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TRIAL CHAMBER III

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

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

Public

Public redacted version of Defence observations on reparations

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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I. INTRODUCTION

1. On 14 March 2012, Thomas Lubanga Dyilo was convicted of the conscription and use of child soldiers in Ituri, crimes that occurred over 14 years ago.¹ Despite reparations being heralded as a “key feature” of the International Criminal Court’s system of justice,² they have not yet been implemented in his case.³ Four years on from Lubanga’s conviction, all further missions in search of eligible applicants have been suspended,⁴ and the Trial Chamber has only recently approved the Trust Fund for Victims’ (“TFV”) proposal for symbolic collective reparations. This proposal anticipates 18 weeks to procure the services required, with no project completion date mandated by the Trial Chamber, or suggested by the TFV.⁵

2. Protracted reparations proceedings have negative side effects. As noted by Professor Carsten Stahn in April 2015, in relation to the *Lubanga* reparations proceedings:⁶

ICC action may increase victim fatigue. In the worst case, continued judicialization of harm and ongoing struggles over modalities of reparation might cause new grievances or forestall a sense of closure with the past.

3. The TFV has expressed similar concerns. Notably, in May 2016, the TFV suspended the harm assessments it was conducting in Ituri in connection with the *Lubanga* case out of concerns that, *inter alia*, its approach may have lead to the “re-

¹ ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para. 1358.

² ICC-01/04-01/06-3129-AnxA, Order for Reparations (“*Lubanga* Principles”, “Principles”), 03 March 2015, para. 3.

³ See, ICC-01/04-01/06-3251, Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations, 21 October 2016, paras. 1-10.

⁴ ICC-01/04-01/06-3208, First submission of victim dossiers With Twelve confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V01 only, 31 May 2016, paras. 20-21.

⁵ ICC-01/04-01/06-3251, para. 15.

⁶ C. Stahn, *Reparative Justice after the Lubanga Appeals Judgment on Principles and Procedures of Reparation*, 7 April 2015, available at: <http://www.ejiltalk.org/reparative-justice-after-the-lubanga-appeals-judgment-on-principles-and-procedures-of-reparation>. Last Accessed 31 October 2016.

traumatisation” of applicants.⁷ The TFV submitted that the Trial Chamber’s order put it in an “untenable situation, whereby its own staff is participating in a process that it finds fundamentally harmful to the victims it is engaging with.”⁸

4. The expeditious implementation of reparations in a manner consistent with the rights of the convicted person, and which does not re-traumatise applicants or give rise to concerns of resumed hostilities in the affected region,⁹ has thus far proved elusive at the ICC. Already an extremely challenging balancing act, the situation is further complicated in the present case.

5. The MLC completed its withdrawal from the Central African Republic on 15 March 2003, over 13 years ago.¹⁰ According to the Office of the Prosecutor, since that time, the civilian population of the CAR has been the subject of widespread violence far exceeding the crimes in the present case, both in terms of its gravity and protracted nature. Described as “massive ethno-religious cleansing”,¹¹

⁷ ICC-01/04-01/06-3208, First submission of victim dossiers With Twelve confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V01 only, 31 May 2016, paras. 48-53.

⁸ *Ibid.*, para. 53.

⁹ See, for example, ICC-01/04-01/06-2904, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, fn. 383: The limited scope of the charges brought by the prosecution against Mr Lubanga limited the categories of victims who have participated in this case. They come largely from the same ethnic group and they do not necessarily represent all those who suffered from crimes committed during the relevant conflict in Ituri. This situation could give rise to a risk of resentment on the part of other victims and the re-stigmatisation of former child soldiers within their communities. See also ICC-01/04-01/07-3512-Anx1-Red2, Report on Applications for Reparations in accordance with Trial Chamber II’s Order of 27 August 2014. 15 December 2014, paras. 78, 82: there is a risk that the provision of reparation to victims of the present case could exacerbate, rather than alleviate, tensions between ethnic groups in the area. The attack on Bogoro of 24th February 2003 took place in the context of wider hostilities in which other communities, including some in the immediate vicinity of Bogoro, also suffered harm. Indeed, the Ngiti community has suffered substantially more than other communities, including the Hema. Awards of reparations, if not carefully managed, could fuel rivalries between communities and go against attempts at reconciliation. See also Moffett, L., ‘Reparations for ‘guilty victims’: Navigating Complex Identities of Victim-Perpetrators in Reparation Mechanisms’, *International Journal of Transitional Justice* (2016), 146-167, 147.

¹⁰ ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, (“Judgment”), 21 March 2016, para. 562.

¹¹ UNHCR, ‘UNHCR chief decries “humanitarian catastrophe” in CAR, including massive ethno-religious cleansing’, 12 February 2014, available at:

thousands have been raped and murdered with “particular cruelty” by the anti-Balaka and Seleka forces.¹² The Seleka forces include 3,500 child soldiers.¹³ UN peacekeepers and French troops are also alleged to have committed widespread rapes.¹⁴ In the words of the Prosecution, “[p]olitical instability and armed conflict have plagued the country since 2001.”¹⁵ Against this backdrop, determining whether the harm currently suffered by Central African civilians has a sufficient causal link to the actions of MLC troops who left the country 13 years ago is an extremely difficult, if not impossible task. A quantification or assessment of this harm, either individually or collectively, raises similar challenges.

6. The ongoing nature of the conflict in the CAR has practical ramifications. The Joint Threat Assessment Group (“JTAG”) recommendations and advisory for the Central African Republic, dated 31 October 2016, states that [REDACTED].¹⁶ In the last week, UN peacekeepers are alleged to have shot and killed four civilians.¹⁷ The TFV has postponed indefinitely all proposed assistance programs.¹⁸ A reparations regime that anticipates “consultation with victims”, “informed

<http://www.unhcr.org/news/latest/2014/2/52fbc6e96/unhcr-chief-decries-humanitarian-catastrophe-car-including-massive-ethno.html?query=Central%20African%20republic>. Last accessed 31 October 2016.

¹² OTP, Situation in the Central African Republic II. Article 53(1) Report, 24 September 2014, paras. 252-263 (CAR-D04-0005-0601).

¹³ *Ibid.*, para. 115.

¹⁴ See, for example, CAR-D04-0005-0402; CAR-D04-0005-0535; CAR-D04-0005-0389; CAR-D04-0005-0397; CAR-D04-0005-0404; CAR-D04-0005-0493.

¹⁵ OTP, Situation in the Central African Republic II, art 53(1) Report, 24 September 2014, Executive Summary para. 9 (CAR-D04-0005-0601).

¹⁶ Email, External Operations Support Section – Registry, International Criminal Court, dated 28 October 2016.

¹⁷ <http://www.bbc.com/news/world-africa-37751664>; <http://uk.reuters.com/article/uk-centralafrica-violence-idUKKCN12O1F3>. Last accessed 31 October 2016.

¹⁸ TFV Strategic Plan 2014-2017, p. 6, available at:

http://www.trustfundforvictims.org/sites/default/files/media_library/documents/pdf/TFV_Strategic_Plan_2014_2017__approved.pdf. Last accessed 31 October 2016.

The Trust Fund for Victims: Assistance & Reparations Achievements, Lessons Learned, and Transitioning Programme: Progress Report 2015, pp. 47-48, available at http://www.trustfundforvictims.org/sites/default/files/media_library/documents/FinalTFVPPR2015.pdf. Last accessed 31 October 2016.

consent”, and “outreach activities”¹⁹ does not fit easily into the framework of an ongoing ethnic tension, political instability, and violent conflict, particularly given the recognised mass displacement of civilians.²⁰

7. Rather than being the defining hallmark of the institution, the reparations process has transformed into one of the most frequent targets of criticism of the Court. This Trial Chamber has an opportunity, despite the glaring practical and logistical difficulties, to implement a reparations process which is credible, expeditious and which – most significantly – has a legitimate prospect of providing assistance to the victims of those crimes for which Mr. Bemba was convicted. This would involve not only the amendment of the Principles set out by the Appeals Chamber in *Lubanga*, but a marked departure from the aspects of the process which have obstructed the implementation of reparations in that case.

II. PROCEDURAL BACKGROUND

8. The trial in the present case opened on 22 November 2010.²¹

9. On the same day, Trial Chamber III (“Trial Chamber”) asked the Registry to provide notification of any request for reparations received so far to the Defence as soon as practicable.²²

10. On 13 January 2011, the Registry filed its *Notification of applications for reparations in accordance with Rule 94(2) of the Rules of Procedure and Evidence*,²³ in

¹⁹ ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015, paras. 29-32: Principle 8: Accessibility and consultation with victims.

²⁰ OTP, Situation in the Central African Republic II, Article 53(1) Report, 24 September 2014, para. 88 (CAR-D04-005-0601).

