

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/08**

Date: **12 July 2018**

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public

Legal Representatives of Victims' joint submissions on the consequences of the Appeals Chamber's Judgment dated 8 June 2018 on the reparations proceedings

**Source: Ms Marie-Edith Douzima-Lawson, Legal Representative of Victims
Ms Paolina Massidda, Office of Public Counsel for Victims**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Lawson Douzima

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Ms Caroline Walter

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States' Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verril

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

I. Introduction

1. The Legal Representatives of Victims recall the high number of victims involved in the present case and the extreme difficulty to reach the totality of their clients which are currently spread throughout the territory of the Central African Republic, in internally displaced people camps in the country, in refugee camps outside of the country or in other countries. Indeed, the time-line set by Trial Chamber III (the “Chamber”), to submit their observations on the consequences of the Appeals Chamber Judgment dated 8 June 2018 (the “Judgment”)¹ on the reparations proceedings did not allow them to consult with all the victims they represent.

2. However, they did confer with the highest number of clients they could locate and reach in the short amount of time since the issuance of the Judgment by the Appeals Chamber and within the deadline set by the Chamber. In this regard, they wish to inform the Chamber that the Judgment has had a distinguished impact on victims who report their deep disappointment and hopelessness for not receiving justice. During the consultations held, the victims have underlined their frustrations and have reiterated their immediate needs in terms of assistance in order to restore their lives.

3. The Legal Representatives submit that, although the Court does not foresee any civil procedure distinct from the criminal one, it nonetheless has the duty of doing its utmost not to re-traumatize victims who have been in contact with

¹ See the “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s Judgment pursuant to Article 74 of the Statute” (Appeals Chamber), No. ICC-01/05-01/08-3636-Red, 8 June 2018 (the “Judgment”). See also the “Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański”, No. ICC-01/05-01/08-3636-Anx1-Red, 8 June 2018; the “Separate opinion [of] Judge Christine Van den Wyngaert and Judge Howard Morrison”, No. ICC-01/05-01/08-3636-Anx2, 8 June 2018; and the “Concurring Separate Opinion of Judge Eboe-Osuji”, No. ICC-01/05-01/08-3636-Anx3, 8 June 2018.

the Court and for whom, the Court taken as a whole, and the Chambers in particular, have a responsibility that does not appear to cease with an acquittal. As underlined by some external observers, the proceedings of the Court raise expectations for victims who assume that their requests will be taken into consideration, one way or another².

4. Accordingly, victims ask the Chamber to establish principles that could be applied for the purpose of future reparations before other *fora*, and to recognize, to that end, the scope and extent of their victimisation, or in other words, the harms they have suffered from and continue suffering from to this day.

5. In keeping with the rules and principles of interpretation applied by the Chambers of the Court, in light of the spirit and objectives of the Rome Statute, the Legal Representatives request the Chamber to read jointly paragraphs 1 and 6 of Article 75, and to interpret them as giving it the power to issue an order establishing principles relating to reparations and determining the scope and extent of victimisation of the persons who have been in contact with the Court throughout this case. Such a reading of article 75 paragraphs 1 and 6 is grounded in the preparatory works of the Rome Statute, where can be inferred the spirit and the objectives of the Statute, and thereby, to the assistance and reparations scheme defined therein, as well as in part of the doctrine.

² See REDRESS, *Moving Reparation forward at the ICC: Recommendations*, November 2016, p. 11: *“Victims can file applications for reparation at any point in the proceedings and such applications are not contingent on a conviction of the accused. Past cases suggest that some victims will apply to participate in the proceedings as soon as an accused is transferred to the Court. As part of their application to participate, many also submit a request for reparation at the same time. The Court initially developed a standard application form for victims seeking to participate in proceedings. Part of the form also included a section on requests for reparation. This not only encouraged victims to request reparation, it also created expectations that those requests would be considered in one way or another. Experiences in all four cases that reached the reparation stage to date suggest that a filled-in form is insufficient for a Chamber to progress requests for reparation – more detail is required.”* This publication is available at the following address, lastly consulted on 3 July 2018: <https://redress.org/wp-content/uploads/2017/12/1611REDRESS_ICCReparationPaper.pdf>.

6. Such an order would bring a recognition more than necessary today to the thousands of victims concerned, and would allow them to seek guidance and look for the assistance of other authorities without losing the benefit of the past years, warding off starting from scratch and having to revisit it all (primarily their still very much open wounds), further guaranteeing the expeditiousness of any procedure that would be put in place for their benefit. In addition, the order would also have the definite advantage of guiding the Trust Fund for Victims in its assistance mandate³, and of providing the latter with precious information in order to implement its mandate in an expeditious, targeted and appropriate manner, in particular for the benefit of the victims already known in this case.

7. The victims have contributed to the proceedings by agreeing to share and explain their sufferings as well as the multiple consequences of the crimes on their lives and on the fate of their families and communities, from the first day of the proceedings and during the next 10 years. For it is the recognition of these sufferings, acknowledged in several decisions of the chambers - that the victims truly need to see re-affirmed in the aftermath of the Judgment.

8. The Legal Representatives submit that such an order would give victims a recognition that would strengthen both the message and the sense of justice amongst them, missing at this point in time. Indeed, despite the Court's efforts, it is undeniable today that victims were not given access to the justice they deserve.

³ See the Statement from the Trust Fund for Victims' Board of Directors, "Following Mr Bemba's acquittal, Trust Fund for Victims at the ICC decides to accelerate launch of assistance programme in Central African Republic", Press Release, 13 June 2018, available at the following address, lastly consulted on 3 July 2018: <<https://www.icc-cpi.int/Pages/item.aspx?name=180613-TFVPR>>. See also the Communication from the Chair of the Board of Directors of the Trust Fund for Victims to the President of the Assembly of States Parties, available at the following address, lastly consulted on 3 July 2018: <https://www.icc-cpi.int/iccdocs/TFV/180603_TFV_letter.pdf>.

II. Procedural Background

9. On 8 June 2018, the Appeals Chamber, by majority, reversed the decision issued by Trial Chamber III in its previous composition⁴, discontinuing the procedure in relation to certain crimes and acquitting Mr Bemba of all remaining charges brought against him (the “Judgment”)⁵.

10. On 13 June 2018, the Chamber issued an Order inviting the Defence, the Legal Representative of Victims, the Office of Public Counsel for Victims (jointly the “Legal Representatives”), the Office of the Prosecutor and the Trust Fund for Victims (the “Trust Fund”) to file submissions on the consequences of said Judgment on the reparations proceedings, at the latest by 29 June 2018⁶.

11. On 26 June 2018, following a request introduced by the Legal Representatives⁷ and which was not opposed by the other parties and participants⁸, the Single Judge granted an extension of time to file the said observations until the 6 July 2018⁹.

⁴ See the “Judgment pursuant to Article 74 of the Statute” (Trial Chamber III), No. ICC-01/05-01/08-3343, 21 mars 2016. See also the “Decision on Sentence pursuant to Article 76 of the Statute” (Trial Chamber III), No. ICC-01/05-01/08-3399, 21 June 2016.

⁵ See the “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’”, *supra* note 1.

⁶ See the “Order inviting submissions following the Appeals Decision” (Trial Chamber III), No. ICC-01/05-01/08-3639, 13 June 2018, para. 2.

⁷ See the “Demande conjointe des Représentants légaux des victimes de prorogation de délai suite à l’« Order inviting submissions following the Appeals Decision », ICC-01/05-01/08-3639”, No. ICC-01/05-01/08-3641, 20 June 2018.

⁸ See the email sent on behalf of Trial Chamber III on 21 June 2018, at 15:52, inviting the Defence, the Office of the Prosecutor and the Trust Fund for Victims to respond to said Request at the latest on 25 June 2018. The next day, the Trust Fund for Victims indicated by way of an email to the Chamber that it does not intend to file any observations; see the email dated 22 June 2018, at 08:41. See also the “Prosecution’s observations on the request for additional time to make submissions on the reparations proceedings before Trial Chamber III”, No. ICC-01/05-01/08-3643, 25 June 2018. The same day, the Defence informed the Chamber by email that it takes no position on the request; see the email send on 25 June 2018, at 15:24.

⁹ See the “Decision on the Legal Representatives’ request for extension of time” (Trial Chamber III, Single Judge), No. ICC-01/05-01/08-3644, 26 June 2018.

12. On 4 July 2018, following a request introduced on the same day by the Legal Representatives, the Chamber granted the latter an extension of pages for their joint submissions.¹⁰

III. Views and Concerns of Victims Following the Judgment Acquitting Mr Bemba

13. The International Criminal Court was created with the aim of prosecuting those individuals whose domestic jurisdictions appear to be unable or unwilling to prosecute in a sufficiently independent and impartial way, due to their high political, civil or military position and to their responsibilities¹¹. One of the major innovations of the Rome Statute was the role assigned to victims¹².

14. This new place given to victims of the most heinous crimes within international justice arises from the idea that true justice can only be achieved if victims' voices are heard, and their sufferings acknowledged¹³. This innovative approach not only renders this justice more human¹⁴, but also has the objective, in addition to fighting impunity, of recognising the scope and extent of the victimisation and implementing measures capable of repairing the victims' sufferings.

