

ANNEX

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EXPERT REPORT ON REPARATION

PRESENTED TO TRIAL CHAMBER III, INTERNATIONAL CRIMINAL COURT

Situation in the Central African Republic

In the Case of The Prosecutor v. Jean-Pierre Bemba Gombo

Team of Experts:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Hague (The Netherlands), 20 November 2017

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ABBREVIATIONS USED IN THE REPORT

CAR – Central African Republic

ICC – International Criminal Court

LRV – Legal Representative of Victims

NGO – Non Governmental Organisation

SCA – Standard Compensation Amount

TFV – Trust Fund for Victims

UN – United Nations

VPRS – Victim, Participation and Reparations Section

INTRODUCTION

1. On 21 March 2016, Trial Chamber III (Chamber) of the International Criminal Court (ICC or Court) convicted Mr. Jean-Pierre Bemba Gombo (Mr. Bemba) under article 28 (a) of the ICC Statute of the war crimes and crimes against humanity of murder and rape, and the war crime of pillaging.¹
2. On 2 June 2017, the Chamber appointed the undersigned as experts to assist it on five issues relating to reparations in this case (the Experts).² The Chamber set out these issues as follows:
 - (a) Victims and groups of victims eligible to benefit from reparations, including issues relevant to the “identification of victims”;
 - (b) Types of relevant harm suffered by direct and indirect victims as a result of the crimes for which Mr. Bemba was convicted, regardless of whether or not they have participated at trial;
 - (c) Scope of Mr. Bemba’s liability for reparations, including the financial or monetary assessment of the harm suffered by the victims under (b);
 - (d) Types and modalities of reparations that would be appropriate to address the harm under (b);
 - (e) Criteria for victims’ prioritization, including sexual violence, child victims, or other appropriate criteria.³
3. The Chamber further noted that the Legal Representative of the Victims (LRV), the Office of Public Counsel for Victims (OPCV) and the Defence identified specific detailed questions which fall within the five issues listed by the Chamber. The Chamber invited the

¹ ICC, Trial Chamber III, *Situation in the Central African Republic in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

² ICC, Trial Chamber III, Decision appointing experts on reparations, 2 June 2017, ICC-01/05-01/08, para. 11.

³ *Ibid.*, para. 1.

Experts, to the extent feasible and necessary, to include information on these questions in their report(s).

4. The Chamber requested the Experts to provide their report(s) on these issues to the Chamber and the parties. It left it to the Experts whether to submit a joint or separate reports. The Experts decided to submit a joint report.

1. The Experts

5. The team of Experts includes [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The following are the brief biographies of the Experts highlighting their qualifications and expertise in the area of reparation.

[REDACTED]

6. [REDACTED]
[REDACTED]
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[REDACTED]

7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 8. [REDACTED]

[REDACTED]

9. [REDACTED]

2. Methodology of work

10. In the preparation of their report, the Experts had, in addition to the file of the Bemba case, access to other case files relevant for reparation, including in *Al-Mahdi*, *Katanga* and *Lubanga*.

11. During a visit to the Court in The Hague on [REDACTED] 2017, they met with VPRS to obtain background information on the work of VPRS on the case of Mr. Bemba, to inspect files and data relating to the case, and to prepare for their field visit to the Central African Republic (CAR).

12. From [REDACTED], the Experts conducted a field visit to CAR.⁴ During that visit, they held interviews and focus group discussions with victims of Mr. Bemba; met with the LRV and [REDACTED] met with representatives of the CAR Government, [REDACTED] visited [REDACTED] and Ministries in Bangui; travelled to [REDACTED] and met there with Mr. Bemba's victims and with [REDACTED], and visited [REDACTED]⁵ [REDACTED].

13. In the preparation of this report, the Experts [REDACTED]. Each of them contributed to the report bearing in mind their relevant areas of expertise. Beyond the case files to which they had access, they also conducted desk-research on relevant literature on key issues relevant for the report.

14. The Experts did all that was possible to access all relevant information in and outside the CAR relevant to responding to the Chamber's requests. However, they faced massive and at times insurmountable challenges particularly given the serious security situation in the country. Furthermore, while all stakeholders capable of providing the Experts with relevant information were duly identified and contacted, [REDACTED], the Experts were not always able to gain access and obtain the information needed. This has made their mission more challenging.

3. Structure of the Report

15. The report contains five sections. The first section deals with eligibility and identification of victims. The second section deals with forms of harm resulting from the crimes for which Mr. Bemba was convicted. The third section deals with forms of reparation and prioritization of victims. The fourth section focuses on the scope and extent of Mr. Bemba's liability. Finally, the fifth section includes some specific conclusions and recommendations for the Chamber in the determination of reparation in the case against Mr. Jean-Pierre Bemba Gombo.

⁴ [REDACTED]

⁵ During the Experts visit to the CAR they had a full schedule of interviews, visits and Focus Group Discussions (FGD).

1. THE UNIVERSE OF MR. BEMBA'S VICTIMS ELIGIBLE TO BENEFIT FROM REPARATIONS

16. The first issue on which the Chamber stated the Experts may assist it is which victims and groups of victims are eligible to benefit from reparations, including issues relevant to the "identification of victims".⁶ This section will first review the conditions that must be fulfilled for victims of Mr. Bemba generally to be eligible for reparations. It will then discuss to what extent these conditions are present for victims or groups of victims that have so far been identified, and whether other victims for whom these conditions may also apply should still be identified.⁷

1.1 The conditions of eligibility

17. For a victim to qualify for reparation in this case, the following conditions must be fulfilled: (i) the victim must have suffered harm as a result of one or more of the crimes of which Mr. Bemba has been declared guilty, and (ii) these crimes must have been committed in certain defined locations in CAR (iii) from on or about 26 October 2002 to 15 March 2003.

1.1.1 *Harm suffered as a result of a crime of which Mr. Bemba has been declared guilty*

18. As a general principle, it is recognized that victims, direct and/or indirect,⁸ of serious international crimes, may suffer multiple types of harm. Those harms can affect individuals, families, communities, as well as succeeding generations.⁹ Organizations or institutions may also be affected by international crimes and experience harm as a result.

⁶ ICC, Trial Chamber III, Decision appointing experts on reparations, *supra*, n. 2, para. 1.

⁷ This Section also addresses questions identified by the LRV, the OPCV and the Defence regarding this issue and on which the Chamber has invited the Experts to include information, to the extent feasible and necessary; Trial Chamber III, Decision appointing experts on reparations, *supra*, n. 2, para. 12.

⁸ ICC, The Appeals Chamber, Situation in the Democratic Republic of the Congo, *in the Case of The Prosecutor v. Thomas Lubanga Dyilo*, 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 and 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.

⁹ Y Danieli, "The Diagnostic and Therapeutic Use of the Multi-generational Family Tree in Working with Survivors and Children of Survivors of the Nazi Holocaust" In J P Wilson and B. Raphael (Eds.) *International handbook of traumatic stress syndromes* in Stress and Coping Series, Donald Meichenbaum, Series Editor, (NY: Plenum Publishing, 1993), 889-898.

Mr. Bemba has been found guilty of murder, rape and pillage. Victims of these crimes have suffered different types of harm. Section two of this report on “Harm in the case of Mr. Bemba” provides a detailed description of the different forms of harm that victims within each of the three categories of Mr. Bemba’s crimes have suffered. This analysis shows that each of these crimes caused some form of harm to a person or persons subjected to the crime. For the purpose of establishing eligibility for reparations, there is thus no need to identify and prove the specific harm suffered by a particular victim. Following relevant international jurisprudence dealing with similar situations, the Experts consider that harm must be presumed for every person who was subjected to one of Mr. Bemba’s crimes. This is clearly the case for direct victims. The Experts submit that a presumption of harm should also apply to indirect victims.¹⁰

19. A different question is which persons qualify as indirect victims of the crimes for which Mr. Bemba was convicted. This depends on the category of crime. Details of these qualifications and the types of harm suffered by indirect victims are also discussed in the Section on “Harm in the case of Mr. Bemba”.

1.1.2 Family members and legal successors

20. Discussing the various harms suffered by direct and indirect victims within the different categories of crime in relation to reparation requires a careful understanding of the concept of the family in the CAR, particularly in order to understand which family members should be eligible for reparation with respect to which types of harm. In defining victims, paragraph V8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the Basic Principles) provides that: “Where appropriate, and in accordance with domestic law, the term “victim” also

¹⁰ Inter-American Court of Human Rights, *Rio Negro Massacre v. Guatemala*, Judgment on Admissibility, Merits, Reparations and Costs, 2 September 2012, para. 308, Inter-American Court of Human Rights, *Ituango Massacres v. Colombia*, Judgment on Admissibility, Merits, Reparations and Costs, 1 July 2006, paras. 374 and 390(f).

includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”¹¹

21. Identifying the “immediate family” of the victim for purposes of awarding reparation is an obvious issue in the case of murder, but it is also relevant to the case of rape, especially for children of rape victims, and even to certain effects of pillage. The Experts consider that the cultural understanding and the social structures in CAR should determine the relevant concept of family relevant for reparation purposes in the case of Mr. Bemba. Accordingly, “family” in the CAR tends to include both the immediate, or nuclear, family and the extended family. These dimensions of cultural understanding and social structures may lead to different conclusions depending on the category of crime at issue.
22. The Chamber has already dealt with the concept of family in the CAR, albeit in a different context.¹² In its decisions on the resumption of actions where applicants died after having been accepted for participation at trial, the Chamber followed the jurisprudence of other Chambers that have allowed family members of victims or other closely-connected individuals to resume the actions initiated by the deceased victims.¹³ The Chamber authorized a successor to participate in the reparations stage in place of the deceased victim if the successor provided evidence of (i) the death of the victim who had been authorized to participate in the proceedings; (ii) the family link or other close connection between the successor and the deceased victim; and (iii) a mandate authorizing the successor to continue the actions on behalf of the deceased victim.¹⁴ The Chamber also set up a streamlined regime for the submission and processing of future applications for the resumption of actions. Resumption applications shall be submitted on forms made available by the Registry; the Registry will assess the applications in accordance with the above criteria; and the Chamber will approve the Registry’s assessment, “barring a clear and material error apparent in the Registry’s assessment”.¹⁵

¹¹ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution 60/147, 16 December 2005.

¹² ICC, Trial Chamber III, “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.

¹³ *Ibid.*, para. 22.

¹⁴ *Ibid.*, para. 23.

¹⁵ *Ibid.*, para. 50.

23. The Experts submit that family members¹⁶ of a victim who was already found eligible to receive the Standard Compensation Amount (SAC)¹⁷ and who died before the compensation payment reached him or her, should be entitled to that compensation.¹⁸ It is recognized that non-financial forms of reparation are personal to the victim. One key purpose of the SCA that the Experts recommend for all victims, however, is to make up for the consequences of pillage on the family, and it would therefore not be justified to deprive the family of this benefit only because of the passage of time until it materializes. More victims will die the longer it takes to deliver reparation and, as has been the case in other reparation programs,¹⁹ families might well perceive the delay in providing compensation as intentional should this obligation cease with the death of the original victim.
24. The Experts further submit that a somewhat similar procedure for the resumption of actions should be used when family members of a deceased victim of pillage seek the compensation in his or her stead. This will include the receipt and assessment of the applications by the Registry (excluding the mandate that was required for participation), and the approval by the Chamber of the Registry's assessment, "barring a clear and material error apparent in the Registry's assessment".

¹⁶ Which members of the family would receive the compensation is a question that the Chamber will have to answer. The Experts submit that [REDACTED]. It would in that case be left to them how they would let the extended family share in the benefits from the compensation payment. The Experts do not recommend that the entitlement to the compensation be governed by the domestic law of CAR. In programs where small amounts of compensation were at stake, a "self-contained regime" of legal succession has proved to be more efficient; see N. Wühler and H. Niebergall, *Property Restitution and Compensation: Practices and Experiences of Claims Programs*, IOM (2008), pages 103 ff. In some countries where a husband who has more than one wife is forcibly disappeared or unlawfully killed, the policy provides equal reparations to all spouses, rather than having them share. This was the case in Morocco. See Rabat Report: The Concept and Challenges of Collective Reparation, (ICTJ, 2009), p. The Experts consider that if the victim dies without a spouse/s and/or children [REDACTED].

¹⁷ For more on SCA see section 3 of this report on Forms of Reparation.

¹⁸ If the victim who died would still have had the items that were pillaged at the moment of death, those items would have transferred to the family. It should be no different for the compensation that replaces such items. On the treatment given to family members as successors in the jurisprudence of the Inter-American Court and European Court of Human Rights as well as in various domestic reparation programmes, see R Rubio-Marín, C Díaz and C Sandoval, "Repairing Family Members: Gross Human Rights Violations and Communities of Harm" in Ruth Rubio-Marín, *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, (Cambridge, Cambridge University Press, 2009), pp. 215-290, at, p. 225-231, 262, 268.

¹⁹ Personal experience of one of the Experts, for instance in the German Forced Labour Compensation Programme, where legal successors received lesser amounts than surviving victims.

25. A different question that is distinct from the participation situation is whether the respective share of the compensation should be paid out to each eligible family member or whether one or more members would be authorized to receive the compensation on behalf of the family. This is a difficult decision, as both approaches have advantages, but also pose challenges: the first option ensures that each eligible family member receives his or her share, but the processing is complicated and time-consuming. The second option is more streamlined, but the risk is greater that some or all of the other family members do not receive their share.²⁰ One way to try and mitigate the drawbacks of both options could be [REDACTED]

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED] ■ A last question in either case would then be whether or not compliance with this obligation should – and could – be monitored.

1.1.3 Crimes committed in certain locations in the CAR

26. The geographical areas where the relevant crimes must have been committed has been described by the Chamber in the Judgment as 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.²² In the Conviction Decision, the Chamber used in the description of the 2002-2003 Operation by MLC troops terms such as “a large geographical area”, “including”, “in and around” and “along the Damara-Sibut and Bossembélé-Bossangoa axes”.²³ During the trial, the Trial Chamber also admitted as participants victims from locations not included

²⁰ In the German Forced Labour Compensation Program, some of the partner organizations of the German Foundation followed the first approach (for instance IOM); others used the second approach since they weighed the pros and cons operating in their “jurisdiction” differently.

²¹ One possibility is for the TFV to formulate rules on the distribution and receipt of compensation and other forms of reparation at the stage of implementing the Court’s final order of reparations, taking into account the different considerations the Experts lay out here. The TFV may also, at that point, require the LRV to update the Fund and the Court on the personal status of the surviving victim/s as well as indirect victims who applied for reparation.

²² ICC, Trial Chamber III, *Bemba*, Judgment pursuant to Article 74 of the Rome Statute, supra, n. 1, para. 742.

²³ *Ibid.*, para. 527.

in the above list.²⁴ The Experts submit that the geographical scope should be the same for the purpose of reparations, but that the above listing of locations of the crimes should not be regarded as exhaustive. This would be relevant in the event that victims who have not yet been identified would still be allowed to apply for reparations. In that case, the question could arise which locations beyond those in the above list should be accepted as within the geographical area where the crimes concerned were committed.

1.1.4 Crimes committed from 26 October 2002 to 15 March 2003

27. Victims are eligible to reparations only based on crimes committed from on or about 26 October 2002 to 15 March 2003. This provides a clear temporal framework; the slightly flexible “on or about 26 October” language does not pose a challenge if applied consistently.

1.2 Victims admitted by the Trial Chamber for participation at the trial

28. The Trial Chamber admitted 5229 victims for participation at the trial. For the reasons set out below, the Experts recommend that these victims be regarded as eligible for reparations without a further application process. The forms of reparation the Experts recommend for these victims and modalities for their implementation are addressed in Section 4 below.

1.2.1 The application and review processes

29. Public information and outreach activities relating to victim participation in the Bemba case in the CAR began in 2008. These activities, together with the application process for participation, continued until late 2012 when they were suspended for security reasons. The Registry received approximately 5760 applications for participation and/or reparations. It reviewed each of them and submitted the majority, which it found eligible, with its assessment, to the Trial Chamber and the Parties. The Chamber reviewed each application, together with the assessment of the Registry and the observations of the Parties, and determined that 5229 applicants were victims eligible to participate at trial. Approximately 3700 of these applicants also requested reparations.

30. In its decisions on the applications for participation, the Chamber confirmed the victim status of an applicant when it was satisfied that, having examined the application as a

²⁴ Public Redacted Version of the Registry’s Observations on Reparations (Annex II), para. 13, footnote 23.

whole, sufficient evidence had been provided to establish *prima facie* that he or she was a victim under Rule 85(b), on the basis that he or she suffered direct harm as a result of the crimes confirmed against Mr. Bemba.²⁵

1.2.2 No need for an additional application

31. The Experts submit that the 5229 victims admitted as participants should be regarded as victims eligible for reparations. The three requirements for victim participation (harm suffered as a result of a crime committed during the relevant period in a location concerned) are the same requirements that need to be fulfilled for a victim to be eligible for reparations. They have been determined to be present by the Chamber, albeit for purposes of participation, but the result would be the same if they were again assessed, now for reparation purposes.
32. It may be that in some cases victims have updated information that will facilitate the choice of the appropriate form of reparation. Given the time that has elapsed since the crimes were committed and the circumstances under which the harm was suffered, this is very unlikely. New information or documentation could still be used in the course of the implementation of reparation. But this unlikely event does not justify a wholesale new application and review process for all the 5229 victims.
33. In the Experts' opinion, an additional application is also not needed to confirm the victims' wish for or consent to reparations. Some 3700 applicants have expressed this already specifically by submitting a sole or joint application for reparations. For the remaining applicants, such a wish can be presumed, based on their understanding of how reparation is awarded in the criminal justice system in the CAR. When victims of a crime participate in a criminal case in the CAR, they do [REDACTED] [REDACTED] is heard and honoured. This was confirmed to the Experts by a number of victims, [REDACTED] during their visit to the CAR.
34. In general, the Chamber confirmed victim status based on only one category of crime, as that was sufficient for purposes of participation. Practically all applicants alleged pillage.

²⁵ A conclusion of the Trial Chamber typically stated that, having examined the application as a whole, the Chamber was satisfied that the applicant fell under the scope of Rule 85(b) of the Rules and that sufficient evidence had been provided to establish *prima facie* that he or she was a victim under Rule 85(b), on the basis that he or she suffered direct harm as a result of crimes confirmed against the accused, namely murder (or rape) (or pillage).

Given their conclusion that pillage, and harm resulting from pillage, must be presumed for all victims, and that they should be entitled to a standard compensation amount, the Experts submit that eligibility for reparations for pillage has been established.²⁶ In cases where applicants have alleged harm as a result of murder or rape, no new application is required either. Rather, the Experts submit that eligibility for reparations for these harms should be assessed when reparation is implemented. The Experts further submit that the Registry should perform this assessment [REDACTED]. The Chamber should approve the Registry's assessment, "barring a clear and material error apparent in the Registry's assessment".²⁷

1.2.3 Organizations admitted by the Trial Chamber for participation at trial

35. The Trial Chamber admitted 14 organizations for participation at the trial. The Chamber's decisions first confirmed that the identity of the person acting on behalf of the organization as well as his or her *locus standi* to act on its behalf was demonstrated by documents. The Chamber then stated that, having examined the application as a whole, it was satisfied that the organization and its belongings fell under the scope of Rule 85(b) of the Rules and that sufficient evidence had been provided to establish prima facie that it was a victim under Rule 85(b), on the basis that it suffered direct harm as a result of crimes confirmed against the accused, namely the pillage of its property. As in the case of individual victims, the eligibility for reparations of these organizations to reparations must be presumed since harm as a result of Mr. Bemba's crimes has been established, in the case of all the organizations under the category of pillage. What remains is the assessment of the extent of the harm and the determination of the appropriate form of reparations for organizations. These matters are discussed below.

1.3 Applications not reviewed by the Chamber

36. Approximately 620 applications for reparations were transmitted by the Registry to the Defence in accordance with Rule 94 and to the Legal Representatives, as well as to the Chamber, but they have not been reviewed by the Chamber. A number of these

²⁶ For details, see Section 2 on Harm and 3 on Forms of reparation and prioritization.

²⁷ ICC, Trial Chamber III, 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, para. 50.

applicants were granted participating victim status as they filed separately an application for participation. As a result, only approximately [REDACTED] of them did not participate in the proceedings. For the first batch of about half of these applications that the Registry transmitted to the Chamber, it made its assessment irrespective of whether the application was complete. For the remaining batches, the Registry performed the same type of assessment as for the applications, which were admitted by the Chamber for participation.²⁸ The Defence has not made observations on these applications, and the Chamber has not reviewed them.

37. In addition, the Registry has received 120 more applications for reparations that have not been transmitted to the Parties.²⁹

38. The Experts submit that the Chamber should review the [REDACTED] applications in the same manner as the earlier applications for participation, taking into account the assessment by the Registry³⁰ and the (still to be obtained) observations by the Parties. This process should begin now so that it is completed by the time the implementation of reparations in the present case begins.

39. The Experts submit that the Registry should assess the 120 applications and transmit those it determines to be linked to the case, to the Parties and the Chamber. The Chamber should review these in the same manner it had reviewed the earlier applications for participation.

40. Those applications that the Chamber will review positively should be regarded as eligible for reparations in the same way as the 5229 applications admitted earlier for participation.

1.4 Unidentified victims

41. Several of the Observations and of the Experts' interlocutors in CAR have insisted that there are victims of Mr. Bemba who did not file an application, either for participation or for reparations. No precise figures could be given, but estimates ranged from [REDACTED]

²⁸ Registry Observations on Reparations, *supra*, n. 24, para. 88, and VPRS-03/11/2017 - Answers to experts' queries.

