



Internal memorandum

To **Presidency**

From

Judge Henderson
Judge Chung

G. Henderson
2.1 3

Date 09/04/2018

Subject Mr Bemba's request for recusal of Trial Chamber III from the reparations proceedings

(I) Introduction

1. The following views are submitted in response to Mr Bemba's request for recusal of Trial Chamber III from the reparations proceedings, filed on 28 February 2018 ("Request").¹ We note that the Request was directed at Trial Chamber III in its previous composition, which included Judge Aluoch.² Due to expiration of her mandate on 9 March 2018, this memorandum represents the views of Presiding Judge Henderson and Judge Chung only.
2. While it is not our intention to comment on every submission and legal argument made by Mr Bemba, we believe that it is important to clarify and rectify certain inaccuracies.

¹ Mr. Bemba's request for recusal of Trial Chamber III from the reparations proceedings, 28 February 2018, ICC-01/05-01/08-3611-Conf. A public redacted version of the request was filed on 9 March 2018, ICC-01/05-01/08-3611-Red. *See also*, Submissions in relation to "Presidency decision concerning "Mr. Bemba's request for recusal of Trial Chamber III from the reparations proceedings", 13 March 2018, ICC-01/05-01/08-3616, clarifying that the Presidency should transmit the Request to a plenary of judges to be treated as a request for disqualification pursuant to article 41(2)(b) and (c) of the Rome Statute. *See also*, [REDACTED]

We note that as of 20 March 2018, Trial Chamber III has been recomposed to Judge Henderson, Judge Chung and Judge Prost: Decision assigning Judges to divisions and recomposing Chambers, 16 March 2018, ICC-01/05-01/08-3617.

3. Furthermore, we recall the jurisprudence of previous plenaries of the Court, which held that the standard of assessment is “whether the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias” in the judge.³ This “standard is concerned not only with whether a reasonable observer could apprehend bias, but whether any such apprehension is objectively reasonable”.⁴ Previous plenaries also found that “there is a strong presumption of impartiality attaching to a judge that is not easily rebutted”.⁵
4. As far as the distribution of this memorandum is concerned, we see no reason why it could not be circulated to all parties and participants concerned, or made public with redactions.⁶ On the contrary, we endorse this process to be as transparent as possible. In the interests of transparency, all internal emails referred to in this response are annexed for the plenary’s information.

³ Decision of the plenary of the judges on the "Defence Request for the Disqualification of a Judge" of 2 April 2012, 5 June 2012, ICC-02/05-03/09-344-Anx, para. 11 (“Plenary Decision on the disqualification of Judge Eboe-Osuji”); Decision of the plenary of judges on the Defence Application of 20 February 2013 for the disqualification of Judge Sang-Hyun Song from the case of *The Prosecutor v. Thomas Lubanga Dyilo*, 11 June 2013, ICC-01/04-01/06-3040-Anx, para. 9 (“Plenary Decision on the disqualification of Judge Song”); Decision of the Plenary of Judges on the Defence Applications for the Disqualification of Judge Cuno Tarfusser from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, 20 June 2014, para. 17 (“Plenary Decision on the disqualification of Judge Tarfusser”); Decision of the Plenary of Judges on the Application of the Legal Representative for Victims for the disqualification of Judge Christine Van den Wyngaert from the case of *The Prosecutor v. Germain Katanga*, 22 July 2014, ICC-01/04-01/07-3504-Anx, para. 39 (“Plenary Decision on the disqualification of Judge Van den Wyngaert”); Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of *The Prosecutor v. Thomas Lubanga Dyilo*, 3 August 2015, ICC-01/04-01/06-3154-AnxI, para. 28 (“Plenary Decision on the disqualification of Judge Fernández”).

⁴ Plenary Decision on the disqualification of Judge Song, ICC-01/04-01/06-3040-Anx, para. 10; Plenary Decision on the disqualification of Judge Tarfusser, ICC-01/05-01/13-511-Anx, para. 17; Plenary Decision on the disqualification of Judge Van den Wyngaert, ICC-01/04-01/07-3504-Anx, para. 39; Plenary Decision on the disqualification of Judge Fernández, ICC-01/04-01/06-3154-AnxI, para. 28.

