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TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public

Submissions relevant to reparations

Source: Office of Public Counsel for Victims

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I. INTRODUCTION

1. Victims have been waiting for 13 years to have justice about the events they have suffered from and to see their victimisation recognised by a court of law. They are now hoping that the harms they have been suffering from will be addressed in a reasonable period of time.

2. The Principal Counsel submits that the principles established by the Appeals Chamber in the *Lubanga* proceedings are generally applicable in the present case. However, in light of the specificities of the case and of the types of crimes for which Mr Bemba has been declared guilty, she proposes some amendments to said principles and the inclusion of two new principles.

3. The Principal Counsel advocates for the direct eligibility of victims who have already participated at trial and for the establishment by the Chamber of a reasonable deadline for the submission of new applications for reparations. Moreover, considering the specific circumstances of the case, the Principal Counsel advocates for an approach sensitive to the difficulties faced by victims in providing evidence and for a relaxed evidentiary requirement in favour of the applicants, also considering that the extent of the harms suffered by victims have already been established at trial.

4. The harms suffered by the victims include various injuries and physical harm, psychological trauma and the development of psychological disorders, death of family members including material deprivation following said death, separation of families, uncertainty about the fate of family members who were murdered and whose bodies were not found, displacement, diseases and infections, miscarriages, disruption of schooling and loss of education opportunities, destruction of private and professional properties and loss of income.

5. In this regard, victims have indicated that Mr Bemba's contribution to address the harms suffered by them is an essential component of the reparations proceedings and that the Chamber should assess the current financial situation of the convicted person.

6. Moreover, victims have expressed concerns towards the possibility that only collective reparations be awarded and they indicated that they seek reparations which will benefit them individually and which are adapted to their needs. The involvement of the Central African Republic Government is also for the victims an element to be taken into account when deciding on reparations measures.

7. Said measures shall be adequate, effective, prompt and proportional to the gravity of the violations and the harms suffered; as well as adapted to the social, cultural and economic context of the country in which reparations programmes will be developed; they shall be designed to preserve the security, well-being and dignity of victims. Therefore, in view of the complexity of the case and of the different harms suffered by the victims by virtue of the different types of crimes committed, the Principal Counsel is of the opinion that the Chamber should appoint a multidisciplinary team of experts to assist not only in the determination of the scope, extent of any damage, loss or injury to or in respect of victims, but also in proposing appropriate types and modalities of reparations.

8. Finally, the Principal Counsel submits that any process conditioning the accessibility of reparations to the victims' consent to disclose their identities to the Defence would be unfair.

II. PROCEDURAL BACKGROUND

9. On 9 December 2009, 19 November 2010, 25 October 2011¹, 11 May and 2 August 2012², the then Trial Chamber III issued several decisions on legal representation of victims, appointing the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as legal representative of 555 applicants for the purpose of reparations proceedings. Consequently, the Principal Counsel represents to date several categories of applicants, namely (i) those who chose in their application forms to be represented by her directly; (ii) those applying for reparations and who did not designate a lawyer in their application forms; and (iii) those who applied for reparations only and were represented by late Mr Zarambaud.

10. On 21 March 2016, the then Trial Chamber III issued its “Judgment pursuant to Article 74 of the Rome Statute” (the “Judgment”), declaring Mr Bemba guilty under article 28 of the Rome Statute of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape, and pillage) committed on the territory of Central African Republic (“CAR”) from on or about 26 October 2002 to 15 March 2003, by the *Mouvement de Libération du Congo*³. On 21 June 2016, Mr Bemba was sentenced to 18 years of imprisonment.⁴

¹ See the “Decision on the Observations on legal representation of unrepresented applicants” (Trial Chamber III), No. ICC-01/05-01/08-651, 9 December 2009; the “Decision on the legal representation of victim applicants at trial” (Trial Chamber III), No. ICC-01/05-01/08-1020, 19 November 2010; and the “Decision on 270 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-1862, 25 October 2011. See also the “Notification of designation of the Office of Public Counsel for Victims as legal representative of unrepresented applicants for reparations”, No. ICC-01/05-01/08-2982-Anx1, 17 February 2014; and the “Notification of designation of the Office of Public Counsel for Victims as Legal Representative of unrepresented applicants”, No. ICC-01/05-01/08-2256, 7 August 2002; the “Notification of designation of the Office of Public Counsel for Victims as Legal Representative of unrepresented applicants”, No. ICC-01/05-01/08-2848, 25 October 2013 and the “Notification of designation of the Office of Public Counsel for Victims as Legal Representative of unrepresented applicants”, No. ICC-01/05-01/08-2906, 25 November 2013.

² See the e-mails sent by the Chamber to the Principal Counsel on 11 May 2012 and 2 August 2012.

³ See the “Judgment pursuant to Article 74 of the Rome Statute” (Trial Chamber III), No. ICC-01/05-01/08-3343, 21 March 2016 (the “Judgement”).

⁴ See the “Decision on Sentence pursuant to Article 76 of the Statute” (Trial Chamber III), No. ICC-01/05-01/08-3399, 21 June 2016 (the “Sentencing Decision”).

11. On 22 July 2016, the newly composed Trial Chamber III (the “Chamber”)⁵ issued the “Order requesting submissions relevant to reparations” (the “Order”), ordering the Legal Representative of victims, the Defence, the Prosecution, the Registry and the Trust Fund for Victims (the “Trust Fund”) to submit their observations by 15 September 2016.⁶ The Chamber also ordered the Registry to provide a list of experts available to assist in its determination of the issues relevant for reparations and an update on the current security situation in the CAR.⁷

12. On 4 August 2016, pursuant to regulation 81(4) of the Regulations of the Court, the Principal Counsel requested to be authorised to submit observations on reparations within the same deadline already set by the Chamber.⁸ On 5 August 2016, the Chamber granted the request.⁹

13. On 25 August 2016, upon request by the Trust Fund, the Chamber extended the time-limit for the submissions until 17 October 2016.¹⁰

14. On 26 August 2016, the Chamber granted the Queen's University Belfast Human Rights Centre, the Redress Trust, the United Nations (the “UN”) and the International Organisation for Migration (the “IOM”)¹¹ leave to submit observations

⁵ See the “Decision replacing two judges in Trial Chamber III”, No. ICC-01/05-01/08-3403, 6 July 2016.

⁶ See the “Order requesting submissions relevant to reparations” (Trial Chamber III), No. ICC-01/05-01/08-3410, 22 July 2016 (the “Order”). On 3 August 2016, the Chamber informed the parties and participants “*that the observations [...] will not be subject to page limit in accordance with regulation 37 of the Regulations of the Court*”.

⁷ *Idem*, para. 9

⁸ See the e-mail sent by the Principal Counsel to the Chamber on 4 August 2016, at 9.12 a.m.

⁹ See the Chamber’s decision communicated by e-mail on 5 August 2016, at 12.43 p.m.

¹⁰ See the “Order on the Requests for extension of time to file submissions relevant to reparations” (Trial Chamber III), No. ICC-01/05-01/08-3429, 25 August 2016.

¹¹ See the “Request for leave to file submission on reparations issues pursuant to Article 75 of the Statute”, No. ICC-01/05-01/08-3420, 8 August 2016; the “Application by the Redress Trust for leave to submit observations pursuant to Article 75(3) of the Statute and Rule 103 of the Rules”, No. ICC-01/05-01/08-3421, 10 August 2016; the “Application by the United Nations for leave to make submissions pursuant to Article 75 of the Statute and Rule 103 of the Rules of Procedure and Evidence”, No. ICC-01/05-01/08-3422, 15 August 2016; and the “Registry’s implementation of Decision ICC-01/05-01/08-3410”, No. ICC-01/05-01/08-3425 and Conf-AnxI, 16 August 2016.

within the above-mentioned deadline.¹² Observations by said organisations were filed on 17 October 2016.¹³

15. On 3 October 2016, the Trust Fund requested a further extension of the deadline to submit observations,¹⁴ which was supported by the Defence and the OPCV.¹⁵ The Chamber granted said request on 7 October 2016, extending the deadline to file submissions until 31 October 2016.¹⁶

16. On 27 October 2016, the Registry requested an extension of time to identify experts,¹⁷ which the Chamber granted on 28 October 2016 setting the new deadline at 31 December 2016.¹⁸

¹² See the “Decision on requests to make submissions pursuant to article 75(3) of the Statute and rule 103 of the Rules of Procedure and Evidence” (Trial Chamber III), No. ICC-01/05-01/08-3430, 26 August 2016.