²¹ Judgment, para. 10.

²² T-32-ENG, p. 62, lines 20-22.

²³ ICC-01/05-01/08-1111.

which it transmitted 332 application forms for reparations to the Trial Chamber. These 332 forms were then transmitted to the Defence on 17 January 2011.²⁴

11. These were the only application forms transmitted at, or proximate to, the commencement of the trial. Other forms seeking reparations were transmitted to the Defence on 6 July 2012 (39 applicants),²⁵ 28 October 2013 (107 applicants),²⁶ and 17 February 2014 (142 applicants).²⁷

12. On 21 March 2016, the Trial Chamber delivered its Judgement under article 74 of the Rome Statute ("Statute"), convicting Mr. Jean-Pierre Bemba.²⁸ The conviction encompassed 3 murders, 28 rapes, and 16 instances of pillage.²⁹

13. On 22 July 2016, the newly-composed Trial Chamber III made an *Order requesting submissions relevant to reparations* ("Order").³⁰ Specifically, the Trial Chamber set out five issues upon which it requested submissions from the Legal Representative of Victims ("LRV"), the Defence, the Prosecution, the Registry and the TFV.³¹

14. Four organisations were also granted leave to make submissions on the five identified issues pursuant to Article 75(3) of the Statute and Rule 103 of the Rules of Procedure and Evidence ("Rules").³² Accordingly, Redress,³³ the QUB Human

²⁴ ICC-01/05-01/08-1132.

²⁵ ICC-01/05-01/08-2241.

²⁶ ICC-01/05-01/08-2847.

²⁷ ICC-01/05-01/08-2977.

²⁸ Judgment.

²⁹ Judgment, paras. 624, 633, 640; *See also*, ICC-01/05-01/08-3376-Conf, para. 15; ICC-01/05-01/08-T-370-ENG, p. 27, lines 12-13.

³⁰ ICC-01/05-01/08-3410.

³¹ ICC-01/05-01/08-3410, para. 7.

³² ICC-01/05-01/08-3430.

³³ ICC-01/05-01/08-3448.

Rights Centre,³⁴ the United Nations,³⁵ and the International Organisation for Migration (“IOM”),³⁶ have to date filed observations before the Trial Chamber.

III. SUBMISSIONS

A. The applicability of the *Lubanga* principles

15. As a “mission statement” the Principles on Reparations set out by the Appeals Chamber in the *Lubanga* case are more than adequate.³⁷ It would, however, be remiss to ignore the fact that practical application of reparations procedure has highlighted a need in certain respects to refocus the Court’s objectives. The particular circumstances of the present case, moreover, give rise to a need to amend or supplement those principles in the following ways.³⁸

1. Principle 1: Beneficiaries of Reparations

16. Principle 1 of the *Lubanga* Principles erroneously conflates two concepts. Rule 85 of the Rules, the first rule in Section III “Victims and Witnesses”, defines the concept of a victim for all purposes within the context of proceedings at the ICC. It is not a complete definition of those to whom reparations may be awarded.

17. Section III of the Rules describes three rights which victims may seek to exercise, protective measures (Rules 87 and 88), participation in the proceedings (Rules 89 to 91), and reparations (Rules 94 and 95). To avail themselves of any of those rights, victims have to make the necessary application in each case.³⁹

18. The fact that an individual fulfils the criteria of being a victim within the definition of Rule 85 does not automatically qualify him, her, or indeed a legal

³⁴ ICC-01/05-01/08-3444.

³⁵ ICC-01/05-01/08-3449.

³⁶ ICC-01/05-01/08-3447.

³⁷ ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015.

³⁸ ICC-01/05-01/08-3410, para. 7(a).

³⁹ Protective Measures may also be granted on application by the parties or of the chamber’s own motion after consultation with VWU; see Rule 88 of the Rules of Procedure and Evidence (“Rules”).

entity to participate in the proceedings, nor to reparations. Absent a proper application, the court has no power to award reparations. That the Appeals Chamber had this in mind is plain from the wording of paragraph 22 of the Principles under Principle 6, where it states that “**the applicant** shall provide sufficient proof of the causal link between the crime and the harm suffered based on the specific circumstances of the case”.⁴⁰

19. However, Principle 1 omits this necessary condition precedent to benefitting from reparations, and it should be amended accordingly to read “[...] reparations may *upon proper application under Rule 94* be granted to [...]”.

20. Rule 94 is the only process by which applications for reparations can be initiated. Article 75(1) of the Statute requires that the Court only proceed to determine the scope and extent of any damage or loss to victims “upon request”. Although the Chamber may also act *proprio motu* under Rule 95, that power only arises in “exceptional circumstances” which do not obtain in this case.⁴¹ With respect to the Appeals Chamber in *Lubanga*, there is no separate process for collective reparations. The ultimate form of the order made does not alter the mechanism for initiating the process. Rules 97 and 98, moreover, concerning

⁴⁰ ICC-01/04/01/06-3129-AnxA, Order for Reparations, 03 March 2015, (emphasis added).

⁴¹ Dona, J., Gasser, H-P., Bassiouni, M. C. (eds), *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blisshenko*, (2009), p. 915, fn. 27: “From a reading of Article 75 in combination with Rule 95, it may be inferred that the Court’s independent power to award reparations will be used mainly where the Court considers it impossible for victims to file a request for reparations.”; McCarthy, C., *Reparations and Victims’ Support at the ICC*, (2012), p. 191: “None of the provisions of the Statute, the Rules of Procedure and Evidence or the Regulations of the Court specifies the kind of circumstances that may be considered “exceptional”. Although the inability of victims to apply for reparations owing to their location or vulnerability may be the kind of circumstances envisaged”; De Hert, P., Holvoet, M., Flamme, J., Struyven, O., (eds), *Code of international criminal law and procedure* (2013), p. 385; It has been suggested that this provision aims to “enable [the Court] to address the absence of the victim, whose geographical or cultural remoteness from the Court, combined with his or her lack of information or funds and other pressures, may prevent him or her from making an application.

assessment of reparations and the TFV, neither describe nor form the basis for the construction of an alternative process.⁴²

21. In any event, the Trial Chamber is in fact in possession of applications for reparations under Rule 94. It must, thus, collate information about the current state of the applications and quantify the reparations, whether individual or collective, accordingly.

2. Principle 3: Causation

22. The situation in the instant case is complicated by the history of the Central African Republic since 2003 and the fact that crimes committed there since the MLC's withdrawal far exceed those for which Mr. Bemba was charged.⁴³

23. The ICC Prosecution attributes thousands of rapes and murders to the Seleka and anti-Balaka troops.⁴⁴ The violence has been of such gravity and length as to prompt (or force) the displacement of one million people.⁴⁵ Seleka forces employ thousands of child soldiers.⁴⁶ UN and French troops are alleged to have committed widespread rapes.⁴⁷

24. Dr. Daryn Reicherter was called by the Prosecution as an expert witness, to testify as to the "longitudinal and intergenerational impact of mass sexual violence".⁴⁸ He testified that following an initial trauma, a victim's "biology" can change, which makes it "much, much more likely that a subsequent trauma will

⁴² ICC-01/04-01/06-3129, 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, 3 March 2015 paras. 148-150.

⁴³ OTP, Situation in the Central African Republic II. Article 53(1) Report, 24 September 2014, paras. 255-263.

⁴⁴ *Ibid.*, paras. 255-264.

⁴⁵ *Ibid.*, paras. 88, 263.

⁴⁶ *Ibid.*, para. 115.

⁴⁷ See, for example, CAR-D04-0005-0535; CAR-D04-0005-0389; CAR-D04-0005-0397; CAR-D04-0005-0402; CAR-D04-0005-0404; CAR-D04-0005-0493.

⁴⁸ ICC-01/05-01/08-3399, para. 37.

cause harm”.⁴⁹ Moreover, if victims remain in an unsafe situation (such as an ongoing conflict) or even have the perception of an unsafe situation (such as living in an area administered by UN peacekeepers who are alleged to be raping civilians), “they're not likely to become better, they're likely to remain the same or even -- even be more chronic.”⁵⁰ The Trial Chamber found Dr. Reicherter’s evidence to be reliable.⁵¹

25. Any assessment of the impact of the 2002-2003 intervention on the mental health status of victims in the Central African Republic must necessarily take into account the trauma to which they have been exposed in the intervening years. As Dr. Reicherter testified, the ongoing state of conflict necessarily heightens the harm suffered by victims of MLC troops. Even victims of MLC troops who suffered no subsequent specific attacks or abuse would necessarily have sustained further harm by simply living in a climate of ongoing conflict and fear. It is of significance that the MLC, as an armed rebellion, ceased to exist in 2003.⁵² Victims could have no fear of MLC troops re-entering the Central African Republic. Their focus would have been on a much more present threat.

