



**CENTRAL AFRICAN REPUBLIC**  
**Unity - Dignity - Work**  
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**SPECIAL CRIMINAL COURT**  
*Appeal chamber*

**Members:** **Mr Barthélémy YAMBA, Chairman**  
**Mr Olivier BEAUVALLET, Judge**  
**Volker NERLICH, Judge**

**Clerk:** **Me Martin BOTEOKO**

**End date:** **23 October 2023**  
**Classification :** **PUBLIC**  
**Language :** **French**

**Stop n° 13**  
**concerning the appeal against judgement no.° 001-2023**  
**of 16 June 2023 of the First Assize Division**

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Mr Alain OUABY, Deputy Special Prosecutor  
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***The Appeals Chamber,***

***Having regard to*** proceedings No. PAOUA-0006-190521/PQS brought against Issa Sallet Adoum alias Bozizé, Ousman Yaouba and Mahamat Tahir,

***Having regard to*** judgment no. 001-2023 of 16 June 2023 of the First Assize Division on civil interests

***Having regard to*** Judgment No. 9 of the Appeals Chamber relating to the appeals lodged against Judgment No. 003-2022 of 31 October 2022 of the First Assize Division dated 20 July 2023;

***Having regard to*** the appeal lodged by Me Manguereka and Me Bagaza Dini on behalf of the civil parties on 19 June 2023,

***Having regard to*** Order No 2023/6 of 4 May 2023 of the President of the Appeals Chamber appointing Judge Olivier Beauvallet as Judge-Rapporteur in the above-mentioned case,

***Delivers*** the following judgment:

**I. Introduction**

1. On 31 October 2022, the First Assize Division of the Special Criminal Court ("Assize Division" and "SPC" or "Court" respectively) delivered its judgment against Issa Sallet Adoum, alias Bozizé ("Issa Sallet"), Ousman Yaouba and Mahamat Tahir (together: "the convicted persons") regarding their criminal responsibility for the attack on the villages of Lemouna and Koundjili on 21 May 2019<sup>1</sup>.

2. On 16 June 2023, the Assize Division handed down its judgement<sup>2</sup> in which it ruled on the admissibility of the civil parties, on the liability of the convicted persons to compensate for the damage and on the methods of compensation (the "Contested Judgement").

3. The civil parties lodged an appeal against the contested judgment on 19 June 2023.

4. On 20 July 2023, the Appeals Chamber reversed the judgement handed down on 31 October 2022 and found the convicts guilty of several counts of crimes against humanity and war crimes.

5. In this judgment, the Appeals Chamber rules on the appeal against the impugned Judgment. In accordance with Article 138-A of the Rules of Procedure and Evidence<sup>3</sup> (the "RPP"), the judgment is duly reasoned in relation to each point of law or fact contested on appeal. In order to make its decision readable and accessible, the Appeals Chamber has opted for a direct and concise style.

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<sup>1</sup> First Assize Division, Judgment No.° 003-2022, 31 October 2022, No.° CPS/C.ASS/ISA/22-001, <https://www.legal-tools.org/doc/lr7fqm/> ("Criminal Judgment").

<sup>2</sup> First Assize Division, Judgment No.° 001-2023, 16 June 2023, No.° CPS/CA/PSA/22-001, <https://www.legal->

[tools.org/doc/h2js5q/](https://www.legal-tools.org/doc/h2js5q/).

<sup>3</sup> Law n°18.010 of 2 July 2018, on the rules of procedure and evidence before the Special Criminal Court of the Central African Republic, <https://www.legal-tools.org/doc/f2t8zd/>.

concise. When referring to the case law of other international or internationalised jurisdictions, the Appeals Chamber does not purport to give an exhaustive list of the relevant decisions, but only refers to those judicial decisions which, in the view of the Appeals Chamber, are the most important.

6. In this first ruling on compensation, the Appeals Chamber first clarifies the conditions governing the admissibility of civil parties. It then ruled on the general principles and procedures applicable to reparation measures. It then examines the grounds of appeal concerning the admissibility of civil parties and reparation measures.

## II. Examination criteria

7. The Appeals Chamber ruled that its review, triggered by an appeal against a judgement of a section of assizes on the public prosecution, concerned both questions of law and questions of fact<sup>4</sup>. The Appeals Chamber considers that in matters of reparations, it exercises the same control over the judgement of the assize section<sup>5</sup>.

### A. Errors of law

8. The Appeals Chamber has previously held that where an appellant alleges that the impugned judgment is vitiated by an error of law, the Appeals Chamber does not defer to the Assize Division's interpretation of the law. It draws its own conclusions as to the applicable law and determines whether the Assize Division misinterpreted the law<sup>6</sup>.

9. The Appeals Chamber emphasised that errors of law may relate to procedural issues. Furthermore, if the grievance relates to a matter in respect of which the Trial Division has a margin of appreciation, the Appeals Chamber will not consider whether it would have taken the error of law into account.

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<sup>4</sup> Ch. App. judgment no. 9 relating to appeals against judgment no. 003-2022 of 31 October 2022 of the First Assize Division, 20 July 2023, 9-2022, <https://www.legal-tools.org/doc/f1s6pp/> ("*Issa Sallet* judgment"), §10.

<sup>5</sup> ICC, Ch. App. *Lubanga*, Judgment on the appeals against the Decision setting out the principles and procedures applicable to reparations issued on 7 August 2012 together with the Amended Reparations Order (Annex A) and Public Annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129-tENG, <https://www.legal-tools.org/doc/4pc0w3/> ("*Lubanga* Judgment"), §40.

<sup>6</sup> *Issa Sallet* Judgment, §11; *Lubanga* Judgment, §41; ICC, Appeals Chamber, *Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", 8 March 2018, ICC-01/04-01/07-3778-Red, <https://www.legal-tools.org/doc/0a95b7/> ("*Katanga* Judgment"), §39; ICC, Appeals Chamber, *Al Mahdi*, Judgment on the appeal by the victims against the Order for Reparations, 8 March 2018, ICC-01/12-01/15-259-Red2-tFRA, <https://www.legal-tools.org/doc/0a95b7/> ("*Al Mahdi* Judgment"), *Al Mahdi*, Arrêt relatif à l'appel interjeté par les victimes contre l'Ordonnance de réparation, 8 mars 2018, ICC-01/12-01/15-259-Red2-tFRA, <https://www.legal-tools.org/doc/c18c58/> (« Arrêt *Al Mahdi* »), § 24 ; CPI, Ch. App., *Ntaganda*, Judgment on Appeals against the Reparations Order issued by Trial Chamber VI on 8

March 2021, 12 September 2022, ICC-01/04-02/06-2782-tENG, [https://www.legal- tools.org/doc/4ne4dc/](https://www.legal-tools.org/doc/4ne4dc/) ("Ntaganda Judgment"), §29.

same decision as the trial division, but only if the trial division's decision was reasonable, taking into account all the relevant factors<sup>7</sup>.

### ***B. Factual errors***

10. In assessing errors of fact, the Appeals Chamber applies the test already set out in a previous decision: where an appellant challenges a factual finding in the impugned judgment, the Appeals Chamber generally confines itself to the question of whether the Assize Division's finding was reasonable in light of the evidence before it<sup>8</sup>.

11. In assessing the reasonableness of the factual conclusion, the Appeals Chamber takes into account the reasons given by the Assize Division<sup>9</sup>.

12. The Appeals Chamber wishes to emphasise that an inadequate statement of reasons for a judgment may thus be relevant to support an error of fact; an inadequate statement of reasons may also constitute a procedural error - and thus a breach of the law - given that the law requires that reasons be given for judgments<sup>10</sup>.

### ***C. Effect of the error on the contested judgment and decision of the Appeals Chamber***

13. The Appeals Chamber considers that, in order to set aside or reform a judgment on a criminal action, or order a new trial, it is necessary to establish not only the existence of an error of law or fact, but also that the error seriously vitiated the contested decision. In this regard, the appellant must show that, in the absence of the error raised, the decision would have been materially different from the one handed down<sup>11</sup>. The same applies to a judgment on damages.

14. When the Appeals Chamber has found that a contested judgment is seriously vitiated by one or more errors of law or fact, it decides whether to set aside or reform the judgment on reparations; it takes this decision in the light of the specific circumstances. The power of the Appeals Chamber, recognised by article 138-C of the RPP, to order that the accused be

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<sup>7</sup> *Issa Sallet* judgment, §12.

<sup>8</sup> *Issa Sallet* judgment, §13; *Lubanga* judgment, §28; *Katanga* judgment, §41 referring to ICC, Ch. App., Lubanga, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1<sup>er</sup> December 2014, ICC-01/04-01/06-3121-Red, <https://www.legal-tools.org/doc/585c75/>, §§18-19; *Al Mahdi* judgment, §24; *Ntaganda* judgment, §30.

<sup>9</sup> *Issa Sallet* judgment, §14.

<sup>10</sup> *Issa Sallet* judgment, §15.

<sup>11</sup> ICC, Appeals Chamber, *Situation in the DRC*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision on the Prosecutor's Application for Warrants of Arrest under Article 58", 13 July 2006, ICC-01/04-169-tENG (OA), <https://www.legal-tools.org/doc/87f8fe/>, §84.

This rule does not apply to appeals against a judgment relating only to the civil action.

***D. Power of the Appeals Chamber to raise errors of its own motion***

15. The Appeals Chamber indicated that in considering an appeal, it examines allegations of errors of law or fact raised by the appellant's brief<sup>12</sup> .

16. The Appeals Chamber recalls, on the basis of article 80 of the Organic Law on the Organisation and Functioning of the Court of Cassation<sup>13</sup> and article 49 of the Organic Law that founded the SPC<sup>14</sup> (the "Organic Law"), that it has the power to raise ex officio errors of law or fact if an appeal has been lodged against a judgment concerning the public prosecution<sup>15</sup> . It considers that it also has this power in the event of an appeal against a judgment concerning the civil action.

### **III. Reminder of the procedure for the repair phase**

***A. The preliminary phase (investigation and enquiry)***

17. A judicial investigation was opened on the basis of an introductory indictment<sup>16</sup> dated 30 July 2019 by the Special Public Prosecutor's Office on charges of crimes against humanity and war crimes for acts committed on 21 May 2019 in the villages of Koundjili and Lemouna, in the sub-prefecture of Paoua.

18. On 6 March 2020, Mr Oliver Manguereka filed a civil party complaint on behalf of eight individuals<sup>17</sup> , relating to the events in Koundjili.

19. On 11 March 2020, Mr Manguereka filed a civil party complaint, this time concerning acts committed in Lemouna on behalf of thirteen people<sup>18</sup> .

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<sup>12</sup> *Issa Sallet* judgment, §20.

<sup>13</sup> Organic law no. 95.0011 of 23 December 1995 on the organisation and operation of the Court of Cassation.

<sup>14</sup> Organic Law No. 15.003 of 3 June 2015, on the creation, organisation and operation of the Special Criminal Court, <https://www.legal-tools.org/doc/fd284b/>.

<sup>15</sup> *Issa Sallet* judgment, §21.

<sup>16</sup> D-II-7.

<sup>17</sup> D-I-52.3-1.

<sup>18</sup> D-I-51.3-1.



20. By order dated 31 May 2021, the Examining Magistrate's Office declared these two civil party applications admissible and ordered that they be joined to the judicial investigation<sup>19</sup> .

21. On 22 October 2020, the Special Prosecutor sent the investigating judges a supplementary indictment seeking to extend the investigation to include acts of rape constituting crimes against humanity and war crimes<sup>20</sup> .

22. From 2 to 4 July 2021, during a visit to the Paoua site, the investigating judges heard the rape victims as civil parties<sup>21</sup> . They benefited from protective measures and appeared under the pseudonyms XX, ZZ, OO, AAA, YY and JJ for the rest of the proceedings.

### ***B. Proceedings before the Assize Division***

23. On 31 October 2022, following the Criminal Judgment, the Assize Division adjourned the case to 4 November 2022 to rule on the civil interests.

24. On 4 November 2022, the Assize Division invited the parties to file their briefs with the clerk of the Assize Chamber before 5 December 2022 for the civil party and before 6 January 2023 for the defence and the Special Public Prosecutor<sup>22</sup> . The hearing was adjourned to 20 January 2023<sup>23</sup> .

25. At the civil interests hearing before the Assize Division, the civil parties' lawyers filed a brief dated 19 January 2023, listing the names of those who had already joined as civil parties, as well as those of others, in particular widows, orphans and collateral relatives of the direct victims. The lawyers also asked the Assize Court to accept new civil party applications from certain residents of Koundjili and Lemouna<sup>24</sup> .

26. On 20 January 2023, Mr Manguereka and Mr Koy-Dolingbete, counsel for the accused Issa Sallet, each applied for a stay of proceedings on the questions of compensation<sup>25</sup> .

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<sup>19</sup> D-I-84.

<sup>20</sup> DII 205

<sup>21</sup> D-II-236, D-II-237, D-II-238, D-II-239, D-II-240, D-II-241.

<sup>22</sup> Notes d'audience sur les demandes de réparation dans l'affaire Ministère Public contre ISSA SALLET Adoum et consorts du 04 novembre 2022 au 10 mars 2023, pièce n°16 ("Notes d'audience, pièce n°16"), p.2.

<sup>23</sup> Hearing notes, exhibit 16, p.2.

<sup>24</sup> Brief of Manguereka, on behalf of the civil parties, submitted to the Assize Division, exhibit 7 ("brief of 19 January 2023"), p.6, §§32-33.

<sup>25</sup> Hearing notes of the Assize Division dated 24 June 2023, p.2.

27. At the hearing on 27 January 2023, Me Manguereka withdrew his request for a stay of proceedings. The President of the Assize Division set 10 March 2023 as the date for delivery of the judgment on civil interests<sup>26</sup>.

28. On 3 March 2023, at the request of the Assize Division, the Registry, through the Victims and Defence Support Service ("VDS"), issued an opinion on the nature and extent of the harm caused to the civil parties and on the assessment of the reparation measures<sup>27</sup>.

29. At the hearing on 10 March 2023, the President of the Assize Division adjourned the deliberations and sent the case back sine die for a new composition of the Division<sup>28</sup>.

