commitment to addressing the multi-layered harms are essential components of this approach.

The *Ongwen* Chamber has opted for a strategic and pragmatic approach, aiming to enable the distribution of prompt and effective reparations. In doing so, it has moved further towards a consistent approach to reparations for the Court, and tried to open the way for a methodology that can make ICC reparations more inclusive and accessible, ensuring that all eligible victims are recognised and supported. Yet, in the future, the Court will need to ensure that expediency and pragmatism are balanced with the need to fully consider victims' views and preferences on the modality of effective reparations.

Moving forward, it is crucial for all actors involved – the TFV, LRVs, VPRS, Ugandan civil society, the government of Uganda, and the broader international community – to collaborate effectively, in order to ensure that all necessary support, including adequate funding and resources, are available to enable the reparations process. Ultimately, the reparations process in the Dominic Ongwen case, the ICC's fifth, will test the Court's capability to deliver prompt, effective, and survivor-centred reparations.

Cover Photo: A child made an illustration of the attack of the Lord Resistance Army (LRA) rebels, where Dominic Ongwen was a former commander, to a village in Northern Uganda.

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