26. To take a more practical example; the house of a victim in PK12 is looted in early November 2002 by the MLC. In late March 2003, further property is stolen in the widespread pillaging which occurred when Bozizé’s rebels seized Bangui.⁵³ In early December 2013, during the height of violence between the Seleka and anti-Balaka forces, his house is burned down and destroyed, he is driven from PK12, and is now living in the bush and unable to return. Mr. Bemba’s liability cannot extend to ensuring his safe return, building and furnishing a new house in PK12, and assisting in his physical and mental recovery from the 13 years of instability, ethnic tension, and violence to which he was subjected.

⁴⁹ T-369-CONF-ENG, p. 19, line 19 – p.20, line 4.

⁵⁰ T-369-CONF-ENG, p. 26, lines 8-11.

⁵¹ ICC-01/05-01/08-3399, para. 37.

⁵² T-368-ENG, p. 22, line 25 – p. 23, line 22.

⁵³ CHM1, T-357-CONF-ENG, p.87, lines 5-16; EVD-T-OTP-00401/CAR-OTP-0004-0409 at 0433-0435.

27. The ICC Prosecution, NGOs, international observers, and journalists corroborate each other as to the breadth of the post-March 2003 violence in the CAR.⁵⁴ The available literature, on its face, makes it extremely unlikely that the applicants for reparations in the *Bemba* case have not been affected, in some way, by the intervening acts.

28. Reparations 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.”⁵⁵ Liability cannot be imposed for people who “suffered harm that did not result from the crimes for which [the convicted person] was found guilty.”⁵⁶ As argued by the Defence in *Lubanga*: “Thomas Lubanga was not found guilty of the civil war in Ituri.” He “can only be compelled to repair collectively the harm suffered by children of less 15 years, enlisted between September 2002 and August 2003.”⁵⁷

29. Given the particular circumstances of this case, a proper application of Principle 3 would require, at a minimum, individualised assessments of eligible applicants to determine the level of harm resulting from pre-15 March 2003 events. The *Lubanga* Principles should be accordingly amended.

⁵⁴ See, ICC-01/05-01/08-3448, para. 38, citing International Federation for Human Rights (FIDH), *Central African Republic: “They must all leave or die”*, June 2014, p 8, UN Office for the Coordination of Humanitarian Affairs, Key Figures, Internationally Displaced People, continuously updated, last updated October 2016. See also, Neglected Emergency: Thousands Displaced by violence in Central African Republic, UN News Centre, <http://www.un.org/en/events/tenstories/08/centralafricanrepublic.shtml>. Last Accessed 31 October 2016.; Preliminary Findings, OHCHR Monitoring Mission in the Central African Republic (CAR) (14 January 2014); Press Release: Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a second investigation in the Central African Republic, ICC-OTP-20140924-PR1043, available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1043>. Last Accessed 31 October 2016.

⁵⁵ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 65.

⁵⁶ *Ibid.*, para. 214.

⁵⁷ ICC-01/04-01/06-T-368-Red, p. 74, line 5; p. 74, line 24 – p. 75, line 1.

3. Principle 8: Accessibility and consultation with victims

30. Principle 8 again conflates the concepts of victims and applicants for reparation and imposes an overly cumbersome burden on Chambers, rendering the effective delivery of reparations less likely. The acknowledgment in paragraph 30 that “[r]eparations are entirely voluntary” is completely at odds with the involvement of families and communities who may have no wish to participate in the process. It is also inconsistent with any feasible regime of protective measures for those who wish to claim reparations semi-anonymously.

31. In any event, family members are, in most if not all circumstances, eligible to reparations themselves,⁵⁸ and communities can participate through “legal entities” under Rule 85(b).⁵⁹ Their explicit inclusion as bodies to be supported and consulted is thus otiose.

32. The principle would make more sense and have more effective practical application by being amended to read: “Applicants for reparations should be able to participate throughout the process [...]”. However, the Defence does not demur from the suggestion that there is a valid imperative in consultation with applicants for reparations.

33. In both the *Lubanga* and *Katanga* cases, an initial step in the reparations phase was for the Chamber to update its information as to the status of the **current** applications for reparations.⁶⁰ Given the passage of time since the filing of the

⁵⁸ ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015, para. 6(b)(i).

⁵⁹ *Ibid.*, para. 8.

⁶⁰ In *Lubanga*, the Registry was given two weeks from the judgment to send the Chamber the **current** applications for reparation, ICC-01/04-01/06-2844, Scheduling order concerning timetable for sentencing and reparations, 14 March 2012, para. 7 (emphasis added). In *Katanga*, the Trial Chamber ordered the Registry to report on applications for reparations prior to requesting observations from the parties and participants regarding reparations principles and procedures. The Chamber considered it “necessary” for the Registry to provide additional and up to date information regarding victims’ applications for reparations as the initial applications had limited information as to “the harm suffered as a result of the crimes and the reparations measures sought by applicants”

applications under Rule 94(2) it is imperative that the eligible applicants be re-contacted to ensure that they continue to consent to participation in the process. This cannot be assumed. On its first mission to Ituri in the context of the *Lubanga* case, the TFV found that “several victims expressed their unwillingness to participate in collective reparations due to security concerns.”⁶¹

34. There is, additionally, the more basic issue of the vitality and traceability of applicants. In *Katanga*, the Chamber placed a time limit upon this process,⁶² and it is submitted that, in order to control the length of the process, the Trial Chamber should do likewise in the present case. Any report on the outcome of the attempts to re-contact the reparations applicants, whether provided by the Registry or the LRV, should provide cogent evidence of consent, and a current address, as a minimum. In the event of the death of an applicant, the report should include a request for continued participation by a next-of-kin, evidence of death, and a reasoned claim to reparations under Rules 85 and 94.⁶³

35. As to the identification of **additional** applicants at this stage of the case, such as appears to have been mooted and even undertaken in *Lubanga*, for the reasons elaborated further below,⁶⁴ the Defence submits that such a process is inconsistent with the statutory framework of the Court. The filing of applications for reparations at the start of the trial is an important check on the credibility of the process. Applications solicited now will likely be tailored to fit the published facts of the conviction.

and most initial applications were received five years prior to the order, ICC-01/04-01/07-3508, Order instructing the Registry to report on applications for reparations, 27 August 2014, para. 7.

⁶¹ ICC-01/04-01/06-3208, First submission of victim dossiers With Twelve confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V01 only, para. 56.

⁶² ICC-01/04-01/07-3508, Order instructing the Registry to report on applications for reparations, 27 August 2014, p. 6.

⁶³ In the course of the trial phase of the case, the LRV has submitted 9 applications for continued participation by the relatives of deceased victims, ICC-01/05-01/08-3256-Conf. It is submitted that *a fortiori* a similar approach should be taken in relation to deceased applications for reparations.

⁶⁴ See paras. 44-50, Section (III) (B) (1) (a).

36. Furthermore, in this case, searching for **additional** applicants at this juncture adds practical difficulties. According to the Prosecution, by August 2014, more than one million people (one fifth of the total population) had been displaced by the conflict in CAR, and 400,000 Central Africans had sought refuge in neighbouring states.⁶⁵ As such, no sensible process can be based on an assumption that additional victims of MLC troops in 2002-2003 will be contactable, or even in the Central African Republic, let alone in areas in which they allege they suffered harm 13 years ago. Under these circumstances, even should the TFV receive security clearance to visit the CAR, finding additional applicants would be a long, and probably fruitless endeavour.

37. On 5 November 2013, for example, the Trial Chamber ordered VWU to perform a security assessment of 19 Prosecution witnesses, whose security had been compromised by the actions of another Prosecution witness.⁶⁶ These witnesses, all of whom had testified before the Trial Chamber, had since returned to live in the Central African Republic. [REDACTED].⁶⁷

38. Moreover, this is not a situation where the victims of the crimes for which the accused was convicted were deprived of an opportunity to file timely reparations applications. The success of the outreach in the CAR situation is momentous. At least 5,229 people, from all regions of the CAR, filled in application forms to participate in the proceedings. The Prosecutor held a large and public meeting of victims in Bangui in 2007-2008, at which a “great many victims” were present, at which he discussed the ICC proceedings.⁶⁸ OCODEFAD, the *Organisation pour la Compassion des Familles en Détresse* has been active and operational for over a

⁶⁵ OTP, Situation in the Central African Republic II, art 53(1) Report, 24 September 2014, para. 88 (CAR-D04-0005-0601). *See also*, ICC-01/05-01/08-3448, Observations by the Redress Trust pursuant to Article 75(3) of the Rome Statute (“Statute”) and Rule 103 of the Rules, para. 38.

⁶⁶ ICC-01/05-01/08-2845-Conf-Red, para. 13.

⁶⁷ ICC-01/05-01/08-2975-Conf-Red, paras. 4-8.