30. On 17 March 2023, the Special Public Prosecutor appealed against this decision.

31. In Judgment No. 6 dated 4 May 2023, the Appeals Chamber declared the Special Public Prosecutor's appeal inadmissible, as he had not filed a statement of case. However, it considered that the decision of 10 March 2023 could be appealed in accordance with article 133-B of the RPP<sup>29</sup>.

32. By order no. 001/P.C.ASS.23 of 2 June 2023, the President of the Assize Division, noting the decision of the Appeals Division, modified the composition of the Assize Division and summoned the parties to a hearing on 12 June 2023<sup>30</sup>.

33. At the hearing on 12 June 2023, the President of the Assize Division resumed the hearing and adjourned the case until 16 June 2023<sup>31</sup>.

34. On that date, the Assize Division handed down the contested judgment<sup>32</sup>, declaring the civil parties' claims admissible:

- Concerning the crimes committed in Koundjili by : Simplicie Bissi, Simon Faya, Patrick Yaou, Désiré Ngoy, Félicité Bissi, Bosco Ndobeletia, Philémon Yaka and Valentin Houtia;
- Concerning the crimes committed in Lemouna by : Jean Denis Albert Horo, Lazare Dane, Saturnin Barry, Alphonse Nzouwone, Sylvain Fendingnaroutia<sup>33</sup>, Sylvain Haoumi

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<sup>26</sup> Hearing notes, exhibit 16, p.5.

<sup>27</sup> Assize Division file, exhibit 15.

<sup>28</sup> Hearing notes, exhibit 16, p.9.

<sup>29</sup> Ch. App, *Issa Sallet et al*, Judgment No. 6 on the appeal against the decision of the First Assize Division on civil interests handed down on 10 March 2023, 4 May 2023, 6-2023, <https://www.legal-tools.org/doc/y5fsvp/>, §15.

<sup>30</sup> Assize Division file, exhibit 5.

<sup>31</sup> Hearing notes on the applications for compensation in the case of Ministère Public v ISSA SALLET Adoum et consorts of 12 and 16 June 2023, exhibit 34 ("Hearing notes, exhibit 34"), p.2.

<sup>32</sup> Hearing notes, exhibit 34, p.3-5.

<sup>33</sup> This spelling of the name is confirmed by the identity document at D-I-78.5. The Appeals Chamber notes variations in the spelling of the names of certain civil parties or victims. It regrets that, on the basis of the information available in the file, it was unable to unambiguously identify the spelling of the names of all the individuals.

Belahimi, Hyance Houli, Paulin Pouna, Lévy Zatala, Darlan Ndao, Léo Haomi and Marthe Ngarara;

- Concerning the rapes committed in Koundjili by : XX, ZZ, OO, AAA, YY and JJ.

35. The Assize Division rejected the other civil party applications, which it listed in Appendices A and B to its judgment.

36. The Assize Court ordered Issa Sallet, Ousman Yaouba and Mahamat Tahir jointly and severally to pay the following damages:

- Alphonse Nzouwone, 600,000 CFA francs;
- Sylvain Fendingnaroutia, 600,000 CFA francs;
- Sylvain Haoumi Belahimi, 600,000 CFA francs;
- Lazare Dane, 200,000 CFA francs;
- Florentin Bissi's heirs, represented by Simplicite Bissi, the sum of 1,000,000 CFA francs;
- Jean Zahoro's heirs, represented by Simon Faya, the sum of 1,000,000 CFA francs;
- to the heirs of Séverin Yaou represented by Patrick Yaou, the sum of 1,000,000 CFA francs;
- to the heirs of Prosper Ngoy represented by Désiré Ngoy, the sum of 1,000,000 CFA francs;
- to the heirs of Olivier Yaboutouni represented by Félicité Bissi, the sum of 1,000,000 CFA francs ;
- Jérémie Kambi's heirs, represented by Bosco Ndobeletia and Sitérii Guelseratia, the sum of 1,000,000 CFA francs;
- to the heirs of César Toussessekia represented by Philémon Yaka and Louissette Sagoko, the sum of 1,000,000 CFA francs;
- to the heirs of Basile Houtia represented by Valentin Houtia, the sum of 1,000,000 CFA francs;
- to the heirs of Chanas Petagor Horo Zozo represented by Jean Denis Albert Horo, the sum of 1,000,000 CFA francs;
- to the heirs of Bizarre Bari represented by Saturnin Barry, the sum of 1,000,000 CFA francs;
- to the heirs of Clément Passy, represented by Hyance Houli, the sum of 1,000,000 CFA francs;
- to the heirs of Félicité Zozo represented by Paulin Houlikaoule, the sum of 1,000,000 CFA francs ;
- to the heirs of Christophe Senle represented by Lévy Zatala, the sum of 1,000,000 CFA francs;
- to the heirs of Justin Woïmayine represented by Michel Senekoula, the sum of 1,000,000 CFA francs ;
- to the heirs of Patrice Nzapele represented by Médard Haoumi, the sum of 1,000,000 CFA francs; and
- to the heirs of Hubert Ndounga, represented by Ange Mbandoya, the sum of 1,000,000 CFA francs.

37. The Assize Division personally ordered Issa Sallet to pay the following damages to :

- ZZ, 1,000,000 CFA francs;
- AAA, 1,000,000 CFA francs;
- XX, 700,000 CFA francs;
- JJ, 700,000 CFA francs;
- OO, 700,000 CFA francs;
- YY, 700,000 CFA francs.

38. The Assize Division also upheld :

- the request for the construction of historical monuments in the villages of Lemouna and Koundjili;
- the request for collective compensation in the form of the construction of two wells in each of the two villages.

39. The Assize Division rejected the remainder of the applications, noted the indigence of the convicted persons and invited the court registry to seek external funding.

### *C. Procedure before the Appeals Chamber*

40. The civil parties' lawyers appealed the judgment on 19 June 2023<sup>34</sup>.

41. On 19 July 2023, the civil parties' lawyers requested an extension of the deadline for filing their appeal brief.

42. By judgment no. 10 delivered on 21 July 2023, the Appeals Chamber authorised the extension of this time limit<sup>35</sup> and ordered that the appellants' statement of case be filed within a period of 15 days expiring on 7 August 2023.

43. The civil parties' lawyers' appeal brief ("appeal brief") was filed in accordance with the judgment of the Appeals Chamber.

44. The appeal brief was served on the Special Public Prosecutor on 7 August 2023, and on the defence lawyers on 11 August 2023.

45. The Special Prosecutor did not write anything in response.

46. The defendants' lawyers did not file any reply briefs.

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<sup>34</sup> Section d'assises file, exhibit 32, Act of appeal, exhibit 33.

<sup>35</sup> Appellate Division, Judgment No. 10 concerning a request for an extension of the deadline for filing the civil parties' appeal against Judgment No. 001-2023 handed down by the First Assize Division on 16 June 2023, 21 July 2023, 10-2022, <https://www.legal-tools.org/doc/5b1cu8/> ("Judgment No. 10").

47. In a letter dated 29 September 2023, the Director of the Institut Francophone pour la Justice et la Démocratie - Institut Louis Joinet ("IFJD") informed the Appeals Chamber of the availability of an additional reparation measure for rape victims. The project, known as "Nengo", provides comprehensive care, including medical and psychological treatment, training and socio-economic reintegration measures.

48. On 9 October 2023, the Appeals Chamber invited the SAVD to inform the victims of this project and to obtain, where appropriate, their consent, the observations of the civil parties' lawyers and the head of the CPS Victims and Witnesses Support and Protection Unit ("USPVT") and to provide the SAVD's observations<sup>36</sup>.

49. Comments from the civil parties' lawyers were received on 13 October 2023 by the SAVD<sup>37</sup>.

50. On 19 October 2023, the SAVD forwarded to the Appeals Chamber the lawyers' observations, those of the SAVD and the USPVT and the consent of victims XX, ZZ, OO, AAA and JJ; it also forwarded the death certificate of victim YY and the minutes of the appointment of a representative of the deceased at a meeting of her family council<sup>38</sup>.

#### **IV. Admissibility of the appeal**

51. Article 129-E of the RPP states that decisions on compensation may be appealed by the civil parties and the convicted offender.

52. The civil parties lodged an appeal on 19 June 2023, within the three-day time limit provided for in article 134 of the RPP.

53. The appeal brief was filed in accordance with Ruling No. 10 of the Appeals Chamber.

54. The appeal is therefore admissible.

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<sup>36</sup> Soit-transmis du juge rapporteur au SAVD, 9 October 2023.

<sup>37</sup> Letter from Me Manguereka dated (by mistake) 12 September received by the SAVD on 13 October 2023; SAVD report dated 19 October 2023, p.2.

<sup>38</sup> Observations of the SAVD of 19 October 2023 and its appendices.

## V. Analysis of appeals

55. The appeal brief submitted by Me Manguereka and Me Bagaza Dini sets out two types of plea. On the one hand, counsel for the civil parties challenged the contested judgment insofar as it declared inadmissible a number of civil party applications submitted at the stage of the judgment hearing on reparations. Secondly, they claim that the judgment under appeal incorrectly assessed the damages awarded to the civil parties. Before analysing the arguments put forward, the Appeals Chamber considers it appropriate to clarify the conditions for the participation of civil parties in proceedings before the PSC and a number of principles applicable to reparations.

### A. *Participation of the civil party and the principles applicable to compensation*

#### 1. *The role of the civil party in proceedings before the CPS: participation in criminal proceedings and compensation for damages suffered*

56. Under the Organic Law, the Special Criminal Court has jurisdiction to investigate, prosecute and try serious human rights violations and serious violations of international humanitarian law committed on the territory of the Central African Republic since 1<sup>er</sup> January 2003<sup>39</sup>. Article 6 of the Organic Law states that the PSC "shall ensure that victims are able to assert their rights at all stages of the proceedings, in accordance with the provisions of the Organic Law and the Rules and in a manner that is neither prejudicial to the rights of the defence nor contrary to the requirements of a fair and impartial trial".

57. The Organic Law and the RPP recognise a certain number of procedural rights for victims, including the right to lodge a complaint either with the Special Public Prosecutor (article 34-3 of the Organic Law and article 63-A of the RPP) or, with civil party status, with the Investigating Chamber (article 40-2 of the Organic Law and article 74 of the RPP). Once they have been constituted, civil parties enjoy additional procedural rights, which enable them to participate effectively in the criminal proceedings before the CPS, whether during the investigation, the trial at first instance or the appeal. Under article 129 of the RPP, civil parties may also submit claims for compensation, which the Assize Division hearing the case will rule on in a second judgment on compensation in the event of a conviction.

58. The role of the civil party before the CPS is thus potentially twofold: it can initiate or join criminal proceedings within the framework established by the Organic Law and the RPP; and it can also claim compensation for the harm it has suffered. These two roles are

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<sup>39</sup> Art. 3 of the Organic Law.

partially independent of each other: a civil party can take part in criminal proceedings without claiming compensation.

2. *Nature of the right to compensation and its relationship with civil compensation*

59. Before dealing with the conditions of admissibility of the civil party's claim, it is necessary to clarify the nature of the right to reparation that the civil party may invoke before the PSC. The Appeals Chamber recalls that Central African criminal procedure recognises the possibility of bringing a civil action for compensation for damage caused by a felony, misdemeanour or contravention at the same time and before the same court as the one hearing the public action<sup>40</sup>. Civil action before the ordinary Central African courts is based on the civil law in force in the Central African Republic, namely article 1382 of the French Civil Code<sup>41</sup>.

60. On the other hand, the claim for reparation that a civil party may bring before the PSC has its origins in international law. The Appeals Chamber sees the right to reparation as a fundamental human right<sup>42</sup>, widely recognised in international human rights law<sup>43</sup>. Before the SPC, the right to reparations derogates from ordinary compensation law. In particular, it has certain characteristics aimed at "*guaranteeing universal and effective recognition of the rights of victims of crime and abuse of power*"<sup>44</sup>. The purpose of reparation measures is very different from the simple compensation permitted by tort law. Indeed, "[t]he aim of adequate, effective and prompt reparation

<sup>40</sup> See articles 2 to 4 of Law no.° 10.002 of 6 January 2010, Central African Code of Criminal Procedure, <https://www.legal-tools.org/doc/a00fcc/> ("CPP").

<sup>41</sup> In Central African law, the basis for an action in tort is to be found in article 1382 of the French Civil Code applicable on 16 February 1959. Article 45 of the first Constitution of the Central African Republic stipulates that "Laws and regulations prior to the date of promulgation of this Constitution shall remain in force in all respects not contrary to the foregoing provisions until they have been repealed or amended by the competent authorities". For a case law application, see for example: Bangui Court of Appeal, Criminal Division, Repertoire No. 012, Year 2015, 29 June 2015: "the application of the provisions of Article 1382 of the Civil Code [constitutes] the legal basis for any action for compensation for any loss suffered as a result of a third party".

<sup>42</sup> ICC, Trial Chamber *Lubanga*, Decision establishing the principles and procedures applicable to reparations, 7 August 2012, ICC-01/04-01/06-2904-tFRA, <https://www.legal-tools.org/doc/b80174/> ("*Lubanga* Decision"), §185; *Kaing Guek Eav alias Duch*, Judgment, 26 July 2010, E188, <https://www.legal-tools.org/doc/611805/> ("*Duch* Judgment"), §662.

<sup>43</sup> See in particular Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations General Assembly, resolution A/RES/40/34, 29 November 1985 <https://www.legal-tools.org/doc/1a6347/> ("Basic Principles (1985)"); 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, United Nations General Assembly, resolution A/RES/60/147, 16 December 2005, <https://www.legal-tools.org/doc/iyxeko/> ("Basic Principles (2005)").

<sup>44</sup> Fundamental Principles (1985), §1 (emphasis added).

is to promote justice by remedying gross violations of international human rights law or serious violations of international humanitarian law"<sup>45</sup> .

61. The Appeals Chamber recalls that, in a first decision on the matter, the Trial Chamber of the International Criminal Court ("ICC") held that reparations have two main purposes: they oblige those responsible for serious crimes to make reparation for the harm they have caused to victims and they enable the Chamber to ensure that criminals are held accountable for their acts<sup>46</sup> . Reparation for international crimes is thus an obligation originating in international law that falls on the perpetrator of the crime or, more specifically in the case of proceedings before the PSC, on the convicted person.

