

Annex II

Public redacted version of the Registry's Observations

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Introduction

1. The Registry is filing this Report in response to the Order issued by the Trial Chamber on 22 July 2016 requesting it, *inter alia*, to file observations on a number of reparations-related issues in the Case.
2. In compliance with the 22 July 2016 Order, the Registry hereby provides its observations on:
 - a) whether the principles established by the Appeals Chamber in the case *The Prosecutor v. Thomas Lubanga Dyilo* (“Lubanga case”) need to be amended or supplemented in light of the circumstances of the Case;
 - b) 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;
 - c) the appropriate types and modalities of reparations to address the harm relevant in the circumstances of the case, including factors relating to the appropriateness of awarding reparations on an individual and/or collective basis;
 - d) whether experts may be usefully appointed to assist the Trial Chamber in determining any of the above issues;
 - e) information regarding the current security situation in the Central African Republic (“CAR”); and
 - f) any other issue the parties and participants wish to bring to the attention of the Chamber.
3. The Registry has adopted for the purpose of its observations the structure suggested in the Chamber Order when listing the issues to be addressed on the matter of reparations. As per point E, the Registry has

also elaborated on other issues, namely: (i) the methodology followed by VPRS to address the issues raised in the 22 July 2016 Order; (ii) some contextual information; (iii) the role envisaged by the Registry in the reparations proceedings.

4. For the purpose of this Report, a distinction is made between the victims who are already participating in the proceedings (“Participating victims”), the victims who have applied for participation in the proceedings and/or for reparations (“Applicants”) and the other victims who may also benefit from reparations in the Case but who have not yet been identified and are potential additional beneficiaries to reparations in the Case (“New potential applicants”), altogether being defined as “Potential beneficiaries”.

I. Registry’s observations on the principles

5. The Registry notes the Appeals Chamber’s decision in the Lubanga case which states that “principles should be general concepts that, while formulated in the light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers”¹ While the Registry considers that most of the principles set out by the Appeals Chamber in its Decision in the Lubanga case can apply to reparations in the instant Case,² it wishes to put forward the following additional considerations and principles linked to the specificities of the instant Case, which may guide the Chamber in its approach to reparations in the instant Case.

¹ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Order for Reparations (amended)”, dated 3 March 2015, ICC-01/04-01/06-3129-AnxA, para.5.

² Since Mr Bemba was not charged with crimes related to child soldiers, Principle 7 does not appear applicable to the instant Case.

A. Prioritisation

6. In the light of the expected high number of New potential applicants in this Case, the Court might still be unable to award reparations to all Potential beneficiaries at the same time. The Court would then need to prioritise, i.e. decide which group(s) of eligible Potential beneficiaries would receive reparations as a priority. For that purpose, the Trial Chamber may wish to consider applying the concept of prioritisation, commonly applied in other judicial settings.³
7. Given the nature of the crimes committed against the Potential beneficiaries in the instant Case, and the current situation on the ground, the Trial Chamber might decide to prioritise reparations according to criteria such as: the nature and/or gravity of harm suffered, or the vulnerability or neediness of the victims.⁴ The Trial Chamber might also decide to start with reparations that can be implemented more expeditiously in terms of implementation.⁵ For example, it may decide to award reparations as a priority to those Potential beneficiaries who are more easily identifiable and reachable, on account of their

³ The Registry respectfully refers the Trial Chamber to its own submissions on the principles of reparations filed in the Lubanga case, in which it developed in details the principle of prioritisation as a measure adopted in other judicial settings to prioritise the allocation of resources in favour of certain forms of reparations and particular groups of beneficiaries. Such measures are often taken where there are insufficient settlement funds to redress the harm caused to every beneficiary or where the provision of redress to all would be disproportionately burdensome or costly relative to the amounts available on a per capita basis. See Registry, *The Prosecutor v. Thomas Lubanga Dyilo*, "Second Report of the Registry on Reparations", dated 1 September 2011 and reclassified as public on 19 March 2012, ICC-01/04-01/06-2806, paras. 25 et seq.

⁴ Registry, *The Prosecutor v. Thomas Lubanga Dyilo*, "Second Report of the Registry on Reparations", dated 01 September 2011 and reclassified as public on 19 March 2012, ICC-01/04-01/06-2806, paras. 34–44.

⁵ In the *Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims)*, the United Nations Compensation Commission (UNCC) Governing Council indicated that in cases where the volume of claims in the "A" Category was large, the Commissioners would adopt expedited procedures in which prompt full compensation would be offered, while larger or more complex claims were being processed, p. 7, S/AC.26/1994/2, dated 21 October 1994.

current whereabouts and/or their easier access to reparations measures. More generally, should the Trial Chamber decide to award both individual and collective reparations, the Trial Chamber might decide to start with the types of reparations that can be more rapidly implemented (e.g. standardised financial awards of small to medium value, when the funds are available). Prioritisation would be applied without prejudice to New potential applicants, towards which the Court would continue to identify and reach in order to be able to provide them with an opportunity to obtain reparations for their harm on an equitable basis, funds permitting.

8. As previously highlighted by the Registry in the Lubanga case,⁶ the prioritisation of reparations is a particularly delicate exercise that can have an enormous impact on the Potential beneficiaries and on how the reparations process is perceived by them. Should the Chamber decide to prioritise certain groups of victims for reparations, the Registry suggests that it hears further submissions on the subject⁷ from the Registry as well as experts, parties in the reparations proceedings and other stakeholders.

⁶ Registry, *The Prosecutor v. Thomas Lubanga Dyilo*, "Second Report of the Registry on Reparations", dated 1 September 2011 and reclassified as public on 19 March 2012, ICC-01/04-01/06-2806, paras. 48-59.

⁷ Rome Statute, article 76(3).

B. Specific principles related to victims of conflict-related sexual violence⁸

9. The Rome Statute includes acknowledgement of the Court's duty to take special measures when dealing with victims of crimes of a sexual nature.⁹ The Trial Chamber in the instant Case marked a historic step by issuing the first ICC judgment referring to a crime of sexual and gender-based violence, namely the crime of rape.
10. Notwithstanding the fact that the Bemba judgement contemplates both instances of rapes against men and women, the Registry notes the recent normative developments in the area of gender sensitive reparations.¹⁰ This includes the "Nairobi Declaration of the Right to A Remedy and Reparation for Women and Girls Victims of Sexual Violence" ("Nairobi Declaration"),¹¹ and the "UN Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence" ("UN Note on Reparations for CRSV").¹² Both documents provide guiding principles and promote gender-sensitive approaches to the

⁸ Conflict Related Sexual Violence is defined in the United Nations Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence as the "incidents or patterns of sexual violence against women, men, girls or boys occurring in a conflict or post-conflict setting that have direct or indirect links with the conflict itself or that occur in other situations of concern such as in the context of political repression. Conflict-related sexual violence takes multiple forms such as, inter alia, rape, forced pregnancy, forced sterilisation, forced abortion, forced prostitution, sexual exploitation, trafficking, sexual enslavement, forced circumcision, castration, forced nudity or any other form of sexual violence of comparable gravity. Depending on the circumstances, it could constitute a war crime, a crime against humanity, genocide, torture or other gross violations of human rights". United Nations, Secretary-General, *"Guidance Note on Reparations for Conflict-Related Sexual Violence"*, 2-3 June 2014, p. 2-3.

⁹ Rome Statute, articles 54 and 68.

¹⁰ For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the CEDAW Committee's General Recommendation No. 30, the United Nations Security Council, Resolutions 1325, 1820, 1888, 1889, 1960, 2106, and 2122.

¹¹ Nairobi Declaration of the Right to A Remedy and Reparation for Women and Girls Victims of Sexual Violence, 19-21 March 2007.

¹² UN Note on Reparations for CRSV, June 2014, p.7.

design and delivery of reparations for victims of conflict-related sexual violence. These documents highlight the importance of the following:

- the need for reparations to be transformative;¹³
- the need to involve and consult victims of such crimes at every step of the reparation procedure with the provision of adequate information through accessible means;¹⁴
- the need to conduct a participatory assessment that is sensitive to specific issues related to gender, age and cultural diversity among others;¹⁵
- the need to promote individual and collective reparation programmes that are integral and complementary;¹⁶
- the need to take into account large numbers of hurdles that prevent female and male victims of rape from being involved and benefitting, while addressing bias and stigma;¹⁷

¹³ "Reparations have the potential to be transformative and to assist in overcoming structures of inequality and discrimination. [...] practices and beliefs and that inform the perpetration of sexual violence", UN Note on Reparations for CRSV, p. 6-8. "Reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls, since the origins of violations of women's and girls' human rights predate the conflict situation", Nairobi Declaration, 19-21 March 2007, p. 2.

¹⁴ "Reparation should support the meaningful participation and consultation of victims in the different steps of the procedure: mapping, design, implementation, monitoring and evaluation. It is important to guarantee the provision of adequate information through accessible means to ensure meaningful participation and accessibility. UN Note on Reparations for CRSV, pp. 10-11.

¹⁵ "Practices and procedures for obtaining reparation must be sensitive to gender, age, cultural diversity and human rights, and must take into account women's and girls' specific circumstances, as well as their dignity, privacy and safety", Nairobi Declaration. 19-21 March 2007, para. 2-E.

¹⁶ "Reparations can be distributed both individually and collectively. Collective reparations can complement individual reparations. However, they tend to serve different purposes. As such, collective reparations are not a substitute for individual reparations", UN Note on Reparations for CRSV, June 2014, p. 7. "[...] Invariably, a combination of these forms of reparation will be required to adequately address violations of women's and girls' human rights", Nairobi Declaration, 19-21 March 2007, para. 3-F.

¹⁷ "The devastating physical and psychological impact of sexual violence, compounded by the stigma attached to it, often prevents survivors from seeking or obtaining redress, including for fear of being ostracised by families and communities as a result of disclosing the facts, or

- the need also to recognise indirect victims, such as family members, children or partners, and children born as a result of pregnancy from rape;¹⁸
- the need not to further stigmatise or traumatise;¹⁹ and
- the need to tailor rules accordingly, allowing for flexible procedures and evidentiary standards.²⁰

11. The Registry further highlights that any reparations awarded to victims of rape must offer the potential to address a wide range of forms of harms, regardless of the victim's gender. This is particularly challenging in contexts where sexual violence committed against males is underreported.

II. Registry's observations on the criteria and methodology to be applied

A. Determination and assessment of the eligibility of victims

12. In its "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012" ("Appeals Chamber Judgment") in the Lubanga case, the Appeals Chamber established that an order for reparations must identify the

of being further victimised by insensitive authorities or institutions". Specifically, "homophobia and the concept of emasculation or feminisation of victims can result in stigma and discrimination against men and boys who are survivors of sexual violence", UN Note on Reparations for CRSV, June 2014, p. 5.

¹⁸ *Ibid*, p. 3.

¹⁹ "Participation of child victims needs to be carefully managed, taking into account their age, abilities, intellectual maturity and evolving capacities, and in a manner that does not risk further harm or trauma", UN Note on Reparations for CRSV, June 2014, p. 12.

²⁰ "Due to the complexity of the reparation programs violations of human rights and/or serious violations of international humanitarian law, including conflict-related sexual violence, which take place on a large scale, the procedures should be flexible", *Ibid*, p. 6.

victims eligible to benefit from reparations or set out the criteria of eligibility.²¹ It further found that:

Only victims within the meaning of rule 85 (a) of the Rules of Procedure and Evidence and regulation 46 of the Regulations of the Trust Fund, who suffered harm as a result of the crimes for which Mr Lubanga was found guilty, are eligible to claim reparations against Mr Lubanga. Where an award for reparations is made to the benefit of a community, only members of the community meeting the relevant criteria are eligible.²²

1. *Scope of the instant Case*

13. Pursuant to the Trial Chamber's Judgment, the Registry considers that, in the instant Case, the scope of eligibility for reparations covers: those victims who suffered direct or indirect personal harm as a result of acts of rape, murder, and pillaging committed by Mr. Bemba's forces between 26 October 2002 to 15 March 2003 in locations including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke, and Mongoumba, and along the axes leading to those areas.²³

²¹ Appeals Chamber, "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012", dated 3 March 2015, ICC-01/04-01/06-3129, paras. 32, 205.

²² *Ibid*, para. 8.

