

Children in the Practice of the International Criminal Court

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ABSTRACT

The International Criminal Court (ICC) is paying enhanced attention to children by all its important institutions. The article would like to give an overview on the children related activity of (1) the Office of the Prosecutor, (2) the judiciary and (3) the Trust Fund for Victims. Children are victims of several crimes, inter alia child-soldiering, attacks against civilian population and different sexual and gender-based crimes. Special care is required when the ICC experts are collecting the children's testimonies about crimes committed against them. The article gives an introduction into the children-related practice of the ICC and its considerations are based on quotations from the most important judicial decisions and the Policy Papers of the Prosecutor.

KEYWORDS

International Criminal Court, Rome Statute, OTP Policy Papers, crime of child-soldiering, 'ting-ting', SGB crimes, 'Do no harm' principle, danger of retraumatization, Trust Fund for Victims, assistance mandate, reparation mandate, transgenerational harm

1. Children in the text of the Rome Statute

Children are mentioned numerous times in the Statute. They appear in the Preamble¹ and in subsequent articles either in the context of certain crimes (genocide,²

1 Rome Statute, Preamble: '(.) Mindful that during this century millions of *children*, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, (...)'.

2 Rome Statute, Article 6, Genocide: 'For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such (...) (e) Forcibly transferring *children* of the group to another group'. (Same text as in the 1948 Genocide Convention).

enslavement,³ child-soldiering⁴) or in connection with the required age for criminal responsibility⁵ or with the qualifications that candidates are required to produce to be elected to the judiciary.⁶ There are references to children in other articles emphasising the need for deep children-related expertise in the Office of the Prosecutor (OTP).⁷ The articles containing the Prosecutor's duties and powers mention the word "children" in the context of witness protection during the investigation.⁸

3 Rome Statute, Article 7, Crimes against humanity: '1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) (c) Enslavement; (2) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and *children*'.

4 Rome Statute in Article 8 (2)(b) concerning war crimes committed in an international armed conflicts and in Article 8 (2)(e) about war crimes committed in a non-international armed conflict. Article 8 (2)(b) (...) (XXVI) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities. Article 8 (2)(e) (...) (VII) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

5 Rome Statute Article 26, Exclusion of jurisdiction over persons under eighteen: 'The Court shall have no jurisdiction over any person *who was under the age of 18* at the time of the alleged commission of a crime'.

6 Rome Statute, Article 36, Qualifications, nomination and election of judges: '(8) (b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children'.

7 Rome Statute, Article 42, The Office of the Prosecutor: '(9) The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against *children*'.

8 Rome Statute, Article 54, Duties and powers of the Prosecutor with respect to investigations: '1) The Prosecutor shall: (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally; (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including *age*, gender as defined in Article 7, Paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against *children*; and (c) Fully respect the rights of persons arising under this Statute'.

The importance of focusing on children's special needs when they are involved as witnesses or victims in an actual procedure is discussed in a more detailed article.⁹

The word "children" also emerges with respect to those who are entitled to submit a motion for the revision of a sentence if the condemned person passes away.¹⁰

The following sections provide an overview of the implementation of these abstract statutory norms, first through the soft-law-type policy documents issued by the Prosecutor when summarising the directions and principles of his proceedings, and second, by providing a short introduction to cases where children were directly concerned.

2. Children in the key strategic and policy documents of the Office of the Prosecutor

The Prosecutor issues policy papers to reveal the approach he follows in the different aspects of case-selection, prioritisation, investigation and representation of the charges to the legal community, media and public. The *twenty*-, thirty- or even forty-page long publications summarise the established practice in a condensed manner without requiring an interested public officer, academic researcher, or journalist to go through hundreds of submitted motions in a given case.

The Prosecutor issued a comprehensive document about the Policy on Children¹¹ in 2016 where "child sensitive approach" and "the best interest of the child" are the returning notions borrowed from the Convention on the Rights of the Child in the

9 Rome Statute, Article 68, Protection of the victims and witnesses and their participation in the proceedings: '1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in Article 7, Paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial - the rights of persons arising under this Statute. • 2. As an exception to the principle of public hearings provided for in Article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness'.

10 Rome Statute, Article 84, Revision of conviction or sentence: '1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that: (...)'

11 Policy on Children, 15 November 2016. Available at: <https://www.icc-cpi.int/161115-otp-policy-children> (In the followings: Policy on Children, 2016).

nine chapters dealing *inter alia* with the regulatory framework, preliminary examinations, investigations, prosecutions, cooperation, institutional development and implementation. All these chapters have footnotes, reflecting the document's coherence with the convention and its monitoring, as well as the child-related approaches of different UN bodies.

As emphasised,¹² Article 21 of the Rome Statute¹³ is the basis for maintaining the practice of International Criminal Court (ICC) and that of the Convention on the Rights of the Child in harmony.

The booklet points out the importance of the twofold age limit: according to the Rome Statute, a child should be 15 years old or younger to be considered a child soldier, however, concerning other crimes and rules of protection, the age limit is 18 years or younger. This second age limit is also applicable when the word "child" is not mentioned in the legal definition of a given crime, however, the actual victims are children, as in the case of "forcible transfer of population" or "attacks against buildings dedicated to (...) education or (...) hospitals".¹⁴

Moreover, the OTP's approach relies on the use of a presumption based *de facto* on the physical outlook: 'the Office will consider young persons whose ages are unknown to be "children" for the sole purpose of its engagement with them, unless there is a reasonable basis to believe otherwise'.¹⁵ (As one footnote explains, this approach follows the jurisprudence of the Special Court for Sierra Leone.)

The booklet emphasises that the OTP requires

'a child-sensitive approach in all aspects of its work involving children. This approach appreciates the child as an individual person and recognises that, in a given context, a child may be vulnerable, capable, or both. The child-sensitive approach requires staff to take into account these vulnerabilities and capabilities. This approach is based on respect for children's rights and is guided by the general principles of the 1989 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 express one's views and have them considered'.¹⁶

12 Policy on Children, 2016, § 37, p. 18.

13 Rome Statute, Article 21, Applicable law: '1. The Court shall apply: (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence; (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict; (...). 3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights and be without any adverse distinction founded on grounds such as gender as defined in Article 7, Paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status. (...)'.
14 Policy on Children, 2016, §§ 2, 16, pp. 6, 11-12.
15 Policy on Children, 2016, § 16, p. 12.
16 Policy on Children, 2016, § 22, p. 13.

In the context of prosecutions, the “best interest of the child” implies that

‘[c]onsistent with its commitment to apply a child-sensitive approach, the Office will, within the context of its mandate, take into account the best interests of a child as a primary consideration. This involves an ongoing assessment of what would best protect a child’s physical, psychological and emotional safety, security and well-being, and applies to decisions that affect children, as individuals or in general’.¹⁷

This rule is implemented using a two-step process,¹⁸ where the first is the assessment of a given child’s specific situation,¹⁹ and the second comprises the examination of an eventual need to balance different interests.²⁰

When explaining the legal content of different crimes related to children, the Prosecutor states that a child’s victimisation could amount to the level of a crime of torture under the Rome Statute, even if an adult’s victimisation does not forcibly amount to the required threshold of torture in a similar case.²¹ Children’s victimisation can be

17 Policy on Children, 2016, § 28, p. 15.

18 Policy on Children, 2016, § 29, p. 16.

19 ‘In making an assessment about the child’s specific situation, in the first step of the best interests inquiry, the Office will consider: (I) the individual profile of the child concerned, taking into account relevant factors, such as age, level of maturity, experience, education, ability or disability, health conditions, membership in a minority group, sex, and gender, as well as whether the child has been displaced, separated, trafficked, detained, abducted or sexually exploited, or is a parent or head of household; and (II) the child’s social and cultural context, for example, the presence or absence of parents or caregivers, residence in a familial or non-familial setting, the quality of the relationships between the child and his or her family or caregivers, and the environment in relation to safety.’ Policy on Children, 2016, § 30, p. 16.