62. The international right to reparation that the civil party can assert against a person convicted before the PSC partially coincides with the Central African civil right to be compensated for damage caused by a crime on the basis of article 1382 of the Civil Code. There are differences between international reparations and compensation under civil law. Some of these differences are set out below:

- Civil law compensation generally takes an exclusively pecuniary form, whereas reparations before the PSC may include "training and socio-professional integration measures, medical and psychological care measures or measures aimed at setting up an agrarian or industrial development fund or educational programmes" (article 129-B of the RPP). This non-exhaustive list of reparation measures indicates that reparations include a transitional aspect - directed towards a future favourable to social peace and reconciliation.
- The CPS courts ruling on applications for reparation have broad discretionary powers with regard to the reparation measures to be ordered. They are required to obtain the opinions of the civil parties in particular (article 129-C of the RPP), but they are not bound by their requests and may order reparation measures other than those requested by the civil parties, provided that they are appropriate to the harm suffered (article 129-B of the RPP).
- Unlike civil compensation, it is possible for reparation measures ordered by the CPS to be financed or carried out by third parties, particularly if the convicted person is indigent (article 129-C of the RPP).

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<sup>45</sup> Fundamental Principles (2005), §15.

<sup>46</sup> *Lubanga* decision, §174; see also on appeal: *Lubanga* judgment, §§65-66.



63. It should be remembered that the SPC only rules on reparations originating in international law. Even if reparations are ordered by the SPC, it remains possible for the victim of a crime to pursue the right to civil compensation against the convicted person before the ordinary civil courts<sup>47</sup>.

64. In such a case, where a reparation measure awarded by the CPS has taken the form of pecuniary compensation, it may be taken into account by the ordinary court subsequently seized of a claim for compensation on the basis of Article 1382 of the Civil Code, particularly when the convicted person has already paid the sum ordered by the CPS. If this were not the case, the convicted person would be obliged to compensate the victim twice and the victim would receive double compensation for the same loss. On the other hand, non-pecuniary measures generally have no impact on any civil compensation ordered by an ordinary court. In other words, non-pecuniary reparation measures ordered by the SPC do not reduce the amount of any civil compensation.

### 3. *Admissibility of the civil party claim*

65. Under the terms of Article 74-A of the RPP, "[i]n accordance with the provisions of Article 40(2) of the Organic Law and Article 2 of the Code of Criminal Procedure, a person who claims to have been injured by a crime falling within the jurisdiction of the Court may, by lodging a complaint, bring a civil action before the Investigating Chamber". The Appeals Chamber therefore considers that, in order to be admissible, an application to bring a civil action must, of necessity, consist of: the identification of the applicant (a); an express expression of intent to bring a civil action (b); and the most precise possible allegation of harm caused by a crime falling within the jurisdiction of the SPC and before the court (c).

#### a) Identifying the plaintiff

66. It goes without saying that the identity of the claimant must be established for a civil action to be validly filed. The court must know who is taking part in the proceedings or requesting reparation measures.

67. This is usually done using official identity documents. However, as regards the means of establishing the identity of a civil party, the court may take into account

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<sup>47</sup> ECCC, Supreme Court Ch., *Kaing Guek Eav alias Duch*, Judgment, 3 February 2012, No. 001/18-07-2007-ECCC/SC, <https://www.legal-tools.org/doc/924439/> ("*Duch* Judgment"), §668.

the context and any difficulties victims may have in obtaining official documents<sup>48</sup>.

68. In addition, the documents in the case file may be taken into account by the court to determine whether the civil party's claim is admissible, including when they relate to the identity of the claimant.

b) Express expression of civil party status

69. According to article 74-B of the RPP, the complaint with civil party status lodged with the Examining Magistrate's Court "must contain an express declaration of civil party status". This requirement applies to all applications for civil party status, since such status confers the special procedural status of civil party. However, an "express statement" need not be in writing and need not use legal terms. It is sufficient if the victim's intention to participate in the proceedings as a party with certain rights or to claim compensation is clearly expressed.

70. The victim may bring a civil action before the CPS him/herself or on his/her behalf by another person duly authorised by the victim, for example a lawyer or relative. The authorisation must be filed in the proceedings before the court before which the civil action is brought.

c) Allegation of personal injury directly caused by a crime within the SPC's jurisdiction

71. In order to bring a civil action, personal injury directly caused by a crime falling within the jurisdiction of the SPC must be alleged.

(1) The crime falls within the jurisdiction of the court seised

72. In order to bring a civil action before the SPC, the claimant must claim to have been injured by a crime falling within the jurisdiction of that court. In addition, to be admissible, the plaintiff must

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<sup>48</sup> *Lubanga* decision, §198: "In reparation proceedings, victims may use official or unofficial identity documents, or any other means of identification recognised by the Chamber. If a victim is unable to produce an acceptable document, the Chamber may accept a statement signed by two credible witnesses, establishing the identity of the applicant and describing the relationship between the victim and the person acting on his or her behalf"; ICC, Trial Ch, *Katanga*, Order for reparations pursuant to Article 75 of the Statute, accompanied by a public annex (Annex I) and a confidential ex parte annex reserved for the Common Legal Representative of Victims, to the Office of Public Counsel for Victims, 24 March 2017, ICC-01/04-01/07-3728, <https://www.legal-tools.org/doc/83d6c4/> ("*Katanga* Order"), §71; ICC, Judicial Ch, *Ntaganda*, Reparation Order, 8 March 2021, ICC-01/04-02/06-2659-tENG, <https://www.legal-tools.org/doc/yfq9cp/> ("*Ntaganda* Order"), §137.

civil action in proceedings that are already underway must be based on an injury linked to a crime that is before the court. For example, if the civil party application is lodged with an assize court, the crime in question must be before that court.

73. Also, if the civil party's claim is admissible prior to a claim for compensation, the court must ensure that the crime invoked by the civil party has been the subject of a conviction. In other words, only crimes for which there has been a conviction can give rise to compensation.

(2) The existence of personal injury

74. ICC jurisprudence defines harm as "injury, loss or damage"<sup>49</sup>. The Appeals Chamber considers that harm may be of various kinds, including physical, psychological, material or other, provided that the victim suffers personally<sup>50</sup> and that it is related to the crimes for which a conviction was obtained in the proceedings in question.

75. According to the jurisprudence of the ICC, in order for a person to participate in the proceedings or claim reparations, he or she must have suffered harm personally<sup>51</sup>. Given that the right to reparation before the PSC has its origins in international law, the Appeals Chamber considers that this jurisprudence is also relevant before the PSC. It follows that it is not possible for the successor in title of a deceased victim to bring a civil action before the PSC claiming the harm suffered by the deceased victim: in such a situation, the harm claimed by the applicant would not be personal to him or her. On the other hand, it is possible for the successor in title of a deceased person to bring a civil action for damages that he or she personally suffers as a result of the victim's death, such as non-material damages.

(3) The causal link between the crime and the damage

76. There must be a causal link between the crime and the harm alleged. In order to bring a civil action, the victim must show that he or she has suffered harm as a result of the offence that is the subject of the proceedings before the CPS or, in the case of compensation, committed by the convicted person<sup>52</sup>. The Appeals Chamber considers it appropriate to conceive of this causal link as making the crime the cause of the harm.

"direct cause" of the loss to be compensated<sup>53</sup>.

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<sup>49</sup> *Katanga* Order, §74.

<sup>50</sup> *Katanga* Order, §74.

<sup>51</sup> ICC, Appeals Chamber, *Lubanga*, Judgment on the appeals lodged by the Prosecutor and the Defence against the Decision on victim participation issued on 18 January 2008 by Trial Chamber I, 10 July 2008, ICC-01/04-01/06-1432, <https://www.legal-tools.org/doc/819953/>, §32; *Lubanga* Judgment, §10.

<sup>52</sup> *Duch* judgment, §642.

<sup>53</sup> *Lubanga* decision, §250; *Lubanga* judgment, §§124-129.

d) Burden of proof

77. The Appeals Chamber notes that the admissibility of a civil claim may be determined at various stages of the proceedings (see also<sup>54</sup> ). It goes without saying that during the judicial investigation, the existence of a crime and the suspect's criminal liability have not yet been legally established, whereas at the time of judgment on the civil action, i.e. after the criminal conviction, these elements have been established, in principle, beyond any reasonable doubt<sup>55</sup> . It follows that, depending on the stage of the proceedings, the existence of damage suffered personally by the applicant and caused directly by a crime falling within the SPC's jurisdiction increases in certainty.

78. In order to participate in the proceedings during the investigation and at the trial, the civil party may bring a claim if the existence of these criteria is probable. This assessment is made on the basis of the information provided in the civil party application and, where applicable, the case file.

79. As regards the assessment of the admissibility of the civil party's claim for reparation, the proof must be such that the Assize Division is convinced that the facts alleged by the civil party in its claim for reparation are established on the basis of the most probable hypothesis<sup>56</sup> .

80. The Appeals Chamber reiterated that the burden of proof lies with the claimant. It is up to them to present sufficient proof of their identity, of the harm they have suffered and of the causal link between said harm and the crime for which they have been convicted<sup>57</sup> . Claims for compensation submitted by civil parties are based on all the relevant documents in the criminal case file and, where applicable, on any other supporting documents, subject to the adversarial procedure<sup>58</sup> . The purpose of the evidence is also to establish the nature and extent of the damage on which the claim for compensation is based.

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<sup>54</sup> See §§126 et seq.

<sup>55</sup> The Appeals Chamber notes that it is possible that a conviction that represents the basis for reparations ordered by a trial division may be quashed on appeal; in such a situation, the Appeals Chamber would be required to quash or reform the judgment concerning reparations as well.

<sup>56</sup> *Katanga* order, §50; *Lubanga* decision, §253.

<sup>57</sup> *Katanga* order, §45; *Lubanga* judgment, §88.

<sup>58</sup> *Lubanga* decision, §252.

#### 4. *Holders of compensation claims*

81. The Appeals Chamber ruled that in order to claim compensation, a victim had to register as a civil party<sup>59</sup>. It can be deduced from this that only civil parties are entitled to bring an action for damages, and that victims who have not formed a civil party are not entitled to do so.

82. A victim who is not a civil party is therefore not entitled to make claims for civil damages. However, this does not rule out the possibility of victims who are not civil parties benefiting from certain reparation measures, in particular collective measures (see below).

#### 5. *Remedial measures*

##### a) The different types of reparation measures

83. Different types of reparation measure can be identified. The Court may grant individual reparation measures or collective reparation measures<sup>60</sup>. In particular, it may order pecuniary compensation, training and socio-professional integration measures, medical and psychological care measures or measures to set up an agrarian or industrial development fund or educational programmes<sup>61</sup>. Under this provision, the Appeals Chamber points out that the list is not exhaustive.

84. The Appeals Chamber also notes that the ICC, on the basis of Article 75 of the Rome Statute<sup>62</sup>, considered that reparations could take one or more of the following forms: restitution, compensation, rehabilitation or other forms.<sup>63</sup>

85. With regard to *restitution*, the ICC concluded that "[t]his form of reparation should, as far as possible, restore the victim to the situation he was in before the crime was committed" and that "[t]he aim of restitution is to restore a person's life, in particular by returning him to his family, his home or his job; to provide him with continuing education; and to ensure that his lost or stolen property is returned to him"<sup>64</sup>.

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<sup>59</sup> V. §§74-75.

<sup>60</sup> Art. 129-A of the RPP.

<sup>61</sup> Art. 129-B of the RPP.

<sup>62</sup> Rome Statute of the International Criminal Court, adopted on 17 July 1998 and entered into force on 1 July 2002, A/CONF.183/9, <https://www.legal-tools.org/doc/j9ja1s/>.

<sup>63</sup> *Lubanga* decision, §222.

<sup>64</sup> *Lubanga* decision, §§223, 224.

86. As for *compensation* to victims, it noted that "[c]ompensation should be considered when (i) the economic harm suffered is sufficiently quantifiable; (ii) such reparation is appropriate and proportionate (taking into account the gravity of the crime and the circumstances of the case); and (iii) available funds permit" and that "[c]ompensation must take into account the interests of both sexes and reparation awarded should not reinforce structural inequalities or perpetuate discriminatory practices"<sup>65</sup> .

87. With regard to *rehabilitation*, the ICC has explained that it "must give effect to victims' right to rehabilitation in accordance with the principles of non-discrimination, which implies taking into account the interests of both sexes and persons of all ages"<sup>66</sup> .

88. As the Appeals Chamber has already indicated above, reparations measures may be individual or collective. It emphasises that individual and collective reparations are not mutually exclusive and may be awarded concurrently<sup>67</sup> .

89. Reparations measures, whatever their modalities, aim to provide appropriate, adequate and prompt reparations to civil parties<sup>68</sup> . Reparations should be proportionate to the harm, loss and damage suffered, as established by the Court<sup>69</sup> .

b) Individual repairs

90. According to the jurisprudence of the ICC, "[r]eparations are individual in nature when the resulting benefit is attributed directly to the individual in order to make reparation for the harm suffered as a result of the crimes of which the person has been convicted; the victim is granted a benefit to which he or she has an exclusive right. Individual reparations should be granted in such a way as to avoid creating or reinforcing tensions and divisions within the communities concerned"<sup>70</sup> .

91. The Appeals Chamber considers that, in principle, only victims who have joined as civil parties can benefit from individual reparation measures. The CPS cannot grant individual reparations to someone who has not requested them.

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<sup>65</sup> *Lubanga* decision, §§226, 227.

<sup>66</sup> *Lubanga* decision, §232 (footnote omitted).

<sup>67</sup> *Lubanga* decision, §220.

<sup>68</sup> *Lubanga* decision, §242.

<sup>69</sup> *Lubanga* decision, §243.

<sup>70</sup> *Ntaganda* Order, §79 (footnotes omitted).

c) Collective repairs

92. The Appeals Chamber considers that collective reparations have the advantage of achieving additional objectives. Particularly in a procedural system that limits individual reparations to civil parties<sup>71</sup>, collective reparations make it possible to include in the reparations victims whose identity is currently unknown, who have not joined as civil parties, or who have been dispersed as a result of the crimes<sup>72</sup>. Collective reparations can address the harm suffered by victims individually or collectively<sup>73</sup>, and should aim to reconcile the victims of the crimes in question with their families and all the communities affected by the events<sup>74</sup>. They are sometimes seen as the most appropriate response to the "constraints imposed by the immensity of the harm"<sup>75</sup>.