¹⁰ See the email sent by the Legal Representatives on 4 July 2018 at 10:28, as well as the email sent on behalf of the Chamber on 4 July 2018 at 15:13.

¹¹ See Bruno COTTE, "La cour pénale internationale. L'expérience d'un magistrat français", in *La Revue des droits de l'homme*, November 2017, posted on 22 December 2017, p. 10. This document is available at the following address, lastly consulted on 5 July 2018: <<https://journals.openedition.org/revdh/2776>>.

¹² See G. BITTI and G. GONZALES RIVAS, "The reparations provisions for Victims under the Rome Statute of the International Criminal Court", in *Redressing Injustices through mass claims processes, innovative responses to unique challenges, The international bureau of the permanent court of arbitration*, Oxford University Press, 2006, p. 299.

¹³ *Idem*, p. 301.

¹⁴ *Ibid.*, p. 321.

15. In this regard, the creation of the Court raised tremendous expectations for victims around the world, and notably for victims in the Central African Republic, who hoped that a restorative justice would be finally provided to them. The victims came before the Court hoping that its action, by beginning to address their justice expectations¹⁵, would eradicate the climate of widespread impunity they were confronted with¹⁶. Or, at odds with all this, victims are today, more than 15 years after the events, filled with scepticism and distrust towards the Court.

16. Fifteen years after the commission of the crimes, and after more than 10 years waiting for justice, the victims of this case have spared no effort to provide the whole humanity with a unique perspective on the events that took place from October 2002 to March 2003 in the Central African Republic¹⁷.

17. These long and tiring years of waiting for justice have been for victims a succession of hopes and disappointments, fears and joys. Despite the very difficult challenges they faced – especially breaking the silence surrounding the heinous and shameful crimes they suffered from, at the forefront of which, rape – and of defying their fears of stigmatisation and exclusion from part of their own community in order to safeguard and not to forget the truth, victims drew their strength from the faith and confidence they had in the justice of this Court.

18. Hence, in their quest for justice, the Court was the only place where they could be heard and recognised as victims. This recognition constitutes an essential step in their recovery. They were very conscious and well informed of the hazardous

¹⁵ See FIDH, ‘All I want is reparation’. Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court”, November 2017. This document is available at the following address, lastly consulted on 5 July 2018: <<https://www.fidh.org/IMG/pdf/rca705ang.pdf>>.

¹⁶ *Idem*.

¹⁷ See the transcript of the hearing held on 1 May 2012, No. ICC-01/05-01/08-T-220-ENG CT WT, p. 53, lines 1 to 3: “I will answer as follows: I cannot ask for my voice or image to be distorted. I want it to be natural, be myself and say before the Judges and before the whole world what I suffered.”

and lengthy journey that was awaiting them. For each of the victims who have been in contact with the Court in this case, the process of filling-in the participation and reparations form, as well as each interview that followed constituted difficult steps, through which their profound wounds were reopened.

19. Their quest for justice met the critical step of the Conviction Judgment¹⁸, which brought a strong sense of relief and great satisfaction to victims. Some of them confided to their Legal Representative: *“My heart starts healing a little”*¹⁹. Other victims shared their impatient longing for reparations in order to rebuild their lives, while others observed bitterly that, as reparations were not forthcoming, entire communities, especially victims of rapes infected with HIV, were vanishing.

20. For the victims, who had placed their sole hopes in this jurisdiction²⁰, the Conviction Judgment was the only exception to the climate of total impunity prevailing in the Central African Republic²¹, despite the multiple armed conflicts and crimes perpetrated over the past two decades or so, on the territory. All testified that their participation in the procedure followed by the conviction of Mr Bemba, contributed to restoring them in their dignity and had a positive impact on their mental health.

¹⁸ See the “Judgment pursuant to Article 74 of the Statute”, *supra* note 4. See also the “Decision on Sentence pursuant to Article 76 of the Statute”, *supra* note 4.

¹⁹ Meeting with the victims in Bangui, June 2016.

²⁰ See “‘All I want is reparation’. Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court”, *supra* note 15; and United Nations, « Report on the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015”, May 2017. This document is available at the following address, lastly consulted on 5 July 2018: <https://www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/2017CAR_Mapping_Report_EN.pdf>.

²¹ *Idem*, p. 241.

21. This feeling of relief was blown away by the Appeals Chamber's Judgment of 8 June 2018²². The Judgment acquitting Mr Bemba, not only came to everyone's surprise, but was also a deep disappointment for the victims, their families and their communities. They expressed unanimously to their respective Legal Representatives their deep disappointment and loss of confidence in justice in general, and towards the Court, in particular.

22. The decision convicting Mr Bemba, although imperfect, remained essential for the victims who wanted to be heard and recognised as such; but also for the perpetrators for whom they were hoping that this decision would remind them of certain fundamental and universal values, thus breaking the circle of impunity that still reigns in the country.

23. As one of the victims underlined in relation to reparations: *"As long as the direct and indirect perpetrators of the crimes will not be punished, it will be very difficult for us to be fully satisfied with reparations. Whatever the reparations will be, we are aware of the fact that we have lost what money can and will never buy: our dignity. We lost in a few days what we had built during our entire lives. In my case, I was raped by several men from the MLC, in front of my children. My dignity as a mother, as a woman, as a human being, I lost it that day. The bond of mother with my children has been distorted and tarnished by this act. My children and I will forever bear the weight of rape. This heavy silence, these avoidances in each other's' eyes translate not only our pain but also the shame we are carrying. My boys became rebels in the society, ready to join any militia in the country in order to take revenge for my rape. It is difficult for me to admit that tomorrow they could do to another woman, another mother, what our persecutors did to us. We are eagerly waiting for justice to play its deterring role. The Decision of the judges in this Bemba case must send a strong message in order to discourage our children from becoming possible persecutors and others responsible of*

²² See the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute'", *supra* note 1.

atrocities in our society on the one hand, and on the other hand, alleviate our pain, as recognising the guilt of a direct or indirect perpetrator is to officially acknowledge that we exist. If reparations aim at helping us to rebuild our lives, the sentence and the punishment remain an essential element for us, the victims."²³ The views expressed by this victim are shared by all the victims represented in this case.

24. In as much as others perpetrators of serious crimes could not be prosecuted, a strong signal, 15 years after the commission of the crimes by the MLC troops, was vitally needed in order to deter other armed groups in the Central African Republic from committing similar crimes against the same victims²⁴.

25. For the victims of this case, the judicial truth, in other words the sentence, would have permitted to put words on facts, and to give back their voices to victims. Victims of rape in general, and those who have contracted HIV in particular, have long suffered from the burden of secrecy, and were waiting for this confirmation of conviction²⁵ to finally be able to share what they went through with their children who were born out of the rapes²⁶. The children born out of rapes, who are now 15 years old, are waiting for an answer as to their own existence. Because of the stigmatisation attached to this crime, many families preferred to remain silent as to who the father of these children is or how they were conceived. Others were hoping to mourn their relatives who were killed and whose bodies were never found.

²³ Meeting with victim a/0588/08 in Bangui in September 2017.

²⁴ It is important to underline that because of the inability of Central African justice to adjudicate the crimes perpetrated between 2002 and 2003 on its territory, the International Criminal Court was seized. See the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute'", *supra* note 1.

²⁵ During the meetings held with the victims by the Legal Representatives following the Judgment of the Appeals Chamber in June 2018, the victims have highlighted that they were expecting either a confirmation of the conviction of Mr Bemba, or an increase in his sentence based on the gravity of the crimes committed and on his conviction for several offences against the administration of justice, including corruption of witnesses and influencing witnesses and their resulting in false testimonies in the Main Case.

²⁶ Meeting with victims in Bangui, June 2018.

26. As expressed by the victims in the course of the recent meetings with their Legal Representatives, the absence of a strong signal from the Court in the fight against impunity not only reinforces their lack of confidence in justice, but also dissuades them from making additional efforts in cooperating or participating in other procedures before this Court. Victims believe that time was not on their side and therefore prefer to turn the page of the Court rather than to continue stirring up the past without any guarantee that justice will be done²⁷.

27. Without disputing the decision issued by the majority of the Judges of the Appeals Chamber, the victims note with deep regret that this decision constitutes a further injustice, as if to tell them, indirectly, that their suffering is not worth of justice's attention. The victims regret that the Majority did not mention their sufferings and the dramatic consequences of the crimes committed by the MLC troops.

28. Despite the continuous efforts of communication and explanations of the Legal Representatives, this unexpected Judgment was hardly understood by the victims.

29. It is the victims' opinion that the Judgment reduced the heinous crimes which victimised thousands of women, men and children in the Central African Republic to a mere chapter of daily local news; these crimes which, yet, have revealed their horror over the course of these 10 years of procedure and have caused the outrage of the entire international community²⁸.

²⁷ All the victims who have participated in the *Bemba* case, in particular the victims of rapes who have testified, have underlined that their testimony constituted a difficult step involving a lot of courage and an immeasurable strength on their part, in as much as it led them to relive the events they went through.

²⁸ See the "Judgment pursuant to Article 74 of the Statute", *supra* note 4. See also the "Decision on Sentence pursuant to Article 76 of the Statute", *supra* note 4.