⁶⁸ P87, T-45-CONF-ENG, p.19, line 5 - p.22, line 20; P23, T-54-CONF-ENG, p.26, line 15 - p.29, line 12; P42, T-67-CONF-ENG, p.32, line 18 - p.35, line 10; P73, T-76-CONF-ENG, p.25, line 1 - p.30, line 12; P29, T-81-CONF-ENG, p.43, line 7 - p.44, line 6; P119, T-83-CONF-ENG, p.16, line 4 - p.17, line 19.

decade in facilitating the participation of Central African victims in ICC proceedings, with witnesses testifying about “regular meetings”, to which victims were transported in chartered buses.⁶⁹ No sensible argument can be made that the victims of the MLC in 2002-2003 have had no opportunity to engage in the reparations process.

39. As such, Principle 8 should be applied realistically, addressing the prevailing circumstances in the Central African Republic over the intervening period, and the Trial Chamber should strictly limit eligible victims to those whose applications were transferred to the Defence in accordance with Rule 94(2).⁷⁰

4. Principle 9: Modalities of Reparations

40. Nowhere in the Statute, Rules, or *Lubanga* Principles, is any attempt made to define the phrase “collective reparations”. The Appeals Chamber in *Lubanga* held that “[w]hen collective reparations are awarded, these should address the harms suffered on an individual and collective basis”. It is plain that collective reparations are therefore intended to represent a harm which is shared by most, if not every member of a class of applicants.

41. In the absence of a definition in the Statute or Rules, the Court is bound to interpret “collective” according to its ordinary meaning:⁷¹ relating to or shared by **all** the members of a group.⁷² Applied to reparations proceedings, this means that the Court must be satisfied that such an award would appropriately redress the harm specifically for each person that has applied for reparations. This is distinct from, and more restrictive than, an award in which all members of a community would benefit. Those who have applied for reparations due to the harm they have suffered from the crimes for which Mr. Bemba was convicted would need to be part

⁶⁹ P73, T-76-CONF-ENG, p. 30, lines 2-3; P81, T-55-CONF-ENG, p.30, lines 2-6.

⁷⁰ See Section III (B) (1) (a) below and para. 10 above.

⁷¹ *Vienna Convention on the Law of Treaties*, Article 31.

⁷² Oxford English Dictionary (emphasis added).

of a unified, victimised group for an award of collective reparations to be appropriate.

42. Moreover where, by way of example, a village is burnt to the ground, and all or most of the survivors claim as victims, it might be appropriate to order reparations which provide restitution of some communal facility lost, such as a school house, the same case could not be made out where a relatively tiny proportion of the population of a large city, like Bangui had been the victims of the same or similar offences for any collective award, the benefit of which would substantially go to those who were not victims.

B. THE ELIGIBILITY OF VICTIMS, THE RELEVANT HARMS, AND THE SCOPE OF MR. BEMBA’S LIABILITY

43. The Trial Chamber has asked the parties to make submissions as to the criteria and methodology to be applied in the determination and assessment of (i) the eligibility of victims, (ii) the relevant harms and (iii) the scope of liability of Mr. Bemba, including the determination of the precise extent of the (monetary) obligations to be imposed on him.⁷³ The Defence makes the following submissions.

1. The eligibility of victims

44. Rather than developing a “criteria and methodology” to be applied in assessing the eligibility of applicants for reparations, the Defence submits that the Trial Chamber should be guided by the framework set out by the Statute, Rules and Regulations of the Court.

⁷³ ICC-01/05-01/08-3410, para. 7(b).

a) Reparations applications must be provided at the commencement of trial

45. Article 75 of the Statute, and Rule 94 of the Rules govern the procedure for requests for reparations. Rule 94 provides as follows:⁷⁴

Rule 94 Procedure upon request

1. A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:

- (a) The identity and address of the claimant;
- (b) A description of the injury, loss or harm;
- (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
- (d) Where restitution of assets, property or other tangible items is sought, a description of them;
- (e) Claims for compensation;
- (f) Claims for rehabilitation and other forms of remedy;
- (g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

2. **At commencement of the trial** and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

46. In accordance with Rule 94(2), the Defence must be notified of requests for reparations at the commencement of trial. The trial in the present case commenced on 11 November 2010. The Defence received 332 applications for reparations two

⁷⁴ Emphasis added.

months later, on 12 January 2011.⁷⁵ These were the only applications which can reasonably be characterised as being provided at the commencement of the trial.

47. Rule 94(2) was drafted to “encourage early claims”, and provide notification to the accused of any claims for reparations **at the start of trial**.⁷⁶ Peter Lewis and Håkan Friman noted that:⁷⁷

the appropriate point for notifying an accused was at the **start of the trial**; at that stage the accused would know that the charges had been confirmed and that there **were claims for reparations associated with that charge**.

48. There is no point in anchoring the Trial Chamber’s request to the commencement of the trial, if the Registry can in fact hand over the reparations applications after the close of the Defence evidence (as indeed occurred in this case). The timeframe itself is then meaningless. In order for Rule 94(2) to have any value, it must be read as requiring that the Trial Chamber’s request, and the provision of applications to the Defence, occur at the commencement of trial.

49. This interpretation is consistent with other provisions within the Court’s statutory framework. Regulation 56 of the Regulations of the Court (“Regulations”) provides that “[t]he Trial Chamber may hear the witnesses and examine the evidence for the purposes of a decision on reparations in accordance with article 75, paragraph 2, at the same time as for the purposes of trial.” According to *Lubanga*, the purpose of Regulation 56 was to facilitate the hearing of reparations evidence during the trial phase, to avoid any risk that witnesses will have to testify twice.⁷⁸ McCarthy notes that “[t]he fact that, under Regulation 56, evidence relating to reparations may be heard at the same time as evidence relevant to the

⁷⁵ ICC-01/05-01/08-1132.

⁷⁶ P. Lewis, & H. Friman, “Reparations to Victims”, in Roy Lee, (Roy S. Lee (ed.) *The International Criminal Court: Elements of Crimes & Rules of Procedure & Evidence*), Ardsley (NY): Transnational Publishers, 2001, p. 480.

⁷⁷ *Ibid.* (emphasis added).

⁷⁸ ICC-01/04-01/06-1119, Decision on victims’ participation, 18 January 2008, para. 120.

determination of guilt or innocence means that trial proceedings will play a potentially important role in the adjudication of issues concerning reparations.”⁷⁹

50. In order to lead evidence during the trial phase “for the purpose of a decision on reparations” the Defence must necessarily be informed of the scope of potential reparations liability at the outset of the trial. If the Defence has been provided with a discrete number of applications for reparations at the commencement of trial, it cannot then be informed after the close of its case of hundreds or thousands more applicants. Particularly if these new applications allege additional or wholly different forms of harm. The purpose of Regulation 56 would be defeated, and the requirement in Rule 94(2) rendered meaningless.

b) Victims participating at trial are not automatically entitled to reparations

51. The participation of victims in trial proceedings pursuant to Article 68(3) of the Statute is distinct from a request for reparations pursuant to Article 75 of the Statute and Rule 94 of the Rules.⁸⁰ The ICC’s statutory framework draws an unambiguous distinction between these two forms of participation.⁸¹

52. Two provisions of the Statute grant victims the right to participate in proceedings. While Article 68(3) generally allows the Court to accept the views and concerns of the victims provided their personal interests have been affected, Article 75 specifically relates to victim participation in reparations.

53. The Rules further delineate the distinction by requiring the submission of an application for participation in proceedings pursuant to Rule 89, and a request for

⁷⁹ McCarthy, C., *Reparations and Victims’ Support at the ICC*, (2012), pp. 189-190.

⁸⁰ ICC-01/04-556, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, 19 December 2008, para. 50.

⁸¹ See, Rome Statute, Articles 68 and 75; RPE, Rules 89 and 94; Regulations of the Court, Regulations 86 and 88.

reparations pursuant to Rule 94. Regulation 86(1) requires a form for participation in the proceedings, noting that the form is to be developed “[f]or the purposes of rule 89”. Regulation 86(2) requires the application to contain information as to why the personal interests of the victim are affected. Regulation 88(1) on the other hand, requires a reparations form “[f]or the application of rule 94”. Regulation 88(2) then requires the Registrar to seek “all necessary information from a victim” to complete their request in accordance with Rule 94(1).

54. The statutory distinction could not be clearer, and precludes any argument that the 5,229 people authorised to participate in the present proceedings are also participating for the purposes of reparations. In granting these 5,229 people participatory rights in the proceedings, the Trial Chamber explicitly “[g]rants participating status”.⁸² No mention is made, nor could it have been made, of their eligibility for reparations. The two processes are separate.