93. Collective non-pecuniary measures may also benefit persons who have not been victims of the crime in question, provided that the measures primarily address the harm suffered by the victims. In particular, if these measures are financed by the convicted person, the benefit to non-victims must not render the measure disproportionate.

94. The Appeals Chamber considers that collective reparations are a particularly appropriate form of reparation. Collective reparations should only very exceptionally take a financial form.

6. *Principles to be observed when ordering reparation measures*

95. Although the Assize Division has the power to assess reparation measures, it must comply with a certain number of principles, the most important of which are outlined below.

a) Principle of dignity, non-discrimination and non-stigmatisation

96. The Appeals Chamber emphasised that, as in all reparations proceedings, all victims must be treated fairly, humanely and with dignity<sup>76</sup>. The Court must, among other things, "take into account the needs of all victims, in particular children, victims of sexual violence and victims of gender-based violence".

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<sup>71</sup> V. §91.

<sup>72</sup> *Lubanga* decision, §219.

<sup>73</sup> *Lubanga* decision, §221.

<sup>74</sup> *Lubanga* decision, §244.

<sup>75</sup> *Duch* judgment, §666.

<sup>76</sup> *Lubanga* decision, §187; *Lubanga* judgment, §12; *Katanga* order, §30; ICC, Trial Chamber, *Al Mahdi*, Reparation order, 17 August 2017, ICC-01/12-01/15-236-tENG, <https://www.legal-tools.org/doc/c91dd6/> ("*Al Mahdi* order"), §§31, 32; *Ntaganda* order, §§41-43.

older persons, persons with disabilities and victims of sexual or gender-based violence"<sup>77</sup> and reparations must be provided "without adverse distinction based on sex, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, property, birth or other status"<sup>78</sup> . Any further stigmatisation or discrimination must be avoided; wherever possible, reconciliation must be promoted<sup>79</sup> .

b) Principle of adequate and proportionate compensation

97. The Assize Division shall ensure that reparation measures are appropriate to the nature and extent of the harm suffered by civil parties as a result of the commission of a crime for which a criminal conviction has been obtained in these proceedings<sup>80</sup> . Reparations should be proportionate to the harm, loss and damage suffered, as established by the Court<sup>81</sup> . Wherever possible, reparations should be based on local culture and customs, unless these are a source of discrimination or exclusion, or prevent victims from exercising their rights on an equal basis<sup>82</sup> . The Appeals Chamber considers it desirable to direct reparations towards autonomous programmes, in order to enable victims, their families and their communities to benefit from these measures over the long term<sup>83</sup> . Reparation must be carried out quickly. The complex situation in which victims of sexual and gender-based violence find themselves must be taken into account<sup>84</sup> .

c) The effectiveness of reparation measures

98. The Appeals Chamber accepts that the right to an effective remedy is also a fundamental human right. In this respect, the Appeals Chamber agrees with the reasons given in a decision by a comparable court, which held that "a remedy whose outcome is a decision that is not enforceable, binding or dependent on the discretionary power of the executive cannot be regarded as effective"<sup>85</sup> .

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<sup>77</sup> *Lubanga* decision, §189.

<sup>78</sup> *Lubanga* decision, §191.

<sup>79</sup> *Lubanga* decision, §§192-193.

<sup>80</sup> *Lubanga* decision, §242; *Lubanga* judgment, §44; *Katanga* order, §30; *Al Mahdi* order, §33; *Ntaganda* order, §§41-43.

<sup>81</sup> ICC, Ch. App. *Lubanga*, Reparations Order, 3 March 2015, ICC-01/04-01/06-3129-AnxA-tFRA, <https://www.legal-tools.org/doc/401768/> ("*Lubanga* Order"), §45.

<sup>82</sup> *Ordonnance Lubanga*, §47.

<sup>83</sup> *Ordonnance Lubanga*, §48.

<sup>84</sup> *Lubanga* decision, §207.

<sup>85</sup> *Duch* judgment, §663 citing footnote 1332 *Case of Band L v. The United Kingdom*, Application no. 36536/02, ECHR, Decision as to the Admissibility, 29 June 2004, p.9.



99. Furthermore, the Appeals Chamber considers that reparation which, in all likelihood, can never be implemented, i.e. which is de facto fictitious, would run counter to the objective of effective reparation and would be a source of confusion and frustration for the victims<sup>86</sup>.

100. As a result, the Appeals Chamber considers that an Assize Division may not order reparation measures whose implementation is not certain or at least probable. For this reason, when identifying reparation measures, the Assize Division is obliged to take into account the convicted person's financial situation and any willingness of third parties to provide or finance reparation measures. This does not mean that the judgement on reparations cannot be made until all aspects of the reparations and their financing have been decided. However, it must be probable that the remedial measures will be carried out. The court ruling on reparations may also decide to keep certain claims pending until they are ready for trial. It may also appoint one of its members to oversee the implementation of the reparation measures.

d) The judgment for damages is pronounced against the convicted person in criminal proceedings

101. Referring to article 129-A of the RPP, the Appeals Chamber deduced that the Court rules on the claims for compensation made against the convicted person. Consequently, on the one hand, the civil parties must refer in their claims to the persons convicted at the end of the criminal proceedings. On the other hand, in the event of an award of damages, the judgment on damages is made against the person or persons convicted<sup>87</sup>.

102. The Appeals Chamber concluded that reparation measures are closely linked to individuals whose criminal responsibility is established by a conviction<sup>88</sup>. Consequently, the convicted person has an obligation to make reparation for the harm caused by the crimes of which he or she has been found guilty<sup>89</sup>.

103. The Appeals Chamber also considers that the law applicable before the PSC, in the light of international principles<sup>90</sup> and the case law of the ICC<sup>91</sup>, means that a

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<sup>86</sup> *Duch* judgment, §667.

<sup>87</sup> See, for example, *Duch* Judgment, §661: "reparations are directly and exclusively payable by the accused once they have been found responsible for a loss which the civil parties have established resulted from the crimes committed".

<sup>88</sup> *Lubanga* judgment, §65.

<sup>89</sup> *Lubanga* judgment, §99.

<sup>90</sup> See for example: Fundamental Principles (1985), § 8: "Perpetrators of criminal acts or third parties responsible for their conduct must, where appropriate, make fair reparation for the harm caused to victims, their families or dependants".

<sup>91</sup> *Lubanga* judgment, §§69-72.

reparation must in all circumstances be made against the person convicted<sup>92</sup>. In other words, as a similar hybrid court has ruled, reparations are ordered against the convicted person and suffered by him personally<sup>93</sup>.

104. The Appeals Chamber deduced that a convicted person's indigence could not prevent him from being ordered to pay full reparation for the crimes he had committed<sup>94</sup> as the question of indigence was unrelated to that of liability for reparation<sup>95</sup>.

105. Article 129-D of the RPP stipulates that "[w]here the convicted person is indigent or if his assets are not sufficient to finance all of the reparations ordered, the Assize Division may invite the victim and defence assistance service to seek external funding". The Appeals Chamber concluded as to the legal nature of this

This "solicitation" does not in any way detract from the individual responsibility of those convicted.

106. The ability of third parties - State, international or non-State - to contribute to the implementation of certain reparation measures in place of the convicted person is exercised on a voluntary basis. The Appeals Chamber also considers that it is not in a position to order the national authorities, or the international organisations present in the Central African Republic, to comply with certain requests made to them by the civil parties<sup>96</sup>. Nor can the Appeals Chamber impose obligations on natural or legal persons who were not parties to the trial<sup>97</sup>.

107. Notwithstanding the foregoing consideration, the Appeals Chamber emphasised that States may intervene in reparation matters on a sovereign basis. Their voluntary action is referred to in several international texts. With regard to compensation, the Basic Principles (1985) stipulate in paragraph 12:

Where it is not possible to obtain full compensation from the offender or other sources, States should endeavour to provide financial compensation:

- a) victims who have suffered physical injury or significant physical or mental harm as a result of serious criminal acts.
- b) The family, in particular the dependents of people who have died or become physically or mentally incapacitated as a result of the victimisation.

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<sup>92</sup> *Lubanga* judgment, §76.

<sup>93</sup> *Duch* judgment, §656.

<sup>94</sup> See also *Lubanga* judgment, §103.

<sup>95</sup> *Lubanga* decision, §174; see also on appeal: *Lubanga* judgment, §105.

<sup>96</sup> See also *Duch* judgment, §663.

<sup>97</sup> *Duch* judgment, §663.

108. In addition, the Basic Principles (2005)<sup>98</sup> stipulate: "States should endeavour to establish national programmes to provide reparation and other assistance to victims where the party responsible for the harm suffered is unable or unwilling to fulfil its obligations".

e) Involvement of victims

109. The Appeals Chamber considers that any reparation procedure must involve the victims. Participation in the reparation process is entirely voluntary and the informed consent of the beneficiaries is a necessary precondition for the award of reparations, including in the form of participation in a reparation programme<sup>99</sup>. It takes the form of consultations with the civil parties<sup>100</sup> and, where appropriate, with unincorporated victims, victims' associations or other third parties in possession of information that may enlighten the court. These interactions, held in a language that the interlocutors easily understand, use intelligible terms. These exchanges will be cautious, in order to avoid further trauma and to manage their expectations tactfully.

f) Do no harm

110. The Appeals Chamber considers the principle of "do no harm" to be an internationally recognised principle<sup>101</sup> in the conduct of proceedings and the assessment of reparation measures. During the proceedings, it requires humanitarian actors to anticipate, monitor and correct any potential or undesirable negative effects of their actions. When deciding on measures, the court must ensure that the reparation measures themselves do not cause harm. The formulation of the above principles helps to ensure the principle of "do no harm" to populations affected by the crimes committed.

7. *Procedure for determining remedial measures*

111. The Appeals Chamber considers that the reparations phase is an integral part of the trial<sup>102</sup>. While during the examination of the criminal case the focus is on the defence and the prosecution, at this stage the Court is primarily interested in the victims of the crimes, even though the defence and the Special Prosecutor's Office also take part in the reparations proceedings<sup>103</sup>. In this respect, the Appeals Chamber deplors the fact that neither counsel for the convicted persons nor the Special Prosecutor's Office have

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<sup>98</sup> Fundamental Principles (2005), §16.

<sup>99</sup> *Ntaganda* order, §49.

<sup>100</sup> *Ntaganda* order, §45.

<sup>101</sup> *Ntaganda* order, §§50-52.

<sup>102</sup> *Lubanga* decision, §260, 267.

<sup>103</sup> *Lubanga* decision, §267.

considered it appropriate to submit pleadings in the present proceedings. The convicted persons have not proposed any contribution to the reparations.

112. Counsel for the civil parties are required to present precise, documented and, in their opinion, feasible requests for reparation. To this end, they may request the Court's services from the trial court in order to draw up draft reparation measures. In this regard, the Appeals Chamber recalls a decision according to which :

Nor can the Chamber order measures whose purpose is neither determined nor determinable and which it would be impossible to enforce. Therefore, in order for reparation to be granted, the nature of the measure requested must first be clearly indicated, the link between the prejudice caused by the accused and the measure intended to remedy it must be stated, and finally the quantum of the compensation or the amount of the reparation requested from the accused must be quantified so that it can be made effective<sup>104</sup>.

113. The Assize Division must therefore determine the nature and extent of the damage caused to the civil parties<sup>105</sup>.

114. The Appeals Chamber considers that the assessment of the measures to be taken, provided for in article 129-C of the RPP, is intended to enable the trial court to assess the reality of the harm suffered and the means of reparation available, before ruling on reparations, which is the only effective remedy for reparation available to victims under the law applicable before the CPS.

115. The Appeals Chamber emphasised that article 129-D of the RPP allows the trial division to invite the CPS's victim and defence support service to seek external funding for the reparation measures it is considering. In view of the principle of effective reparation referred to above, this invitation must, in principle, take place before the Assize Division decides on reparation.

116. The Appeals Chamber noted that, under article 129-C of the RPP, "[i]n order to determine the nature and extent of the harm caused to the civil parties and to assess the reparation measures to be taken, the Assize Division may obtain the opinions of the civil parties, the victims and defence assistance service and other experts".

117. Consequently, it is the responsibility of the court hearing the claims for compensation to prepare the claims, and in particular to receive the reasoned claims from the civil parties, and to check their feasibility, including technical feasibility, by the relevant departments, and their financing, before making a decision.

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<sup>104</sup> *Duch* judgment, §665.

<sup>105</sup> *Katanga* Order, §74.

8. *The structure of the decision on reparations*

118. In order to make a judgement on reparations clear and easy to understand, a trial section should adopt the following structure:

- a. A reminder of the procedure ;
- b. Criminal convictions of convicted persons ;
- c. Decision on the admissibility of civil parties ;
- d. Analysis of the merits of the claims for compensation (discussion of the loss, the causal link with the convicted crimes, the evidence available, and the nature and extent of the compensation claimed);
- e. Determining remedial measures ;
- f. The device.

***B. Plea in law relating to the right of victims to bring civil actions after the closure order***

1. *Summary of the Assize Division's conclusions*

119. In the judgment under appeal, the Assize Division declared admissible the civil action brought by :

- Simplicie Bissi,
- Simon Faya,
- Patrick Yaou,
- Désiré Ngoy,
- Félicité Bissi,
- Bosco Ndobeletia,
- Philémon Yaka and
- Valentin Houtia, and
- XX,
- ZZ,
- OO,
- AAA,
- YY, and
- JJ

for the crimes committed in Koundjili (a total of 14 people, including the 6 rape victims); and of

- Jean Denis Albert Horo,
- Lazare Dane,
- Saturnin Barry,
- Alphonse Nzouwone,
- Sylvain Fendingnaroutia,

- Sylvain Haoumi Belahimi,
- Hyance Houli,
- Paulin Pouna,
- Lévy Zatala,
- Darlan Ndao,
- Léo Haomi and
- Marthe Ngbara

for the crimes committed in Lemouna (12 people in total)<sup>106</sup> .

120. The Assize Division rejected "the civil party claims made before the Assize Division, which are set out in Appendix A and Appendix B to this judgment, as well as the civil party claims for the alleged acts of theft and pillage"<sup>107</sup> . With regard to the rejection of the civil party claims made before the Assize Division, the Assize Division explained that it considered that a reading of article 63 of the RPP, as well as article 40 of the Organic Law and article 74 of the RPP, revealed that the constitution of a civil party claim after the conclusion of the judicial investigation was excluded<sup>108</sup> .