⁵ Plenary Decision on the disqualification of Judge Song, ICC-01/04-01/06-3040-Anx, para. 10; Plenary Decision on the disqualification of Judge Tarfusser, ICC-01/05-01/13-511-Anx, para. 18; Plenary Decision on the disqualification of Judge Van den Wyngaert, ICC-01/04-01/07-3504-Anx, para. 40; Plenary Decision on the disqualification of Judge Fernández, ICC-01/04-01/06-3154-AnxI, para. 29. *See also*, Plenary Decision on the disqualification of Judge Eboe-Osuji, ICC-02/05-03/09-344-Anx, para. 14.

⁶ [REDACTED]

5. Lastly, we note that the following observations are made without prejudice to any procedures the Chamber may adopt in its final reparations order.

(II) Remarks on Mr Bemba's submissions

Submissions (i) and (ii)

6. **Submissions (i) and (ii)** of the Request are connected and therefore addressed together. Fundamentally, Mr Bemba does not agree with the decision taken by the Chamber to continue with the reparations proceedings while the appeal against Mr Bemba's conviction is pending. Part of this includes the Chamber's finding that a reparations order could theoretically be issued prior to a conviction being confirmed (or otherwise) on appeal. Mr Bemba submits this approach is demonstrative of the Chamber's apparent pre-disposition against him.⁷
7. These issues were litigated in the Chamber's 5 May 2017 decision rejecting the Defence's request to suspend the reparations proceedings ("Suspension Decision"),⁸ and the Chamber's 29 June 2017 decision rejecting the Defence's request for leave to appeal the Chamber's decision appointing the experts ("Leave to Appeal Decision").⁹ It was touched upon again in the Chamber's 29 January 2018 decision on a Defence request for further amendments to the reparations timetable.¹⁰
8. Mr Bemba's complaints in the Request are that the Chamber: (i) is happy for resources spent on the reparations proceedings to date to be "wasted" in the event of a partial or full acquittal, which is "wildly irresponsible and cannot be correct", or is operating under the biased assumption that Mr Bemba's conviction

⁷ Request, ICC-01/05-01/08-3611-Conf, paras 2, 38.

⁸ Decision on the Defence's request to suspend the reparations proceedings, 5 May 2017, ICC-01/05-01/08-3522.

⁹ Decision on the Defence request for leave to appeal the decision appointing experts on reparations, 29 June 2017, ICC-01/05-01/08-3536.

¹⁰ Decision on requests for further amendments to the reparations timetable, 29 January 2018, ICC-01/05-01/08-3601-Conf, paras 4, 9.

will be upheld;¹¹ (ii) has “rushed” the reparations process to render a reparations order before the conviction can be altered;¹² (iii) employed misconceived legal reasoning in its decision to proceed with the reparations proceedings;¹³ and (iv) circumvented its undertaking in the Suspension Decision that it would only take “preliminary” and “preparatory” steps in the reparations proceedings.¹⁴

9. In response to these points, we would like to note the following:

10. Mr Bemba was convicted on 21 March 2016. The Chamber in the composition complained of by Mr Bemba was assigned to the proceedings on 6 July 2016.¹⁵ At the time of the Request, the reparations proceedings had thus been on foot before that Chamber for more than 18 months. At no time did the Chamber state that its intention was to issue the reparations order prior to an appeal judgment being rendered. At its highest, the Chamber suggested that, in its view, to do so would be permissible under the Court’s framework.¹⁶

11. What the Chamber did during those 18 months, in our view, was to take logical and necessary steps towards the ultimate goal of issuing its reparations order.¹⁷

12. Furthermore, the decision to proceed with these steps was taken after careful consideration of balancing the use of the Court’s resources with the Chamber’s obligation to promote the efficient and expeditious conduct of the reparations

¹¹ Request, ICC-01/05-01/08-3611-Conf, para. 29. *See also*, para. 33.

¹² Request, ICC-01/05-01/08-3611-Conf, para. 38. *See also*, para. 30.

¹³ Request, ICC-01/05-01/08-3611-Conf, paras 34-38.

¹⁴ Request, ICC-01/05-01/08-3611-Conf, para. 44. *See further*, paras 3, 39-45.

¹⁵ Decision replacing two judges in Trial Chamber III, 6 July 2016, ICC-01/05-01/08-3403.