20 ‘Once a best interests assessment is made as a first step, the Office will then consider whether there are other factors, including legal or operational issues, which may require a balancing of various interests. The Office will resolve potential conflicts on a case-by-case basis, carefully balancing the interests of all parties, in an effort to find a suitable compromise. If harmonisation is not possible, the Office will analyse and weigh the rights and interests of all those concerned. Substantial weight will be placed on the child’s best interests. In circumstances where the ultimate conclusion is that other considerations outweigh the initial best interests assessment, the Office will strive to implement appropriate measures to mitigate any negative impact that such a decision may have on the child.’ Policy on Children, 2016, § 32, p. 17.

21 ‘The Statute also proscribes other related crimes, for example, other inhumane acts as a crime against humanity (Article 7(1)(k)), 62 and inhuman treatment (Article 8(2)(a)(II)), cruel treatment (Article 8(2)(c)(I)) and wilfully causing great suffering (Article 8(2)(a)(III)) 65 as war crimes. The Office recognises that, owing to their physical and emotional development and their specific needs, treatment, potentially amounting to torture and related crimes, may cause greater pain and suffering to children than to adults. It will bear this in mind when considering whether such treatment against children may amount to a crime under the Statute.’ Policy on Children, 2016, § 50, pp. 23-24.

rightfully considered when assessing the “gravity”²² and the “interest of justice”.²³ If committed against children, sexual- and gender-based crimes should be perceived as militating for prosecution.²⁴ Crimes committed against children deserve higher penalties²⁵ and should be considered when judges decide on reparation modalities.²⁶

According to the “*Do no harm*” principle and to avoid re-traumatisation, children’s character and their special needs are to be observed during contacts and interviews. A special psychosocial assessment, which should be video-recorded, should be performed prior to the interview.²⁷ Even if some children are ready and keen to step up as witnesses during the trial, the personnel of the OTP should carefully analyse whether this would really be in the child’s interest.²⁸ If the decision is to call him/her to testify, a special psychological coaching is required before, during and after the testimony.²⁹

To deal with all the complex policies concerning children and the ICC, the Prosecutor appointed a Special Advisor for children in and affected by armed conflict.³⁰

This Policy Paper underwent certain actualisation and was also subject to public consultation.³¹ The 2023 edition confirmed the established strategy, and the considerations and applied techniques were settled into a matrix constituting slightly reformulated objectives and principles.

The new version³² formulates six objectives and seven principles.

22 Policy on Children, 2016, § 57, p. 26.

23 ‘In determining the gravity of potential cases, the Office assesses the scale, nature and manner of the commission of the crimes as well as their impact on victims and communities. In general, the Office will regard crimes against or affecting children as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law.’ Policy on Children, 2016, § 59, p. 27.

24 Policy on Children, 2016, §§ 85-86, p. 34.

25 Policy on Children, 2016, §§ 101-102, pp. 38-39.

26 Policy on Children, 2016, §§ 105-107, pp. 39-40.

27 Policy on Children, 2016, §§ 71-82, pp. 30-33.

28 ‘In the process of selecting witnesses to testify, the Office will bear in mind the attributes a child may possess, including his or her vulnerabilities, capabilities and resilience, as well as the relevance of the evidence the child can provide. It will take into account considerations relating to any psycho-social and security assessments, as well as any possible healing effect which may be associated with providing evidence. The Office recognises that certain child witnesses may want to testify in support of judicial proceedings, and may regard testimony as a component of their own recovery process. The Office will give careful consideration to whether taking evidence will be of benefit or harm to a child. Engagement with children will be conducted by staff members with expertise relating to vulnerable witnesses, including children.’ Policy on Children, 2016, § 89, p. 35.

29 Policy on Children, 2016, §§ 91-97, pp. 35-37.

30 Policy on Children, 2016, § 120, p. 43.

31 The Office of the Prosecutor launches public consultation to renew the policy paper on crimes against or affecting children, Statement of 9 March 2023. Available at: <https://www.icc-cpi.int/news/office-prosecutor-launches-public-consultation-renew-policy-paper-crimes-against-or-affecting>.

32 Available at: <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf> (In the followings: Policy on Children - 2023).

The six objectives are as follows: *a.* To help remedy the historic under-representation and lack of engagement with children in international criminal justice processes; *b.* To emphasise its view that all crimes under the Rome Statute may be committed against children or otherwise affect them in myriad ways; *c.* To ensure that in all dealings related to children, the Office takes a child rights, child-sensitive, and child-competent approach guided by the best interests of the child; *d.* To actively reflect and adapt to issues related to intersectionality, children's different developmental stages and their evolving capacities and capabilities; *e.* To emphasise the Prosecutor's commitment to establish an institutional environment that facilitates effective investigation and prosecution of crimes against and affecting children – including through recruitment, training, external collaboration, and meaningful implementation, monitoring, and evaluation measures; *f.* To promote the exchange of lessons learned and best practices arising from local and international accountability efforts.³³

The following seven principles are enumerated and explained in the document: *a.* Taking a child rights, child-sensitive, and child-competent approach; *b.* Acknowledging diversity among children; *c.* Taking an intersectional approach; *d.* Taking a survivor-centred, trauma-informed approach; *e.* Proactive consideration of and engagement with children; *f.* Consent and assent; *g.* Cooperation and complementarity.³⁴

Children's special interests are emphasised in other policy papers dealing with general or other special aspects of the OTP. Most were issued a few years prior to the publication of the Policy on Children.

When the *Policy Paper on Sexual and Gender-Based Crimes*³⁵ refers to children, it evokes the “Do no harm” principle³⁶ with special focus on gender aspects of child-soldiering and child victims of enslavement.³⁷ Special protective measures, including restrictions on public hearings, are advisable for child victims.³⁸

The *Policy Paper on Preliminary Examination*³⁹ stipulates that when the OTP is analysing the nature of the crime as a component of the assessment of the gravity of the crime,

33 Policy on Children, 2023, p. 7

34 Policy on Children, 2023, pp. 23, 26, 27, 28, 29, 30 and 31.

35 Policy Paper on Sexual and Gender-Based Crimes, June 201. Available at: https://www.icccpi.int/sites/default/files/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf (In the followings: Policy Paper on Sexual and Gender-Based Crimes).

36 Policy Paper on Sexual and Gender-Based Crimes, § 5, p. 6.

37 Policy Paper on Sexual and Gender-Based Crimes, §§ 8, 34, pp. 6 and 21.

38 Policy Paper on Sexual and Gender-Based Crimes, § 88, p. 34.

39 Policy Paper on Preliminary Examinations, November 2013. Available at: https://www.icccpi.int/sites/default/files/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf (In the followings: Policy Paper on Preliminary Examinations).

it should particularly focus on whether the crimes have been committed against children.⁴⁰

The *Policy Paper on Case Selection and Prioritisation*⁴¹ states that the victimisation of children is considered an important factor when assessing the gravity of the crimes⁴² and promises that '[t]he Office will pay particular attention to crimes that have been traditionally under-prosecuted, such as crimes against or affecting children as well as rape and other sexual and gender-based crimes'.⁴³ A relatively similar reference can be found in the *Policy Paper on Situation Completion*⁴⁴ and *Policy Paper on the Crime of Gender Persecution*,⁴⁵ in which the Prosecutor presents its policy concerning crimes falling under Article 7(1)(h)⁴⁶ of the Statute.

40 'The Office's assessment of gravity includes both quantitative and qualitative considerations. As stipulated in regulation 29(2) of the Regulations of the Office of the Prosecutor, the factors that guide the Office's assessment include the scale, nature, manner of commission of the crimes, and their impact. (...) The nature of the crimes refers to the specific elements of each offence such as killings, rapes and other crimes involving sexual or gender violence and crimes committed against children, persecution, or the imposition of conditions of life on a group calculated to bring about its destruction.' Policy Paper on Preliminary Examinations, §§ 61, 63 p. 17.

41 Policy paper on case selection and prioritisation, 15 September 2016, https://www.icc-cpi.int/sites/default/files/20160915_OTP-Policy_Case-Selection_Eng.pdf (In the followings: Policy paper on case selection and prioritisation).