30. The victims told their Legal Representatives that they felt “*betrayed*”²⁹ and “*stabbed in the back*”³⁰, abandoned by the international justice that had promised them so much³¹, and in which they had so much believed.

31. The issuance of the Judgment left victims in total disarray³² and many of them inform their Legal Representatives of the deterioration of their physical and mental health which translates into sleep issues, high and low blood pressure crisis, and psychological trauma. The deterioration in their health is accompanied by a renewed sense of re-victimization and ostracisation that has reignited the red embers of sorrow in the collective memory of the Central African people.

32. The numerous victims of sexual violence represented in this case expressed their feeling of having suffered a triple punishment: from the crimes suffered in their own flesh; from the consequent sufferings and stigmatisation by their communities; and, finally, from the acquittal and the end of these proceedings, which were perceived as an insult to their sufferings. The sexual violence perpetrated during the conflict in 2002-2003 led to the destruction of the social fabric in the Central African Republic, which in turn paved the way to the systematic use of such violence as a tool of war on this territory. Victims were expecting from the Court a strong message of condemnation of these crimes the echo of which would have awakened consciences and warned all other criminals of the fate that awaits them. Victims now fear that the Judgment will be perceived as an incentive to the commission of crimes.

²⁹ Meeting with victims in Bangui, June 2018.

³⁰ Meeting with victims in Bangui, June 2018.

³¹ See “‘All I want is reparation’. Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court”, *supra* note 15, p. 23: “*When we went to the ICC, the Court guaranteed us that they would do something, and nothing is happening. We are all going to die. What can the Court do for me? My health is gone. It’s too far away, the only one who helps us is our lawyer.*”

³² The Legal Representatives observed that when the victims were informed about the Judgment, they became angry, violent, they fainted and had blackouts.

33. The Legal Representatives underline that the reparations proceedings had reached a stage where the Chamber had already received all relevant submissions in order to be in a position to issue an order on the principles applicable to reparations and on the scope and extent of victimisation. In all likelihood, had the Appeals Chamber confirmed the conviction against Mr Bemba, the Chamber was ready to issue a reparations order, in accordance with paragraph 2 of article 75 of the Rome Statute. In the context of this case, it is especially difficult for victims to understand the situation. Even more so that Mr Bemba and others were convicted by another Chamber of the Court for interfering with the evidence and witnesses in this case, in order to elude Mr Bemba's guilt as well as his conviction, successfully³³.

34. The Judges of the Appeals Chamber, like the parties, did not dispute the existence of the crimes suffered by the victims from between October 2002 and March 2003. There is also no doubt that the MLC troops have committed crimes against the victims, causing serious harms to the latter. In the case at bar, what is in issue concerns only the errors that the Trial Chamber would have made in its assessment of the necessary and reasonable measures taken by Mr Bemba.

35. Not being privileged actors in the selection of situations and cases to be investigated and prosecuted, and having even less control over the strategy of the Prosecutor when choosing the mode of liability³⁴; wanting to make them pay for the mistakes of others is seen by the victims as an injustice. These mistakes do not erase the crimes committed, which on the contrary, remain, nor, even worse, their consequences.

³³ See the "Prosecution Detailed Notice of Additional Sentencing Submissions", No. ICC-01/05-01/13-2296, 2 July 2018.

³⁴ See G. BITTI and G. GONZALES RIVAS, *supra* note 12, p. 313.

36. Victims have been in contact with their Legal Representatives throughout these 10 years of proceedings, including during the reparations stage, and they have hence not only actively participated in sharing their views and concerns as the procedural vicissitudes went, but were also informed of every stage of the proceedings: the charges against Mr Bemba were unanimously confirmed by the Pre-Trial Chamber; two charges were not confirmed for the trial, and the victims of torture and inhuman and degrading treatments committed by the MLC troops were left out the trial; the Conviction Judgment was overturned by a decision which cast serious doubts on the principle of legal certainty and rigor, which no informed observer could have reasonably expected. The Judgment, for its content and its neglected and dodged format³⁵, constitutes an affront to all judicial actors who believed in the last bulwark formed by this highest judicial body; the approach taken by the majority of Judges, and not by consensus as would be expected for such reversals, has changed the rules upon which the Appeals Chamber reviews factual findings entered by Trial Chambers³⁶; has interpreted the scope of the conviction, going down from a “campaign of violence” of which more than 5,000 victims were found eligible to participate in the proceedings to 20 instances of criminal acts³⁷; has

³⁵ See the multiple reactions to the Acquittal Judgment from legal practitioners and academics, external observers: Joseph POWDERLY and Niamh HAYES, *The Bemba Appeal: A Fragmented Appeals Chamber Destabilises the Law and Practice of the ICC*, 26 June 2018, text available at the following address, lastly consulted on 3 July 2018: <<https://humanrightsdoctorate.blogspot.com/2018/06/the-bemba-appeal-fragmented-appeals.html?m=1>>; Just Security, Alex WHITING, *Appeals Judges Turn the ICC on its Head with Bemba Decision*, 14 June 2018, text available at the following address, lastly consulted on 3 July 2018: <<https://www.justsecurity.org/57760/appeals-judges-turn-icc-head-bemba-decision/>>; EJIL : Talk !, Diane Marie AMANN, *In Bemba and Beyond, Crimes Adjudged to Commit Themselves*, 13 June 2018, text available at the following address, lastly consulted on 3 July 2018: <<https://www.ejiltalk.org/in-bemba-and-beyond-crimes-adjudged-to-commit-themselves/#more-16267>>; and EJIL : Talk !, Leila N. SADAT, *Fiddling While Rome Burns? The Appeals Chamber’s Curious Decision in Prosecutor v. Jean-Pierre Bemba Gombo*, 12 June 2018, text available at the following address, lastly consulted on 3 July 2018: <<https://www.ejiltalk.org/fiddling-while-rome-burns-the-appeals-chambers-curious-decision-in-prosecutor-v-jean-pierre-bemba-gombo/#more-16264>>.

³⁶ See the “Judgement on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’”, *supra* note 1, para. 40; see also the “Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański”, *supra* note 1, paras. 2 to 18.

³⁷ See the “Judgement on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’”, *supra* note 1, paras. 104 and 119; see also the

changed the rules for assessing the sufficiency of the measures taken to prevent the commission of crimes, pursuant to article 28 of the Rome Statute, departing from the established international jurisprudence³⁸, and requesting that said measures be set out in the Decision confirming the charges as material facts³⁹ – the same decision that was before the Appeals Chamber as part of the record of the case in multiple occasions during the trial – and however never casted any doubt – keeping both the victims and the person then accused for another 5 years of additional proceedings. In such circumstances, the harm caused to the legal principles and even more so to the victims is absolute. While frustrations are a natural part of any judicial process, their legitimacy and any related expectations differ depending on the circumstances of each case. The circumstances of this case have in no way made it possible to anticipate the current situation of legal vacuum with which victims and the Court are faced.

37. The thousands of victims who have been in contact with the Court and have participated in the proceedings (approximately 6,000) have followed them with courage, patience and determination. They shared their sufferings and accepted to narrate, in details, what they went through in the hands of the MLC, trusting the Court, hoping, to no avail, that justice will be served. All of them took upon themselves to revisit the past in order to help the judicial actors to understand the crimes committed and to shed some lights on them so that, they, in turn would help the victims understand what happened to them in 2002/2003. There is no doubt today after these 10 years of proceedings that the crimes they have been suffering

“Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański”, *supra* note 1, paras. 32 and 39.

³⁸ See the “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’”, *supra* note 1, paras. 170 and 186; see the “Judgment pursuant to Article 74 of the Statute”, *supra* note 4, paras. 203, 204 and 719 to 734 (see the references in the relevant footnotes to the jurisprudence of the *ad hoc* tribunals).

³⁹ See the “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’”, *supra* note 1, paras. 170 and 186; voir also the “Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański”, *supra* note 1, paras. 50, 51 and 96 to 100.

from were committed by the MLC troops deployed on the Central African territory under the command of Mr. Bemba, called by former President Mr. Patassé in order to oppose the insurgency of Mr. Bozize. The victims wanted the truth; they also wanted to prevent others from becoming victims like them, thanks to the conviction of the persons responsible that could have served as an example; they wanted reparations for the crimes they have suffered from. Nobody denies today that these thousands of victims and others have been heavily attacked and have suffered murders, physical and psychological injuries, pillages and rapes. The Judges of the Appeals Chamber themselves, like the Judges of the Trial Chamber and the Pre-Trial Chamber, have acknowledged that these crimes were committed, and that the victims have suffered harms as a result of these heinous crimes with immeasurable consequences till this day⁴⁰.