¹⁶ Suspension Decision, ICC-01/05-01/08-3522, para. 15; Leave to Appeal Decision, ICC-01/05-01/08-3536, para. 13.

¹⁷ These steps included: initial submissions on reparations by the parties and other participants; appointing experts; experts’ joint report on reparations; additional information on reparations from the LRV and OPCV; submissions on the feasibility of the reparations recommended by the experts; security report by the Registry; addendum to the expert report on the scope of Mr Bemba’s liability; final submissions on reparations.

proceedings, taking into account the ultimate goal of the proceedings, the rights of the victims, and the rights of Mr Bemba.¹⁸

13. Throughout this process, the Chamber has afforded full flexibility to parties and participants in meeting the deadlines imposed by the Chamber. It is true, as noted by Mr Bemba,¹⁹ that the reparations timetable set by the Chamber has been extended many times upon request. However, rather than indicating that initial deadlines set by the Chamber were “rushed”, these extension requests have been largely based on factors arising unexpectedly during the reparations proceedings (for example, difficulties encountered due to the [REDACTED],²⁰ and due to the Appeals Chamber’s decision to take additional submissions and hold a hearing in Mr Bemba’s conviction and sentence appeals²¹).
14. In addition, the legal reasoning relied upon by the Chamber to support its decision to proceed, including its conclusion that a reparations order could, in theory, be issued prior to the appeal being determined, was set out in the Suspension Decision, relying on the approach adopted by the *Lubanga* Appeals Chamber.²² If Mr Bemba disagreed with the Suspension Decision and the Chamber’s interpretation of the jurisprudence, he could have sought leave to appeal at the time.

¹⁸ See Suspension Decision, ICC-01/05-01/08-3522, paras 18-22; Leave to Appeal Decision, ICC-01/05-01/08-3536, paras 14, 17-19.

¹⁹ Request, ICC-01/05-01/08-3611-Conf, para. 30.

²⁰ See Decision on the request from the reparations experts for an extension of time for the submission of their joint report, 30 August 2017, ICC-01/05-01/08-3559-Conf, para. 6; Decision on the Legal Representatives request for extension of time, 28 November 2017, ICC-01/05-01/08-3580, with confidential Annex A, paras 2-6; Decision on requests for further amendments to the reparations timetable, 29 January 2018, ICC-01/05-01/08-3601-Conf, para. 10.

²¹ See Decision on the Defence request for an extension of time to file additional observations for reparations, 8 November 2017, ICC-01/05-01/08-3569, para. 7; Decision on the Defence’s further request for a revision of the timetable for the filing of documents, 22 November 2017, ICC-01/05-01/08-3576, para. 10; Decision on the Legal Representative of the Victims request for extension of time, 14 December 2017, ICC-01/05-01/08-3587, paras 10-11.

²² Suspension Decision, ICC-01/05-01/08-3522, para. 15.

15. Mr Bemba states that he did not seek leave to appeal the Suspension Decision in reliance on the undertaking/ruling in the Suspension Decision that the Chamber would only take “preliminary” and “preparatory” steps in the reparations proceedings. The suggestion that the Chamber gave any such undertakings or rulings does not accord with a proper reading of the Suspension Decision. Indeed, the Chamber stated in that decision that in its view, “[t]he issuance of a reparations order is not prejudicial to the rights of the convicted person irrespective of whether there is an appeal against the conviction decision”.²³
16. Furthermore, the Chamber has taken steps throughout the proceedings to assure that Mr Bemba’s rights in relation to the conviction appeal would be protected. It stated that should Mr Bemba’s conviction be amended by the Appeals Chamber, he would “receive the opportunity to make submissions on the amendments, as relevant to the reparations order”.²⁴ It also specified that no execution of any reparations order would occur unless or until Mr Bemba’s conviction was confirmed on appeal.²⁵

Submissions (iii) and (v)

17. Mr Bemba alleges that “[t]he failure of the Trial Chamber to include Mr Bemba in *ex parte* meetings concerning reparations and/or disclose the report of these meetings within a reasonable period gives rise to a reasonable apprehension of bias” (**submission iii**), and that “[t]he Trial Chamber’s experts have been permitted to act under the effective instruction of the LRV further giving rise to a reasonable apprehension of bias” (**submission v**). As both submissions appear to suggest that the Chamber has treated the interests of other parties in a

²³ Suspension Decision, ICC-01/05-01/08-3522, para. 15.