42 Policy paper on case selection and prioritisation, §§ 39, 46, pp. 13 and 16.

43 Policy paper on case selection and prioritisation, § 46, p. 16.

44 'The Prosecutor's decision whether to prosecute a case, or otherwise how to manage it, will be informed by a rigorous process of internal peer review of the evidence, including the participation of senior members of the Office assigned to other situations as well as relevant subject-matter specialists (law, analysis, sexual and gender-based crimes, children, etc.).' Policy on Situation Completion, 15 June 2021. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210615-Situation-Completion-Policy-eng.pdf>, § 38, p. 15.

45 'With regard to gender persecution committed against or affecting children, the Office considers such acts or crimes as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law. Persecutory acts targeting children on the basis of age or birth may be charged on intersecting grounds, including gender, in accordance with the Policy on Children. The Office will pay particular attention to child victims of all ages – from birth to adolescence – of gender persecution when assessing the gravity and impact of such crimes. Additionally, when engaging with children who are victims of gender persecution, the Office will apply a trauma-informed, child-sensitive and child-competent approach'. Policy on the Crime of Gender Persecution, 7 December 2022. Available at: <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf> (In the followings: Policy on the Crime of Gender Persecution).

46 Rome Statute, Article 7, Crimes against humanity: '1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in Paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.'

The *Policy Paper on Victims' Participation*⁴⁷ issued during the first phase of the Lubanga trial raised two aspects of the crime of child-soldiering: I. the identification of natural persons who can act as indirect victims of this crime and their right of participation;⁴⁸ and II. the right of participation of legal persons, in fact schools.⁴⁹

The *Documenting international crimes and human rights violations for accountability purposes – Guidelines for civil society organisations*⁵⁰ is a recent document jointly issued by the Prosecutor, Eurojust and the EU Network for the investigation and prosecution of genocide, crimes against humanity and war crimes. When emphasising the importance of cooperation with NGOs, it is pointed out that these organisations should also observe the rules and principles protecting children because of their particular vulnerability⁵¹ and secure professional psychological pre-assessment and coaching prior to interviews.⁵²

According to the Prosecutor's regular reports on preliminary examinations, child-related crimes seemingly falling under the Rome Statute were well on the agenda; for example, in 2020,⁵³ preliminary examinations covered these types of crimes in the

47 Policy Paper on Victims' Participation, April 2010. Available at: https://www.icccpi.int/sites/default/files/Policy_Paper_on_Victims_Participation_April_2010.pdf (In the followings: Policy Paper on Victims' Participation.)

48 'The Chamber ruled that the category of "indirect victims" entitled to participate in the proceedings, in addition to those with a close personal relationship to a direct victim, may include the harm suffered by persons who intervened to prevent a crime alleged against the accused. By contrast, it excluded from the category of "indirect victims" those who suffered harm as a result of soldiers since 'it is only victims "of the crimes charged" who may participate in the trial proceedings pursuant to Article 68(3)'. The Office concurs that "victims" under rule 85(a) can be persons who were not the direct targets of a crime, but who suffered indirect harm as a result of the commission of a crime. The Office supports a broad characterization of "indirect victims". In Lubanga, the Office expressed its views that those who have suffered harm as a result of crimes committed by child soldiers, i.e. as a consequence of the crimes charged, are also entitled to participate'. Policy Paper on Victims' Participation, pp. 10 and 11.

49 'In relation to rule 85(b), the Office supports participation by legal persons meeting the criteria and having sufficient authority to represent the organization or institution concerned. Trial Chamber I in the Lubanga case ruled, for example, that the principal of a school from which children were recruited by Lubanga's militia, and who himself qualified as a victim under rule 85(a), also had sufficient authority to act on behalf of the school under rule 85(b). Accordingly, it held that he could participate both on his own behalf and on behalf of his school.' Policy Paper on Victims' Participation, p. 8.

50 Documenting international crimes and human rights violations for accountability purposes - Guidelines for civil society organisations (2022), Available at: https://www.icc-cpi.int/sites/default/files/2022-09/2_Eurojust_ICC-CSOs_Guidelines_2-EN.pdf, (In the followings: Documenting international crimes).

51 Documenting international crimes, pp. 13-14, 16 and 23-27, etc.

52 Documenting international crimes, pp. 13-15 and 24-27, etc.

53 Report on Preliminary Examination Activities 2020, 14 December 2020, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>, (In the followings: Report on Preliminary Examination Activities 2020).

following countries: Uganda,⁵⁴ Australia,⁵⁵ Venezuela,⁵⁶ Colombia,⁵⁷ the Philippines,⁵⁸ Israel and the Palestinian Authority⁵⁹ and Nigeria.⁶⁰

As for the OTP's investigative activity, children-related war crimes or crimes against humanity – in most cases in conjunction with other crimes—are currently under investigation, for example, in Libya,⁶¹ Ukraine and Russia,⁶² Sudan⁶³ and Afghanistan.⁶⁴

In the recently published Strategic Plan for 2023-2025 of the OTP,⁶⁵ the promise to 'ensure effective investigations and prosecutions of Sexual and Gender-Based Crimes and Crimes Against Children' figures at the sixth place among the strategic goals⁶⁶ with special emphasis on the fact that 'these crimes are considered, when reflecting the facts and evidence of the case, from the initial investigative and prosecutorial stages when developing case theories, investigation plans and charging strategies'⁶⁷ and that its staff should be continuously trained 'on the relevant legal framework and on cultural, child and gender-related issues related to the situation and the specific communities in which the investigation is being conducted'.⁶⁸ The document also underlined the need for 'a child-sensitive and child-competent approach to investigations and prosecutions, adapted to children's developmental stages and to diverse

54 Report on Preliminary Examination Activities 2020, Report on Preliminary Examination Activities, 2020, § 40, p. 13.

55 Report on Preliminary Examination Activities, 2020, § 46, p. 14.

56 Report on Preliminary Examination Activities, 2020, § 97, p. 25.

57 Report on Preliminary Examination Activities, 2020, § 109, pp. 109-110.

58 Report on Preliminary Examination Activities, 2020, § 188, p. 47.

59 Report on Preliminary Examination Activities, 2020, § 224, p. 57.

60 Report on Preliminary Examination Activities, 2020, § 255, 257, pp. 65-66.

61 Statement of ICC Prosecutor Karim A.A. Khan KC to the UN Security Council on the Situation in Libya, pursuant to Resolution 1970 (2011), Statement of 12 May 202. Available at: <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-un-security-council-situation-libya-pursuant>.

62 Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova, Statement of 17 March 2023. Available at: <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>.

63 Statement of ICC Prosecutor, Karim A.A. Khan QC, to the United Nations Security Council on the Situation in Darfur, pursuant to Resolution 1593 (2005), Statement of 25 August 2022. Available at: <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-united-nations-security-council-situation-darfur-0>.

64 Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan, Statement of 27 September 2021. Available at: <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application>.

65 Office of the Prosecutor Strategic Plan 2023-2025. Available at: https://www.icc-cpi.int/sites/default/files/2023-06/OTP-Strategic-Plan_2023-2025.pdf, 2023-strategic-plan-otp-v.3.pdf (icc-cpi.int), (In the followings: OTP Strategic Plan 2023-2025).

66 OTP Strategic Plan 2023-2025, p. 17.

67 OTP Strategic Plan 2023-2025, para. 59, p. 17.

68 OTP Strategic Plan 2023-2025, para. 61, p. 18.

types of crimes, taking into account the best interests of the child'.⁶⁹ Accordingly, prior control of conformity to these principles should be introduced in all OTP documents and publications.⁷⁰

The commitment of the OTP is also reflected in the Strategic Plan of the ICC:

'The OTP will pay special attention to victims of SGBC and crimes against or affecting children (CAC). An increased systematic focus in all situations and cases on these crimes, combined with an expansion of the OTP's competence to deal with victims of such crimes and with strict application of related policies and standards, will be at the heart of the OTP's strategy with regard to SGBC and CAC.'⁷¹

3. Children in the jurisprudence of the ICC chambers

3.1. *Children as direct or indirect victims*

Children can be direct victims of special children-related crimes (e.g. child-soldiering) and of several "ordinary" crimes such as wilful killing, persecution, torture, deportation, transfer of population, sexual and gender-based crimes and slavery.

They are indirect victims if the crime is committed against an adult; however, the harm caused also concerns them, such as their parents being killed or their educational premises being destroyed.