²⁹ *Ibid.*, Registry Observations, *supra*, n. 24, para. 89. These applications were assessed by the Registry as either incomplete and/or not linked to the case, or were received after the Registry's last transmittal to the Defence.

³⁰ The applications in the first batch should be reviewed irrespective of whether they are complete.

██████████³¹ This raises the question whether an opportunity should be provided to such victims to file an application for reparations at this stage of the proceedings.

42. One consideration in this respect is why so many victims did not file an application.

Different reasons have been advanced. First, that ██████████

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 These activities were then suspended for security reasons. Second, that the victims who are most psychologically devastated tend to be too numb and paralyzed to act in response to outreach of any kind.³² Third, that the fighting in the country and the difficult security situation made it hard for victims both to gain access to information and to file an application. And fourth, that the large-scale displacements in and from various parts of the CAR also took place in areas where the crimes for which Mr. Bemba was convicted were perpetrated, and that it was even harder for displaced victims to submit applications than it was for those who remained in or returned to their communities. Perhaps the most problematic aspect was that at the time of the outreach, victims were told that what was at stake was Mr. Bemba's trial at the Court and that they would have the opportunity later to apply for reparations, assuming that Mr. Bemba would be convicted. The unclear situation was not made clearer by the fact that at different points in time, different application forms were used: some only for participation, some for participation and reparations; and later some only for reparations.

43. This situation poses a real dilemma. On the one hand, it is clear that there are more victims of Mr. Bemba than have so far filed applications, and it is likely that many of them have been prevented from filing an application by circumstances beyond their control. But even if the victims did not file an application for reasons attributable to them, such as that they were too beaten or overwhelmed to apply, it seems unfair to deprive those who would have wanted to file an application for reparations of the opportunity to do so.

³¹ Information given to the Experts by ██████████ Observations and obtained through ██████████

³² Y Danieli, "The treatment and prevention of long-term effects and intergenerational transmission of victimization: A lesson from Holocaust survivors and their children," In C R Figley (Ed.), *Trauma and its wake*, (New York: Brunner/Mazel, 1985), pp. 295-313.

44. On the other hand, a number of considerations speak against keeping the filing period for reparations open at this stage. An application-based reparations program must have a deadline after which applications are no longer accepted. This has been the practice of national as well as international programs so as to avoid that a program remains open-ended.³³ Further, a reasonable deadline is all the more important the more limited the program's resources are - both for reparations and for its administration - and the more the pressure is to complete the program as quickly as possible. The latter aspect is particularly relevant when victims have to wait for a long time for the reparations to materialize.
45. Extensions of deadlines happen when developments occur that had not been foreseen or when a program does not have the capacity to cope with the number of applications within its initial timeframe.³⁴ To re-open a filing deadline that was for all practical purposes closed is another matter and it poses a number of practical challenges. In the case of reparations for victims of Mr. Bemba, these challenges would be particularly serious. To offer a meaningful opportunity to file applications now, significant outreach would have to take place again, which would be particularly challenging in the current political and security environment in CAR. This political and security environment would also make it difficult for victims in many parts of the country to reach the places where applications could be submitted. The recent large-scale displacements would add to the outreach program's difficulties finding and reaching potential applicants, and for applicants to find and reach the program.³⁵ Clearly, not all would be reached and some inequality in access would thus remain. And another difficult decision would have to be made, i.e., how long the "extended" deadline should be kept open.
46. An important consequence of allowing the renewed filling of applications now would be a significant delay in the delivery of reparations for the victims who had filed their

³³ See, for example, section 14 (1) of the Law on the Creation of a Foundation "Remembrance, Responsibility and Future" (the German Federal Foundation) of 2 August 2000 (<https://www.stiftung-evz.de/eng/the-foundation/law.html>), dealing with the compensation for former forced labourers under the National Socialist regime.

³⁴ In the case of the German Federal Foundation, the filing deadline was extended by one year since it proved not feasible to complete the collection and registration of the more than 2.5 million applications in over 90 countries within the initial period of 15 months.

³⁵

[REDACTED]

applications earlier. The time it would take to collect, process and review the additional applications would prolong the waiting period for all beneficiaries, unless the “old” applicants would receive priority over the “new” applicants. In such case, the limitation in resources might lead to a preferential treatment of the former and a renewed disappointment of the latter.

47. Weighing all these considerations, the Experts would propose that no new period should be opened for the identification of additional potentially eligible victims.

48. The Court may consider whether to make an exception for surviving victims of rape and children born of rape. These are among the most serious crimes with particularly severe consequences for the victims. Especially victims of rape often find it very difficult to participate in a legal process or to submit an application for reparations, given the sensitivity of the information they will have to provide, the trauma associated with reviving the memory of the events, and the risk of further stigmatization and scorn generated in CAR by reporting rape.

49. The Experts are however mindful of the implication of reopening the filing period only for victims of rape and children born out of rape particularly concerning discrimination and stigma. However [REDACTED] in such a renewed application effort, an outreach sensitive to today’s situation of rape victims of Mr. Bemba, parallel to the outreach efforts of the Special Criminal Court where the Chief Prosecutor coined the message “Break the silence before it breaks you,” and the [REDACTED] could alleviate these obstacles somehow and offer them an opportunity they would not have had earlier.³⁶ The re-opening of the filling period should take place only if [REDACTED]

50. Should the Court consider providing another opportunity for rape victims in this case to apply for reparations, it may consult [REDACTED] and others whose views it deems useful, concerning the potential pool of such victims, their current situation, the best ways to reach them without causing additional harm, and the

³⁶ Guidance Note of the Secretary-General – Reparations for Conflict-Related Sexual Violence, June 2014, p. 7 and 10.

challenges involved. The Court should then also consider ways to streamline such a process so as to avoid unnecessary burdens for these victims and undue delay for the delivery of reparations to the victims who have already been determined to be eligible.

51. In any event, the Experts recommend that the Court review the procedures for outreach and collection of applications for reparations and make the necessary amendments to ensure that these type of dilemmas are avoided in the future. This will include being clear about filing periods and considering the use of joint application forms for participation and reparations at the trial stage, knowing that expectations would be raised, that might not be fulfilled in the event that the person indicted is not convicted.

2. TYPES OF RELEVANT HARM SUFFERED BY DIRECT AND INDIRECT VICTIMS AS A RESULT OF THE CRIMES FOR WHICH MR. BEMBA WAS CONVICTED, REGARDLESS OF WHETHER OR NOT THEY HAVE PARTICIPATED AT TRIAL

2.3 Harm and forms of harm

52. The second matter on which the Chamber invited the Experts to assist it with is the types of relevant harm direct and indirect victims suffered as a result of the crimes for which Mr. Bemba was convicted, regardless of whether they have participated at trial.³⁷ After a brief discussion of the concept of harm as it is generally recognized when serious crimes are at stake, this section will set out the types and forms of harm victims suffered under the three categories of crime for which Mr. Bemba was convicted namely, pillage, murder and rape.

53. While the concept of harm has not been defined by the Rome Statute or in the Rules of Procedure and Evidence, the Trial Chamber I in *Lubanga*, does refer to “hurt, injury and damage”³⁸ suffered as a result of the commission of an international crime. According to

³⁷ ICC, Trial Chamber III, Decision appointing experts on reparations, *supra*, n. 2, para. 1.

³⁸ ICC, Trial Chamber I, *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo*, Decision Establishing the Principles and Procedures to be Applied to Reparations, ICC-01/04-01/06, 7 August 2012, para. 228.

the Chamber, “the harm does not necessarily need to have been direct, but it must have been personal to the victim.”³⁹

54. The International Criminal Court has been addressing the various types of harm that can ensue through its case law on a case-by-case basis. So far it has recognised that there are three predominant types of harm: material, physical and psychological.⁴⁰ In addition, it has considered allegations of other types of harm, such as sui generis harm and transgenerational harm.⁴¹ More recently, in the *Al Mahdi* case, the Trial Chamber found new forms of harm, recognising the damage to protected buildings in Timbuktu, and its consequential economic loss.⁴²

55. It is recognized that that victims, direct and/or indirect,⁴³ of serious international crimes, suffer multiple types of harm. Those harms can affect individual victims, families, and communities, including succeeding generations.⁴⁴ Organizations or institutions may also be affected by international crimes and experience harm as a result.

56. There is little dispute in law or in practice that various forms of harm may take place and coexist with one another, particularly when serious international crimes are at stake.⁴⁵ As a general rule, individual harm could be pecuniary or non-pecuniary. The Inter-American Court, the international tribunal with the richest jurisprudence on reparation for gross human rights violations, understands pecuniary damage to be “the loss of or detriment to

³⁹ Ibid.

⁴⁰ ICC, Trial Chamber II, *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. German Katanga*, Reparations, ICC-01/04-01/07, 24 March 2017, para. 74.

⁴¹ Ibid., *Katanga*, p. 132-136.

⁴² ICC, Trial Chamber VIII, *Situation in the Republic of Mali, In the Case of the Prosecutor v. Ahmad Al Faqi Mahdi*, Reparations Order, ICC-01/12-01/15, 17 August 2017, paras. 72-83.

⁴³ ICC, Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo, 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 and 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.

⁴⁴ For detailed descriptions of how serious international crimes affect their victims, families, communities and succeeding generations, see Y Danieli “The treatment and prevention of long-term effects and intergenerational transmission of victimization: A lesson from Holocaust survivors and their children. In CR Figley (Ed.), *Trauma and its wake*, supra, n. 32 and Y Danieli (ed.), *International Handbook of Multigenerational Legacies of Trauma*, (New York: Springer Publishers, 1998); and Y Danieli, “Multicultural, multigenerational perspectives in the understanding and assessment of Trauma.” In JP Wilson & C Tang (Eds.) *The Cross-Cultural Assessment of Psychological Trauma and PTSD*, (New York: Springer-Verlag Publishers, 2007), pp. 65-89.

⁴⁵ Ibid., Y. Danieli concept of ‘multidimensional cascade of harm’ in “Conclusions and Future Directions,” In Y Danieli (Ed.) *International Handbook of Multigenerational Legacies of Trauma*, pp. 669-689.

the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the [...] case."⁴⁶

57. It has established that non-pecuniary or moral harm is the result of "suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms."⁴⁷ Non-pecuniary harm thus encompasses "the impairment of the victim's mental integrity."⁴⁸

58. Non-pecuniary damage often happens as a result of the suffering caused by the commission of an international crime⁴⁹ and/or of witnessing the perpetration of the crime,⁵⁰ of changes in living conditions,⁵¹ damage to reputation, harm to the integrity of the family, damage to the life plan of a victim, or stigma-related suffering. These traumatic losses are likely to result in psychological harm, where the victims develop serious mental health problems such as Posttraumatic Stress Disorder (PTSD), depression or generalized anxiety.⁵² They might also result in mental harm when the anguish suffered by the victim does not amount to what would be considered a mental health symptomatology or illness but nonetheless causes great emotional suffering. These are more akin to Post-trauma Adaptational Styles (e.g., victim, numb, fighter) that encompass those intrafamilial and interpersonal psychological, social and behavioral coping, mastery and defence mechanisms the victim/survivor adopted as survival strategies during and

⁴⁶ Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*, Judgment on Reparations and Costs, 22 February 2002, Para. 43.

⁴⁷ Inter-American Court of Human Rights, *Case of the Street Children* (Villagrán-Morales et al.) v. Guatemala, Reparations and Costs, 26 May 2011, para. 84 and *Caso Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal vs. Guatemala*, Judgment on merits, reparations and costs, 30 November 2016, para. 324.

⁴⁸ C Sandoval and M Duttwiler, "Redressing Non-pecuniary Damages of Torture Survivors," in C Sandoval, G Gilbert and F Hampson, *The Delivery of Human Rights: Essays in Honour of Professor Sir Nigel Rodley*, (Oxford, Routledge, 2011), pp. 114-136 at p. 118.

⁴⁹ Inter-American Court of Human Rights, *Velasquez-Rodriguez v. Honduras*, Reparations and Costs, Judgment, 21 July 1989, para. 27 and *Aloeboetoe v. Suriname*, Reparations and Costs, Judgment, 10 September 1993, para. 52.

⁵⁰ *Ibid.*, *Aloeboetoe v. Suriname*, para. 309.81. Equally, posttraumatic Stress Disorder (PTSD) Criterion A, 2. Establishes "Witnessing in person, the event(s) as it occurred to others", See American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders*, 5th edn, Washington, DC: American Psychiatric Association (2013).

⁵¹ Inter-American Court of Human Rights, *García-Asto and Ramírez Rojas v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, 25 November 2005, para. 267.

⁵² Y Danieli, B Engdahland WE Schlenger, "The Psychological Aftermath of Terrorism. In FM Moghaddam and AJ Marsella (Eds.), *Understanding terrorism: Psychological roots, consequences, and interventions*. Washington, D.C. American Psychological Association. (2003) pp. 223-246.

after the trauma.⁵³ Generalizing to a way of life, they become an integral part of her/his personality and mode of being in the world. They also influence parenting and affect the children's psychosocial development and adaptation, thereby becoming intergenerational.⁵⁴

59. Pecuniary damage includes loss of earnings/income, *lucrum cessans* and *damnum emergens*, lost pensions, stigma-related consequent losses, funeral expenses, loss or damage to property, loss or damage to livestock, expenses to pay for treatment and medicines to address physical or psychological harm, costs of travel, expenses incurred by victims looking for loved ones or trying to obtain justice and reparation, as well as lost opportunities.

60. The victim's family may also experience damage as a result of an international crime. Family harm could be considered additively, keeping in mind each member of the family but could also be seen as the harm suffered by the family unit as such. While on most occasions international tribunals opt to recognise harm to the family unit in relation to individual victims,⁵⁵ it is important to also recognise harm to the family unit for either cultural or religious reasons or because there is clear evidence in a case that the family unit as such has experienced significant harm. For example, the Inter-American Court has recognised pecuniary harm to the family unit as such "when there is a substantial change in the conditions and quality of life of the victims as a result of exile or relocation, suspended studies, expenditures to find a new job, loss of valuables, as well as damages to the physical and emotional health of the family."⁵⁶ The award of reparation to individual members of the family for family harm could coexist with reparations for harm suffered by the family unit as such.

⁵³ Y Danieli, F Norris, V Paisner, B Engdahl and J Richter. "The Danieli Inventory of Multigenerational Legacies of Trauma, Part I: Family Adaptational Styles." *Journal of Psychiatric Research*, (2015a) 68, pp. 167-175;

⁵⁴ Y. Danieli, F Norris, V Muller-Paisner, S Kronenberg and J Richter. The Danieli Inventory of Multigenerational Legacies of Trauma, Part II: Reparative Adaptational Impacts. *American Journal of Orthopsychiatry*, (2015b). 85(3), pp. 229-237; and, Y Danieli, F Norris and Engdahl, "Multigenerational Legacies of Trauma: Data-Based Integrative Modeling of the What and How of Transmission. *American Journal of Orthopsychiatry*, (2016). 86(6), pp. 639-651.

⁵⁵ For a detailed analysis of how international tribunals have dealt with family members in relation to reparation for gross human rights violations, see C Sandoval, R Rubio-Marin and C Diaz, "Repairing Family Members: Gross Human Rights Violations and Communities of Harm," *supra*, n. 18.

⁵⁶ *Ibid.*, "Repairing Family Members", at p. 260.

61. Communities can also suffer harm for pecuniary and non-pecuniary damages as already recognised by the International Criminal Court in *Lubanga*,⁵⁷ *Katanga*⁵⁸ and *Al Mahdi*.⁵⁹ Institutions and organisations can also suffer pecuniary harm, which might, as a consequence, cause pecuniary and non-pecuniary harm to individual persons.

2.2 Harm in the case of Jean-Pierre Bemba

62. The types and the extent of the harm suffered by victims of Mr. Bemba have been described in various forms by both the International Criminal Court and by [REDACTED]. The Trial Chamber has done this in its judgment on the conviction.⁶⁰ Practically all the observations filed at the reparations stage have addressed the issue. Equally, the [REDACTED] provides a detailed account of the harms suffered by victims of sexual violence by the MLC and their views on reparations, based on a number of recent interviews with victims and other interlocutors.⁶¹ Nevertheless, the most specific accounts of the harms are contained in the applications for participation and/or reparations that have been submitted by victims in the case.

63. In its decisions on the applications for participation, the Chamber confirmed that the respective victims suffered some harm as a result of the crimes for which Mr. Bemba was found guilty. The documents referred to in the immediately preceding paragraph make clear that all these victims suffered multiple forms of harm. What has not been established either by the Chamber or through the above-referenced materials is the type and extent of the harm suffered by each individual victim. If the goal in the reparations process were to award and implement reparations to each victim based on an assessment of his or her individual situation, then the specific harm would need to be determined for each eligible victim. The Experts submit that this is neither feasible nor desirable in the context of reparations for the victims of Mr. Bemba.

⁵⁷ ICC, Appeals Chamber, *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, paras. 153, 162 and 212.

⁵⁸ ICC, Trial Chamber II, *Katanga*, reparations, supra, n. 40, para. 288-295.

⁵⁹ ICC, Trial Chamber VIII, *Al Mahdi*, reparations, supra, n. 42, paras. 45, 53, 67, 86 and 90 and 134.

⁶⁰ ICC, Trial Chamber III, *Bemba*, conviction, supra, n. 1.

⁶¹ In a report to be submitted to the Court before the end of [REDACTED] [REDACTED] provided the experts with an advance copy of the report.

64. An assessment of each individual victim's harm and the extent of the harm is not desirable for two reasons: the lack of documentary evidence of harm and the length of time it would take to determine, in an adequate way, each individual claim.
65. The Experts consider that it is unlikely that another individual review of the victims' applications with a view to determine each specific harm would yield more beneficial results than have been obtained through the review that VPRS and the Chamber performed during the participation phase. This is owed to the lack of documentary evidence from which most of the applications suffer. This lack of evidence was to be expected, given the circumstances of the crimes and the types of harms suffered as a result. Lack of supporting evidence has been a challenge in other parts of the world in relation to similar crimes. The general response has been to set up domestic reparation programs where the standard of proof is fully alleviated and presumptions are used to ensure that victims have access to redress.⁶² The Experts submit that forms of and extent of harm should be presumed for the types of harm within each category of crime, as set out in detail in the following sub-sections on pillage, murder and rape.
66. The Experts submit that a further harm assessment is not required also in view of the standardized nature of the reparations that they recommend for the majority of the victims (see section on forms of reparation). In addition, the delay that would result from an individual harm assessment would be out of proportion to the very limited additional knowledge that such an exercise is expected to produce. It would be also particularly problematic bearing in mind that victims have been waiting for over a decade to obtain redress from Bemba for the harm they suffered as a result of his crimes they suffered.
67. In the following three sections the Experts describe to the Court the harms they considered that victims of Mr. Bemba's crimes have suffered, of both pecuniary and non-pecuniary nature. The Experts also considered that, even if it is neither possible nor desirable to fully assess the extent of the damage suffered by each individual victim in the case, it is important to provide a thorough account of the harms they suffered that were evident to the Experts during the visit to the CAR and were communicated to them by the

⁶² Guidance Note of the Secretary General, *supra*, n. 36, p. 14 and Ruth Rubio-Marin and C Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment." 33 *Human Rights Quarterly* (2011), pp. 1062-1091 at p. 1084-1091.

victims. A full account of the harms and victimhood caused by Mr. Bemba constitutes an important measure of satisfaction for victims.

2.3 Pillage

68. The MLC troops committed pillage wherever they went through in the CAR. The Chamber has found proven that victims lost alarm clocks, radios, mattresses, televisions, furniture, generators, electric coils, cattle, money, beds, kitchen utensils, suitcases, cassava mills, bicycles, motorcycles, clothing, freezers, microwaves, coffee makers, washing machines, dishes, computers, children's toys, sewing machines, and similar goods.⁶³ This coincides with the information gathered by the Experts during their field trip to the CAR. All victims provided accounts of how their mattresses, radios, televisions, cassava mills, clothes, and money were taken from them by force. They repeatedly used statements such as "they took it all" or "they took everything with them."

69. Pillage has affected individual victims, families and institutions/organisations in the CAR. They all suffered various harms as a result of pillage.

2.3.1 Pecuniary Harm

70. Individual victims suffered pecuniary harm as a result of losing their belongings. The majority of victims lost household valuables like furniture, mattresses, kitchen utensils, clothe, radios and televisions. Many others lost cassava mills and other goods necessary for their work and subsistence such as cattle and livestock in general, agricultural products or building materials. Some victims' businesses were also affected. Money, cash machines were all also lost.

71. Being deprived of these valuables had an adverse impact at the very least on the victims' adequate standard of living. They were unable to have a decent place to sleep and rest, a radio or television to enjoy some leisure time; in other cases, it also disrupted their means of survival, as their income was reduced or fully lost as a result while their means of generating income were taken away from them as well.

2.3.2 Non-pecuniary harm

⁶³ ICC, Trial Chamber, *Bemba*, conviction, *supra*, n. 1, paras. 470-472, 495, 502, 507 and 509.