## 2. *Arguments of the civil parties*

121. Counsel for the civil parties criticise the contested Judgment for holding that only civil party claims lodged in the legal form and within the legal time limits are admissible<sup>109</sup> , i.e., according to the contested Judgment, during the investigation.

122. Counsel thus challenged the Assize Division's interpretation that the CPS texts precluded the lodging of a civil party claim after the close of the investigation<sup>110</sup> . They also point out that the six rape victims have never formally lodged a civil party claim, even though they were admitted as such by the Assize Division<sup>111</sup> , on the grounds that article 74-D of the RPP does not provide for any particular formality for lodging a civil party claim during the investigation<sup>112</sup> .

123. They also invoke certain United Nations resolutions protecting "the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law"<sup>113</sup> . They also argue that Article 2 of the CPP provides that a civil action for reparation for damage caused by a crime

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<sup>106</sup> Judgment under appeal, p.39.

<sup>107</sup> Judgment under appeal, p.39.

<sup>108</sup> Contested judgment, §121.

<sup>109</sup> Appeal brief, p.7.

<sup>110</sup> Appeal brief, p.8.

<sup>111</sup> Appeal brief, p.7.

<sup>112</sup> Appeal brief, p.7.

<sup>113</sup> Appeal brief, p.9.

belongs to all those who have suffered damage directly caused by the offence<sup>114</sup>. Lastly, they pointed out that Article 6 of the RPP guarantees that victims can assert their rights at all stages of the proceedings<sup>115</sup>. They emphasised the factual circumstances that had prevented the civil parties from exercising their right to recourse and reparation<sup>116</sup> and the lack of awareness and information among victims in the field<sup>117</sup>.

124. Counsel for the civil parties ask the Appeals Chamber to allow as civil parties the claims of the inhabitants of the villages of Koundjili and Lemouna rejected by the contested Judgment and set out in Appendices A and B, reproduced in the appeal brief<sup>118</sup>.

### 3. *Analysis and conclusions*

125. The Appeals Chamber will first examine whether it is only possible to bring a civil party action during the judicial investigation (a), before examining the Assize Division's decision on the admissibility of civil parties (b). Finally, the Appeals Chamber will conduct its own examination of the admissibility of the civil parties (c).

#### a) When to file a civil action

126. Firstly, the Appeals Chamber recalls that the Assize Division considered that the RPP provided for two possibilities for bringing a civil action before the CPS<sup>119</sup>, i.e. under article 63 of the RPP and article 74 of the RPP. For the reasons set out below, it wrongly concludes that the PSC's texts exclude the possibility of bringing a civil action after the close of the investigation.

127. With regard to Article 63 of the RPP, the Appeals Chamber considers that the complaint referred to in this text consists of the information sent by a person claiming to be injured to the Special Public Prosecutor of the commission of a crime likely to fall within the jurisdiction of the SPC. This denunciation has no effect on the initiation of the public prosecution and consequently no effect either on the civil action and the defence of his interests by an individual.

128. The Appeals Chamber emphasised that the main difference between a simple complaint under Article 63 and a complaint with civil party status under Article 74 of the RPP was precisely the fact that the latter "must contain an express declaration of civil party status"<sup>120</sup>.

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<sup>114</sup> Appeal brief, p.8.

<sup>115</sup> Appeal brief, p.9.

<sup>116</sup> Appeal brief, p.9.

<sup>117</sup> Appeal brief, p.9.

<sup>118</sup> Appeal brief, p.7, p.10-16.

<sup>119</sup> Contested judgment, §120.

<sup>120</sup> Art. 74-B of the RPP.

The complaint and the civil party complaint are therefore two distinct actions left to the discretion of the victims, as article 56 of the Criminal Procedure Code clearly states. A civil party complaint cannot therefore be lodged with the Special Public Prosecutor, but rather with the Investigating Chamber, in order to trigger the opening of a judicial investigation or to join an investigation that has already been opened.

129. The Appeals Chamber notes that nothing in the RPP excludes the possibility of filing a civil action later in the proceedings.

130. The Appeals Chamber further notes that Article 6 of the RPP provides that :

The Court guarantees that victims can assert their rights at all stages of the proceedings, in accordance with the provisions of the Organic Law and the Rules and in a manner that is neither prejudicial to the rights of the defence nor contrary to the requirements of a fair and impartial trial.

It also points out that a combined reading of articles 221 and 164 of the Criminal Procedure Code authorises victims to appear before the criminal court as civil parties.

131. The Appeals Chamber also observed that the inquisitorial nature of the criminal proceedings, in particular the secrecy of the investigation, and the difficulties for victims living in Koundjili, Lemouna or elsewhere to obtain information about their rights, meet with counsel and, where appropriate, bring a civil action in proceedings centralised in Bangui, also militate in favour of an interpretation of the RPP allowing a civil action to be brought at the civil interests hearing.

132. Article 129-A of the RPP authorises such an approach by providing that "[a]fter ruling on the public prosecution, the Assize Division shall rule on claims for compensation against the convicted person, after hearing the civil parties, the convicted person and the prosecutor". Article 3 of the Criminal Procedure Code also states that "the civil action may be brought at the same time as the public action". This option implicitly means that the civil action may also be brought following the criminal action.

133. The Appeals Chamber is also aware of the burden placed on the court to examine the admissibility of a very large number of civil parties in mass-crime cases, at a time when its attention is entirely focused on the charges against the accused. In order to reconcile Articles 6 and 129 of the RPP, in particular with regard to the rights of the defence, especially the right to be tried on the charges brought against one within a reasonable time, and the need for the judicial system to function properly, the Appeals Chamber considers that the Assize Division may decide, on a case-by-case basis, that victims who are not parties to the proceedings may be admitted as civil parties.



In other words, in such a situation, the victims would be able to assert their right to compensation, but would not participate in the criminal trial. In other words, in such a situation, the victims would be able to assert their right to compensation, but would not participate in the criminal proceedings.

134. The Appeals Chamber concluded that, contrary to what the Assize Division had considered, the filing of a civil party claim at the civil interests hearing complied with the RPP and did not infringe the rights of the defence.

b) Examination of the admissibility of civil party claims by the Assize Division

135. To determine the admissibility of civil party claims, the Assize Division based its reasoning<sup>121</sup> on articles 63-B, 74-A, -B, -C and -D of the RPP and articles 2, 3 paragraph 2 and 56 to 60 of the CPP. The Appeals Chamber has already ruled above<sup>122</sup> that article 63 of the RPP, which deals only with simple complaints, does not shed any light on the regime for complaints with civil party status, which are dealt with in article 74 of the RPP and articles 2, 3 and 56 to 60 of the CPC.

136. According to the Assize Division, "[b]y taking into account the periods during which civil party applications were filed and the manner in which they were made, as well as the chamber before which they were filed, the Division notes that there are three types of applications made by lawyers defending the interests of victims"<sup>123</sup>. It then distinguishes between the admissibility of parties constituted during the pre-trial investigation, rape victims constituted as civil parties who are said not to have been formally declared, and applications to constitute civil parties made at the trial hearing.

(1) Admissibility of civil party claims lodged during the investigation

137. Firstly, the civil party claims lodged during the investigation, "The Assize Division considers that these civil party submissions were made in accordance with the legal forms and deadlines and, moreover, were not contested by any of the parties. They should therefore be declared admissible"<sup>124</sup>.

138. In so ruling, the Assize Division erred. The Appeals Chamber considered that neither the fact that a complainant had been received as a civil party during the course of the trial nor the fact that the complainant had not been received as a civil party during the course of the trial had any bearing on the decision.

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<sup>121</sup> Contested judgment, §111.

<sup>122</sup> See §127; judgment under appeal, §106.

<sup>123</sup> Contested judgment, §106.

<sup>124</sup> Contested judgment, §113; see also §112 and 117.

neither the absence of a challenge by the defence or the Special Public Prosecutor exempts the Assize Division from examining the admissibility of the civil parties when it rules on the question of reparations. Indeed, the Appeals Chamber considered that it was incumbent on the Assize Division to verify and assess, on its own initiative but subject to appeal, the admissibility of the civil parties, in accordance with Article 129 of the RPP, before identifying and ordering reparation measures. Furthermore, as the Appeals Chamber has already explained above, during the course of the proceedings, the scope of the criminal court's jurisdiction may have varied, and the admissibility of the civil party's claim at the time of the reparation measures is not the same as during the investigation<sup>125</sup>.

(2) Admissibility of civil action by rape victims

139. Secondly, with regard to the admissibility of the civil party claims of the rape victims, the Assize Division noted that they had only been identified during the judicial investigation and that the possible stigmatisation as a result of the crimes they had suffered justified their statements to the investigating magistrates being considered as equivalent to "demonstrations to demand reparation"<sup>126</sup>. Going further, "[i]n the present case, the Section considers that a civil party has been constituted from the moment that the investigating magistrate's office has considered and treated the victims of sexual violence as civil parties by allowing them to benefit from the provisions of articles 75 and 76 of the RPP on the assistance of the civil party and the possibility for the latter to participate in the proceedings"<sup>127</sup>.

140. Once again, the Appeals Chamber considers that the Assize Division cannot leave the examination of the admissibility of the civil parties' claims to the investigating magistrates when it comes to ruling on the reparation measures.

(3) On the admissibility of civil party applications made at the hearing

141. Thirdly, the Appeals Chamber has already ruled that the Assize Division's view that the law precludes the filing of a civil party complaint after the close of the investigation<sup>128</sup> was an error of law<sup>129</sup>. On the other hand, the right to bring a civil action at the civil interest hearing complies with the RPP.

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<sup>125</sup> V. §§77-80.

<sup>126</sup> Judgment under appeal, §115.

<sup>127</sup> Contested judgment, §116.

<sup>128</sup> Contested judgment, §121

<sup>129</sup> V. §138.

c) Determination by the Appeals Chamber of the admissibility of civil party claims

142. The Appeals Chamber ruled that the Assize Division's determination of the admissibility of the civil party applications was vitiated by several errors of law. It is therefore the responsibility of the Appeals Chamber to determine the admissibility of the civil party claims itself.

143. Before the Assize Division, counsel for the civil parties argued that they represented a total of 44 civil parties (who also represented other victims of the crimes in Koundjili and Lemouna)<sup>130</sup>. However, counsel's submissions do not make it possible to clearly identify these 44 civil parties: neither counsel's written submissions nor the attached annexes provide this information unambiguously. The appeal brief does not clarify this point either.

144. The Appeals Chamber's analysis of the admissibility of civil parties is based on the relevant documents in the case file. The Appeals Chamber recalls that it has already identified above<sup>131</sup> the criteria for the admissibility of civil parties.

(1) Identification of the civil party and express declaration of intention to bring a civil action

145. The Appeals Chamber reiterated that in order to be admissible, the identity of the civil party must be established, and the civil party must express an express wish to bring a civil action, either by the victim himself or by a person duly authorised by the victim<sup>132</sup>. Although these are two separate criteria, they should be considered together in the case in question.

146. As regards the manifest expression of a desire to bring a civil action, the Appeals Chamber considers that this must be done before the competent court. Thus, an expression of a desire to be compensated or of an intention to sue for damages made, for example, during the hearing of a witness at the preliminary enquiry<sup>133</sup> does not constitute an express expression of intention to sue for damages.

147. After analysing the file, the Appeals Chamber identified three instances in which the intention to bring a civil action was expressly expressed, namely the two complaints with civil action of 6 and 11 March 2020 (D-I-52.3 and D-I-51.3) and the brief filed on 19 January 2023 before the Assize Division (exhibit no.° 7 of the proceedings before the First Assize Division), which was supplemented on 26 January 2023 (exhibit no.° 9 of the proceedings before the First Assize Division).

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<sup>130</sup> Memorandum of 19 January 2023 (exhibit 7), §7.

<sup>131</sup> V. §§65-80.

<sup>132</sup> V. §§69-70.

<sup>133</sup> See for example exhibit D-II-52.

148. These documents were signed by Me Manguereka. It is now necessary to determine whether he was duly authorised to file a civil party claim.

149. The file shows that the victims mentioned in the civil party complaints of 6 and 11 March 2020 have all signed a judicial mandate in favour of Mr Manguereka<sup>134</sup>. As for the rape victims, during their hearings before the Investigating Chamber, they were all assisted by Mr Manguereka and confirmed their willingness to have him defend their interests<sup>135</sup>. However, for the other victims mentioned in the brief of 19 January 2023, the Appeals Chamber did not find in the file a judicial mandate authorising the civil parties' lawyers.

150. Accordingly, the Appeals Chamber will restrict its further analysis to those victims for whom Manguereka has validly indicated his willingness to act as a civil party. These are :

- Simplicie Bissi,
- Simon Faya,
- Patrick Yaou,
- Ngoy Désiré,
- Félicité Bissi,
- Bosco Ndobeletia,
- Philémon Yaka and
- Valentin Houtia, and
- XX,
- ZZ,
- OO,
- AAA,
- YY, and
- JJ

for the crimes committed in Koundjili; and

- Jean Denis Albert Horo,
- Lazare Dane,
- Saturnin Barry,
- Alphonse Nzouwone,
- Sylvain Fendingnaroutia,
- Sylvain Haoumi Belahimi,
- Hyance Houll,
- Paulin Pouna,
- Lévy Zatala,
- Darlan Ndao,

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<sup>134</sup> Simplicie Bissi : D-I-56.3 ; Simon Faya : D-I-57.3; Patrick Yaou: D-I-58.3; Désiré Ngoy : D-I-59.3; Félicité Bissi: D-I-60.3 ; Bosco Ndobeletia : D-I-61.3; Philémon Yaka: D-I-63.3; Valentin Houtia: D-I-62.3; Jean Denis Albert Horo: D-I-82.1; Lazare Dane: D-I-81.1; Saturnin Barry: D-I-80.1; Alphonse Nzouwone: D-I-79.3; Sylvain Fendingnaroutia: D-I-78.1; Sylvain Haoumi Belahimi: D-I-77.1; Hyance Houll: D-I-76.2; Paulin Pouna: D-I-75.4; Lévy Zatala: D-I-74.3; Darlan Ndao: D-I-73.2; Médard Haoumi: D-I-72.3; Freddy Mbandoya: D-I-71.3; Jules Calvaire Gompoule: D-I-70.3.