38. The victims' reactions are irrevocable. The victims are desperate and the feeling of having been re-victimized a second time is omnipresent: *"it is as if we have been killed, pillaged and raped again"*; *"it is as if the sky fell on the heads of Central Africa in general, and of the victims in particular"*; *"it is worse than an earthquake, we do not understand what is happening to us"*; *"it is a hard blow and a double victimisation that*

⁴⁰ See the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute'", *supra* note 1, paras. 194 and 196; see also the "Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański", *supra* note 1, paras. 32, 37, 48, 71, 87 to 89, 91, 307, 495; the "Separate opinion Judge Christine Van den Wyngaert and Judge Howard Morrison", *supra* note 1, paras. 24, 57-58, 61-62 and 74-79 – para. 57: *"The acquittal in this case pertains to Mr Bemba's responsibility as a commander. This does not mean, quite obviously, that the crimes charged were not committed. The Trial Chamber indeed made findings beyond a reasonable doubt that a number acts of murder, pillaging and rape listed in paragraphs 624, 633 and 640 of the Conviction Decision were committed by MLC troops."*; para. 74: *"There was undeniable suffering on the part of the many victims of violence and cruelty at the hands of persons or groups that are related to the accused"* (we underline); as well as the "Concurring Separate Opinion of Judge Eboe-Osuji", *supra* note 1, para. 1: *"The crucial question in the appeal is not whether victims suffered violations. There is ample evidence that they did. And they deserve, in my view, every rehabilitative assistance that individuals, national governments and the international community can offer, including under the Rome Statute"* (we underline).

international justice has just given to the victims"⁴¹. Some also ask: *"with the acquittal in the criminal proceedings, what will happen to our civil claims?"*

39. As underlined by the Appeals Chamber, "[t]he reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. The success of the Court is, to some extent, linked to the success of its system of reparations."⁴² Consequently, the Legal Representatives submit that, notwithstanding the acquittal, the Chamber should rule on the applicable principles and on the scope and extent of the victimisation pursuant to paragraph 1 of article 75 of the Rome Statute.

IV. Consequences of the Judgment on Reparations Proceedings

40. The Legal Representatives note the legal *vacuum* which victims, but also the judicial process before the Court, are facing. After 10 years of proceedings, of courageous involvement of the victims; 10 years during which the details of the crimes committed against part of the Central African population were narrated, assessed, commented and recorded; after these 10 years, the evidence which led to the declaration of the liability at trial of the person who was recognised as responsible before the Court for the atrocities committed - were deemed insufficient. However, there is no doubt that crimes were committed and that the 6,000 persons who were in contact with the Court were victimised by said crimes.

⁴¹ See the statements made by some victims and some intermediaries working with victims on account of the Court. See also the comments made by civil society organisations which worked for and with victims in the course of these ten years of proceedings, gathered by Nadia Carine FORNEL POUTOU and Lucie BOALO HAYALI: Just Security, *A Belief Shattered: The International Criminal Court's Bemba Acquittal*, 25 June 2018, text available at the following address, lastly consulted on 3 July 2018: <https://www.justsecurity.org/58386/belief-shattered-international-criminal-courts-bemba-acquittal/>: "[...] For Central African civil society, especially organizations working on sexual and gender-based violence, this decision felt like a bomb dropped on us, erasing the work we have done over the last ten years. [...]"

⁴² See the "Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2" (Appeals Chamber), No. ICC-01/04-01/06-3129, 3 March 2015. See in particular its Annex A, "Order for Reparations (amended)", No. ICC-01/04-01/06-3129-AnxA, para 3.

41. Hence arises the question as to what the mandate of the Court consists in and how the international community – since the Court potentially acts as relay – could make effective the right of these victims to obtain reparations for the crimes they have suffered from. Is the Court empowered to help these victims rather than ignoring them after 10 years of proceedings during which it nevertheless has recognised their existence and their sufferings?

42. The Legal Representatives, like Madame Prosecutor⁴³, must respect the Judgment as a decision from the highest body of the judiciary system of the Court and against which no recourse is possible, as well as the integrity of the Court's proceedings and through it, the acquittal of Mr Bemba.

43. Therefore, the present observations, filed at the invitation of the Chamber, do not intend to dispute or claim a different judicial outcome from the one irrevocably decided by the Appeals Chamber.

44. However, faced with a situation of legal and procedural *vacuum* and discovering in that respect the possible inconsistencies of the system, the Legal Representatives have carefully reviewed the legal texts governing the Court in relation to the reparations proceedings. Having proceeded to a complete analysis of the preparatory works of the key provision in this regard, namely article 75 of the Rome Statute, they cannot but note that, in the absence of a conviction, the Court has no mandate to proceed with a reparations proceedings in accordance with paragraph 2 of article 75 of the Statute.⁴⁴ While noting with interest the proposals by

⁴³ See the "Statement of ICC Prosecutor, Fatou Bensouda, on the recent judgment of the ICC Appeals Chamber acquitting Mr Jean-Pierre Bemba Gombo", available on the International Criminal Court Website at the following address, lastly consulted on 2 July 2018: <<https://www.icc-cpi.int/Pages/item.aspx?name=180613-OTP-stat>>.

⁴⁴ See the "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2", *supra* note 42, paras. 64 to 76, in particular 65: "The Appeals Chamber recalls the

Judge Eboe-Osuji in the *Ruto and Sang* case, the Legal Representatives share his reasoning only in relation to the assertion that in certain specific circumstances the conclusion of judicial proceedings should not *per se* impede the right of victims to receive reparations [forthwith](#).⁴⁵ Indeed, the Legal Representatives note that no general principle of law requires the existence of a conviction as prerequisite for reparations⁴⁶; nonetheless, in light of the spirit of the legal texts of the Court, it can be concluded that the possibility to hold full reparations proceedings in the absence of a conviction is not (yet) part of the Court's mandate.

45. Nevertheless, in light of the preparatory works of article 75 and its final text as adopted, it can be inferred that a combined interpretation of paragraphs 1 and 6 of article 75 – in line with the spirit and objective of the legal texts of the Court – seems to allow a Trial Chamber - independently of any conviction or acquittal – to issue an order establishing, on the one hand, the principles relating to reparations that victims may in the future activate before others *fora*, in accordance with their national law or with international law; and, on the other hand, determining the scope and extent of any damage, loss or injury to, or in respect of victims, in other words, the scope and extent of their victimisation. Indeed, the convicted person is only mentioned in paragraph 2 of article 75. Consequently, the Legal Representatives invite the Chamber to implement its mandate, not applying paragraph 2 of article 75

principle established in the Impugned Decision that reparations “ensure that offenders account for their acts”. The Appeals Chamber considers that this principle properly reflects the system of reparations at the Court. In other words, reparations, and more specifically orders for reparations, must reflect the context from which they arise, which, at the Court, is a legal system of establishing individual criminal liability for crimes under the Statute. In the view of the Appeals Chamber, this context strongly suggests that reparation orders are intrinsically linked to the individual whose criminal liability is established in a conviction and whose culpability for those criminal acts is determined in a sentence”. See also the interpretation of the Judgment by Judge Eboe-Osuji, “Decision on Defence Applications for Judgments of Acquittal” (Trial Chamber (V)A), No. ICC-01/09-01/11-2027-Red-Corr, 5 April 2016, p. 136, paras. 199 to 202 (Reasons of Judge Eboe-Osuji).

⁴⁵ *Idem*, “Decision on Defence Applications for Judgments of Acquittal”, p. 66, para. 9 (Reasons of Judge Eboe-Osuji).

⁴⁶ *Ibid.*, “Decision on Defence Applications for Judgments of Acquittal”, para. 201 (Reasons of Judge Eboe-Osuji).

but in accordance with article 75, paragraphs 1 and 6. The Legal Representatives recognise that such interpretation of the legal texts would be innovative in as much as, so far, no other Trial Chamber has ever been faced with a similar situation and such a reading was hence not triggered. There is no precedent to which the Chamber could refer since the system put in place at the Court in relation to victims is in itself unprecedented.

46. As recognised by some authors, the legal system of the Court, especially concerning reparations, does not exist in isolation. On the contrary, it completes other mechanisms available for victims of unlawful acts at the international level.⁴⁷ To that end, the decisions of the Court shall make possible the relay between the victims and such mechanisms.

47. It seems that all the challenges linked to the issue of reparations of victims had not yet been completely taken into account by the emergent practice of the Court. Some questions already had arisen in the past without however providing the exceptional conditions present in this case, for instance in the face of the non-confirmation of charges against Mr Mbarushimana, the acquittal of Mr Ngudjolo, and in a more acute way in the Kenyan cases against Mr Ruto and Mr Sang,⁴⁸ as well as Mr Kenyatta.⁴⁹ Faced with such situations of injustice for victims which realities were never denied, the Court could never provide a legal or judicial answer.

⁴⁷ See Conor McCarthy, "Reparations and Victim Support in the International Criminal Court", Cambridge University Press, 2012, para. 9.

⁴⁸ See the "Decision on Defence Applications for Judgments of Acquittal", *supra* note 44, and in particular para. 149 (Reasons of Judge Fremr) and paras. 3, 9 and 195 et seq. (Reasons of Judge Eboe-Osuji). See also "Victims' Views and Concerns on the Issue of Reparation or Assistance in Lieu of Reparation Pursuant to the Trial Chamber Decision of 5 April 2016 on the Defence Motions on 'No Case to Answer', plus 3 Annexes", No ICC-01/09-01/11-2035, 15 June 2016; as well as the "Decision on the Requests regarding Reparations", No ICC-01/09-01/11-2038, 1 July 2016.

⁴⁹ See the "Victims' further submissions on the Prosecution's application for a finding of non-compliance under article 87(7) of the Statute", No ICC-01/09-02/11-1035, 15 October 2015; see also the "Victims' response to the 'Prosecution's notice of withdrawal of the charges against Uhuru Muigai Kenyatta'", No ICC-01/09-02/11-984, 9 December 2014.