72. As for non-pecuniary harm, victims experienced extreme suffering as a result of their losses. Pillaging of their means of survival not only had a serious impact on the victim's standard of living but also deprived them of the means to support their families. In certain cases, pillage deprived them of the ability to perform essential life tasks, and to meet medical, psychological, social or other related needs. Every victim who had children, stressed to the Experts the anguish they felt from not being able to provide for their children's education. Many victims' accounts poignantly described degradation of educational and occupational opportunities, of the social status of the family, and of the next generation.
73. The feeling of having lost everything was omnipresent in the interviews and focus groups the Experts carried out. For example, in the interview with [REDACTED] in CAR it was explained that "if one loses everything one wonders how long it would take to rebuild everything lost. This is one thing that leads people to depression. It does not have the same impact of death or rape but makes people think and think endlessly. People think life is over so it leads to suicide. They feel that "the meaning of their life is over."
74. Moreover, as pillage happened together with rape and/or murder, victims experienced it as the total deprivation not only of their goods and assets and means for survival but also of their most valuable immaterial goods such as life, dignity and purity. This compounded nature of pillage aggravates its meaning and the non-pecuniary harm it caused victims. To explain the nature and meaning of the loss of livestock to its owners, one of the persons the Experts interviewed stated that, for the livestock owner, [one's] "livestock is of the same value as [one's] children's, and when we lose them, it is as if we lose our children – a very traumatic experience for us as livestock owners."
75. Direct victims of pillage, those who owned or possessed the goods/assets, were not the only ones who experienced pecuniary and non-pecuniary damage. Indirect victims also suffered as a result of it, in particular family members. Beyond witnessing the pillaging, many of them have suffered on a daily basis the financial, physical, psychological and social consequences that ensued as a result of being deprived of goods that were pillaged.
76. During our interviews and focus groups it became clear that the family unit in the CAR is not limited to the nuclear family and that it is the custom for various members of the

extended family to live together and share responsibilities and costs. When the Experts inquired as to the number of people usually living together under one single roof, victims' answers ranged from 9 to 14 persons, including grandparents, siblings, nieces and nephews. The impact, pecuniary and non-pecuniary, extends to the various members of the family (nuclear and extended), even if the degree of harm might vary among them.

77. Members of the MLC also pillaged institutions and organisations. They lost their means of work, directly affecting the activities they were carrying out (financial or not). Such pillage caused direct pecuniary harm to the institutions that have applied for reparation, and it also caused non-pecuniary harm to the shareholders or people working at those institutions since they saw their work and means of work being completely lost and disrupted, causing them serious suffering. The pillage of those institutions has also affected the livelihood of those working for or benefiting directly from the work of those institutions as their income or profit was severely compromised. This was the conclusion of the Experts following the [REDACTED] they organized [REDACTED] with victims of pillage.

2.4 Murder

78. The Court found that murder committed by the MLC troops of which Mr. Bemba was found guilty took place as both a crime against humanity and a war crime.⁶⁴ The Court also found proven that in some cases, murder happened to those who attempted to resist pillaging or rape.⁶⁵ In the words of the Trial Chamber, "The killings were part of larger events targeting other members of their families, including both women and men, and/or accompanied by acts of pillaging and/or rape."⁶⁶

79. Murder happened to both males and females and to varied members of the family: fathers, mothers, sisters, brothers, daughters, sons, grandfathers, grandmothers as well as members of the extended family. As has already been indicated in the section on pillage, when assessing harm and considering who qualifies as indirect victim of murder, the Court must duly take into account the concept, meaning and significance of family in

⁶⁴ ICC, Trial Chamber, *Bemba*, conviction, supra, n. 1, paras. 461, 488, 520.

⁶⁵ Ibid, para. 567

⁶⁶ Ibid, para. 625.

the CAR.⁶⁷ This was the position taken by the Court in *Lubanga* when it indicated that the concept of family “must be understood in relation to the relevant family and social structures.”⁶⁸

80. As well as violating the direct victims’ right to life and its sacredness, murder has far-reaching consequences for its indirect victims – family and dependents. The following maps some of the life functions that indirect victims of murder were deprived of as a result of murder, and the consequent harm. While not meant to be exhaustive, these functions are key to understanding the extent of the losses caused by murder.

81. Some of the victims of murder were fathers. Traditionally, in CAR, the father is the family’s (main) breadwinner. That role might include building, buying or renting the family house, performing household repair and maintenance, and generally maintaining the immediate and extended family’s standard of living. It further extends to procuring food and clothes, paying school fees for the children’s education, and paying medical and other ongoing life’s bills. In his parental role, the father is expected to teach/pass on to his children the livelihood-generating (family) trade, skills, occupation and overall legacy. An additional crucial function (more than the mother’s) is that of protecting the family against robbery, invasion, and other harms, thereby providing the family with a sense of safety and security.⁶⁹

82. As well, in his paternal role, the father teaches his children responsibilities and rights, provides discipline and moral guidance (the difference between right and wrong), imparts advice and counsel, belongingness to and rootedness in the community, and generally guides them through finding their way in the world.⁷⁰ One of the Doctors interviewed by the Experts and already referred to in this report, relayed that “the African is very sensitive to the loss of his father... [his death creates] problems for everyone.”

⁶⁷ See part on pillage in the section on Harm of this report.

⁶⁸ ICC, Appeals Chamber, *Lubanga*, Reparations, supra, n. 57, para. 7 and Trial Chamber II, *Katanga*, Reparations, supra, n. 40, para. 121.

⁶⁹ S. Freud, *Civilization and its Discontents*. In J. Strachey (Ed. and Trans.), *The standard edition of the complete psychological works of Sigmund Freud* (London: Hogarth Press, 1961, Vol 21) (Originally published 1930). Pp. 57-145.

⁷⁰ Ibid.

83. In the CAR's patriarchal society, the children are expected to obey. Victims interviewed by the Experts exclaimed, "You have to obey;" "He was my father so I was obliged to obey; I was his son/daughter."
84. A Doctor stated that when the father has been killed, the child "is free to do anything s/he wants...leave school...a lot of bad things. And as the Experts were told during their Focus Group with victims of murder "This is why these youth join the armed groups." He continued: "First, their behaviour in the household changed. They have become more and more nervous, very nervous. Their grades in school drop. The communication with the [surviving parent/adults] has changed. They are violent against their parents, not gentle anymore. They are also aggressive in school towards their teachers, and they are violent among themselves." These are tangible consequences for the children of a murder father.
85. In addition to the above, as a husband, the murdered victim provided companionship safety and sexual satisfaction to his wife.
86. Mothers were also murdered. While the father's responsibility generally is the house, the wife is in charge of the home. She is responsible for household maintenance such as cleaning and cooking for and feeding the family. She is the carrier of emotional closeness, comfort and support, providing nurturance and predictable regularity and structure for the sense of (inner) peace and wellness in the family. As well, she (or a substitute female extended family member) imparts gender-relevant advice and guidance and is a role model for the children. Here too, from the child's point of view, the earlier the loss of his/her mother, the more severe the impact. As a wife, she provides companionship, safety and sexual satisfaction to her husband.
87. Sons and daughters were also murdered. The murder of a child is psychobiologically the hardest, if not genuinely impossible, to heal from, especially if it has occurred in front of the parent, or an older sibling, who was helpless to prevent it from happening.⁷¹ One's children are one's future, the harbingers of one's generational continuity and support in old age. Their loss means a deprivation of the normal cycle of the generations and ages, a

⁷¹ See the *numb* parent Post Trauma Adaptational Style in Y Danieli 1985.

loss of one's continuous self-image and esteem.⁷² The loss of a son in CAR's society also means the loss of financial security for parents as the son would have been essential when they are ageing. The loss of a daughter means losing the person that would always provide care and emotional protection to parents.

88. Siblings were also murdered. They are a source of psychosocial support and a mirror of one's identity and place/position in one's peer group and in one's fabric of life. Also, older siblings often take on the role of parent when needed, and share caretaking roles in the parents' old age.⁷³

89. The murder/loss of members of the extended family is also likely to have caused harm to their next of kin, beyond the nuclear family, and the harm seems contingent upon the degree of dependency and emotional connection that existed between the murdered individual and other members of the family. Uncles and aunts or grandparents also have a loving supportive, protective and guiding role not only with their own siblings but with their children and grandchildren. This extends to cousins as well. In fact, research with massively traumatized victims has shown that the survival of the mother's mother is predictive of the family as a whole in that it functions as a symbol of biopsychosocial continuity and acts as a supportive⁷⁴ core for the surviving family as a whole.

2.4.1 Non-pecuniary harm

90. The loss of a murdered loved person to whom one has both blood and emotional ties, at the very least, causes non-pecuniary harm. The Inter-American Court presumes the non-pecuniary damage suffered by parents, children and the partner of a murdered victim.⁷⁵ This appears to build on the belief that the closer the family member is to the murdered person, the more intense the harm would be.

91. In the case of CAR, the Experts would argue that, given the strong concept of family in a culture where the nuclear and the extended family are intrinsically connected, and

⁷² Y Danieli, "As Survivors age: An Overview," in *Journal of Geriatric Psychiatry* (1997) 30(1), pp. 9-26.

⁷³ Ibid

⁷⁴ Y Danieli, "The Diagnostic and Therapeutic Use of the Multi-Generational Family Tree in Working with Survivors and Children of Survivors of the Nazi Holocaust", supra, n. 9.

⁷⁵ Inter-American Court of Human Rights, *Paniagua Morales and Others v. Guatemala*, Judgment on Reparation and Costs, 25 May 2001, para 110, and *Pueblo Bello v. Colombia*, Judgment on Reparation and Costs, 31 January 2006, para. 257 for example. For an analysis of the treatment given see R Rubio Marin, C Sandoval and C Diaz, "Repairing Family Members: Gross Human Rights Violations and Communities of Harm," supra, n. 18, p. 245-257.

considering the aforementioned significant impacts murder had on members, the Chamber should consider whether to presume that emotional non-pecuniary harm has been suffered by members of the extended family of the murdered person.

92. There are three other factors that intensify the non-pecuniary harm suffered by these indirect victims: the manner in which the family member was murdered; whether the body was ever found; and, the condition the body was found in and whether it was fit for traditionally-expected burial.
93. Helplessly witnessing a murder greatly amplifies and exacerbates the indirect victim's long-term sense of victimization, loss and agonizing demoralization. Further, when a family member's body was never found, this significantly compromises the indirect victim's ability to even begin to mourn him/her, thereby generating chronic acute moral pain, and freezing him/her from moving onward with his/her lives.
94. How and in what condition was the direct victim's body found, whole or in part, determines one's memories of the murdered victim, and whether it is fit for proper burial. Consider, for example, the impact on a mother returning from the bush to find her son's clothes and shoes, then be told by her pastor that her son had been "eaten"; or another, finding her loved one's body parts in the toilet.
95. Traditionally proper burial that affords culturally expectable shared mourning, and the opportunity to visit and bring flowers to his/her grave, is experienced as less traumatic and eases the mourning process, even when the loved one was murdered.

2.4.2 Pecuniary damage

96. The murder of a parent, particularly the father, causes critical pecuniary damages to the family unit as a whole. Family roles must be altered. The mother has to find a way to survive economically in addition to having to cope with her own and her children's painful emotional loss and to continue taking care of the children. In many cases, other family members, such as (grand)parents or siblings, step in to try to provide some financial support. However, the absence of the main breadwinning father affects the income as well as the conditions of the house, often depriving the family of the minimal resources to pay rent or mortgage, procure food or clothing, pay school, medical care and transport fees and generally keep the family's socioeconomic status intact. When the mother is

murdered, the family's sense of emotional equilibrium tends to be lost with her, affecting the breadwinner of the house and thereby the financial stability of the home.

97. As well, in a society whose norms include the adult child's supporting his/her parents through aging, the loss of a child bears material, not only emotional and symbolic, harms. When the society does not have the socio-economic structures to support its aging population, the impact of the child's murder is felt not only as a matter of moral loss, with its attendant grief and sadness, but it also has very real economic impact. Adult children look after their parents. They provide food, clothes, shelter, and health and emotional care and safety for their loved ones.

2.5 Rape

98. The MLC troops committed systematic rape in and around all places they assaulted in CAR. Most rape victims were between 19 and 34 years of age. The great majority of victims of the MLC troops were women.⁷⁶ Data collated by VPRS included girls as young as 6 years old. The Chamber found that rape was committed both as a weapon of war and as a means for Bemba's soldiers to pay themselves for the services they were providing to him.⁷⁷

99. This is the first time in the history of international criminal law that an international criminal tribunal has the opportunity to provide redress to victims of rape. The Experts consider that the Chamber's decision on reparations for victims of rape in the Mr. Bemba case will constitute a historic opportunity to a) visualize all the harms they have suffered; b) deliver satisfaction as a form of redress to victims, given that the Court would fully acknowledge the harms they have endured; and c) provide victims with other forms of reparation that could make a significant reparative and transformative difference in their own lives, those of their families and communities, and perhaps even in the CAR society.

100. The Experts recall the important work carried out during the last decade to both acknowledge the various types of harm engendered by rape as a weapon of war to its direct and indirect victims, and to stress the need for comprehensive reparations to redress them. Specifically, the Experts recommend that the Chamber take guidance from, among other important documents, the UN Secretary General's Guidance Note on

⁷⁶ Registry submission, Public Redacted Version of the Registry's Observations, *supra*, n. 24, p. 25.

⁷⁷ ICC, *Bemba*, conviction, *supra*, n. 1, para. 565.

Reparations for Victims of Conflict Related Sexual Violence,⁷⁸ the General Comment on the Right to Health and the General Comment on the Right to Sexual and Reproductive Health of the UN Committee on Economic, Social and Cultural Rights (CESCR),⁷⁹ and to the General Recommendation on women in conflict prevention, conflict and post-conflict situations of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁸⁰

101. Rape is not only a serious international crime that can take the form of crime against humanity, war crime or genocide. Particularly massive rape becomes the trigger of many different forms of chronic violence, re-victimization and discrimination. It has a multiplying, cascading effect.⁸¹ Moreover, not only does it affect its direct victims, those who were raped, but its effects extend to indirect victims as they rupture families, community ties and affect future generations.

102. Rape engenders at least three new forms of serious harm: a) social and community stigma; b) undesired pregnancies, miscarriages and children born of rape and, c) frequent HIV/AIDS in victims of rape and in children born of rape. The intersecting impact of these forms of harm accentuates the pecuniary and non-pecuniary damages suffered by direct and indirect victims of rape.

103. The Experts submit that rape and its ensuing harms cannot be discussed independently of the cultural and historical context where they occurred.⁸² Despite CAR's

⁷⁸ Guidance Note of the United Nations Secretary General, *supra*, n. 36.

⁷⁹ Committee on Economic, Social and Cultural Rights, General Comment N. 14 (2000), *The Right to the Highest Attainable Standard of Health* (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, 11 August 2000; and General Comment N. 22 (2016) *on the Right to Sexual and Reproductive Health* (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016.

⁸⁰ Committee on the Elimination of Discrimination against Women, General Recommendation N. 30 *on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, CEDAW/C/GC/30, 1 November 2013.

⁸¹ Sarah Mclvor Murray, Katie L. Robinette, Paul Bolton, Talita Cetinoglu, Laura K. Murray, Jeannie Annan, and Judith K. Bass, "Stigma Among Survivors of Sexual Violence in Congo: Scale Development and Psychometrics" *Journal of Interpersonal Violence* (2015), pp. 1-24.

⁸² See also Y Danieli and K Nader, "Respecting Cultural, Religious and Ethnic Differences in the Prevention and Treatment of Psychological Sequelae" In LA Schein, HI Spitz, GM Burlingame, PR Muskin & S Vargo (Eds.), *Psychological Effects of Catastrophic Disasters: Group Approaches to Treatment* Binghamton, (NY: The Haworth Press Inc, 2006), pp.203-234 and Y Danieli, "Multicultural, Multigenerational Perspectives in the Understanding and Assessment of Trauma" In JP Wilson & C Tang (Eds.), *The Cross-Cultural Assessment of Psychological Trauma and PTSD*, (New York: Springer-Verlag Publishers, 2007), (pp. 65-89).

history of conflicts, traditionally only men were involved in wars and women were respected and protected by the men. During their visit to CAR, the Experts were told various times that Bemba's MLC's assaults appear to have been the first time in CAR's history that rape was used as a weapon of war, and done indiscriminately and systematically.

104. CAR culture considers a woman a sacred being. As a girl grows up, she is socialized to understand that no one can touch her body. Every morning, following morning prayers, parents give children advice; part of this morning ritual is to explain to the children that the female body is sacred. The daily advice is given within the family as a whole. Generally, girls constitute the value and dignity of the family. A bride's family demonstrates its dignity by being able to give its daughter in marriage before she has children. The groom's family, in turn, pays dowry to demonstrate its dignity. If a girl becomes pregnant and has a child in her parents' home, regardless of the economic status of the family, it brings profound shame to the family. So when rape occurs, the entire family feels shame because a sacred being was violated. The entire family is demoralized by that event and traumatic psychological effects are felt by the family as a whole. Families might thus be destroyed.
105. From a religious perspective, 80% of CAR's population is Catholic; about 15% is Muslim. Thus 95% of the population adheres to religious faith, following the Bible or the Koran. The principles, values, culture, all linked, hold the human (female or male) body sacred. The fundamental principle in these religions is for both genders to abstain from sex prior to marriage. The sacred woman's body belongs to her husband alone and the sacred man's body belongs to his wife alone. Married people can have sex only with their spouses. So even in CAR's religious context, when someone has been raped, s/he is no longer pure, s/he is now impure.
106. Socially, there is a distortion in assigning guilt and shame, whereby the victim (rather than the perpetrator) goes into hiding because of being blamed, shamed and shunned by the societal stigma and the perpetrator escapes with impunity. In CAR society, the raped daughter is no longer marriageable. According to both the man's family and the society, it is impossible for the girl and her boyfriend to continue their relationship, certainly not to get married. Another crucial effect of rape regards education. Raped youths are no

longer educable. A girl who has been raped can no longer attend school. She will have to drop out because in school she will be humiliated, mocked and ridiculed and people will point their fingers at her; her classmates will reject her, talk about her, no one will sit with her. It is under these circumstances that a raped girl would leave her family and community and move to a place where no one knows her or what happened to her. The Experts heard persistently from victims of rape that they had dropped out from school and/or left their communities and were living in other places precisely to attempt to escape the stigma.

107. Statements such as “A raped woman is nothing;” “When you lose honour you lose everything in life” convey these attitudes. As relayed by Doctor, rape has a lot of effects in the household; men would not sleep or have sex with their wives again or would abandon them.

108. It is even worse when a man is sodomized because other men view him as belittled; he is now “less than a woman.” If possible, the taboo is worse: “We can’t talk about this...a man cannot accept that (i.e., being sexually abused by other men);” “You are not a man.” The raped man can no longer speak to other men. He is humiliated. He can no longer continue to live in the same neighbourhood. As a result, the Experts were told, some men “who were not psychologically strong” committed suicide.

2.5.1 Non-Pecuniary Harm

109. Rape has generated serious non-pecuniary harm in direct as well as indirect victims. These culturally-, societally-, and religiously-originated attitudes coalesce to illuminate why the extent of the harm, suffering and pain borne of rape is as extreme, condemning the victim to social isolation or worse, real or social “death.”

110. Direct victims of rape undergo serious psychological suffering. Their bodies and their beliefs are often destroyed. They are rejected by their own family members, from parents to husbands and by their community’s stigmatisation. The combined impact of these multidimensional effects generates very serious psychological and psychiatric effects. Direct victims of rape are isolated from others, they would either lose their children or be abandoned with them; they also tend to run away so as to shield themselves from the permanent feeling of rejection in their communities. This life of secrecy exacerbates the

victims' individually-suffered self-loathing and self-hate because of what happened to them. Some view the discrimination and the stigma as worse than the rape itself. This is corroborated by ample scientific and other writings.⁸³

111. A crucial aspect to highlight is that, because of the historical absence of rape as a weapon of war in the CAR, direct and indirect victims of rape as well as communities in CAR have not developed coping mechanisms to deal with rape and sexual violence of war. As a result of this, discrimination and stigma are accentuated and the necessary mechanisms to respond to them are lacking.

112. But not only have direct victims of rape suffered non-pecuniary harm. Their next of kin, including their children, husband/wife, parents and close family members have also experienced non-pecuniary harm as the result of the rape and its aftermath.

113. Rape in CAR often happened in front of family members and the victims' communities. Many Children witnessed helplessly as their mothers, sisters, or other women were being raped. They saw their loved ones brutally violated without being able to do anything about it. Pynoos and Nader found that children exposed to this experience exhibited prominent post-traumatic stress disorder symptoms, disturbances in aggression and sexuality, alterations in their sense of security and vulnerability, challenged self-esteem, stress in intrafamilial and peer relationships, and changes in future orientation. These reactions are similar to those of sexually abused children and indicate that child witnesses need special therapeutic attention. While their study was conducted in the United States, it seems consistent with what the Experts learned in the CAR.⁸⁴

114. Children also suffered as a consequence of the rupture of their families. Women who were subjected to rape were seen as impure and, if they contracted HIV/AIDS, they were seen as "contaminated women." This sometimes led their partners or other family members to take their children away from them so as to avoid their being contaminated too. Children were then taken to live with other family members. When children were dispersed to different family members, siblings were not kept together. In losing their mother/father/their family, these children lost their sense of security and love, causing

⁸³ Y Danieli, "Confronting the unimaginable:" In JP Wilson, Z Harel, and B. Kahana (Eds.), *Human adaptation to extreme stress* (New York: Plenum, 1988). pp. 219-238.

⁸⁴ RS Pynoos and K Nader "Children who Witness the Sexual Assaults of their Mothers" in 27(5) *Journal of the American Academy of Child and Adolescent Psychiatry* (1988), pp. 567-572.

them serious emotional harm. They were deprived of all the parental functions reviewed by the Experts in the section on murder.