¹³ See the “Submission by QUB Human Rights Centre on reparations issues pursuant to Article 75 of the Statute”, No. ICC-01/05-01/08-3444, 17 October 2016 (the “Submission by Queen University Belfast”); the “Submission by the International Organization for Migration to the International Criminal Court pursuant to article 75(3) of the statute: on the issues proposed by Trial Chamber III on the 12th August 2016”, No. ICC-01/05-01/08-3447, 17 October 2016 (the “Submission by the IOM”); the “Observations by the Redress Trust pursuant to Article 75(3) of the Statute and Rule 103 of the Rules”, No. ICC-01/05-01/08-3448, 17 October 2016 (the “Observations of Redress Trust”); the “Joint submission by the United Nations containing observations on Reparations pursuant to Rule 103 of the Rules of Procedure and Evidence”, No. ICC-01/05-01/08-3449, 17 October 2016 (the “United Nations Submission”).

¹⁴ See the “Request for an extension of the time limit”, No. ICC-01/05-01/08-3437, 3 October 2016.

¹⁵ See the e-mail sent by the Lead Counsel of Mr Bemba to the Chamber, on 5 October 2016, at 11.12 a.m.; see also the e-mail sent by the Principal Counsel to the Chamber, on 5 October 2016, at 11.22 a.m.

¹⁶ See the “Order on the Trust Fund for Victims’ request for an extension of the time limit” (Trial Chamber III), No. ICC-01/05-01/08-3442, 7 October 2016.

¹⁷ See the “Request for an extension of time to identify experts”, No. ICC-01/05-01/08-3452, 27 October 2016.

¹⁸ See the “Order on the Registry request for extension of time to identify experts” (Trial Chamber III), No. ICC-01/05-01/08-3453, 28 October 2016.

III. OBSERVATIONS ON REPARATIONS

17. Preliminarily, the Principal Counsel wishes to inform the Chamber that she consulted with the appointed Legal Representative of victims in order to share views on issues related to reparations.

18. Both Counsels share the concerns linked to the particular complexity of the victims' situation in the present case in light of the following factors: (i) the high number of individuals likely to be concerned by and interested in the reparations proceedings; (ii) the geographical scope of the case, covering the entire territory of the country; (iii) the current still volatile security situation in the country; (iv) the fact that many victims have been displaced since the events or cannot be easily located since their last contact with their lawyers, or have died; (v) the fact that many victims have been re-victimised by further dramatic events which occurred in the country after 2002-2003. While both Counsels have common concerns, they have chosen at this stage to submit separate observations in order to reflect the distinct interests of the victims they represent.

19. The Principal Counsel also informs the Chamber that, to the extent possible, she has consulted with her clients who still reside in the Central African Republic and also with some of the ones who are currently residing outside of the country in order to better understand their views and concerns in relation to the reparations proceedings.

20. The submission will address the issues as listed in the Order of the Chamber.

A. Applicability of the principles established by the Appeals Chamber in the *Lubanga* case

21. The Principal Counsel supports the implementation of all principles identified by the Appeals Chamber in the *Lubanga* case.¹⁹ In light of the specificity of the case, she wishes to suggest some amendments and the inclusion of two new principles.

22. In relation to the *beneficiaries of reparations*, the Principal Counsel observes that the concept of ‘family’ in the present case should be understood as extending beyond the spouse and children of the victim, in light of the cultural specificities with regard to the notion of family and community.²⁰ This understanding may be particularly relevant in the present case since numerous victims - particularly children - were living at the time of the events with their grandparents, aunts or uncles. Many of the victims were living with numerous family members, either together in the same house or in the same household, regrouping members of their families in neighbouring houses. Some were caring for their elder parents, ill siblings, or children of their sisters or brothers when the Banyamoulué attacked them. Many

¹⁹ See the “Judgement on the appeal against the ‘Decision establishing the principles and procedures to be applied for reparations’ of 7 August 2012” with Amended Order for reparations (Annex A) (Appeals Chamber), No. ICC-01/04-01/06-3129 A, A2, A3, 3 March 2015 (respectively the “Appeal Judgement” and the “Annex A”). See also, the “Decision establishing the principles and procedures to be applied to reparations” (Trial Chamber I), No. ICC-01/04-01/06-2904, 7 August 2012.

²⁰ In this sense, see ECCC, Case against Kaing Guek Eav, Judgement, E188, 26 July 2010, para. 643: “Although the immediate family members of a victim fall within the scope of Internal Rule 23(2) (b), direct harm may be more difficult to substantiate in relation to more attenuated familial relationships. The Chamber nevertheless considers that harm alleged by members of a victim’s extended family may, in exceptional circumstances, amount to a direct and demonstrable consequence of the crime where the applicants are able to prove both the alleged kinship and the existence of circumstances giving rise to special bonds of affection or dependence on the deceased. In this regard, the Chamber accepts the view of expert CHHIM Sotheara regarding the nature of familial relationships within Cambodian culture and has therefore evaluated the claims of extended family members who have sought to demonstrate a particular bond with immediate victims of S-21 and S-24”. See also ECCC, Case against Kaing Guek Eav, Appeal Judgement, Case File No. 001/18-07-2007-ECCC/SC, 3 February 2012, para. 562: “As held above, the Trial Chamber was correct to articulate the requirement of special bonds of affection or dependence between a direct victim and the claimed indirect victim. This Chamber has further held that close family members may be presumed to have had such bonds. As to what constitutes a close family is context dependent. In the Cambodian context large families live together and form ties connecting immediate and non-immediate family members” (the “KAING Guek Eav Appeal Judgement”). This Judgement is available at the following address, lastly consulted on 27 October 2016:

<https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/Case%20001AppealJudgementEn.pdf>

of them, due to the death of too many family members following the events, are left caring for numerous children, sisters and/or brothers.

23. Moreover, the Principal Counsel supports the proposal by the United Nations to include, in the list of beneficiaries, both children born as a result of pregnancy from rape and victims' dependants more broadly.²¹

24. In relation to the *causation and the standard and burden of proof*, the Principal Counsel agrees that the causal link between the crime and the harm for the purposes of reparations is to be determined in light of the specificities of the case; and that the applicant shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case.²² Therefore, considering the specific circumstances of the case, the Principal Counsel advocates for an approach sensitive to the difficulties faced by victims in providing evidence and for a relaxed evidentiary requirement in favour of the applicants.²³ In this regard, the Chamber should consider applying presumptions or consider whether different standard of proof should be applied to the different types of crimes and subsequent harms suffered from by victims. Further arguments in this regard are developed *infra* paragraphs 41 to 46.

25. In relation to *the liability of the convicted person*, this principle is particularly relevant in this case because Mr Bemba is not indigent. Further arguments in this regard are developed *infra* paragraphs 47 to 60.

²¹ See the "United Nations Submission", *supra* note 13, para. 17 and footnote 28.

²² See the "Appeal Judgment", *supra* note 19, paras. 11 and 22.

²³ See in this sense the "Observations of Dr. Golden, Mr Higson-Smith, Professor Ní Aoláin and Dr Wühler pursuant to Rule 103 of the Rules of Procedure and Evidence", No. ICC-01/04-01/06-3240, 5 October 2016, paras. 13 and 48 (the "Experts' Report") and footnote 30 referring to NIEBERGALL (H.), *Overcoming Evidentiary Weaknesses in Reparations Claims Programmes*, in FERSTMAN (C.), GOETZ (M.) and STEPEHNS (A.) (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, Martinus Nijhoff, 2009, pp. 145 – 146. See also the "Observations of Redress Trust", *supra* note 13, para. 76 b. and c.