55. Even if it were possible to ignore the statutory framework of the Court and conflate “participation” with “reparations”, this does not circumvent the fact that reparations are “entirely voluntary” and that “the informed consent of the recipient is necessary prior to any award of reparations.”⁸³ The requirement of informed consent was deemed important enough to include in Principle 8, which notes that:⁸⁴

Reparations are entirely voluntary and the informed consent of the recipient is necessary prior to any award of reparations, including participation in any reparations programme.

⁸² See, ICC-01/05-01/08-699, para. 39; ICC-01/05-01/08-807, para. 102; ICC-01/05-01/08-1017, para. 63; ICC-01/05-01/08-1091, para. 37; ICC-01/05-01/08-1590, para. 38; ICC-01/05-01/08-1862, para. 34; ICC-01/05-01/08-2011, para. 22; ICC-01/05-01/08-2162, para. 19; ICC-01/05-01/08-2219, para. 20; ICC-01/05-01/08-2247-Conf, para. 39; ICC-01/05-01/08-2401, para. 27.

⁸³ ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, paras. 159-160.

⁸⁴ ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015, para. 30.

56. Given that participating victims have not automatically consented to being part of the reparations process, no conflation of the two phases is possible.

57. Of course, this makes perfect sense, the two concepts are completely different; a victim may want compensation but have no interest in his views being presented to the Court, or *vice-versa*.⁸⁵ On its first mission to Ituri, the TFFV found that “several victims expressed their unwillingness to participate in collective reparations due to security concerns.”⁸⁶ It is not possible to simply lump these 5,229 individual *en masse* into a process to which they have not consented, and may not wish to be involved.

58. Nor does the creation of a “joint application form” (in this case, mid-way through the proceedings) assist. As a starting point, a “joint application form” does not appear to conform to the requirements of Regulations 86 and 88, which require the development of “standard forms” for participation, and a “standard form” for reparations. Notably, the Registry asserts, in a footnote to a transmission of reparations applications, that:⁸⁷

The VPRS notes that when applicants have applied for both participation and reparations before the deadline for filing applications for participation **using joint application forms**, and after having been assessed as complete, the latter were transmitted to the parties in the regular course of transmission of applications to participate in the proceedings.

59. The Registry has not fulfilled its obligation under Rule 94(2) of notifying the Defence of applications for **reparations** by including joint forms within transmissions of (sometimes several hundred) applications for **participation**, with no further specification, or even contemporaneous notification that it was doing

⁸⁵ See, for example, a/05000/13, a/05009/13.

⁸⁶ ICC-01/04-01/06-3208, First submission of victim dossiers With Twelve confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V01 only, 31 May 2016, para. 56.

⁸⁷ ICC-01/05-01/08-2846, fn. 4.

so.⁸⁸ In any event, the transmission of these “joint application forms” was not provided “at the commencement of trial”, and as such, as discussed above, was not effected in accordance with Rule 94(2).

c) Applications for reparations need carefully scrutiny

60. Considerable caution will be necessary in assessing the genuineness of applications for reparations in this case. The Trial Chamber has previously intervened⁸⁹ after learning that intermediaries in the Central African Republic were encouraging alleged victims to lie about the harm suffered with the goal of extracting more money from the ICC.⁹⁰ One witness testified, for example, that he was told by an intermediary to note on his application form that his daughter had been gang raped, even though this had not occurred.⁹¹ On that basis, he was accepted as one of the 5,229 participating victims in this case.⁹² The same intermediary (or group of intermediaries) completed application forms on behalf of alleged victims in different locations in the CAR.⁹³

61. While this testimony concerned applications for participation, many of the applicants for reparations exhibit similar insurmountable barriers in terms of credibility. Many claim to have been attacked by the MLC on dates prior to their arrival in the Central African Republic.⁹⁴ A group of forms state in identical terms that Mr. Bemba is responsible because “he did not teach his soldiers humanitarian

⁸⁸ See, for example, ICC-01/05-01/08-1807; ICC-01/05-01/08-1885; ICC-01/05-01/08-1923; ICC-01/05-01/08-1979; ICC-01/05-01/08-2018; ICC-01/05-01/08-2156, etc.

⁸⁹ ICC-01/05-01/08-1593-Conf.

⁹⁰ P73, T-73-CONF-ENG, p. 19, line 4 – p. 34, line 3; T-76-CONF-ENG, p.8, line 19 - p.10, line 17.

⁹¹ P73, T-73-CONF-ENG, p. 33, lines 14-25.

⁹² ICC-01/05-01/08-1017, para. 63.

⁹³ P73, T-73-CONF-ENG, p. 20, line 16 – p.21, line 14; T-76-CONF-ENG, p. 7, lines 12-25. See also, ICC-01/05-01/08-3200-Conf.

⁹⁴ See, for example, a/0668/09; a/1005/10; a/1656/10.

law concerning the protection of civilians”,⁹⁵ giving rise to questions about the level of intermediary involvement.

62. Similarly, while applicants are required to note the “date of the incident”,⁹⁶ many indicate only a date range which matches precisely the date of the charges (25 October 2002 until 15 March 2003).⁹⁷ Forms completed in English, when the applicant speaks only French and Sango, designate the person responsible as “Mr. John Peter MBemba Gombo”,⁹⁸ suggesting the use of “google translate” or similar applications in their production. This Trial Chamber has recognised that the process of third parties completing application forms “may increase errors”.⁹⁹

63. The amounts claimed in reparation also raise concern. Losses in the order of 344,773,400,00 XAF (524,055.57 EUR) have been claimed to compensate for pillaged goods.¹⁰⁰ Claims totalling hundreds of thousands of euros for pillaged goods are not uncommon.

64. Significantly, unlike the *Lubanga* and *Katanga* cases, a live issue in the present proceedings was the identity of the perpetrators in question.¹⁰¹ Even the Trial Chamber acknowledged the possibility that “other forces may have committed crimes during the relevant time period” and may also have had “some characteristics in common with the MLC soldiers”.¹⁰² In this context, several applicants do not indicate that the MLC was involved in the harm for which they

⁹⁵ See, for example, a/0012/10; a/0013/10; a/0017/10; a/0298/10.

⁹⁶ Rule 94(1)(c) of the Rules.

⁹⁷ a/0769/10; a/1258/10; a/1264/10; a/1290/10; a/1355/10; a/1356/10; a/1357/10; a/1358/10; a/1359/10; a/1360/10; a/1361/10; a/2187/10; a/2191/10; a/2192/10; a/2193/10; a/2194/10; a/2195/10; a/2312/10; a/2689/10; a/2690/10; a/2592/10.

⁹⁸ See, for example, a/0017/10.

⁹⁹ ICC-01/05-01/08-2012-Conf, para. 100.

¹⁰⁰ a/1656/10. See also, for example, the demands of a/2650/10; a/2650/10; a/1651/10; a/1629/10; a/1604/10; a/1576/10; a/0907/10; a/0703/10; a/0300/10, a/2266/10, etc.

¹⁰¹ See, for example, ICC-01/05-01/08-3434-Conf, paras. 463-493.

¹⁰² Judgment, para. 695.

are claiming relief. Others explicitly implicate Bozizé's rebels.¹⁰³ In these circumstances, the risk that Mr. Bemba is held liable for crimes which are unconnected with his conviction, cannot be discounted.

65. In the Defence submission, having defined the range of those eligible by reference to the timely submission of an application under Rule 94, a further filter should apply to exclude those which on their face do not appear to be genuine, by reason of their exhibiting such flaws as are identified above.

2. The Relevant Harms

66. The Trial Chamber has asked the parties to submit "on the criteria and methodology to be applied in the determination and assessment of [...] the relevant harms".¹⁰⁴

67. In *Lubanga*, the Trial Chamber was found to have erred in delegating to the Trust Fund the task of defining the harms caused to victims as a result of the crimes for which Mr Lubanga was convicted.¹⁰⁵ As such, the Appeals Chamber emphasised that it is the responsibility of the Trial Chamber to:¹⁰⁶

clearly *define* the harms that result from the crimes for which the person was convicted, the extent of which may then be *assessed* by the Trust Fund for purposes of determining the size and nature of reparation awards.

68. In this context, the Appeals Chamber has noted that "the statutory framework provides for the convicted person to be able to challenge any such evidence that could potentially be relied upon in the eventual order for

¹⁰³ See, for example, a/0654/09; a/0917/10.

¹⁰⁴ ICC-01/05-01/08-3410, para. 7(b).

¹⁰⁵ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 184.