115. The spouses, male or female, of victims also suffered as a result of the rape and its aftermath. They too were subjected to stigma and discrimination or were unable to run away from cultural stereotypes and as a consequence often left their raped spouse. It did not matter whether they wanted to, the pressure they were under by their cultural or religious beliefs, by their families and communities, led them to take decisions that caused them and their families' profound harm.

116. During the visit to CAR, the Experts learned also about the appalling harms suffered by children born of rape. It is unclear how many children were born of rape as a result of Bemba's MLC crimes. The State does not have available reliable data on it and, given the stigma attached to rape, and being born of rape, opaque silence remains the rule when it comes to them.

117. Nonetheless, during the Experts meeting with a NGOs working with victims of sexual violence, it was indicated that of [REDACTED] children were born out of rape. Today the surviving children are about 13 years old. The NGO reported that there is no support for these children in CAR and that they are referred to as "Bayamulengues." Many have not been tested for HIV/AIDS to avoid upsetting their mothers with the possibility that their children might also be infected. Because of CAR's religious beliefs, raped mothers were unable to obtain an abortion. Some children born of rape have been abandoned (sometimes in the streets) at birth. Some died of neglect, from the same HIV/AIDS that they were not tested for.

118. In some cases where the children were left with the mother as "her" children, the mother used her father's name to hide the child's origin and protect him/her. When their origins are or become known, similarly to their raped mothers/fathers, children born of rape are also mocked, discriminated against and stigmatized in school or other sociocultural and religious settings (for example, "your mother is Bemba's wife," "You are Bemba's child") and, as a result, are deprived of education and normal childhood and adolescent friendships. In the absence of the abandoning parent, they often grow up in a one- (ill or depressed) parent household, and are subjected to all the consequent related

losses of the parental functions they are deprived of and of normal opportunities for advancement.⁸⁵

119. Children born after rape – but not born of rape – also suffer non-pecuniary damage. Most of the time they grow up in homes with the silent, wordless rape trauma looming like a constant shadow their household, despite the mother’s (or raped father, and sometimes others’, including the church) desperate attempts to shroud it in secrecy. They might inherit not only the legacy of silence but also the legacy of their parent’s unspoken violation, unbearable yet inexplicable victimhood and resulting pervasive, vague, worry about ‘something’ (i.e., their history) possibly revealed. These constitute the biopsychosocial milieu into which the children are born, live and struggle to grow. As much as they are motivated, mostly unconsciously, to repair and heal their parent’s wounds, they feel insecurity about their own competence, protective defensiveness and sometimes, preoccupation with power, control and revenge, particularly in the absence of, or too-long a delay of full justice. Some, particularly when living in abject poverty, and deprived of education or a sense of purpose, resort to violence and are at risk for joining the militias. This concern cannot be overemphasized. This is even truer of children born of rape.⁸⁶

2.5.2 Pecuniary Harm

120. Rape has also generated serious pecuniary harm in both direct and indirect victims, as outlined below:

a) Physical Harm, Access to Treatment and Medicines, and HIV/AIDS

121. The reproductive systems of victims of rape have been seriously damaged. They have acquired sexually transmitted diseases including HIV/AIDS, syphilis and other venereal diseases, unwanted pregnancies, miscarriages or infertility. Many have also seen their reproductive systems fully destroyed.

⁸⁵ See part on Murder in the Second Section of this report.

⁸⁶ On the ubiquitous conspiracy of silence after trauma and its traumatogenic effects, see D R Johnson, H Lubin, R Rosenheck, A Fontana, S Southwick, and D Charney, “The impact of the homecoming reception on the development of Posttraumatic Stress Disorder: the West Haven Homecoming Stress Scale” (WHHSS), 10(2) *Journal of Traumatic Stress*, (1997), pp. 259-277; M Symonds. “The ‘second injury’ to victims,” *Evaluation and Change (special issue)* (1980) pp. 36-38.

122. The expert report presented to the Court by the Human Rights in Trauma Mental Health Laboratory, quotes Dr. Adeyinka M Akinsulure-Smith as follows: “the immediate physical consequences of rape include major physical damage to the reproductive and ano-rectal physiology, as well as pregnancies. She testified that muscle and bone damage can also occur. Headaches, muscle tension, nausea, and stomach problems are all mentioned as possible consequences.”⁸⁷ The above report further stated that the “long-term physical consequences of rape are well known within the medical community. Rapes result in gynecologic fistula—a complete disruptive rendering of the woman’s vagina and bladder and/or rectum (Bastick, Grimm, Kunz, 2007) and chronic pelvic pain.” And loss of interest in sex and in having children.⁸⁸

123. Physical harm has also been exacerbated as a result of the lack of accessible, affordable, adequate, available, prompt and quality health treatment for the victims.⁸⁹ In the case of victims who acquired HIV/AIDS as a result of rape, the lack of medical care and antiretroviral medication for them means that “HIV is often a gradual death sentence.”⁹⁰

124. Victims of rape not only had to assume the costs of their medical treatments in the CAR, if they were available, but also had to pay for the transport to go and see a doctor in Bangui -- the only place in CAR where such treatment was available. The interviews conducted by the Experts revealed clearly that a significant number of victims live in abject poverty, likely also as a result of pillaging to themselves or their families of origin, in the least developed country in the world, which made it even harder for them to afford medical treatment or to go to the capital Bangui for healthcare. Moreover, they had to borrow money to obtain treatment and medicines.

125. The Experts had the opportunity to visit some medical [REDACTED] in Bangui and in [REDACTED].⁹¹ Two of them were considered the best, and the [REDACTED] [REDACTED]. The Experts learned that their conditions were woefully inadequate, could not comply with minimum standards of hygiene and lacked proper

⁸⁷ Human Rights in Trauma Mental Health Laboratory, Department of Psychiatry and Behavioral Sciences, Stanford University, School of Medicine, Case of Jean Pierre Bemba, Public Redacted Version of ICC-01/05-01/08-3417-Conf-Anx.A, Mental Health Outcomes of Rape, Mass Rape, and Other Forms of Sexual Violence, P. 15.

⁸⁸ Ibid, p. 15-16.

⁸⁹ General Comment on the Right to Sexual and Reproductive Health, supra, n. 79.

⁹⁰ P. 16.

⁹¹ [REDACTED]

treatment for victims.⁹² This situation is in clear contrast with the victims' right to health, according to which persons should have "timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health."⁹³

126. In relation to treatment for HIV/AIDS, the Experts were able to gather information both from doctors [REDACTED] they visited and from the victims they interviewed. Since 2010 antiretroviral medication is available free-of-cost to victims with HIV/AIDS. But in reality it is not always affordable to victims residing out of Bangui, who lack the money to pay for the transportation to go to Bangui and obtain it.

127. Victims also lack a core determinant of the right to health, adequate food, to be able to ingest their medicines, which, as we were told, are medicines not be taken on an empty stomach. Improper adherence to food requirements can be just as problematic as not taking the pills. In some cases, it can affect the bioavailability of the drug, reducing the actual amount of active ingredient that enters the bloodstream. At other times, it can cause digestive problems or interfere with the pharmacokinetics (drug action) of an accompanying ARV. Thus, without the means to procure food, notwithstanding to pay for the trip to the hospital, rape victims with HIV/AIDS might simply die despite being provided with free HIV medications. Many of the victims we interviewed who survived rape and have HIV/AIDS can afford one meal a day at most.

128. The Experts were also informed that, while antiretroviral medicines are available to victims, access to free treatment does not cover any other disease victims might develop, even if it was developed as a result of HIV/AIDS and, therefore, should be included under the provision of free and adequate treatment for HIV/AIDS-related illnesses.

b) Financial Harm

129. Victims of rape have been discriminated against as a result of stigma, contracting HIV/AIDS, and conceiving children of the Bayamulengues (as they are portrayed in the CAR). This has caused them serious financial harm as they have lost access to being

⁹² General Comment on the right to Sexual and Reproductive Health, *supra*, n. 79, paras. 12-21.

⁹³ General Comment 14, The Right to Health, *supra*, n. 79, para. 11.

financially supported by their spouses and/or their families, to work and to education. They have also lost access to opportunities they would have had generally, had they not been raped and suffered the rape's ensuing harmful multidimensional aftermath.

130. In our interviews with them, victims described having been used to selling goods at the market before Bemba's soldiers came, but that having being raped meant that now no one would buy anything from them. Having to find other ways of surviving, under the best circumstances would mean that a family member would provide them with some financial help, but that was rarely enough to pay for living a decent life.

131. The Experts are of the opinion that these victims are struggling to survive. Not only do they have to cope daily with the health consequences of being victims of rape, such as having problems going to the toilet to urinate, living and coping with the consequences of HIV/AIDS or other sexually transmitted diseases, or with the terrible psychosocial harm they suffer, but many also have children to look after but without the family, communal/social and emotional network necessary to enable them to move forward in life.

132. And as if this were not enough, in many cases, as the Experts learned during their visit to CAR, victims of rape, female or male, had to abandon their homes and relocate to other places as they were rejected by their loved ones -- their partners (husband, wife), their parents, friends and other members of their communities. They did it to escape this painful fate and adopt to life as strangers in communities who might not know them or their histories. Beyond the few family members, the consistent source of interpersonal support mentioned by many of our interviewees were [REDACTED] but even their work was limited to providing [REDACTED].

133. The children of victims of rape have also incurred financial harm. Their families broken and destitute as a consequence of this atrocious crime, deprived them of the quality of educational and consequent career opportunities they might have otherwise had later in life. Again, as indicated above, the malignant combination of abject poverty and lack of

education or educational structures, humiliation and purposelessness might lead them to join the militias and reproduce the type of violence they were victims of.⁹⁴

2.6 Conclusions

134. The Experts strongly suggest that the Chamber provides the most detailed account it can of the harms, both pecuniary and non-pecuniary, that victims have suffered as a result of the crimes committed by Mr. Bemba.
135. The Experts suggest as well that a flexible concept of victim that is culturally sensitive to CAR's understanding of 'family' should be utilized. The Experts consider that such approach would provide victims an important measure of satisfaction for the harms suffered.
136. The Experts acknowledge the challenges that exist in identifying and assessing the extent of the harm suffered by almost 6,000 victims of Mr. Bemba. Yet, the Experts believe that such harm, given its systematic nature, should be presumed and that a standard approach to reparations should be implemented, as explained in the following section, on Forms of Harm, of this report.

3. FORMS OF REPARATION AND THE MEANS OF PROVIDING ACCESS TO THEM

3.1 General Considerations

137. Having addressed the nature and gravity of the harms victims suffered as a result of Bemba's crimes, in this section the Experts will identify the forms of reparation that correspond most meaningfully to those harms and, where there is sufficient empirical basis to do so, propose the manner of providing access to those forms of reparation. The Experts will first state the most important factors the Court should consider before it orders any form of reparations and the means of providing access to them. A key factor we discuss is the need for the Court (and those who will be involved in designing and

⁹⁴ P Knoope and S Buchanan-Clarke, *Central African Republic: A Conflict Misunderstood*, (The Institute for Justice and Reconciliation Occasional Paper 22, 2017), available at: <https://www.clingendael.org/publication/central-african-republic-conflict-misunderstood>

implementing reparations in this case) to ‘do no harm’, to ensure that, in receiving reparation, victims are not placed in far worse circumstances, physically and economically than they are in now. The Experts then discuss who should be prioritized, with urgency, and the forms of reparations essential to this end. Next the most feasible forms of reparation under the current conditions of the CAR are discussed.

3.1.1 Reparations should be conveyed as acknowledgement and as recognition

138. Various material forms of reparation can be offered to victims of which compensation is the most easily understood. But there is also the restitution of certain rights linked to livelihood, status, relationships or property. Physical and psychological rehabilitation must be addressed as well. Satisfaction, the subjective sense that justice has been done, is another important form of redress, which can take the form of punishing perpetrators or the form of truth or knowledge, of finding a missing person or knowing how a loved one died or disappeared. But given the nature of the harms victims suffer as a consequence of many of the crimes included in the Court’s Statute, such as the rape, murder and pillage committed in this case, none of these forms of reparation can truly meet the standard of *restitutio ad integrum*, a standard used across different fields of law and legal systems representing the idea of restoring something to its original situation. In the first place, this standard was applied as a measure of reparation between and among States.⁹⁵ More importantly, it is simply not possible to bring victims back to their original situation before Mr. Bemba committed his crimes. To borrow at length from Pablo De Greiff, who as of this writing, is the UN Special Rapporteur on the Promotion of the Right to Truth, Justice, Reparations and Guarantees of Non-Recurrence:

Now, in an isolated case of a human rights violation, this ideal of complete reparation (restitutio in integrum) understood in terms of the restoration of the status quo ante or of compensation in proportion to the harm suffered, is unimpeachable.... But there are circumstances in which this ideal is unrealizable, either due to insurmountable constraints such as the impossibility of bringing someone back to life, or due to constraints that although not absolute, are still severe, such as real scarcity of resources of the sort that makes it unfeasible to satisfy, simultaneously, the claims of all

⁹⁵ PCIJ, *Chorzow Factory* (Merits) (Germany v. Poland), 13 September 1928, Series A, no. 17, 47.

*victims and of other sectors of society that in fairness, also require the attention of the state.*⁹⁶

139. Indeed, the UN Basic Principles state that “restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.”⁹⁷

140. Instead, reparation is better conceptualized, and communicated to victims, as the acknowledgment by the international community of the harms they suffered and, where the convicted perpetrator willingly participates, recognition by the perpetrator of responsibility for those harms. By characterizing reparations as acknowledgement of harm and recognition of responsibility rather than reinforcing the view that reparations should restore victims to their prior situation, the Court can establish conditions that will make the fulfilment of its reparations mandate more realistic. Laying this down as a principle can contribute to managing the expectations of victims. It may also help avoid irresolvable debates over what amount of money would be the equivalent of certain harms.

141. The Court may want to explicitly point out that, as a matter of law, the CAR as a State and through its government has the obligation to provide reparation to the victims of crimes committed in this case, whether they participated in its proceedings or not.⁹⁸ Coming from this Court, that statement will have more weight than if it came from elsewhere. It could move the government to do more, including symbolically, on reparation. It might also transform how the CAR State sees the idea of citizenship— a contentious, even existential issue that underlies all the conflicts now going on in the country. In the words of one of the most respected analysts of the history of conflict in CAR, the Central African Republic as a State is “for most citizens a hurtful presence and a painful absence.”⁹⁹

⁹⁶ De Greiff, P, “Justice and Reparations”, in *Reparations: Interdisciplinary Inquiries*, Jon Miller and Rahul Kumar (eds.), (Oxford; New York: Oxford University Press, 2007), pp. 153-175.

⁹⁷ Basic Principles, supra, n. 11, Principle 19.

⁹⁸ Basic Principles, supra, n. 11, Principle 9.

⁹⁹ L Lombard, *State of Rebellion: Violence and Intervention in the Central African*, (London, Zed Books, 2015) p.

142. As early as now, if there is one first step that the Court should take before embarking on any other measure of reparative justice, it should be to clearly acknowledge not only the harm done to victims in this case but equally the resilience and strength with which they have lived with the consequences of those harms for more than a decade. That they have found ways to cope with those consequences, be it through humanitarian assistance or through their own efforts, does not diminish their right to reparations nor the obligation of the convicted person to repair the harms he caused.¹⁰⁰

3.1.2 Reparations should be an attempt to repair harm and to transform victims' vulnerability

143. The Court should convey to victims and to other stakeholders in this and future reparations proceedings that reparations are meant principally to acknowledge the harm suffered by victims, rather than to restore the victims to their prior situation and, for the convicted person, to recognize responsibility for that harm. Having said that, the Experts also consider it important for the Court to attempt to materially repair the harm done to victims and in doing so, find ways to help transform the social and economic circumstances of their community or society so as to ensure both their livelihood and wellbeing.

144. This is particularly important with respect to those harms that are of such nature that if they are not addressed urgently or in the appropriate manner, can lead to even more serious or permanent harm. The Experts recommend that the Court provide such urgent reparation measures to avoid permanent damage for HIV-positive victims of sexual violence. These forms of urgent reparations are elaborated upon further below.

3.1.3 The current and foreseeable security and economic context of the CAR

145. In laying down its principles for reparations in general and crafting its reparations order in the case of Mr. Bemba, the Court should not only consider the context as it was when the crimes were committed but also the conditions that may exist when reparations are about to be and are then finally delivered. Given the nature of the post-conflict or post-authoritarian situations for which many reparation's programs are

¹⁰⁰ See, ICC, Trial Chamber VII, *Al Mahdi*, reparations, supra, n. 48, "Remedial efforts by a third party in the time elapsed between the destruction and the issuance of the reparations order do not alter the amount of damage originally done." At para. 65.

designed, an ideal situation will never exist for its implementation. But the CAR is not only a less than ideal setting for implementing reparations; it is arguably not a post-conflict situation. The number of troops in the peacekeeping mission UN Multidimensional Integrated Stabilization Mission (MINUSCA) is set to be increased as of this writing due to what the UN Secretary-General (who visited the country soon after the Experts did) has described as a “deteriorating situation.” The UN has not minced words in describing the current situation; CAR is “the most dangerous country for humanitarian action.”¹⁰¹

3.1.4 The lapse of time to secure reparation and new cycles of violence

146. Reparation is meant to convey a sense that justice is being done in full. However, such a message is difficult to communicate when the crimes were committed over a decade ago. But it is arguably an even more difficult message to convey where crimes of the same type have been or are being committed on a larger scale.¹⁰² Reparation is, in concept at least, meant to provide ‘guarantees of non-recurrence’.¹⁰³

147. The Experts propose two steps that might contribute to the preventive goal of reparations: (1) elements that add a transformative aspect to reparations and (2) a discussion on what and when symbolic forms of reparations might be considered in this case.

3.1.5 Victims’ poverty and their expectations

148. The current economic and social situation in CAR means that implementing the forms of reparation the Court may order will happen in a context of deep poverty and nearly non-existent State social and economic services. In the 2015 UNDP Human Development Index (HDI), the Central African Republic was “in the low human development category—

¹⁰¹ [REDACTED] suggests that the events that are the violence and conflict that form the backdrop of that case have ceased, the actual situation in the country shows otherwise. See “Security Council considers boost in UN peacekeepers numbers in Central African Republic,” 6 November 2017. <http://www.un.org/apps/news/story.asp?NewsID=58035#.WgR6f1uPKM8>

¹⁰² [REDACTED]

¹⁰³ Basic Principles, supra, n. 11, Principles 18 and 23.

positioning it at 188 out of 188 countries and territories.”¹⁰⁴ The CAR Constitution in fact guarantees reparation for, among other violations, the deprivation of the right to life.¹⁰⁵

149. But this is a country where 15 years of still on-going conflict and tensions, including and after the events in this case, have led to thousands being killed, raped, pillaged and displaced. According to the May 2017 Mapping Report on the Central African Republic prepared by the UN Office of the High Commissioner for Human Rights (OHCHR):¹⁰⁶

*the 13-year period under consideration (2003-2015) was marked by waves of major political crises characterized by conflicts between armed groups and Government forces and, sometimes, between rival armed groups. A large number of civilians were victims of extrajudicial executions and sexual and gender-based violence; many others were maimed, tortured or severely ill-treated, raped, forcibly displaced or disappeared. Thousands of children were recruited by armed groups. Many civilians had their property pillaged and homes destroyed, and were thus deprived of their economic, social and other fundamental human rights. Hundreds of thousands were internally displaced, while others fled to neighbouring countries. Civilians were too often denied access to humanitarian assistance and the ability to live in dignity.*¹⁰⁷

150. Any indication that reparation is forthcoming for some of those crimes will undoubtedly generate both hope and expectations among victims and non-victims that they will receive reparations, too, if not in this case then in some other proceeding supported by the international community (such as the Special Criminal Court). In the

¹⁰⁴ Briefing note for countries on the 2016 Human Development Report: Central African Republic,” United Nations Development Program (UNDP) at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/CAF.pdf.

¹⁰⁵ Article 17, Central African Republic Constitution, as amended: “An individual [who is a] victim of violations of the provisions of Articles 1 to 15 of this Title has the right to reparation. Article 3: “Everyone has the right to life and physical integrity.” The same article says: “No one may be subjected either to torture, or to rape [viol], or to cruel, inhuman, degrading or humiliating acts or treatment.”

¹⁰⁶ OHCHR, *Report of the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015*, May 2017, executive summary, p. 9.

¹⁰⁷ “*Report of the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015.*” Office of the High Commissioner for Human Rights, available at http://www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/2017CAR_Mapping_Report_EN.pdf

combined experience of the Experts, these expectations can often climb to levels that are difficult to manage and lead to frustration, resentment, and even more violence. It is important for the Court to manage – not outright dismiss -- those victim expectations. Expectations involving reparations almost always centre on receiving compensation or money. In our discussions with [REDACTED] and victims themselves, it was clear that, regardless of the language of Art. 75(1) of the Rome Statute¹⁰⁸ the ordinary understanding is that “reparations” is compensation, which in Sango is the word “futa.” The term for “compensation” ordered by a court is also “futa.” In other words, both the legal and non-legal understanding of reparations in the country equates it with compensation. This means the expectation is to receive money.