26. In relation to the *child victims*, the Principal Counsel notes that, while the principle was drafted in the context of a case involving former child soldiers, it is applicable generally to the situation of children victimised by the events in the present case. Therefore, reference to the words “child soldiers” shall be deleted.²⁴ The Principal Counsel suggests including also a paragraph to cover the situation of children born out of rapes and the issue of the trans-generational harm. Said inclusion will complete the reference to this category of beneficiaries as proposed *supra* in paragraph 23.

27. In relation to the *modalities of reparations*, the Principal Counsel refers to the developments *infra* paragraphs 65 to 82.

28. Finally, taking into account the specificities of the crimes for which the convicted person has been declared guilty, the Principal Counsel suggests the inclusion of two principles: 1) related to gender crimes and the need for a gender-inclusive approach; and 2) related to the crime of pillaging and covering loss of property and/or income, as well as the impact of said crime on the perspective of life. Concerning the first principle, the *Nairobi Principles on Women and Girls’ Right to a Remedy and Reparation*²⁵ and the Guidance Note of the Secretary General of the United Nations on *Reparations for Conflict-Related Sexual Violence*²⁶ provide useful guidance for the drafting of said principle. The principle should cover equally the situation of female and male victims of rape. Concerning the second principle, the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the

²⁴ See the “Annex A”, *supra* note 19, para. 26.

²⁵ See the “Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation”, International Meeting on Women’s and Girls’ Right to a Remedy and Reparation, Nairobi, 19 to 21 March 2007. This document is available at the following address, lastly consulted on 27 October 2016: [http://www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2009/Nairobi-Declaration-on-Women%E2%80%99s-and-Girls%E2%80%99-Righ-\(1\)/09-04-M-Annex.pdf](http://www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2009/Nairobi-Declaration-on-Women%E2%80%99s-and-Girls%E2%80%99-Righ-(1)/09-04-M-Annex.pdf)

²⁶ See United Nations, Guidance Note of the Secretary General of the United Nations on Reparations for Conflict-Related Sexual Violence, June 2014. This document is available at the following address, lastly consulted on 27 October 2016: <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf> See also the “United Nations Submission”, *supra* note 13, paras. 25-28.

“*Pinheiro Principles*”)²⁷ could provide useful guidance for the drafting of said principle, *mutatis mutandi*.

B. Criteria and methodologies to be applied in the determination and assessment of (i) the eligibility of victims; (ii) the relevant harms; and (iii) the scope of liability of Mr Bemba, including the determination of the precise extent of the (monetary) obligations to be imposed on him

(i) The eligibility of victims

29. The Principal Counsel submits that victims already authorised to participate in the case and who have expressed their willingness to also participate in the reparations proceedings shall be eligible for reparations without being required to complete a new application form.

30. Concerning victims whose applications are still pending before the Chamber, said applications should be assessed as soon as possible. In the case of incomplete applications, the Principal Counsel advocates for a reasonable deadline to be set by the Chamber for the submission by the legal representatives of additional information.

31. Moreover, the Principal Counsel notes that any other individual or entity satisfying the definition of “victim” in accordance with rule 85 of the Rules of Procedure and Evidence may also be eligible for reparations. In this regard, the Principal Counsel advocates for a reasonable time established by the Chamber in which victims could file their applications for reparations.

²⁷ See United Nations, Principles on Housing and Property Restitution for Refugees and Displaced Persons, 28 June 2005 E/CN.4/Sub.2/2005/17. This document is available at the following address, lastly consulted on 27 October 2016: <http://www.refworld.org/docid/41640c874.html>. See also, GOLAY (C.) and CISMAS (I.), Legal Opinion: The Right to Property from a Human Rights Perspective. This document is available at the following address, lastly consulted on 27 October 2016: <http://www.geneva-academy.ch/docs/publications/ESCR/humanright-en.pdf>

32. On the methodology to be used to collect new application forms, the Principal Counsel supports the use of a simplified standard application form to be designed by the Registry in consultation with the legal representatives. Concerning the identification of persons applying for reparations, the Principal Counsel advocates for adopting the same approach already implemented by the Trial Chamber in relation to applications for participation at trial.²⁸

(ii) The relevant harms

33. Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the “Basic Principles”) provides as follows:

*“victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.*²⁹

²⁸ See the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants” (Trial Chamber III), No. ICC-01/05-01/08-699, 22 February 2010, paras. 35 and 36; the “Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-807-Corr, 12 July 2010, paras. 15, 20, 80 to 85, and 91 to 96.

²⁹ See the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, Resolution adopted by the UN General Assembly at its 60th session on 21 March 2006, UN Doc. A/RES/60/147 (the “Basic Principles”), Principle 15. This document is available at the following address, lastly consulted on 27 October 2016: <http://www2.ohchr.org/english/law/remedy.htm>

34. Taking into account the description of the events in the application forms and the types of crimes for which Mr Bemba has been convicted, there are numerous forms of harm the victims have been suffering from: various injuries and physical harm, psychological trauma and the development of psychological disorders, death of family members including material deprivation following said death (especially in the case of widows or orphans), separation of families, uncertainty about the fate of family members who were murdered and whose bodies were not found, displacement, diseases and infections, miscarriages, disruption of schooling and loss of education opportunities, destruction of property and loss of income.

35. Children of a very young age - boys or girls - were also victimised by the loss of their house and household, had to flee and live in the forest or in the bush for many weeks or months, sometimes years, forced to grow up in very precarious situations, with very little to ensure their development, and consequently lost the chance to continue going to school and learn skills leading to a profession later. Some of them were subjected to sexual violence and rapes, losing their virginity and innocence, sometimes in front of family members. Others lost their family members, with whom they were living and who were taking care of them, brutally killed by the Banyamoulués, sometimes in their presence. Victims who were victimised while they were children, carry with them deep sufferings and traumas which have shaped forever their perception of the world and their ability to integrate in the society. Because most of them never benefited from any kind of support, they still need nowadays medical and psychological care, educational support with schooling and professional workshops and trainings, support to develop and handle a professional activity.

36. Victims of rape – male and female – are of particular concern. They face great difficulties during the process of being accepted back into their families and communities, with girl mothers and their children experiencing the highest level of rejection. They may be unable to marry, which may also deprived them of emotional,

financial and material security particularly in the African context. They may be denied access to productive activities such as communal farms or local markets, which may in turn force them to live in poverty. They may be prevented from attending school, which may deprive them of the opportunity to raise themselves out of poverty. They may suffer from HIV/AIDS or other sexually transmitted diseases as a consequence of the rape, which have very serious implications for their health and hence their life plan.³⁰

37. Some are indirect victims, born out of rapes committed against their mothers. Growing up as sons or daughters of the Banyamoulués, rejected by their families, communities, and sometimes mothers, they have been facing since the events shame, humiliation, stigmatisation, abandonment, rejection and mistrust by members of their own families and communities, hence living in very difficult economical and psychological situations.

38. Victims who were adult at the time of the events had to run for their lives, trying nonetheless to save their families, and for the vast majority of them could not succeed in doing so, and had to witness and bear the consequences of the crimes committed against them and their loved ones. Some victims not only keep the physical and mental scars of these sufferings, but also remain isolated from their families and communities, stigmatised by the events they went through in 2002-2003.

39. Victims who lost their houses after being pillaged and further destroyed still need support to reoccupy houses and lands. In this regard, helping victims reinstalling themselves in a proper house, under a proper roof, is a key element aiming to support and ensure their well-being. Indeed, the crime of pillage touches upon the very heart of the capacity of any human being to heal oneself. Only when once is settled in a place where she/he manages to feel home in (even temporarily), only then can and will measures aiming at supporting her/his health - physical,

³⁰ See in this sense, the "Submission by Queen University Belfast", *supra* note 13, paras. 58 to 60.

mental and psychological and her/his professional activity, education, reintegration be beneficial, so to say, useful, constructive and life-changing.