3.1.1. *Child-soldiering*

In the jurisprudence of the International Criminal Court, child-soldiering has been treated so far in the Lubanga,⁷² Ntaganda⁷³ and Ongwen⁷⁴ cases and forms part of the still pending Yekatom and Ngaissona cases.⁷⁵ This study presents some of the common features of this type of crime and the problems encountered.

69 OTP Strategic Plan 2023-2025, para. 61, p. 18.

70 OTP Strategic Plan 2023-2025, para. 63, p. 18.

71 International Criminal Court, Strategic Plan 2023-2025. Available at: https://www.icc-cpi.int/sites/default/files/2023-06/ICC-Strategic-Plan_2023-2025.pdf, Para 42, p. 14.

72 Available at: <https://www.icc-cpi.int/drc/lubanga>, <https://www.icccpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf>.

73 Available at: <https://www.icc-cpi.int/drc/ntaganda>, .

74 Available at: <https://www.icc-cpi.int/uganda/ongwen>, <https://www.icc-cpi.int/sites/default/files/2022-12/OngwenEng.pdf>.

75 Available at: <https://www.icc-cpi.int/carII/yekatom-ngaissona>, <https://www.icc-cpi.int/sites/default/files/2023-03/yekatom-ngaissonaEn.pdf>.

The international and non-international armed conflict versions of this crime are nearly the same, the only difference being the presence of the adjective “national” in the first.⁷⁶

The first challenge was how to interpret the expression “*to participate actively in hostilities*”. In the case *The Prosecutor v. Thomas Lubanga Dyilo*, related to the civil war in the Ituri Province of the Republic Democratic of Congo, the Trial Chamber first explained why any reference to the jurisprudence of the Special Court for Sierra Leone (SCSL) was legitimate,⁷⁷ then followed the specific approach of the SCSL in its judgement, that is, ‘any conduct accepting the child as a part of the militia. Such conduct would include making him participate in military operations’.⁷⁸ However,

‘[a]n armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation. Hence carrying loads for the fighting faction, finding and/or acquiring food, ammunition or equipment, acting as decoys, carrying messages, making trails or finding routes, manning check-points or acting as human shields are some examples of active participation as much as actual fighting and combat’.⁷⁹

Trial Chamber I summarised the SCSL’s position as follows: ‘The SCSL therefore held that the concept of “using” children to participate actively in hostilities encompasses the use of children in functions other than as front-line troops (participation in combat), including support roles within military operations’.⁸⁰ It quoted, “[u]sing”

76 Rome Statute Article 8(2)(b), (XXVI) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities; Art. 8 (2)(e) (VII) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

77 ‘The jurisprudence of the SCSL has been considered by the Trial Chamber. Although the decisions of other international courts and tribunals are not part of the directly applicable law under Article 21 of the Statute, the wording of the provision criminalising the conscription, enlistment and use of children under the age of 15 within the Statute of the SCSL is identical to Article 8(e)(VII) of the Rome Statute, and they were self-evidently directed at the same objective. The SCSL’s case law therefore potentially assists in the interpretation of the relevant provisions of the Rome Statute.’ *The Prosecutor v. Thomas Lubanga Dyilo*, judgement pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842 14-03-2012. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_03942.PDF , (In the followings: *The Prosecutor v. Lubanga judgement*), para. 603, p. 275.

78 SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeals Chamber, judgement, 28 May 2008 (“CDF Appeal Judgement”), para. 144, *The Prosecutor v. Lubanga judgement*, para. 573 and footnote 1719, p. 263.

79 SCSL, AFRC Trial Judgement, para. 737. *The Prosecutor v. Lubanga judgement*, para. 624, footnote 1798, p. 284–288.

80 *The Prosecutor v. Lubanga judgement*, para. 625, p. 285.

children to “participate actively in the hostilities” encompasses putting their lives directly at risk in combat’.⁸¹

Based on these considerations, the Trial Chamber reached the following conclusions:

‘The extent of the potential danger faced by a child soldier will often be unrelated to the precise nature of the role he or she is given. Those who participate actively in hostilities include a wide range of individuals, from those on the front line (who participate directly) through to the boys or girls who are involved in a myriad of roles that support the combatants. All of these activities, which cover either direct or indirect participation, have an underlying common feature: the child concerned is, at the very least, a potential target. The decisive factor, therefore, in deciding if an “indirect” role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target. In the judgment of the Chamber these combined factors – the child’s support and this level of consequential risk – mean that although absent from the immediate scene of the hostilities, the individual was nonetheless actively involved in them. Given the different types of roles that may be performed by children used by armed groups, the Chamber’s determination of whether a particular activity constitutes “active participation” can only be made on a case-by-case basis.’⁸²

In *The Prosecutor v. Bosco Ntaganda* case concerning the same civil war and the same paramilitary formation (i.e. Ntaganda was Lubanga’s deputy in command, a *quasi*-chief of staff within the UPC/FPLC), the Trial Chamber noted, ‘that active participation in hostilities is temporary in nature under IHL and that individuals cease to actively participate when not engaged in combat related activities. Any charge of active participation must therefore be framed in a more specific way’.⁸³

In *The Prosecutor v. Dominic Ongwen* case, linked with the religiously and partially ethnically motivated non-international armed conflict in “Acholiland” in the Northern part of Uganda, the Trial Chamber defined the duties performed by child soldiers of the Lord’s Resistance Army as follows:

‘Children under 15 years of age serving as soldiers in Sinia brigade took part in fighting. They further facilitated LRA attacks by raising alarms, burning and pillaging civilian houses, collecting and carrying goods from attack sites

81 SCSL, AFRC Trial Judgement, para. 736. *The Prosecutor v. Lubanga* judgement, para. 626, footnote 1800, p. 285.

82 *The Prosecutor v. Lubanga* judgement, para. 628, pp. 285-286.

83 *The Prosecutor v. Bosco Ntaganda*, judgement, ICC-01/04-02/06-2359, 08-07-2019. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_03568.PDF, para. 1113, p. 493.

and serving as scouts. During all four attacks relevant to the charges, children under the age of 15 participated in the hostilities.⁸⁴

Considering that the case *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* had not yet finished when these pages were written, this study can only refer to the decision on the confirmation of charges, issued by the Pre-Trial Chamber.⁸⁵ Mr. Yekatom, as one of the commandants of the Christian Anti-Balaka militia, and Mr. Ngaïssona, as an alleged top political leader of the organisation, are charged for crimes committed against the Muslim population in the Central African Republic and the crime of child soldering – as to Mr. Yekatom – was also confirmed by the Pre-Trial Chamber. The Pre-Trial Chamber concluded that there are substantial grounds to believe that child-soldering was performed in the following manner:

‘Children were also present in several other locations under Yekatom’s control or where Yekatom was present as well, including checkpoints and barricades established by his elements. (...) Once enlisted, children were used to carry out a variety of tasks. They were given the role of messengers or spies, sent to operate checkpoints set up by Anti- Balaka groups, or simply used as a free workforce, (..) Children were also forced to participate in military-style training aiming at teaching them how to behave in combat. (...) children were then used to injure and weaken captured enemies, prior to Anti-Balaka elements killing them. (....) Finally, children were mobilised to directly participate in hostilities (....).’⁸⁶

However, the recurring problem of prosecution for the crime of child-soldering is evidentiary in nature. How to certify the relevant age and i. how to assess the pertinence of the evidence which refer to child-soldering in UN terms, that is, *under the age of eighteen years*; and II. how to prove that the person in question was *under the age of fifteen years*.

The fact that the different UN peacekeeping missions in African countries identified child-soldiers as being eighteen years old or younger is based on the Convention

84 *The Prosecutor v. Dominic Ongwen*, Trial Judgement, ICC-02/04-01/15-1762-Red 04-02-2021. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01026.PDF, para. 225, p. 70.

85 Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’ ICC-01/14-01/18-403-Corr-Red 29-06-2021. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_05873.PDF.

86 Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, paras. 148-149, pp. 67-68.

on the Rights of the Child (20 November 1989)⁸⁷ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (25 May 2000),⁸⁸ both aiming to grant greater protection by fixing a higher age (18

87 Convention on the Rights of the Child, 20 November 1989, Article 38: '1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict'.