151. But it is also important to understand that victims are coming from (and still are in) situations of extreme, dehumanizing poverty. Their expectations are not necessarily about getting substantial amounts of money or of being restored to their prior situation. For some of those we spoke to in interviews and focus group discussions, the expectation is of just being acknowledged through reparations and seen as persons with dignity who need help with their health and living conditions.¹⁰⁹

3.1.6 “First, do no harm”

152. Above all, the Court must do no harm in the process of ordering, designing and implementing reparations in this case. There are several possible ways in which victims can be prejudiced by well-intentioned efforts to help them. The Experts will mention at least two that are of immediate and basic importance: Any effort to provide reparations must not add to the physical insecurity of victims and that Disarmament, Demobilisation and Reintegration (DDR) of ex-combatants does not resent victims as a result of DDR benefits.

153. During the visit to the country and meetings with interlocutors, including outside the capital Bangui, the manifestations of insecurity involving crime and violence in general

¹⁰⁸ “The Court shall establish principles relating to reparations to, or in respect of, victims, *including restitution, compensation and rehabilitation*. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.” (Italics added by the Experts)

¹⁰⁹ Y Danieli, “Healing aspects of reparations and reparative Justice for victims of crimes against humanity.” In J-A M. Wemmers (Ed.) *Reparation for Victims of Crimes Against Humanity*, (New York, Routledge, 2014) pp. 7-21).

could not be ignored – from ubiquitous checkpoints to peacekeeping patrols. No one has been spared from being victimized by armed robbery in the country. So-called ‘road cutters’ who “stop traffic and create flexible, personalized entitlements to profit for those who operate them,”¹¹⁰ including those who commit these attacks in the country’s only highway to armed robbers who attack humanitarian workers, including UN offices.¹¹¹

154. While less visible, the population’s insecurity over access to their most basic social and economic rights – food, health care and shelter – was just as heightened. The Experts saw this in [REDACTED] they visited both in [REDACTED]; The Experts heard this from the more than [REDACTED] CAR citizens they spoke with, both victims in the Bemba case and well as from leaders in their communities. The types of reparation and the modalities of distributing them should ideally help overcome insecurity; but at the very least, reparations should not lead to its beneficiaries becoming more vulnerable and insecure.

155. A second ‘do no harm’ consideration is to ensure that disarmament, demobilization and re-integration (DDR) programs do not create resentment among victims as a result of what ex-combatants and members of armed groups are receiving as DDR benefits. DDR programs often offer some of the same types of benefits that reparations do, particularly payment of money and opportunities for livelihood. It will be important to ensure that no significant gap, whether perceived or actual, be created between what reparations programs offer and what ex-combatants have been and are currently receiving. In particular, and because compensation, rightly or wrongly, is seen as the measure of the munificence of a reparations policy¹¹² it will be important to ensure that compensation

¹¹⁰ L Lombard, “Raiding Sovereignty in Central African Borderlands,” (Dissertation) 2012, Available at https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/5861/Lombard_duke_0066D_11603.pdf.

¹¹¹ “UN Staff Attacked, Robbed in Central African Republic” VOA News, July 14, 2017, at <https://www.voanews.com/a/un-condemns-attack-on-staffers-in-central-african-republic/3927464.html>.

¹¹² In De Greiff’s words: “Munificence is the characteristic of reparations programs that relates to the magnitude of their benefits from the individual beneficiary’s perspective. Needless to say, there is no absolutely reliable way to measure the absolute worth of the benefits, and the difficulties only increase if one aspires to do a cross-country analysis of their comparative worth. Nevertheless, abstracting from other complications, a simple comparison of the dollar value of material benefits directly distributed to victims by some recent reparations programs leads to the following rough ascending order of munificence: South Africa, which finally gave a once off payment of less than \$4,000 to victims, would lie on the lower side of the spectrum; the US plan for Japanese-Americans, which gave to victims a once-off \$20,000 payment would be followed by Chile, Germany, Brazil, and would end with Argentina’s plan, which gave to the families of the victims of the disappeared bonds with face value of \$224,000.52 As this ordering makes clear, munificence, by itself, is not a criterion of success in reparations. It would be difficult to argue that the Argentinean reparations efforts, the most munificent in this list, have been significantly more successful than, say, US reparations for

payments, in terms of the amounts given and the promptness of their delivery, do not lag behind how DDR benefits are delivered. The UN has said that:

*The lack of coordination between transitional justice and DDR may lead to unbalanced outcomes and missed opportunities. One outcome, for example, is that victims receive markedly less attention and resources than ex-combatants. The inequity is most stark when comparing benefits for ex-combatants with reparations for victims. In many cases the latter receive nothing whereas ex-combatants usually receive some sort of DDR package. The imbalance between the benefits provided to ex-combatants and the lack of benefits provided to victims has led to criticism by some that DDR rewards violent behaviour. Enhanced coordination between DDR and transitional justice measures may create opportunities to mitigate this imbalance and increase the legitimacy of the DDR programme from the perspective of the communities, which need to accept returning ex-combatants.*¹¹³

3.2 Urgent Reparation Measures

3.2.1 HIV-positive victims of rape who are, including HIV-positive children born of rape should be prioritized

156. In *Lubanga* the Trial Chamber established that “priority may need to be given to certain victims who are in a particularly vulnerable situation or who require urgent assistance.”¹¹⁴ In this case, the Experts see the need to give priority to victims of rape who are HIV-positive, including HIV-positive children born of rape as well as to the partners of victims of rape who have also been infected with HIV/AIDS.

3.2.2 Access to ARV and other essential medication

Japanese-Americans, which happens to be close to the bottom of the spectrum.”
<http://glc.yale.edu/sites/default/files/files/justice/greiff.pdf>.

¹¹³The Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS), UNDDR Resource Center, Module on DDR and Transitional Justice, available at <http://www.unddr.org/uploads/documents/IDDRS%206.20%20DDR%20and%20TJ.pdf>.

¹¹⁴ ICC, Trial Chamber, *Lubanga*, Amended Order for Reparations, supra, n. 57, para. 19.

157. The Experts recommend that persons who were victims of sexual violence who are HIV-positive should, along with their children who are HIV-positive, receive lifetime access to anti-retroviral (ARV) medication, similar lifetime access to medication to counter illness linked to HIV or HIV/AIDS, and food assistance for at least 12 months.

158. According to the “Joint UN Program on HIV and AIDS” (UNAIDS), as of 2016, the Central African Republic had between 110,000 to 160,000 persons, both children and adults, living with HIV/AIDS. Only 24 percent were accessing antiretroviral therapy.¹¹⁵

159. According to the Registry, of the more than 5000 persons that applied to participate as victims in the proceedings before the Trial Chamber, approximately 700 claimed they had been victims of rape and 110 said they were HIV-positive. There is no data showing how many of them have had access to HIV treatment. Victims of rape interviewed by the Experts indicated that have free access to ARV drugs. However, it is not clear that they have access to the most effective combination of so-called first, second and third-line ARVs. A June 2016 joint statement on ending AIDS by 2030 by UN human rights experts points out that:

The HIV epidemic continues to be a metaphor for great inequalities within and between countries. Specific populations and communities – often the most fragile and marginalized – continue to be left out and bear the brunt of the epidemic. HIV-related discrimination and violence faced by certain sectors of the population make it more likely that they will end up living in situations of poverty. And those who come from deprived socioeconomic backgrounds are often subject to multiple forms of discrimination, which make it extremely difficult to lift themselves out of poverty.¹¹⁶

160. The Court should recognize that access to first, second and third-line ARVs is essential to the fulfilment of the human right to health and the right to life of the affected victims in this case.

3.2.3 Access to food must accompany access to ARVs

¹¹⁵ UNAIDS, Country Fact Sheet, Central African Republic, available at: <http://www.unaids.org/en/regionscountries/countries/centralafricanrepublic/>

¹¹⁶ Joint Statement by UN human rights experts on the occasion of the High-Level Meeting on ending AIDS by 2030, June 10, 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20053&LangID=E>.

161. For the treatment to be both effective and humane, the victims taking ARV drugs must eat regularly. This is a core element of the right to health that any victim with HIV/AIDS has, and particularly in the special situation of vulnerability of such victims in the CAR. This is the interpretation given by the Committee on Economic, Social and Cultural Rights to Article 14 of the Covenant on Economic, Social and Cultural Rights on the right to health.¹¹⁷ During the interviews, the Experts asked victims how often they ate in a day. One said it was either once or not at all. Another said that when she took ARV drugs without food, she felt intense pain and like ‘going blind.’ When asked how often she took ARV drugs without food, she said it was frequent. Other victims provided similar answers. The indispensability of access to food alongside access to ARV for rape victims with HIV was also underlined by victims interviewed by [REDACTED]. One victim quoted by [REDACTED] said: “we have access to HIV medicine but we don't have food.”¹¹⁸

3.2.4 Why should these victims and beneficiaries be prioritized?

162. Victims of rape and their children who are HIV-positive should be given urgent reparation as soon as possible, even before any other forms of reparation are ordered or implemented; and, arguably, even before the judgment on the appeal/s filed in this case is handed down. The UN Secretary General Guidelines on Reparation for Victims of conflict-Related Sexual Violence specifically address the need to provide such measures to victims of sexual violence.¹¹⁹

163. In some countries in which transitional justice processes have included reparations programs, the needs of a limited number or narrowly defined group of survivors and victims have sometimes been prioritized ahead of all other victims and beneficiaries entitled to reparations. In South Africa for example, an ‘interim’ reparations program was established by the Truth and Reconciliation Commission (TRC) while still in the middle of carrying out its mandate and before it recommended a comprehensive reparations program in its Final Report.¹²⁰ Similarly, while the East Timor Commission on Truth,

¹¹⁷ General Comment 14, The Right to the Highest Attainable Standard of Health, supra, n. 79, paras. 4 and 43.b in particular.

¹¹⁸ [REDACTED]

¹¹⁹ Guidance Note of the UN Secretary General, supra, n. 36, point 7, 2014.

¹²⁰ “It was proposed that individual reparation grants be paid to victims (if alive) or relatives/dependants (where victims were deceased). The amount to be paid should be calculated according to three criteria: an

Reconciliation and Reception (known by its Portuguese acronym CAVR, the Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste) was operating (in a post-crimes/post-conflict scenario), it implemented an urgent reparations program that tried to meet very specific needs of victims categorized by the CAVR as “the most vulnerable.”¹²¹

164. While interim or urgent reparations measures established by truth commissions as well as many post-truth commission State reparations programs are not based on court decisions, these examples offer lessons that the Court should consider. These examples show that victims still have needs years or even decades after the crimes that harmed them were committed that, when unmet, lead to deleterious, life-altering and often permanent outcomes. In South Africa, interim reparations were offered more than 50 years since apartheid began; in Timor-Leste, the urgent reparations program gave benefits after 25 years of Indonesian-occupation-related crimes. By delivering urgent reparations as early as possible and not waiting for the full implementation of a reparation program, victims’ lives can be saved and prolonged and permanent harm can be averted.

3.2.5 How can prioritized victims receive ARV drugs as a form of urgent reparations?

165. There are various ways through which delivery of and access to ARV can be prioritized for the relevant victims in this case. Any of these ways will have to contend with the insecurity challenges pointed out earlier. There are experiences in and outside of CAR to consider in designing and implementing this option. In the experience of Médecins Sans Frontières (MSF), using community service delivery systems is possible: “MSF has successfully implemented a number of different community service delivery models, including: appointment spacing for clinical and drug refill visits in Malawi; peer educator-

amount that acknowledges the suffering caused by the violation; an amount that enables access to requisite services and facilities, and an amount that subsidizes daily living costs according to socio-economic circumstances. As the cost of living is higher in rural than in urban areas, it was recommended that victims living in the rural areas should receive a slightly higher grant. The amount also varied according to the number of dependants (up to a maximum of R23,023 per annum). It was recommended that the annual amount be paid twice a year for a period of six years and be administered by the President’s Fund, which is located within the Department of Justice and Constitutional Development.”

¹²¹ ICTJ, *Unfulfilled Expectations: Victims perceptions of justice and reparations in Timor L’este*, 2011, available at <https://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Unfulfilled-Expectations-2010-English.pdf>

led ARV refill groups in South Africa; community ARV distribution points in DRC; and patient-led community ARV groups in Mozambique.”¹²²

166. These examples point to the possibility of using community leaders and civil society organizations where victims live to organize access to ARV delivery systems. This can benefit both HIV-positive victims in this case and those who are not part of this case but are HIV-positive and need access to ARV drugs. MSF has in fact tried this community delivery system approach in the CAR, in the city of Zemio, amidst its current insecurity: “Our HIV programme was community based, with patients divided into groups, some living as far as 250 kilometres away. One person from each group would visit our clinic and collect enough antiretroviral medications for his or her group for the next three months. We covered around 1,600 patients.”¹²³

167. A word of caution is needed. The Zemio experiment did not last. In July 2017, armed men attacked the MSF hospital in Zemio twice, killed a baby and 11 other persons. This caused massive displacement, with over 20,000 people fleeing the city. The 1,600 HIV patients who used to receive ARV drugs through the Zemio hospital as well as food assistance at the hospital can no longer access either food or medication.¹²⁴ Again, the precariousness of the CAR situation, including its difficult security situation, is more than a relevant consideration and any form of reparation, including urgent forms of redress, should take it into account.

3.2.6 Food assistance as urgent reparation

168. As discussed above, the community delivery system for ARV has been tried in the CAR to mixed (and tragic) results. It would have been and may still be possible to resume the system and to then use it to deliver food assistance. Food assistance itself can come in different forms. It can be through vouchers or cash that can be used to purchase food in local markets where supply is available or it can be through direct supply of food or ‘food-in-kind’ delivered where “(1) local markets are not functioning or (2) there isn’t enough

¹²² Medecins Sans Frontieres, *Out of Focus: How Millions of People in West and Central Africa Are Being Left Out of the Global HIV Response*, April 2016, available at <https://www.msf.org/za/about-us/publications/reports/out-focus-report-hiv-west-and-central-africa>

¹²³ Wil Van Roekel, “The only people left in Zemio are those that couldn’t run away,” Medecins Sans Frontieres, September 12, 2017, available at <http://www.msf.org/en/article/central-african-republic-%E2%80%9C-only-people-left-zemio-are-those-who-couldn%E2%80%99t-run-away%E2%80%9D>

¹²⁴ Ibid.

food in local markets to meet need or (3) beneficiaries do not have physical access to markets.”¹²⁵ The Court itself cannot specify the way food assistance can be made; but through the Trust Fund for Victims, the Court can order [REDACTED]

169. As discussed further below, the most efficient way that food assistance can be delivered in a reparations program in this context is [REDACTED]

3.2.7 Making access to HIV treatment and food assistance transformative

170. Had the persons in this case not been victimized, directly or indirectly, by any, some or all of the crimes committed by Bemba, they would still likely be among the 84 percent of the CAR population facing extreme poverty and therefore be confronted with food insecurity and lack of access to general health care including to the mental health care and psychosocial support needed for those traumatized by these crimes.

171. Neither urgent reparations such as the proposed emergency food assistance nor comprehensive reparations that might include compensation and other material benefits are likely to transform the situation, unless these are specifically designed to promote that transformation. At the very least, a reparations measure can be transformative in a ‘do no harm’ approach, by not undermining the potential for transformation.¹²⁶

172. As an example, transformation through the modality of food distribution be it in the form of cash or vouchers can be encouraged. Drawing on USAID’s experience, for example, “vouchers may be used when working with specific vendors, ensuring people receive certain foods, or for security reasons. Vouchers can strengthen local markets by enabling participating local vendors to sell more food. Debit card or mobile phone cash

¹²⁵US Agency for International Development (USAID), *Types of Emergency Food Assistance*, available at <https://www.usaid.gov/what-we-do/agriculture-and-food-security/food-assistance/programs/emergency-programs/types-emergency>

¹²⁶R Uprimny, “Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice” in 27(4) *Netherlands Quarterly of Human Rights*, (2009), 625-647; C Sandoval, “Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition” in R Duttie and P Seils, *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, (NY, ICTJ, 2017), p.167-200 at 169-171 and 185-192. Ruth Rubio-Marín and Clara Sandoval, “Engendering the Reparations Jurisprudence of the inter-American Court of Human Rights”, *supra*, n. 62.

transfers, as well as electronic vouchers may benefit local banks and mobile phone companies.”¹²⁷

173. But broader than that transformation, it would be helpful to consider how the process of delivering food assistance in this context can contribute to providing access to food more generally in CAR’s communities. As it is, there is extreme malnutrition in the country, linked to poverty and violence, which does not discriminate between victims and non-victims in this case. 84 percent of the population lives on US \$2 a day, with half the population facing extreme multidimensional poverty. One in two households face food insecurity. The country has one of the highest chronic malnutrition rates in the world with 40 percent of children aged 6-59 months suffering from stunting.¹²⁸ Worse, a joint Famine Early Warning Systems program ran by WFP with humanitarian groups projects that the CAR will reach a “crisis” stage (the highest stage is “emergency”) in its food assistance needs outlook by March 2018.¹²⁹

174. In such a situation, the Court can contribute to addressing not only the urgent needs of the prioritized victims but CAR citizens more generally by directing the TFV to use its additional resources, separately and beyond what the convicted perpetrator must provide, to find the most efficient ways the Fund can make food assistance in the CAR sustainable, especially in the situation of conflict and famine prevailing in the country.

175. Alongside access to ARV drugs and to food assistance, we also propose that as part of urgent reparations for HIV-positive rape victims, access to mental health care be provided as soon as possible and as widely as the implementing institutions are able. This is particularly important for rape victims, some of whom we spoke with, whose only resource for mental health support are [REDACTED] and the family members they have who have refused to take part in the social stigmatization attached to being both a rape victim and to being HIV-positive.

3.2.8 What forms of reparation should be provided as a matter of priority?

TABLE 1: URGENT REPARATIONS FOR HIV-POSITIVE RAPE VICTIMS

¹²⁷ *Supra*, n. 125.

¹²⁸ <https://data2.unhcr.org/en/documents/download/55943>

¹²⁹ See Famine Early Warning Systems Network (FEWS-NET), “The conflict precludes any improvement in food security, even with on-going harvests,” October 2017, available at <http://www.fews.net/west-africa/central-african-republic/remote-monitoring-report/october-2017>

| Form of urgent reparation | Beneficiaries | Eligibility requirement | Mode of delivery |
|---|--|--|--|
| <p><i>Lifetime</i> access to first, second and third-line regime antiretroviral (ARV) drugs</p> | <p>Female and male victims of rape with HIV</p> <p>Children of rape victims with HIV</p> <p>Spouse or partner of rape victims with HIV</p> | <p>TC participation ruling or medical certificate that HIV was <i>likely</i> contracted from Dec 2002 in the relevant area</p> | <p>Distributed via:</p> <ul style="list-style-type: none"> • Most accessible health care facility • Including [REDACTED] (i.e. [REDACTED]) • Or community-delivery system where feasible and safe |
| <p><i>Emergency food assistance</i>¹³⁰ for a minimum of twelve (12) months. This</p> | <p>Above beneficiaries and their dependent children + children of the victims'</p> | <p>Same as above</p> | <ul style="list-style-type: none"> • (or other humanitarian) channels of Via [REDACTED] distribution, if |

¹³⁰ The September 2017 projected “emergency food assistance needs” analysis of the Famine Early Warning Systems (FEWS NET) projects needs up to 2018. For CAR, the FEWS NET data shows that the CAR will reach a “crisis” stage (the highest stage is “emergency”) in its food assistance needs outlook by March 2018. According to the FEWS NET analysis, “the conflict (*referring to the 2012-2014 conflict*) has had a significant impact on livelihoods and food access. It has also caused a rise in food prices and hinders the delivery of humanitarian assistance. The most affected areas are in the northwest, central, and south-eastern regions.” Overall, according to WFP data, “at least 1 in 5 households face significant food consumption gaps with high or above usual acute malnutrition, or is marginally able to meet minimum food needs only with unsustainable coping strategies such as liquidating livelihood assets.”

| | | | |
|---|------------------|--|--|
| <p>assistance can take the form of (1) [REDACTED] or (3) food transfers for food.</p> | <p>children;</p> | | <p>voucher or food</p> <ul style="list-style-type: none"> • Distribution and use of the food assistance monitored through [REDACTED] in the beneficiary's community |
| <p>Access to mental health care</p> | | | <p>Humanitarian agencies, and once capacity is built, State institutions</p> |

3.3 What should the standard reparation package (SRP) consist of?

3.3.1 Comparing complex and standardized reparation programs

176. One dichotomy to consider in reparation programs is that of complexity versus standardization. A reparation program can be complex in that it tries, as much as possible, to tailor program benefits to the differing types of victims, violations or harms in a situation. Or it can be a more standardized program when it either opts for (a) a common form of reparation or a standardized set of benefits for all beneficiaries in the universe of victims or for (b) a standardized set of benefits for all victims within each category of violations (for example, pillage) or within each type of harm (for example, the loss of livelihood, regardless of the crime that caused it).

177. One example of a standardized program is the one implemented by the South African government soon after the SA TRC submitted its report. In what was really a standardized compensation program, the SA government used part of the President's Fund, set aside for reparation, to pay SA 30,000 rand each to around 17,000 persons who were registered

as victims during the South Africa TRC process.¹³¹ A more limited but perhaps an even more relevant example is the reparations approach of the Extraordinary Chambers in the Courts of Cambodia (ECCC). So far, the ECCC has followed a narrow interpretation of its mandate to provide “collective and moral” reparations,¹³² interpreting this mandate as preventing it from ordering any “material” form of reparation. Thus, the ECCC did not grant requests by parties civil (*partes civiles*) for funding to build or maintain stupas or temples or collective forms of material reparation, such as health care facilities. By interpreting its mandate this way, it ended up offering only one set of reparation measures for all victims, regardless of the crimes committed against them.