40. The Principal Counsel therefore submits that in assessing the prejudice suffered by the victims, it is necessary to take into account the age-related harm experienced by each of them, assess any differential impact of the crimes concerned on male and female, take all appropriate measures to promote their physical and psychological recovery and social reintegration, stemming from any form of neglect, exploitation, abuse, degrading treatments, in an environment which fosters the health, self-respect and dignity of the individual. Moreover, children benefit from a particular protection: in this sense, victims who were children when they were harmed should benefit from additional reparation measures.³¹

41. Related to the issue of the assessment of the harms suffered by the victims, is the matter of the standard of proof for the purpose of reparations. As already shown for the purpose of participation in this case, it is sometimes very difficult for the victims to obtain copies of identity documents, let alone medical documentation or documents related to their house and belongings at the time of the events, also considering that the country has been the theatre of several episodes of violence after 2002-2003 and people had to flee their houses. In most situations, heads of neighbourhoods who know the victims and their families agree to establish identities, family relations or personal conditions in written statements. In some cases, victims do not have the necessary money to pay for copies of the original documents kept by the relevant institutions - when said institutions (such as non-governmental organisations, governmental bodies, hospitals, town hall, etc.) still exist and maintain archives. As a consequence, the Principal Counsel advocates for a

³¹ See IACHR, *Mapiripán Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of 15 September 2005, paras. 96(30)-(47), 284: An additional 10,000 USD was awarded to any victim that was a minor at the time of the incident, on the basis that minors are entitled to special protections from such violations. See also IACHR, *Aloeboetoe et al. v. Suriname*, Reparations and Costs, Judgment of 10 September 1993, para. 100.

flexible approach with regard to the threshold to be established when considering sufficient proof of the harm suffered by the victims.

42. In this regard, it is possible to infer from the practice of human rights bodies that a flexible approach to the standard and burden of proof in reparations claims applies. As the Human Right Commission explained, “[the] *burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information*”.³² Accordingly, in order to balance this situation with the victim’s capacity to prove the damage suffered, international adjudicatory bodies have relied on presumptions and circumstantial evidence “*when they lead to consistent conclusions as regards the facts of the case*”.³³

43. Numerous recent post-conflict claims processes have established “relaxed standards of proof”.³⁴ These standards include:

- Plausible evidence making out the claim.³⁵ A “plausible case” requires a claimant to show “*that it is plausible in light of all of the circumstances that he or she is entitled, in whole or in part, to the dormant account*”;³⁶
- Predominantly probable claims.³⁷ In particular, “*the causality shall be deemed to have been substantiated when the partner organisation or the arbitration commission*

³² See HRC, *Elena Beatriz Vasilskis v. Uruguay*, Communication No. 80/1980, U.N. Doc. CCPR/C/OP/2 at 105 (1990), 18th session, para. 10.4.

³³ See IACHR, *Gangaram Panday v. Suriname*, Merits, Reparations and Costs, Judgment of 21 January 1994, Series C No. 16, para. 49.

³⁴ More generally on the issue of presumptions, see the “Observations of Redress Trust”, *supra* note 13, para. 76.

³⁵ See the Governing Rules of the Claims Resolution Tribunal for Dormant Accounts, Article 17, para. 1. This document is available at the following address, lastly consulted on 28 October 2016: <http://www.crt-ii.org/faqs.phtml>

³⁶ *Idem*.

³⁷ See the Common guidelines for the partner organisations concerning the compensation of other personal injuries, decided by the Board of Trustees of the Foundation “Remembrance, Responsibility and Future” on 21 June 2001, para. 6. This document is available at the following address, lastly consulted on 28 October 2016: www.stiftung-evz.de

*appointed by it is convinced that the claims made by the claimant are predominantly probable”;*³⁸

- Credibly demonstrated claim.³⁹ According to this standard, a fact shall be considered established if it has been credibly demonstrated; a claim cannot be rejected on the sole ground that it is not supported by official documentary evidence.⁴⁰

44. The Inter-American Court of Human Rights (the “IACHR”) used presumptions in relation to establishing certain facts. For instance, the IACHR held that: “[i]n determining whether or not the State is responsible for violations of the substantive rights under the American Convention, the Court freely takes into account circumstantial evidence, presumptions of fact, and to draw inferences. In this regard, the Court has recognized that: in the exercise of its jurisdictional function, and in the process of obtaining and assessing the evidence it needs to decide the cases it hears, it may, in certain circumstances, use both circumstantial evidence and indications or presumptions as a basis for its pronouncements, when consistent conclusions regarding the facts can be inferred from same”.⁴¹ Similarly, in the case of *Cantoral-Benavides*, the IACHR noted: “[i]n addition to direct evidence, be it testimonial, expert or documentary, international courts, as well as domestic courts, can base their judgments on circumstantial evidence, indications and presumptions, provided same lead to sound conclusions regarding the facts”.⁴²

³⁸ *Idem*.

³⁹ See the International Organisation for Migration, Property Claims Commission, Supplementary Principles and Rules of Procedure, 29 January 2002, Section 22.1. The document is available at the following address, lastly consulted on 28 October 2016: www.compensation-for-forced-labour.org

⁴⁰ *Idem*, Section 22.2.

⁴¹ See IACHR, *Castillo-Petruzzi et al.*, 30 May 1999, par. 62; *Loayza-Tamayo*, Reparations, Judgment of 27 November 1998, Series C No. 42 (1998), para. 51; *Paniagua Morales et al. v. Guatemala* (the *White Van* case), Merits, 8 March 1998, par. 72; *Blake v. Guatemala*, Merits, 24 January 1998, par. 49; and *Gangaram-Panday v. Suriname*, Merits, Reparations and Costs, Judgment of 21 January 1994, Series C No. 16, para. 49.

⁴² See IACHR, *Cantoral-Benavides v. Peru (Merits)*, 18 August 2000, para. 47.

45. The adoption of a flexible and relaxed standard of proof in favour of the applicants seems appropriate considering the specific circumstances of the case. Depending also on what form of reparations – collective and/or individual – is chosen, there may be a difference as far as the applicable standard of proof is concerned.

46. Moreover, and like the proposition put forward by the Trust Fund in the *Lubanga* proceedings,⁴³ the Principal Counsel wishes to suggest the adoption of two fundamental presumptions with regards to all the victims of the case: a presumption of psychological harm, on the one hand, and a presumption of trans-generational harm, on the other hand.⁴⁴

(iii) The scope of liability of Mr Bemba, including the determination of the precise extent of the (monetary) obligations to be imposed on him

47. The Appeals Chamber underlined that: *“Reparations fulfil two main purposes that are enshrined in the Statute: they oblige those responsible for serious crimes to repair the harm they caused to the victims and they enable the Court to ensure that offenders accounts for their acts”*⁴⁵; and that *“it is the obligation of the convicted person to remedy the harm caused by the crimes for which he or she was convicted”*.⁴⁶

⁴³ See the “Redaction of Filing on Reparations and Draft Implementation Plan”, No. ICC-01/04-01/06-3177-Red, 3 November 2015, paras. 268-283; see also the “Annex A to Filing on Reparations and Draft Implementation Plan”, No. ICC-01/04-01/06-3177-AnxA, 3 November 2015, para. 71.

⁴⁴ See the “Submission by the Queen University Belfast”, *supra* note 13, para. 28. See also FARIDA (B.), “La transmission intergénérationnelle du psycho traumatisme liée à la violence”, Mémoire présenté pour l’obtention du diplôme du magister en psychologie clinique, Université Mentouri de Constantine, 26 juin 2009, pp. 8 et 12. This document is available at the following address, lastly consulted on 27 October 2016:

<http://www.umc.edu.dz/buc/theses/psychologie/BEN1004.pdf>

See also, LECHEVALIER (B.), “Les conséquences des traumatismes de guerre pour les générations suivantes. Transmission de la destructivité et du non-sens”, in *Perspectives Psy*, 2014/1 (Vol. 53), pp. 25-29 ; CROCQ (L.), *Les traumatismes psychiques de guerre*, Odile Jacob, 1999, pp. 9-10.

⁴⁵ See “Annex A”, *supra* footnote 19, para. 2. See also the “Basic Principles”, *supra* note 29, part IX, para. 1.