<sup>135</sup> V. D-II-236.1; D-II-237.1; D-II-238.1; D-II-239.1; D-II-240.1; D-II-241.1.

- Médard Haomi,
- Freddy Mbandoya and
- Jules Calvaire Gompoule for

crimes committed in Lemouna.

151. The Appeals Chamber notes that this list largely corresponds to the list of civil parties declared admissible by the Assize Division, but Médard Haomi, Freddy Mbandoya and Jules Calvaire Gompoule were not included, while Léo Haomi and Marthe Ngarara were. As for the latter, the Appeals Chamber was unable to identify any express expression of civil party status, or any judicial mandate in favour of Me Manguereka.

152. As to the identification of the applicants, the Appeals Chamber notes that the case file contains copies of identity documents for most of them<sup>136</sup>. Some others were interviewed during the judicial investigation or before the Assize Division, which implies that their identity was verified by a judicial authority<sup>137</sup>.

153. In the case of four applicants - Saturnin Barry, Hyance Houli, Médard Haomi and Freddy Mbandoya - the Appeals Chamber was unable to confirm their identities; their civil party claims are therefore inadmissible and they are excluded from further analysis.

154. The Appeals Chamber has been informed that the victim, identified as YY, died on 17 November 2022<sup>138</sup>. A death certificate is included in the proceedings. In view of his death, victim YY's claim for compensation has been extinguished and his civil action is inadmissible.

(2) Personal injury directly caused by a crime within the SPC's jurisdiction

155. Concerning Alphonse Nzouwone, Sylvain Fendingnaroutia, Sylvain Haoumi Belahimi and Lazare Dane, the Appeals Chamber recalls that they were victims of attempted murder. The Appeals Chamber also recalls that XX, ZZ, OO, AAA and JJ were recognised as victims of rape. Their claims for compensation were therefore based on direct personal harm caused by a crime within the Court's jurisdiction.

156. With regard to the other victims mentioned above, they claim prejudice linked to the loss of a member of their family. The Appeals Chamber easily understands that the death of a relative

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<sup>136</sup> Simplicie Bissi: D-I-52.6; Simon Faya: D-I-52.7; Patrick Yaou: D-I-52.8; Ngoy Désiré: D-I-52.9; Félicité Bissi: D-I-52.10; Bosco Ndobeletia: D-I-52.11; Philémon Yaka: D-I-52.5; Valentin Houtia: D-I-52.4; Jean Denis Albert Horo: D-I-51.5; Lazare Dane: D-I-81.4 (difficult to read); Sylvain Fendingnaroutia: D-I-51.7; Sylvain Haoumi Belahimi: D-I-51.8.

<sup>137</sup> Paulin Pouna: D-I-11; Lévy Zatala: D-I-12; Darlan Ndao: D-II-87; Jules Calvaire Gompoule: D-I-27; Alphonse Nzouwone: D-I-6, D-II-11, D-II-89.

<sup>138</sup> SAVD report dated 19 October 2023, appendix: death certificate dated 19 October 2023.

in violent circumstances such as those of the attack on the villages of Koundjili and Lemouna constitutes direct harm, at least of a moral nature, caused by a crime within the jurisdiction of the Court.

157. The following persons are therefore eligible to bring civil action:

- Simplicie Bissi,
- Simon Faya,
- Patrick Yaou,
- Désiré Ngoy,
- Félicité Bissi,
- Bosco Ndobeletia,
- Philémon Yaka and
- Valentin Houtia, and
- XX,
- ZZ,
- OO,
- AAA, and
- JJ

for the crimes committed in Koundjili; and

- Jean Denis Albert Horo,
- Lazare Dane,
- Alphonse Nzouwone,
- Sylvain Fendingnaroutia,
- Sylvain Haoumi Belahimi,
- Paulin Pouna,
- Lévy Zatala,
- Darlan Ndao and
- Jules Calvaire Gompoule for

crimes committed in Lemouna.

***C. Grounds of appeal relating to reparation measures ordered by the Assize Division***

158. The civil parties' lawyers are challenging the reparation measures ordered by the Assize Division, both with regard to individual and collective measures.

1. *Means of appeal relating to individual compensation*

a) Survivors of attempted murder

(1) Summary of the Assize Division's conclusions

159. The Assize Section ordered the three convicts to pay Alphonse Nzouwone, Sylvain Fendingnaroutia and Sylvain Belahimi the sum of 600,000 CFA francs each<sup>139</sup>. According to the Assize Division, the three victims were tied up by the assailants in Lemouna. They survived the massacre committed in this village and still bear the after-effects. Alphonse Nzouwone was also shot in the right femur<sup>140</sup>. The Assize Division awarded the sum of 200,000 CFA francs to Lazare Dane, who also survived the massacre<sup>141</sup>.

(2) Arguments of the civil parties

160. The civil parties' lawyers argue that the Assize Division failed to award compensation to the fifth surviving victim, Patrice Nzouwone; they point out that they had also made a request on his behalf, which they repeat before the Appeals Chamber<sup>142</sup>.

161. The civil parties' lawyers also reiterated their demands regarding the amount of compensation, claiming the sum of 3,000,000 CFA francs for Sylvain Balahimi, who was shot in the right leg, the sum of 15,000,000 CFA francs for Alphonse Nzouwone, who would no longer be able to carry out his activities, the sum of 3,000,000 CFA francs for Sylvain Fendingnaroutia, who had allegedly been shot in the hand, and the sum of 2,000,000 CFA francs each for Patrice Nzouwone and Lazare Dane, for their non-pecuniary losses<sup>143</sup>.

(3) Analysis by the Appeals Chamber

162. With regard to the Assize Division's failure to award compensation to Patrice Nzouwone, the Appeals Chamber recalled that his civil party application was not one of those deemed admissible<sup>144</sup>. Given that individual compensation can only be ordered for the benefit of validly constituted civil parties<sup>145</sup>, the Assize Division did not err in not awarding him compensation.

163. With regard to the amount of reparation awarded by the Assize Division, the Appeals Chamber recalled that the Assize Division has a margin of appreciation in determining the appropriate reparation measures. As such, the sums awarded by the Assize Division do not

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<sup>139</sup> Judgment under appeal, p.39.

<sup>140</sup> Judgment under appeal, §51

<sup>141</sup> Judgment under appeal, p.39.

<sup>142</sup> Appeal brief, p.17.

<sup>143</sup> Appeal brief, p.17.

<sup>144</sup> V. §157.

<sup>145</sup> V. §91.



not appear to be entirely unreasonable. The Appeals Chamber also considers that the implementation of these individual reparation measures seems likely, given the resources available. The arguments of the civil parties' lawyers are therefore rejected.

b) Rape victims

(1) Summary of the Assize Division's conclusions

164. The Assize Division ordered Issa Sallet Adoum to pay rape victims ZZ and AAA, who were minors at the time of the events, the sum of 1,000,000 CFA francs each and victims XX, JJ, OO and YY the sum of 700,000 CFA francs<sup>146</sup>. In reaching its decision, the Assize Court noted the different types of harm suffered by the victims (material harm: loss of source of income, loss of schooling, moral impossibility of carrying out one's main activity, abandonment by one's partner...<sup>147</sup>; physical harm: physical violence, acute pain and bleeding...<sup>148</sup>; psychological harm: severe psychological problems, social stigmatisation... ).<sup>149</sup>

(2) Arguments of the civil parties

165. On appeal, the civil parties' lawyers argued that the sums awarded were insufficient to compensate the harm suffered by the rape victims and criticised the Assize Division for failing to verify the needs of each victim on a case-by-case basis; they reiterated their request for compensation of 20,000,000 CFA francs per victim<sup>150</sup>.

(3) Analysis by the Appeals Chamber

166. The Appeals Chamber recalls that the Assize Division, in identifying and ordering reparation measures, has a margin of appreciation. The sums awarded to rape victims do not appear to be entirely unreasonable and intervention by the Appeals Chamber to reassess them is not justified.

167. As for the argument that the Assize Division should have verified the harm suffered by each victim on a case-by-case basis, the Appeals Chamber considers that the Assize Division may decide to award lump sums. In this case, it is not necessary to analyse in detail the harm suffered by each victim. In addition, the reasons given by the Assize Division ensure that it was sufficiently informed about the harm suffered by the rape victims. The Appeals Chamber also considered that the sums awarded were not entirely fair.

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<sup>146</sup> Contested judgment, p.40.

<sup>147</sup> Contested judgment, §47.

<sup>148</sup> Contested judgment, §50.

<sup>149</sup> Judgment under appeal, §§54, 55.

<sup>150</sup> Appeal brief, p.17-18.

unreasonable and that the implementation of these individual redress measures seems likely, given the resources available. The argument is therefore rejected.

168. With regard to victim YY, the Appeals Chamber noted that she had been informed of her death on 17 November 2022. Her civil action was therefore declared inadmissible<sup>151</sup>. As a result, the Appeals Chamber cannot order reparation measures for her.

169. During the proceedings, the Appeals Chamber was informed of the availability of an additional reparation measure for rape victims. This is a project called "Nengo", which provides comprehensive care, including medical and psychological care, training and socio-economic reintegration measures.

170. The Appeals Chamber invited the SAVD to inform the victims of this project. The victims then agreed to benefit from this programme. The Appeals Chamber also sought observations from counsel for the civil parties, the USPVT and the SAVD.

171. The civil parties' lawyers have given a "very favourable" welcome to this project<sup>152</sup>. However, they expressed the wish<sup>153</sup> to be involved in all stages of the project, to be kept informed of its progress, to set up a project monitoring body and to involve the victims' associations from the villages of Koundjili and Lemouna in the project.

172. In its report<sup>154</sup>, the USPVT recommended that the Appeals Chamber lift all or part of the suspension,

"by court order", the protective measures from which victims benefit "in order to allow external partners to interact with them and, if necessary, to frame the decision with very precise and clear safeguards following a risk assessment".

173. The SAVD is also in favour of the "Nengo" project<sup>155</sup>. It has a number of reservations, particularly regarding the possibility of providing victims with treatment in Bangui, given the distances involved and the risk of "uprooting". It suggests setting up a monitoring committee and a detailed plan to accompany the measures, as well as a communication strategy to avoid pitting victims against each other.

174. With regard to the wishes expressed by the lawyers to be involved in the reparations project, the Appeals Chamber reiterated the general principles set out above, in particular the principle of the right of defence.

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<sup>151</sup> V. §154.

<sup>152</sup> Letter from Me Manguereka dated (by mistake) 12 September received by the SAVD on 13 October 2023; SAVD report dated 19 October 2023, p.2.

<sup>153</sup> Letter from Mr Manguereka dated (by mistake) 12 September received by the SAVD on 13 October 2023.

<sup>154</sup> Observations of the USPVT, dated 13 October 2023, received by the Appeals Chamber on 19 October.

<sup>155</sup> SAVD report dated 19 October 2023.

In addition to the dignity of victims and the principle of not harming them, the provisions relating to the protection of victims, the operating rules of the "Nengo" project, and medical or professional confidentiality. The Appeals Chamber considers that the benefit of reparation measures excludes any alleged right of counsel to intervene, participate or be informed of reparation measures. Those responsible for the "Nengo" project will assist the victims in accordance with their operating rules and will only be required to report on the measure to the Appeals Chamber and the SAVD. The Appeals Chamber asks the IFJD to send it an annual report and an end-of-measure report.

175. With regard to the suggestion made by counsel and the SAVD concerning the creation of a body and the involvement of associations, the Appeals Chamber considers that this is beyond the scope of the present proceedings. The Appeals Chamber reiterates that such measures must be carefully considered so as not to contradict the principles and rules set out above. The Appeals Chamber reiterates that it is not in a position to create obligations for third parties to the proceedings. Those responsible for the "Nengo" project are conducting it in accordance with their own rules.

176. With regard to the recommendations concerning the release of protective measures that the Appeals Chamber is not in a position to assess at this stage, the Appeals Chamber invites the USVPT to submit a possible request to it. The Appeals Chamber will appoint the Judge-Rapporteur to assess such a request and, if necessary, amend the protective measures by order. The USVPT will consider, on a provisional basis, the conclusion of confidentiality agreements with the partners of the "Nengo" Project.

177. In conclusion, the Appeals Chamber ordered the participation of victims XX, ZZ, AAA, OO and JJ in the "Nengo" project as individual reparation measures.

c) Other "individual" reparations ordered by the Assize Division

(1) Summary of the Assize Division's conclusions

178. Before the Assize Division, the civil parties' lawyers claimed 3,000,000 CFA francs per child, 2,000,000 CFA francs per widow and 1,000,000 CFA francs per brother and sister for the widows, children and siblings of each murder victim in Koundjili and Lemouna. The Assize Division indicated that it was granting these claims, but that the sums requested were excessive, given the resources available<sup>156</sup>. In order to "reduce these amounts to their fairest proportion", it awarded "1,000,000 francs for each of the beneficiaries" of 16 victims who died in Koundjili and Lemouna<sup>157</sup>. For each deceased victim, the Assize Division

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<sup>156</sup> Contested judgment, §163.

<sup>157</sup> Contested judgment, §163.

indicated one or, on two occasions, two "representatives"<sup>158</sup> . The same list appears in the operative part of the judgment under appeal, but an overall sum of 1,000,000 CFA francs is awarded to the heirs of each deceased victim, regardless of the number of heirs<sup>159</sup> .

(2) Arguments of the civil parties

179. Before the Appeals Chamber, the civil parties' lawyers maintained that the Assize Division should not have awarded the same sum per deceased victim, regardless of the number of heirs, and criticised the Assize Division for not having taken into account the number of members within each family; they claimed, for the heirs of 13 victims who died in Koundjili and 19 victims who died in Lemouna, the sums claimed before the Assize Division<sup>160</sup> . They also claim that the Assize Court did not award any compensation to the widows and siblings of the deceased<sup>161</sup> .

180. The civil parties' lawyers also note a contradiction between the grounds of the judgment under appeal, which awards the sum of 1,000,000 CFA francs to each of the beneficiaries, and the operative part, which awards this sum per deceased victim<sup>162</sup> .

(3) Analysis by the Appeals Chamber

181. The Assize Division's approach to compensation for heirs is not unequivocal. In particular, the Assize Division decided not to award compensation to all heirs of deceased victims, but seems to have wanted to award compensation only to the heirs of a deceased victim if at least one civil party had been declared admissible, representing all the heirs. However, some of the persons named as "representatives" were not accepted as civil parties by the Assize Division<sup>163</sup> .