²³ Judgment, ICC-01/05-01/08-3343, para. 742. The Registry notes that in para. 380 of the Conviction Decision, the Trial Chamber provides the following definition of the 2002-2003 Operation: "Over the course of approximately four and a half months, beginning on 26 October 2002, the MLC troops advanced through Bangui, to PK12 and PK22, and along the Damara-Sibut and Bossembélé-Bossangoa axes, attacked Mongoumba, and, on 15 March 2003, withdrew back to the DRC". It found that the 2002-2003 Operation covered "a large geographical area, including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, KagaBandoro, Bossemptele, Boali, Yaloke, and Mongoumba". Likewise, in para. 563, the Trial Chamber delineates the 2002-2003 Operation with terms such as: "a large geographical area", "including", "in or around" and "along the Damara-Sibut and Bossembélé-Bossangoa axes". The Registry also notes that during the Trial phase, the Trial Chamber has admitted for participation in the proceedings, victims from rapes, murder, and pillage committed in a large number of locations, not included in the above list. This includes crimes committed on the roads between localities such as Bangui, Damara, Sibut, Bossembélé, Bozoum, Bossangoa and Mongoumba and villages in their

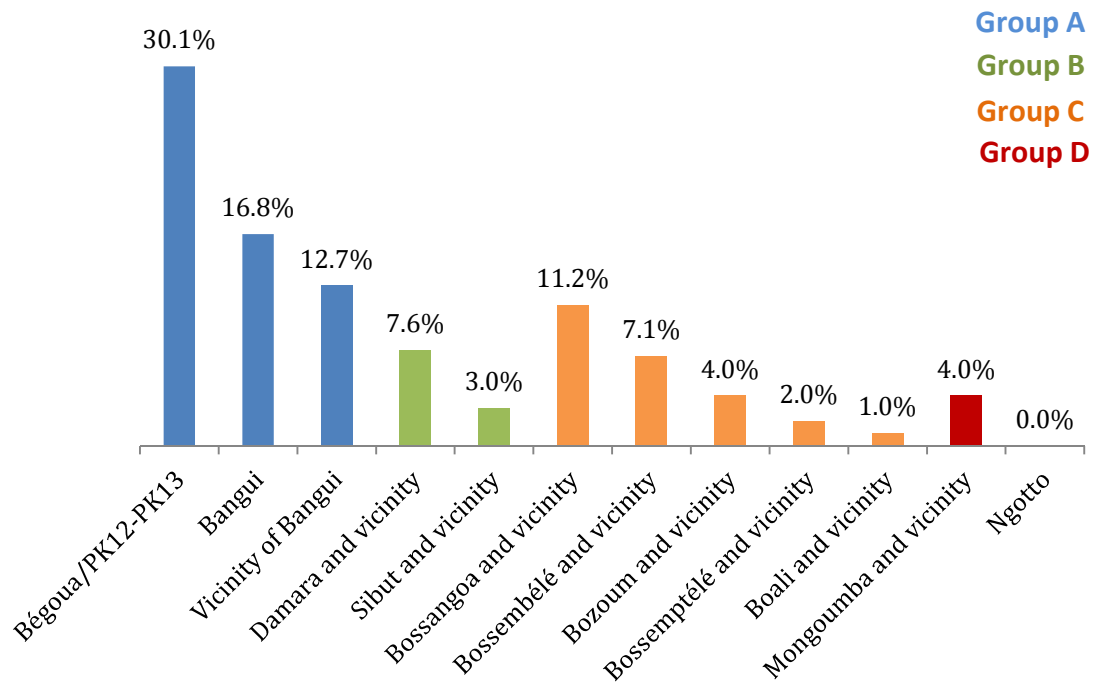


Figure 1: Location of crime - Murder (based on a total of 5229 Participating victims)

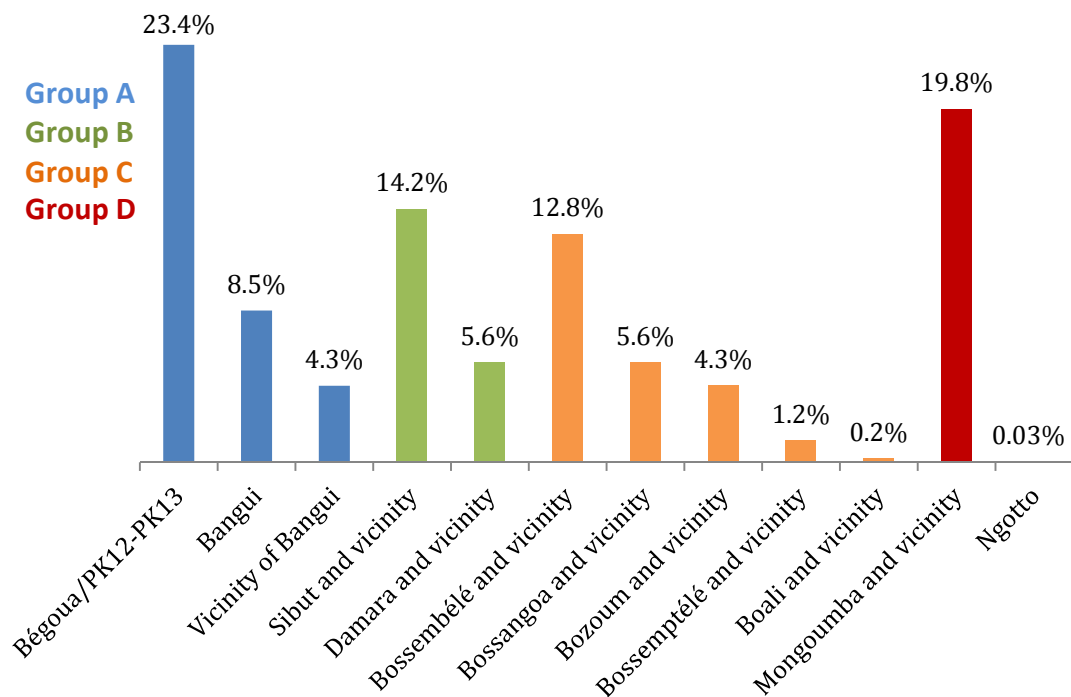


Figure 2: Location of crime - Pillage (based on a total of 5229 Participating victims)

vicinity as well as crimes committed on the river between Bangui and Mongoumba. Therefore, the Registry considers the aforementioned list of locations to be non-exhaustive.

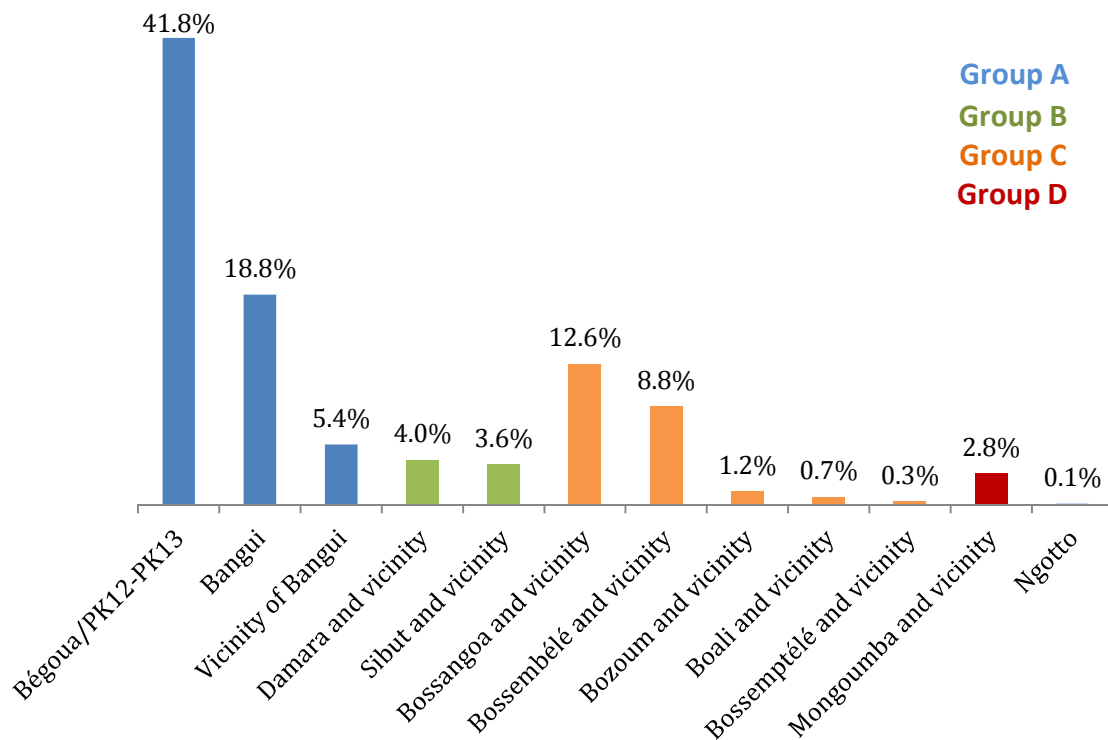


Figure 3: Location of crime - Rape (based on a total of 5229 Participating victims)

2. Indirect and direct victims

14. The Appeals Chamber recognised in the Lubanga case that: “[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims.”²⁴ Consistent with this approach, in the instant Case, the Trial Chamber found victims suffering emotional harm as a result of crimes committed against a deceased relative or a relative who is still alive to

²⁴ ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the Appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 32. On that basis, Chambers of this Court have recognised, for example, the emotional suffering of an applicant as a result of the death of a family member, and the financial loss or material deprivation that accompanies the loss of a person who used to provide for another. See ICC, Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of “Decision on ‘indirect victims’”, 8 April 2009, ICC-01/04-01/06-1813, para. 50.

be eligible for participation in the proceedings.²⁵ The same approach should apply to natural persons who were indirect victims of the three crimes of which the convicted was found guilty, and they should be eligible for reparations. In line with the principles established in the Lubanga case, the Trial Chamber might also consider as indirect victims in the instant Case: those who suffered personal harm attempting to prevent the commission of the crimes under consideration, or to help or intervene on behalf of direct victims, or other persons who suffered personal harm as a result of these offences, such as the children born as a result of pregnancy from rape.²⁶ The Registry considers this to be consistent with the UN Note on Reparations for CRSV, the events alleged by applicants in the instant Case, as well as experts' testimonies during the Bemba trial.²⁷

15. Lastly, and as recalled by the Trial Chamber in its Judgment, 14 organisations or institutions have been admitted as participants in the proceedings, under rule 85 (b).²⁸ The Registry sees no reason to depart from the approach taken by the Pre-Trial Chamber III²⁹ and the Trial

²⁵ Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on 772 Applications by Victims to Participate in the Proceedings", 18 November 2010, ICC-01/05-01/08-1017, para. 44.

²⁶ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, "Order for Reparations (amended)", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 6.b. This will be consistent with the UN Note on Reparations for CRSV, the events alleged by applicants in the instant Case, as well as experts' testimonies during the Bemba trial.

²⁷ UN Note on Reparations for CRSV, pp. 3, 13-15: The Note recalls that "in Peru, the Reparations Plan recognised children born of rape as a distinct category of beneficiary, noting they should be entitled to economic compensation up to the age of 18 and should be eligible for preferential access to education services". *Programa Integral de Reparaciones en Peru*, Ley 28592, art. 2-6.

²⁸ Judgment, ICC-01/05-01/08-3343, para. 21. Pursuant to rule 85 (b) of the RPE, a victim may be an "organisation" or "institution" provided that (1) it owns "property dedicated to religion, education, art or science or charitable purposes" or "historic monuments, hospitals and other places and objects for humanitarian purposes"; and (2) it "has sustained **direct harm** to this property". [Emphasis added].

²⁹ Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Fourth Decision on Victims' Participation", 15 December 2008, ICC-01/05-01/08-320, paras. 33 and 53.

Chamber in the instant Case to recognise these entities as victims in the Case.³⁰ This is also consistent with the approach of the Appeals Chamber in the Lubanga case reparations decision.³¹

3. *Eligibility of next of kin*

16. Aside from the eligibility of indirect victims of murder, in which a person has been authorised to participate on the basis of his or her suffering as a result of a crime committed against a close relative, the Registry notes that the Trial Chamber has established different regimes for the participation of deceased victims and their family members in the current proceedings.

17. The Trial Chamber has recognised that the death of a victim should not extinguish the opportunity for the Trial Chamber to consider his or her views and concerns.³² Accordingly, the Trial Chamber has admitted as participants in the proceedings 34 deceased victims who have been participating in the trial via a person acting on their behalf. Furthermore, the Trial Chamber has allowed the participation of "Successor" on behalf of participating victims who had died in the course of the trial,³³ specifically mentioning that this practice could also

³⁰ See for instance, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on 772 applications by victims to participate in the proceedings", 18 November 2010, ICC-01/05-01/08-1017, para.45.

³¹ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, "Order for Reparations (amended)", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 8.

³² The Trial Chamber admitted deceased victims as participants in the proceedings, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Corrigendum to the Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings", ICC-01/05-01/08-807-Corr, 12 July 2010, paras. 78-85. The Trial Chamber also set up a system for the resumption of actions initiated by victims authorised to participate in the proceedings. Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on 'Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées'", 24 March 2016, ICC-01/05-01/08-3346, paras. 23 and 49.

³³ Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on 'Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées'", 24 March 2016, ICC-01/05-01/08-3346, paras. 21-22. The Registry notes that the LRVs as well as Registry's

be applied at the stage of reparations proceedings.³⁴ Taking into account the legal text,³⁵ the jurisprudence of the Inter-American Court of Human Rights³⁶ and the specific circumstances of the instant Case, the Registry is of the view that the death of an eligible victim should not prevent respective right holders, such as the next of kin, if he or she provides the necessary evidentiary documentation, from being eligible for reparations.

4. *Standard of causation and standard of proof*

18. The Registry finds it appropriate to apply the standard of causation established in the Lubanga case in the instant Case, i.e. a “but/for” relationship between the crime and the harm and a “proximate cause” test.³⁷

intermediaries have reported the death of many Participating victims. The Registry expects that more deaths of potential eligible victims will be reported in the future. In their interactions with the Registry in CAR, victims often raised concerns that they would die before reparations would be implemented, and wanted reassurance that their families would benefit from their right to reparations.

³⁴ *Ibid*, para. 22.

³⁵ The Registry notes that article 75 (2) of the Rome Statute specifies that the Court may make an order specifying appropriate reparations “to, or in respect of, victims “. As highlighted by the Legal Representative of Victims in the instant Case, the French version of article 75 envisages the possibility of considering eligible to reparations individuals other than the victim. See Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées”, 18 June 2015, ICC-01/05-01/08-3256, para. 7, footnote 2.

³⁶ The jurisprudence of the Inter-American Court of Human Rights recognised the right of successors/next of kin in right-to-life cases. See Garrido and Baigorria Case, Reparations (art. 63(1) American Convention on Human Rights), Judgment of August 27, 1998, Inter-Am. Ct. H.R. (Ser. C) No. 39 (1998), para. 50. The Registry notes that this recognition does not preclude the right of people in the Inter-American Court system to claim reparations in their own right. See also Sandoval, Clara, Ruth Rubio-Marin and Catalina Diaz, “Repairing Family Members: Gross Human Rights Violations and Communities of Harm” in Ruth Rubio-Marin ed. by Cambridge: Cambridge University Press, 2009, *The Gender of Reparations*, p. 224; See also Article 2.16 of the Rules of Procedure (January 2009) of the Inter-American Court of Human Rights provides that: “the expression ‘next-of-kin’ refers to the immediate family, that is, the direct ascendants and descendants, siblings, spouses or permanent companions, or those determined by the Court, if applicable”.

³⁷ Appeals Chamber, Judgment, ICC-01/04-01/06-3129, para. 82.

19. The Registry draws a distinction between the *prima facie* standard of proof applied to assess whether an individual can be qualified as a victim in the Case in the meaning of rule 85 of the RPE, and the balance of probabilities standard of proof that is applied at the reparations stage in relation to the harm suffered by a Potential beneficiary. The Registry moreover notes the critical distinction highlighted by the Appeals Chamber between *identifying* the harms to direct and indirect victims caused by the crimes for which the person was convicted and *assessing the extent* of that harm for purposes of determining the nature and/or size of reparation awards.³⁸

20. The Registry notes that in its decision in the Lubanga case, the Appeals Chamber stated that victims are required to provide “sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case.”³⁹ The Appeals Chamber clarified that what is “sufficient” in terms of victims meeting the burden of proof will also depend upon the circumstances of the specific case and that “Trial Chambers should take into account any difficulties that are present from the circumstances of the case at hand”.⁴⁰ The Appeals Chamber specified that this would include the difficulties victims may face in obtaining evidence in support of their claim owing to the destruction or unavailability of evidence.⁴¹ The Registry submits that the specific context of the instant Case differs from the context

³⁸ Appeals Chamber, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, dated 3 March 2015, ICC-01/04-01/06-3129, para. 181.