⁴⁶ See the “Appeal Judgement”, *supra* note 19, para. 99. See also, Council of the European Union, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceeding, 2001/220/JAI, 22 March 2001, Official Journal of the European Communities, L. 82/1; in particular,

48. The Principal Counsel notes that different decisions have been issued in relation to the financial position of Mr Bemba for the purpose of indigence in the proceedings. In particular, the Principal Counsel recalls that the Registrar found that Mr Bemba is not indigent, having identified sums in bank account, as well as moveable and immovable property.⁴⁷ The Trial Chamber has also indicated that Mr Bemba is “*clearly a man of considerable means, in the sense that he appears to ‘own’, or to have a proprietary interest in various kind of property (e.g. buildings, cars, companies), and there are bank accounts held in his sole name, in a number of different countries*”.⁴⁸

49. However, these findings have so far been used for the purpose of establishing whether Mr Bemba could afford the expenses for his defence.

50. In light of the importance for the victims that Mr Bemba contributes to the reparations afforded to them,⁴⁹ it appears crucial at this stage of the proceedings that the financial situation of the convicted person is established.

51. In this regard, the Principal Counsel highlights the distinction between the verification of an individual’s indigence for the purpose of legal aid (for which assets and properties of Mr Bemba were already frozen and seized)⁵⁰ and for reparations. In its Report to the Assembly of States Parties, the Court already noted that: “*Future*

article 9.2: “*Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims*”. This document is available at the following address, lastly consulted on 27 October 2016: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=FR>

⁴⁷ See the “Registrar’s Decision on the Application for Legal Assistance Paid by the Court Filed by Mr Jean-Pierre Bemba Gombo”, No. ICC-01/05-01/08-76-tENG, 25 August 2008.

⁴⁸ See the “Redacted version of “Decision on legal assistance for the accused”” (TC III), No. ICC-01/05-01/08-567-Red, 26 November 2009, 20 October 2009, para. 1.

⁴⁹ See in this sense, the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Official Journal of the European Union, 14 November 2012. Text available at the following address, lastly consulted on 27 October 2016: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

⁵⁰ See the “Decision et Demande en vue d’obtenir l’identification, la localisation, le gel et la saisie des biens et avoirs adressées à la République Portugaise” (Pre-Trial Chamber III), No. ICC-01/05-01/08-8, 27 May 2008.

Trial Chambers will have to assess the specific facts of the case concerned when deciding which standards to apply for the determination of assets of a convicted person for the purpose of reparations as well as whether and how to issue reparation orders if indigence is at issue.”⁵¹

52. The same Report also underlined that: *“In 2012, in its resolution ICC-ASP/11/Res.7 on victims and reparations, the [Assembly] “[r]ecall[ed] that the declaration of indigence of the accused for the purpose of legal aid bears no relevance to the ability of the convicted person to provide reparations, which is a matter for judicial decision in each particular case, and further request[ed] the Court to review this matter and to report to the Assembly at its twelfth session” [...] Although the Rome Statute foresees the provision of legal assistance without payment by a person who does not have sufficient means, it is important to note that “indigence” as such is not mentioned in the Rome Statute, nor as part of the criteria for the payment of reparations under article 75 of the Rome Statute. While criteria have been established by the Registry for determining whether a suspect, accused or a victim is eligible for legal aid pursuant to rules 21 and 90 of the Rules of Procedure and Evidence (“Rules”), there are no criteria to establish the convict’s disposable means from the point of view of reparations”.*⁵²

53. In the same vein, the Supreme Court Chamber of the ECCC indicated that *“[l]’action civile, introduite sur le fondement du code de procédure pénale de 2007, part du principe que, même s’il est indigent, il n’est pas exclu que le défendeur perçoive des revenus à l’avenir ou que des tiers payent à sa place. À titre d’exemple, le code civil du Cambodge prévoit expressément qu’‘une obligation peut être exécutée par un tiers au même titre que par le débiteur’ [traduction non officielle] et régit la subrogation dans l’exécution des obligations. L’obligation peut aussi incomber aux héritiers de l’accusé après qu’ils aient accepté la succession”.*⁵³

⁵¹ See Assembly of States Parties, Twelfth session, The Hague, 20-28 November 2013, “Report of the Court on the criteria for the determination of disposable means relating to reparations”, ICC-ASP/12/40, para. 14. This document is available at the following address, lastly consulted on 27 October 2016: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-40-ENG.pdf

⁵² *Idem*, paras. 1 and 4.

⁵³ See the “KAING Guek Eav Appeal Judgement”, *supra* note 20, para. 666.

54. Moreover, the chamber underlined that it has an obligation to verify the existence of “tangible resources” : *“Dans le cadre d’une action au civil, le fait de chercher à obtenir un titre exécutoire contre un défendeur indigent procède du choix et de l’intérêt personnel du demandeur; en revanche, dans le cadre d’une procédure pénale dans laquelle les réparations jouent un rôle, l’obligation de prononcer des réparations effectives suppose de vérifier l’existence de ressources tangibles”*.⁵⁴

55. Article 75(4) of the Rome Statute provides for the possibility for the Trial Chamber to ask the assistance of States Parties during the reparations phase, pursuant to article 93(1)(k). In accordance with the Appeals Chamber, *“the specific reference in article 75 (4) of the Statute to the possibility of seeking assistance of States Parties in, inter alia, the identification and freezing of property and assets indicates that indigence is not an obstacle to the imposition of liability for reparations on the convicted person”*,⁵⁵ particularly because the order *“may be implemented when the monitoring of the financial situation of the person sentenced reveals that he or she has the means to comply with the order”*.⁵⁶

56. At this stage and considering the specific role afforded to the legal representatives in the reparations proceedings, it is essential that the latter be informed of any steps already taken to identify, trace, freeze or seize proceeds, property and assets of the convicted person.⁵⁷

⁵⁴ *Ibidem*. See also ECCC, Case against IENG Thirith, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 57), D193/5/5, Decision on appeal of Co-lawyers for civil parties against order on civil parties' request for investigative actions concerning all properties owned by the charged persons, 4 August 2010, paras. 20-41. This decision is available at the following address, lastly consulted on 27 October 2016: https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D193_5_5_EN.PDF

⁵⁵ See the “Appeal Judgement”, *supra* note 19, para. 103.

⁵⁶ *Idem*, para. 104.

⁵⁷ See the “Corrected version of 'Decision on 'Request for access to filings which may relate to steps taken to identify, trace, freeze or seize assets of the accused'” (Trial Chamber V(B)), No. ICC-01/09-02/11-909-Corr, 4 April 2014, para. 7.

57. Therefore, the Principal Counsel respectfully requests the Chamber to provide access to the legal representatives to any information related to the financial situation of the convicted person. Moreover, the Principal Counsel asks the Chamber to verify the actual financial situation of Mr Bemba in order to eventually seize the available resources for the ultimate benefit of victims.⁵⁸ In this regard, the Principal Counsel advocates for the appointment of a financial investigator or for the designation of an international firm having experience in tracing and seizing assets.

58. In this regard, the Principal Counsel recalls that the Appeals Chamber has stated that the extent of the convicted person's liability must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes of which he or she has been found guilty, in the specific circumstances of the case.⁵⁹

59. Therefore, the following factors seem relevant for the determination of Mr Bemba's liability: (i) the gravity of the crimes; (ii) the geographic extent of the victimisation and its systematic nature; (iii) the key role played by the convicted person in the commission of the crimes as recognised by the Chamber; (iv) the number of victims (direct and indirect) who could be beneficiaries of reparations; (v) the types of harm they have been suffering from; (vi) any costs related to the different types of harms suffered by the victims; (vii) any costs linked to the implementation of reparations awards.

60. Finally, an important factor to be considered will be any voluntary contribution that Mr Bemba will be willing to provide to compensate the victims, as well as any recognition of the victims' sufferings and public apology.

⁵⁸ See the "Decision concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo" (Pre-Trial Chamber I), No. ICC-01/04-01/06-8-Corr, 17 March 2006, para. 135. See also Article 109 of the Rome Statute.

