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Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

PUBLIC

With four public annexes

Report on the implementation of Decision No. 3546, including the identification of harm suffered by victims as a result of crimes committed by Germain Katanga

(article 75(1) of the Statute and regulation 38(1)(f) of the Regulations of the Court)

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INTRODUCTION

1. On 8 May 2015, the Chamber ordered the Legal Representative to consolidate all the requests for participation and/or reparations initially submitted by victims who had been authorized to participate in proceedings accompanied – “where possible – by supporting documentation attesting to the extent of the harm suffered and the causal link between the alleged harm and the crime committed”. It further ordered the Legal Representative to represent any victims who had not yet made themselves known and who wished to submit requests for reparations in the case (“Decision No. 3546”).¹ A final deadline of 29 February 2016 was set for filing these documents.²

2. In fulfilment of Decision No. 3546, the Legal Representative and his team conducted a field mission with a view to (i) collecting any information substantiating participating victims’ requests for reparations, including, where appropriate, by gathering supporting documentation; and (ii) identifying victims who had not yet come forward (“new victims”) and, where appropriate, drawing up their requests for reparations. Over a period totalling more than four months, between June 2015 and February 2016, they met 499 victims, including new applicants.

3. As a result of this mission the Legal Representative filed notices of discontinuance of proceedings on behalf of 99 victims who had already been authorized to participate³ and applications to terminate his representation of 93

¹ “Decision on the ‘Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve’ and future stages of the proceedings”, ICC-01/04-01/07-3546-tENG.

² Following the various extensions of the deadline granted by the Chamber: “Decision on the requests of the Common Legal Representative of Victims and the Registry for an extension of time limit for transmitting and filing applications for reparations”, ICC-01/04-01/07-3599-tENG; “*Décision accordant une nouvelle prorogation de délai au Représentant légal commun des victimes pour le dépôt des demandes en réparation*”, ICC-01/04-01/07-3628.

³ “*Communication du Représentant légal relative à la situation de certaines victimes*”, ICC-01/04-01/07-3609; “*Rectificatif de la deuxième communication du Représentant légal relative à la situation de certaines victimes*”, ICC-01/04-01/07-3669-Corr; “*Troisième communication du Représentant légal relative à la situation de certaines victimes*”, ICC-01/04-01/07-3671.

others.⁴ Moreover, during the mission 185 new victims who were not yet on record were identified and, where appropriate, requests for reparations were filed on their behalf.

4. Ultimately, after the discontinuance of proceedings and termination of representation in respect of 192 victims and the addition of 132 new victims, the Legal Representative filed **304 requests for reparations** with the Registry on a rolling basis, accompanied by supporting documentation.⁵ These requests were transmitted to the Defence for comment.⁶

5. The aim of the present report, filed in accordance with regulation 38(1)(f) of the Regulations of the Court,⁷ is to enable the Chamber to apply article 75(1) of the Statute, according to which “the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting”. In Decision No. 3546, the Chamber stated that,

[o]n the basis of all the documents submitted, and after considering, *inter alia*, the observations of the Defence, the Chamber will consider, on a case-by-case basis, whether the requests, within the meaning of rule 94 of the Rules, justify the awarding of reparations on an individual and/or collective basis.⁸

⁴ “Rectificatif de la ‘Demande de retrait de mandat du Représentant légal relativement à certaines victimes ayant été autorisées à participer à la procédure’”, ICC-01/04-01/07-Corr.

⁵ “Transmission de demandes en réparation”, 12 November 2015, ICC-01/04-01/07-3614; “Seconde transmission de demandes en réparation”, 20 November 2015, ICC-01/04-01/07-3617; “Troisième transmission de demandes en réparation”, 27 November 2015, ICC-01/04-01/07-3621; “Quatrième Transmission de Demandes en réparation”, 2 February 2016, ICC-01/04-01/07-3646; “Cinquième Transmission de Demandes en réparation”, 17 February 2016, ICC-01/04-01/07-3656; “Sixième Transmission de Demandes en réparation”, 26 February 2016, ICC-01/04-01/07-3661; “Septième Transmission de Demandes en réparation”, 29 February 2016, ICC-01/04-01/07-3664.

⁶ “Defence Observations on Victims Applications for Reparation”, 24 February 2016, ICC-01/04-01/07-3660; “Second Defence Observations on the Victims Applications for Reparation”, 11 April 2016, ICC-01/04-01/07-3681.

⁷ This provision limits to 100 the number of pages for representations under article 75.

⁸ ICC-01/04-01/07-3546, para. 21.

The present report should therefore:

- (1) Inform the Chamber of the methodology the Legal Representative used to gather supporting documentation and to consolidate and/or draw up the 304 requests for reparations that it has before it; and
- (2) Outline the principles used to ascertain the types of harm suffered by victims and, consequently, to identify and classify the harm suffered by applicants for reparations while establishing a causal link with the crimes of which Germain Katanga was convicted.

6. The report also contains an overall response to the points raised in general terms by the Defence in its observations on the requests for reparations.⁹ It likewise broadly addresses the Defence's specific observations on individual dossiers but does not go into the detail of each dossier.¹⁰ Should the Chamber consider, in view of Defence objections, that certain dossiers remain in dispute despite the explanations furnished in this report, the Legal Representative is at its disposal to answer these points specifically and provide a full clarification.

7. Furthermore, pursuant to article 75(2) and (3) of the Statute, the Legal Representative will shortly be filing his observations on reparations that could be ordered. In view of this matter's novelty for the Court and the potential impact of a decision on reparations in this and other cases, the Legal Representative believes it is essential that specific proposals should be submitted separately to the Chamber. To this end, the Legal Representative will present a broad – yet thorough – analysis of the views expressed by the victims, taking into consideration all the interests at play and how they should best be represented.

⁹ ICC-01/04-01/07-3660; ICC-01/04-01/07-3681.

¹⁰ Annexes to ICC-01/04-01/07-3660 and ICC-01/04-01/07-3681.

I. METHODOLOGY USED TO CONSOLIDATE DOSSIERS, IDENTIFY NEW APPLICANTS AND GATHER SUPPORTING DOCUMENTATION

8. With a view to fulfilling the Chamber's most recent specific instructions in Decision No. 3546, i.e. to provide it with sufficient information on the extent of the harm suffered by each victim and the causal link between the alleged harm and the crimes of which Germain Katanga was convicted, the Legal Representative considered it imperative to complete each victim's dossier.