³⁹ *Ibid*, para. 81. Moreover, “the Appeals Chamber has highlighted the critical distinction between *identifying* the harms to direct and indirect victims caused by the crimes for which the person was convicted and *assessing the extent* of that harm for purposes of determining the nature and/or size of reparation awards”, see *ibid*, para. 181.

⁴⁰ *Ibid*, para. 81.

⁴¹ Appeals Chamber, “Order for Reparations (amended)”, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 22, 81.

prevailing in the Lubanga case. The Registry therefore recommends that the Trial Chamber determination on what is a "sufficient" proof for the purpose of assessing the victims' claims for reparations, takes into account the specific circumstances of the instant Case.

21. The Registry also notes that rule 94 (1)(4) of the RPE acknowledges the difficulties victims may encounter when looking for supporting evidence, stating that they are required to present any relevant supporting documentation with their requests for reparations "to the extent possible". As was already the case with the submission of applications for participation in the proceedings,⁴² and evidently even more so in the light of the current context in CAR, the Registry

⁴² In previous submissions relating to the participation of victims, the Registry highlighted to the chambers some of the difficulties faced by victims in providing documentary evidence to support their claims, including official records; see Victims Participation and Reparations Section, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Report on forms of proof of identity documents that are available in the Central African Republic", 17 October 2008, ICC-01/05-01/08-168-Conf-Exp-Anx2. "The Trial Chamber took into account the fact that 'numerous [...] citizens [of the Central African Republic], living in rural areas, do not possess any official identity document' and that others 'face difficulties in obtaining identity documents due to e.g. cumbersome administrative procedures, the high costs incurred and a lack of transport means to reach the competent authorities' and consequently adopted a flexible approach in its appreciation of the documentary evidence provided with applications for participation. See, Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on 772 Applications by Victims to Participate in the Proceedings", 18 November 2010, ICC-01/05-01/08-1017, para. 41. See also Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Fourth Decision on Victims' Participation", 15 December 2008, ICC-01/05-01/08-320, para. 35. See also: Registry, *The Prosecutor v. Thomas Lubanga Dyilo*, "Second Report of the Registry on Reparations", 1 September 2011 and reclassified as public on 19 March 2012, ICC-01/04-01/06-2806, paras. 194-196; Niebergall, Heike, "Overcoming Evidentiary Weaknesses in Reparation Claims Programmes" in Fertsman, C. et al (Eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, pp. 155 - 160. The author refers, as an example, to the Property Loss Programme of the German Forced Labour Compensation Programme, whereby the victims had to show a presumption related to the geographical extension and the timeframe, asserting that if the loss took place during a certain period in a certain territory occupied by the Reich, then it was presumed that the loss was due to the involvement of German companies; article 22 of the Rules of Procedure for the Claims Resolution Process ("CRT - Procedural Rules"), 15 October 1997, http://www.crt-ii.org/crt-i/rules_procedure.html; See generally JJ Haersolte-van Hof, 'Innovations in Mass Claims Dispute Resolution: Using New Standards of Proof' 58 *Dispute Resolution Journal* (2003), 70; S Giroud & S Moss, *Mass Claims Processes under Public International Law*, *British Institute of International and Comparative Law* (2015), pp. 481-503.

anticipates that the presentation of documents in support of reparations claims in CAR will continue to be impractical and, in some situations, will place an impossible burden on Potential beneficiaries.⁴³ The current dysfunction of the State apparatus implies the quasi-total absence of administration outside of Bangui, and even in the capital the issuance of documents related to civil status requires individuals to overcome a series of barriers, which may discourage or deny access to reparations for certain victims. It has also been reported that victims living outside Bangui would have to travel long distances, in the current context of insecurity, to reach the only “functioning” judicial institution in Bangui, at a high financial cost (including travel expenses and loss of income).

22. The Registry further notes that those obstacles to obtain documentary evidence of harm and quantify the harm itself could prove more difficult for some victims, according to the crime they suffered from and their current situation. Indeed, while proving the murder of a close relative could be easier in theory,⁴⁴ victims of rape may not be able to produce any document to support their claim, above all owing to the time elapsed since the crime was committed and/or the stigma attached to the crime of rape which in most cases have prevented (and may still prevent) individuals from reporting the crime.⁴⁵

23. Victims who had their property destroyed and/or were forced to flee as a result of the on-going insecurity in CAR might find it difficult to meet

⁴³ Médecins Sans Frontières, “Central African Refugees in Chad and Cameroon: “Suitcase or coffin”, 16 July 2016, <http://www.msf.org/article/central-african-refugees-chad-and-cameroon-%E2%80%9C9Csuitcase-or-coffin%E2%80%9D>.

⁴⁴ A death certificate was submitted by approximately 20% of Participating victims authorised as a result of the crime of murder.

⁴⁵ As already stressed by the Registry in the Lubanga Case, “[c]ertain victims, such as those who experience sexual violence, may be reluctant even to talk about their experience, much less gather evidence, given the stigmatisation that often results from such crimes”. Registry, *The Prosecutor v. Thomas Lubanga Dyilo*, “Second Report of the Registry on Reparations”, 01 September 2011 and reclassified as public on 19 March 2012, ICC-01/04-01/06-2806, para. 195.

the required standard of proof as most of them left home with nothing. These victims are likely to be unable to produce any kind of evidence (whether contemporaneous documents, which are likely to have been destroyed or left behind when they fled, or even *ad hoc* documents, since they no longer live where the crimes were committed). Moreover, there are reported cases of organised banditry, which involve local authorities destroying documents such as cadastral plans, to prevent individuals who fled to claim their house and/or land, in order to re-sell their property. It is likely that these victims will not be able to prove the prejudice they suffered should an excessively demanding threshold be set, thereby exposing them to a type of secondary victimisation.

24. For these reasons, the Registry recommends that a standard of proof less than the balance of probabilities be applied in the instant Case. The Registry also recommends that the same standards of proof be applied to all Potential beneficiaries.

Participating victims

25. The Registry does not expect that the current situation in CAR will allow for Participating victims to be easily reached, located and/or in a position to provide further documents. Consequently, the Trial Chamber may decide that Participating victims who have not yet applied for reparations should be presumed to have made such request without asking the LRVs to provide a written confirmation from their clients. This way, all Participating victims would automatically be part of the pool of Potential beneficiaries, as long as their applications for participation in the proceedings comply with the requirements of rule 94 of the RPE. Indeed, while the Registry has always emphasised the differences between “participation” in the proceedings and

“reparations”, in practice, and especially in the years 2009 and 2010, intermediaries and victims in CAR often used participation and reparations forms interchangeably. They did it without understanding that might have an impact on their right for reparations. Moreover, experience has shown that victims closely associate participation in the proceedings with reparations. This is apparent, for example, in the way the applications for participation in the proceedings have been filled-in (e.g. many applicants ask for compensation), as well as from the meetings held with victims and intermediaries and the questions received during the outreach activities of the Court.⁴⁶

26. Moreover, the Registry considers that having Participating victims fill-in an application form for reparations at this late stage in the proceedings also needs to be weighed against the cumbersome exercise this may entail, bearing in mind the current security situation and the considerable displacements of population. This may also cause widespread confusion and frustration with the process, and be unnecessarily retraumatising.

Applicants and New potential applicants

27. The Registry respectfully shares its preliminary views on a system of evidentiary standards that it considers will allow for an equal treatment

⁴⁶ According to the Registry, social distance, differing cultural perceptions of what justice entails, the precariousness of the victims' personal circumstances, and expectations of the work of an international body like the Court have led to “participation” being seen as “reparations”. When an application for participation was “approved”, this meant for many individuals that the Court would deal with their needs, losses or reparations expectations. See Registry, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Annex 1 to Final report on the investigations pursuant to the Chamber's Decision on the ‘Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings’”, 31 March 2011, ICC-01/05-01/08-1369-Conf-Exp-Anx1, p.7.

of all Potential Beneficiaries. This system is based on the documents already provided by victims in their applications for participation and/or reparations, and the preliminary information the Registry has already collected in the field regarding the availability of documents.

Crime of rape

28. The Registry expects that, for a variety of reasons, it would be very difficult for many victims of rape who are not in the possession of documents to prove what happened to them (either because they did not seek medical assistance or because they lost their documents) to obtain evidence of their victimisation in the current context.⁴⁷

29. The Registry therefore respectfully submits this is an additional example for why a standard of proof less than the balance of probabilities test is the most appropriate in the instant Case.

Crime of murder

30. The Registry notes that, at the participation stage, indirect victims of murder had to prove the identity of the direct victim, as well as their relationship of proximity to be accepted for participation in the proceedings.⁴⁸ The Trial Chamber has accepted a variety of documents to support the claim, including, in some instances, statements signed by two witnesses to prove the identity of the direct victim and kinship with the applicant.⁴⁹

⁴⁷ The Registry notes that some, although by far not the majority of applicants for participation in the proceedings alleging rape in the context of the instant Case have provided along with their applications documents such as medical records or other documents which state that they are HIV positive. A medical certificate was submitted by approximately 8% of Participating victims authorised as a result of the crime of rape.

⁴⁸ Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, para. 49.

⁴⁹ Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on

31. This criterion seems to have been met by a significant number of the Participating victims. A minority have additionally provided documentation showing that the death of the close member of the family occurred (such as a death certificate, an attestation de chef de village/quartier, a *procès verbal de conseil de famille*, or a declaration by two witnesses to that effect). The Registry considers that in the instant⁵⁰Case, identification and kinship documents combined with the well-documented patterns of murder (established during the course of the trial proceedings), which occurred in CAR territory during the 2002 to 2003 conflict, would suffice to establish that the applicant is eligible. The Registry thus recommends not requesting further documentation to Participating victims and requesting the same documentation to Applicants and New potential applicants alleging to have suffered harm as indirect victim of murder, in order for them to establish their eligibility. The Registry considers that the same criteria should indeed apply to Participating victims and other Potential beneficiaries.

Crime of pillage

32. The Registry preliminarily notes that most of the Participating victims allege to have suffered from pillage. The Registry therefore considers that due consideration need to be paid in the systems devised to redress this.

33. Providing evidence of pillage can be extremely challenging, especially when no records of previous ownership exist.⁵¹ Moreover, the crime of pillage in this Case has been committed in a variety of ways, from the

applications for participation by 86 applicants”, 22 February 2010, ICC-01/05-01/08-699, para. 36.

⁵⁰

⁵¹ Less than 5% of victims of pillage supported their claims with lists of looted items stamped (for instance by local authorities).

seizing of cattle, to the looting of personal items in the victims' house, or the pillage of merchandise. This disparity may create inequalities in the way some victims of this crime may be able to provide evidence of previous ownership. As such, big cattle herders or merchants may be in a different position to have documentation to prove their previous ownership, than people engaged in small trade who lost their merchandise, or those who were robbed of their personal items of lesser value.

34. The Registry also proposes to work with established patterns of pillage that have been brought forward, both in applications for participation in the proceedings and/or reparations also during Trial. For the purpose of evaluating the loss, as developed further in the report, the Trial Chamber might categorise these incidents and associate a specific standard of proof to each that would be proportionate to the harm suffered. This may apply both to Participating victims and New potential applicants.

B. Determination and assessment of the relevant forms of harms

35. The forms of harm to which the crime of rape, murder and pillage could give rise are numerous. Without listing them exhaustively, the Registry will set out below a few of the most notable forms of harm reported by victims. These forms of harms result from the crimes charged, based on individual decisions issued by Trial Chamber III on the merits of the applications for participation transmitted, information extracted from

victims applications, and the testimonies of experts and victims given during the Trial.⁵²

36. The Registry considers that updated information collected by the LRV/LRs on the victims' situation would provide a further and more up-to-date understanding of the impact of the crimes. The Trial Chamber might also call experts to elaborate on the types of harm commonly suffered by victims in the light of the specificities of the instant Case. The Registry notes that experts' findings on the manner could also serve for the categorisation of claims, as further developed below.

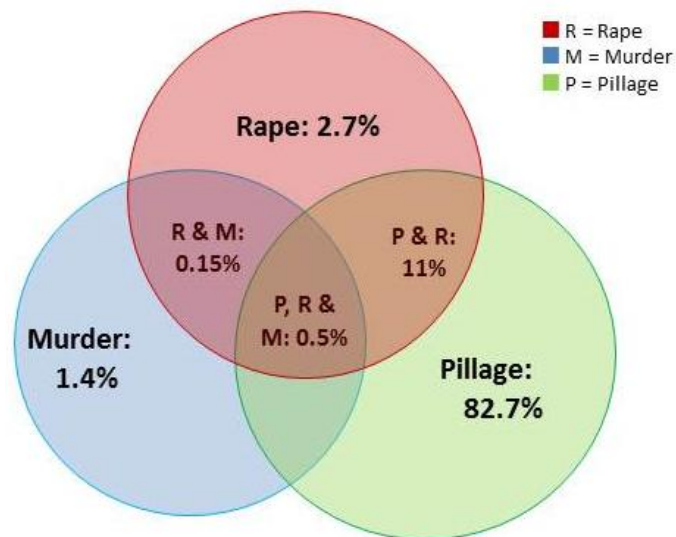


Figure 4: Type of Crimes (based on a total of 5229 Participating victims)

1. Rape

37. As reported by the experts who testified in the course of the Trial, the experience of rape is profoundly devastating to its victims and their families, inflicting severe physical harm, gravely affecting mental health

⁵² Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Order requesting submissions relevant to reparations, 22 July 2016, ICC-01/05-01/08-3410", para. 6.

and communal bonds, and provoking stigma and the exclusion of the victims.⁵³

38. The Trial Chamber described in its Sentencing Decision the specific circumstances in which rapes occurred: targeting particularly defenceless victims,⁵⁴ and committed with particular cruelty.⁵⁵ The description of the events reported by Participating victim [REDACTED] illustrates these two characteristics:

Comme je suis handicapée, j'avais un tricycle pour aller au marché et aussi des béquilles. Ils m'ont attrapée et amenée dans la brousse à 5. [...] Ils m'ont violée tous les cinq alors que j'étais encore pucelle. Je me suis mise à crier et ils m'ont bâillonnée. Ensuite j'ai perdu connaissance pendant 2 jours. Quand je me suis réveillée, je sentais des bêtes qui me mordillaient, j'étais couverte de fourmi, même la plaie que j'avais au genou. Mon genou me faisait souffrir, il était tordu car ils l'avaient frappé. Je n'avais plus le tricycle et les béquilles alors j'ai dû ramper [...]