⁵⁹ See the "Appeal Judgement", *supra* note 19, para. 118; and "Annex A", *supra* note 19, para. 21.

61. Therefore, it seems premature to define the exact scope of Mr Bemba's liability, including the determination of the precise extent of the (monetary) obligations to be imposed on him, without knowing the number of potential beneficiaries and the actual financial situation of the convicted person.

C. The types and modalities of reparations appropriate to address the harm relevant in the circumstances of the case, including factors relating to the appropriateness of awarding reparations on an individual basis, a collective basis, or both

62. The challenge of reparations in this case is not only related to the important number of victims of the crimes committed, but also to the time that has elapsed since the events. In the particular context of the CAR, the time elapsed since the events is not only a challenge in itself with regard to the situations of victims (health-wise notably), but also because victims have been affected by subsequent numerous other episodes of violence and have been re-victimised several times since the conflict in 2002-2003.⁶⁰

63. General poverty, on the one hand, and displacement, on the other hand, are but two fundamental elements in the midst of which reparations will have to be developed. In the most recent Human Development Index, on the scale of the 188 countries, Central African Republic arrives at the 187th position. The expected years of schooling in the country is of 7.2 only, with 4.2 mean years of schooling and with

⁶⁰ See United Nations Office for the Coordination of Humanitarian Affairs, Humanitarian Response Plan, 2016 Funding Status CAR, p. 4: "*Après plus de deux années d'instabilité, l'ampleur et la complexité de la crise humanitaire en République centrafricaine (RCA) sont sans précédent, une grande partie de la population reste extrêmement affectée, vulnérable et exposée à des risques de deux ordres : (a) une pauvreté et une précarité quasi générales : les indicateurs de base restent alarmants, dans les secteurs de la nutrition, santé, de la sécurité alimentaire, et de l'éducation. Dans de nombreuses zones, les services de l'Etat sont insuffisants pour répondre aux besoins, et l'accès aux populations est restreint; (b) des violations graves des droits de l'homme et des crimes de guerre sont commis quotidiennement, attaques de groupes armés, violations du droit international humanitaire, déplacements de population (environ 450 000 déplacés internes fin novembre 2015) et conflits inter communautaires sont les principaux facteurs de crise qui affectent de nombreuses parties du pays. La combinaison de ces deux éléments entraîne une détresse considérable pour des centaines de milliers de Centrafricains.*" This document is available at the following address, lastly consulted on 27 October 2016: <https://docs.unocha.org/sites/dms/CAR/HRP%20CAR%202016.pdf>

huge differences between female and male, girls and boys.⁶¹ 48.8% of the population is concerned by severe multidimensional poverty; and 62.2% of the population is living below income poverty line;⁶² only 6.7% of the population reaches 65 years of age or older, when 68.7% of the population has below 14 years old.⁶³

64. Victims of this case are part of the population of one of the poorest countries in the world. In 2003, after the events from which the victims have suffered from, the country rated 168 over 175 countries on the Human Development Index. Their situation, already very bad, got worse over the last 13 years.⁶⁴ The Principal Counsel submits that this is a fundamental element to be taken into consideration when evaluating the types and modalities of reparations.

65. As recently underlined by the Group of Experts in the *Lubanga* reparations proceedings: *“Remedies should be adequate, effective and prompts’. Reparations are not abstract legal principles but rather constitutive specific, deliverable and practical remedies delivered to persons who have suffered serious violations of human rights and humanitarian law. The modality and effectiveness of reparations should be fundamentally victim-centered”*.⁶⁵

⁶¹ See United Nations Development Programme, Human Development Report 2015, Work for Human Development, p. 223: expected years of schooling for female is 5.9 while for male, it rates 8.6; as for mean years of schooling, 2.8 for female and 5.7 for male. The full report is available at the following address, lastly consulted on 27 October 2016: http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf

⁶² *Idem*, p. 228.

⁶³ *Ibidem*.

⁶⁴ See UNDP, Human Development Report 2003, Millennium Development Goals: A compact among nations to end human poverty. The full report is available at the following address, lastly consulted on 27 October 2016: http://hdr.undp.org/sites/default/files/reports/264/hdr_2003_en_complete.pdf

⁶⁵ See the “Experts’ Report”, *supra* note 23, para. 5. See also, International Center for Transitional Justice, *The Right to Reparations in Situations of Poverty*, September 2009, pp. 2-3: *“Reparations, as a component of the transitional justice process, are meant to serve two goals. The first is to recognize the loss and pain suffered by victims and, in doing so, help them become rights-holders entitled to redress. The second goal is more problematic in situations of massive poverty: to provide actual benefits to victims, whether in symbolic or material forms, or ideally a combination of both. The political will, technical capacity, and financial resources needed to design, implement and sustain reparations programs are invariably absent in post-conflict developing countries. (...) When the causes and consequences of poverty are not seen as directly relevant to transitional justice, reparations programs – if they are implemented at all – may only lead to frustration and resentment”*.

66. In this regard, international experience has shown that, even in contexts where victims have significant present-day needs and suffer profound poverty, the symbolic element of recognition and acknowledgement of the suffering is important; as well as the distinction between benefits provided as reparations and benefits provided as part of a humanitarian or development program.⁶⁶

67. With regard to the types and modalities of reparations, the Principal Counsel submits that individual and collective reparations are not mutually exclusive, and may be awarded concurrently.

68. In the present case, to determine the most appropriate modalities of reparations to address the harm suffered by victims, the following factors should, *inter alia*, be taken into account:

- The findings in the Judgement and in the Sentencing Decision related to the circumstances of the victimisation, the harm suffered by the victims, and the general impact of the crimes committed;⁶⁷
- The specificity of each crime for which Mr Bemba has been convicted;
- The fact that the vast majority of the victims have suffered from different crimes simultaneously or in a short period of time;
- The fact that, as a consequence of the above, the extent of the harms suffered by victims is necessarily ample and requires a comprehensive, holistic approach;
- The age and gender of the victims at the time of the victimisation;
- The age and gender of the victims at present;
- The number of dependants of the victims;

Paper available at the following address, lastly consulted on 27 October 2016: <https://www.ictj.org/publication/right-reparations-situations-poverty>

⁶⁶ See the "Submission by the IOM", *supra* note 13, para. 34.

⁶⁷ See the "Judgement", *supra* note 3, paras. 624, 633 and 640 and the "Sentencing Decision", *supra* note 4, paras. 11, 23, 31, 32, 35-40, 49-51.

- The permanent consequences that the events have caused to the victims;
- The need to identify specifically vulnerable categories of victims whose needs should be addressed first;
- The fact that the victims are geographically dispersed on the entire territory of the country. In this regard, it is important to note that the situation of the victims varies depending on the area of the country in which they reside (in terms of accessibility to humanitarian aids, medical and social services, schooling; as well as economic situation which is necessarily different in a rural or town area). Moreover, the still volatile security situation in the country may render difficult to access all areas concerned by the crimes;
- The fact that victims are not all residing in the CAR (since they were obliged to flee following the episodes of violence of the recent years and to settle in foreign countries or in refugees camps);
- The local socio-economic and cultural context;
- How the crimes have affected the community and the society as a whole;
- Whether victims have already benefited from or are benefiting from humanitarian programmes.

69. Moreover, the wishes of victims are also an essential factor to be considered when deciding on the types of reparations to be awarded. In this regard, since the beginning of the proceedings, victims have expressed their concerns towards eventual collective reparations, indicating that they fear that said type of reparations may benefit individuals who have not been victimised by the events for which Mr Bemba has been declared guilty, and therefore subtracting resources for the ones who really suffered from the events occurred in 2002-2003. This concern has been recently reiterated in the consultations that the Principal Counsel had with her clients. During said consultations, victims have indicated that they are aware that the Court may not have sufficient resources to repair each of them individually but because other episodes of violence occurred subsequently to the events of this case,

they are concerned that it will be difficult to identify the victims of the crimes for which the convicted person is responsible; and therefore if only collective reparations are awarded, there is a real risk that said reparations will not target the victims of the case but a more broad category of individuals.