²⁴ Leave to Appeal Decision, ICC-01/05-01/08-3536, para. 16.

²⁵ Suspension Decision, ICC-01/05-01/08-3522, para. 15; Leave to Appeal Decision, ICC-01/05-01/08-3536, para. 13.

preferential manner as opposed to Mr Bemba's interests, we will address them simultaneously in the following.

18. We confirm that, as set out by the Trust Fund for Victims ("TFV") in its report titled "Report on meeting in the context of reparations on 21 and 22 December organized by the Trust Fund with a delegation [REDACTED] [REDACTED] ("Report"),²⁶ several "informal meetings" were held between members of the TFV, [REDACTED] the Legal Representative of the Victims ("LRV"), the Office of Public Counsel for Victims ("OPCV"), the Office of the Prosecutor ("OTP"), sections of the Registry, and representatives of the Chamber in December 2016. Purportedly, no such meetings were arranged with members of the Defence. However, we would like to rectify several issues with respect to Mr Bemba's allegations above.
19. First, we note that the meetings were not initiated by the Chamber, but by the TFV.²⁷ In emphasising that the Chamber was not the regulator or organiser of these meetings, we also note that the Chamber was not informed about the fact that meetings with other parties and participants, to the exclusion of the Defence, were planned prior to the meeting, and could thus not have instructed the TFV to extend its invitations accordingly. By the same token, the Chamber was, and still is, unaware about any costs incurred by this meeting.²⁸

²⁶ Report on meeting in the context of reparations on 21 and 22 December organized by the Trust Fund with a delegation from [REDACTED] with five confidential annexes, 1 February 2017, ICC-01/05-01/08-3493-Conf. ICC-01/05-01/08-3493-Conf-AnxA contains the full report: "Report by the Trust Fund for Victims on a series of informal meetings on 21 and 22 December 2016, exploring the possibility of an engagement with [REDACTED] in Bemba reparations in accordance with 98 (4) of the Rules of Procedure and Evidence (RPE)".

²⁷ Email to the Chamber, 19 December 2016 16:03. *See* Annex, p. 1. This was also confirmed by [REDACTED]

[REDACTED] We note that the Defence Request for Leave to Reply to 'Response to the Defence Request for Trial Chamber III Recusal', 26 March 2018, ICC-01/05-01/08-3620-Conf, is currently pending before the Presidency.

²⁸ Request, ICC-01/05-01/08-3611-Conf, para. 57.

20. Second, the meetings with the TFV and [REDACTED] were held separately with each party or participant,²⁹ as well as with representatives of Chambers. At no time were parties or participants present and representatives of the Chamber present at once, discussing matters relevant to the proceedings.
21. Third, we note that neither one of the Judges, nor anyone of the legal staff on the Bemba case, attended the meeting. In fact, the Head of Chambers, [REDACTED], accompanied by a visiting professional assisting on the Bemba team at the time, attended. Mr [REDACTED] explicitly indicated in advance by way of email that he considered the meeting to be “informal” and that he was “not attending as any sort of formal representative of the Bemba [C]hamber”.³⁰ This was acknowledged by email by a representative of the TFV.³¹
22. Mr Bemba’s allegation that the parties “discussed” and “had an opportunity to make further arguments and engage in discussions” “*in front of the Chamber*” (emphasis added) on critical issues relevant to the reparations proceedings is thus inaccurate.
23. In this context, we would also like to comment on the fact that the Report, which was filed on 2 February 2017, was classified as “*ex parte*” (Registry only), and not available to the Defence. While it is unfortunate that some time passed before the report was reclassified, the Chamber eventually took action to ensure that it was available to all parties.³² This time lapse constituted an oversight, but was not intended to be to the detriment of Mr Bemba. On the contrary, it must be noted

²⁹ This was also confirmed by [REDACTED]

³⁰ Email to the TFV, 19 December 2016, 17:28. *See* Annex, p. 2.

³¹ Email to the Head of Chambers, 19 December 2016, 17:52. *See* Annex, p. 3.