88 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000. Article 1: 'States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.'

Article 2: 'States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.'

Article 3: '1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in Article 38, Paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that: (a) Such recruitment is genuinely voluntary; (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians; (c) Such persons are fully informed of the duties involved in such military service; (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in Paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with Articles 28 and 29 of the Convention on the Rights of the Child.'

Article 4: '1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. 2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. 3. The application of the present article shall not affect the legal status of any party to an armed conflict.'

years) than the first⁸⁹ and the second⁹⁰ additional protocols of 1977 to the 1949 Geneva Conventions which stipulate 15 years, as the Rome Statute does. (It is noteworthy that with the exception of the Rome Statute, other conventions distinguish between the minimum age for enlisting and participation in hostilities. A comment made by the International Committee of the Red Cross also recognises that problems of coherence exist in the interplay of these instruments⁹¹).

The outcome is that the use of UN reports when referring to child soldiers seen in training centres, camps and posts, is subject to caution within the ICC, and additional communication or materials are required before passing a decision on how many child soldiers have been detected. The same can be said about documents delivered during the *Disarmament and Demobilization and Reintegration Programs* (DDR), organised generally with the help and under the supervision of the UNICEF and the International Bank for Reconstruction and Development.

These difficulties are exacerbated by the fact that *I.* the beneficiaries of DDR programmes cannot always preserve their DDR certificates; *II.* for reasons of securing the child from ethnic retaliation, DDR certificates in the Congo did not contain any reference to the militia where the given person had been serving as a child soldier; *III.* several child-soldiers escaped from the militia and did not undergo a formal DDR

89 Additional Protocol I (1977), Article 77 - Protection of children:

'1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of Paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, Paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.'

90 Additional protocol II:

'3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured; (...).'

91 Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/crc-opac-2000?activeTab=default>.

centre programme (“self-demobilization”) – consequently, they did not have any official attestation of their past; *iv.* the identity documents are easily falsifiable in some African countries; or *v.* even if the documents are valid, the contained data often contradict other valid documents because, given the lack of a centralised personal identity register, they are based only on the remembrances of a family member; *vi.* an additional challenge is that DDR certificates were issued several times without the thorough control of the given person, or even as a type of complaisance when the child belonged to the administrator’s family or community, or if the local official believed that the young person deserved financial compensation for his/her suffering and tragedy.

As the Trial Chamber pointed out in *The Prosecutor v. Bosco Ntaganda* case about birth dates provided in official documents,

‘[w]ith regard to the various types of documentary evidence submitted concerning the age of alleged child soldiers, it is noted that, generally, the reported conditions of production of most of these documents were such that the Chamber only attached a very low probative value to them. Where it appeared that documents were produced on the basis of the witness’s account alone, or that of their parents, and that no further verification as to the accuracy of the provided information was effectuated, the Chamber found that these documents had limited or no corroboratory value. This was the case, for example, for most of the birth certificates issued by the Etat civil. The Chamber, however, considered that the documents, to the extent that discrepancies could not be explained in a satisfactory manner, could be of relevance to impeach a witness’s credibility’.⁹²

Similarly,

‘[w]hen considering school records, and having had particular regard to the informed evidence provided by P-0551, the Chamber found that these records, to the extent that they are contemporaneous documents containing personal information about witnesses, can be given some weight in assessing the witnesses’ evidence. Relevant discrepancies, most notably regarding the purported age of alleged child soldiers, but also their attendance of or absence from school during periods for which they report having undergone training, have been discussed on a case-by-case basis’.⁹³

All these factors have contributed to such a jurisprudential practice that the precise number of child-soldiers is not mentioned in the judgements of condemnation; instead, formulas such as ‘a considerable number of child soldiers’, ‘a significant number of

⁹² *The Prosecutor v. Bosco Ntaganda*, judgement, para. 86, pp. 40 and 41.

⁹³ *The Prosecutor v. Bosco Ntaganda*, judgement, para. 87, p. 41.

children under the age of fifteen”⁹⁴ who were trained or used as body guards, ‘a large number of child soldiers’⁹⁵ or ‘a large number of children’⁹⁶ have been applied and the calculation of the precise number of victims of child-soldiering (and of other crimes) was assigned to the Trial Chamber acting during the reparation phase.

Calculating the “precise number” is difficult and it needs a close cooperation with the Trust Fund for Victims, autonomous organ of the ICC dealing with assistance and reparation activities using the money collected from States’ voluntary contributions, individual and collective donations, in case of the condemned offender’s insolvency, which is practically always the case.

The implementation of the reparation case concerning only child-soldiers, that is, that of Mr. Lubanga, is approaching its end. It will cover cca. 2500 people.⁹⁷ The reparation order concerning Mr. Bosco Ntaganda’s victims was quashed on appeal, and the Appeals Chamber instructed the Trial Chamber to review its order and substantiate it through precise calculations.⁹⁸ A new order⁹⁹ was issued on 14 July 2023.

Considering the overlap between the Lubanga and Ntaganda cases, the responsibility for child-soldiering was a *res iudicata*. However, Ntaganda’s financial liability must be determined for harm caused by crimes committed against child-soldiers (SGB crimes or cruel corporal punishment). In the sub-point below, the reparation of Ntaganda’s victims for transgenerational harm is succinctly presented.

As Thomas Lubanga’s financial liability for child-soldiering was established as an *in solidum* liability, the obligation to recalculate Mr. Ntaganda’s financial responsibility concerned only the other crimes for which he was condemned. Therefore, the sums fixed in the Lubanga reparation order, its calculations and its implementation by the Trust Fund for Victims were *ab ovo* considered as an integral part of Mr. Ntaganda’s liability.

The order on the reparation due to Mr. Ongwen’s victims is under preparation in 2023. Dominic Ongwen was condemned not only for the crime of child-soldiering but also for other crimes; thus, his liability should also cover the reparation of these other crimes.

In 2023, The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona case is ongoing, which is why any authoritative judicial statements concerning child-soldiers in the Central African Republic cannot be cited.

94 *The Prosecutor v. Lubanga*, judgement, paras. 811, 838, 857, pp. 361, 369 and 376.

95 *The Prosecutor v. Bosco Ntaganda*, judgement, para. 432, note 1223, p. 192.

96 *The Prosecutor v. Dominic Ongwen*, judgement, paras. 223-224, p. 70.

97 More on this: Kovács, 2023, pp. 292-297.

98 See also: Kovács, 2023, pp. 309-319.

99 Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659, ICC-01/04-02/06-2858-Red 14-07-2023. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2023_01595.PDF (In the followings: Addendum, Ntaganda victims’ reparation, 2023).

3.1.2. *Abducted children becoming child soldiers or first “ting-tings” than “forced wives”*

The background of *The Prosecutor v. Dominic Ongwen* was an armed conflict between governmental forces and a strange, partially ethnically, partially religiously coloured uprising movement, the Lord’s Resistance Army (LRA), led by a charismatic person, Mr. Joseph Kony,¹⁰⁰ acting as a supreme commander and a self-nominated prophet of a religion, mixed with Christianity, local spiritualism and animistic beliefs of the Acholi population.

After some clashes and battles, Mr. Kony allegedly shifted to Sudan and after the secession to South Sudan, where he used radio connections to conduct his troops being under his tough control and supervision both “politically” and “religiously”. Disobedience, real or suspected betrayal, and violation of the internal rules of the movement were severely punished.

One of the characteristics of the LRA manoeuvring in the northern part of Uganda was the attacks on not at all or poorly defended villages to plunder foodstuffs, ammunition and to abduct children. Boys were first used as transporters, but they were progressively taught military skills – often through rather bloody and cruel initiation exercises – to become child soldiers with the perspective of becoming commandants. Dominic Ongwen himself was an abducted child, earning more and more stars on his shoulders to become a “general” of a brigade.

Abducted girls became first “ting-tings” (servants, but in fact, domestic slaves) in the household of the LRA commanders. Their duties comprised taking care of their master’s children, helping their “wives” in cleaning and cooking. When they reached their maturity (this often happened as early as at the age of twelve or thirteen), they were attributed as “wife” to meritorious soldiers and commanders, who were often not even twenty years old.