70. Victims have clearly expressed their expectations in the applications forms, as well as in the recent consultations – though not extensive because of the time and security constraints. They are seeking reparations which will benefit them individually and which are adapted to their needs. The majority of them did not indicate explicitly the nature of the reparations mechanism (individual or collective), but they indicate that any remedy has to be individual-centered, in so far as victims have expressed a preference to see their individual situation reinstated. Some victims have also indicated that the events had an impact not only on the individuals, but on the society as a whole, and therefore advocate for the need to restore the solid and rich culture of the social structure.

71. Depending on the types of crimes they have suffered from, victims have expressed a preference for medical and psychological assistance, as well as support in finding a professional activity in the case of gender-based crimes and murder; and a preference for indemnity or financial compensation in case of loss of property, animals, loss of income. Moreover, victims who lost family members consider that a lump sum could be granted on accounts of members of their family who were killed.

72. Victims have also emphasised that Mr Bemba shall contribute to the effort of compensating them from the harm they have been suffering from because this will mean that he finally recognises the wrong-done and the sufferings of the victims.

73. In relation to symbolic reparations (such as the construction of a monument or a memorial), victims have indicated that they do not consider it to be an appropriate measure. Some of them even specified that this kind of measures could be seen as insulting because not representative of the extent of the victimisation and of the harm suffered from.⁶⁸ Moreover, they expressed the view that symbolic reparations will mean nothing in the CAR cultural and economic context today.

74. However, the Principal Counsel underlines that measures aiming at recognising what happened to the victims and the long-lasting suffering such as publication and dissemination of the judgement could be envisaged.⁶⁹

75. Finally, victims indicated that the State should be involved in any reparations process. Indeed, the majority of them is of the opinion that the Central African Republic Government has a responsibility towards its citizens in granting them security and an adequate life, including to take measures to repair the harm they have suffered from episodes of violence in which the government was involved.⁷⁰ In this regard, the Principal Counsel underlines that the CAR Government has a role to play in ensuring effective and long-lasting impacts of the reparations eventually awarded by the Court.

76. In light of the concerns expressed by the victims and of the fact that not all victims reside in the CAR, the Principal Counsel submits that the Chamber should consider awarding both individual and collective reparations.

⁶⁸ In this sense, see the “United Nations Submissions”, *supra* note 13, para. 22: “*In the United Nations’ experience, victims must be carefully consulted on any award for satisfaction because this form of reparations may be disfavoured where other measures of reparations are available. Further, memorials can pose unacceptable risks of re-traumatizing victims and reinforcing harmful stereotypes particularly of victims of conflict-related sexual violence*”.

⁶⁹ See the “Submission by Queen University Belfast”, *supra* note 13, para. 11.

⁷⁰ A minority of the victims consulted so far has indicated that the CAR Government should not be involved in the reparations proceedings.

77. The practice of international bodies shows that it is possible and feasible to award individual reparations even on a large scale. In this regard, the Principal Counsel refers to the methodologies described in the United Nations and in the IOM submissions.⁷¹

78. This approach is consistent with the United Nations' recommendation according to which, where gravest international crimes have occurred, a combination of individual and collective reparations should be considered and possibly implemented.⁷²

79. Concerning individual reparations, the Chamber should consider the possibility to award financial compensation, particularly for victims of the crime of pillage and for victims now residing outside of the CAR.

80. Concerning collective reparations, the Principal Counsel submits that they should be designed as to include an individual component in order to address adequately the harms the victims have been suffering from.

81. The Principal Counsel underlines the importance in implementing eventual collective reparations award(s) of targeting an individual impact through programs that may nonetheless be labelled "collective". In this regard, she advocates for a holistic approach towards reparations, which can be best illustrated in integrated reparations programs. In particular, she is of the opinion that forms of compensation or packages of services (including education and training, housing, professional and job opportunities, micro-credits initiatives, health and psychosocial services) could address the harm suffered by an individual or a group.⁷³

⁷¹ See the "United Nations Submissions", *supra* note 13, paras. 47 to 52; the "Submission by the IOM", *supra* note 13, para. 47. See also, the "Observations of Redress Trust", *supra* note 13, paras. 17.

⁷² See the "United Nations Submissions", *supra* note 13, para. 41. See also, the "Submission by the IOM", *supra* note 13, para. 47.

⁷³ See in this sense the "Experts' Report", *supra* note 23 para. 6 c. See also the resources available on restorative justice, available on the website of the Institut Français pour la Justice Restaurative, lastly

82. Furthermore, considering the difficulties victims may face in applying for reparations because of the still volatile security situation in the country which may render difficult the outreach efforts, the Principal Counsel submits that the Chamber should consider using its *proprio motu* powers under article 75(1) of the Rome Statute and awarding reparations on a collective basis. By awarding collective reparations by virtue of said powers, the Chamber would therefore address objective difficulties in identifying all the victims linked with the convicted person and would attempt to repair as many victims as possible. Moreover, the purpose of ordering reparations “*in respect of*” victims may be to extend the scope of application of article 75 of the Rome Statute to persons indirectly affected by the crime, or the heirs of victims, and thus to enable the Court to award reparations to the benefit of as many of those affected by the crimes as possible, including family members of direct victims, other indirectly harmed persons or groups of victims.⁷⁴

D. Whether experts may be usefully appointed to assist the Chamber in determining any of the issues set out above pursuant to rule 97 of the Rules of Procedure and Evidence

83. Rule 97(2) of the Rules of Procedure and Evidence provides the possibility to appoint appropriate experts to assist in determining the scope and extent of any damage, loss and injury to, or in respect of victims, and to suggest various options concerning the appropriate types and modalities of reparations.

84. The Principal Counsel notes that the Chamber is already in possession of relevant information concerning the type of prejudice and consequences suffered from by the victims provided in the following reports filed in the record of the case: “*Mental Health Outcomes of Rape, Mass Rape, and other Forms of Sexual Violence Produced*

consulted on 27 October 2016: <http://www.justicerestaurative.org/fr/article/les-principes-de-la-justice-restaurative>.

⁷⁴ See DWERTMARM (E.), *The Reparations System of the International Criminal Court*, Martinus Nijhoff Publishers, Leiden, 2010, pp. 111 and 112 with further references.

by the Human Rights in Trauma Mental Health Laboratory, Department of Psychiatry and Behavioral Sciences, Stanford University School of Medicine”;⁷⁵ “Rapport d’Expertise” (on sexual violence as a tool of war);⁷⁶ “Expert Report on gender crime and Posttraumatic Stress Disorder” (PTSD).⁷⁷ In addition, the recent submissions filed by the *amici curiae* provide a very useful analysis of the challenges linked to reparations and suggestions on possible types and modalities of reparations.

85. Concerning the reports filed at trial, the Principal Counsel is of the opinion that they can form the basis for the determination of the scope, extent of any damage, loss or injury to or in respect of victims. However, since they were mainly provided for the purposes of the trial proceedings, the Chamber could evaluate the possibility of requesting the experts to file an *Addendum* to their respective reports focussing mainly on reparations issues. Should the Chamber agree on this course of events, the Principal Counsel considers that the parties should be invited to file their respective questions to the experts or instructed to file joint instructions to the experts.

⁷⁵ See the Expert Report and its Annexes provided by Prosecution Witness CAR-OTP-PPPP-0925, Dr Daryn Reichert, certified psychiatrist with national and international expertise in cross-cultural trauma of survivors of mass atrocities and human rights abuses, such as rape and torture, and a Clinical Associate Professor at Stanford University’s Department of Psychiatry and Behavioral Sciences and Director of the Program for Human Rights in Trauma Mental Health. See CAR-OTP-0094-0493/EVD-T-OTP-00861 and CAR-OTP-0094-0541, CAR-OTP-0094-0552, CAR-OTP-0094-0560, CAR-OTP-0094-0564, and CAR-OTP-0094-0568. See also “Annex 3 to the Prosecution’s Submission of Additional Information regarding its Proposed Expert Witness”, No. ICC-01/05-01/08-3368-Conf-Anx3, 15 April 2016; the transcripts of the hearing held on 16 May 2016, No. ICC-01/05-01/08-T-368-ENG ET WT, pp. 70-116; and the transcripts of the hearing held on 17 May 2016, No. ICC-01/05-01/08-T-369-Red-ENG WT, pp. 1-34.