³² The reclassification of the Report (ICC-01/05-01/08-3493-Conf) was ordered on 23 June 2017 and effected on 27 June 2017.

that the other parties and participants likewise only gained access to the report on the same day as the Defence.³³

24. Furthermore, in assessing the content of the discussions in these meetings, we believe that Mr Bemba's rights could not have suffered any harm. The purpose of the meeting was merely for the TFV to explore whether [REDACTED] could be a potential partner organisation under Rule 98(4) of the Rules of Procedure and Evidence, and, noting [REDACTED] to get [REDACTED] any potential future problems in the implementation phase in the difficult political and security context of the CAR.³⁴ It was, however, not a forum for the Chamber to receive submissions or views by the different parties and participants.

25. We further note Mr Bemba's allegation that "*ex parte* access to the Trial Chamber is part of a more generalised practice in these proceedings", and that it has identified "16 other filings missing from the case file since the delivery of the Trial Judgment on 21 March 2016, that have been presumably filed as *ex parte*".³⁵ The Chamber did not overlook the Defence's observations in this regard. It rather did not consider it necessary to respond, as the precise purpose of *ex parte* filings is to keep only certain parties and participants informed about the content and the existence of the filing. The Chamber, at all times, satisfies itself of the appropriateness of each classification. In this regard, we also note that the legal team undertook a thorough review of the entire reparations case file after the Chamber reclassified the abovementioned Report, to ensure that all parties are in

³³ See also, [REDACTED]

³⁴ Report, ICC-01/05-01/08-3493-Conf-AnxA. [REDACTED]

Request, ICC-01/05-01/08-3611-Conf, para. 56.

possession of all relevant documents. We are thus confident that any standing *ex parte* classification is well-founded.³⁶

26. We would like to stress that the Chamber has continuously considered the Defence's, and other parties' and participants', interests throughout the reparations proceedings.

27. Mr Bemba's **submission (v)** in the Request relates to the Chamber's instruction to the Victims Participation and Reparations Section ("VPRS") that the experts may not meet with *any* party or participant, in order to avoid any influence on the experts' independent assessment or any exchange of information by way of de facto "*ex parte*" meetings, which are outside of the control and awareness of other parties and participants.³⁷ The Chamber did not single out the Defence, as suggested by Mr Bemba,³⁸ but rather attempted to keep the experts' assessment generally as neutral as possible.

28. Mr Bemba, however, submits that the LRV met the experts "in breach of the Trial Chamber's order".³⁹ In this regard, we would like to stress that the Chamber has not authorised any such meetings. Furthermore, recalling that the Court's setup restricts access to the victims' contact information to the LRV, we note that the LRVs had to be consulted in order to enable the experts to meet victims in the CAR, due to the fact that VPRS had no other way of locating them.⁴⁰ Lastly, it must be noted that the experts never purported to rely on the LRVs to form

³⁶ [REDACTED]

Email to VPRS, 17 July 2017 08:32. *See* Annex, p. 4.

³⁸ Request, ICC-01/05-01/08-3611-Conf, para. 68.

³⁹ Request, ICC-01/05-01/08-3611-Conf, paras 64-68.

⁴⁰ This was confirmed by [REDACTED]

conclusions on central issues in their report,⁴¹ but relied rather on interviews with victims.⁴²

29. As regards Mr Bemba's submission that the experts' Addendum, filed on 16 February 2018,⁴³ revealed that the contact between the LRV and the experts "had continued" and that the LRV's input informed the content of the Addendum,⁴⁴ we note further inaccuracies.

30. By way of background, the paragraph specified in the Request in the experts' Addendum reads as follows: "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]" [REDACTED]

[REDACTED] as

requested by the experts, in order to be able to assess Mr Bemba's overall liability, including a calculation with regard to the [REDACTED]

31. VPRS, as indicated earlier, has to rely on information provided by the LRV, and therefore requested information on the [REDACTED] on 12 January 2018.⁴⁶ The Chamber was not copied on the email, but authorised the

⁴¹ Request, ICC-01/05-01/08-3611-Conf, para. 66.