182. Moreover, it is not clear from the decision whether the Assize Division considered that the widows of the victims and their brothers and sisters were included among the beneficiaries. As the lawyers for the civil parties have pointed out, there is also a certain contradiction between the grounds and the operative part of the contested judgment as regards the sum awarded (1,000,000 CFA francs per heir or per deceased victim?).

183. Although the Appeals Chamber considers that an Assize Division may award lump sums per family of a deceased victim as a reparation measure, which would thus take rather

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<sup>158</sup> Contested judgment, §163.

<sup>159</sup> Judgment under appeal, p.39-40.

<sup>160</sup> Appeal brief, p.18-22.

<sup>161</sup> Appeal brief, p.20, 22-23.

<sup>162</sup> Appeal brief, p.23-24.

<sup>163</sup> In particular, Paulin Houlikaoula, Michel Senekoula, Médard Haoumi and Ange Mbandoya; see Judgment under appeal, p.40.

a symbolic and collective form, as directed towards the families of the victims, the approach adopted by the Assize Division must be clear and consistent. As this was not the case in this instance, the Assize Division's decision should be reformed on this point.

184. The Appeals Chamber recalls the principles mentioned above, in particular the principles of dignity, non-discrimination and non-stigmatisation, adequate and proportionate reparation, the effectiveness of reparation measures and the principle of doing no harm<sup>164</sup>, to which the reparation measure must respond.

185. It also points out that collective reparations should only very exceptionally take financial form. However, given that this is the first case in which reparations have been awarded and that the Assize Division has awarded collective financial reparations, which in this case appear to be feasible, and that it has rejected most of the other applications for collective reparations, the Appeals Chamber has decided, on an exceptional basis, to maintain this measure of reparation. Although the financial reparations do not compensate for the suffering of the family members of the deceased, the sums awarded constitute symbolic recognition of the suffering of these families and may meet, at least in part, the needs of those who have lost loved ones as a result of the crimes of which the convicted persons are guilty.

186. However, as this was a matter of collective reparation, the Appeals Chamber considered it important that each family that had lost a member during the attacks in Koundjili and Lemouna should receive a sum of money, regardless of whether any of its members had been admitted as a civil party. It thus included in this reparation measure all the families of the deceased victims. In this context, the Appeals Chamber recalls that collective reparation measures are not necessarily limited to victims validly constituted as civil parties<sup>165</sup>.

187. The Appeals Chamber noted a certain discrepancy between the names and numbers of the deceased victims given in the Criminal Judgement, the Impugned Judgement and the submissions of the civil parties' lawyers. Having reviewed the case file, it found that the following persons were victims of murder in Koundjili:

- Florentin Bissi ;
- Basile Houtia;
- Ferdinand Houtia ;
- Mitterrand Houtia ;
- Jérémie Kembé ;
- Prosper Ngoye ;
- Thursday Pouna ;

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<sup>164</sup> V. §§95-110.

<sup>165</sup> V. §93.

- Augustin Vote ;
- Olivier Yaboutouni<sup>166</sup> ;
- Elisée Yambia;
- Sévérin Yaou;
- César Toussekaya and
- Jean Zahoro<sup>167</sup> .

188. The following people were murdered in Lemouna:

- Bizarre Bari<sup>168</sup> ;
- Gaspard Bari (or Zibela);
- Laurent Bari;
- Dessai Bendounga ;
- Simon Demon ;
- Raphaël Haoumi;
- Chanas Petagor Horo Zozo ;
- Michel Sosthène Kobaïkera ;
- Hubert Ndounga ;
- Zachée Ngoung-Poule ;
- Thomas Nguengo ;
- Patrice Nzapele ;
- Jospin Nzohoune ;
- Félicité Zozo ;
- Clément (or Yambéré) Passy ;
- Yapele (or Fernand) Sang-Baile ;
- Christophe Senele ;
- Justin Woimayine and
- Crépin Winzeraketia<sup>169</sup> .

189. The Appeals Chamber recalls that the effectiveness of reparations requires that the reparations awarded be implemented; in other words, sufficient resources must be available to fund the sums awarded. Having received information from the SAVD regarding the resources available, the Appeals Chamber determined the amount awarded to each family.

190. The Appeals Chamber points out that this is a collective reparation measure, exceptionally financial and symbolic in scope - the sum awarded does not claim to be in the nature of a compensation payment.

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<sup>166</sup> The Appeals Chamber notes that, in the Criminal Judgement, §274, this victim is also wrongly listed as a victim in Lemouna.

<sup>167</sup> The Appeals Chamber notes that the Criminal Judgement, §257, also refers to a victim named Jean-Marie Lombadou. After consulting the file, in particular Exhibit D-II-100.4, it concluded that this victim and Jean Zahoro are identical.

<sup>168</sup> In the Criminal Judgment, §274, reference is made to a victim who is said to be "the husband of Ms Marie-Josée Mbailo". Having studied the file, in particular Exhibit D-I-90.4, the Appeals Chamber concluded that the victim was Bizarre Bari.

<sup>169</sup> In the Criminal Judgment, §275, reference is made to a victim named "Winzirati". Having studied the file, in particular section D-I-49.19, the Appeals Chamber concluded that the victim in question was Crépin Winzeraketia.

correspond to the full amount of the damages suffered. Given the limited resources available, the Appeals Chamber is able to award symbolic compensation.

191. The Appeals Chamber is also aware that the number of family members of each deceased victim varies: some victims have left more relatives than others. Another approach might have been to award sums per relative (widow, child, father, mother, brother, sisters, etc.). However, such an approach would have required an identity and relationship verification procedure for several hundred people. Already limited resources would have had to be devoted to verification or management operations, instead of concentrating on the reparation measures themselves. The potential benefit of already symbolic measures would then have collapsed. Faced with a difficult choice, the Appeals Chamber opted for measures that would be simple to implement in the near future. It also reiterated that financial compensation is symbolic and collective in nature. They are awarded on an exceptional basis, in this first reparation procedure.

192. The Appeals Chamber notes that even the measure it opted for in this case - that of collective reparations in the form of symbolic lump sums per family of deceased victims - is not without its implementation challenges. The Appeals Chamber did not appoint "representatives" per family, as representatives were not clearly identified for each deceased victim. The Appeals Chamber requests the victims' counsel and the SAVD to cooperate in order to ensure the implementation of this reparation measure. The Judge-Rapporteur in these proceedings is appointed to oversee the implementation of the measure and to decide on any issues that may arise.

## 2. *Grounds of appeal relating to collective redress*

193. With regard to collective reparation measures, the Appeals Chamber, after recalling the measures ordered by the Assize Division (a), will set out the arguments of counsel for the civil parties (b) and then analyse them (c).

### a) Collective reparation measures ordered by the assize section

194. With regard to collective reparations, the Assize Division granted the request for the construction of historical monuments in the villages of Lemouna and Koundjili, and the request for the construction of two wells in each of the villages.

195. It then rejected applications for the construction of a health centre and a training centre; for the installation of a telephone aerial; and for the installation of



the introduction of a civic and peace education programme.

196. The Assize Division also rejected the request to award the sum of 15,000,000 CFA francs per village.

b) Arguments of the civil parties

197. The civil parties' lawyers emphasised that the victims in the villages of Lemouna and Koundjili had suffered moral injury and trauma as a result of the attacks<sup>170</sup>. They seem to criticise the Assize Division for having considered "that individual reparations should be supplemented by a collective reparation package, and that it can only grant measures that commit entities that were not [*sic*] parties to the trial"<sup>171</sup>.

198. More generally, the civil parties' lawyers call for individual reparation measures to be supplemented by several collective reparation measures. They point out that the court need not worry about implementing the measures it orders because "if the convicted person is indigent or if his assets are not sufficient to finance all of the reparations ordered, the Assize Division may ask the Victims and Defence Assistance Service to seek external funding"<sup>172</sup>. The civil parties' lawyers even maintain, with regard to the request to build a health centre, that "[i]t is not for the Section to decide on the feasibility of this request"<sup>173</sup>.

199. They asked the Appeals Chamber to set aside the contested judgment and to order the construction of a health centre; to order the installation of law enforcement officers; to order the implementation of a civic and peace education programme; to award the sum of 15,000,000 CFA francs to each of the two villages.

c) Analysis by the Appeals Chamber

200. By providing that the Assize Division may order a variety of reparation measures, article 129-B of the RPP is intended to give the courts a wide margin of discretion in determining the appropriate measures. The RPP invites the courts to exercise their powers with discernment, after hearing the parties and ordering reparation measures that are appropriate to the nature and extent of the harm suffered by the civil parties.

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<sup>170</sup> Appeal brief, p.24.

<sup>171</sup> Appeal brief, p.24.

<sup>172</sup> Appeal brief, p.25.

<sup>173</sup> Appeal brief, p.24.

201. In this respect, the Appeals Chamber regrets the lack of participation of the Special Public Prosecutor and the defence in these proceedings. It emphasised that the civil parties had not requested a hearing.

202. With regard to the examination of the claims, the Appeals Chamber recalled that, as the plaintiff, the burden of proof rests with the civil parties' lawyer. It is up to them to present their claims and supporting documents<sup>174</sup>.

203. The Appeals Chamber was astonished that counsel could ask a court to make a decision without regard to its feasibility. Such an assertion is not likely to support counsel's reasonable claims. The Appeals Chamber stated its commitment to the right to an effective remedy, which includes first and foremost the credibility that attaches to a judicial decision. The Appeals Chamber will always endeavour, out of consideration for civil parties and victims and for the functions vested in it, to issue enforceable decisions<sup>175</sup>.

204. The Appeals Chamber will now examine each of the grounds of appeal.

(1) Concerning the construction of a health centre and a training centre

205. In rejecting the request, the Assize Division concluded that such a request "went far beyond the spirit of the text, which provides for measures of training or medical care"<sup>176</sup>.

206. The Appeals Chamber first noted that counsel for the civil parties was only appealing the rejection of the application to build a health centre<sup>177</sup>. He made no objection to the rejection of the request for a training centre.

207. The Appeals Chamber considers that such a project is likely to fall within the scope of Article 129-B of the RPP. Assuming that it was inappropriate because it was too large, the Assize Division could have invited the parties to specify their request in order to adjust it to their actual needs. The Appeals Chamber emphasised that the merits of the requests made by the civil parties, possibly with the support of the SAVD, are assessed on the basis of the applicant's documents, in particular specifying the request, its link with the crime, and the conditions under which the request was made, in particular practical and financial conditions.

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<sup>174</sup> V. §80.

<sup>175</sup> V. §§98-100.

<sup>176</sup> Contested judgment, §167.

<sup>177</sup> Appeal brief, p.25.

208. However, the Appeals Chamber found that the request for reparation in the form of the construction of a care centre had not been properly elaborated or specified in the present case. The request made by counsel for the civil parties does not enable the Assize Division, or indeed the Appeals Chamber, to assess the nature and extent of the reparation sought. The request made by the civil parties' counsel does not meet the conditions identified above<sup>178</sup>. Counsel for the civil parties do not present a sufficiently precise request to enable the Assize Division (or the Appeals Chamber) to assess the measure requested. The Appeals Chamber therefore finds no error in its rejection by the Assize Division.

209. The Appeals Chamber therefore dismissed the appeal on this point.

(2) Concerning the installation of security forces near the villages of Lemouna and Koundjili

210. In rejecting the request, the Assize Division held that this was a sovereign prerogative of the Central African State, which was not a party to the proceedings<sup>179</sup>.

211. In principle, the Appeals Chamber accepts that reparations may include measures to prevent crimes from being repeated.

212. The Appeals Chamber, recalling the principles set out above<sup>180</sup>, did not, however, see any error in the Assize Division's reasons. The trial courts of the Special Criminal Court have no jurisdiction to order the authorities of the Central African Republic or the UN to carry out such a reparation measure.

213. The Appeals Chamber therefore dismissed the appeal on this point.

(3) Concerning the introduction of a civic and peace education programme

214. In rejecting the request, the Assize Division ruled that it was not sufficiently detailed, either in terms of content or beneficiaries<sup>181</sup>. It also added that it had no jurisdiction to impose a programme that was part of the government's national education policy.

215. On appeal, counsel for the civil parties pointed out that it was not a question of academic training, but merely of inculcating a few peaceful principles for the youth of the villages in question<sup>182</sup>.

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<sup>178</sup> V. §100.

<sup>179</sup> Contested judgment, §168.

<sup>180</sup> V. §106.

<sup>181</sup> Contested judgment, §169.

<sup>182</sup> Appeal brief, p.26.

216. The Appeals Chamber agreed that the implementation of a civic and peaceful education programme unquestionably fell within the scope of Article 129-B of the RPP. The clarifications provided by counsel for the civil parties make it possible to set aside the second ground identified by the Assize Division in the contested Judgment.

217. On the other hand, the Appeals Chamber considers that, without being irrelevant, the request made by counsel for the civil parties does not meet the conditions for implementation identified above<sup>183</sup>. Counsel for the civil parties did not present a precise, documented request for an education programme or the conditions for carrying out such a programme. The Appeals Chamber therefore sees no error that could be held against the Assize Division for having, in this insufficiently elaborated form, rejected the request.

218. The Appeals Chamber therefore dismissed the appeal on this point.

- (4) Concerning the allocation of the sum of 15,000,000 CFA francs to each of the two villages

219. In rejecting the claim, the Assize Division held that "the civil party has not provided proof of a link between the harm previously sustained and the grounds for this claim, especially since collective reparations are in addition to individual reparations and the civil parties have already been compensated"<sup>184</sup>.

220. The Appeals Chamber noted that the application submitted to the Assize Division by the civil parties' lawyers did not specify whether it was made on behalf of the villages in question, which, assuming they had legal personality, had not filed as civil parties. Counsel did not explain how these claims fell within the scope of collective reparations measures, or how they related to the crimes committed by the convicted persons. They do not explain or justify the amount of the sums requested.

221. Before the Appeals Chamber, counsel for the civil parties challenged the conclusions of the contested Judgment without discussing the grounds. They did not identify any error on the part of the Assize Division. The Appeals Chamber therefore dismissed the appeal on this point.