9. It should be noted that, although some work had already been done to complete the dossiers, they were not yet in a state that would have fully complied with the Chamber's instructions. In the first place, the manner in which applications for participation had initially been filled (before a legal representative was appointed) meant that victims had to be met individually to clarify their request. The Legal Representative began to do this after his appointment at the beginning of the trial stage. However, the possibility of holding individual meetings with victims greatly depended on whether the Legal Representative was granted permission to travel to the field, developments in the proceedings and the resultant priorities for his work, the human and technical resources allocated to the team, the feasibility of visiting the field (for security reasons among others), and logistics on the ground (in particular in terms of arranging to meet victims and their ability to keep these arrangements).

10. Neither would the information obtained during the mission conducted by the Victims' Participation and Reparations Section ("VPRS") in 2014 at the previous Chamber's behest¹¹ have fulfilled the instructions set forth in Decision No. 3546. During this mission, the VPRS had considered that, in the light of its mandate and its status as an organ of the Court, it was appropriate only to gather the victims'

¹¹ "Order instructing the Registry to report on applications for reparations", 27 August 2014, ICC-01/04-01/07-3508; "Registry Report on Applications for Reparations in accordance with Trial Chamber II's Order of 27 August 2014", dated 15 December 2014, transmitted 16 December 2014, ICC-01/04-01/07-3512.

opinions about proposed reparations and not to discuss the substance of their requests with them.

11. In fulfilment of Decision No. 3546, the Legal Representative therefore completed the existing dossiers and proceeded to draw up new dossiers for new applicants. He did this by conducting a detailed analysis of the requests from the point of view of harm and its causal link with the crimes of which Germain Katanga had been convicted. He performed stringent checks of the information gathered by conducting investigations on the ground, cross-checking information and holding in-depth interviews with some victims (whether existing participants or new applicants) (see below, 1 and 2). All interviews were carried out in accordance with a standard procedure decided in advance by the team. Following these interviews, annexes containing additional information (for victims who had already filed a request for reparations) or requests for reparations were completed in a pre-determined format (see 3, below). Additional supporting documents were also collected in accordance with a strict methodology (see 4, below).

1. Investigations on the ground

12. During the mission, the Legal Representative carried out investigations and checks on the ground, which included cross-checking facts with various prominent figures and/or people who knew the region well and, specifically, the situation in Bogoro in 2003.

13. In particular, the Legal Representative and his team undertook a meticulous mapping exercise of Bogoro with a view to forming a more precise idea of where the victims were at the time of the events, which routes the victims said they took in their flight, where cattle *kraals* (enclosures) and pastures were located and where new buildings had been built (which sometimes served as a reference point for the explanations given by victims). The exercise relied on detailed explanations furnished by prominent figures in the village during an in-depth visit to Bogoro, which were then cross-checked with the descriptions and documents already

contained in the record of the case (evidence given by witnesses and the report on the Chamber's site visit in January 2012).¹² This extensive knowledge of the site was drawn on during meetings with the victims, in particular when seeking clarification of some of the accounts.

2. In-depth interviews with applicants

14. Between June 2015 and February 2016, during a field mission that lasted a total of more than four months, the Legal Representative and his team met 499 people: victims who had already been authorized to participate and people who wished to submit a request for reparations at this stage in proceedings.

15. The situation on the ground (such as difficulties in contacting victims and persuading them to travel to meetings, and comprehension problems) meant that the meeting schedule had to be adjusted each day to take account of cancellations, postponements and other factors. Moreover, despite repeated efforts to arrange a meeting with them, some victims failed to attend. In the end, the Legal Representative was forced to conclude that he could not fulfil his representation agreement with regard to such victims and he therefore sought permission to terminate it.¹³

16. To ensure that all of the victims were systematically informed and consulted on the points relevant to the submission of their dossier, the Legal Representative and his team drew up a standard interview plan. Consideration was given during interviews to the victims' difficulties in remembering the traumatic events of over 10 years earlier and, in some cases, to their particular vulnerability.

17. Annex 1 tabulates statistics on the victims, in particular on distribution according to gender and age-ranges (at present and at the time of the attack). These

¹² "Order on the *procès-verbal* of the judicial visit to the Democratic Republic of the Congo", 3 February 2012, ICC-01/04-01/07-3233-tENG.

¹³ "Rectificatif de la 'Demande de retrait de mandat du Représentant légal relativement à certaines victimes ayant été autorisées à participer à la procédure'", ICC-01/04-01/07-Corr.

tables provide information that will also be relevant when deciding reparations, which the Legal Representative will elaborate on in a future submission.

2.1. Corrections and clarifications to requests for reparations submitted by victims who are already participants, discontinuances and termination of representation agreements

18. Individual meetings provided a new opportunity to explain the significance of Germain Katanga's conviction and its ramifications. They allowed each person's dossier to be discussed in detail, clarifications to be sought and, where appropriate, explanations of the desired reparations to be requested.

19. A recurring difficulty was that several victims saw the attack on Bogoro as the continuation of other attacks that had taken place between 2001 and 2003. They struggled to understand why they should single out events that, in their minds, concern one and the same conflict. Owing to the length of time that had elapsed and/or the trauma they had suffered, others confused the various attacks they had survived. Still others could not easily grasp the geographical limit of the crimes of which Germain Katanga was convicted. Moreover, some victims believed that they were somehow acting on behalf of the entire family, ignoring the fact that other family members might also wish to submit a request, thus creating confusion as to the exact harm alleged.

20. These factors explain the changes – at times substantial – in descriptions of the harm alleged by some victims in comparison with their initial requests. In some annexes to requests for reparations, corrections or clarifications were inserted as to the year in which victims' family members died, as to the loss of particular property, or as to how ownership of property was divided within a family in order to prevent reparations for harm being mistakenly claimed several times in full by different members of the same family.

21. Contrary to what the Defence suggests, it would be wrong to conclude that the requests made by the victims concerned lack credibility and that they must be treated with great caution.¹⁴ At the time when the applications for participation were completed, those concerned had not been given precise explanations of the proceedings and the reparations they could legally claim. The conditions in which the participation request forms were completed – hurriedly, with no discussion of the substance of applicants’ requests and without the assistance of anyone who could provide legal advice and guidance – were among the factors that led to the collection of incorrect information (since victims were not properly informed) and to the completion of forms by persons who were not in fact eligible to claim reparations (since there was no causal link with Germain Katanga’s crimes).

22. In contrast, the Legal Representative’s work consisted in discussing in detail each dossier with the applicant and explaining what the applicant was entitled to claim in the present proceedings. The fact that some victims have now made corrections to their previous declarations and revised the harm alleged downwards is proof of their good faith and sincerity, not the opposite.