178. An example of a more complex reparation program was envisaged and partially implemented in Sierra Leone. It offered different amounts of compensation for different victim categories, considered to be in a vulnerable situation, such as ‘war widows,’ amputees and children.¹³³ It was State-supported, but non-State-administered programs accompanied the State program. UN Women, for example, funded fistula surgery for victims of sexual violence,¹³⁴ while the Norwegian Rescue Committee (NRC) built housing for amputees.¹³⁵ The Experts do not mean to suggest, however, that the dichotomy between complexity and standardization should be viewed as rigid; some reparation

¹³¹ Philip de Wet, “Reparations still on the backfoot,” *Mail and Guardian*, November 16, 2012, at <https://mg.co.za/article/2012-11-16-00-reparations-still-on-the-back-foot>

¹³² In the Appeal Judgment in the ECCC’s Case 001, the Court held that “the term “moral” denotes the aim of repairing moral damages rather than material ones.” It also said: “monetary payments to civil parties are excluded and reparations shall be requested in a single submission seeking a limited number of measures. The proposed projects are to be financed either by the convicted person or by external donors.” At <https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/Case%20001AppealJudgementEn.pdf>

¹³³ M. Suma and C. Correa, *Report and Proposals for the Implementation of Reparations in Sierra Leone*, ICTJ, April 2011, <https://www.ictj.org/sites/default/files/ICTJ-SierraLeone-Reparations-Report-2009-English.pdf> ; “Sierra Leone victims receive compensation,” IOM, June 25, 2012, available at <https://www.iom.int/news/sierra-leone-victims-receive-compensation>

¹³⁴ “Mechanisms,” End VAW Now, at <http://www.endvawnow.org/en/articles/1673-mechanisms.html>

¹³⁵ Edward Conteh and Maria Bergs, *‘Mi At Don Poil’: A Report on Reparations in Sierra Leone for Amputee and War-Wounded People*, 2014, Amputee and War-Wounded Association, Freetown, Sierra Leone. Available at <http://pf7d7vi404s1dxh27mla5569.wpengine.netdna-cdn.com/files/library/AWWA%20Report%20on%20Reparations.pdf> , page 17.

“Most people we talked to had been provided housing by the Norwegian Refugee Committee or later the Norwegian Friends of Sierra Leone and thus gaining shelter was no longer one of their overall main needs. Reparations money was thus not spent on shelter unless it was the provision of ‘additional buildings’. In this respect, despite many criticisms of the Norwegian programme in building far from urban centres and with limited abilities for farming land, Pa Bokarie said that, “We have been pulled out of shame.”

programs might offer benefits that are standard for all within a category, but still maintain specialized forms of reparations for certain victims.

3.3.2 Design considerations and the challenges of access and delivery in this case

179. Different reasons lead to choosing one design or another. In some cases, complexity is chosen because reparation's policymakers want to respond to demands of different victims groups for specific forms of reparation. Morocco, for example, gave compensation to families of those killed in violent police responses to demonstrations as well as for victims of prolonged detention and torture. But it also offered reparations in the form of capital and technical assistance for livelihood projects to those who had been punished collectively for their political views by excluding them from economic opportunities.¹³⁶ In other cases, policymakers opt for standardization, such as a standard form of reparation or using standard amounts of compensation, because victims are too spread out and are thus unlikely to easily access other forms of reparation, such as health care or education offered in a specific location. One reparation program for victims of Nazi persecution, for example, relied on standardized compensation payments for beneficiaries, inter alia because they were spread across a number of countries on several continents.¹³⁷ In some cases, both standardized amounts of compensation are used alongside standard non-compensation reparations programs. An example is Nepal's 'interim relief program' for victims of its 1996-2006 armed conflict; it offered standardized amounts of compensation for victims of enforced disappearances and unlawful killings. It also offered scholarships for children of victims of both types of violations.

3.3.3 Feasibility issues

180. In the view of the Experts, other than in the provision of urgent reparation measures discussed earlier for HIV-positive victims of rape], a complex reparation program that delivers benefits in both monetary and non-monetary forms is not likely to be feasible in this case. The reason for this is not the number of victims and potential beneficiaries

¹³⁶Ruben Carranza and Julie Guillerot, *The Rabat Report: The Concept and Challenges of Collective Reparations*, ICTJ February 1, 2009

¹³⁷ See Law on the Creation of a Foundation "Remembrance, Responsibility and Future" (the German Federal Foundation) of 2 August 2000 (<https://www.stiftung-evz.de/eng/the-foundation/law.html>), dealing with the compensation for former forced labourers under the National Socialist regime.

involved. In fact, it is precisely in situations where the number of victims is significant, that reparation programs are designed and implemented in a combined fashion – some complex and some (as will be discussed below) relatively standardized and simpler to implement. Many reparation programs have in fact addressed far larger numbers of victims than are eligible in this case. While it involves the largest number of victims who have applied for reparations in the case of the International Criminal Court, it is not the largest number of victims that reparations programs have had to deal with. For example, the number of applications submitted to the Philippines reparations program for victims of the Marcos dictatorship reached 75,730 by the time registration ended, or four times the number anticipated.¹³⁸ In Colombia, 8,425,398 persons applied for reparations; 6,605,488 were found eligible by the May 2017 cut-off date.¹³⁹

181. The Experts cannot recommend a complex program that promises to deliver not only monetary compensation but also access to social services, goods and other material benefits because of the aforementioned insecurity and other conditions prevailing in the CAR. The first principle is to ‘do no harm.’ Having visited the country, spoken with different stakeholders and monitored the security situation [REDACTED], a complex reparation program that will increase the physical risks to victims and require the Court and the TFV to put in place a system of supplying and delivering goods and services to victims directly or through others, may lead to harm for both beneficiaries and implementers. The aforementioned recent MSF experience in Zemio is an example. As it is, the Trust Fund for Victims was meant to begin in 2012 its assistance program for victims of sexual violence in several regions of the country in this case, with a budget of €600,000 [approximately FCFA 300,000,000]. But the following year, it decided to “carefully monitor the unfolding political and security situation” and in the meantime “suspends all its activities until further notice.”¹⁴⁰

182. Instead, we recommend that, in addition to and apart from the urgent reparations discussed earlier, a comprehensive reparations program be ordered, in which compensation for specific non-pecuniary harms and, where appropriate, compensation

¹³⁸ “Frequently Asked Questions,” Human Rights Violations Victims Claims Board, Republic of the Philippines, available at <http://hrvclaimsboard.gov.ph/index.php/fag>

¹³⁹ Unidad Víctimas Colombia, <http://www.unidadvictimas.gov.co/en>

¹⁴⁰ “Trust Fund For Victims Suspends Its Activities In The Central African Republic”, March 25, 2013.

<http://www.trustfundforvictims.org/news/trust-fund-victims-suspends-its-activities-central-african-republic>

for certain services and material goods that can address material harms be delivered to victims in the safest, most efficient and most expeditious way.

183. This leads to its own challenges, including calculating the amounts of compensation corresponding to the harms redressed, and determining the safest and most effective means of delivering them.

3.4 Calculating amounts of compensation

184. Every situation in which a reparation program includes compensation will inevitably have to face the challenge of assigning values to harm and estimating the cost of the corresponding attempt to repair that harm, unless fixed amounts are determined in negotiations or legislation. Conveying the notion that reparation is about acknowledging the harms suffered by the victim rather than trying to restore him or her to a prior situation is only a part of the answer. Offering compensation will require an effort to assign values to, as the UN Basic Principles describes them, harms that are “economically assessable.”¹⁴¹ Different legal systems have established various ways of calculating the value of certain types of losses, even those that are seemingly resistant to pecuniary estimation, such as the loss of a life. In some cases, awards of compensation for the loss of life or for other harm resulting from human rights violations or from crimes corresponding to those in this case, have used national jurisprudence, regional human rights court rulings and analogous valuations, such as those in insurance law or workplace regulations.

185. It is not clear to the Experts whether similar national jurisprudence or analogous findings that provide amounts of compensation for the kinds of harm in this case exists in the CAR.¹⁴² But the circumstances of the victims who experienced harms in this case are so varied that any attempt to extract a satisfactory amount to all or even to most will be counter-productive and will require more time that will, in turn, further delay the distribution of reparations. Instead, the Experts adopt what they consider to be a more reasonable and practical approach, taking into account that the harms caused as a result

¹⁴¹ Basic Principles, *supra*, n. 11, Principle 20

¹⁴² In the trial in 1987 against former dictator Jean-Bedel Bokassa, various amounts were awarded by the Bangui Appeals Court to civil parties for material and moral damages, ranging from a symbolic 1 franc amount to 5 million francs to legal successors of victims of murder, torture and detention; Cour d’Appel de Bangui, Répertoire n° 06, Année 1987. See also, AP, “Bokassa doomed by Bangui court,” June 13, 1987, <http://www.nytimes.com/1987/06/13/world/bokassa-doomed-by-bangui-court.html>

of Mr. Bemba's crimes were detrimental to their and their families' right to an adequate standard of living, including their health, education, food, clothing and need to repair pillaged houses."¹⁴³

3.4.1 Standard compensation amount (SCA) and Standard reparation package (SRP)

186. In this case, we will assign a pecuniary value to an adequate standard of living, given the totality of harms inflicted on the universe of victims. We will then use that value as the standard amount of compensation for each eligible beneficiary. Based on that value, and taking into account the information obtained from various sources on the costs of housing, education and what may be needed to initiate a source of livelihood, we will also assign corresponding values.

187. To this end, the Experts recommend to the Court to adopt two concepts: that of a 'standard compensation amount' (SCA) which represents the "floor" amount of compensation for material harms suffered by each victim, and that of a 'standard reparation package' (SRP). We also propose to assign a standard value to moral harm for all victims, given the inherent difficulty of quantifying such harm.¹⁴⁴ With respect to organizations and/or institutions that are juridical persons under the CAR legal system and were victims of pillage, we recommend the payment of the standard compensation amount (SCA) as well, but not any of the other components of the standard reparations package.

¹⁴³ Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, ratified by the CAR states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

¹⁴⁴ In significant ways, this approach is based on the one used in the reparations program for victims of Canada's so-called residential schools. In that program, around 40,000 persons who were children and members of different Canadian 'First Nations' (indigenous) people were compelled, as children, to live in so-called 'Indian residential schools.' In these schools, they were stripped of their indigenous identities and taught to be Westernized Canadians. In addition, many of the children suffered sexual and other physical abuse. To respond to a court case filed by victims, the Canadian government entered into a settlement that included the setting up of a truth commission that examined this residential schools experience, and a reparations program, including what is called a 'common experience payment' (CEP), which is "a lump-sum payment that recognizes the experience of living at an Indian Residential School(s) and its impacts." For more details regarding this reparations program, see <https://www.ictj.org/our-work/regions-and-countries/canada>. In this case, however, and unlike the Canadian example, we propose that no individualized process be carried out and that standard compensation amounts and reparations packages be given instead.

188. We also recommend that the Court encourage reparation beneficiaries to pool their compensation payments to help them gain greater and more sustainable access to livelihood materials or a modest source of capital for agricultural or commercial use.

3.4.2 The value of a 'standard compensation amount' (SCA)

189. The 'munificence' of the proposed reparations program, including the values assigned to different forms of reparation and/or types of social services or goods and the actual amount in money that victims will receive, will depend largely on the value of the SCA. The SCA is meant to take into account but not necessarily meant to correspond to the cost of living conditions in CAR. Since there is no current and reliable method of measuring what the minimum living costs might be in different parts of the CAR, particularly where victims are located, the Experts recommend to the Court the following options in designating the value of the SCA in this case.

190. The standard compensation amount can be fixed using considerations of equity and anecdotal information that the Experts gathered in the focus group discussions, interviews and bilateral discussions with different CAR-based ██████████. In our judgment, the amount of ██████████ represents a reasonable estimate of the material harm suffered by victims, without making a claim that this amount can repair all those harms at this point.

191. There is another option that the Court can consider. Historically, CAR citizens have seen public sector employment as a means of earning a living that represents an alternative to the restrictive, resource-extraction based work available in the country. A state job conferred a certain status.¹⁴⁵ This option is not unprecedented, In Argentina, compensation for victims of prolonged detention was based on the salary of the highest-paid public servant, multiplied by the number of years of detention.¹⁴⁶

192. Of course, the Court may determine any other amount as a 'standard compensation amount.' But perhaps the most important consideration in exercising its discretion in

¹⁴⁵ L Lombard, *State of Rebellion: Violence and Intervention in the Central African Republic*, supra, n. 100 and also T Carayannis and Louisa Lombard (Eds.). *Making Sense of the Central African Republic* (London: Zed Books. (2015).

¹⁴⁶ Law 24.043 (1991) available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/442/texact.htm>

setting that amount would be to keep in mind that it should be the starting, minimum amount.

193. Among other material harm the standard compensation amount is meant to cover the harm caused by pillage on the homes and possessions of victims. The extent of pillage in this case explains the near-total preference among victims who participated in the FGDs and interviews for housing as a form of reparation. The nature of pillage as a crime precludes us from recommending either actual housing or the cost of rebuilding homes, but we have taken into account the cost for victims of having to repair their homes in the standard compensation amount. This may also cover the situation of women victims, including victims of rape we interviewed, who mentioned that they had been staying with relatives as a result of stigmatization. As one rape victim put it in our interviews, to deal with stigma, “the best thing to do is to leave the area.” Hence, the importance of standardizing this individual compensation across different crimes, in which there is impact on shelter.

194. Victims gave the Experts varying estimates of what they think new housing (or rental) would cost. This is likely because they came from, or have moved to, different parts of the country since the events in this case. Figures seemed to fluctuate based on the country’s security situation¹⁴⁷ But housing costs are in any case prohibitive in the country and this amount is not meant to cover those costs in its entirety.

195. This is not to say that community reparations programs cannot incorporate the construction of infrastructure that benefits an entire community, including those in which the impact of violations committed in conflict has been significant. The International Organization for Migration (IOM), for example, has been implementing a ‘cash for work’ program in CAR, in which 12 infrastructure projects, nine of which have been completed, were built in PK5 and workers were given vocational training to help them learn a livelihood-supporting trade for the future.¹⁴⁸

3.4.3 Pooling of the SCA and the kelemba system

¹⁴⁷ Center for Affordable Housing Finance in Africa, 2017 Yearbook http://housingfinanceafrica.org/app/uploads/2017_CAHF_YEARBOOK_14.10-copy.compressed.pdf

¹⁴⁸ "IOM Hands over rehabilitated community infrastructure in Bangui, CAR," April 12, 2016 <https://www.iom.int/news/iom-hands-over-rehabilitated-community-infrastructure-bangui-car>

196. When asked whether they were willing to pool part of the compensation payments they might receive in a joint economic enterprise with other victims (or non-victims), some of the FGD participants said they would while others had reservations over whether this would make sense for them. Yet others saw it as a way of increasing the sustainability of their livelihood. A kelemba is a “substitute to formal financial services, a local safety net mechanism that constitutes simultaneously a solidarity group and access to savings and credit. Called tontines in French or kelemba in Sango, it takes the form of an amalgam of rotating and accumulating savings and credit associations.¹⁴⁹ There is evidence from the field that the kelemba system is not only popular among the CAR people but are “effective financing mechanisms in other sectors in CAR” and that it can “provide secure saving, intra-group lending and opportunity for re-investment in income-generating activities, and perhaps most importantly, increase cohesion and solidarity” among its participants”.¹⁵⁰

197. One hindrance to promoting kelemba services is of course the lack of resources to contribute in the first place. One victim interviewed by the Experts said she would be willing to join a kelemba and contribute part of any compensation she receives. She said that she used to be member of kelemba but had to stop “because [she] has nothing to contribute.”

198. Hence, the Experts recommend that victims be encouraged to make these payments sustainable by investing a specific amount in a kelemba. The details of carrying out and monitoring this process can be done by the implementing institution together with [REDACTED]

3.4.4 Payment and delivery of the SRP

199. At the beginning of this section, the Experts emphasized why the ‘do no harm’ principle must be a factor in this case. The modalities of distributing the standard compensation amount (and urgent forms of reparation paid as cash) should not add to

¹⁴⁹ Joana Friedman, “Alternative Financing Mechanisms For Artisanal Diamond Development,” August 14, 2008, USAID, available at https://www.usaidlandtenure.net/wp-content/uploads/2016/09/USAID_Land_Tenure_PRADD_Financing_Mechanisms.pdf

¹⁵⁰ “This field work showed that the *kelemba* structure could work among miners. These economic and social aspects could allow miners to reap greater benefits from their economic activities, and improve their livelihoods and those of their families, their economic activities, and improve their livelihoods and those of their families.

the insecurity and hardship that victims, like many other CAR citizens, currently face. The CAR banking system is weak and many victims the Experts spoke to said they did not have bank accounts. Payment of cash in person will require travel either on the back of a motorbike, sometime for two or more days, to reach a bank in Bangui or paying for passage on board lorries coming from or going back to Bangui or other population centres. The other option, which we would recommend be conveyed, through the Court, to the implementing institution is to consider [REDACTED]

200. With no functioning postal and public transportation system, mobile phone use in the CAR has grown considerably. The World Bank reports around 1.24M mobile phone subscribers¹⁵¹ or 24 mobile phone users for every 100 persons.¹⁵² Anecdotally, when we asked FGD participants whether they had access to a mobile phone, most said they did while others said that they could have access to a family member’s mobile phone. There are 4 mobile phone operators in the country but the company called Orange says “it is the only operator to provide mobile payment services since it launched its Orange Money offer in 2016.”¹⁵³ Orange has more than 400,000 active mobile subscribers, most of them are prepaid customers.

201. The capacity to [REDACTED] is an obvious advantage in a situation of insecurity and conflict; it is also a way by which the costs of implementing a program that requires [REDACTED] to thousands of persons in a country with limited transportation and banking systems can be done. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]s can promote the fulfilment

¹⁵² From the country profile for the Central African Republic, the World Bank, available at http://databank.worldbank.org/data/views/reports/ReportWidgetCustom.aspx?Report_Name=CountryProfile&Id=b450fd57

¹⁵³ From the Orange website: According to the company, it has “more than 400,000 active mobile subscribers, most of them being prepaid customers, (and) has provided the four main cities of the country with mobile data services through its positioning in offers to companies, organizations and international military forces.” <https://www.orange.com/en/Group/Orange-in-the-world/countries/Welcome-to-Orange-Central-African-Republic>

¹⁵⁴ [REDACTED]
[REDACTED] .

of access to basic social rights and, most relevant in this case, “helps maintain a sense of dignity.”¹⁵⁵

3.5 The value of dignity and acknowledging unquantifiable moral damage

202. Some victims used the Sango word for “dignity” (nenggo) in describing what they hope reparations would make them feel. Others used the literal phrase “to feel better” (betsemo ayeke) while pointing to their heart. While the standard compensation amount will not fully repair the material harm done to victims, there is no amount that can correspond to the indignity, suffering and non-pecuniary damage they themselves underwent or experienced seeing their spouses, children, siblings or other family members murdered, be rape or dying as they fled their pillaged homes. The amount the Experts propose as an award for this moral damage is symbolic; but it is important that it goes with the standard compensation amount so that both material and symbolic forms of reparation are delivered simultaneously.

3.6 Components of the standard reparation package (SRP)

203. To recapitulate, the standard reparation package (SRP) shall be offered to each eligible victim and will consist of the following:

- A standard compensation amount (SCA)
- An amount for sustainable livelihood assistance, for investing in a *kelemba*.
- An amount for moral damage

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Table 2: Components of the SRP and corresponding values in money

| The Standard Reparation Package | |
|---|--|
| Standard compensation amount (SCA) to cover all material harms of each victim | ■■■■■ ■■■■■ whichever is higher |
| Livelihood assistance | ■■■■ to be used for joining a <i>kelemba</i> |
| An amount to cover the unquantifiable moral damage suffered by each victim | ■■■■ |
| Total equivalent amount of the SRP: Not less than ■■■■■ | |

3.7 Forms of Community Reparations

204. The Appeals Chamber in *Lubanga* said that “certain crimes may have an effect on a community as a whole [so] that, if there is a sufficient causal link between the harm suffered by members of that community and the crimes of which [the convicted person] was found guilty, it is appropriate to award collective reparations to that community,

understood as a group of victims. Therefore, an award of collective reparations to a community is not necessarily an error.”¹⁵⁶

205. In this case, the crimes had impact on the communities even as certain groups of people – regardless of the crimes they were victims of or were witness to – likewise suffered harms that may arguably be addressed collectively.

206. The Experts recommend three main types of community and collective reparations. For each type of community or collective reparation, we recommend that the standard compensation amount (SCA) be used as a reference on a per capita basis, depending on the number of victims affected per community or per collective (i.e. number of survivors of rape, number of indirect victims of murder and number of those killed in the context of this case) or the total cost of the service (i.e. the cost of running a radio program in a popular CAR radio station):

- 1) **Collective reparations for pillage of the structures and property of community institutions**, [including State-run schools and health care facilities, the buildings and equipment of local governments, including courts, and social and economic infrastructure relied on for sustaining life and livelihoods among the population, including the water supply system and markets];
- 2) **Collective reparations for communities economically impacted by harm not constituting pillage**: The possible options for investment may be community manioc processing equipment, [REDACTED]¹⁵⁷ for communities [REDACTED]; repair and maintenance of community. One factor to consider here is the legal characterization of pillage as the taking of property. This characterization relies on the conventional assumption that an object that provides benefit is property and is thus private and susceptible of being taken or pillaged. In many developing countries, including in this case, certain things and objects (such as a boat) may be communal property, or ‘owned’ in a way not premised on private property-based models, such as in

¹⁵⁶ *Lubanga*, Appeals Chamber, Reparations, supra, n. 57, para. 212

¹⁵⁷ From the FGDs: [REDACTED] took all the money I earned and borrowed. I couldn’t get it back nor repay.”

indigenous legal systems or even possibly owned by someone else (who may or may not be a victim). An example is of [REDACTED] whose livelihoods have been affected by the cycles of violence in the country.¹⁵⁸ The river is the same body of water used by Mr. Bemba's troops to cross into the CAR and commit the crimes in this case.