- (5) Drilling two wells in each of the villages of Koundjili and Lemouna

222. The Appeals Chamber, acting on its own motion, will now examine the collective measures ordered by the Assize Division. The Appeals Chamber considers that in the present case it is appropriate to proceed in this way, given the scope of the measures ordered.

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<sup>183</sup> V. §100.

<sup>184</sup> Contested judgment, §170.

223. As part of the collective reparations, the Assize Court ordered the drilling of two wells on the grounds that "the construction of two wells [...] for each of the villages will enable the victims and survivors, who are still suffering from trauma as a result of the crimes, to have access to drinking water"<sup>185</sup>. It then considered that the project was appropriate to the nature and extent of the damage.

224. The Appeals Chamber does not underestimate the suffering of the civil parties and the people of the villages of Koundjili and Lemouna. It clearly understands the importance of access to water in the villages of the Paoua region.

225. The Appeals Chamber observes, however, contrary to the above reasoning in the impugned Judgment, that there is no evidence of the nature and extent of the damage caused by the murder of numerous victims in these villages, which would be remedied by the drilling of wells.

226. Nor has the link between the murders and the drilling of the wells been established. The judgment under appeal does not explain how the drilling of these wells would constitute an appropriate reparation measure for the crimes committed in the villages; the explanations given in the civil parties' brief of 19 January 2023 are sketchy<sup>186</sup>. No feasibility study (simply attesting to the existence of a water table, for example) or financing plan is attached to the application.

227. Having identified an error of law, the Appeals Chamber dismissed the drilling application in question.

(6) Concerning the installation of a historical monument in each of the villages of Koundjili and Lemouna

228. Before ruling on this measure, the Assize Division considered "that the reparations previously granted on an individual basis should be supplemented, as far as possible, by a collective reparation package"<sup>187</sup>. It went on to say that "this project is appropriate to the nature of the damage, as it would enable the civil parties and, more broadly, the villagers to commemorate this event on 21 May 2019 so that their suffering is not forgotten".

229. The Appeals Chamber agreed that the erection of a memorial was part of the collective reparation measures.

230. The Appeals Chamber noted, however, that no "historic monument" project that had met with the approval of the population, particularly in terms of its memorial or aesthetic dimension

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<sup>185</sup> Contested judgment, §172.

<sup>186</sup> See memorandum of 19 January 2023, §88.

<sup>187</sup> Judgment under appeal, §165.

was brought to the court's attention. No feasibility or financing study is attached to the application.

231. The Appeals Chamber concluded that the claim, which had not been sufficiently documented by the civil parties or assessed by the relevant departments, was not ready for trial.

232. However, the request for a historical or memorial installation is of interest to the Appeals Chamber as a collective reparation measure. However, the Appeals Chamber is not in a position to rule on the merits of the request.

233. It is therefore up to the civil parties to specify their claim. The appeal will therefore remain with the Appeals Chamber, which will make its decision at the end of the pre-trial procedure before the judge-rapporteur.

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## DEVICE

For these reasons, after having deliberated in accordance with the law, the Appeals Chamber, ruling contradictorily, publicly and in last resort,

### In form :

**DECLARE** the appeal admissible.

### Background:

**REVERTS** the judgment under appeal and :

1. **DECLARES RECEIVABLE** the civil party applications lodged by Simplicie Bissi, Simon Faya, Patrick Yaou, Désiré Ngoy, Félicité Bissi, Bosco Ndobeletia, Philémon Yaka and Valentin Houtia, as well as XX, ZZ, OO, AAA, and JJ in relation to the events of 21 May 2019 in Koundjili;
2. **DECLARES RECEIVABLE** the civil party applications lodged by Jean Denis Albert Horo, Lazare Dane, Alphonse Nzouwone, Sylvain Fendingnaroutia, Sylvain Haoumi Belahimi, Paulin Pouna, Lévy Zatala, Darlan Ndao and Jules Calvaire Gompoule in relation to the events of 21 May 2019 in Koundjili ;
3. **DECLARES IRRECEIVABLE** the other civil party applications filed on behalf of the victims of the events of 21 May 2019 in Koundjili and Lemouna;
4. **IMPOSES THE FOLLOWING INDIVIDUAL COMPENSATION MEASURES AGAINST Issa SALLET ADOUM alias BOZIZÉ :**
  - a. Victims ZZ and AAA each receive the sum of 1,000,000 CFA francs;
  - b. Victims XX, JJ and OO each received the sum of 700,000 CFA francs;
  - c. The proposal to take part in the "Nengo" project was approved and Victims ZZ, AAA, XX, JJ and OO were invited to take part in the "Nengo" project to assist victims of sexual violence;

**5. PRONOUNCING THE MEASURES OF  
REMEDY against Issa SALLET ADOUM alias  
BOZIZÉ, Ousman**

**YAOUBA AND Mahamat TAHIR**, jointly and severally:

- a. Alphonse Nzouwone, Sylvain Fendingnaroutia and Sylvain Haoumi Belahimi will each receive 600,000 CFA francs;
- b. Lazare Dane received the sum of 200,000 CFA francs.

**6. PRONOUNCING THE MEASURES OF  
REMEDY against Issa SALLET ADOUM alias**

**BOZIZÉ, OusmanYAOUBA ETMahamat TAHIR**, jointly  
jointly and severally:

- a. The family of Florentin Bissi, killed during the attack in Koundjili, receives the sum of 350,000 CFA francs;
- b. The family of Basile Houtia, killed during the attack in Koundjili, receive the sum of 350,000 CFA francs
- c. The family of Ferdinand Houtia, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- d. The family of Mitterrand Houtia, killed during the attack in Koundjili, receives the sum of 350,000 CFA francs;
- e. The family of Jérémie Kembi, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- f. The family of Prosper Ngoye, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- g. The family of Jeudi Pouna, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- h. The family of Augustin Vote, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- i. The family of Olivier Yaboutouni, killed during the attack in Koundjili, receives the sum of 350,000 CFA francs;
- j. The family of Elisée Yambia, killed during the attack in Koundjili, receives the sum of 350,000 CFA francs;



- k. The family of Sévérin Yaou, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- l. The family of César Toussekaya, killed during the attack in Koundjili, receives the sum of 350,000 CFA francs;
- m. The family of Jean Zahoro, killed in the attack in Koundjili, receives the sum of 350,000 CFA francs;
- n. The family of Bizarre Bari, killed during the attack in Lemouna, receives the sum of 350,000 CFA francs;
- o. The family of Gaspard Bari (or Zibela), killed in the Lemouna attack, will receive 350,000 CFA francs;
- p. The family of Laurent Bari, killed in the Lemouna attack, receives 350,000 CFA francs;
- q. The family of Dessai Bendounga, killed during the attack in Lemouna, receives the sum of 350,000 CFA francs;
- r. The family of Simon Demon, killed in the Lemouna attack, receives 350,000 CFA francs;
- s. The family of Raphaël Haoumi, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
- t. The family of Chanas Petagor Horo Zozo, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
- u. The family of Michel Sosthène Kobaïkera, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
- v. The family of Hubert Ndounga, killed in the Lemouna attack, receives 350,000 CFA francs;
- w. The family of Zachée Ngoung-Poule, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
- x. The family of Thomas Nguengo, killed in the Lemouna attack, receives 350,000 CFA francs;
- y. The family of Patrice Nzapele, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;

- z. The family of Jospin Nzohoune, killed during the attack in Lemouna, receives the sum of 350,000 CFA francs;
  - aa. The family of Félicité Zozo, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
  - bb. The family of Clément (or Yambéré) Passy, killed during the attack in Lemouna, receives the sum of 350,000 CFA francs;
  - cc. The family of Yapele (or Fernand) Sang-Baile, killed during the attack in Lemouna, received the sum of 350,000 CFA francs;
  - dd. The family of Christophe Senele, killed in the Lemouna attack, receives the sum of 350,000 CFA francs;
  - ee. The family of Justin Woimayine, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
  - ff. The family of Crépin Winzeraketia, killed in the attack in Lemouna, receives the sum of 350,000 CFA francs;
7. **Remains seized of** the demand for collective reparation in the form of a memorial or historical project;
  8. **DECLARES** that the Judge-Rapporteur shall be responsible for monitoring the implementation of the reparation measures and may proceed by way of order;
  9. **DECLARES** that the Head of the Victim Support and Defence Unit will report on the implementation of the reparation measures granted;
  10. **REJECTS** the remaining claims for damages.

**RESERVES** the costs.

Signed in Bangui on 23 October 2023

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**Judge Barthélémy YAMBA President of  
the Appeals Chamber**

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**Judge Olivier BEAUVALLET**

*/signed/*

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**Judge Volker NERLICH**

*/signed/*

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**Me Martin BOTEOKO, Registrar**

## Table of abbreviations

### *General abbreviations*

<b>CETC</b>	Extraordinary Chambers in the Courts of Cambodia
<b>CPI</b>	International Criminal Court
<b>CPS</b>	Special Criminal Court
<b>IFJD</b>	Francophone Institute for Justice and Democracy - Institut Louis Joinet
<b>SAVD</b>	CPS Victim Support and Defence Service
<b>USPVT</b>	CPS Victim and Witness Support and Protection Unit

### *Laws and other legal instruments*

<b>PPC</b>	Law no.° 10.002 of 6 January 2010, Central African Code of Criminal Procedure, <a href="https://www.legal-tools.org/doc/a00fcc/">https://www.legal-tools.org/doc/a00fcc/</a>
<b>Organic Law</b>	Organic Law No. 15.003 of 3 June 2015, on the creation, organisation and operation of the Special Criminal Court, <a href="https://www.legal-tools.org/doc/fd284b/">https://www.legal-tools.org/doc/fd284b/</a>
<b>Fundamental principles (1985)</b>	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations General Assembly, resolution A/RES/40/34, 29 November 1985 <a href="https://www.legal-tools.org/doc/1a6347/">https://www.legal-tools.org/doc/1a6347/</a>
<b>Fundamental principles (2005)</b>	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, United Nations General Assembly, resolution A/RES/60/147, 16 December 2005, <a href="https://www.legal-tools.org/doc/iyxeko/">https://www.legal-tools.org/doc/iyxeko/</a>
<b>RPP</b>	Law n°18.010 of 2 July 2018, regulating proceedings and evidence before the Special Criminal Court of the Central African Republic, <a href="https://www.legal-tools.org/doc/f2t8zd/">https://www.legal-tools.org/doc/f2t8zd/</a>
<b>Rome Statute</b>	Rome Statute of the International Criminal Court, adopted on 17 July 1998 and entered into force on 1 July 2002, A/CONF.183/9, <a href="https://www.legal-tools.org/doc/j9ja1s/">https://www.legal-tools.org/doc/j9ja1s/</a>

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<b><i>Al Mahdi stop</i></b>	ICC, Appeals Chamber, <i>Al Mahdi</i> , Judgment on the appeal by victims against the Reparations Order, 8 March 2018, ICC-01/12-01/15-259-Red2-tENG, <a href="https://www.legal-tools.org/doc/c18c58/">https://www.legal-tools.org/doc/c18c58/</a>
<b><i>Duch stop</i></b>	ECCC, Supreme Court Ch., <i>Kaing Guek Eav alias Duch</i> , Judgment, 3 February 2012, No. 001/18-07-2007-ECCC/SC, <a href="https://www.legal-tools.org/doc/924439/">https://www.legal-tools.org/doc/924439/</a>
<b><i>Issa Sallet stop</i></b>	Ch. App. ruling no. 9 on the appeals lodged against judgment no. 003-2022 of 31 October 2022 of the First Assize Division, 20 July 2023, 9-2022, <a href="https://www.legal-tools.org/doc/fls6pp/">https://www.legal-tools.org/doc/fls6pp/</a>
<b><i>Katanga stop</i></b>	ICC, Appellate Ch. <i>Katanga</i> , Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", 8 March 2018, ICC-01/04-01/07-3778-Red, <a href="https://www.legal-tools.org/doc/0a95b7/">https://www.legal-tools.org/doc/0a95b7/</a>
<b><i>Stop Lubanga</i></b>	ICC, Ch. App. <i>Lubanga</i> , Judgment on the appeals against the Decision setting out the principles and procedures applicable to reparations issued on 7 August 2012 together with the Amended Reparations Order (Annex A) and Public Annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129-tENG, <a href="https://www.legal-tools.org/doc/4pc0w3/">https://www.legal-tools.org/doc/4pc0w3/</a>
<b><i>Ntaganda judgment</i></b>	ICC, Appeals Chamber, <i>Ntaganda</i> , Judgment on the appeals against the reparation order issued by Trial Chamber VI on 8 March 2021, 12 September 2022, ICC-01/04-02/06-2782-tENG, <a href="https://www.legal-tools.org/doc/4ne4dc/">https://www.legal-tools.org/doc/4ne4dc/</a>
<b><i>Stop n°10</i></b>	Appellate Division, Judgment no. 10 concerning a request for an extension of the deadline for filing the civil parties' appeal against Judgment no. 001-2023 handed down by the First Assize Division on 16 June 2023, 21 July 2023, 10-2022, <a href="https://www.legal-tools.org/doc/5b1cu8/">https://www.legal-tools.org/doc/5b1cu8/</a>
<b><i>Lubanga decision</i></b>	ICC, Trial Chamber <i>Lubanga</i> , Decision setting out the principles and procedures applicable to reparations, 7 August 2012, ICC-01/04-01/06-2904-tENG, <a href="https://www.legal-tools.org/doc/b80174/">https://www.legal-tools.org/doc/b80174/</a>
<b><i>Judgment appealed</i></b>	First Assize Division, Judgment No.° 003-2022, 31 October 2022, No.° CPS/C.ASS/ISA/22-001, <a href="https://www.legal-tools.org/doc/lr7fqm/">https://www.legal-tools.org/doc/lr7fqm/</a>
<b><i>Duch judgment</i></b>	ECCC, First Instance Division, <i>Kaing Guek Eav alias Duch</i> , Judgment, 26 July 2010, E188, <a href="https://www.legal-tools.org/doc/611805/">https://www.legal-tools.org/doc/611805/</a>
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<b><i>Al Mahdi ordinance</i></b>	ICC, Trial Chamber, <i>Al Mahdi</i> , Reparation Order, 17 August 2017, ICC-01/12-01/15-236-tENG, <a href="https://www.legal-tools.org/doc/c91dd6/">https://www.legal-tools.org/doc/c91dd6/</a>

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