⁴² Expert Report on Reparations, 28 November 2017, ICC-01/05-01/08-3575-Conf-Anx-Red-Corr: For instance, the experts' assessment of the "family unit" in the CAR context was based on interviews and focus group discussions, *see* para. 76; the experts' assessment with respect to nutrition for HIV/AIDS positive victims was based on interviews, *see* para. 161.

⁴³ The Addendum deals with assessing Mr Bemba's liability, which was, in the Chamber's view, insufficiently addressed in the experts' report in November 2017: ICC-01/05-01/08-3607-Conf-Anx.

⁴⁴ Request, ICC-01/05-01/08-3611-Conf, para. 66.

⁴⁵ ICC-01/05-01/08-3607-Conf-Anx, p. 29.

⁴⁶ Email to LRV, OPCV on 12 January 2018 16:22. *See* Annex, p. 5.

contact beforehand,⁴⁷ bearing in mind that this information could not be obtained otherwise.

32. Ultimately, however, the LRV and OPCV jointly informed VPRS that they were not able to provide the sought information.⁴⁸ Mr Bemba's conclusion that the LRV's input shaped the experts' Addendum in any way is therefore not accurate.

Submission (iv)

33. Mr Bemba asserts that the Chamber has side-stepped the process of ensuring the Defence's right to make observations on each of the applicants for reparations, and whether they fall within the scope of Mr Bemba's conviction, and thus can properly fall within an award for reparations in the present case.⁴⁹
34. Mr Bemba refers to the reparations procedure adopted by Trial Chamber II in the *Katanga* case, where the Defence was afforded the opportunity to make observations on each of the reparations applications filed *before* the reparations order was issued.⁵⁰ He also refers to the *Al Mahdi* case, where the opportunity to make representations before the TFCV assesses any applicant's eligibility for reparations was provided to the Defence *in* the reparations order, meaning that this process would necessarily occur *after* the order was issued during the implementation phase.⁵¹
35. Mr Bemba submits that the Chamber has "skipped this step entirely, notifying Mr Bemba that he can file 'any other last arguments' he wishes 'before rendering

⁴⁷ Email to VPRS on 12 January 2018, 14:52 indicating that the Chamber considered that authorisation for the VPRS to reach out to the LRV and OPCV to gather the information requested was implied in paragraph 10 of the Chamber's 22 December 2017 order regarding follow-up matters arising from Expert Report: ICC-01/05-01/08-3588-Conf. See Annex, p. 6.

⁴⁸ Email to VPRS on 22 January 2018 09:57. The Chamber was not copied on the email but informed of the outcome afterwards. [REDACTED]

Request, ICC-01/05-01/08-3611-Conf, paras 6, 59-63.

⁵⁰ Request, ICC-01/05-01/08-3611-Conf, para. 60-61.

⁵¹ Request, ICC-01/05-01/08-3611-Conf, para. 62.

its reparations order', *without him even being informed of who are the applicants for reparations in his case.*"⁵² He states that this is "an error which not only demonstrates a pre-disposition against [him], but also a fundamental misapprehension of the reparations procedure."⁵³

36. In response we note first that the Chamber has made no determinations about the procedure which will be followed in relation to the eligibility of victims. Second, we note that the individual assessment approach adopted by Trial Chamber II in the *Katanga* case was not endorsed on appeal.⁵⁴ Third, as demonstrated in the *Al Mahdi* case, to which Mr Bemba refers, we note that the Defence's opportunity to make representations on victims' eligibility can occur *after* a reparations order is issued. Indeed, in that case, Trial Chamber VIII considered that the impracticability of identifying all those meeting its individual reparations parameters justified an administrative eligibility screening process conducted by the TFV during the implementation phase.⁵⁵ Trial Chamber VIII's approach in this regard was recently confirmed by the Appeals Chamber.⁵⁶

37. Noting, therefore, that the process mentioned by Mr Bemba can occur *after* a reparations order is issued, nothing in the Chamber's procedure so far indicates

⁵² Request, ICC-01/05-01/08-3611-Conf, para. 63. Emphasis added.

⁵³ Request, ICC-01/05-01/08-3611-Conf, para. 63.

⁵⁴ *The Prosecutor v. Germain Katanga*, Appeals Chamber, Judgment 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", 8 March 2018, ICC-01/04-01/07-3778-Conf, paras 64, 65, 69, 147.