Several witnesses during the Ongwen-trial mentioned that Kony *I.* wanted to establish a new generation ready to rule the region according to his beliefs and prophesies; *II.* reserved for himself the nicest girls, and he was living with a *de facto* harem comprising forty–eighty wives on the Sudanese basis; *III.* aimed to reward his followers by offering them “wives”; *IV.* was afraid of AIDS and other venereal diseases, which explains why he had young girls abducted who had no previous sexual relationship; *V.* prohibited extra-conjugal sexual relationships for the same reason; *VI.* the LRA did not ask the girl’s consent for the marriage. If her “husband” died in battle, she had to remarry after a certain mourning period; however, at that time, her consent had already been obtained. However, she could not remain a widow, and was not allowed to leave the LRA.

The Trial Chamber concluded Dominic Ongwen’s criminal responsibility for several types of crimes committed against children (i.e. child soldering, enslavement, rape, sexual slavery, forced pregnancy and forced marriage as other inhuman acts).

100 Available at: <https://www.icc-cpi.int/uganda/kony>, <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/KonyEtAlEng.pdf>.

Moreover, several children were victims of murder perpetrated during attacks against four villages: Abok, Lukodi, Odek, and Pajule. Mr. Ongwen's criminal responsibility was also established for several other crimes unrelated to children.¹⁰¹

3.2. *The issue of transgenerational harms*

The issue of transgenerational harm first emerged in the reparation case of Germain Katanga's victims and later and more substantially, in the reparation case of Bosco Ntaganda's victims. Both cases were linked to the civil war in the Ituri province of the Democratic Republic of Congo, and the latter case included rape and sexual abuse perpetrated against the civilian population as well as against girls involved in the practice of child-soldering.

The phenomenon of transgenerational harm was first circumscribed historically during the post WWII period, when children (and eventually much later born descendants as well) of former concentration camp prisoners or Jewish people ghettoised or hiding from persecution presented similar, mostly psychological distress symptoms, even if they were born in peaceful, normal and safe conditions. The scientific community has elaborated on two approaches for explaining this phenomenon.

The first approach is generally called *epigenetic school* because it explains the long-term effects of genetic transformations owing to malnutrition, corporal and mental harm, and in some cases also owing to the consequences of the Nazis' human experiments performed in some KZ camps. The second approach is the *social/behavioural school*, emphasising the social transmission of fears and feelings manifested in automatic reactions appearing in people who, *in personam* were not deported or ghettoised but who behaved and reacted in the same manner as their persecuted fellows or family members.

These two schools, presented here in a simplified manner, have followers of new mass crimes perpetrated in the last decades in different points of the globe.

Although in WWII cases, both schools agreed that men having suffered personal, physical or other harm could also be transmitters of the phenomenon, in the cases before the ICC, the symptoms were linked with SGB crimes (rape, sexual slavery, forced marriage) suffered during recent armed conflicts.

In the Germain Katanga victims' reparation case, the acting trial chamber first refused to enter into the examination of the transgenerational harm that eventually suffered. It argued that considering the divided nature of this scientific branch (i.e. the two schools and the applicability of their approaches in a non-WWII context), it does not consider itself qualified to pass a decision on the matter, much less in case the concerned persons are eligible for reparation on other grounds. However,

101 *The Prosecutor v. Dominic Ongwen*, Trial Judgement, 4 February 2021, ICC-02/04-01/15-1762-Red 04-02-2021. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01026.PDF ;<https://www.icc-cpi.int/sites/default/files/itemsDocuments/ongwen-verdict/2021.02.03-Ongwen-judgment-Summary.pdf>, <https://www.icc-cpi.int/news/dominic-ongwen-declared-guilty-war-crimes-and-crimes-against-humanity-committed-uganda>, <https://www.icc-cpi.int/sites/default/files/2022-12/OngwenEng.pdf>.

the Appeals Chamber gave right to the victims' representatives and instructed the trial chamber to revisit the question.¹⁰² Although the Trial Chamber went through the most important teaching of the two schools in a new order, the decision was again negative. As Mr. Katanga was acquitted from the charges of rape and his liability was established "only" concerning his assistance to the massacre of Bogoro village, the Trial Chamber concluded that the causal nexus had not been established between the psychological harm suffered and the crimes for which Mr. Katanga was convicted.¹⁰³

However, owing to differences between the Germain Katanga and Bosco Ntaganda cases, and particularly the fact that Ntaganda's liability was also established concerning rape committed by soldiers under his command, the order in Bosco Ntaganda's victims' reparation cases is truly important. Amending the order of 2021¹⁰⁴ upon the instruction of the Appeals Chamber,¹⁰⁵ the order delivered in 2023¹⁰⁶ presents the two chief schools¹⁰⁷ and points out that in 2021, 'when defining the types of harm suffered by the victims, it considered all relevant information before it and concluded that the children of direct victims suffered transgenerational harm',¹⁰⁸ and the order

102 'The Appeals Chamber recalls that, in this case, the Trial Chamber assessed all applications for reparations individually with a view to determining whether the applicants were victims, and the harm suffered. These determinations were then the basis for awarding symbolic individual as well as collective reparations. While the Appeals Chamber has expressed concerns about this approach in this case, it has not found that it amounted to an error of law or an abuse of discretion. In these circumstances and bearing in mind that the number of applications alleging transgenerational harm is low, the Appeals Chamber considers it appropriate that these applications be reassessed. Thus, the Appeals Chamber considers it appropriate to reverse the Trial Chamber's findings in relation to the Five Applicants and to remand the matter to the Trial Chamber, which has detailed knowledge of the case, for it to reassess the question of the causal nexus between the crimes for which Mr. Katanga was convicted and their psychological harm and whether they should be awarded reparations.' Judgement on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute" ICC-01/04-01/07-3778-Red 09-03-2018. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_01651.PDF, para. 260, pp. 110-111.

103 'On the basis of the foregoing, the Chamber considers that the evidence brought in support of the applications for reparations assessed above does not establish, to the standard of proof of a balance of probabilities, the causal nexus between the psychological harm suffered and the crimes of which Mr. Katanga was convicted.' Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgement of 8 March 2018, ICC-01/04-01/07-3804-Red-tENG. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04641.PDF, pp. 8-10, §§ 9-14.

104 Reparations Order, ICC-01/04-02/06-2659 08-03-2021. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01889.PDF.

105 Judgement on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order, ICC-01/04-02/06-2782 12-09-2022", Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06187.PDF.

106 Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659, ICC-01/04-02/06-2858-Red 14-07-2023. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2023_01595.PDF (In the followings: Addendum, Ntaganda victims' reparation, 2023).

107 Addendum, Ntaganda victims' reparation, 2023, pp. 71-75, §§ 174-175.

108 Addendum, Ntaganda victims' reparation, 2023, p. 78, § 183.

‘did not restrict transgenerational harm to psychological harm only. Accordingly, children of direct victims who can demonstrate to have suffered transgenerational harm should be provided with collective reparations with individualised components, to the extent of the individual harm suffered as a result of the crimes for which Mr. Ntaganda was convicted’.¹⁰⁹

To recognise a victim eligible for reparation for transgenerational harm, the applicant must undergo a case-by-case assessment because transgenerational harm cannot be presumed.¹¹⁰ However, other assumptions regarding the repair procedure apply.¹¹¹

All these considerations were crowned by a solemn tribute paid to children’s sufferings:

‘(...) the Chamber finds it essential to acknowledge the existence of the phenomenon of transgenerational harm and the personal suffering that children of victims of unimaginable atrocities may also experience. In the view of the Chamber, this approach is further justified in light of the fundamental principle of the “best interests of the child”, which should guide reparations decisions concerning children. A sensitive approach to the rights of children that – while ensuring that the rights of the convicted person are fully respected – also carefully promotes the protection of children and recognises the distinct personal harm that they may have suffered, in itself, may already constitute a measure of satisfaction’.¹¹²

109 Addendum, Ntaganda victims’ reparation, 2023, p. 78, § 184.

110 ‘In concrete terms, a child of a direct victim claiming to have suffered transgenerational harm, would generally need to prove (I) that a direct victim suffered harm as a result of a crime for which Mr. Ntaganda was convicted; (II) that the child of the direct victim suffered harm; (III) that the child’s harm arises out of the harm suffered by the direct victim, i.e., the causal link; and (IV) a parent-child relationship. As to the evidence required to prove the elements above, the Chamber considers that the same evidentiary criteria applicable in order to prove identity, the harm suffered, and the causal link between the crime and the harm, as for any other victims in the case, applies to victims claiming transgenerational harm.’ Addendum, Ntaganda victims’ reparation, 2023, p. 79, § 185.