23. This conclusion is borne out by the fact that, after the individual interviews and lengthy explanations by the Legal Representative of the geographical, temporal and subject-matter parameters of Germain Katanga’s conviction, 99 victims chose not to pursue matters further and to discontinue their applications. Furthermore, the Legal Representative’s analysis of some dossiers and the individual interviews that followed led him to conclude that certain individuals’ situations did not meet the criteria for to claim harm in connection with the crimes of which Germain Katanga was convicted. Where victims wished to pursue their claim despite the Legal Representative’s detailed explanations of the difficulties posed by their case, he was

¹⁴ “Second Defence Observations on the Victims Applications for Reparation”, 11 April 2016, ICC-01/04-01/07-3681, para. 26.

forced to seek permission to terminate his representation agreements to represent them.¹⁵

24. Some meetings were difficult from a human perspective but they were worthwhile in the end since people were not left with futile hopes and expectations. The Legal Representative underscores that all these people had suffered from the conflicts that have ravaged Ituri and must accordingly be considered victims of the situation in the Democratic Republic of the Congo, even if they are not victims in the case at bar. It is a matter here of having due regard to the process used to confer the status of “victim” in the case. To echo the words of Special Rapporteur Pablo de Greiff, one of the foremost demands made by victims is for recognition of the harm they have suffered and that they have rights:

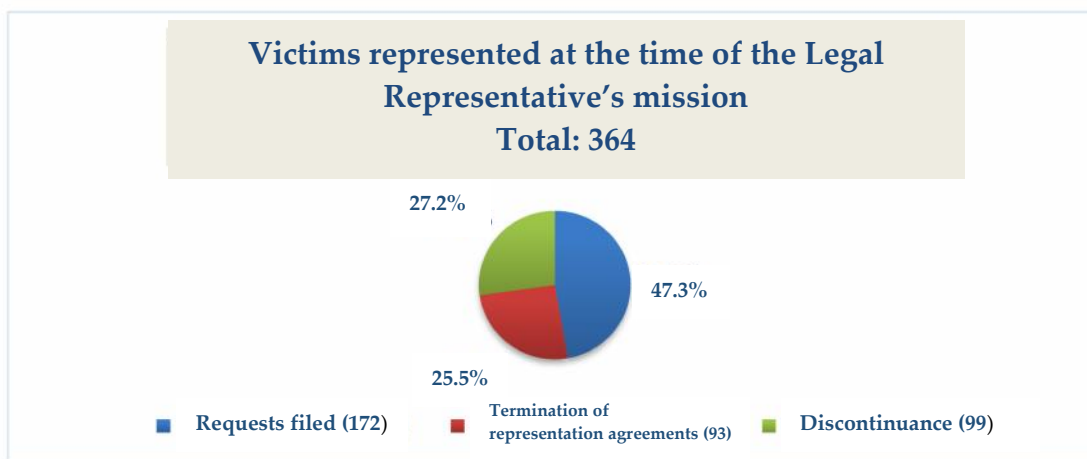
This entails not only the right to seek for avenues of redress that can assuage suffering but also to restore the victim’s rights that were so brutally violated and affirm her or his standing as someone who is entitled to make claims, on the basis of rights, and not simply as a matter of empathy, or any other type of consideration.¹⁶

25. It is essential, therefore, that during reparations proceedings the status of “victim” is granted to those who were in fact harmed by Germain Katanga’s crimes.

26. In total, more than half (52.7 per cent) of the 364 people represented by the Legal Representative at the time of his mission discontinued proceedings (and hence no longer seek reparations) (27.2 per cent) or their representation was terminated (25.5 per cent). Of those initially admitted to participate in proceedings, only 47.3 per cent of cases (or **172 applications**) have, in the view of the Legal Representative, sufficient, credible material to support a valid request for reparations before the Chamber.

¹⁵ “Rectificatif de la ‘Demande de retrait de mandat du Représentant légal relativement à certaines victimes ayant été autorisées à participer à la procédure’”, ICC-01/04-01/07-Corr.

¹⁶ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 9 August 2012, A/HRC/21/46, para. 29.



2.2. Collection of new requests for reparations

27. Decision No. 3546 also authorized the Legal Representative to represent all victims who were not already participants and wished to file a request for reparations.

28. During his mission in Ituri, therefore, the Legal Representative met other potential victims, especially women and children from families that for one reason or another had not come forward at the beginning of the trial and/or whose requests had not been taken into account at the time. He likewise met people who, although they had been very young at the time of the attack (or had not even been born), could have suffered from post-traumatic stress in connection with Germain Katanga's crimes.¹⁷ The VPRS also approached the Legal Representative with a view to identifying people who were located in Ituri or, in the large majority of cases, in Uganda.

29. In all, the Legal Representative met around 200 people who came forward as potential applicants for reparations. For each, the Legal Representative proceeded in the same manner as he had done with the victims who had already filed a request: he conducted an in-depth interview with potential applicants, analysed what they had said and cross-checked information. He was highly mindful of the particular

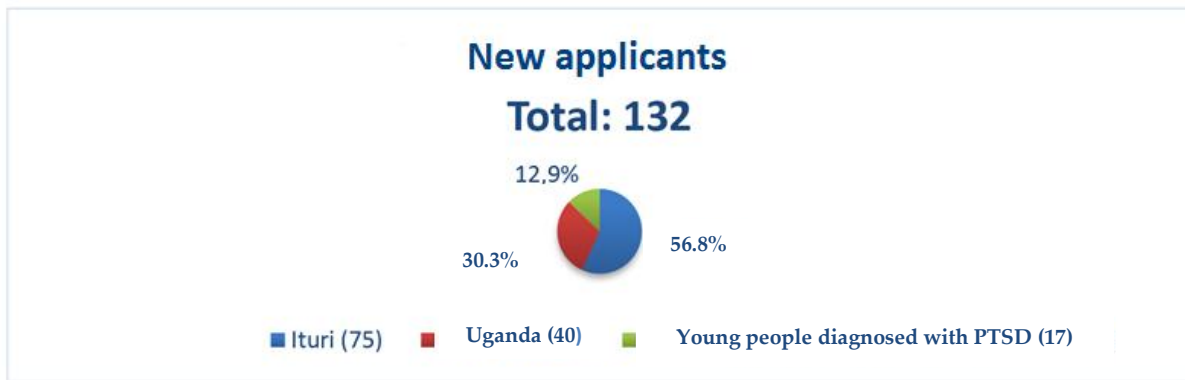
¹⁷ For more details on this category of victim, the Legal Representative refers to his submission accompanying the separate report on the findings of the neuropsychiatric expert appointed in this area, to be filed shortly.

vulnerability of some applicants, especially those who had been very young at the time of the attack.