39. In view of data extracted from the applications of the Participating victims, the Registry is able to provide the Trial Chamber with the following overview:

⁵³ The Trial Chamber found that “Dr Adeyinka M. Akinsulure-Smith (P221) and Dr André Tabo (P229), experts on post-traumatic stress disorder (“PTSD”) and sexual violence in armed conflict, testified that rape victims generally suffer from four types of consequences: (i) medical (including lesions to organs, human immunodeficiency virus (“HIV”), loss of virginity, and unwanted pregnancies); (ii) psychological (fear, anxiety, anger, aggression, guilt, isolation, embarrassment and shame, loss of confidence, and washing rituals); (iii) psychiatric (PTSD, reactive depression, melancholia, neuroses, addictive behaviour, and psychosomatic disorders); and (iv) social (stigmatisation and repudiation).” See Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on Sentence pursuant to Article 76 of the Statute”, 21 June 2016, ICC-01/05-01/08-3399, para. 36.

⁵⁴Ibid, paras. 40-43.

⁵⁵Ibid, paras. 44-47.

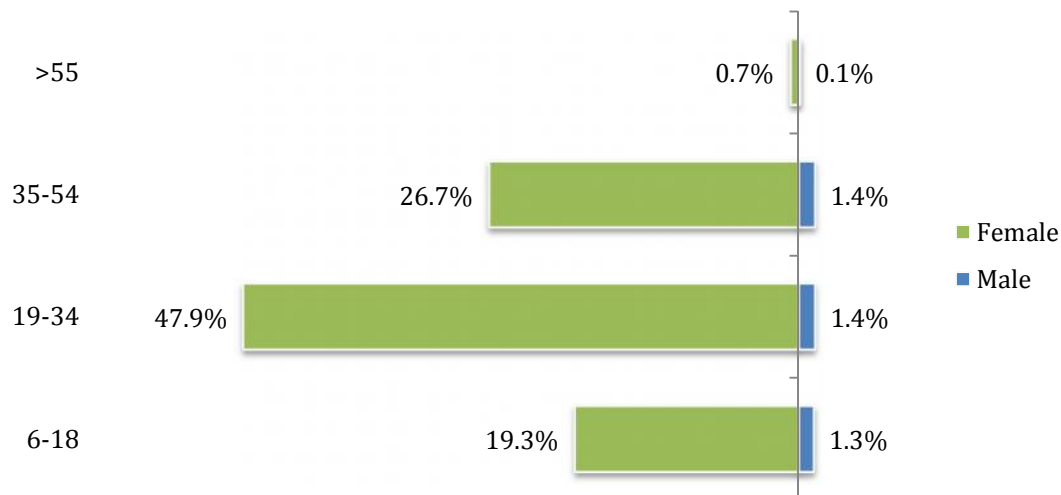


Figure 5: Age and gender of Participating victims who suffered harm as a result of rape (based on a total of 708 applications)

40. It stems from the applications, that Participating victims who were direct victims of rape suffered physical harm, including physical injury and trauma,⁵⁶ sexually-transmitted infections such as HIV/AIDS or syphilis⁵⁷ unwanted pregnancy⁵⁸ miscarriage brought on by the physical violence committed against the victim⁵⁹ and other reproductive health consequences such as inability to conceive and infertility.⁶⁰

⁵⁶ Participating victim [REDACTED] reports : “ Je venais d’accoucher d’un petit bébé 45 jours avant, et j’étais encore très fragile à cause de la césarienne. J’ai été violée trois fois. Mon ventre s’est ouvert. Aujourd’hui j’ai des douleurs au niveau du bassin, aux reins et au dodo. J’ai eu un choc grave. ” ; [REDACTED] ; Participating victim [REDACTED] reports “Après je ne suis pas allée à l’hôpital car je n’avais personne pour s’occuper de moi. J’ai toujours mal au bassin et au bas du ventre”. At least 30 victims report that they were pregnant at the time they were raped.

⁵⁷ Among the Participating victims recognised on the basis of rape, it is alleged that at least 100 direct victims HIV positive, and 10 others were infected with syphilis or other unknown venereal disease.

⁵⁸ At least 10 Participating victims report that they became pregnant as a result of their rape.

⁵⁹ Participating victim [REDACTED] reports : “En effet à l’arrivée des Banyamulengués j’étais enceinte et à terme [...] trois m’ont violée à tour de rôle [...] J’ai accouché 4 jours après ce viol mais l’enfant né est décédé”.

⁶⁰ Participating victim [REDACTED] reports : “Depuis j’ai des douleurs au bas ventre [...] les médecins m’ont dit que j’aurais des problèmes pour avoir des enfants, au bas ventre. Aujourd’hui je n’ai plus envie de me marier, je veux rester sans hommes”.

41. Participating victims report that, as a result of their rape, their mental health has been affected. As Participating victim [REDACTED] reports:

J'étais donc ce jour du 17 février dans cette maison lorsque les miliciens de Jean Pierre Bamba m'ont surprise avec ma cadette. Après avoir cassé la porte, ils s'étaient rués sur moi en groupe de cinq pour violenter et violer à tour de rôle. Malgré ma protestation, ils m'avaient donné des coups de crosse parce que je leur résistais. Ma sœur cadette avait également subi le même soit [...] je continue à souffrir psychologiquement de ce viol.

42. Some Participating victims report that as a result of the rape, they have developed emotional response,⁶¹ psychological disorders,⁶² psychiatric disorders,⁶³ and/or somatic reactions, feeling of loss resulting from miscarriage. As Participating victim [REDACTED] reports:

C'est la première fois que j'en parle et souhaitais ne jamais avoir à le faire [...] je préfère me taire, tous les biens que j'ai perdu lors de ces événements m'importe peu en comparaison de ce que j'ai souffert [...] je ne sais pas ce que la Cour peut faire, je ne veux pas revenir sur ces événements [...]

43. The Registry notes that in at least 100 instances rapes claims to occurred in front of a family member.⁶⁴ The Registry further notes that Participating victims report that they have experienced psychological suffering because of the rape inflicted upon a family member and that,

⁶¹ Such as feelings of humiliation, shame, anxiety, anguish, fear, stress, or apathy.

⁶² Such as dissociative behaviours, numbing, hyper-arousal, depersonalisation, avoidance, eating and sleeping disorders, confusion, interpersonal disorders; *see, inter alia*, Trial hearing, Transcript of 29 November 2010, Witness CAR-OTP-PPPP-0221, ICC-01/05-01/08-T-38-ENG (ET WT), p. 26, line 22, to p.27, line16.

⁶³ Such as PTSD, reactive depression, melancholia, neuroses, addictive behaviour, suicidal tendencies and psychosomatic disorders, experiences of intrusive memories, or flashbacks; *See, inter alia*, Trial Chamber III. *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on Sentence pursuant to Article 76 of the Statute", 21 June 2016, ICC-01/05-01/08-3399, para. 36 and Trial hearing, Transcript of 29 November 2010, Witness CAR-OTP-PPPP-0221, ICC-01/05-01/08-T-38-ENG (ET WT), pp. 26, lines 10-12.

⁶⁴ An expert in the instant Case has reported that when close relatives witnessed their rape, they reported having suffered from an additional humiliating experience, Trial Chamber III. *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on Sentence pursuant to Article 76 of the Statute", date 21 June 2016, ICC-01/05-01/08-3399, paras. 37-39.

in some instances, they were forced to witness it. As Participating victim [REDACTED] reports:

J'étais dehors avec ma sœur qui avait 11 ans, ils ont commencé à la maltraiter et à la déshabiller. Quand ma mère qui était dedans a vu qu'ils allaient violer sa fille, elle est sorti pour la sauver et un Banyamulengue la tirer dessus et la tué[...] moi ils m'ont menacé pendant qu'ils violaient ma sœur[...] Cela est difficile pour moi de parler des évènements.

44. Participating victims further allege that this crime has affected communal and family bonds.⁶⁵ Participating victims and their family, in particular in the case of children born out of rape,⁶⁶ have suffered from stigmatisation and ostracism, resulting in rejection by partners and/or separations of families,⁶⁷ unfitness for marriage, loss of social status, or tension in marital relationship. In particular Participating victims have indicated the following:

[m]on mari avait fui la maison. J'étais seule avec les enfants. Les Banyamulengues étaient nombreux et ils ont chassé les enfants. Trois soldats sont rentrés dans la maison et ils

⁶⁵ The Registry notes the accounts of some of the Participating victims, including Participating victim [REDACTED] who reports “*[i]ls l'ont pris jeté dans le lit, se sont mis à la violer atrocement. Douze (12) soldats l'ont violé sur place en présence de notre père [...] ma sœur était stigmatisée par la population et le public. Les gens ont dit que [...] les femmes de Banyamulengués [...] nous avons des souffrances psychologiques et des angoisses*” ; [REDACTED] reports “*On m'a exigé à me déshabiller. Parmi les hommes que se trouvaient dans ce groupe, un élément m'a violée. J'ai eu une grossesse à la suite de ce viol. Cette grossesse non désirée a créé des distensions dans notre couple. J'ai été amenée à faire interrompre volontairement cette grossesse à la demande du père de mes enfants. Celui-ci, malgré cet acte, est resté très choqué et ne pouvant pas supporter, a trouvé la mort le 31 mai 2007*”.

⁶⁶ Participating victim [REDACTED] reports: “*[i]ls se sont rouillés [sic] sur moi pour me violer. Ils parlaient en langue lingala. Ils m'ont violés à tour de rôle, les cinq soldats sans préservatif. J'étais en période de l'ovulation [...] j'ai passé trois mois à l'hôpital ou j'ai gardé le lit pour me permettre de suivre des séances de rééducation [...] C'est du lit de l'hôpital que je vais constater après examen médical [...] que j'étais enceinte. [...] J'ai un enfant dont je ne connais pas le père et qui n'est pas accepté par la famille*”.

⁶⁷ Among the applications for participation in the proceedings recognised on the basis of rape, at least 80 Participating victims have been allegedly rejected by their partner, family and/or community.

*m'ont violé. Ils n'ont rien pris dans la maison. Après les événements, mon mari est revenu et il m'a abandonnée avec les enfants.*⁶⁸

*[i]ls m'ont posé la question en Lingala et comme je ne comprenais pas, ils m'ont déplacé a cote de ma mère. Ils me déshabillaient et tiraient en l'air 2 coups d'arme, puis ils passaient un a un en rapport sexuel avec moi [...] après ces événements, il y a séparation de corps entre mon époux et moi [...] j'ai perdu ma crédibilité d'une femme musulmane.*⁶⁹

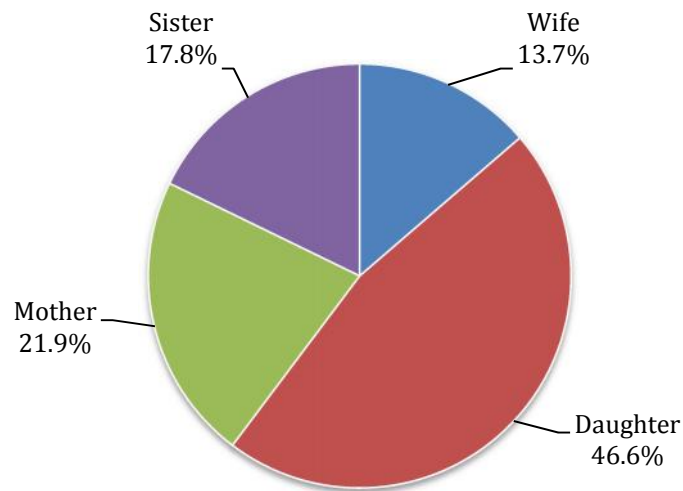


Figure 6: Relationship with direct victims – cases of rape.⁷⁰ (based on a total of 73 applicants recognised as indirect victims of rape in the Trial Chamber's decisions)

45. Lastly, Participating victims mention in their applications the medical cost associated with treatments, or the economic loss resulting from their inability to work or the fact that they have also had to drop out of school.⁷¹

⁶⁸ See [REDACTED]

⁶⁹ See [REDACTED]

⁷⁰ Figures for males were omitted given that they represent less than 1 % of direct victims of rape and include father, husband and brother.

⁷¹ Participating victim [REDACTED] reports: "J'ai subi un grave préjudice moral car j'ai été non seulement violée mais enlevée et déportée en RDC pendant cinq (5) ans, j'ai été utilisée comme esclave sexuelle dont est né un enfant âgé aujourd'hui de 3 ans. J'ai également subi la perte d'une chance puisque j'ai été contraint interrompre mes études alors que je venais d'être admise au concours d'entrée en 6^e pour effectuer des études secondaires".

2. *Pillage*

46. The crime of pillage took many different forms and shapes in the context of the MLC attacks on the population. The harm related to the crime of pillage often goes beyond the immediate material loss, as in many cases the goods pillaged represented a victim's entire patrimony and/or means of subsistence for him or her and his or her family.
47. Based on a preliminary assessment of the individual decisions issued by the Trial Chamber, the Registry notes that the Participating victims' claims linked to pillage mention mainly the loss of: (i) money; (ii) livestock; (iii) merchandise; and (iv) boats.
48. In many cases the pillage of the means of conducting an economic activity (for example, the loss of a car or of an entire cattle herd) has also redefined the place of the individual in society and, in the absence of any insurance system, may have jeopardised the victim's future and that of his or her family (for example, loss of means to send the children to school). In certain cultures, such as the Fulani, cattle may be part of the cultural identity of an individual.