⁷⁶ See the Expert Report provided by Prosecution Witness CAR-OTP-PPPP-0229, Docteur André TABO, Médecin Psychiatre centrafricain, Professeur Agrégé en Psychiatrie, Médecin Chef du Service de Psychiatrie au Centre National Hospitalier Universitaire de Bangui, expert witness on sexual violence as a tool of war. See CAR-OTP-0065-0023; see also the transcripts of the hearing held on 13 April 2011, No. ICC-01/05-01/08-T-100-ENG CT2 WT, pp. 20-35, 48; and the transcripts of the hearing held on 14 April 2011, No. ICC-01/05-01/08-T-101-ENG CT WT, pp. 5-7. See also CAR-OTP-0065-0178: Quels problèmes sanitaires posent les violences chez les femmes, lors des conflits armés? L’Expérience de Bangui, Centrafrique, 1^{er} novembre 2008.

⁷⁷ See the Expert Report provided by Prosecution Witness CAR-OTP-PPPP-0221, Akinsulure-Smith Adeyinka M., licensed counselling psychologist in New York State, specialised in severe psychopathology, trauma and refugee/immigrant mental health. See CAR-OTP-0064-0560 and 0782; see also the transcripts of the hearing held on 29 November 2010, No. ICC-01/05-01/08-T-38-ENG ET WT, pp. 24-29; and the transcripts of the hearing held on 30 November 2010, No. ICC-01/05-01/08-T-39-ENG ET WT, pp. 5 and 7-14.

86. In view of the complexity of the case and of the different prejudice suffered by the victims, the Principal Counsel also suggests that the Chamber appoint a multidisciplinary team of experts to assist not only in the determination of the scope, extent of any damage, loss or injury to or in respect of victims, but also in proposing appropriate types and modalities of reparations.

87. In particular, the multidisciplinary team of experts should be requested to address not only the issues directly linked to reparations (such as the extent and types of harms and the impact on the victims, as well as possible remedies), but also to identify the political, economic and cultural factors at the time of the events and subsequent to the events which bear importance to appreciate the actual victims' challenges and current situation; and, in turn, assist the Chamber in deciding on the most appropriate awards for reparations.

88. The Principal Counsel is aware of the fact that the Chamber requested the Registry to provide a list of experts available to assist in its determination of the relevant issues,⁷⁸ however she wishes to draw the attention of the Chamber on the following individuals who – while appointed as experts by the United Nations on the situation in the CAR in recent years – have knowledge and understanding of the country:

- Mr Paul-Simon HANDY (regional expert); and
- Ms Carolina REYES ARAGÓN (humanitarian expert).

⁷⁸ See the "Order", *supra* note 6, para. 9 a.

89. The Principal Counsel also suggests including in the team of expert one representative of the Human Rights Division of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA); and one representative of the Land, Property and Reparations Division within the Department of Operations and Emergencies of the IOM.

90. Finally, the Principal Counsel draws the attention of the Chamber on the specific expertise of Dr Shannon Golden, Mr Craig Higson-Smith, Professor Fionnuala Ní Aoláin and Dr Norbert Wühler in the field of reparations.⁷⁹

91. Should the Chamber appoint experts, the Principal Counsel favours the practice of joint instructions by the parties.

E. Any other issues the parties and participants wish to bring to the attention of the Chamber

92. The Principal Counsel wishes to address few issues related to the reparations proceedings.

93. While acknowledging the instruction of the Chamber according to which the Registry is not required to take steps in the field to publicise the reparations proceedings yet, the Principal Counsel wishes to note that an important aspect of said proceedings is the outreach and information to the affected communities and potential beneficiaries. Outreach is indeed a first step in recognising and acknowledging the extent of the victimisation and the harms suffered by victims.

⁷⁹ See the "Experts' Report", *supra* note 23, para. 3.

94. Lack of information or misinformation as to the purpose and nature of the reparations proceedings may impact negatively on the possibility for potential beneficiaries to manifest themselves. In this regard, it will be important to coordinate the efforts of all interlocutors with whom victims and potential beneficiaries may come in contact in order to agree on key messages to be delivered to avoid creating confusion or misunderstanding about the procedure, as well as to manage expectations, and to create the necessary trust which will be indispensable for victims to engage in the reparations process.⁸⁰ In this sense, coordination and cooperation between the Registry, the legal representatives and the Trust Fund will be essential to ensure that clear and understandable information is delivered timely. Moreover, considering that some victims are displaced in countries other than the CAR, some outreach activities may need to be carried on in said countries.

95. Another aspect which should be considered by the Chamber is the opportunity of designing categories of reparations programmes before engaging in consultation with the victims. This will allow victims, on the one hand, to have an understanding of which reparative measures could be implemented depending on the preliminary assessment of their needs and on the available resources; and, on the other hand, it will allow the Chamber, following said consultations with victims and based on the possible programmes proposed and discussed, to tailor said programmes in accordance with the needs pointed out by the victims.⁸¹

96. In this regard, the Principal Counsel notes the frustration expressed by victims in the *Lubanga* case because of the impossibility of knowing the types of reparations measures and programmes proposed when consulted and, in turn, their inability to express their consent and willingness to engage in such a blank process. In the CAR, victims have already expressed similar concerns on the impossibility for them to

⁸⁰ See the "United Nations Submissions", *supra* note 13, para. 32.

⁸¹ See the "Submission by the IOM", *supra* note 13, para. 37.

decide whether they wish to engage in the reparations process if they do not have information about the programmes and the available reparations measures.

97. Furthermore, in relation to the transmission to the Defence of applications for reparations, the Principal Counsel notes the order by the Trial Chamber in the *Katanga* and in the *Lubanga* proceedings, according to which the identity of the victims has to be communicated to the Defence.

98. In this regard, the Principal Counsel wishes to underline that the vast majority of the victims in this case have expressed their wish to maintain their anonymity towards the Defence. This wish was reiterated during the first consultations with them.

99. Therefore, should the concerned individuals do not consent to their identity being disclosed to the Defence, the Principal Counsel submits that any process conditioning the accessibility of reparations to the victims' consent to disclose their identities to the Defence would be unfair. Such a course of action, as demonstrated in the *Lubanga* case, not only gravely put at risks the security and well-being of victims, but also annihilates the efforts made for tailoring and implementing reparations measures.

100. In these circumstances, the Principal Counsel submits that a necessary balance has to be found between the rights of the Defence and the rights of Victims. In order to strike an appropriate balance in implementing the rights of both parties to fair and impartial proceedings, the Principal Counsel suggests that the core information the Defence needs to be appraised of corresponds to the harm suffered by the victims, the circumstances of their victimisations and the corresponding needs expressed and/or wishes about reparations measures. The verification of the victims' identities

shall adequately be ensured by the Registry, neutral in its nature, and by the Chamber, guardian of the rights of the parties.⁸²

101. Finally, the Principal Counsel informs the Chamber of the availability of the Office to continue representing victims in the reparations proceedings should the Chamber so decide. The Principal Counsel already has a team in place, which has been following the proceedings since the beginning of the pre-trial phase, she has maintained contact with her clients throughout the years and she has been recently in contact with them for the purpose of filing these observations. Moreover, coordination with the team of the appointed Legal Representative is in place and the two teams have been working together throughout the proceedings.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda", written in a cursive style. The signature is underlined with a single horizontal line.

Paolina Massidda
Principal Counsel

Dated this 31st day of October 2016
At The Hague, The Netherlands

⁸² See the "Ordonnance relative à la requête du Bureau du conseil public pour les victimes du 16 septembre 2016" (Trial Chamber II), No. ICC-01/04-01/06-3252, 21 October 2016, para. 21.