¹⁰⁶ *Ibid.*

reparations.”¹⁰⁷ As such, if the Trial Chamber intends on making a finding of a harm for which reparations may be awarded, this can only be based on evidence which the Defence has had an opportunity to challenge. If the Trial Chamber intends to rely on any additional evidence presented during a reparations hearing, the Defence must be given an opportunity to challenge this evidence, in the normal manner.¹⁰⁸

69. The Appeals Chamber also anticipated that a Trial Chamber could rely on “evidence contained in a request for reparations pursuant to rule 94” that “identifies a harm that is not mentioned in the decisions on conviction and sentence.”¹⁰⁹ To this end, the Defence notes this Trial Chamber’s consistent position that application forms for participation are of “limited probative value”.¹¹⁰ A majority of the Trial Chamber held that the application forms:¹¹¹

are administrative in nature and are created through a relationship of confidence between a potential victim and the Registry of the Court. They are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to Rule 89 of the Rules. For this reason, no formal requirements govern their creation, such as those applicable to the collection of “formal statements” under Rules 111 and 112 of the Rules.

70. Also of concern was the fact that “third parties often fill out the application forms on behalf of victim applicants or assist them in doing so”, a process that “may increase errors”.¹¹² In particular, the Trial Chamber expressly rejected any reliance

¹⁰⁷ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 185.

¹⁰⁸ *Ibid.*, para. 185.

¹⁰⁹ *Ibid.*, para. 185.

¹¹⁰ ICC-01/05-01/08-2012-Conf, paras. 100-101. *See also*, Judgment, para. 272

¹¹¹ *Ibid.*, para. 100.

¹¹² *Ibid.*

on these forms as “evidence”, given that this “may be perceived by victim applicants as an unfair use of documentation that was provided to the Court for a discrete purpose.”¹¹³

71. The same reasoning necessarily applies to application forms for reparations, which are also “administrative in nature”, are often completed by “third parties”, and “are intended to serve a limited purpose”. According to this Trial Chamber, therefore, application forms provided under Rule 94 are of limited probative value. In any event, even if their probative value and provenance had been satisfactorily established, the Defence would still retain its right to challenge the evidence contained therein,¹¹⁴ before any reliance is placed on them by the Trial Chamber in determining the relevant harms.

72. On this point, the level of redaction of reparations application forms inhibits the ability of the Defence to assess or test their veracity. Even in cases where the applicants have indicated that they have no objection to their information being provided to the Defence, the Registry has applied redactions to the forms in question.¹¹⁵ At a minimum, it appears that (at least) these forms should be transmitted in un-redacted form to the Defence.

73. Even putting aside identifying information such as the applicant’s name, birthdate, and current occupation, more than a quarter of the applications transmitted pursuant to Rule 94(2) have the place, and/or the date of the alleged incident redacted. Either the neighbourhood within Bangui is not indicated,¹¹⁶ or the location is redacted in its entirety.¹¹⁷ Given that the MLC were found by the Trial

¹¹³ ICC-01/05-01/08-2012-Conf, para. 102.

¹¹⁴ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 185.

¹¹⁵ See, for example, a/0730/10; a/0733/10; a/0734/10; a/0760/10.

¹¹⁶ a/0668/09; a/1005/10; a/1656/10.

¹¹⁷ a/0017/10; a/0702/10; a/0727/10; a/0729/10; a/0730/10; a/0731/10; a/0733/10; a/0734/10; a/0735/10; a/0992/10; a/1402/10; a/1441/10; a/1453/10; a/1465/10; a/1467/10; a/1485/10; a/1486/10; a/1492/10;

Chamber to be moving through different parts of the Central African Republic during different periods, the disclosure of the dates and locations of alleged incidents is a pre-requisite to the Defence being able to assess the veracity of the applicants' claims.

74. More importantly, however, Mr. Bemba has filed appeals against both the Judgment,¹¹⁸ and Sentencing Decision.¹¹⁹ In *Lubanga*, the Appeals Chamber recognised that findings in the Judgment and Sentencing Decision were relevant to defining the harms caused by the crimes for which Lubanga was convicted.¹²⁰ Reliance on these findings was only possible, however, after the Appeals Chamber had upheld both decisions on appeal.¹²¹ Accordingly, any definition of the relevant harms can only take place after the Appeals Chamber has rendered final decisions on both Mr. Bemba's appeal from conviction and appeal from sentence.

3. The scope of Mr. Bemba's liability

a) Mr. Bemba's liability is limited by the conviction

75. As a starting point, Principle 5 of the *Lubanga* principles provides that the convicted person's liability for reparations must be proportionate to the harm caused and his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case.¹²²

a/1501/10; a/1512/10; a/1518/10; a/1528/10; a/1540/10; a/1547/10; a/1554/10; a/1600/10; a/1601/10; a/1630/10; a/1633/10; a/1642/10; a/1651/10; a/1660/10; a/1664/10; a/1719/10; a/1720/10; a/1723/10; a/1747/10; a/1852/10; a/1653/10; a/1858/10; a/1861/10; a/1863/10; a/1866/10; a/1867/10; a/1868/10; a/1869/10; a/1872/10; a/1873/10; a/1877/10; a/1880/10; a/1881/10; a/1885/10; a/1886/10; a/1887/10; a/2186/10; a/2189/10; a/2196/10; a/2197/10; a/2238/10; a/2244/10; a/2264/10; a/2274/10; a/2460/10; a/2481/10; a/2531/10; a/2663/10; a/2686/10; a/2703/10; a/2715/10; a/2719/10; a/2725/10; a/1730/10; a/1732/10; a/1733/10; a/1739/10; a/1740/10; a/1742/10; a/1744/10; a/1722/10; a/2591/10; a/2658/10; a/2659/10; a/2660/10.

¹¹⁸ ICC-01/05-01/08-3434-Conf.

¹¹⁹ ICC-01/05-01/08-3450-Conf.

¹²⁰ ICC-01/04-01/06-3129, 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, 3 March 2015, paras. 186-187.

¹²¹ *Ibid.*, para. 187.

¹²² ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015, para. 21.

76. The Appeals Chamber has emphasised the importance of protecting the rights of the convicted person by ensuring that “reparations are not awarded to remedy harms that are not the result of the crimes for which he or she was convicted”.¹²³

77. Mr. Bemba was convicted of 3 murders, 28 rapes and pillaging.¹²⁴ Neither party disputes that this is the scope of his conviction.¹²⁵

78. In this way, the present case can be distinguished from that of *Lubanga*, who was convicted of “widespread recruitment”.¹²⁶ In contrast to Mr. Bemba’s conviction, Lubanga’s conviction was not limited to a defined number of crimes. As such, the reparation decision encompassed eligible victims who had demonstrated personal harm arising directly from the enlistment, conscription into the FPLC of children under the age of 15 years or their participation in hostilities in the period between 1 September and 13 August 2003.¹²⁷

79. Katanga’s conviction is framed in similarly general terms. A majority of the Trial Chamber was satisfied that “using machetes and/or firearms, the group of Ngiti combatants from Walendu-Bindi intentionally killed at least 30 civilians not

¹²³ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 184.

¹²⁴ Judgment.

¹²⁵ ICC-01/05-01/08-3376-Conf, para. 15; ICC-01/05-01/08-T-370-ENG, p. 27, lines 12-13 ; ICC-01/05-01/08-3451, para. 15.

¹²⁶ ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras. 857, 911, 915-916: using the words “a significant number of children”, “widespread recruitment” and “children” in general. See also ICC-01/04-01/06-2901, para. 49 “recruitment [...] was widespread” and ICC-01/04-01/06-3122, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute”, 01 December 2014, para. 102.

¹²⁷ ICC-01/04-01/06-2904, Decision establishing the principles and procedures to be applied to reparations, 07 August 2012, paras. 180, 194, 231.

taking part in the hostilities.”¹²⁸ At its most specific, the majority of the Trial Chamber found “that some elderly people and 13 children, 11 of whom were aged less than six years, were murdered.”¹²⁹ The convictions for pillage and destruction of property is described in even more general terms. The majority found that “on 24 February 2003 in Bogoro, the attackers demolished and/or set ablaze or removed the roofs of the houses owned and occupied by the predominantly Hema population of Bogoro.”¹³⁰

80. Mr. Bemba’s conviction, by contrast, was discrete: 3 identified instances of murder, and 28 identified instances of rape. He was not convicted of “widespread” rapes and murders, or murder with an estimated number of (unidentified) victims. Reparations in this case should accordingly be awarded to remedy the harms that are the result of crimes for which he was convicted.¹³¹

b) Claimants alleging harm from pillage must be limited to the places and dates as found in the Judgement

81. The trial in the present case spanned over three years. During this time, the Prosecution and LRV were on notice that Regulation 56 empowered the Trial Chamber to hear witnesses and examine evidence for the purpose of a decision on reparations. Together, the parties and LRV presented over 77 witnesses, and the Trial Chamber permitted three victims to present their views and concerns.¹³² 733 items of evidence were admitted into evidence.¹³³

82. On the basis of this trial record, the Trial Chamber made specific findings, beyond reasonable doubt, about the movements of the MLC troops throughout the

¹²⁸ ICC-01/04-01/07-3484-tENG-Corr, Corrigendum of Translation of Decision on Sentence pursuant to article 76 of the Statute, 8 October 2015, para. 47.