Contrary to the above mentioned cases, the victims in this case are before a Chamber which has already undertaken part of the reparations proceedings, and victims simply ask for the recognition of their victimisation in order to be able to continue such proceedings before other *fora*, where applicable.

48. Again faced with a situation of injustice – even more blatant considering that 10 years of proceedings have elapsed, including 2 years starting off the debates on reparations, the Court must henceforth formulate a proper response. While the question of the possible amendment of article 75 could be asked,⁵⁰ it appears that in the circumstances, another avenue more obvious and more expeditious could be pursued for the Court to take into account an unforeseen situation so that its mandate and work retain their meaning and legitimacy. This unique answer to a novel situation should respect the objectives and spirit of the legal texts governing the Court.

49. Applying the rules of interpretation of treaties as established by the Court⁵¹, the Legal Representatives have pondered about the objectives and spirit of

⁵⁰ See Conor McCarthy, 'The Rome Statute's Regime of Victims Redress', in C. Stahn (ed), *The Law and Practice of the International Criminal Court* (Oxford: OUP, 2015) 1203: "At the doctrinal level, it is unclear whether the advent of the regime may herald the development, over time, of something akin to a system of delictual liability under the Rome Statute predicated upon the crime enumerated therein, or whether, more modestly, the role of the reparations regime is lately limited to a discrete procedural mechanism ancillary to the criminal proceedings before the Court." The Legal Representatives posit that a combined reading of paragraphs 1 and 6 of article 75 of the Rome Statute allows for a middle way.

⁵¹ See the "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal" (Appeals Chamber), No. ICC-01/04-168, 13 July 2006, para. 33: "*The interpretation of treaties, and the Rome Statute is no exception, is governed by the Vienna Convention on the Law of Treaties (23 May 1969), specifically the provisions of articles 31 and 32. The principal rule of interpretation is set out in article 31 (1) that reads: A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The context of a given legislative provision is defined by the particular sub-section of the law read as a whole in conjunction with the section of an enactment in its entirety. Its objects may be gathered from the chapter of the law in which the particular section is included and its purposes from the wider aims of the law as may be gathered from its preamble and general tenor of the treaty*". See also P. CURRAT, "L'interprétation du Statut de Rome", (2007) 20.1 *Revue québécoise de droit international*. This document is available at the following address, lastly consulted on 3 July 2018: <https://www.sqdi.org/wp-content/uploads/20.1_currat.pdf>.

the texts as drafted by the negotiators of the Rome Statute. The preparatory works of article 75 show that some delegations wanted to create an obligation for the Court to establish principles relating to reparations as well as the scope and extent of the victimisation in a judgment which could have been used before national or international authorities having the obligation to execute it, in accordance with their internal rules. However, such idea was linked to a power of the Court to order external entities, notably States, to provide reparations to the victims – a power which has not been retained as such for the Court in the Statute. As of the first discussions in 1993, reference was made to the responsibility of States for international unlawful acts,⁵² and, a year later, in 1994, to the duty of the international community to provide a response in case of crimes committed by a State or its agents acting in their official capacity⁵³. While the *ad hoc* Committee for the creation of an international criminal court was unable to make progress on the issue of reparations⁵⁴, the Preparatory Committee for the creation of an international criminal court clearly saw the emergence of the principle according to which the benefit of reparations ordered by the Court was subject to a conviction⁵⁵. However, the French delegation made a proposal foreseeing that any judgment of the Court

⁵² See the “Report of the International Law Commission on Its Forty-Fifth Session, Draft Statute for an International Criminal Court, 3 May-23 July 1993”, UN doc. A/48/10(SUPP), September 1993, Article 6*bis*.

⁵³ See the “Report of the International Law Commission on Its Forty-Sixth Session, Draft Statute for An International Criminal Court, 2 May-22 July 1994”, UN doc. A/49/10(SUPP), September 1994, II. Draft Code of Crimes Against the Peace and Security of Mankind, draft Article 5, paras. 136 to 139: “*The prosecution of an individual for a crime against the peace and security of mankind does not relieve a State of any responsibility under international law for an act or omission attributable to it. The special rapporteur explained that a single criminal act often had dual consequences: criminal consequences, namely, the penalty imposed on the perpetrator, and civil consequences, namely, the obligation to compensate for the damage*”; and para. 274: “*Some members furthermore took the view that in the case of crimes, reparation was due not only to the State which was materially affected, but also, in a broader sense, to the international community.*”

⁵⁴ See the “Summary of the proceedings of the Ad Hoc Committee during the period 3-13 April 1995”, UN doc. A/AC.244/2, 21 April 1995 and the “Report of the Ad Hoc Committee on the Establishment of an International Criminal Court”, UN doc. A/50/22(SUPP), 6 September 1995.

⁵⁵ See the “Summary of the Proceedings of the Preparatory Committee on the Establishment of an International Criminal Court during the Period 25 March-12 April 1996”, UN doc. A/AC.249/1, 7 May 1996, new Article 47*bis*. See also the “Decisions Taken by the Preparatory Committee on the Establishment of an International Criminal Court at its Session Held from 1 to 12 December 1997”, UN doc. A/AC.249/1997/L.9/Rev.1, 18 December 1997, Article 58.

could be transmitted to the competent national authorities which would be bound by the principles established in relation to the compensation of damages caused to the victims. While in the first versions of this proposal mention was made to the convicted person, such a mention did not appear anymore in the subsequent texts⁵⁶. The same year, in the work of the Preparatory Committee, reference was made again to the civil nature of the reparations proceedings and to the possibility for the Court to first, issue a ruling – binding on national jurisdictions - on the scope and extent of the victimisation and to determine the principles applicable to a compensation of the harms caused to the victims in order for them to be able, subsequently, to take up this matter before national authorities to receive reparations.⁵⁷ Such idea does not seem to require in essence that a person is declared guilty⁵⁸.

50. Or, such proposal is ostensibly close to the final version of paragraphs 1 and 6 of article 75 of the Statute. While the debate about the power of the Court to impose its authority to external instances – be it the Trust Fund or national or international authorities – seems to have different answers depending on the context

⁵⁶ See the “Draft Statute of the International Criminal Court, Working Paper Submitted by France, UN doc. A/AC.249/L.3, 6 August 1996”, Article 130.

⁵⁷ See the “Report of the Preparatory Committee on the Establishment of an International Criminal Court: Volume I, Proceedings of the Preparatory Committee during March-April and August 1996”, UN doc. A/51/22[VOL.I](SUPP), 13 September 1996, para. 282. See also the “Report of the Inter-Sessional Meeting of the Preparatory Committee on the Establishment of an International Criminal Court from 19 to 30 January 1998 in Zutphen, The Netherlands”, UN doc. A/AC.249/1998/L.13, 4 February 1998, proposals 1 and 2.

⁵⁸ See the “Report of the Preparatory Committee on the Establishment of an International Criminal Court: Volume II, Compilation of Proposals, UN doc. A/51/22[VOL.II](SUPP)”, 13 September 1996, Article 43(c). See the “Report of the Preparatory Committee on the Establishment of an International Criminal Court: Addendum”, UN doc. A/CONF.183/2/Add.1, 14 April 1998. See also the “Decision on the Legal Representatives of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations” (Trial Chamber), n° STL-11-01/T/TC/F3260, 31 July 2017, paras. 24-25: “[...] *the Appeals Chamber has acknowledged that the personal interests of the victims include their potential ability to claim compensation. But whether this conditional right should be exercised at this stage of the proceedings, namely, during the trial, is another issue, because it may, in some circumstances, be more appropriately exercised during a sentencing hearing.*” Such an interpretation seems to suggest that victims may obtain compensation before national tribunals in the course of a trial, based on their identification as victims by the Tribunal, even before the Chamber seized of the matter issues its decision on the culpability of the Accused.

and the proceedings, the fact that the orders and decisions of the Court may assist said instances to implement the rights of victims does not appear controversial. To the contrary, the Court has clearly been mandated as “complementary” to the national criminal jurisdictions,⁵⁹ interpreting said complementarity exactly as a duty to assist other entities to empower themselves in order to be able to fulfil their mandate.

51. Thus, applying the Court’s jurisprudence,⁶⁰ the Legal Representatives recall the objectives⁶¹ and responsibilities bestowed upon the Court by the Assembly of States Parties. The victims, their protection,⁶² the assistance and reparations of their sufferings by taking into account the long lasting impacts of the crimes under the jurisdiction of this Court are at the heart of such objectives and responsibilities. Indeed, the States Parties have clearly vested the Court since its creation and on a continuous basis with duties towards victims as recipients and beneficiaries of the rights enshrined in the Rome Statute, but also as members of societies for which the Court has undertaken a responsibility to contribute to their peaceful reconstruction and to their healing process.⁶³ In that respect, the Assembly of States Parties

⁵⁹ See article 1 of the Rome Statute.

⁶⁰ See, *inter alia*, the “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, *supra* note 51.

⁶¹ Moreover, it is not questionable that amongst the self-evident purposes of the Rome Statute, one is “mak[ing] internationally punishable the heinous crimes specified therein in accordance with the principles and the procedure institutionalized thereby”. See the “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”, *idem*, para. 37.