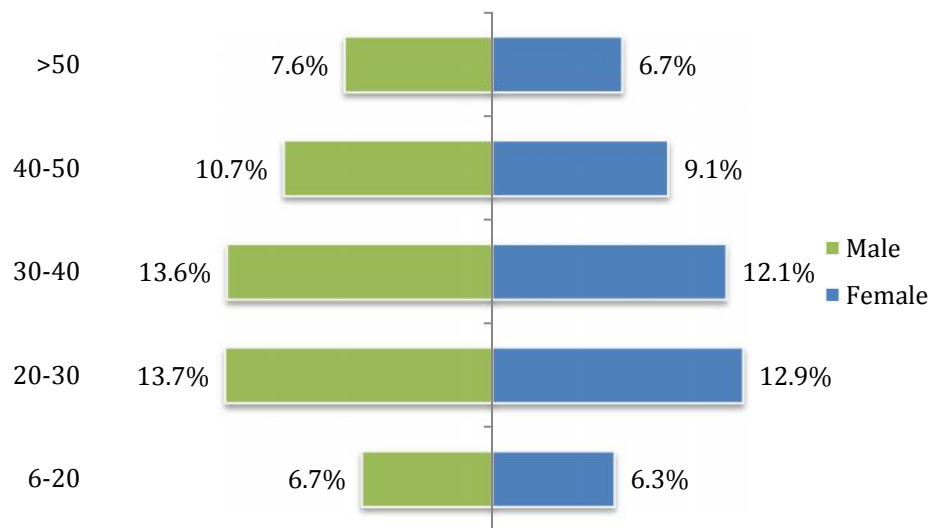


Figure 7: Age and gender of Participating victims who suffered harm as a result of pillage. (based on a total of 4998 applications)

49. As a result of this pillaging, Participating victims reported several adverse impacts, including but not limited to: loss of property, loss of source of income or livelihood; forced dependency; lack of financial means to support the family or dependents not being able to pursue education. In particular, Participations victims report the following:

*Depuis, je n'ai plus les moyens de faire mon petit commerce, trois de mes enfants ont été renvoyés de l'école et même manger à la maison est devenue difficile.*⁷²

*Jusque-là nous n'avons plus de maison pour y habiter et nous n'avons pas pu récupérer nos biens.*⁷³

Avec les évènements j'ai perdu mes effets et ma maison, j'ai huit enfants et nous devons louer des maisons mais fautes de moyens, nous sommes parfois chassés de la maison. Mes quatre aînés ont arrêté l'école et nous restons parfois deux jours sans

⁷² See [REDACTED] ⁷³ See [REDACTED].

⁷³ See [REDACTED]

*manger. Suite aux évènements je souffre d'hypertension car c'est tellement de douleurs quand je me rappelle.*⁷⁴

*Ils ne nous ont rien laissé. Mon père était mort avant les évènements et nous avaient laissé quelques biens que les Banyamulenges ont emporté. Je suis l'aîné de la famille et je suis en charge de mon cadet et de mes enfants. Aucune personne ne m'a apporté de soutien.*⁷⁵

*Ils m'ont tout pris[...] Depuis je vis aux dépends de la communauté et de ma famille.*⁷⁶

*Tout ce que j'avais je l'ai perdu. A ce moment, je me trouve nu comme un enfant qui vient de sortir de sa maman.*⁷⁷

*Ils ont ramassé tous les effets dans la maison puis ils ont incendié la maison. Après cela, je ne pouvais plus rester là [...] Ils m'ont mis à plat, je n'ai ni ressources, ni subventions, je suis dans un malaise et j'ai toujours ma famille à charge. A chaque fois que je me souviens de ces évènements, cela me fait du mal.*⁷⁸

*Lorsque j'ai vécu tout cela, je n'y croyais pas, c'est comme si mon âme s'était enfuie.*⁷⁹

*Aujourd'hui je ne suis pas tranquille, je me réveille en sursaut et je ne sais pas comment je vais continuer ma vie sans mes économies.*⁸⁰

*A cause des évènements je souffre beaucoup, j'angoisse quant à l'avenir de mes enfants, auxquels j'ai des difficultés à payer l'éducation.*⁸¹

⁷⁴ See

⁷⁵ See

⁷⁶ See

⁷⁷ See

⁷⁸ See

⁷⁹ See

⁸⁰ See

⁸¹ See

A cause des évènements, j'ai perdu mes biens. Je n'avais rien et devais subvenir aux besoins de ma famille, de mes parents et mes onze frères et sœurs. Mes sœurs ont dû arrêter l'école. Aujourd'hui seuls mes quatre cadets peuvent continuer.⁸²

Quand l'évènement s'est produit, j'ai eu mal au cœur, j'ai eu des vertiges. J'ai voulu me suicider mais les gens m'ont dit prends courage, c'est la mort qui voulait t'emporter qui a été payé par l'argent. Après cela, j'étais très malheureuse, je pleurais tout le temps.⁸³

3. Murder

50. As noted by the Trial Chamber in its Sentencing Decision,⁸⁴

Murder deprives the direct victim of life, the ultimate harm. Relatives and dependants left behind are not only deprived of the direct victim, an impact that cannot be underestimated, but may also be directly injured – physically and/or psychologically – as a result of the murder. The Trial Chamber found that MLC soldiers killed victims after they resisted acts of pillaging.⁸⁵ All acts of murder were committed in the presence of other civilians, including some victims' family members, and were accompanied by acts of pillaging,⁸⁶ rape, and/or physical and verbal abuse.⁸⁷

51. Murder of a member of a family affects naturally psychologically relatives. As Participating victim [REDACTED] reports:

Les Banyamulengues avaient envahi notre village et étaient venus tuer mon mari [...] Nos 3 enfants étaient présents lors de la mort de mon mari [...] lorsque mon mari préparait la cuisine pour les enfants, il a été abattu par balle [...] Depuis les évènements, je n'ai plus

⁸² See [REDACTED]

⁸³ See [REDACTED]

⁸⁴ Sentencing Decision, 01/05-01/08-3399, para. 29.

⁸⁵ For example, Participating victim [REDACTED] reports : "[l]e jeudi 13 février 2003 à 18h, mon père était dans sa maison avec ma mère quand les Banyamoulengues sont entrés dans la maison. Ils voulaient prendre l'appareil radio de mon père et puisque celui-ci s'y est opposé, ils l'ont tué avec un coup de balle sous les yeux de ma mère".

⁸⁶ Participating victim [REDACTED] reports : "Après avoir tout pillé, ils ont encore demandé de l'argent à mon père. Quand il leur a répondu qu'il n'en avait plus, ils ont commencé à le battre avec la crosse de leurs armes puis lui ont tiré dessus. Il est tombé et du sang a commencé à couler."

⁸⁷ Sentencing Decision, 01/05-01/08-3399, para. 28.

d'appétit, je fais de l'hypotension, j'ai beaucoup de soucis. J'ai consulté un médecin à l'hôpital qui m'a donné des médicaments pour mes vertiges [...] Je suis seule avec mes enfants mineurs et personne ne peut m'aider [...] C'était mon mari qui subvenait aux besoins de notre famille.

52. The loss of a family member may also have had a material impact on the Participating victims, for example when the deceased was a breadwinner, a head of family or a person who was generating an income. Relatives have had to take on the additional burden of providing for the dependants of the deceased person, modifying the roles of the different family members and the entire family structure.

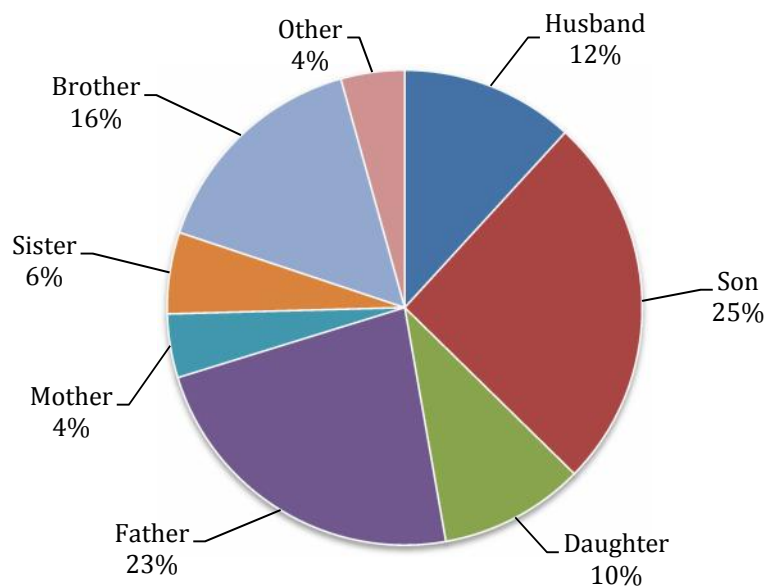


Figure 8: Relationship with direct victims– cases of murder.⁸⁸ (based on a total of 162 applicants recognised as indirect victims of murder in the Trial Chamber's decisions)

53. Participating victims have further reported to have suffered from the loss of an individual who would have supported their education, or individuals who were supposed to take care of them in their old age. In particular, Participating victims have stated that:

⁸⁸ The percentages are approximate.

À cause de ces événements, ma vie est devenue très difficile. Je dois trouver du travail journalier.⁸⁹

[j]'ai subi un grave préjudice moral non seulement du fait du meurtre de mon père mais aussi du fait qu'après sa mort j'ai perdu ma scolarité ainsi que mes cadets qui sont obligés d'aller vivre chez des proches parents faute de soutien.⁹⁰

C'était mon mari qui subvenait aux besoins de notre famille.⁹¹

Mon concubin qui revenait de Damara pour venir me rendre visite à Bangui a été intercepté par les miliciens de MLC [...] Après l'avoir passé à tabac, ils l'ont tué. [...] Il était mon seul soutien. Actuellement, je suis abandonné m'occupant seule de ces enfants sans grandes ressources.⁹²

La manière qu'ils nous ont traité, c'est vraiment déshonorer. La façon dont ils ont tué mon frère [...] et mon mari. [...] J'ai subi des préjudices morale de mon fils qui est devenu fou suite à la mort de son père jusqu'à présent.⁹³

C. Determination and assessment of the scope of liability of Mr Bemba

54. Pursuant to the Appeal Chamber's Judgment, an order for reparations "must establish and inform the convicted person of his or her liability with respect to reparations awarded in the order",⁹⁴ and "the imposition of liability on a convicted person, including the precise scope of that liability should be done by the Trial Chamber in the order for reparations."⁹⁵

1. Challenges in identifying New potential applicants

55. The Registry notes that given the security context in CAR during the past four years, it was not in a position to start its inquiry to determine the approximate number of New potential applicants ahead of the reparations phase of the proceedings in the Case. In addition, from the

⁸⁹ See [REDACTED]

⁹⁰ See [REDACTED]

⁹¹ See [REDACTED]

⁹² See [REDACTED]

⁹³ See [REDACTED]

⁹⁴ Appeals Chamber, Judgment, ICC-01/04-01/06-3129, paras. 1 and 32.

⁹⁵ *Ibid*, para. 237.

start, the Registry has been faced with the challenge of not having had access to any systematic recording of the violations that occurred during the temporal scope of the instant Case.

56. It is however obvious for the Registry that the number of Participating victims does not correspond to the total number of Potential beneficiaries, taking into account the number of Applicants and given the broad geographical and temporal scope of the instant Case, which implies a large numbers of New potential applicants.⁹⁶ Identifying these New potential applicants should be the primary focus of the Registry's activities at this stage.

57. Reaching out to New potential applicants must take into account the current cycle of violence in CAR, from which spring the following challenges:

- ongoing insecurity in CAR;
- distinguishing victims of the instant Case from other victims of the repeated crisis in CAR, including the 2012 December crisis;
- the risk of individuals trying to enter programmes fraudulently in order to benefit from any outcome victims may have in the process;

⁹⁶ Possible reasons why they would not have applied are: (1) the inherent limitations (logistical and security constraints) on the capacity of the Registry to inform all victims, as well as the limited resources at its disposal to facilitate participation of victims before the start of the trial; (2) the Registry's focused activities on the participation of victims in the instant Case before to the verdict, to avoid raising expectations as to reparations in a context where (a) it is not known whether the accused will be found guilty, and (b) there is a lack of clarity regarding how and when any reparations proceedings might occur; and/or (3) the vast geographical scope of the instant Case, and the inherent prioritisation of certain localities included in the Prosecution's Submission of Amended Document Containing the Charges; "Annex 3 to, Annex 3 to "Prosecution's Submission of Amended Document Containing the Charges, Amended List of Evidence and Amended In-Depth Analysis Chart of Incriminatory Evidence", 30 March 2009, ICC-01/05-01/08-395-Anx3, para 38.⁹⁷ The Registry notes that even within this category of pillage, it may be necessary to create sub-categories, depending on the type of activity (nomadic herders may not have any document to support their ownership of their cattle) and the size of the cattle.

- the massive displacement of population, which includes the presence of potential beneficiaries outside CAR; and
- discrimination against certain communities.

58. During its interactions with civil society actors on the ground, the Registry learned that in some villages the identification of New potential applicants could be relatively easy, because of their accessibility, the homogeneity of the harm suffered, the cohesion in the community, and the attitude/presence of local authorities/leaders. However, this exercise may be more complex and more time-consuming in other villages. The Registry has been advised therefore to take a cautious approach, and to multiply and cross-check the sources of information to avoid alleged fraudulent practices and the exclusion of categories of legitimate potential beneficiaries.

59. The Registry has also been warned that it would also be a challenge to track members of some communities, such as, for example, Fulani cattle herders, who are in movement during transhumance seasons; and, more generally, Potential beneficiaries would have been displaced as a result of the Ongoing Crisis and their tracks are not necessarily reported. The Registry notes however that a number of organisations based in CAR have expertise and knowledge that would be of assistance to overcome these challenges.

60. Given this context, the Registry will need to adopt specific strategies, starting with a mapping exercise of Potential beneficiaries, which should be carried out as soon as possible with the assistance of the relevant experts, and in coordination with the legal representatives of victims and applicants (“LRV/LRs”). The Registry would regularly inform the Trial Chamber of the progress made on this identification

process and provide the Trial Chamber with an approximate figure of the total number of identifiable Potential beneficiaries and the time required to reach out and assist them to complete reparations forms. Such information would help to determine the scope of liability of the convicted person.