⁵⁵ *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Reparations Order, 17 August 2017, ICC-01/12-01/15-236, para. 144. This is consistent with the jurisprudence from the Appeals Chamber stating that a reparations order itself need not necessarily *identify* the victims eligible to benefit from the awards for reparations but can instead *set out the criteria of eligibility* based on the link between the harm suffered by the victims and the crimes of which the person was convicted, leaving the eligible: Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, ICC-01/04-01/06-3129, para. 32.

⁵⁶ *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Appeals Chamber, Judgment on the appeal of the victims against the "Reparations Order", 8 March 2018, ICC-01/12-01/15-259-Conf, para. 72, where the Appeals Chamber stated that "[i]t is within the discretion of a trial chamber to request, on a case-by-case basis, the assistance of, for example, the TFV to undertake the administrative screening of beneficiaries of individual reparations meeting the eligibility criteria set out by the trial chamber".

that it has “circumvented this central step”, simply because the Defence might not make any such representations before a final reparations order is issued.

38. To the extent that Mr Bemba complains of not being given *identities* of applicants at this stage, we note that the Appeals Chamber recently held that the “Trial Chamber *erred* in ordering victims to reveal their identity to Mr Al Mahdi as a precondition to having their claims for individual reparations assessed by the TFV”.⁵⁷

(III) Conclusion

39. We have carefully reflected on the decisions taken throughout the course of the reparations proceedings and our continued role therein, and have concluded that, in our view, there is no need to recuse ourselves from the proceedings, nor do we consider there to be reasons warranting our disqualification.

⁵⁷ ICC-01/12-01/15-259-Conf-Exp, para. 87. Emphasis added. *See also*, paras 78-96.

Annex

From: [REDACTED]
Sent: 19 December 2016 16:03
To: [REDACTED]
Cc: [REDACTED]
Subject: Chambers - Invitation to a meeting TFV/[REDACTED] - Bemba case

Dear [REDACTED]

On behalf of [REDACTED] the Trust Fund for Victims would like to invite you this week to participate in an informal discussion with the Trust Fund and representatives from [REDACTED]

The purpose of the meeting is to have a preliminary informational session with [REDACTED] regarding the implementation of potential reparation awards arising in the *Prosecutor v. Bemba* case in the Central African Republic (CAR), including [REDACTED]. In this regard, the Trust Fund recalls and refers you to its submissions in the *Bemba* proceedings relevant to inquiries that it planned to undertake with respect to potentially identifying a rule 98 (4) organisation.

Please let me know your availability on **Wednesday, 21st December between 13:30 – 17:00 p.m. or Thursday, 22nd December between 10:00-12:30 p.m.** The meetings are expected to last between 45 minutes to one hour. Please also indicate the staff members who will be participating.

Kind regards,

[REDACTED]
 Trust Fund for Victims / Fonds au profit des victimes
 International Criminal Court / Cour Pénale Internationale
 Visiting address: Oude Waalsdorperweg 10, 2597 AK, The Hague, The Netherlands
 Mail address: PO Box 19519, 2500 CM, The Hague, The Netherlands
 Tel. +31 70 5158013
<http://www.trustfundforvictims.org/>



Fonds au Profit des Victimes
The Trust Fund for Victims



From: [REDACTED]
Sent: 19 December 2016 17:28
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Chambers - Invitation to a meeting TFV, [REDACTED] - Bemba case

Dear [REDACTED]

In the absence of most of the legal officers active on the Bemba reparations matter, I am happy to meet with you – reparations is an area of increasing importance, and of particular interest to me [REDACTED]
[REDACTED] If [REDACTED] is available, she may be joining me. At present I am free during the time you have indicated on the Wednesday, and from 10 – 11.30 on the Thursday.
(I note the meeting is informal, and in this regard I am not attending as any sort of formal representative of the Bemba chamber.)
Thanks and regards,
[REDACTED]

[REDACTED]
Head of Chambers

International Criminal Court
Oude Waalsdorperweg 10
2597 AK, The Hague
Netherlands

Tel: + 31 (0)70 799 6151
Mobile: + 31 (0)646448959
Fax: + 31 (0)70 515 8789

From: [REDACTED]
Sent: 19 December 2016 17:52
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Chambers - Invitation to a meeting TFV/[REDACTED] - Bemba case

Dear [REDACTED]

Thank you for your message and we are happy to hear that you and [REDACTED] are available to attend the meeting this week with TFV and [REDACTED] especially on a short notice.