⁶² See International Criminal Court, Assembly of States Parties, “Report of the Court on the Revised strategy in relation to victims: Past, present and future”, Resolution ICC-ASP/11/40, 5 November 2012, para. 23: “Protection, as it is used in the ICC system, refers mainly to physical safety, security and well-being. Support is a broader and, in some sense, more inclusive term, covering the mitigation of any harm that victims may suffer as a result of their interaction with the Court. [...] Both objectives encompass protection against and support in the face of any hardship arising from the judicial proceedings” (we underline). This document is available at the following address, lastly consulted on 3 July 2018: <https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-40-ENG.pdf>.

⁶³ See International Criminal Court, Assembly of States Parties, “Strengthening the International Criminal Court and the Assembly of States Parties”, Resolution ICC-ASP/16/Res.6, 14 December 2017, *inter alia* pages 2-3 : “Recognizing that victims’ rights to equal and effective access to justice, protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning

continuously stresses how assistance and reparations for victims represent a unique mandate of the Court contributing to promote reconciliation and strengthen peace. In its Resolutions, the Assembly further recognises the constant need for the Court to develop any appropriate procedures in order to take into account the needs and challenges related to victims' as they emerge⁶⁴.

violations and redress mechanisms are essential components of justice, emphasizing the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the Court towards victims and determined to ensure the effective implementation of victims' rights, which constitute a cornerstone of the Rome Statute system" (we underline); paras. 95-95: *"Stresses the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and emphasizes the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims; Recalls article 75 of the Rome Statute and, in this regard, the reparative justice role of the Court, and notes that assistance and reparations to victims may promote reconciliation and contribute to peace-building"* (we underline). This document is available at the following address, lastly consulted on 3 July 2018: <https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res6-ENG.pdf>.

⁶⁴ *Idem*, Annex I, Mandates of the Assembly of States Parties for the intersessional period, p. 21, para. 12, alinéas a-e: *"With regard to Victims and affected communities, reparations and Trust Fund for Victims, (a) requests the Court to continue to establish principles relating to reparations in accordance with article 75, paragraph 1, of the Rome Statute as a priority in the context of its judicial proceedings; (b) encourages the Board of Directors and the Secretariat of the Trust Fund for Victims to continue to strengthen its ongoing dialogue with the Court, States Parties and the wider international community, including donors as well as non-governmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact and ensure the continuity and sustainability of the Fund's interventions; (c) requests the Court and the Trust Fund for Victims to continue developing a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations; (d) decides to continue to monitor the implementation of the rights of victims under the Rome Statute, with a view to ensuring that the exercise of these rights is fully realized and that the continued positive impact of the Rome Statute system on victims and affected communities is sustainable; (e) mandates the Bureau to continue considering victims-related issues as necessary or as they arise, having recourse to any appropriate process or mechanism"* (we underline). See also International Criminal Court, Assembly of States Parties, "Resolution on Victims and affected communities, reparations and Trust Fund for Victims, adopted at the 12th plenary meeting", Resolution ICC-ASP/13/Res.4, 17 December 2014, paras. 1, 6 and 20, *inter alia*: *"Welcomes the ongoing and continuous work of the Court in implementing and monitoring its Revised Strategy in relation to victims and welcomes the Court's intention to review such a strategy once the judicial cycle be finished, if necessary [...] Reiterates the need for the Court to continue to ensure that principles relating to reparations be established in accordance with article 75, paragraph 1, of the Rome Statute, takes note of the Court report on this matter, and further requests the Court to continue to establish such principles as a priority and report back to the Assembly [...] Mandates the Bureau to continue considering victims-related issues as necessary or as they arise, having recourse to any appropriate process or mechanism"* (we underline). This document is available at the following address, lastly consulted on 3 July 2018: <https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP13/ICC-ASP-13-Res4-ENG.pdf>.

52. As underlined by the Assembly of States Parties in its “Report of the Court on the Revised strategy in relation to victims: Past, present and future”: *“One of the unique features of the Rome Statute system is that victims have been granted the right to request reparations and may benefit from support by the TFV under its assistance mandate. The further advantage presented by the reparations and assistance mandates is that positive and pro-active engagement with victims can have a significant effect on how they experience and perceive justice, thus contributing to their healing process and the rebuilding of peaceful societies. [...] Overall, the Court must adapt to the unique aspects of each case and situation. [...] The Court must constantly monitor and adjust strategies and messages in order to respond not only to judicial developments but also to local dynamics. To do so requires from the entire Court system immense flexibility, creativity and, at times, speed. [...].”*⁶⁵

53. Moreover, the Legal Representatives recall that the legal texts governing the Court, and notably article 75 of the Statute, *“must be interpreted and applied in accordance with internationally recognized human rights, as declared in article 21 (3) of the Statute.”*⁶⁶

54. Following said principles of interpretation as recognised by the Chambers,⁶⁷ the Legal Representatives request the Chamber to read jointly paragraphs 1 and 6 of article 75 and to interpret them as providing the power to issue an order establishing the principles related to reparations and determining the scope and extent of the victimisation of the individuals having communicated with the Court in this case, on the basis of the information already collected, and independently of the acquittal of Mr Bemba. As developed *supra*, this proposed reading of article 75 paragraphs 1 and 6 finds support in the preparatory works from

⁶⁵ See the “Report of the Court on the Revised strategy in relation to victims: Past, present and future”, *supra* note 62, paras. 46, 80 et 83, *inter alia* (we underline).

⁶⁶ See the “Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal”, *supra* note 51, para. 38.

⁶⁷ *Idem*, the “Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal”, para. 33.

which the spirit and objectives of the Rome Statute⁶⁸, and consequently of the system of assistance and reparations for victims can be inferred, as well as in part of the doctrine.⁶⁹

⁶⁸ See the “Concurring Separate Opinion of Judge Eboe-Osuji”, *supra* note 1, para. 139.

⁶⁹ See E. DWERTMANN, Chapter 3, *Purpose Of Reparations In International Criminal Law*, in *The Reparation System of the International Criminal Court. Its Implementation, Possibilities and Limitations*, Brill-Nijhoff, 2 March 2010, p. 30: “Recently, the purpose of international criminal law in general and the ICC in particular has been moving toward an inclusion of the rights and interests of the crimes’ victims. Previously, international criminal justice did not adapt current trends in contemporary domestic criminal law and in the international human rights context, where there has been increasing consensus that the aim to restore social harmony cannot be achieved merely by convicting and sentencing the guilty. The ICC’s mandate goes beyond the determination of the criminal responsibility of perpetrators of crimes under international law. It is expected to ‘contribute to efforts to restore and maintain peace and security and guarantee lasting respect for and enforcement of international justice.’ Also, that victims have been granted attention and potential rights in the ICC Statute may have broadened the perspective on the purposes of international criminal law so as to include the victims’ perspective. Donat-Cattin states [in “Article 75 – Reparations to Victims”, In TRIFFTERER, pp. 965 et seq. and pp. 977 et seq.] that the punitive and preventive role of the Court vis-à-vis the most serious crimes of concern to the international community as a whole “must not be confined to the prosecution and punishment of the perpetrators [...]. The content of article 75, combined with article 68 and several other Statutory provisions, makes justice of this approach and renders the ICC an institution in which victims will be a central element of the penal proceedings””. See also Human Rights Center, UC Berkley School of Law, *The Victims’ Court? A Study of 622 Victim Participants at the International Criminal Court. Uganda Democratic Republic of Congo Kenya Côte d’Ivoire*, 2015, p. 13: “These new provisions [notably article 68(3)] reflect a “growing consensus that participation and reparations can play an important role in achieving justice for victims.” International prosecutions are, today, focused on more than ending impunity. They also aspire to the welfare and recovery of individual victims” (we underline). This document is available at the following address, lastly consulted on 3 July 2018: <https://www.law.berkeley.edu/wp-content/uploads/2015/04/VP_report_2015_full_rev_b-4.pdf>. See also G. BITTI, *La jurisprudence de la Cour pénale internationale en 2016*, *Droits fondamentaux*, No. 16, January 2018 – December 2018, pp. 19-20: “En revanche, l’article 75-1 du Statut précise lui que la « Cour établit des principes applicables aux formes de réparation, telles que la restitution, l’indemnisation ou la réhabilitation, à accorder aux victimes ou à leurs ayants droit ». La Cour peut également déterminer l’ampleur du dommage, de la perte ou du préjudice causé aux victimes ou à leurs ayants droit. On peut que souligner que, contrairement au paragraphe 2, le paragraphe 1 de l’article 75 du Statut ne fait aucune référence à la personne condamnée, ni d’ailleurs au résultat de l’instance pénale. On peut donc parfaitement imaginer une instance civile devant la Chambre de première instance à l’issue de l’instance pénale, même après un acquittement : la Cour ne pourrait cependant pas à l’issue de cette instance civile, prononcer une condamnation civile à l’encontre de la personne non condamnée. Elle pourrait cependant établir les préjudices subis par les victimes et les principes applicables aux réparations en leur faveur. Cette décision ne serait sans doute pas dénuée d’intérêt ou de valeur aux yeux des victimes : elle donnerait par ailleurs sans doute la possibilité aux victimes de se tourner vers le fonds en faveur des victimes ou vers des autorités nationales, pour obtenir des réparations concrètes sur la base de la décision prise par la Chambre de première instance. Il faut espérer que le débat sur cette importante question va continuer.” This document is available on the website of the Revue électronique du Centre de recherche sur les droits de l’homme et le droit humanitaire, at the following address, lastly consulted on 3 July 2018: <http://droits-fondamentaux.u-paris2.fr/sites/default/files/publication/contribution_de_j_bitti.pdf>. Lastly, an author goes as far as suggesting the creation of a Chamber dedicated to reparations, independently of any conviction. See L. MOFFETT, *Reparations for victims at the International Criminal Court: a new way forward?*, in *The*