2. Categorisation and valuation of claims

61. Given the context in CAR described previously, the Registry considers it difficult for victims to prove the harm they suffered, while it is also difficult to obtain evidence on the basis of which their damage, loss and/or injury can be quantified. Similarly, the Court faces the challenge of assessing with consistency, on an individual basis, the corresponding level of reparations to award.
62. One possible avenue for the Trial Chamber is to step away from individually-assessed awards and standardise the awards according to the types of harm alleged. In the case of pillage, the standards could be set depending on the loss and the reparations sought: those seeking larger amounts of reparations would be expected to provide a greater level of evidential support for their claims than those claiming smaller amounts. For example, a person alleging to have been robbed of his personal items or merchandise valued under a certain amount would not need to provide documentary evidence of the event other than his own statement (given that such documentary proof is unlikely to exist). However, a cattle owner who claims his entire herd was pillaged might have to provide some kind of proof of his previous ownership of the cattle to obtain adequate and proportionate reparations.⁹⁷ The Registry

⁹⁷ The Registry notes that even within this category of pillage, it may be necessary to create sub-categories, depending on the type of activity (nomadic herders may not have any document to support their ownership of their cattle) and the size of the cattle.

stands ready to assist the Trial Chamber to gather relevant information on the types of existing documentary evidence relating to the harm suffered.

63. Following this approach, the Registry, with the assistance of relevant experts and in coordination with the LRV/LRs and TFV, would group the claims according to their similarities in terms of crime, type of harm and supporting evidence relating to the harm. Instead of assessing each individual claim, the Trial Chamber would take a decision on the level of reparations awarded for each category of claims, as presented by the Registry, after receiving submissions from parties and stakeholders. The Registry or any other designated body would then apply the Trial Chamber's decision administratively to every claim that falls within each category, bearing in mind the precedents decided by the Trial Chamber.
64. The Registry considers that a categorisation of this type could also take into account vulnerability criteria, should the Trial Chamber decide to prioritise certain types of applications, and would also help to determine the liability of the convicted person.

III. Registry's observations on the appropriate types and modalities of reparations

A. Distinction between individual and collective reparations

65. The rights of victims to reparations is an individual right provided under numerous international instruments, and is preserved pursuant to article 75 (6) of the Rome Statute. As recalled in the Appeals Chamber Judgment, there are procedural implications if the Trial Chamber decides to opt for individual reparations, collective reparations or both.⁹⁸ The Registry maintains its views previously expressed in the context of other cases before this Court⁹⁹ with regards to both modalities of reparations. Indeed, in general the Registry considers that individual and collective approaches to reparations are complementary and, if awarded together, should work in conjunction in the way that is most appropriate in the circumstances of each case.

B. Preliminary findings

66. The Registry will hereby limit itself to reporting on its experience in CAR, and the information taken from the individual applications for reparations already submitted to the Registry.

1. Participating victims and Applicants' expressed preferences

67. When interacting with the Registry and its intermediaries, Participating victims and Applicants have expressed a wish for compensation reparations measures, in order to redress the harm suffered in relation to the Case. This results from different factors, including their current

⁹⁸ Appeals Chamber Judgment, ICC-01/04-01/06-3129, paras. 149 and 152.

⁹⁹ Registry, *The Prosecutor v. Thomas Lubanga Dyilo*, "Second Report of the Registry on Reparations", dated 01 September 2011 and reclassified as public on 19 March 2012, ICC-01/04-01/06-2806, paras. 60-74; Registry, *The Prosecutor v. Germain Katanga*, "Registry's Observations pursuant to Order ICC-01/04-01/07-3532" 15 May 2015, ICC-01/04-01/07-3553, para. 4.

situation, their immediate needs, the nature of their domestic legal system and the perceptions they have of Mr. Bemba.

68. Furthermore, the Registry notes from these interactions that Participating victims and Applicants expressed a strong preference for individual material and tangible benefits to address their more immediate and specific needs and those of their families.¹⁰⁰ They also showed negative reactions when presented with the examples of symbolic types of reparations, such as monuments and memorials. However, when scant information has circulated in communities regarding the Court's reparations process, the existing modalities and type of reparations, the distinction between individual and collective awards is often a source of confusion. In particular, Participating victims and Applicants seem to have no grasp of what could constitute collective reparations in the absence of crafted examples tailored to their local situation. It is for this reason that the Registry deems it important that the Trust Fund for Victims ("TFV") and/or the LRV/LRs consult victims further, armed with specific examples of the types of reparations that would be available to them. The Registry is at their disposal to assist in this consultation.

¹⁰⁰ The Registry felt a general fatigue with the "time of the proceedings" (which describes a long process) that does not correspond to the reality faced by the victims.

2. Information available in the requests for individual reparations

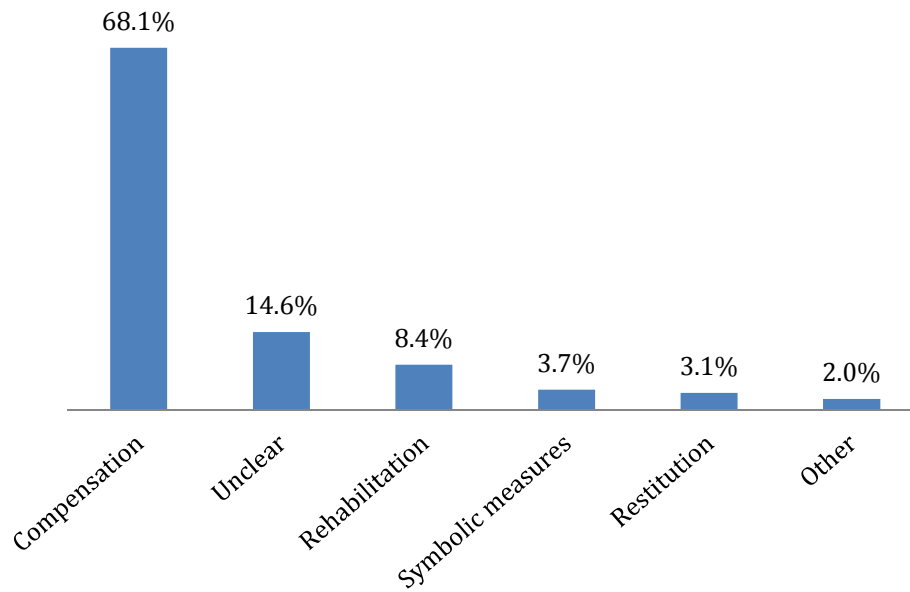


Figure 9: Type of reparations sought in the individual requests for reparations (based on 5229 applications)¹⁰¹

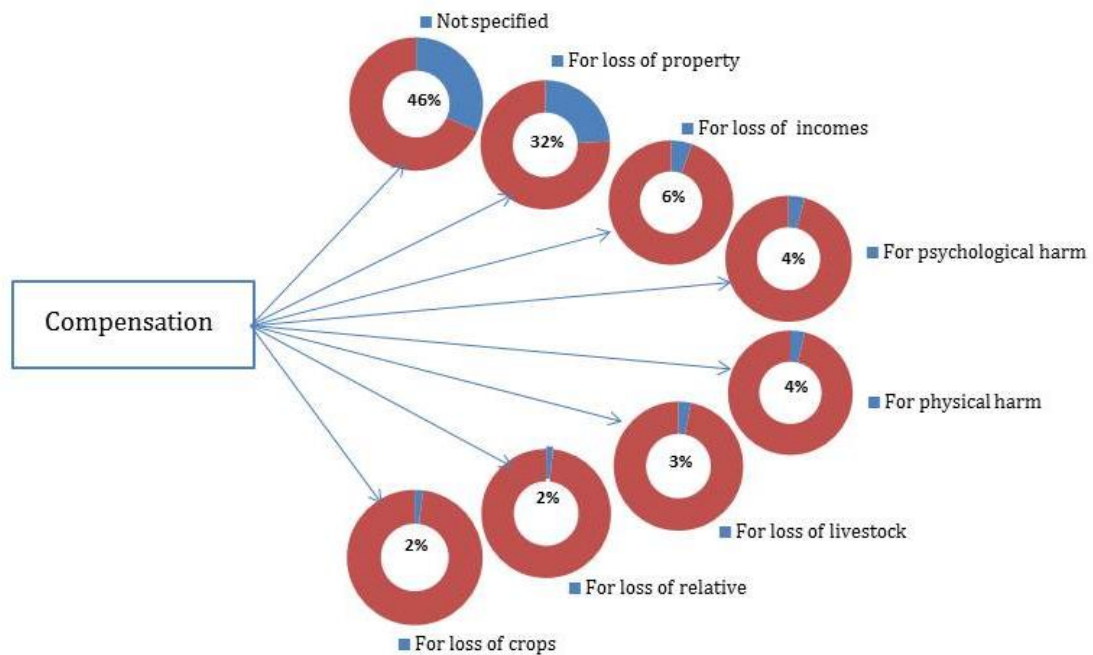


Figure 10: Type of compensations sought in the individual requests for reparations (based on 5229 applications)

¹⁰¹ The type of reparations “Unclear” refers to requests which have not been clearly expressed by the applicants in the form.

C. Other relevant factors in the instant Case

69. The Registry considers that when making determinations on the modalities of reparations, the Trial Chamber might also need to take into account several considerations, including the actual harm suffered and claimed by direct and indirect victims in their application forms, as well as the considerations listed below. In light of the contextual information provided in Section VI (B) below and in the security assessment attached in Annex III to the present report, the Registry highlights that the Registry considers that depending on their types and modalities of distribution, reparations awards may lead to the marginalisation of vulnerable Potential beneficiaries in certain areas. According to the information received by the Registry, certain groups of victims seem to be more vulnerable to stigmatisation, including the victims of sexual violence and victims from ethnic groups or the religious faith associated with ex-Seleka. Extreme caution is thus recommended by the Registry when dealing with these groups of vulnerable victims. The Registry considers for example that specific identification approaches should be implemented, *inter alia* with the involvement of staff specialised in dealing with vulnerable victims. It would recommend also the use of experts to ensure that the types and modalities of reparations are suitable taking into account the specific needs of these victims, their level of poverty, the presence of armed groups and the circulation of arms and/or use of drugs by armed individuals in the victims' communities.
70. The Registry further notes that many Potential beneficiaries have been displaced from their original place of residence, and now live in internally displaced camps or refugee camps located in neighbouring

countries. It is currently unknown whether these Potential beneficiaries will eventually return to their place of origin or settle elsewhere. The Registry considers that the modalities of reparations should also take this factor into account.

1. The nature of the charges and of the harm suffered

71. According to the principles of international human rights and international criminal law, the identification of what might constitute appropriate forms of reparations for victims is fundamental in order to establish an effective reparation scheme. It has to take into account the type of harm suffered by individuals and the aggravated circumstances in which the crimes have been committed.¹⁰²

72. Regarding reparations of victims of rape in particular, the Registry notes the guiding principles enumerated by the UN Secretary General, which states that “[a]dequate reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations”¹⁰³ and that individual and collective reparation should complement and reinforce each other in order for reparations to be comprehensive.¹⁰⁴

¹⁰² See, for example, United Nations, General Assembly, *Resolution 60/147, 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*, 16 December 2005, A/RES/60/147; United Nations General Assembly, *Resolution 61/177, International Convention for the Protection of All Persons from Enforced Disappearances*, 20 December 2006, (A/RES/61/177); *Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation*, adopted at the International Meeting on Women’s and Girls’ Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007.

¹⁰³ UN Note on Reparations for CRSV, June 2014, p.5.

¹⁰⁴ *Ibid.*, pp.7-8.

2. *The need for a consultation process*

73. A principle recognised by the Appeals Chamber is that victims should be consulted on issues pertaining to reparations.¹⁰⁵ Experience in the field consistently shows that in order for reparations procedures to have their intended impact and be perceived as such, the views and preferences of the victims must feature somewhere in the final order for reparations. In particular, Participating victims and New potential applicants should be consulted so that the reparations award fit the victims' needs, and for them to take ownership of the process, an essential factor if reparations are to be successful.

74. The Registry considers, consequently, that a consultation exercise needs to be carried out to provide the Trial Chamber with information on:

- the reparations measures sought;
- the needs of victims;
- possible crafted awards tailored in the instant Case;
- the design, implementation and monitoring of the reparations awarded.

75. In the light of the trust and special client/counsel relationship between the victims and the LRV/LRs, the Registry suggests that the LRV/LRs conduct consultations with their clients, in accordance with the professional responsibilities to their clients and the Court. The Registry stands ready to assist the LRV/LRs with the logistical aspect of these consultations and to share its experience in terms of methodology, if need be. It would be up to the LRV/LRs to determine the appropriate level of involvement of the TFV, if any, in these consultations.

¹⁰⁵ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, "Order for Reparations (amended)", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 32.

76. During the consultations, victims should be provided with clear and timely information to enable them to take ownership of the process. On the basis of its experience, the Registry recommends that if Mr. Bemba's conviction is confirmed by the Appeals Chamber,¹⁰⁶ context-specific and concrete options of awards be proposed to victims to facilitate their consultation and better manage their expectations.¹⁰⁷

77. The Trial Chamber might hear submissions from experts, parties and participants to decide on a set of options to propose to the potential beneficiaries who will be consulted.

3. The feasibility of the award

78. In deciding on the modalities and type of reparations, the Registry recognises that the Trial Chamber would have to take into account practical considerations, such as (i) the number of eligible beneficiaries (those already identified and those not yet identified, on the basis of a preliminary mapping) and, their whereabouts, (ii) the possibility to proceed with an application-based process, (iii) the liability of the convicted person compared to the available funds, and (iv) the security situation on the ground.

¹⁰⁶ The Registry is here mindful that consultation processes may generate expectations among victims that reparations will actually be delivered, increase victims' fatigue with the Court and could expose victims' status. It therefore recommends against engaging in this activity before a conviction is confirmed.

¹⁰⁷ The Registry learned the importance of this aspect from the consultations it carried out in Ituri, DRC, see Registry, *The Prosecutor v. Germain Katanga*, "Public Redacted Version of: Annex 1 to the Registry Report on Applications for Reparations in accordance with Trial Chamber II's Order of 27 August 2014", 21 January 2015, ICC-01/04-01/07-3512-Anx1-Red2, paras. 9-10 and 23.

D. Need for an assessment of the impact of reparations

79. In order to foresee risks and avert or mitigate them, an impact assessment of different forms of reparations or methods of prioritisation could be undertaken before the modalities of reparations are determined.