We also understand that your attendance will not be considered as any sort of formal representative of the Bemba chamber as it is only a preliminary informational discussion with [REDACTED]

I will send the meeting request in the calendar soon together with the venue.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: 17 July 2017 08:32
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Bemba reparations - meetings with the experts

Dear [REDACTED],

The Chamber has indicated that they do not consider it appropriate for the experts to meet with Chamber staff, or to meet with the parties/participants, other than the VPRS.

Noting the VPRS' neutral status and the expected content of the its discussions with the experts, the Chamber considers proposed meetings between it and the experts both appropriate and potentially useful. However, with respect to the other parties/participants, given that the experts are already equipped with the necessary information by way of the submission, it is not presently clear what the added value of such meetings would be. Moreover, the Chamber considers the proposed meetings inappropriate, given the risk that the meetings may involve exchange of information not available to other parties/participants, or will be perceived to have affected the experts' neutrality. In respect of the proposed meeting with the Chamber staff, while acknowledging its potential utility, the Chamber does not consider such a meeting appropriate.

Accordingly, please be advised that the Chamber does not authorise any of the proposed meetings in the attached agenda which concern Chamber staff or the parties/participants, other than the VPRS.

Kind regards,

[REDACTED] on behalf of Trial Chamber III

From: [REDACTED]
Sent: 12 January 2018 16:22
To: [REDACTED]
Cc: [REDACTED]
Subject: Bemba case\ Order regarding follow-up matters arising from Expert Report - Demande d'informations

Chers Maîtres,

Conformément à la décision de la Chambre d'instance III ICC-01/05-01/08-3588 paragraphe 10 ("*Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red* " en date du 22 décembre 2017), le Greffe fournit assistance aux Experts désignés par elle dans la préparation d'un addendum à leur rapport.

Les Experts cherchent actuellement auprès du Greffe des compléments d'informations leur permettant d'établir la responsabilité financière de Mr. Bemba. Afin de les assister, nous vous relayons les demandes d'information suivantes de leur part, vous considérant les mieux placées pour y apporter des éléments de réponses actualisés.

[REDACTED]

Nous vous saurions gré de bien vouloir nous transmettre au plus tard le 22 janvier les éléments de réponses que vous seriez en mesure de partager avec les Experts.

Nous restons à votre disposition pour tout besoin de clarifications.

Recevez mes sincères salutations,

[REDACTED]

From: [REDACTED]
Sent: 12 January 2018 14:52
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Bemba: Request for clarification on Order regarding follow-up matters arising from Expert Report / contact with LRV

Dear [REDACTED]

Thank you for your email. On the questions raised regarding ICC-01/05-01/08-3588-Conf (the Order), the Chamber indicates that:

1. [REDACTED]
2. it considers that authorisation for the VPRS to reach out to the Common Legal Representative and OPCV to gather the information detailed below is implied in paragraph 10 of the Order, so please go ahead.

Kind regards,

[REDACTED] on behalf of Trial Chamber III

From: [REDACTED]
Sent: 11 January 2018 17:28
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for clarification on Order regarding follow-up matters arising from Expert Report / contact with LRV

Dear Trial Chamber III,

This is first of all to wish you a happy, health and successful 2018!

I have two matters that I respectfully seek your guidance and approval on:

Reference is made to your "Order regarding follow-up matters arising from Expert Report ICC-01/05-01/08-3575-Anx-Corr2-Red" of 22 December 2017 (hereinafter "Order") in the *Bemba* reparations proceedings (ICC-01/05-01/08-3588-Conf).

1. [REDACTED]



2. The three Experts have provided the Registry with a 'Request for information' [REDACTED]
After an assessment of the information sought, it transpires that some of the experts' queries relate to personal information of the victims represented by the Common Legal Representative and OPCV. I herewith respectfully seek the Chamber's approval to reach out to the Common Legal Representative and OPCV in order to seek their assistance in providing the requested information to the Experts.

Thank you very much for your consideration of the two issues that I am bringing before you.

Kind regards,

[REDACTED]
VPRS)