55. Such an order would bring to the thousands of victims concerned a recognition – more than necessary today – and would allow them to look for the assistance of other instances, without losing the benefit of the past years, therefore saving them from starting from scratch again and from revisiting (essentially their wounds still open today), and guaranteeing the expeditiousness of any procedure which could be triggered for their benefit. Furthermore, such an order would create a precedent for the Court, the judicial actors and the victims allowing for more visibility and legal certainty without slowing down the consideration of, the attention to, the understanding of and the analysis of the consequences of the crimes and of the needs of victims throughout a procedure. Indeed, it could be feared that one of the consequences of the Judgment would be that, in further cases, no reparations proceedings would be started until a final ruling on appeal is rendered, *de facto* losing precious time for the victims and threatening to erode the Court's resources – in this regard, the possibility for a Trial Chamber to issue an order as suggested would permit to avoid such a scenario.

56. The victims and their Legal Representatives welcome positively and with some relief the announcement made by the Trust Fund to speed up the launch of assistance programmes in the Central African Republic,⁷⁰ while deploring the fact that it was necessary to arrive at such a dramatic – for the victims – conclusion of the proceedings⁷¹ in order to be able to finally start hearing of concrete assistance for them. Since the Trust Fund has already announced that the “*Board will consider first the harms suffered by victims in the Bemba case, as well as harms from sexual and gender*

International Journal of Human Rights, 17 August 2017, pp. 1216-1217. This document is available at the following address, lastly consulted on 3 July 2018: <<https://www.tandfonline.com/doi/pdf/10.1080/13642987.2017.1360005?needAccess=true>>.

⁷⁰ See the Statement from the Trust Fund for Victims' Board of Directors, as well as the Communication from the Chair of the Board of Directors of the Trust Fund for Victims to the President of the Assembly of States Parties, *supra* note 3.

⁷¹ Many victims died without receiving any assistance from the Court.

based violence ("SGBV") arising out of the situation in CAR I"⁷² and that it "will urgently engage in consultations with the CAR government authorities, civil society, international actors, and the legal representative of victims in the Bemba case"⁷³; therefore, an order by the Chamber as requested in the present submissions would benefit the Trust Fund in providing guidance and assistance in the accomplishment of its task and would provide it with precious information to implement its mandate in an expeditious, targeted and appropriate way.⁷⁴ In particular should the Chamber consider it appropriate to include in said order some guidelines to the Trust Fund which would allow it to prioritise its activities for the benefit of the victims of this case.

57. The victims have already been consulted several times and their needs have been explained and analysed, assessed by experts and evaluated by the Chamber; an order detailing the scope and extent of the victimisation already established and the principles which should be applied to answer to the needs of the victims would facilitate the work of the Trust Fund and would avoid a further re-traumatisation of the victims through new interviews. Moreover, faced with the sufferings and needs of more than 6000 victims, contrary to "classic" reparations proceedings, which would have been carried should the conviction be confirmed, the Trust Fund will not benefit from the same monitoring and guidance of the trial chamber as in other cases which reached the reparations stage.⁷⁵ Nonetheless, confronted with such a distinctive situation, it is evident that any support which could speed-up and streamline the work of the Trust Fund as triggered should be encouraged. The Legal Representatives submit that an order of the Chamber would

⁷² See the Statement from the Trust Fund for Victims' Board of Directors, *supra* note 3.

⁷³ *Idem*.

⁷⁴ See Assembly of States Parties, Resolution ICC-ASP/4/Res.3, Regulations of the Trust Fund for Victims, 3 December 2005, Regulation 49: "The Board of Directors may consult victims as defined in rule 85 of the Rules of Procedure and Evidence and, where natural persons are concerned, their families as well as their legal representatives and may consult any competent expert or any expert organisation in conducting its activities and projects." [we underline]

⁷⁵ See the Reparations Orders issues in the case *The Prosecutor v. Thomas Lubanga Dyilo*, *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Ahmad Al Faqi Al Mahdi*.

unquestionably serve that purpose and – being authoritative⁷⁶ - would support the call made by the Board of Directors of the Trust Fund “*on all States Parties to join in providing meaningful and much-needed assistance by making a voluntary contribution for the benefit of victims and their families in the CAR I situation*”.⁷⁷

58. Finally, such a ruling would also allow the Trust Fund to avail itself more efficiently of regulation 53 of its Regulations which provides that “[t]he Board of Directors may engage in any outreach and information campaigns it deems appropriate for the purpose of raising voluntary contributions. The Board of Directors may ask for the assistance of the Registrar in this matter.”

59. Lastly, such an order would facilitate the notification procedure that the Trust Fund will start with respect to said assistance programs in conformity with regulation 50(a) of its Regulations.

60. The Legal Representatives also points out the issue of whether the Chamber could – in application of the principle of positive complementarity⁷⁸ and in addition to the present request, recommend to external entities, such as the

⁷⁶ See “Strengthening the International Criminal Court and the Assembly of States Parties”, *supra* note 63, para. 116: “Encourages States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and welcomes the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular he continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization during the fourteenth session of the Assembly” (we underline).

⁷⁷ See the Statement from the Trust Fund for Victims’ Board of Directors, *supra* note 3.

⁷⁸ See “Strengthening the International Criminal Court and the Assembly of States Parties”, *supra* note 63, para. 117: “Encourages the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while recalling the Court’s limited role in strengthening national jurisdictions, and also encourages continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance” (we underline). See also L. MOFFETT, *Reparations for victims at the International Criminal Court: a new way forward?*, *supra* note 69, pp. 1214-1215. The author refers to “Reparative Complementarity”.

Security Council of the United Nations,⁷⁹ the Central African Government⁸⁰ or other actors, to take over the situation of these victims; as well as the issue of whether the Court could transmit certain parts of the record of the case to other jurisdictions, without prejudice of the fundamental principle of *ne bis in idem*. The Legal Representatives do not present arguments on said issues and leave them to the appreciation of the Chamber.

61. Furthermore, the Appeals Chambers established the principle according to which, when reparations are implemented following a conviction, “*there is a need to go beyond the notion of punitive justice, towards a solution which is more inclusive, [...] and recognises the need to provide effective remedies for victims*”.⁸¹ Without commenting on said principle, it seems even more obvious that the establishment of principles relating to possible reparations, as well as the recognition of the scope and extent of the victimisation as such, could not and should not be considered as “punitive”, and even more so when the order would be issued in application of a combined reading of paragraphs 1 and 6 of article 75 of the Rome Statute, detached from any conviction and aiming at future procedures to be eventually activated in other *fora*. In this regard, the issuance of such an order is not only within the powers of the Chamber

⁷⁹ See the possibility for the Security Council to create a Compensation Commission with the aim of responding to the harm suffered by victims in the conflict in Central African Republic in 2002/2003. See for instance the United Nations Compensation Commission created as a subsidiary organ of the United Nations Security Council to process claims and pay compensation for losses and damage suffered as a direct result of Iraq’s unlawful invasion and occupation of Kuwait in 1990-91. Information available on the Website of the Commission, at the following address, lastly consulted on 3 July 2018: <<https://uncc.ch/>>. See also United Nations Security Council, Resolution 687, 3 April 1991.

⁸⁰ See United Nations General Assembly, “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, Resolution A/RES/40/34, 29 November 1985; 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”, New York, 16 December 2005 (written by Theo van Boven); as well as United Nations General Assembly, “Responsibility of States for internationally wrongful acts”, Resolution A/RES/56/83, 28 January 2002. From these texts stems, in International Law, the obligation for States to provide reparations to victims, and the obligation for the Central African State to provide a remedy to victims in respect of its own conduct and of conduct by non-state actors for which it has responsibility.

⁸¹ See the “Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2”, *supra* note 42, Annex A, para 1.

in order to provide victims with appropriate remedies, but it would not undermine the principle of the presumption of innocence, nor the one of *res judicata*. Consequently, since such an order should be issued without any reference to Mr Bemba, his Defence should not see in this course of action any reason to object.