80. The Registry highlights that the timing of such an impact assessment is particularly important. The Registry submits that carrying out an impact assessment, before a final conviction, would be desirable. The Registry is mindful that this assessment, if carried out too early, may unnecessarily raise expectations of victims. However, such assessment would be necessary for the Trial Chamber to be aware of the likely impact of different forms of reparations or different methods of prioritising resources at an early stage and before making its final Reparations Order. Therefore, if the Trial Chamber plans to address the question of reparations more or less at the same time as issuing a final judgement on appeal on guilt or shortly thereafter, the Registry would respectfully submit that an impact assessment should be promptly conducted to enable the Trial Chamber to make or approve methods for the prioritisation of resources in a fully informed manner.

IV. Registry's observations on the use of experts

81. In addition to the list of areas of expertise already identified by the Trial Chamber in its 22 July 2016 Order,¹⁰⁸ and bearing in mind its Observations above, the Registry has identified one additional area in which the Trial Chamber might benefit from the assistance of experts as provided by Rule 97 RPE, namely expertise

¹⁰⁸ 22 July 2016 Order, ICC-01/05-01/08-3410, Footnote 12.

in the design and implementation of consultation processes with victims, including with sampling methodologies.

82. Pursuant to paragraph 9a) of the 22 July 2016 Order, the Registry is in the process of launching a call for expression of interest for individuals with relevant expertise who could assist the Trial Chamber in the reparations process. A list of the individuals selected by the Registry on the basis of their qualification in one or more of the sought areas of expertise will be provided to the Trial Chamber before the deadline of 31 December 2016.¹⁰⁹

V. Registry's observations on the current security situation

83. Since the end of 2012, CAR has been plunged into turmoil and has been facing a deep political, security, and economic crisis. Despite the election of President Faustin Archange Touadéra in March 2015 and the Government's determination to end the cycle of violence, many challenges remain, among them the stabilisation of the security and peace countrywide, national reconciliation, and the implementation of the Disarmament, Demobilisation, Reintegration, and Repatriation (DDRR) programme.
84. The stabilisation of security remains a challenge with armed groups and militias still active countrywide including in Bangui and with political, social, and economic grievances remaining. In the coming months there will continue to be concerns for renewed, namely with regard to crime, the presence of armed groups, and popular dissatisfaction over social inclusion and/ or Government decisions. In addition, clashes between

¹⁰⁹ Trial Chamber III, "Order on the Registry request for extension of time to identify experts", 28 October 2016, ICC-01/05-01/08-3453.

anti-Balaka and ex-Séléka elements outside Bangui and LRA activities in the eastern part of the country continue to be reported every day (for more details about the security situation in the Central African Republic including the current recommendations and logistical constraints, see Annex III).

VI. Other relevant Registry's observations

A. Methodology followed by VPRS to address the issues raised in the Chamber's Order

1. *Review and organisation of relevant data from applications received in the Case*

85. The Registry has compiled and organised data relevant to the question of reparations and available in its database from the approximately 5760 applications for participation in the proceedings and/or reparations received by the Registry relating to the Situation in the Central African Republic since the opening of the Case.¹¹⁰

86. In this report, the Registry draws its data and analysis regarding the type of crimes and harm suffered as well as the type and modalities of reparations sought from the application forms of the pool of Participating Victims. The Registry considers that the 5229 Participating victims constitute a representative pool of the total of Potential beneficiaries for reparations in the Case. Indeed, their applications have been through an adjudication process during Pre-Trial and Trial stages, and Chambers have issued consistent individual decisions on their merits.¹¹¹

¹¹⁰ This includes applications that, in light of the information provided, have been assessed, by the Registry or Chambers, to be incomplete or not linked with the Case.

¹¹¹ The Trial Chamber noted that: " information about the harm suffered by victims and the circumstances of their victimisation is available in the applications to participate in the

87. Among the 5229 applications for participation in the proceedings of Participating victims, the Registry notes that approximately 3700 Participating victims also requested reparations.¹¹²

88. Moreover, approximately 600 additional Applicants filed separate application forms for reparations, which have been transmitted to the Defence, in accordance with rule 94 of the RPE.

89. The Registry has received a further approximately 120 applications for reparations which have not been transmitted to the parties.¹¹³

90. On the basis of the individual decisions issued by the Chambers on the merits of applications for participation in the proceedings, the Registry provides below an overview of the age and gender of the Participating victims in the Case, as well as the locations per type of crimes recognised in those decisions.

proceedings submitted by the 5229 victims”, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Order on the Requests for extension of time to file submissions relevant to reparations”, 25 August 2016 ICC-01/05-01/08-3429, para 10.

¹¹² This includes applications for reparations transmitted at the same time as the transmission of applications for participation (when applicants used a joint form for participation and reparations) as well as those applications for reparations transmitted separately under rule 94 of the RPE. 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, 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.

¹¹³ These applications have been assessed by the Registry as either incomplete and/or not linked with the instant Case, or were received by the Registry after its last notification to the Defence of applications for reparations in accordance with rule 94(2) of the RPE (See “Registry, Situation in CAR, “Fifteenth Periodic Report of the Registry on the activities of the Victims Participation and Reparations Section in the Situation in the Central African Republic”, dated 11 August 2014, ICC-01/05-77).

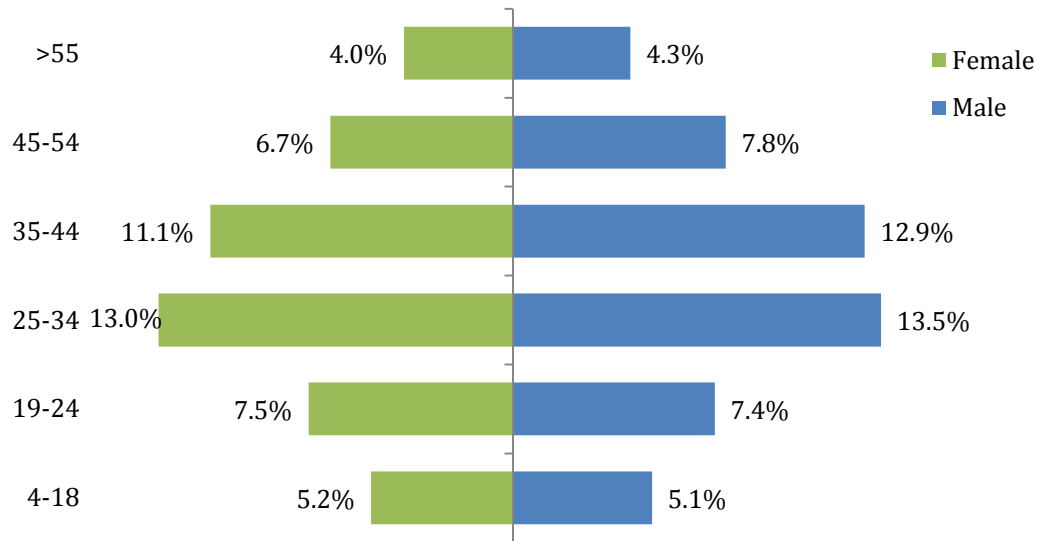


Figure 11: Participating victims' age in 2003 (based on a total of 5229 applications)

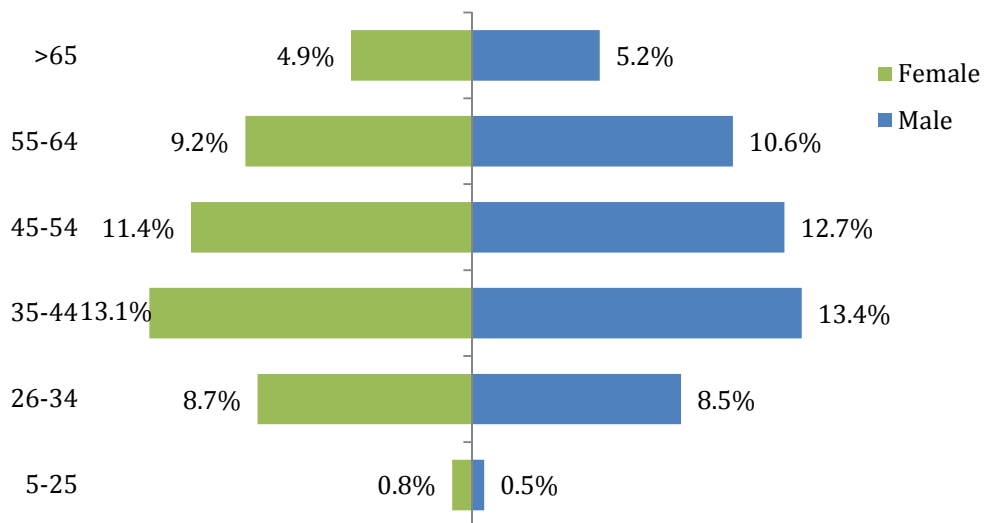


Figure 12: Participating victims' age in 2016 (based on a total of 5229 applications)

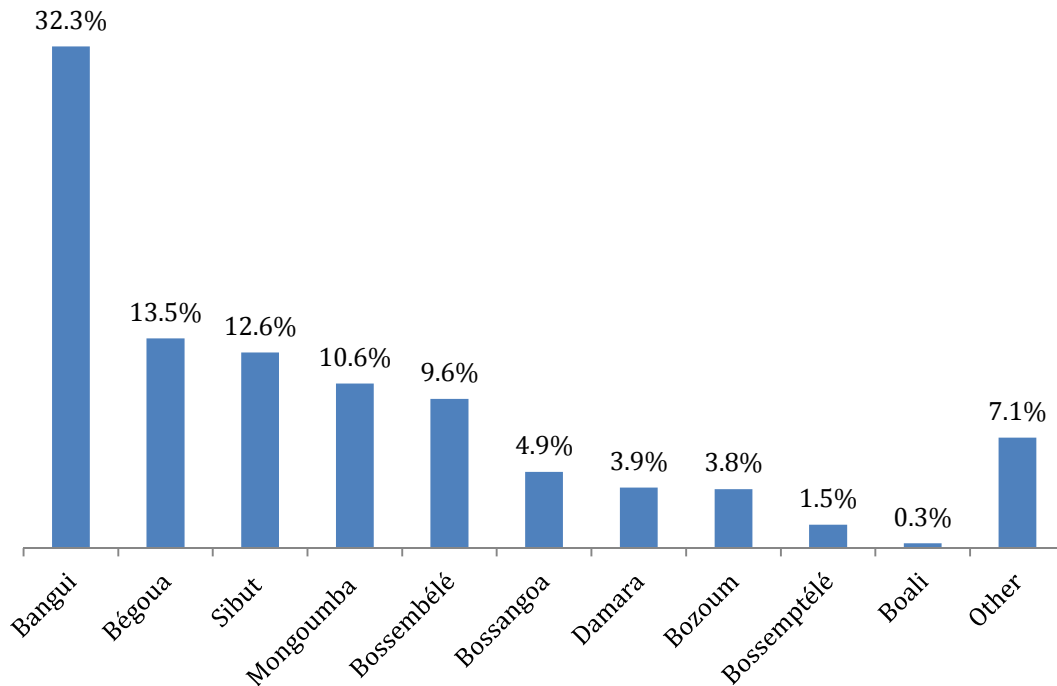


Figure 13: Participating victims' place of residence when form was filled-in¹¹⁴ (based on a total of 5229 applications)

91. Furthermore, the Registry notes that the Participating victims in the Case also belong to different ethnic groups - such as Banda, Gbaya, Mandja, Yakomas, Fulani (including Mbororo), Sara - to which different cultural norms apply. These groups have also different religious faith

2. *Inquiries with relevant interlocutors*

92. In addition, the Registry based its observations on the expertise of its field staff based in CAR and interactions with relevant interlocutors including affected communities, local and international aid organisations, as well as intermediaries.

93. In addition, in September 2016, the Registry conducted preliminary and informal consultations in CAR and during a conference on reparations

¹¹⁴ The places of residence are those mentioned in the applications forms that were filled -in between 2008 and 2011. However the locations where Participating victims live have changed owing to the ongoing conflict in CAR.

held in Uganda,¹¹⁵ with civil society actors and experts to collect their views on: (1) the security situation in CAR and the current situation of victims, including the impact on the victim population of CAR crisis which started with the unrest of December 2012 (“Ongoing Crisis”); (2) the types and modalities of reparations appropriate to address the harm relevant to the circumstances of the Case; and (3) potential challenges that need to be taken into account when implementing reparations programmes. Owing to time constraints, the number of consultations was limited, and consequently the Registry does not consider that it has been able thus far to conduct detailed and comprehensive inquiries into these matters. As developed below, the Registry respectfully recommends that further consultations be conducted, *inter alia* with a sample of victims, in order to provide the Chamber with more detailed recommendations and specific options for reparations programmes.

B. Contextual information

1. *VPRS activities in the field and related difficulties*

94. Public information and outreach activities relating to victim participation in the Case in CAR began in 2008. The activities initially focused on the capital, Bangui, and its surroundings, and in 2010 were extended to the interior of the country. Between 2011 and 2012, the Registry maintained a steady presence in the following areas most affected by the crimes alleged in this Case: Bangui, PK12, PK22, Damara, Sibut, Bossembélé, Bossemptélé, Bossangoa, Bozoum and Mongoumba. However, the Registry was unable to conduct activities in or around other affected localities, such as Boali, Yaloké, Dekoa, and

¹¹⁵ International conference organised by Avocats Sans Frontières, Belgium and REDRESS, in Entebbe, on 26 and 27 September 2016.

Kaga Bandoro. The Registry was able to publicise the judicial proceedings and facilitate the application process for participation of victims in the Case until late 2012, mainly through radio programmes broadcast in Sango, meetings held with affected communities and a network of intermediaries.