30. For victims located in Ituri, the Legal Representative checked details primarily with other victims and prominent figures with whom he was in contact. For potential applicants located in Uganda, the VPRS first contacted the Ugandan authorities with a request for lists of refugees who had come from Ituri and were now living in camps in Uganda. Next, the VPRS assisted the Legal Representative to call a mass meeting for anyone named in these lists to raise awareness and provide information. Local authority representatives also attended. During this meeting, the Legal Representative informed participants of the aim of his field mission and the nature and scope of his mandate. A list of potential applicants was then compiled. They were subsequently invited to individual interviews and checks were carried out in the same way as they were for victims living in Ituri.

31. Young applicants were interviewed in tandem by a neuropsychiatric expert and a lawyer from the Legal Representative's team. Details of the methodology can be found in the separate report on these applicants. It should be noted that 17 out of the 26 cases selected were placed in the special category of "young applicants diagnosed with post-traumatic stress disorder" (PTSD). The nine others were put into the general category of new applicants identified in Ituri.

32. Out of all those who were met, 132 became the subjects of individual dossiers that, in the Legal Representative's view, contained sufficient reliable material to support a valid request for reparations before the Chamber. The Legal Representative concluded that the other requests did not fulfil the necessary criteria and appeared to be manifestly unfounded. Individual interviews provided an opportunity to explain at length to these people why they did not meet the requirements for filing a request for reparations in the case at bar. The pie chart [new applicants] below shows the distribution between the three categories mentioned above.



3. Template documents used to complete the dossiers or draw up new requests

33. For those who had already applied for reparations, the Legal Representative followed the former practice of submitting an “annex” showing additional information (see 3.1, below). For new applicants, he used a reparations application form tailored to the case at bar (see 3.2, below).

3.1. Annexes to requests for reparations

34. The purpose of the annex to each request for reparations is to summarize the information already contained in the dossier, sometimes with reference to the content documents already contained therein. The annex also contains additional information gathered by the Legal Representative pursuant to rule 94(1) of the Rules of Procedure and Evidence and regulation 88(2) of the Regulations of the Court.

35. The annex was compiled during the interview with the victim concerned. It focuses on the most relevant information to assessing each victim’s request for reparations. In particular, each annex contains information necessary to understand and assess harm (including the causal link with the crimes), along with an inventory of supporting documentation. It also shows the corrections or clarifications made by victims to their accounts and/or requests. The template for the annex can be found in Annex 2 to this report.

3.2. Reparations application form for new victims

36. In view of Decision No. 3546 and the Chamber's need to process each new request efficiently, the Legal Representative felt it was necessary to draw up and use a version of the reparations application form that was more suited to the case than the standard form provided by the VPRS. He considered it important to focus requests for reparations narrowly on the information needed to determine the harm, its causal link with the crimes committed and the reparations to be awarded. The template form can be found in Annex 3 to this report.

37. This form complies with the requirements under rule 94 of the Rules of Procedure and Evidence. It should be recalled that the Court's instruments do not require the VPRS forms to be used¹⁸ and, in practice, Chambers of the Court have had recourse to simplified versions of the VPRS standard form in several cases.

4. **Supporting documentation substantiating the requests**

38. Contrary to what the Defence maintains,¹⁹ it is true that the attack made it impossible for victims to keep supporting documents. In its Judgment, the Chamber established the violence with which victims were taken unawares in their sleep at dawn on 24 February 2003. Some were killed on the spot. Others fled, sometimes pursued by assailants. Still others hid with varying degrees of success in the hope of heading for Bunia once night fell; returning home did not enter their minds for one moment. Victims fled with the few belongings that they had on them – they could not give a second's thought to taking anything with them (least of all administrative documents, if they had any). Having emptied the village of its inhabitants, the attackers proceeded to pillage and systematically destroy houses, mostly by setting them on fire. Furthermore, although the attack itself lasted one day, the attackers' hunt for civilians and the village's occupation made it impossible for victims to

¹⁸ Regulation 88(1) of the Regulations of the Court at most provides that victims should use the forms provided by the Registry "to the extent possible".

¹⁹ "Defence Observations on Victims Applications for Reparation", 24 February 2016, ICC-01/04-01/07-3660, para. 13.

return to Bogoro. On the contrary, these events compelled many of them to take refuge in Bunia or Kasenyi, or in Uganda, for many years, without the possibility of returning to Bogoro. These facts are amply established in the Judgment.²⁰

39. To these circumstances must be added the general context of the conflict in Ituri that brought about the destruction of many archives. For example, the Kasenyi civil status registers were destroyed during attacks on the village between 2001 and 2003.²¹ Furthermore, although the Congolese Family Code lays down that registrars address matters of civil status, in practice, rural communities are not used to undertaking the administrative procedures required by the official authorities, such as registering births, deaths and marriages. They tend to approach traditional, local authorities such as chiefs of *groupements*. Although the latter are not legally authorized to produce civil records, their close contact with the people means that they are considered a valuable source of information. Thus, it is quite common for a chief of a *collectivité*, as registrar, to approach the chief of the *groupement* with a view to checking the details provided by a citizen who wishes to have a civil record issued.

40. All of these circumstances explain why it is so difficult for victims to produce official documents that substantiate their requests. They also explain the type of documentation submitted and the manner in which it was obtained. Four categories of documents have been provided, depending on the dossiers: (1) death certificates and kinship certificates; (2) certificates of residence; (3) certificates of livestock ownership; and (4) medical certificates.

41. As will be detailed in the second part of this report, to determine the harm suffered by victims, this supporting documentation must be considered in the light of all of the documents and evidence in the record of the case (including testimony and documents admitted into evidence during the trial and the findings of the

²⁰ "Judgment pursuant to article 74 of the Statute", 7 March 2014, ICC-01/04-01/07-3436-tENG ("Judgment"), pp. 293-300.

²¹ See in particular Judgment, para. 464 *et seq.*

Judgment). Contrary to what the Defence would seem to suggest,²² these documents must not be considered on their own. Moreover, they must be assessed using the balance of probabilities as the standard of proof (see part 2, below).