111 ‘Regarding the first two requirements, i.e., harm of the direct victim and harm of the direct victim’s child, the Chamber considers that, although no presumption of transgenerational harm applies, the general factual presumptions established in the Reparations Order to the extent that are not affected by the Appeals Judgment still apply, meaning that, once direct victim status has been proven, (I) children of former child soldiers and of victims of rape and sexual slavery benefit from the presumption of material, physical, and psychological harm in relation to them (as close family members) and in relation to their parents (as direct victims); (II) children of direct victims of attempted murder and of direct victims of crimes committed during the attacks who personally experienced the attacks, benefit from the presumption of psychological harm in relation to their parents (as direct victims); and (III) children of direct victims who lost their home or material assets with a significant effect on their daily life, benefit from the presumption of psychological harm in relation to their parents (as direct victims).’ Addendum, Ntaganda victims’ reparation, 2023, p. 79, § 186.

112 Addendum, Ntaganda victims’ reparation, 2023, p. 84, § 195.

3.3. *The perception regarding the child soldier past of the accused*

The sentence condemning Mr. Ongwen to 25 years of imprisonment¹¹³ gave particular importance to the issue whether – and if yes, in what measure – Ongwen’s own child-soldier past and “socialization” within the LRA since 1987 (when he was probably nine years old) could be considered as a mitigating factor, as the defence suggested (however, the charged period concerned 2002-2005, when he was definitely well over 18 years).

As the Trial Chamber emphasised

‘[o]n the basis of all the available evidence, it is evident to the Chamber that Dominic Ongwen’s abduction at the age of around nine years and subsequent early years in the LRA brought to him great suffering and led to him missing out on many opportunities which he deserved as a child. (...) It is clear that Dominic Ongwen suffered following his abduction into the LRA, even though – as found in the Trial Judgment – this trauma did not lead to a mental disease or disorder and had no lasting consequences from that viewpoint.’¹¹⁴

‘At the same time, the Chamber cannot ignore that the evidence laid out above, specifically concerning various time periods between Dominic Ongwen’s abduction in 1987 and 2002, the beginning of the period of the charges, indicates that whereas during the first years following his abduction, Dominic Ongwen’s stay in the LRA was extremely difficult, he was soon noticed for his good performance as a commander – already in the mid-1990s, at approximately 18 years old. His adaption into the LRA, including with its violent methods, indeed occurred relatively early. (...)’¹¹⁵

‘(...) the Chamber deems that Dominic Ongwen’s personal history and circumstances of his upbringing, since his young age, in the LRA – in particular his abduction as a child, the interruption of his education, the killing of his parents, his socialisation in the extremely violent environment of the LRA – must be given a certain weight in the determination of the length of each individual sentence. The present considerations must therefore be read as incorporated into the individual assessments conducted below concerning each crime.’¹¹⁶ ‘(...) Dominic Ongwen’s abduction and early experience in the LRA constitute specific circumstances bearing a significant relevance in the determination of the sentence, which shall be carefully balanced with all other relevant factors and circumstances in order to determine the most appropriate individual sentence for each of the crimes of which Dominic Ongwen was convicted. In approximate terms, and as a broad indication,

113 The Prosecutor v. Dominic Ongwen, Sentence, 6 May 2021, ICC-02/04-01/15-1819-Red 06-05-2021, Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_04230.PDF (In the following: Ongwen, sentence).

114 Ongwen, sentence, para. 83, p. 33.

115 Ongwen, sentence, para 84, p. 33.

116 Ongwen, sentence, para 87, p. 35.

the Chamber considers the Prosecution's recommendation to consider these circumstances as warranting "approximately a one-third reduction", in the length of the sentences that, in their absence, Dominic Ongwen would otherwise receive, to be generally fitting and reasonable – obviously depending on the particulars of each crime.¹¹⁷

The Defence submitted an appeal against the conviction and sentence, but the Appeals Chamber approved the Trial Chamber's judgement, and it did not find any error in legal argumentation.¹¹⁸

3.4. The issue of children's unlawful deportation or transfer

3.4.1. The issue of children's unlawful deportation in the "situation in Myanmar"

In the "situation of Myanmar" concerning the deportation of seven to eight hundred thousand Rohingyas, a local Muslim community, the Pre-Trial Chambers were confronted with the assessment of a situation where, according to the Prosecutor, allegedly owing to the Myanmarian army's action, several hundred thousand had to flee to the neighbouring Bangladesh to save their life and seek refuge. The forced exodus concerned not only families but also villages.

The importance of the first Rohingya decision is linked to the fact that the Pre-Trial Chambers confirmed the Prosecutor's position: if one of the constitutive elements of a crime is committed in the territory of a State Party, the jurisdictional competence of the Court also concerns the elements that occurred in the territory of a non-State Party.¹¹⁹ In the second decision, authorising the Prosecutor to investigate, the other

117 Ongwen, sentence, para 88, p. 35.

118 Judgement 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-Red 15 December 2022, Available at: <https://www.icc-cpi.int/court-record/icc-02/04-01/15-2022-red>, Judgment on the appeal of Mr. Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled "Sentence", ICC-02/04-01/15-2023, 15 December 2022, Available at: <https://www.icc-cpi.int/court-record/icc-02/04-01/15-2023>, <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-15-ongwen-judgment-summary-eng.pdf>.

119 'In the light of the foregoing, the Chamber is of the view that acts of deportation initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute. It follows that, in the circumstances identified in the Request, the Court has jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh, provided that such allegations are established to the required threshold. This conclusion is without prejudice to subsequent findings on jurisdiction at a later stage of the proceedings.' Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", ICC-RoC46(3)-01/18-37 06-09-2018. Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF, para 73, p. 42.

Pre-Trial Chamber made references to children, but only through the recapitulation of the victims' statements.¹²⁰

*3.4.2. The issue of children's unlawful deportation
or transfer in the "situation in Ukraine"*

In the context of the war launched by Russia against Ukraine in 2022, the Pre-Trial Chamber II granted the Prosecutor's request for arrest warrants for alleged perpetrators of unlawful transfer or deportation. It is well known that these arrests warrant concern for President Mr. Vladimir Putin and the ombudsperson for the children, Mrs. Maria Lvova-Belova. For the time being, the only publicly accessible documents

120 'Victims' representations also mention that children were often targeted and killed, including small children who were thrown into water or fire to die. Victims' representations refer to entire families being torched after perpetrators locked them in their homes.' (...) 'As noted above, victims' representations mention that perpetrators purposely targeted children and that sexual violence, often committed in a brutal manner, was prevalent. (...) 'As a result of these indiscriminate shootings, numerous Rohingya, including many children, were reportedly killed or injured, many whilst fleeing. (...) 'According to the material submitted, most of the Rohingya interviewed in refugee camps in Bangladesh wish to return to Myanmar, but expressed concerns about their safety and citizenship rights. Many stated that they would return only if they were treated with dignity, including respect for their religion, their ethnic identity, the return of their possessions, and a sustainable future for their children.' Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27 14-11-2019. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF, paras. 29, 37, 81, 107, pp. 14, 18, 38 and 49.

of the ICC were press releases issued on the decision,¹²¹ followed by the Prosecutor's