¹²⁹ *Ibid.*, para. 47.

¹³⁰ ICC-01/04-01/07-3436, Judgment pursuant to article 74 of the Statute, 17 April 2015, para. 924.

¹³¹ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 184.

¹³² Judgment para. 17.

¹³³ Judgment para. 17.

Central African Republic. The MLC troops were not in the CAR prior to 26 October 2002.¹³⁴ The MLC troops were not in the neighbourhoods of 36 Villas, Fohou and Bogombo before 30 October 2002.¹³⁵ The MLC did not advance to PK12 before 30 or 31 October 2002.¹³⁶ The MLC arrived in the vicinity of PK22 before 15 November 2002.¹³⁷ The MLC did not seize Damara before 7 December 2002.¹³⁸ The MLC remained in Bossangoa for no more than one week, after arriving in late February or early March 2003.¹³⁹ The MLC troops were not in Mongoumba before the beginning of March 2003.¹⁴⁰ The MLC completed its withdrawal from the CAR on 15 March 2003.¹⁴¹

83. It is not possible, even on a balance of probabilities, to extend Mr. Bemba's liability to times and dates which are specifically excluded by the Trial Chamber's findings. Reparations are necessarily linked to the judicial process. Claims for pillage which fall outside the areas and times identified by the Trial Chamber remove the reparations process from the framework of the trial. They are also, given the Trial Chamber's findings, significantly less likely to be credible and, as such, risk undermining the integrity of the reparations process.

c) Claimants alleging harm from crimes outside the conviction are not eligible for reparations

84. Amongst the 332 application forms, many claimants allege harm on the basis of crimes which are not linked to the conviction, and have never been part of this case. Crimes such as "gunshot wounds", "sexual slavery", "assault and battery",

¹³⁴ Judgment, para. 458.

¹³⁵ Judgment para. 459.

¹³⁶ Judgment para. 485.

¹³⁷ Judgment para. 520.

¹³⁸ Judgment, para. 524.

¹³⁹ Judgment, para. 534.

¹⁴⁰ Judgment, para. 536.

¹⁴¹ Judgment, para. 562.

“knife wound and torture”,¹⁴² and “the destruction of property”¹⁴³ should not give rise to a claim for reparations in the present proceedings.¹⁴⁴

85. Similarly, claims which allege the harm was not exclusively caused by the MLC, or do not specify the identity of the perpetrators, should also be excluded from the reparations process.¹⁴⁵

d) Mr. Bemba’s conviction as a superior is relevant to the scope of his liability

86. The fact that Mr. Bemba was convicted as a superior, and not as a direct perpetrator, is also relevant to assessing the scope of his liability. Principle 5 of the *Lubanga* principles provides that the convicted person’s liability must be proportionate to “his or her participation in the commission of the crimes for which he or she was found guilty.”¹⁴⁶

87. Any suggestion that the relationship between the conduct of the accused and the harm suffered is irrelevant for reparations is incorrect. The requirement in Principle 5 that liability be proportionate to the level of participation exists to set levels of gradation as between different forms of participation. Mr. Bemba did not personally commit murder, rape, or pillage. He was not present at the crime sites, nor did he order or direct their commission. He did not share the intent of the principle perpetrators. His liability, which is grounded in a failure to prevent or punish the acts, must be less than those who personally killed or raped civilians.¹⁴⁷

¹⁴² See, for example, a/0789/10 and a/1856/10: gunshot wound; a/1003/10: sexual slavery and hostage; a/1692/10 and a/1695/10: assault and battery; a/1857/10: knife wound.

¹⁴³ See, for example, a/1258/10; a/1360/10; a/1540/10; a/1719/10, a/1720/10; a/2703/10; a/2711/10; a/2719/10; a/2720/10; a/2732/10.

¹⁴⁴ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 196.

¹⁴⁵ See, for example, a/0654/09; a/0917/10.

¹⁴⁶ ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015, para. 21.

¹⁴⁷ See ICC-01/05-01/08-3376-Conf, paras. 18-27.

The principle of proportionality must have some meaning, and should be properly applied in the present case.

88. Moreover, Mr. Bemba was convicted as a superior on the basis of an organisational policy on the part of the MLC. On this basis, the MLC as an organisation should be held jointly liable for any reparations.¹⁴⁸

C. THE FORM OF REPARATIONS

89. The Trial Chamber also asked for submissions on the types and modalities of reparations appropriate to address the harm relevant in the circumstances of the case, including factors relating to the appropriateness of awarding reparations on an individual basis, a collective basis, or both.¹⁴⁹

90. As submitted above, the present case is not amenable to collective reparations by reason of the fact that there is no identifiable harm shared by all or even most of the applicants which any form of reparations could address. Any attempt to identify subgroups, moreover, runs the risk of discrimination. Furthermore, the implementation of collective reparations, in the context of the protracted violence in the Central African Republic, appears impractical. Political instability is also a factor, given that government authorisation may be required for any construction, permits, or transfer of property.¹⁵⁰ To this end, it is worth noting that there has been a peacekeeping presence in the Central African Republic since 2010,¹⁵¹ with MINUSCA exercising its current mandate until 15 November 2017,¹⁵² given the CAR's recognised "humanitarian crisis".

¹⁴⁸ The Defence is supported in this submission by the QUB Human Rights Centre, ICC-01/05-01/08-3343, para. 100.

¹⁴⁹ ICC-01/05-01/08-3410, para. 7(c).

¹⁵⁰ *Kaing Guek Eav*, 001/18-07-2007-ECCC/SC, SCC, Appeal Judgment, 3 Feb. 2012, para. 684.

¹⁵¹ <http://www.un.org/en/peacekeeping/missions/minusca/background.shtml>. Last accessed 31 October 2016.

¹⁵² Resolution 2301, 26 July 2016 at

[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2301\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2301(2016)). Last accessed 31 October 2016.

91. The TFV, under its assistance mandate, has previously attempted to implement assistance programs in the Central African Republic. Specifically, it developed a program focusing on victims of sexual and gender-based violence, and implementing partners were selected. Due to the deteriorating security situation in the CAR, this program was suspended in March 2013 “until further notice”.¹⁵³ The project was revived in 2014, but a new outbreak in violence in Bangui and “a continued, very difficult situation elsewhere in the country led to a reconsideration of that plan.”¹⁵⁴ There is no indication that the implementation of any collective reparations project would be more successful.

92. Moreover, the *Lubanga* Trial Chamber was criticised on appeal for granting collective reparations without setting any criteria for distinction between those members of the community who met the relevant eligibility criteria, and other members of the communities. As a result, “such an award of reparations may lead to imposing liability on Mr Lubanga for reparations with respect to persons who, despite being members of the communities identified by the Trial Chamber, suffered harm that did not result from the crimes for which Mr Lubanga was found guilty.”¹⁵⁵

93. In this context, the intervening 13 years of violence make would raise challenges in monitoring whether those accessing collective reparations projects such as community psycho-social or medical support centres are (i) only the victim of MLC crimes, and (ii) only being treated for the harm inflicted in 2002-2003.

¹⁵³ TFV Strategic Plan 2014-2017, at

http://www.trustfundforvictims.org/sites/default/files/media_library/documents/pdf/TFV_Strategic_Plan_2014_2017___approved.pdf. Last accessed 31 October 2016.

¹⁵⁴ TFV 2015 report Assistance & Reparations: Achievements, Lessons Learned, and Transitioning Programme Progress Report 2015 at

http://www.trustfundforvictims.org/sites/default/files/media_library/documents/FinalTFVPPR2015.pdf. Last accessed 31 October 2016.

¹⁵⁵ ICC-01/04-01/06-3129, 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, 3 March 2015, paras. 65, 214.

94. Should the Trial Chamber limit the eligible participants to the victims of the 3 murders, 28 rapes, and pillaging in the areas of the Central African Republic as defined by the temporal and geographical limitations the judgment, the Defence submits that this is a case in which individual reparations could be implemented effectively.

D. THE USE OF EXPERTS

95. The Defence submits that the Chamber could usefully obtain evidence of the proper cost of restitution of pillaged items such as mattresses, televisions, radios and various forms of livestock. The appropriate witness should be jointly instructed and cost the items locally. This exercise to have been carried out in the *Katanga* case.¹⁵⁶

E. ANY OTHER ISSUES

1. Credit for Asset Depreciation

96. Mr. Bemba's assets have been seized and frozen by the court pursuant to Article 57(3)(e) of the Statute as a protective measure for the purposes of forfeiture to the ultimate benefit of the victims.¹⁵⁷ [REDACTED].¹⁵⁸

97. In its Sentencing Decision, this Trial Chamber held that such depreciation was "not a sanction" and that there was "no risk that Mr. Bemba will be doubly punished because of any sentence imposed and the freezing order"¹⁵⁹. It went on to conclude that it was "unable to assess [...] the alleged depreciation of Mr. Bemba's

¹⁵⁶ ICC-01/04-01/07-3711-AnxA, Observations in response to the Trial Chamber's order of 15 July 2016, 30 September 2016.