4.1. Death and kinship certificates

42. As previously mentioned, the Legal Representative's field mission enabled him to carry out checks and to hold in-depth individual interviews with applicants. Some dossiers proved to have an insufficient basis to justify pursuing the matter with the competent authorities. Others contained relevant – and trustworthy – information that made it worth applying for certificates.

43. For death certificates, the Legal Representative was guided by the Congolese Family Code and approached the registrar, the chief of the *collectivité*. Under article 133 of the Code: “[TRANSLATION] A death certificate shall be issued upon a declaration of a relative of the deceased person or of any person possessing the necessary information concerning the death.” [Emphasis added.]

44. To ensure that sufficient, objective information existed about a person's death, it was decided to take advantage of the knowledge of prominent figures in Bogoro. These people examined and checked victims' declarations drawing on their familiarity with local families, and, where appropriate, they duly imparted the necessary information for a registrar to issue a death certificate. Kinship certificates were acquired by the same means.

45. In its submissions, the Defence alleges that the death certificates submitted following this process have been “adapted” to changes in some victims' accounts. It also considers that these certificates are often based solely on declarations by victims who did not witness the death of their relative.²³

²² ICC-01/04-01/07-3660; ICC-01/04-01/07-3681.

²³ ICC-01/04-01/07-3660, para. 15.

46. As has been explained previously, during his field mission the Legal Representative carried out extensive checks and analyses of his clients' dossiers. The conditions in which applications to participate and/or for reparations were initially made were problematic with regard to how the information was collected.

47. Confusion about names presents yet another difficulty when it comes to civil records. People in the Democratic Republic of the Congo are traditionally given three names: a family name, a post-name and a given name. In the Hema tradition, a name indicating respect is added to these (for example, "Amoti", "Abala", "Arali", "Abooli", "Abooki", "Akiki", "Atenyi" and "Adyeri"). Some people are known only by their "respect name", while others are known by a nickname or diminutive. Within the same community, a person may be called different names by different people depending on whether they use the "respect name" or nickname. Likewise, names entered on identity documents may not correspond with the name that a person is called by family members. In addition, names can be spelled differently (and are sometimes written phonetically). Lastly, family relationships are more complicated than in the West. For example, an uncle may be considered (and called) the father of a family because he is the eldest brother and therefore the family "patriarch".

48. This situation understandably gives rise to confusion when it comes to establishing people's identities and their family relationships. In the Judgment, the Chamber noted the difficulties relating to civil records in the Democratic Republic of the Congo, but considered that they had no bearing on witnesses' or victims' credibility.²⁴

49. The methodology followed by the Legal Representative was intended to correct these flaws. As a result, a number of applications were excluded for the

²⁴ See, for example, Judgment, para. 129: "In the light of the considerable amount of material on record, it seems to the Chamber that modifying birth-dates is a fairly common practice in the DRC, in particular in relation to school enrolment, in order either to delay or accelerate a child's enrolment in school. [...]. It is the Chamber's view, therefore, that P-28 is not answerable for the inconsistencies in his statements concerning his age as, locally, they are very widespread." [Emphasis added.]

reasons outlined above (confusion between attacks, failure by victims to distinguish between attacks, harm outside the scope of the conviction, etc.). The other obvious outcome of this extensive verification procedure is that the remaining applications are sound and the documents filed in their support are reliable.

4.2. Certificate of residence in Bogoro

50. As a result of the victims' precipitous flight and the village's destruction after the attack, very few victims could provide evidence that they owned property in Bogoro when making their request. Like other administrative documents, all land registers in Bunia and Kasenyi had been destroyed or looted during previous attacks. Only a few victims had taken the trouble to obtain land registration certificates for buildings built in durable materials, such as brick, and had, by chance, kept their documents elsewhere than in Bogoro.

51. That being the case, and after a meticulous check of the dossiers of the victims concerned, the Legal Representative considered that the only option was to approach *localité* and *groupement* chiefs for them to issue certificates of residence where there were grounds to do so. They did so in the form of documents prepared and signed in the absence of a person entitled to make officially recorded documents.

52. In its submissions, the Defence contends that these certificates should be viewed with caution by the Chamber, given that they were issued 12 years after the events for the specific purpose of being tendered in the reparations proceedings, are signed by someone who is both a Prosecution witness and a victim (i.e. the chief of the *groupement*) and are drafted in a standard format.²⁵

53. The Legal Representative does not dispute that the documents in question were issued recently and in connection with these proceedings. However, for the reasons explained above (the victims' precipitous flight and the destruction of Bogoro), it would have been simply impossible for victims to advance any proof

²⁵ ICC-01/04-01/07-3660, para. 16.

other than evidence provided by the people best placed to supply information on land and home occupancy, namely chiefs of *localité* and *groupement*.

54. It bears mention that, in the absence of a cadastral system in rural areas, the authorities created a system for issuing “plot certificates” related to the customary systems of land allocation. These certificates are drawn up after the village chief has allocated the plot in question with the agreement of the chief of the *groupement* and the chief of the sector and with the approval of a rural surveyor. In other words, the chief of the *groupement* is directly involved in managing land in the area for which he is responsible and for that particular reason has complete knowledge of how land is allocated and what buildings have been erected. For the same reason, the certificates of residence were produced in a standard format to emphasize their official nature.

55. Contrary to what the Defence would seem to be implying, the witness/victim status of the chief of the *groupement* should be taken as a guarantee of his good faith. It is in neither his interest nor that of the other victims (living in the area under his administration) to make false declarations that include persons who did not really suffer from the crimes committed by Germain Katanga. In the same vein, in the Decision on Sentence, the Chamber underscored that the chief of the *groupement* was particularly well-placed to comment on the situation of Bogoro inhabitants, since his position meant he came into constant contact with them.²⁶

4.3. Certificate of livestock ownership

56. Like other administrative documentation, all of the registers that might have contained records of herds and their owners’ names were destroyed during the attacks in the region between 2001 and 2003. Nor do the victims concerned still possess the relevant administrative documents, which were left behind when the victims fled and were then destroyed.

57. That being the case, and after a meticulous verification of the dossiers of the

²⁶ “Decision on Sentence pursuant to article 76 of the Statute”, 23 May 2014, ICC-01/04-01/07-3484-tENG-Corr, para. 56.

victims in question, the Legal Representative turned to the local authorities in office during the attack and the officials of the *Promotion pour la Défense de l'Élevage* (PRODEL; Livestock Producers Cooperatives), which were set up under the auspices of the Ituri Project Bureau (erstwhile project financed by the World Bank) to bring a village's livestock owners together to train them and lend them support. The PRODEL were created at village level, with the *Association des Cooperatives d'Éleveurs de l'Ituri* (ACOOPELI; Ituri Livestock Producers Cooperative Union) as an umbrella organization. Set up in 1979, and financed by the Government until 1990, the ACOOPELI represented 12–14 000 cattle breeders in Ituri through 126 CO-PRODELS.