121 Press Release: 17 March 2023, Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. 'Today, 17 March 2023, Pre-Trial Chamber II of the International Criminal Court ("ICC" or "the Court") issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr. Vladimir Vladimirovich Putin and Ms Maria Alekseyevna Lvova-Belova.' Mr. Vladimir Vladimirovich Putin, born on 7 October 1952, President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under Articles 8(2)(a)(VII) and 8(2)(b)(VIII) of the Rome Statute). The crimes were allegedly committed in Ukrainian occupied territory at least from 24 February 2022. There are reasonable grounds to believe that Mr. Putin bears individual criminal responsibility for the aforementioned crimes, (I) for having committed the acts directly, jointly with others and/or through others (Article 25(3)(a) of the Rome Statute), and (II) for his failure to exercise control properly over civilian and military subordinates who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility (Article 28(b) of the Rome Statute). Ms. Maria Alekseyevna Lvova-Belova, born on 25 October 1984, Commissioner for Children's Rights in the Office of the President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under Articles 8(2)(a)(VII) and 8(2)(b)(VIII) of the Rome Statute). The crimes were allegedly committed in Ukrainian occupied territory at least from 24 February 2022. There are reasonable grounds to believe that Ms Lvova-Belova bears individual criminal responsibility for the aforementioned crimes, for having committed the acts directly, jointly with others and/or through others (Article 25(3)(a) of the Rome Statute). Pre-Trial Chamber II considered, based on the Prosecution's applications of 22 February 2023, that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population and that of unlawful transfer of population from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children. The Chamber considered that the warrants are secret in order to protect victims and witnesses and also to safeguard the investigation. Nevertheless, mindful that the conduct addressed in the present situation is allegedly ongoing, and that the public awareness of the warrants may contribute to the prevention of the further commission of crimes, the Chamber considered that it is in the interests of justice to authorise the Registry to publicly disclose the existence of the warrants, the name of the suspects, the crimes for which the warrants are issued, and the modes of liability as established by the Chamber. The abovementioned warrants of arrests were issued pursuant to the applications submitted by the Prosecution on 22 February 2023. Available at: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

statement¹²² and a video message from the ICC President.¹²³

The issue of these children is extensively covered in the international press and in some documents of international organisations,¹²⁴ however, at the time of writing the present article, no other public document was released by the ICC on the matter.

4. The Trust Fund for Victims and children

This special half-autonomous organ of the ICC's institutional complex deals with the needs of victims, many of whom are children, under two mandates. Under the reparation mandate, the Trust Fund manages the victims' reparations when the perpetrator is convicted. The condemned person is liable for the whole costs of reparation, however, pending his insolvency – which has always been the case so far – the Trust Fund “advances” a reasonable sum collected from states and private donors and it conducts the reparation services through hospitals, sick-bays and educational institutions.

Activity under the assistance mandate is linked with an ICC *situation*, but not with a given ICC *case*, and does not presuppose the perpetrator's condemnation.

122 ‘(...) Incidents identified by my Office include the deportation of at least hundreds of children taken from orphanages and children's care homes. Many of these children, we allege, have since been given for adoption in the Russian Federation. The law was changed in the Russian Federation, through Presidential decrees issued by President Putin, to expedite the conferral of Russian citizenship, making it easier for them to be adopted by Russian families. My Office alleges that these acts, amongst others, demonstrate an intention to permanently remove these children from their own country. At the time of these deportations, the Ukrainian children were protected persons under the Fourth Geneva Convention. We also underlined in our application that most acts in this pattern of deportations were carried out in the context of the acts of aggression committed by Russian military forces against the sovereignty and territorial integrity of Ukraine which began in 2014. In September last year, I addressed the United Nations Security Council and emphasised that the investigation of alleged illegal deportation of children from Ukraine was a priority for my Office. The human impact of these crimes was also made clear during my most recent visit to Ukraine. While there, I visited one of the care homes from which children were allegedly taken, close to the current frontlines of the conflict. The accounts of those who had cared for these children, and their fears as to what had become of them, underlined the urgent need for action. We must ensure that those responsible for alleged crimes are held accountable and that children are returned to their families and communities. As I stated at the time, we cannot allow children to be treated as if they are the spoils of war. (...)’

Statement: 17 March 2023, Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova. Available at: <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>

123 President Hofmanski's speech is attached at the end of the press release cited *supra*.

124 Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation, Publisher Organization for Security and Co-operation in Europe, 4 May 2023. Available at: <https://www.osce.org/odihr/542751> ; https://www.osce.org/files/f/documents/7/7/542751_0.pdf.

This means that victims of events that *ratione personae*, *ratione loci* or *ratione temporis* did not make part of the charges, in case the perpetrator was acquitted, or the case ended for any other reason without condemnation (e.g. the death of the person under investigation) can nevertheless have access to some help financed from the collection.

Despite the different legal nature of the two mandates and considering the sums available, the most urgent needs and their costs, the granted services are similar and in case of children-victims or ex-children victims such as child soldiers, domestic slaves (“*ting-tings*”), sexually abused or raped children and children born from rape, the services are centred on medical and psychological treatment, education and professional formation necessary for their social integration.¹²⁵

5. Conclusion

Children, as vulnerable victims, are the focus of attention of the International Criminal Court. Their enhanced presence in the Rome Statute and other normative texts, the importance attributed to the children in case selection, pre-trial and trial management and during reparation and assistance activities are absolutely justified. Their personal tragedy is often a relevant factor in the recurrence of hostility and transboundary extension.

125 See in detail and also with indication of costs in: Strategic Plan, 2023-2025, Trust Fund for Victims at the International Criminal Court. Available at: [https://www.trustfundforvictims.org/sites/default/files/reports/TFV Strategic Plan 2023-2025 ENG.pdf](https://www.trustfundforvictims.org/sites/default/files/reports/TFV%20Strategic%20Plan%202023-2025%20ENG.pdf); [https://www.trustfundforvictims.org/sites/default/files/inline-files/TFV Annual Report 2021_0.pdf](https://www.trustfundforvictims.org/sites/default/files/inline-files/TFV%20Annual%20Report%202021_0.pdf); <https://www.trustfundforvictims.org/en/locations/democratic-republic-congo>; <https://www.trustfundforvictims.org/en/locations/central-african-republic>; <https://www.trustfundforvictims.org/index.php/en/locations/uganda>; <https://www.trustfundforvictims.org/en/news/trust-fund-victims-launch-programme-georgia>.

Bibliography

- International Criminal Court, Strategic Plan 2023-2025. Available at: (https://www.icc-cpi.int/sites/default/files/2023-06/ICC-Strategic-Plan_2023-2025.pdf)
- Office of the Prosecutor Strategic Plan 2023-2025. (Available at: https://www.icc-cpi.int/sites/default/files/2023-06/OTP-Strategic-Plan_2023-2025.pdf)
- Policy on Children, November 2016. (Available at: <https://www.icc-cpi.int/161115-otp-policy-children>)
- Policy on Children, December 2023 (Available at: <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf>)
- Policy Paper on Sexual and Gender-Based Crimes, June 201. (Available at: https://www.icccpi.int/sites/default/files/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf)
- Policy Paper on Preliminary Examinations, November 2013. (Available at: https://www.icc-cpi.int/sites/default/files/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf)
- Policy paper on case selection and prioritization, September 2016. (Available at: https://www.icc-cpi.int/sites/default/files/20160915_OTP-Policy_Case-Selection_Eng.pdf)
- Policy on Situation Completion, June 2021. (Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210615-Situation-Completion-Policy-eng.pdf>),
- Policy on the Crime of Gender Persecution, December 2022. (Available at: <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>)
- Policy Paper on Victims' Participation, April 2010. (Available at: https://www.icccpi.int/sites/default/files/Policy_Paper_on_Victims_Participation_April_2010.pdf)
- Documenting international crimes and human rights violations for accountability purposes - Guidelines for civil society organizations (2022), (Available at: https://www.icc-cpi.int/sites/default/files/2022-09/2_Eurojust_ICC_CSOs_Guidelines_2-EN.pdf)
- Report on Preliminary Examination Activities 2020, December 2020, (Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>)
- Trust Fund for Victims at the International Criminal Court, Strategic Plan, 2023-2025, (Available at: https://www.trustfundforvictims.org/sites/default/files/reports/TFV_Strategic_Plan_2023-2025_ENG.pdf)
- Kovács Péter: L'individu et sa position devant la Cour pénale internationale, Recueil des Cours de l'Académie de Droit International de La Haye, Tome 432, Brill / Nijhoff (2023), Leiden.