95. Most of the Registry's field activities were suspended from December 2012 to December 2015 for security reasons. Although the Court's field office closed temporarily, on account of its location outside the then security perimeter, the Registry was able to maintain a limited presence and level of activity in Bangui throughout the crisis. Registry staff in Bangui kept abreast of the situation on the ground, including the continued interest shown by victims in information about procedural developments concerning ICC reparations. They were able to maintain regular communications with a network of intermediaries who were in contact with victims in the Case to ensure a minimal flow of information about the Court's activities. Owing to the volatile security situation, the Registry currently operates with limited capacity on the ground and competing priorities. To date, the field staff operated with temporary premises which allowed for the support of various missions occurring sometimes simultaneously.¹¹⁶

2. Impact of the Ongoing Crisis on the Potential beneficiaries

96. Evaluating the precise extent and manner in which the situation of victims related to the Case was affected by the Ongoing Crisis is a

¹¹⁶ To date only two local staff are dedicated to outreach and activities linked with participation and reparations for the Situation in CAR and the Situation in CAR II. As from the beginning of 2017, the field office is expected to have additional material and human resources.

challenging exercise. On the basis of the information that the Registry has been able to gather, through meetings organised with a number of civil society actors, including intermediaries, the Registry considers that the crisis affecting CAR since December 2012 has led to the following:

- the potential re-victimisation of victims related to this Case;¹¹⁷
- the need for a large part of the population to receive humanitarian assistance;¹¹⁸
- extensive movements of victims related to this Case to internal displacement camps, host villages, and refugee camps;¹¹⁹
- the modification of the social fabric in towns, villages and neighbourhoods where the Registry used to conduct activities;¹²⁰
- shifts in internal cohesion among the victim population.¹²¹

¹¹⁷ See Office of the Prosecutor, *Situation in the Central African Republic II*, "Article 53(1) Report" 24 September 2014, paras. 88, 255-258, 260-263.

¹¹⁸ According to the *Report of the Secretary-General on the situation in the Central African Republic*, "[T]he humanitarian situation remained dire, with more than 2.3 million of the 4.8 million Central Africans still dependent on humanitarian assistance". United Nations, Secretary General, *Report of the Secretary-General on the situation in the Central African Republic*, 29 September 2016, S/2016/824, para. 37.

¹¹⁹ *Ibid.* For updated information on the situation of refugees and internally displaced persons see United Nations Refugee Agency, "Réponse Régionale à la crise des Réfugiés en République centrafricaine", <http://data.unhcr.org/car/regional.php>. It has been reported to the Registry that internally displaced victims may be located in towns' sites under the control of armed groups linked with ex-Sekeka.

¹²⁰ The presence of arms and armed groups, in particular in localities where the Court used to operate before the Ongoing Crisis, has (1) provoked mass movements of individuals of the Muslim faith (See also: HRW, "Central African Republic: Muslims forced to flee", 12 February 2014; and (2) posed a challenge to the traditional authority of the *Chefs de Village*, and/or the disappearance of administrative authorities. Before the Ongoing Crisis, victims lived in a vast geographical area, mostly in or around the localities and axes mentioned in the Decision Confirming the Charges. The Registry has been informed that most of the Muslim population who used to live in localities such as Bossembele, Bossangoa, Bossemptele, Bozoum and Mongoumba, or in areas of Bangui such as PK12 and PK13, no longer live in those areas and have been displaced to a variety of locations such as refugee camps in Cameroon, Chad, the Congo and the DRC, and internally displaced camps in CAR.

¹²¹ The Registry has been informed of perceptions on the part of certain populations and their assimilations to the ex-Seleka, affecting the cohesion between communities including in locations where victims used to live such as Bangui. See for instance Conseil Danois pour les Réfugiés, "Analyse à base communautaire des perceptions des dynamiques conflictuelles des

97. The Registry considers that any of the above-mentioned effects of the crisis will have a direct impact on how reparations are perceived or expected by victims in the Case, how potential beneficiaries can be reached and/or identified by the Registry, as well as the type of reparations programmes and/or awards that can be put in place.

3. *Victim's expectations*

98. The Registry's experience shows that despite efforts deployed to disseminate clear and accurate information about reparations in the field, victims still have high expectations. Even before the Ongoing Crisis, at the trial stage, expectations regarding reparations in CAR were particularly high. There were rumours and speculation about the type of reparations and when they would be awarded.¹²² The Registry predicts that recent developments may create more confusion among the victim population and cause further misinformation about reparations. These developments include the opening of a new ICC investigation related to the crimes falling within the scope of the Situation in the Central African Republic II ("CAR II"),¹²³ the prospect of a Special Court¹²⁴ or the humanitarian assistance provided by other organisations in response to the Ongoing Crisis.

populations du PK5 ", May 2015, pp.25-33, http://www.cf.undp.org/content/car/fr/home/library/democratic_governance/analyse-a-base-communautaire-des-perceptions-des-dynamiques-conf.html.

¹²² The lack of clarity surrounding reparations in the Case results from a variety of factors. These include: the impact of the ICC proceedings and of victims' participation, which involved more than 5000 victims, the confusion between participation and reparations at the ICC; and the often misunderstood separate mandate of the TFV, all combined with the limited capacities of the Registry to disseminate information on reparations. Moreover, the Bemba trial has been taking place in a context of extreme precariousness and urgent needs of victims, a high rate of illiteracy of the victim population and poor infrastructures in the country.

¹²³ OTP, Situation in the Central African Republic II. Article 53(1) Report, 24 September 2014.

¹²⁴ Géraldine Mattioli-Zeltner, "Taking Justice to a New Level: The Special Criminal Court in the Central African Republic", 13 July 2015, <https://www.hrw.org/news/2015/07/13/taking->

4. *Reparations in the context of an ongoing conflict and ongoing investigations*

99. The people of CAR have suffered a series of crisis, which left them with a failed State for decades, and a widespread culture of impunity. Before the Ongoing Crisis, some communities outside Bangui relied on a system of “parallel” justice operated by key individuals from the community,¹²⁵ and very fragile institutions.¹²⁶ This system collapsed following the events, and for the last three years, communities have been left to their own devices, ruled by armed groups, in complete absence of the State.¹²⁷ Whole populations have no access to information and the communication network is very weak.

100. It has also been pointed out to the Registry that reparations for victims of crimes committed in CAR in the context of the Case offer a unique opportunity to restore hope and faith in justice, a concept to be emphasised and appropriated by the population by means of tailored outreach by the Court. In particular, the Registry’s interlocutors stressed that reparations should also support the restoration of the judicial system, and that perpetrators are being held accountable and punished, even when they come from different countries.

[justice-new-level-special-criminal-court-central-african-republic](#). For an update on the status of the Special Court, see United Nations, Secretary General, *Report of the Secretary-General on the situation in the Central African Republic*, 29 September 2016, S/2016/824, paras 46-47.

¹²⁵ Such individuals are not necessarily village Chiefs, but are generally elders or community leaders invested with this function by their communities.

¹²⁶ Office of the United Nations High Commissioner for Human Rights, “*Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Philip Alston on his mission to the Central African Republic*”, 27 May 2009, A/HRC/11/2/Add.3, para. 59.

¹²⁷ See United Nations Security Council, “*Final Report of the International Commission of Inquiry on the Central African Republic*”, 22 December 2014, S/2014/928, paras. 57 and 58. While, the Government is taking steps towards the strengthening of the Justice and of the rule of law, “[i]n some areas under the control of armed groups, the gap in basic justice services has been filled by parallel justice systems established by armed groups and/or religious leaders, while in a few areas, both local authorities and armed groups opposed the redeployment of magistrates.” United Nations Secretary General, *Report of the Secretary-General on the situation in the Central African Republic*, 29 September 2016, S/2016/824, para. 49.

101. The Registry also considers that the outcome of the ongoing investigations in the Situation in CAR II may have an impact on the Potential beneficiaries for reparations. In the event that one or more cases against individuals from the anti-Balaka or ex-Seleka groups were to proceed, the level of threats and security risks for individuals associated with the ICC would have to be assessed.

C. Role of the Registry

102. On the basis of the information presented in this report and bearing in mind the ongoing appeals, the Registry respectfully proposes to undertake the following actions:

1. *Gradual outreach*

103. The Registry advises as a priority the conduct of outreach. Such outreach should take into account the different situation of victims (either displaced, or marked by other type of vulnerabilities) and aim at reaching all communities, as far as possible. These outreach activities may be undertaken by the Registry together with the LRV/LRs and TFV.

104. To the extent possible, victims should be given clear directions and offered predictability with regard to reparations procedures. Messages should address, at least in general terms the following issues: (a) the eligibility criteria, including the issue of next of kin; (b) the procedural timelines, namely whether or not an Order for reparations should be expected before a final decision on Conviction; and (c) the type of claims that will be used (including whether: (i) applicants should expect an application-based process; (ii) those applicants who applied for

participation only would need to fill in an additional application form for reparations; and (iii) applicants would be expected to disclose their identity to the Defence). Such clear directions, albeit not comprehensive, will reduce the risk of discrepancies in the messages provided by the different actors working with victims in the field. It would also clarify messages regarding what could be expected and when, so that beneficiaries would be provided with accurate information and be in a better position to manage their own expectations regarding the potential outcome.

105. As far as notification to victims under rule 96 of the RPE (publicity of procedures) is concerned, the Registry considers that such steps would not be appropriate until such time as the Trial Chamber has made a public decision regarding its approach to reparations, and will have to be context-specific.

2. Coordination between the Registry, the LRV/LRs and the TFV

106. Given the specific context in CAR, and to ensure the most efficient use of resources, the Registry would welcome some level of coordination between the various actors who will be interacting with victims in the context of reparations, and more importantly the LRV/LRs and the TFV.

107. With respect to the independence of the mandates of the LRV/LRs and TFV, the Registry suggests that all those involved ensure coordination on the following:

- information and messages provided to victims regarding reparations procedures and the assistance mandate of the TFV;
- activities/consultations to be implemented in the field, including harmonisation of the methodology for collecting and conveying data; and

- the sharing of information on reliability/security issues encountered in the interaction with victims, intermediaries and the rest of civil society.

3. *Mapping exercise*

108. With the assistance of experts, organisations based in the CAR and in coordination with the LRV/LRs and TFV, the Registry considers necessary a mapping exercise to collect information regarding:

- the identification and localisation of New potential applicants, in light of rule 85 of the RPE;;
- the identification of relevant key civil society actors who can assist the Court in identifying New potential applicants and, more generally, inform the Court on, *inter alia*, (1) the type of reparations that can be implemented (be they individual, collective or both); (2) the way awards should be framed as to avoid identified risks of exacerbating tensions and causing re-victimisation and (3) the best ways to publicise reparations proceedings.
- external records available to supplement, support or verify the claims of victims, including the type of evidentiary document that can be gathered to assess, per type of crime the extent of the harm suffered.

109. The Registry stands ready to propose a timetable for said mapping to be conducted.

4. *Process for collecting new application forms*

110. As instructed in the 22 July 2016 Order,¹²⁸ at this preliminary stage the Registry will not be seeking application for reparations pending a determination by the Trial Chamber of the approach to be taken as

¹²⁸ 22 July 2016 Order, ICC-01/05-01/08-3410, para. 10.

regards reparations proceedings. Given the current context in CAR, and in light of its experience of application processes, the Registry recommends starting with the above-mentioned mapping exercise in order to identify the locations of New potential applicants and assess the feasibility of an application process, or whether alternatives are preferable. If, upon receiving information from the Registry regarding the feasibility of the process the Trial Chamber decides that it will accept new applications for reparations, the Registry further recommends that it be given a “hands-on” approach regarding the application process for newly identified beneficiaries, Experience has shown that this approach is the best for ensuring that applications that are collected are completed following best practices, that victims have been given accurate information about the process, and that the process, in general, is well managed and coordinated in light of the procedural timeframe. The Registry therefore stands ready to propose to the Trial Chamber a simplified form that is tailored to the specificities of the Case,¹²⁹ and make said application forms for reparations available upon request for completion with the assistance of the LRV/LRs, and/or individuals and/or organisations who have previously been trained and vetted.¹³⁰

111. The Registry further advises that the Trial Chamber sets a timeline for both the collection and the transmission of all new applications in order to frame the process and offer all those involved more predictability.

¹²⁹ The Registry notes that in the processes relating to reparations in the Lubanga and Katanga cases, new application forms were designed to collect data from the victims and new applicants. Should the Registry be in charge of entering the data collected from victims in this Case, it strongly advises that it should either design the said form, or at least to be consulted in order to ensure that it is in conformity with its capacities to extract the data that will be collected using it.

¹³⁰ Given the probability that a reparation process will create a lot of interest within the population, the Registry considers that there is a risk that fake applications process be operated to the detriment of victims.

VII. Conclusion

112. The Registry respectfully submits to the Trial Chamber's consideration all the above mentioned observations and recommendations. It highlights in particular the following recommendations presented in the present report:

On the principles to be applied

- In light of the expected high number of New potential applicants in this Case, the Trial Chamber might decide to prioritise reparations according to criteria such as: the nature and/or gravity of harm suffered, or the vulnerability or neediness of the victims. Should the Chamber decide to prioritise certain groups of victims for reparations, the Registry suggests that it hears further submissions on the subject from the Registry as well as experts, parties in the reparations proceedings and other relevant stakeholders;
- The Trial Chamber may wish to adopt specific principles related to victims of conflict-related sexual violence;

On the question of eligibility

- The Registry recommends that a standard of proof less than the balance of probabilities be applied in the instant Case. The Registry also recommends that the same standards of proof be applied to all Potential beneficiaries.
- The Trial Chamber might decide that Participating victims who have not yet applied for reparations should be presumed to have made such request without a written confirmation;

On the assessment of Harm

- The Trial Chamber may call experts to elaborate on the type of harms commonly suffered by victims in light of the specificities of the Case. The Registry will report to the Chamber by 31 December 2016 on potential experts available to assist the Trial Chamber in this regard;

On the scope of liability

- A mapping exercise may be carried out in order to, *inter alia*, identify the locations of Potential beneficiaries, assess the feasibility of an application process or whether alternatives are preferable, and assess appropriate ways to publicise reparations;
- Trial Chamber may wish to step away from individually-assessed awards, and rely on the system of categories to allow the standardisation of awards based on the types of harm alleged. The Registry, with the assistance of relevant experts and in coordination with the LRV/LRs and TFV, would group the claims according to their similarities in terms of crime, harm and supporting evidence relating to the harm, in order to determine their eligibility for award;

On the types and modalities of reparations

- Potential beneficiaries may be consulted on the reparations measures sought, their needs, possible crafted awards tailored to the Case and the design, implementation and monitoring of the reparations to be awarded;
- An impact assessment of different types and modalities of reparations or methods of prioritisation may also be undertaken

prior to any Trial Chamber's Order for reparations, in order to foresee the risks and avert or mitigate them.