58. Each PRODEL keeps a list of members. These lists were forwarded to veterinary clinics, public authorities that were also responsible for keeping records of livestock numbers. In theory every livestock breeder (even those with a small herd) had an individual record card with a copy at the clinic. As a result all animals were registered, but many were registered under the name of the person who kept them in his *kraal*. In this case it was the keeper and not the owner who registered the livestock.

59. The official procedure for keeping records of cattle specifies that all lists drawn up at district level should then be forwarded to the territory authority (Irumu).²⁷ However, successive wars in Ituri substantially weakened the ACOOPELI and the PRODELS and all their records were destroyed at both district and territory levels.

60. After analysing and checking the dossiers of the victims concerned, the Legal Representative saw it as his duty to approach the people who at the time of the events were responsible for the Bogoro PRODEL as well as the village's veterinary services to ask them to issue, where they deemed it appropriate, certificates of livestock ownership in Bogoro.

²⁷ Former administrative subdivisions of the State, in effect until 2015.

61. The Defence considers that these certificates were inadequate where they do not state the number of animals owned by the victim concerned or whether these cattle were pillaged during the attack on Bogoro.²⁸ It adds that some cattle had already been relocated before the attack.²⁹

62. To require the officials to state the number of cattle per applicant would be tantamount to asking them to conjure figures out of thin air. Clearly, they cannot remember precisely how many head of cattle each person owned. Moreover, at this stage it is a question of identifying the types of harm, not evaluating the extent of the harm (see below, paras. 65 *et seq*).

63. The victims do not dispute that some cattle was moved between 2001 and the beginning of 2003. Following repeated attacks in the region, some breeders who owned large herds had in fact decided to take some but not all of their cattle to Uganda. Small livestock farmers – the majority – could not afford to do the same. Once again, the Defence is demanding impossible evidence that meets an overly exacting standard of proof of the harm suffered by each victim. It is indisputable, as the Chamber found in its Judgment, that animal husbandry is an integral part of traditional Hema life as an everyday source of food and income. A family's wealth is gauged by the size of its herd. Cattle confer significant social status. In other words, even if some animals were moved before the attack on Bogoro, it is inconceivable that livestock producers' families did not have a single cow in the village or its immediate surroundings. According to estimates by one of the former veterinaries, there were around 10,000 head of cattle in Bogoro before the attack.

4.4. Medical certificates

64. Most victims still do not have medical certificates more than 13 years after the events. Others have turned to traditional medicine because they could not afford to do otherwise. During his field visit, the Legal Representative advised victims who

²⁸ ICC-01/04-01/07-3681, para. 32.

²⁹ ICC-01/04-01/07-3660, para. 18.

had suffered physical injury to visit the Centre Médical Évangélique in Nyakunde for a clinical examination. The Centre issued reports on those victims who were able to attend.

II. CATEGORIZATION OF HARM AND PROOF OF A CAUSAL LINK WITH THE CRIMES

65. As the Appeals Chamber stated in *Lubanga*, it is for the Trial Chamber to identify the direct and indirect harm done to victims that resulted from the crimes of which the Accused is convicted. An assessment of the extent of harm may be undertaken at a later stage with a view to determining the nature and/or extent of reparations.³⁰

66. After a brief overview of the principles applicable to proof of harm in the case (part 1, below), this section sets out the types of harm identified, including their causal links with the crimes of which Germain Katanga was convicted (part 2 below). A synoptic table in Annex 4 sets out the types of harm caused by each crime. The Legal Representative is also in the process of drawing up a table that shows the types of harm alleged by each victim. This exhaustive table will shortly be made available to the Chamber and the parties to help identify the specific harm suffered in each individual case.

67. In its observations, the Defence criticizes the lack of precise assessments of losses suffered by applicants (for example, exact figures for cattle and movable property pillaged or destroyed). The Legal Representative invites the Chamber to evaluate the extent of harm at a later stage and bearing in mind the nature and extent of reparations that may be ordered in this case. To this end, he intends to submit specific proposals to the Chamber and the parties in the near future.

³⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations”, 3 March 2015, ICC-01/04-01/06-3129, paras. 181 and 183.

1. Brief overview of the principles: standard and burden of proof in this case

68. According to the Appeals Chamber, in reparations proceedings the applicant must provide “sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case”.³¹ What is the “appropriate” standard of proof and what is “sufficient” to meet the burden of proof will depend upon the circumstances of each case.³² In the view of the Appeals Chamber, in determining what is sufficient, Trial Chambers should take into account any difficulties in obtaining documents in support of their requests for reparations owing to their destruction or unavailability.³³ Rule 94(1) of the Rules of Procedure and Evidence, according to which requests for reparations should contain all relevant supporting documentation “[t]o the extent possible”, echoes this principle.³⁴

69. On the basis of these principles, the Appeals Chamber held that in reparations proceedings the standard of proof cannot be the same as that laid down at trial for handing down a conviction or an acquittal (namely, “beyond reasonable doubt”). Consequently, it acknowledged that, when determining that a convicted person is liable to make reparation for harm resulting from the crimes of which he or she was convicted, a Chamber may consider it “appropriate,” in view of the circumstances of the case, to use “the balance of probabilities” as the standard of proof.³⁵

70. Application of that standard requires the judges – having examined the parties’ submissions and the evidence – to rely on the most probable version of events. In accordance with this standard of proof, the Chamber may find that harm has been established where the existence of an act constituting the harm is more probable than not.³⁶ The Legal Representative takes the view that the circumstances

³¹ ICC-01/04-01/06-3129, para. 80.

³² ICC-01/04-01/06-3129, para. 81.

³³ *Ibidem*; see also ICC-01/04-01/06-3129-Anx A, para. 22.

³⁴ In this sense, see Trial Chamber I, “Decision establishing the principles and procedures to be applied to reparations”, 7 August 2012, ICC-01/04-01/06-2904, para. 252, upheld by the Appeals Chamber, ICC-01/04-01/06-3129, para. 80.

³⁵ ICC-01/04-01/06-3129-Anx A, para. 65.