- 3) **The cost of providing access to mental health care as a form of collective reparations:** This should cover at least two (2) years of mental health services, ideally by paying for State-run counselling. This cost, however, should be channelled directly to the State health authorities so that existing capacity can be expanded rather than separately established for purposes of this case. This can include training of more local mental health professionals as well as creating a mobile clinic for their operations in the hinterland. If a State-run service is not feasible, the funding can be channeled to especially-trained national non-government organizations that have worked with victims of sexual violence and extended to cover victims of murder in this case. The importance of sustainable local mental health services cannot be overemphasized.
- 4) **Exhumations and reburial costs as a form of collective reparations for families of murder victims:** This may be done as or alongside symbolic forms of reparation, should the remains of those not properly buried with corresponding religious or cultural traditions cannot be found or reburied.
- 5) **For victims of sexual violence, the following collective forms of reparation:**¹⁵⁹

¹⁵⁸ [REDACTED]

¹⁵⁹ One question that has come up in other reparations programs in which forms of material reparations, usually a social service are offered, is whether those who are not technically meant to be its beneficiaries can avail of the service. The position we are taking here is that those persons who suffer from the same harm that the victims of the crimes in this case suffered, i.e. those who may be HIV-positive, whether or not as a consequence of sexual violence, should be able to access this service. Not only is this in line with a non-discriminatory approach to providing access to health care; but this can help counter stigma directed at victims of rape in the CAR and, in particular, stigma directed at victims of rape in this case, both men and women. In our interviews and FGDs, one aspect that both victims and non-victims of rape pointed out was the specific stigma associated with having been raped by men described as *Banyamulenge*.

- (a) Free access to HIV-AIDS testing on a regular basis, including the possibility of mobile HIV-AIDS testing facilities if and when the security situation permits;
- (b) Cost of providing sustainable psychosocial support and mental health care.
- (c) Cost of promoting awareness programs (via radio and printed materials) to address the stigmatization of rape victims and their children.

207. On memorialization and symbolic reparations, most of the victims we met and interviewed, as a group or individually, were sceptical of the idea of memorials or of other forms of symbolic reparations, such as an apology. Part of this stemmed from the absence of material reparations; another, from a perception (which is not limited to the CAR) that monuments are for 'heroes,' prominent leaders or politicians rather than for victims of violence in armed conflict.

208. We asked families who have not or can no longer find and re-bury the remains of those who were killed, whether it would be meaningful for them to have a common symbolic gravesite where, in accordance with Christian religious practice, for example, they can pay their respects and remember. A few saw this as meaningful. Others remained sceptical, even after the idea of symbolic reparations was explained.

209. One victim's response was: "Wouldn't it be better to use the money for compensation? Besides, a statue will only remind us of the pain we felt."

210. We also asked FGD and interview participants whether they felt that an apology from Bemba would help repair the harm done. Many of the answers reflected the deep religious beliefs of the victims: "God says we should accept an apology. I will pray that God forgives him." We are supposed to accept it." "There's nothing else to be done but to accept forgiveness." Others were outraged and vehemently rejected it.

211. Given these responses, the Experts recommend that the Court refrain at the moment from passing upon the question of memorials as symbolic reparations or an apology from

Mr. Bemba. The more prudent choice would be to focus on designing and delivering the limited and time-sensitive material reparations in this case and revisit the possibility of these specific symbolic forms of reparation after the material forms have been provided, if desired by the victims.

4 SCOPE OF MR. BEMBA'S LIABILITY

212. The final issue the Court asked the Experts to comment on was the scope of the liability of Mr. Bemba. The extent of the harms caused by Mr. Bemba and the forms of reparation to address them have been discussed in the previous sections. While they have recommended a standard compensation amount (SCA) for each eligible victim, the Experts are not in a position to assign a monetary value to each type of harm and each form of reparation they have recommended. Consequently, they have not put forward an amount for the sum-total of the harms caused by Mr. Bemba and of the corresponding reparations; this will only be known when the Chamber has decided which forms of reparation shall be awarded and when their monetary value has been calculated. Independently of this amount, and considering the circumstances of this case, the proportion of Mr. Bemba's liability for the total harm suffered by the victims can be determined.

213. In addition to determining the scope of liability of Mr. Bemba, in this section of the report the Experts discuss the possible impact of a *novus actus interveniens* and the alleged obligation of victims to disclose any benefits they have received domestically or internationally that might limit or reduce the liability of Mr. Bemba. In the words of the Defence, this will ensure that "the convicted person is not providing cumulative benefits in a manner inconsistent with the principles of reparations."¹⁶⁰

214. The jurisprudence of the International Criminal Court on the extent and scope of the liability of a convicted person has so far established the following principles:

¹⁶⁰ ICC, Trial Chamber III, *Situation in the Central African Republic in the case of the Prosecutor v. Jean Pierre Bemba Gombo*, Defence Observations on Reparations, confidential, ICC-01/05-01/08, 31 October 2016, para. 103.

- a) that it is the responsibility of the convicted person to redress the harm caused as a result of the crimes for which the person was convicted;
- b) that the indigence of the convicted person is no obstacle to establishing the extent of the liability of the person;¹⁶¹
- c) that in cases of indigence, the liability of the person is not limited to non-monetary reparations;¹⁶²
- d) that the liability of the convicted person in relation to the forms of reparation ordered by the Chamber always has to be established by the Chamber and made known to the person;¹⁶³ and,
- e) that the scope of the liability of the person “must be proportionate to the harm caused and, inter alia, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case.”¹⁶⁴

215. To date, the Court has determined the extent of the financial liability of the convicted person only in the cases of *Katanga* and *Al-Mahdi*. In *Katanga*, the Court determined that the extent of the harm in financial terms was USD 3,752,620 and considered that Mr. Katanga’s liability reached USD 1,000,000.¹⁶⁵ This figure was the result of the analysis carried out by the Chamber with respect to the factual and legal implications of Mr. Katanga’s participation as an accessory to the crimes that took place in the attack in Bogoro on 24 February 2003, and based on the assessment of each head of harm that the Chamber performed.¹⁶⁶

¹⁶¹ ICC, Appeals Chamber, *Lubanga*, Reparations, supra, n.57, paras. 102-105.

¹⁶² Ibid., para. 240.

¹⁶³ Ibid., paras. 1 and 32.

¹⁶⁴ Ibid., para. 118.

¹⁶⁵ Trial Chamber II, *Katanga*, Reparations, supra, n. 40, paras. 239 and 264.

¹⁶⁶ Ibid, para. 257.

216. In the case of Al Mahdi, the Court identified the types of relevant harm caused by the destruction of nine mausoleums and a mosque in Timbuktu, Mali, between 30 June 2012 and 11 July 2012 for which Mr. Al Mahdi was convicted as co-perpetrator of the war crime of wilfully directing attacks against historical or religious sites. The Court then assessed the financial extent of the harms and established the liability of Al Mahdi at EUR 2,700,000.¹⁶⁷ In contrast to Katanga, in Al Mahdi the Chamber appears to have made him financially liable for all the harm caused as a result of the destruction of cultural and religious property and the ensuing harms such as consequential economic loss, and not just for a part of it.

217. A key element in understanding the different treatment given to the extent of the liability in Katanga and Al-Mahdi is the principle of joint and several liability, also known as *responsabilité solidaire* or *in solidum*. According to this principle, each person who is jointly liable for the harm caused, is fully liable for the full extent of the harm but take recourse action against the other persons responsible, to recover part of what he or she has paid. This principle was rejected in Katanga,¹⁶⁸ which applied the several liability principle, making the convicted person responsible only for the share of his or her responsibility. In contrast, the principle of joint and several liability appears to be used in *Al-Mahdi*.

218. The Experts believe that the Court should revisit the non-application of the principle of joint and several liability since a decision based only on several liability hinders the right to reparation that victims have under the Rome Statute. Victims who have already been waiting for more than a decade to obtain reparation from the Court, and who are living in a highly vulnerable situation and in urgent need of redress, would have to seek justice even against unknown perpetrators, in and outside CAR, to ensure that their right to reparation is fulfilled to the fullest extent.¹⁶⁹ This would render meaningless their right to effective reparation.

¹⁶⁷ Trial Chamber VIII, *Al Mahdi*, reparations, supra, n. 42, para. 134.

¹⁶⁸ *Katanga*, reparations, supra, n. 40, para. 263.

¹⁶⁹ Observations by the Redress Trust Pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, *Situation in the Central African Republic, In the Case of the Prosecutor v. Jean-Pierre Bemba Gombo*, 17 October 2016, para. 23.

219. The Experts consider that it is important to remember that the principle of joint and several liability is based on the recognition that more than one person may be responsible even if it is possible to take action against any of them for the total to ensure that there is full redress for victims. Put simply, this principle works as an insurance for victims that they will get redress for the terrible harms they have suffered. It is not the victims' fault that their harm was caused by a plurality of perpetrators; consequently, they should not have to bear the procedural risks typically involved with securing redress from multiple perpetrators such as that the persons causing the harm cannot be identified; that they cannot be traced; that they are insolvent; that the costs of a lawsuit are prohibitive; or that there is simply no legal remedy available to secure reparation. The principle also protects the funds of the Trust Fund. The Trust Fund was not set up to be a third party liability insurance for persons convicted for serious international crimes established under the Rome Statute. Quite the contrary, the TFV was established "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims."¹⁷⁰

220. In connection with this, it is important to note that the key reparation principle specified so far by the Appeals Chamber, in interpreting Article 75.1 of the Rome Statute, that is directly related to the extent/scope of the liability of a convicted person, is that "a convicted person's liability for reparations must be proportionate to the harm caused and, inter alia, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case"¹⁷¹ While the specific scope and reach of this principle remains to be determined, if it is interpreted as including of the several liability principle, it would be detrimental to the right to reparation of victims for the reasons that have been indicated.

221. It is the view of the Experts that the principle established by the Appeals Chamber in *Lubanga* is compatible with the joint and several liability principle since it does not change the tenet of "responsibility proportional to harm" but rather transfers to the perpetrator the burden to recover the portion of the liability that is not attributable to him or her.

¹⁷⁰ Rome Statute, Article 79.1.

¹⁷¹ ICC, Appeals Chamber, *Lubanga*, reparations, supra, n. 57, para. 6.

222. As a consequence, and to prevent an interpretation of the principle that deprives victims of their right to reparation, the Experts submit that any assessment of the participation of the convicted person in the commission of the crimes should bear in mind the following factors:

- a) the mode of the criminal responsibility of the person in the commission of the crimes for which he was convicted;
- f) the gravity of the crimes committed and the extent of the harm caused to victims; and
- g) recognising the concurrent responsibility of other persons, even if their responsibility has not been determined by a tribunal.

4.1 The mode of Mr. Bemba's criminal responsibility in the commission of the crimes for which he was convicted

223. Mr. Bemba was found guilty on the basis of command responsibility for the crimes against humanity of murder and rape, and the war crimes of murder, rape and pillaging. Concerning his power and effective control over the MLC soldiers, the Chamber found that

Mr Bemba was the President of the MLC and Commander-in-Chief of the ALC throughout the period relevant to the charges, and held the rank of Divisional General. The Chamber has found that, in these capacities, Mr Bemba had broad formal powers, ultimate decision-making authority, and powers of appointment, promotion, and dismissal. Mr Bemba additionally controlled the MLC's funding, had direct lines of communication to commanders in the field, had well-established reporting systems, received operational and technical advice from the MLC General Staff, and both could, and did, issue operational orders. Furthermore, the Chamber has found that Mr Bemba had disciplinary powers over MLC members, including the power to initiate inquiries and establish courts-martial, and had the ability to send or withdraw troops from the CAR. These findings establish that Mr Bemba effectively acted as a military commander and had effective

authority and control over the MLC, including ALC troops, during the time period of the charges.¹⁷²

224. Furthermore, the Chamber found that Mr. Bemba knew that the MLC forces were committing or about to commit the crimes concerned and did not take the necessary and reasonable measures to prevent or repress their occurrence.¹⁷³ Indeed, Mr. Bemba visited CAR a few times while his troops were deployed there between October 2002 and March 2003. He knew through his own troops, through media and NGO reports that there were credible allegations that his troops had and were committing rape, murder and pillaging in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke and Mongoumba.¹⁷⁴

225. As President of the MLC and Commander-in-Chief of the MLC, with the aforementioned command powers Mr. Bemba had over its troops, he should and could have acted to prevent these crimes. He had the means to respond to the allegations of pillage, rape and murder in an effective manner so as to prevent and repress their occurrence, but he failed to take appropriate action to do so. Furthermore, the crimes for which he was convicted took place during almost five months (from on or about 26 October 2002 to 15 March 2003), that is, a long enough period of time for Mr. Bemba to take appropriate measures to intervene and prevent them.

4.2 The gravity of the crimes committed and the extent of the harm caused to victims

²²⁶ Mr. Bemba's role as Commander-in-Chief of the MLC troops and his failure to take reasonable measures to prevent or repress the occurrence of the crimes committed should be particularly taken into account by the Court. Rather than deterring and preventing his troops from committing the crimes concerned, his conduct sent the message that they could continue to commit them. Other tribunals have qualified such failures in this way.¹⁷⁵

¹⁷² Trial Chamber, *Bemba*, conviction, supra, n. 1, para. 697.

¹⁷³ *Ibid.*, paras. 719-734.

¹⁷⁴ *Ibid.*, para. 709.

¹⁷⁵ ICTY, *Delalić et al.* Appeal Judgment, paras. 739-740 and ICTY, *Mucić et al.* Sentencing Appeal Judgment, para. 35a and ICTY, *Milošević* Appeal Judgment, para. 334.

227. Mr. Bemba's responsibility as military commander for the commission of the crime of murder is of a severe gravity. His action and inaction as military commander allowed his troops to take away the life of civilians thereby harming those close to the murdered person, often his/her next of kin. Such acts happened on roads, in villages or in victims' homes, often in front of their loved ones, and took place together with acts of pillaging and rape.¹⁷⁶ Victims' next of kin suffered not only the loss of their loved ones, but also from the brutal ways in which they were murdered. Many of the surviving victims were and would also be deprived of the economic support from those murdered.¹⁷⁷

228. What the Experts heard and saw during their visit to CAR is completely consistent with the Court's findings on pillage, among other crimes committed in this case. Pillage happened in a systematic manner throughout the places where the MLC troops operated, and that this caused grave harm to the vast majority of the victims.¹⁷⁸ Many victims lost not only their livelihood but their means of survival, such as animals, livestock, tools or vehicles. Victims also lost their personal, often emotionally-laden goods such as mattresses, pieces of clothing, radios, televisions, mobile phones, and family mementoes.¹⁷⁹ Pillaging occurred from the moment that the MLC troops arrived in CAR up until they left.¹⁸⁰

229. The Experts are also equally mindful of the systemic manner in which sexual violence took place in CAR as a result of Mr. Bemba's behaviour. The Chamber found that rape happened in a systematic manner, targeting men, women and children during the 2002-2003 CAR operation commanded by Bemba.¹⁸¹ The gravity of this crime cannot be overlooked by the Chamber when establishing the liability of Mr. Bemba. The Rome Statute and the Rules of Procedure of the Court duly recognise the gravity of sexual crimes for which Mr. Bemba was convicted.¹⁸² Rape has generated irreparable harm in all its victims, their families, the next generations, and their communities. Women, men and

¹⁷⁶ ICC, Trial Chamber, *Bemba*, conviction, supra, n. 1, para. 625.

¹⁷⁷ ICC, Trial Chamber, *Situation in the Central African Republic in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Sentence Pursuant to Article 76 of the Statute, ICC-01/05-01/08, 21 June 2016, para. 32.

¹⁷⁸ ICC, Trial Chamber, *Bemba*, conviction, supra, n. 1, para. 646.

¹⁷⁹ Ibid.,

¹⁸⁰ ICC, *Bemba*, sentence, supra, n. 180, para. 51.

¹⁸¹ Ibid., *Bemba*, sentence, para. 40.

¹⁸² See, for example, Articles 36(8)(b), 42(9), 43(6), 54(1)(b), and 68(1) to (2) of the Statute; and Rules 16(1)(d), 17(2)(a)(iv), 17(2)(b)(iii), 17(3), 19(f), 63(4), 70, 72(1), 86, 88(1), 88(5), and 112(4) of the Rules.

children who were raped not only have gone through a highly traumatic situation that resulted in physical injuries and severe, long-term psychological harm, but also lost their loved ones, partners and children in particular and, often, their communities. Because of the socio-cultural pervasive stigma and discrimination attached to rape, their husbands or partners abandoned them, their children were either abandoned with them as “theirs”-- rather than the non-raped partner’s – children, or removed from them, as the raped victims were seen as “wives of the banyamulengues” or as “contaminated” people if they got HIV-AIDS. Various victims of rape gave birth to children who carried both the legacy of rape and the HIV-AIDS. They are also terribly affected by discrimination and stigma. They are referred to as “the children of the banyamulengues.”

4.3 Recognising the concurrent responsibility of other persons even if their responsibility has not been determined by a tribunal

230. This part of the report is particularly relevant to the Chamber if it decides not to apply the joint and several liability principle since it will need to consider the concurrent responsibility of other persons. However, even if the Chamber applies the principle of joint and several liability the Experts consider that it might still be important for the Chamber to refer to concurrent responsibility as a recognition that Mr. Bemba y not solely responsible for the crimes that took place.

231. Concurrent criminal or other type of responsibility is often at stake when international crimes are committed, and may have to be taken into account when assessing the extent of criminal and civil liability of the convicted person. This section focuses on the extent to which Mr. Bemba’s civil liability may be impacted by the existence of concurrent responsibility in the commission of the crimes.

4.3.1 The MLC troops and Mr. Bemba

232. Mr. Bemba was the military commander of the MLC troops during the period when the crimes were committed. He deployed the MLC to the CAR. However, it was the members of the MLC troops who carried out murder, pillage and rape against the civilian population in a systematic and indiscriminate manner, and they are therefore also responsible for these crimes. However, these troops were under Mr. Bemba’s command,

and he could and should have stopped the commission of those crimes but failed to take appropriate action. Therefore Mr. Bemba's responsibility must not be reduced because of the concurrent responsibility that the MLC and/or his soldiers have.¹⁸³

4.3.2 The responsibility of the CAR

233. State responsibility in the commission of the crimes for which Mr. Bemba was convicted is another factor to weigh when establishing Mr. Bemba's liability. Indeed, Mr. Bemba sent his troops to CAR as a result of a request made by the then-CAR President Patassé in response to the threat posed by Bozize's coup d'Etat.¹⁸⁴ The extent of the civil responsibility of the State for what happened after the MLC went to the CAR remains to be determined by a tribunal other than the ICC, as it lacks jurisdiction, or by the State itself through its government or its national courts.

234. In addition, the nature of the relationship between the CAR military and Mr. Bemba and the MLC troops is relevant to the purpose of establishing the extent of his liability. While Mr Bemba's troops collaborated with members of the CAR military,¹⁸⁵ they "were not 'resubordinated' to the CAR military hierarchy, to render secondary Mr Bemba's authority over the MLC contingent in the CAR."¹⁸⁶ In fact, the Chamber found, that tensions even existed between the MLC and the CAR military.¹⁸⁷ As the military commander of the MLC, Mr. Bemba was certainly independent from the CAR military and had full power over his troops.

235. Mr. Bemba took decisions about military operations, strategy and communications and had broad powers to discipline his troops.¹⁸⁸ He had three battalions of approximately 1,500 soldiers under his command.¹⁸⁹ Colonel Moustapha, the troops' field commander, followed Mr. Bemba's orders. While his troops committed murder, rape and pillaging, Mr. Bemba knew of the crimes and failed to act in a manner adequate to sanction and

¹⁸³ L Moffett, R Killean, Y Dowds, et al. *Submission by QUB Human Rights Centre on Reparations Issues Pursuant to Article 75 of the Statute, Situation in the Central African Republic, In the Case of The Prosecutor v. Jean-Pierre Bemba Gombo*, 17 October 2016, Para. 100. This Submission considers that the MLC should also be liable for reparations.

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¹⁸⁵ ICC, Trial Chamber, *Bemba*, conviction, para. 380 and 453.

¹⁸⁶ ICC, Trial Chamber, *Bemba*, conviction, para. 444, and 701-702.

¹⁸⁷ *Ibid.*, para. 444.

¹⁸⁸ *Ibid.*, para. 427 and 447.

¹⁸⁹ *Ibid.*, para. 410.

discipline his men and to prevent these crimes from continuing to happen. While those in charge of the CAR military might be responsible for the same kinds of crimes committed by their troops as those committed by Mr. Bemba's men, his responsibility as military commander for the commission of murder, rape and pillage by his troops is not affected by any other crimes committed by other persons in the same situation.