62. The Legal Representatives submit that the Chamber is in a unique position at a key moment, faced with the delicate task of not losing the information related to the sufferings and harms of the victims collected in the last 10 years and reinforcing the engagement of the Court with victims confirming thereby their importance for this Court. The years elapsed and the efforts put to try to understand what happened to the victims; as well as the resources, time and efforts deployed to encourage victims to share their story and not only take note but also assess their sufferings and needs following the crimes that victimised them, should not necessarily be considered as lost.⁸²

63. In this regard, the Chamber still has a role to play in order to ensure the consistency of the judicial system and that this precious information will not be lost, victimising once more the individuals concerned; indeed, said precious information is based on an important element which is not challenged by the acquittal of Mr Bemba, namely their victimisation. As the Appeals Chamber underlined: “[t]he victims of the present crimes are to enjoy equal access to any information relating to their right to reparations and to assistance from the Court, as part of their entitlement to fair and equal treatment throughout the proceedings”.⁸³ It is difficult to imagine that such a right would cease when implementing procedures detached of any decision pertaining to the liability for these crimes; particularly when the Court has an obligation to protect the dignity, as well as the physical and psychological well-being of each victim who

⁸² The meetings held with the victims about reparations were not easy in as much as the latter took it upon themselves to relive what they went through.

⁸³ See the “Order for Reparations (amended)”, *supra* note 42, para. 13.

has communicated with the Court in conformity with article 68 of the Rome Statute, a responsibility which shall not cease with an acquittal.⁸⁴ It is also not disputable that the Court – and primarily the Chambers – have a duty to act in order to avoid any re-traumatisation of victims due to their involvement in the Court’s proceedings.

64. Victims need their sufferings and their harms – recognised by multiple decisions of the chambers in the last 10 years⁸⁵ – to be re-stated after the Judgment. It is not too late to give effect to the objectives established by the Assembly of States Parties to the Rome Statute when it underlines: “[b]y providing victims with an opportunity to articulate their views and concerns, enabling them to be part of the justice process and by ensuring that consideration is given to their suffering, it is hoped that they will have confidence in the justice process and view it as relevant to their day to day existence rather than as remote, technical and irrelevant. It is recognized that victim participation will contribute to the justice process at the Court and will make the proceedings more sensitive to

⁸⁴ See article 68 of the Rome Statute together with its related jurisprudence, and notably the “Decision on victims’ participation” (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2018, para. 137.

⁸⁵ See the “Judgment pursuant to Article 74 of the Statute”, *supra* note 4, paras. 18 et al.; the “Decision on 799 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-2401, 5 November 2012; the “Public redacted version of “Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings”” (Trial Chamber III), No. ICC-01/05-01/08-2247-Red, 19 July 2012; the “Decision on 1400 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-2219, 21 May 2012; the “Decision on 471 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-2162, 9 March 2012; the “Decision on 418 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-2011, 15 December 2011; 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; the “Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims’ applications to the Registry” (Trial Chamber III), No. ICC-01/05-01/08-1590-Corr, 21 July 2011; the “Decision on 653 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-1091, 23 December 2010; the “Decision on 772 applications by victims to participate in the proceedings” (Trial Chamber III), No. ICC-01/05-01/08-1017, 18 November 2010; 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; 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; and finally, the “Fourth Decision on Victims’ Participation” (Trial Chamber III, Single Judge), No. ICC-01/05-01/08-320, 12 December 2008.

victims.”⁸⁶ It is not too late to add to the consequences of the Judgment effects compatible with the objectives attached to the good functioning of the administration of justice before the International Criminal Court⁸⁷.

65. Such an order by the Chamber would give victims a recognition that would strengthen both the message and the sense of justice amongst them, blatantly missing at this point in time. Indeed, despite the Court’s efforts, it is undeniable today that victims were not given access to the justice they deserve; at best, were they given access to an illusion of justice.

66. The Legal Representatives refer to their past submissions filed in the reparations proceedings,⁸⁸ and consequently request the Chamber to confirm the principles established by the Appeals Chambers in the case *The Prosecutor v. Thomas Lubanga Dyilo* and which could be applicable to the victims of this case,⁸⁹ as well as to indicate any other additional principle applicable by virtue of the specific circumstances of this case.⁹⁰ In this regard, any measure suggested for the benefit of

⁸⁶ See International Criminal Court, Assembly of States Parties, “Report of the Court on the strategy in relation to victims”, ICC-ASP/8/45, 10 November 2009, para. 44. This document is available at the following address, lastly consulted on 5 July 2018: <https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf>.

⁸⁷ See the “Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański”, *supra* note 1, para. 47

⁸⁸ See the “Consolidated Final Submissions on Reparations”, No. ICC-01/05-01/08-3610-Conf, 28 February 2018 ; the “Observations consolidées de la Représentante légale des victimes sur le rapport des Experts et son Addendum et les observations de l’OIM”, No. ICC-01/05-01/08-3612-Conf, 28 February 2018 ; the “Soumissions conjointes des Représentants légaux des victimes d’éléments d’informations supplémentaires en vue de l’Ordonnance en réparation”, No. ICC-01/05-01/08-3581, 1December 2017; and the “Submissions relevant to reparations”, No. ICC-01/05-01/08-3455, 31 October 2016 and the “Version publique expurgée des observations de la Représentante légale des victimes relativement aux réparations”, No. ICC-01/05-01/08-3459-Red, 31 October 2016.

⁸⁹ See the “Order for Reparations (amended)”, *supra* note 42, paras. 1 to 52.

⁹⁰ See the “Consolidated Final Submissions on Reparations”, *supra* note 88, *inter alia* paras. 28, 30, 31, 32, 45, 46, 51, 52, 53, 56 (specifically related to the victims of pillages), 57 (specifically related to the victims of murders), 58 (specifically related to the victims of rapes), 59, 60, 63, 64, 65, 66, 68, 73, 78, 81, et 83 ; as well as the “Observations consolidées de la Représentante légale des victimes sur le rapport des Experts et son Addendum et les observations de l’OIM”, *supra* note 88 ; and the “Soumissions conjointes des Représentants légaux des victimes d’éléments d’informations supplémentaires en vue de l’Ordonnance en réparation”, *supra* note 88. See also the “Transmission of Experts’ Joint Report

the victims of this case should take into account their situation in its entirety and in a holistic manner in order to be effective and appropriate and address the multidimensional harms they have been suffering from. Therefore, the Legal Representatives request the Chamber to establish the scope and extent of the victimisation in this case by making reference to the multiple harms suffered by the victims – being individuals or organisations - their families and their communities; as well as to the various consequences of said harms on their lives, at the physical, psychological (including the transgenerational harms), material and economical level; and the fact that victims are confronted with diverse situations depending on the place where they currently reside – throughout the territory of the Central African Republic, in internally displaced people camps, in refugees camps outside of the country or in exile in other countries. The Legal Representatives finally recall once again the extreme urgency of any measure to be implemented for the benefit of the victims because of their precarious situation, especially physically and medically.

67. The Legal Representatives also request the Chamber to underline, in issuing such an order, the huge work done tirelessly by the intermediaries and focal points in the communities throughout the territory of the Central African Republic but also in the exiled communities, who have accompanied and supported the victims but also the different judicial actors in these proceedings; while being often confronted to the most difficult aspects arising from the traumas suffered by the victims they have continued in their engagement guided by their commitment towards their compatriots which never left them and is still alive today, despite the immense discouragement attached to the Judgment. In the same vein, the work done

pursuant to Trial Chamber Decision ICC-01/05-01/08-3559-Red of 30 August 2017”, No. ICC-01/05-01/08-3575, 20 November 2017, paras. 137 to 256 ; the “Confidential Redacted Version of Annex to the Transmission of Experts' Joint Report pursuant to Trial Chamber Decision ICC-01/05-01/08-3559-Red of 30 August 2017”, No. ICC-01/05-01/08-3575-Conf-Anx-Red, 21 November 2017; as well as the “Corrigendum to ICC-01/05-01/08-3575-Conf-Anx-Red”, No. ICC-01/05-01/08-3575-Conf-Anx-Red-Corr + Anx, 28 November 2017. See finally the “Submissions relevant to reparations”, No. ICC-01/05-01/08-3455, 31 October 2016 and the “Observations de la Représentante légale des victimes relativement aux réparations”, *supra* note 88.

by the judicial actors within the services of the Court at headquarters and in the field for the benefit of the most vulnerable victims must also be underlined for its exemplarity through the perseverance shown all along the last 10 years. They have all tirelessly worked facing multiple questions by and worries of victims in relation to the procedures before the Court.

68. The Legal Representatives do not request the Chamber to be guided or to show their compassion towards victims. They request the Chamber to comply with its mandate implementing one of the key provisions of the Rome Statute, interpreting said provision in conformity with the spirit and objectives of the Statute. The Legal Representatives request the Chamber to implement the law established by and for the Court, in giving back to the victims the full extent of their rights. If the Court cannot always be the best *forum* to answer to the expectations and needs of “*millions of children, women and men [who] have been victims of unimaginable atrocities that deeply shock the conscience of humanity*”,⁹¹ it can nonetheless serve as relays “*for the sake of present and future generations*”,⁹² as dictated by its Statute.

⁹¹ See the Preamble of the Rome Statute, 2nd indent.

⁹² See the Preamble of the Rome Statute, 9th indent.

CONSEQUENTLY, the Legal Representatives of Victims respectfully request the Chamber to issue an Order 1) establishing the principles relating to reparations which could be applicable to future proceedings before other *fora*, and 2) determining the scope and extent of any damage, loss and injury to, or in respect of, victims of this case as established in the proceedings.



Ms Marie Edith Douzima-Lawson



Ms Paolina Massidda

Done in English and in French; the French version being authoritative.

Dated this 12th day of July 2018

At The Hague, The Netherlands