³⁶ Similarly, Trial Chamber II applied this standard to the mitigating circumstances cited by Germain Katanga, Sentencing Decision, para. 34: “The Chamber may, however, consider a mitigating

of the present case justify application by the Chamber of the “balance of probabilities” test. He notes that, in its general observations on reparations, the Defence acknowledged that the principles set forth by the Trial Chamber in *Lubanga* as modified by the Appeals Chamber were broadly applicable in this case.³⁷

71. As regards the test for establishing a causal link between the crimes and harm caused (“standard of causation”), the Legal Representative is of the opinion that, given the circumstances of the case, it is appropriate to apply the “but for” test applied by the Appeals Chamber (and the Trial Chamber) in *Lubanga*, combined with the requirement to show that the crimes committed by Germain Katanga are the “proximate cause” of the harm for which reparations are claimed.³⁸ In other words, the applicant must show that but for the commission of the crime, the harm would not have occurred.

72. In view of the principles established by the Appeals Chamber, it would therefore be appropriate for the Chamber to consider all of the evidence available and *to weigh it in its entirety in the light of the context of the case*. Contrary to what the Defence would seem to imply, the Chamber will not be examining the certificates appended to the requests for reparations in isolation. Instead, it will be careful to take into account not only the victims’ requests for reparations and the documents appended to them but also evidence admitted during the trial and the findings of fact of Trial Chamber II in its Judgment and its Sentencing Decision.³⁹

73. In the case at bar, Trial Chamber II established beyond reasonable doubt the violence of the attack,⁴⁰ which took the victims unawares in their sleep⁴¹ and forced

circumstance where, on a balance of probabilities, the Defence establishes the existence of such a circumstance.”

³⁷ “Defence Observations on Reparations”, 15 May 2015, ICC-01/04-01/06-3549, para. 2.

³⁸ ICC-01/04-01/06-3129, para. 82, and ICC-01/04-01/06-3129-Anx A, para. 59.

³⁹ ICC-01/04-01/07-3436-tENG and ICC-01/04-01/07-3484-tENG-Corr.

⁴⁰ See in particular: Judgment, para. 731, and the footnotes referring to testimony: “The witnesses, be they residents of Bogoro or soldiers from the UPC camp, or even a Ngiti combatant from Walendu-Bindi who took part in the attack, all stated that *there were a great many attackers, that they were armed with firearms, arrows, spears and machetes, that the gunfire was particularly heavy, to the point that it was heard in neighbouring villages, and that it came from all directions.*” [Emphasis added.] See also

them to flee leaving behind everything they owned,⁴² in particular because they were pursued by their assailants, who openly sought to kill them.⁴³ The Chamber likewise found that, once the village had fallen into the attackers' hands, the latter pillaged and destroyed houses. They then occupied Bogoro, preventing villagers from returning for several years.⁴⁴

74. All these factors are relevant and specific to the case. They explain the great difficulty which the victims face in submitting documentation to substantiate their requests. Save in exceptional cases,⁴⁵ the victims do not have documents that predate or are contemporaneous with the time of the attack and that attest to their ownership of property or deaths of family members. It is essential therefore that, as the Legal Representative shows below (2), that the Chamber is in a position to take into consideration a range of factors in finding that the victims have supplied sufficient proof of the harm and its causal link with the crimes of which Germain Katanga was convicted.

75. The Legal Representative submits that this approach is all the more justified insofar as the importance of determining with precision the harm suffered will also depend on the reparations mechanisms to be put in place. In a separate filing the Legal Representative will set out specific proposals for reparations that could be ordered in the case.

para. 810, "the attack was particularly intense, with considerable gunfire". See also Sentencing Decision, para. 48.

⁴¹ Judgment, para. 731: "The witnesses who were in Bogoro on 24 February 2003 stated that the attack began at dawn, at around four or five a.m., at which time they were awoken by the chatter of gunfire." [Emphasis added.] See also paras. 775, 810 and 872.

⁴² Judgment, para. 811: "many of its inhabitants [...] fled their homes [...]" Sentencing Decision: "The survivors of the massacres were forced to flee, leaving behind all their possessions."

⁴³ Judgment, para. 811. See also para. 745: "[T]he attackers came from all directions and [...] escape was very difficult. Most of the witnesses were forced to hide in the bush and move carefully to evade them"; para. 813: "The increasing intensity of the fire exchanged and the difficulty, perhaps impossibility, of reaching the Institute forced some villagers to give up their attempt to do so and to flee towards those areas of bush surrounding the village centre or Waka mountain." See also paras. 823 to 830, 833, 873 and 877.

⁴⁴ See in particular: Judgment, paras. 745, 811, 813, 823 to 830, 833, 873 and 877; Sentencing Decision, para. 50.

⁴⁵ The victims who kept evidence of building a house outside Bogoro come mainly to mind here.

2. Categorization of harm in the case at bar and evidence of a causal link with the crimes

76. An analysis of all of the requests for reparations shows that the harm alleged by the victims can be divided into three categories: (1) physical or bodily harm; (2) moral or psychological harm; and (3) material or economic harm (see also the synoptic table in Annex 4).

2.1. Physical or bodily harm

77. This is harm resulting from bodily injury sustained during the attack and/or flight. As the Chamber noted in its Judgment, several witnesses stated that they had seen people being wounded or that they themselves had been wounded. The assailants not only opened fire on fleeing villagers but also attacked them with bladed weapons as they tried to run away.⁴⁶ In the Sentencing Decision, the Chamber found that those particularly cruel acts had caused extreme physical suffering to those who somehow survived the injuries inflicted.⁴⁷

78. Of the victims who filed requests for reparations, 27 (including Victim a/1205/10 (P-132)) are claiming reparations for physical harm resulting from the crimes committed by Germain Katanga (attack against a civilian population).

79. In its Judgment, the Chamber found beyond reasonable doubt that Victim a/1205/10 (P-132) had sustained a bullet wound during the attack.⁴⁸ This fact is accordingly no longer open to dispute.

80. Owing to the particular circumstances of the case, only 13 applicants were able to submit a medical certificate evidencing care received and/or scars, after-effects or disabilities that they still suffer, in particular because of lack of appropriate

⁴⁶ Judgment, para. 836.

⁴⁷ Sentencing Decision, para. 49.

⁴⁸ Judgment, para. 208.

treatment. In its observations, the Defence would seem to acknowledge that these certificates provide sufficient proof.⁴⁹

81. The other 14 applicants give a detailed description in their accounts about how they escaped from the attackers and how they were wounded during their flight. In the Legal Representative's view, since it is impossible, in the circumstances, for these victims to provide supporting documentation, their accounts should be deemed sufficient to establish the harm caused and its causal link with the attack against the civilian population. In its Judgment, the Chamber described the heavy firing that came from every direction and the targeting of civilians by the attackers. It is more than probable that a person was injured while fleeing and that the after-effects are still felt owing to poor healthcare. If necessary, the Chamber could invite an expert to determine the harm in question.