236. Finally, the responsibility of the CAR as a result of not acting to support and provide victims with adequate measures to cope with their harms after the crimes took place is another factor that might have an impact on Mr. Bemba's overall liability. Indeed, the CAR has obligations as a State to respect and ensure the fulfilment of civil and political rights as well as economic, social and cultural rights of its citizens. With respect to the right to reparations, the CAR as a State had the obligation to act in a prompt manner to try to provide victims with remedies for the harm suffered.¹⁹⁰

^{237.} For example, and in particular, victims who were raped and, as a result were infected with HIV/AIDS, should have been provided, in a timely manner, with access to adequate healthcare as well as to essential medicines. Since such access to adequate health treatment has not taken place, or has been provided only partially by the State, the harms caused to victims have further deteriorated. It is also important to note that "it is particularly incumbent on States parties and other actors in a position to assist, to provide "international assistance and cooperation, especially economic and technical" which enable developing countries to fulfil their core and other obligations" such as essential primary health care, minimum essential food, essential drugs, etc.¹⁹¹

4.3.3 The responsibility of Bozizé's rebels

238. Another possible element of concurrent responsibility might have been the presence in CAR of General Bozizé's approximately 500 rebels, that prompted the then CAR President Patassé to request Mr. Bemba's help. However, General Bozize's rebels' presence could not justify the commission of international crimes by others and therefore

¹⁹⁰ The CAR has ratified most UN relevant human rights treaties such as the International Covenant on Civil and Political Rights (1981), the International Covenant on Economic, Social and Cultural Rights (1981), the Convention on the Elimination of All Forms of Discrimination against Women (1991), the Convention on the Rights of the Child (1992).

¹⁹¹ General Comment to Article 12, *The Right to the Highest Attainable Standard of Health*, supra, n. 79, paras. 43 and 45.

cannot reduce the extent of Mr. Bemba's liability for crimes committed against CAR's civilian population.

239. It has also been alleged that General Bozizé's rebels committed serious crimes against the same victims as the MLC, and that Mr. Bemba should not be liable for the crimes against those same victims. However, NGO reports presented as evidence before the Court indicate that General Bozizé's rebels' crimes happened in places other than those assaulted by the MLC forces.¹⁹² Furthermore, the MLC deliberately targeted the civilian population, committing "acts of murder, rape, and pillaging when they were the only armed force present in a given area, and after confirming that General Bozizé's rebels had departed."¹⁹³ Any responsibility on the part of General Bozizé and his rebels should therefore not be considered as a ground to limit the extent of Mr. Bemba's liability.

4.4 Novus actus interveniens

240. It is alleged that the current conflict in CAR between the Ex-Seleca and Anti-Balaka militias has caused the re-victimization of some victims of Bemba's crimes and that Mr. Bemba cannot be liable for the harm caused by others. The theory of *novus actus interveniens* refers to the existence of new intervening acts that can break the chain of causation to acts for which the defendant was liable. The Experts consider that in the case of Mr. Bemba the theory does not apply, given that these are two different sets of acts, both of which happened without any intervening causes, and generated harm that can be determined and measured as the Experts explain in sections 2 and 3 of this report.

241. It also appears that the extent of re-victimisation from 2012 onwards of victims of Bemba's crimes does not apply to a substantial number of victims but rather a small group of such victims. When we asked, none of the focus group and interview participants said that they had been victims of the 2012 violence as well.

4.5 Other benefits obtained by victims since the time they were harmed

242. The Defence has argued that, as part of assessing the extent of Mr. Bemba's liability, all victims be asked to disclose all cumulative benefits they received from third parties, be it the State or international organisations, since the moment they were harmed.

¹⁹² Ibid., para. 578.

¹⁹³ Ibid., para. 673.

243. Victims of Mr. Bemba's crimes, be they victims of murder, rape or pillage, have not received any form of reparation for the harm these crimes caused them. The right to reparation requires that those responsible for the harm provide full, prompt and adequate redress for it or that, in their absence, the State repairs the victims in solidarity and seeks from the perpetrator of the crimes to recover the payment for the harm.¹⁹⁴ To date, neither Mr. Bemba nor the CAR have provided reparations to Mr. Bemba's victims.

244. Other benefits that may have been received by Mr. Bemba's victims since his crimes occurred are not a form of reparation. These were provided to victims either as humanitarian assistance or as a way to help them with their most urgent needs. In either case such benefits have come from NGOs or international organisations. Even if they came from the State, the State has not characterized them as reparations. Important authority and jurisprudence confirm that humanitarian assistance or other types of help to victims in times of conflict or displacement should not be confused with reparation.

245. For example, in Colombia, where over 6 million persons are internally displaced and where IDPs have also suffered crimes such as murder, rape and pillage, when the Colombian Government argued that humanitarian assistance was a form of reparation, the Colombian Constitutional Court found as follows:

246. Full reparation for victims should be distinguished from social services and assistance and from humanitarian aid provided by the State, given their nature, form and aims. While social services are provided ordinarily with the aim to fulfil social rights, and to fulfil public policies related to housing, education and health, and humanitarian aid is provided in cases of disasters, reparation instead, is the result of a crime and the serious violation of human rights, therefore they cannot be used interchangeably, even if the same State institution is responsible for fulfilling those functions.¹⁹⁵

247. In the Philippines, the reparations law provides that any benefits received by victims under a law that provides State reparations to victims of the Ferdinand Marcos dictatorship does not preclude victims from demanding or receiving reparations from the

¹⁹⁴ Basic Principles, *supra*, n. 11, Principle IX.16 and 17.

¹⁹⁵ Colombian Constitutional Court, SU-254/2013, Judge: Luis Ernesto Vargas, 24 April 2013, (4.2.3.XII). Translation made by the Experts.

perpetrators, their representatives or their estate nor will such benefits be counted against what they receive under the law.¹⁹⁶

248. The Experts concur with the position taken by the Colombian Constitutional Court. Since no reparation has been provided to-date either by Mr. Bemba or by the CAR authorities, Mr. Bemba's victims have no obligation to disclose any assistance or benefits they may have received during the intervening years while arduously trying to cope with the overwhelmingly difficult situations they have found themselves in. That they have found ways to do this, be it through humanitarian assistance, benefits or through their own efforts, does not diminish their right to reparations nor the obligation of the convicted person to repair the harms he caused.¹⁹⁷

4.6 Priority for reparations over other obligations owed by Mr. Bemba

249. The Experts note that this is the first case in which the International Criminal Court will award reparations where assets of the convicted person have been forfeited. This constitutes an important precedent for the future of reparations in an international criminal setting. However, the fact that Mr. Bemba is not indigent and does have assets does not affect the extent of his liability. An award of reparations is not based on the wealth or poverty of the convicted person; rather, it is made in view of the elements examined in this section, namely, the mode of responsibility for which the perpetrator has been convicted, the gravity of the crimes committed and any concurrent responsibilities.

¹⁹⁶ Republic Act 10368, Republic of the Philippines (2013): SEC 4. *Entitlement to Monetary Reparation*. — Any HRVV qualified under this Act shall receive reparation from the State, free of tax, as herein prescribed: *Provided*, That for a deceased or involuntary disappeared (victim), the legal heirs as provided for in the Civil Code of the Philippines, or such other person named by the executor or administrator of the deceased or involuntary disappeared HRVV's estate in that order, shall be entitled to receive such reparation: *Provided, further*, That no special power of attorney shall be recognized in the actual disbursement of the award, and only the victim or the aforesaid successor(s)-in-interest shall be entitled to personally receive said reparation from the Board, unless the victim involved is shown to be incapacitated to the satisfaction of the Board: *Provided, furthermore*, That the reparation received under this Act shall be without prejudice to the receipt of any other sum by the HRVV from any other person or entity in any case involving violations of human rights as defined in this Act."

¹⁹⁷ See also the statement Trial Chamber, *Al Mahdi*: "Remedial efforts by a third party in the time elapsed between the destruction and the issuance of the reparations order do not alter the amount of damage originally done."

250. The Experts are mindful that in this particular case the specific assets that have been forfeited may not end up being used for reparations.¹⁹⁸ Mr. Bemba’s sentence includes a fine that has to be paid to the Court as well as litigation costs he is required to pay which he may (or may not) be obliged to pay ahead of reparations. Mr. Bemba himself acknowledges the possibility that “the value of (his) assets is fully exhausted by the maximum acceptable amount of his debt to the ICC (including possible reparations order)” (The Experts emphasis)¹⁹⁹
251. The Experts submit that when assets from the convicted person are available to the Court, priority must be given to reparations for victims before any other debts to the Court are considered. This follows from Rule 221 (2) of the Rules of Procedure and Evidence, and this rule applies no matter what the competing demand may be. Enforcing this priority will solidify the role of the Court as a key actor of reparative justice. Such understanding would also be in line with the spirit of the Rome Statute.
252. The Experts also submit that Mr. Bemba’s Boeing airplane should be forfeited. It may be that this will be a “burdensome” asset, given the potentially decrepit condition it may be in and the fact that the costs of preservation and maintenance might be high. Nevertheless, there would be symbolic value in forfeiting this airplane since it was used in the commission of the crimes in CAR for which Mr. Bemba has been convicted.
253. Finally, the Experts consider important to recall that while the challenge often raised about providing reparation is the lack of funding to pay for it, there are important experiences in the global South that show that it is possible seize the assets of perpetrators for reparation purposes. These experiences show that both with dictatorships and armed group leaders with ill-gotten assets if significant effort is made early enough to identify, freeze and, if there is a conviction, forfeit assets, the perpetrators’ assets can contribute significantly, materially and symbolically to the goals

¹⁹⁸ Trust Fund for Victims, *Situation in the Central African Republic, in the Case of the Prosecutor v. Jean Pierre Bemba Gombo, Observations Relevant to Reparations*, ICC-01/05-01/08, 31 October 2016, p. 37, paras. 110-113.

¹⁹⁹ Defence, *Situation in the Central African Republic, in the Case of the Prosecutor v. Jean Pierre Bemba Gombo, Observations on reparation*, supra, n. 162.

https://www.icc-cpi.int/RelatedRecords/CR2016_25743.PDF

of reparation.²⁰⁰ Thus, reparations have partially been funded by the assets of Alberto Fujimori in Peru,²⁰¹ of Ferdinand Marcos in the Philippines,²⁰² of drug-trafficking armed groups in Colombia,²⁰³ and potentially, of the dictator Ben Ali in Tunisia²⁰⁴ and most recently, Yahya Jammeh in Gambia. It is important for the Court to provide more capacity and resources to asset freezing and recovery in order to fulfil its reparations mandate.

254. It is equally important for the Court to call on States Parties to the Rome Statute to cooperate in the realisation of the task just described.

4.7 Conclusion

255. Applying the principles set out in this section, the Experts consider that the Court should apply the principle of joint and several liability and that Mr. Bemba should respond for all the harm caused to victims even if others, such as the CAR State or the MLC troops, share concurrent responsibility for repairing the harms done.

256. If the Court was of the view that the scope of Mr. Bemba's responsibility should be limited and that he should be only severally liable for his conduct, the Experts submit that his responsibility should not be lower than three quarters of the total.

²⁰⁰ C McCarthy, "What Happens to the Gaddafi's Fortune? Could Frozen Assets be used to Satisfy Claims for Reparation?," March 11, 2011; R Carranza, "Plunder and Pain: Should Transitional Justice Engage With Corruption and Economic Crimes," (2) *The International Journal of Transitional Justice*, (2008), 310–330.

²⁰¹ "The State promoted the freezing of Fujimori's assets to guarantee the payment of reparations," , See L Laplante. "The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition." (23) *American University International Law Review* (2009), 51-90.

²⁰² Ambassador A. del Rosario, "Learning from the recovery of Marcos assets," <http://www.philembassyberne.ch/press/learning-from-the-recovery-of-the-marcos-assets.pdf>

²⁰³ "Colombia's FARC rebels say will forfeit assets for victim reparations," Reuters, October 2, 2016 <https://www.reuters.com/article/us-colombia-peace/colombias-farc-rebels-say-will-forfeit-assets-for-victim-reparations-idUSKCN1213N0>

²⁰⁴ Olfa Benhassine, "Tunisia must work on tracking assets abroad, says ICTJ expert" <http://www.justiceinfo.net/en/justice-reconciliation/29428-%E2%80%9Ctunisia-must-work-on-tracking-assets-abroad%E2%80%9D,-says-ictj-expert.html>

5 CONCLUSIONS AND RECOMMENDATIONS

257. The following are the key conclusions and recommendations the Experts offer the Court in its consideration of reparation in the case of Mr. Jean-Pierre Bemba Gombo:

Eligibility

1. The 5229 victims who were admitted for participation at the trial should be regarded as eligible for reparations. They do not need to submit another application.
2. The 5229 victims are all presumed to have suffered harm as a result of pillage,
3. Victims are direct or indirect victims and include family members and organizations.
4. Family members of eligible victims of rape and murder are also eligible for reparations. The Court should take into account the concept of family in CAR.
5. Family members of eligible victims who die before receiving compensation for pillage are entitled to receive the compensation in their stead. As a general rule, the compensation should be paid out to [REDACTED]
[REDACTED]
6. The 14 organizations that were admitted for participation at the trial should be regarded as eligible for reparations. They do not need to submit another application.
7. The 14 organizations are presumed to have suffered harm as a result of pillage. The extent of the harm and the forms of reparations should be assessed on a case-by-case basis.
8. The approximately [REDACTED] applications transmitted to, but not yet reviewed by, the Chamber, should be reviewed by the Chamber in the same manner as the 5229 applications admitted for participation. This should be done before the Chamber issues the Reparations Order. The same presumptions should apply to these victims.
9. In principle, no new filing period should be opened for so-far-unidentified victims.
10. The Court may consider opening a new filing period for surviving victims of rape and children born of rape. The new filing period should be opened only [REDACTED]
[REDACTED] and if, after

consultation with the [REDACTED] and other relevant stakeholders, the Chamber determines that such opening of the filing period should take place.

11. The Court should review the procedures for victims' outreach and collection of applications for reparations and take the necessary measure to ensure that the problems reaching out to victims in the case of Mr. Bemba do not happen again in the future.

Harm

12. The victims of Mr. Bemba's crimes suffered various types of material and non-material harm.
13. An individual assessment of each victim's harm and the extent of the harm is neither feasible nor desirable due to the lack of documentary evidence, and the length of time it would take to assess each individual claim. Therefore, presumptions should be used.
14. Victims of rape have been re-victimised. They were not only raped but they have also been victims of all their sociocultural structures: their spouses, families, communities and their State as they have faced stigma, discrimination, and ostracism. The degree of harm they have suffered has been greater when, in addition to rape, they were infected with HIV/AIDS and/or had a child as a result of rape.
15. Children born of rape are in a highly vulnerable situation: many with HIV/AIDS, they are stigmatised, alone, poor, uneducable and unmarriageable.
16. Victims of rape, including children born of rape, have neither had access to adequate health treatment, including antiretroviral medication, to treat the disease nor to essential and adequate food to be able to take their medication. In addition, only rarely and unsustainably have they had access to the psychosocial counselling they desperately need.
17. In the cases of murder and rape, family members of the direct victims also suffered harm.
18. The Experts have attempted to be very detailed in their analysis of the different forms of harm (pecuniary and not pecuniary) suffered by victims as this in and of itself should be a form of satisfaction to victims. The Chamber should consider doing the same in its order on reparation.

Forms of reparations

19. The Chamber should be mindful of the victims' overwhelmingly uniform request and expectation that they be provided financial compensation as reparation (*futa*).
20. Each eligible victim should receive a standard compensation amount in CAR francs, equivalent to [REDACTED], for material damages.
21. If the beneficiary of the standard compensation amount (SCA) uses this compensation for a *kelemba*, he or she should receive an additional amount equivalent to [REDACTED]
22. Each eligible victim should receive a standard compensation amount equivalent to [REDACTED] [REDACTED] for non-pecuniary damage.
23. The ceiling for reparations would be no less than [REDACTED]
24. HIV-positive victims of rape should receive, on a priority basis, the following: lifetime access to ARV drugs, [REDACTED], and access to psychosocial and/or mental health care for at least 2 years. These measures should be implemented urgently, given the precarious health/life situation in which rape victims with HIV/AIDS are. HIV-positive children and HIV-positive spouses of victims of rape should also receive, on a priority basis, the same additional reparations.
25. Each of the 14 organizations admitted for participation at the trial should receive compensation for pillage, based on a case-by-case assessment of the extent of the harm it suffered.
26. The following types of community reparations are recommended, based on *per capita* amounts or cost of the service:
 - Collective reparations for pillage of community institutions
 - Collective reparations for communities economically impacted by harm not constituting pillage
 - The cost of providing access to and ensuring sustainable mental health care as a form of collective reparations
 - Exhumation and reburial costs for families of murder victims
 - For victims of rape, as a form of collective reparations:

- (i) free access to HIV/AIDS testing on a regular basis; and
- (ii) the cost of promoting community and radio awareness messages and programs to address the stigma of rape victims and their children and
- (III) the cost of providing sustainable psychosocial support and mental health care to such victims..

Liability

27. The Chamber should further clarify the meaning of the principle established in *Lubanga* by the Appeals Chamber, according to which “a convicted person’s liability for reparations must be proportionate to the harm caused and, inter alia, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case.”
28. The Chamber should apply the principle of joint and several liability in interpreting the mentioned principle.
29. This principle should be interpreted using the following three grounds: .
- the mode of the criminal responsibility of the person in the commission of the crimes for which he or she was convicted;
 - the gravity of the crimes committed and the extent of the harm caused to victims; and
 - recognising the concurrent responsibility of other persons, even if their responsibility has not been determined by a tribunal.
30. Mr. Bemba is fully responsible for all harm caused by the crimes for which he has been convicted even if others share concurrent responsibility.

31. Since not all amounts of harm have been assessed (such as those for priority reparations), no total figure can be given at this stage for Mr. Bemba's liability.
32. Should the Chamber find Mr. Bemba only severally liable, his liability should be not lower than three quarters of the total amount.
33. It is important to recognise that in crimes of this magnitude and gravity others share concurrent responsibility. The Experts believe that it is important both in relation to Mr. Bemba but also in relation to the victims, that the Court refer, in particular, to the responsibility of the CAR as an important element of concurrent responsibility that should be addressed by other bodies, international or domestic.
34. Mr. Bemba's assets (both those already forfeited and those that may still be forfeited) should be used as a matter of priority for reparations, before any other debt to the ICC.
35. Mr. Bemba's Boeing airplane should be forfeited; this would have symbolic value since this plane was used in the commission of the crimes for which Mr. Bemba has been convicted.

[REDACTED]

From: [REDACTED]
Subject: [REDACTED] tant question

-----Original Message-----

From: [REDACTED]
Sent: 20 November 2017 09:32
To: [REDACTED]
[REDACTED]
Subject: RE: BEMBA/experts: Important question

Dear colleagues,

I would like to state on record that, in addition to the Expert report I signed, and mindful of all the reasoning behind its conclusions, I recommend that a maximum of 50 indirect victim families of (direct) Bemba's (not later conflicts') murdered victims proven to be still homeless since 2002-2003 because of Mr. Bemba's crimes, should be eligible for opening their filing for a period no longer than six months from the date of the Chamber's determination of reparations in the Bemba case.

I would appreciate your help in making this a formal statement to the Chamber.

Kind regards,

[REDACTED]
Expert on Reparation in the Bemba case

23 November 2017

Expert Report on Reparation, presented to Trial Chamber III, International Criminal Court

Situation in the Central African Republic, In the Case of The Prosecutor v. Jean-Pierre Bemba Gombo

Statement for the record of the case

On 20 November, ██████████ sent an email to the Registry in which she stated a recommendation that differed from the Expert Report on Reparation. In this email, which she sent after she had signed the Expert Report on Reparation on 19 November and after this Report had been submitted to the Registry for submission to the Chamber, ██████████ requested the Registry's help in making the recommendation contained in her email a formal statement to the Chamber.

The Registry sent the following response to ██████████ "We take note of your request that we will add as an annex to the report". Also on 20 November 2017, the Registry sent the following message to the undersigned, forwarding the above correspondence: "I realised that I did not copy you on the previous message. Please see the below correspondence for your information as it has an impact on the approach proposed in the report".

In an email response, the undersigned stated: "Many thanks for letting us know about ██████████'s position. During our last team conversation these views were not expressed by ██████████. We appreciate you letting us know about it. We do not have any problem with ██████████ sharing her views to the trial Chamber as an annex to the report."

Given that this response of the undersigned has not been shared with the Chamber, they request that the present statement be added to the record in the case. In particular it is important to note that:

As set out in the Expert Report on Reparation, the undersigned and ██████████ had decided to draft and submit to the Chamber a joint Report. This joint Report, signed by the three undersigned and ██████████ was submitted to the Registry, and by the Registry to the Chamber, on 20 November 2017.

██████████ did not share the recommendation contained in her email of 20 November 2017 with the undersigned prior to her signing of the joint Report. Indeed, during the last team meeting on the evening of 19 November, ██████████ did not mention to be in disagreement with the content of the joint Report or express the view she asked to be sent to the Chamber. Equally, she did not inform the undersigned of her intention to send her view unilaterally to the Chamber after the joint Report had been sent to the Court. The undersigned learned about ██████████'s approach through the email sent to them by the Registry referred to above.

For the reasons set out in the Expert Report on Reparation, the undersigned do not agree with the recommendation made now by ██████████ and do not consider her view to be part of the Expert Report on Reparation or of the work of the Team of Experts.

The undersigned request that the present statement be made part of the record in the case in the same way as [REDACTED]'s statement is made part of the record, and that it be transmitted to the Chamber and all relevant parties in the case as well as to all those to whom [REDACTED]'s email was circulated.

Signed: [REDACTED]

23 November 2017