¹⁵⁷ ICC-01/05-01/08-3199, Decision on Sentence pursuant to Article 76 of the Statute, ("Sentencing Judgment"), para. 83.

¹⁵⁸ Defence Sentencing Submissions paras. 98, 101, 104; CAR-D04-0005-0511; ICC-01/05-01/08-3375-AnxII.

¹⁵⁹ Sentencing Judgment, para. 83.

property” and that “such matters are better addressed at the reparations phase”.¹⁶⁰ Accordingly, having declined to discount his sentence by reason of these matters on that basis, the Chamber should now make an assessment of the depreciation of Mr. Bemba’s assets and make an equivalent reduction in his liability to pay reparations

2. Disclosure of benefits received

98. The TFV, in submissions in the *Lubanga* case, has highlighted the importance of “avoiding cumulative benefits”.¹⁶¹ Citing the importance that the communities in which victims live perceive the reparations award to be fair and equitable, the Trust Fund proposed that “in its determination of awards, the Court take into account any benefits received by victims with respect to the harm they suffered through other national or international processes”.¹⁶²

99. This position finds support in the recognised purpose of reparations proceedings. As far as possible, reparations aim to “wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.”¹⁶³ The UN *Basic Principles 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*,¹⁶⁴ requires reparation to be “adequate”, and “proportional to the gravity of the violations and the harm suffered”.¹⁶⁵

¹⁶⁰ Sentencing Judgment, para. 84.

¹⁶¹ ICC-01/04-01/06-2872, Observation on Reparations in Response to the Scheduling Order of 14 March 2012, 25 April 2012, para. 53.

¹⁶² *Ibid.*, paras. 53-54.

¹⁶³ International Court of Justice, *Chorzow Factory Case*, PCIJ, Collection of Judgment, Series A. No. 17, 13 September 1928, p. 47.

¹⁶⁴ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147 (“UN Basic Principles”), http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf. Last accessed 31 October 2016.

¹⁶⁵ UN Basic Principles, Article 15. See also Articles 19 and 20.

100. As such, reparation of harm must be administered in a manner consistent with the principle that no loss or gain may accrue from the sum awarded.¹⁶⁶

101. [REDACTED].¹⁶⁷ The Trial Chamber has also heard evidence that Central African NGOs, such as OCODEFAD, have provided benefits to victims of MLC crimes on the basis of losses incurred.¹⁶⁸

102. Self-evidently, to quote an extreme example, an applicant who has been given several hundreds or even thousands of dollars in financial assistance, or who has been relocated together with his whole family to another country, can have no subsisting claim for the restitution of the cost of household goods, if that is the only harm he is alleged to have suffered.

103. In accordance with the above principles, the Defence submits that the Prosecution, the Registry, and relevant Central African NGOs and government agencies should be directed by the Trial Chamber to provide full disclosure of all payments and benefits provided to victims deemed eligible for participation in the reparations process. Likewise, applicants who are re-contacted to ascertain their ongoing willingness to participate in the reparations phase, should also be asked to disclose the extent of the benefits or payments they have received from third parties arising out of the harm inflicted by MLC troops in 2002-2003. This will ensure that the convicted person is not providing cumulative benefits in a manner inconsistent with the principles of reparations.

¹⁶⁶ ICC-01/04-01/06-2866-tENG, Defence submissions on the principles and the procedure to be applied with regard to reparations, 18 April 2012, para. 68 citing French Court of Cassation, Criminal Division: Crim., 5 November 1997, No. 96-85366; Crim., 3 November 2011, No. 11-80077.

¹⁶⁷ See ICC-01/05-01/08-3217-Conf-AnxIX.

¹⁶⁸ See, for example, P82, T-60-CONF-ENG, p. 32, line 15 – p. 36, line 9; P23, T-52-CONF-ENG, p. 26, line 5 – p. 27, line 10, p. 32, lines 2-11, T-54-CONF-ENG, p. 26, line 15 – p. 30, line 3; P42, T-67-CONF-ENG, p. 12, line 2 – p. 14, line 14; P81, T-55-CONF-ENG, p. 28, line 8 – p. 30, line 6; P68, T-49-CONF-ENG, p. 3, line 13 – p. 6, line 20; P80, T-61-CONF-ENG, p. 26, line 13 – p. 27 line 14; P79, T-77-CONF-ENG, p. 30 lines 3-22.

IV. CONCLUSION

104. The reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. The Appeals Chamber has rightly recognised that "[t]he success of the Court is, to some extent, linked to the success of its system of reparations".¹⁶⁹

105. Thus far, *Lubanga* is the only case in which a reparations order has been issued. The *Lubanga* reparations process has been objectively long, and exposed the Court to criticism.¹⁷⁰ The delay, at least in part, can be attributed to the process of searching for applicants post-conviction, rather than assessing eligibility within the confines of Rule 94(2) of the Rules. The TFV, and the Legal Representative of Victims in the *Lubanga* case,¹⁷¹ considered that this process "damages and re-traumatises victims"¹⁷² by having them recount and relive the harm they suffered so many years ago. Searching for applicants in the absence of an approved implementation plan, meant the TFV was unable to offer "sound answers to their logical quer[ies]", which in part contributed to many refusing consent to be part of the reparations process.¹⁷³

106. The Trial Chamber in the present case has an opportunity to administer a reparations process which is not only expeditious, but credible. The discrete nature of the conviction in this case, the finite number of eligible victims, and guidance

¹⁶⁹ ICC-01/04-01/06-3129-AnxA, Order for Reparations, 03 March 2015, para. 3.

¹⁷⁰ See, Stahn, C., Reparative Justice after the *Lubanga* Appeals Judgment on Principles and Procedures of Reparation, 7 April 2015, available at <http://www.ejiltalk.org/reparative-justice-after-the-lubanga-appeals-judgment-on-principles-and-procedures-of-reparation>, last Accessed 31 October 2016; See also Carayon, G., Waiting, Waiting, and More Waiting for Reparations in the *Lubanga* Case, 18 February 2016, available at: <http://www.ijmonitor.org/2016/02/waiting-waiting-and-more-waiting-for-reparation-in-the-lubanga-case/>. Last Accessed 31 October 2016.

¹⁷¹ Agence France Presse, How much is a child soldier's lost youth worth? ICC asks, 11 October 2016, <http://www.dailymail.co.uk/wires/afp/article-3831843/ICC-close-paying-war-crimes-reparations.html>. Last accessed 31 October 2016.

¹⁷² ICC-01/04-01/06-3208, First submission of victim dossiers With Twelve confidential, ex parte annexes, available to the Registrar, and Legal Representatives of Victims V01 only, 31 May 2016, para. 8.

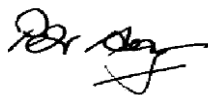
¹⁷³ *Ibid.*, paras. 55-56.

which can be drawn from the *Lubanga* Principles, will allow the process to be streamlined, efficient, and targeted to those who properly fall within its bounds. While the practical challenges arising from the intervening (and prevailing) circumstances in the Central African Republic mitigate against collective or community-based reparations, a meaningful process remains possible.

107. Mr. Bemba is not liable for improving the lives of millions of Central Africans who have suffered through a decade of war, political instability, and humanitarian crisis. Reparations at the International Criminal Court are grounded in the convictions rendered by its Judges. As the TFV has recognised, “judicial reparations within criminal proceedings, which are necessarily and genuinely linked to a conviction, have their limitations”.¹⁷⁴

108. By limiting reparations to the scope of the precise conviction in this case, the Trial Chamber can balance the implementation of proportionate reparations to those who suffered harm as a result of the actions of the MLC troops between October 2002 and March 2003, and ensure that the convicted person is not liable for harm which did not result from the crimes for which he was found guilty. Only in this way, will the reparations process be manageable, meaningful, and fall within the framework of the Court’s statutory instruments.

The whole respectfully submitted.



¹⁷⁴ ICC-01/04-01/06-3129, 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, 3 March 2015, para. 182; ICC-01/04-01/06-3009, Observations of the Trust Fund for Victims on the appeals against Trial Chamber I’s “Decision establishing the principles and procedures to be applied to reparations” Observations of the Trust Fund for Victims on the appeals against Trial Chamber I’s “Decision establishing the principles and procedures to be applied to reparations”, 08 April 2013, para. 10.

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Done at The Hague, The Netherlands, 1 November 2016