82. In addition to suffering a bullet wound, Victim a/1205/10 (P-132) was also subjected to sexual abuse, causing further bodily injury. Two other victims (a/30469/15 and a/30478/15) are in a similar situation. The Legal Representative wishes to emphasise that there is no question of holding Germain Katanga criminally responsible for the crime of rape. It is rather a question of victims claiming reparations for physical harm resulting from the attack against the civilian population. In its Judgment, the Chamber established that during and after the attack, civilians were killed and wounded, and others were victims of sexual assault.⁵⁰ In this particular context, and contrary to what the Defence contends,⁵¹ by granting reparations for physical harm caused by sexual assault the Chamber would not find Germain Katanga guilty of the *crime* of rape but would instead recognize his responsibility to make reparations for harm caused by another form of

⁴⁹ ICC-01/04-01/07-368, para. 29.

⁵⁰ Judgment, para. 833: "In view of the foregoing, the Chamber concludes that, on 24 February 2003, once the camp had fallen and fighting had ceased, the attackers continued to pursue the inhabitants hiding in the bush, sexually assaulted women, captured people whom they found hiding and killed others. None of these people had any part in the fighting."

⁵¹ See in particular: "Defence Consolidated Response to the Parties, Participants and Other Interested Persons' Observations on Reparation", 16 June 2015, ICC-01/04-01/07-3564.

bodily injury arising out of the attack against the civilian population, a crime of which he was convicted.

2.2. Moral or psychological harm

83. An analysis of the requests for reparations shows that emotional or psychological harm caused by Germain Katanga's crimes can be divided into five categories.

(i) *Moral harm linked to the trauma of the attack*

84. All of the victims who survived the attack suffered from this harm without exception. The violence and the attackers' *modus operandi* inevitably traumatized everyone in Bogoro at the time of the events. This trauma continues to be serious in the overwhelming majority of victims.

85. In the Sentencing Decision, the Chamber found that:

The use of machetes caused serious and persistent trauma both to the survivors who had to have a limb amputated and to people who witnessed the suffering of their relatives. The women and men who survived those crimes [...] are traumatised, having witnessed the cruelty of the acts constituting the crimes committed at that time.⁵²

The Chamber further observed that, "[...] many survivors were scared of returning owing to memories of the fighting".⁵³

86. The Defence does not dispute that any victim present in Bogoro during the attack of 24 February is entitled to claim reparations for psychological harm.⁵⁴ However, it maintains that little is known about the number of people present in Bogoro and that many civilians had left Bogoro before the attack.

87. This assertion is contradicted by the Chamber's findings of fact in the Judgment. Thus, "[f]rom the Defence's estimate based on the testimony of D02-176", the Chamber considered it established that at least 800 civilians were living in the

⁵² Sentencing Decision, para. 49 [emphasis added].

⁵³ Sentencing Decision, para. 58.

⁵⁴ ICC-01/04-01/07-3681, para. 27.

village on the day of the attack.⁵⁵ The village was far from abandoned, then, and it is therefore highly credible that most applicants should be seeking reparations for moral harm as a result of being traumatized by the attack.

88. Furthermore, each dossier states the victim's place of birth and place of residence (specifically in the request for reparations and the appended identity document). These details are particularly relevant in view of the local context. The accounts contained in the requests for reparations support the conclusion that the applicants were in fact present at the time of the attack: they include either sufficient contextual information on the victim's life in Bogoro at the material time (in particular, as to family or neighbour ties with other victims) or details of the sequence of the attack and the victim's experience of and/or escape from it. Most applicants have provided a certificate of residence to substantiate their claim.

89. In view of all of these factors, and bearing in mind the specific circumstances of the case (especially the victims' inability to provide evidence of their presence in Bogoro during the attack), it would be reasonable for the Chamber to find that any person who had been born in Bogoro and whose interests were centred on the village (as evidenced by requests for reparations and the appended documentation) was more than likely to have been in Bogoro on the day of the attack and suffered moral harm as a result.

90. Apart from the victims present in Bogoro at the time of the attack, the Legal Representative has also noted behavioural difficulties in children who were born after the attack to parents who lived through these traumatic events and are suffering from post-traumatic stress disorder. Contrary to what the Defence suggests,⁵⁶ at issue is not an allegation of harm connected to the death of relatives during the attack but another form of psychological trauma passed down the generations. The Legal Representative describes the assignment carried out by an expert in this area and the findings in a separate report soon to be filed.

⁵⁵ Judgment, para. 730.

⁵⁶ ICC-01/04-01/07-3681, para. 31.

91. The Legal Representative understands the Defence's concern that requests from anyone who currently lives in Bogoro might be granted.⁵⁷ However, he considers it necessary for the Chamber to examine this question closely. At this stage, it is not a matter of assessing the harm but of determining whether it exists. As the expert states, parents could have passed on the trauma resulting from the attack to their children. This is also reflected in the statements made by applicants in their requests for reparations: several say that they cannot forgive what happened to them and what they passed on to their children. If reparations also aim to reconcile communities,⁵⁸ the Chamber must consider this issue.

(ii) *Harm linked to loss of a close family member (emotional harm)*

92. In its Judgment, the Chamber established that: "The village was littered with corpses, including those of women, children and elderly persons."⁵⁹ Although the Chamber judged itself only in a position to state with certainty that 60 people were killed during the attack,⁶⁰ it considered that "the attack claimed considerably more lives".⁶¹ At the time, the Defence arrived at a figure of 142, but that figure included UPC fatalities and people who were killed by civilians or who had participated in the hostilities. The Defence did not specify the number of deaths resulting from collateral damage.⁶²

93. More specifically, in its Judgment the Chamber found the following deaths to be established beyond reasonable doubt: the murder of the mother and the sister of Victim a/1205/10 (P-132);⁶³ the murder of the baby of Victim a/0191/08 (Witness V2);⁶⁴

⁵⁷ *Ibidem*.

⁵⁸ *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, 9 August 2012, A/HRC/21/46, paras. 36-39.

⁵⁹ Judgment, paras. 836 and 839.

⁶⁰ Judgment, para. 838.

⁶¹ Judgment, para. 839.

⁶² Judgment, para. 835.

⁶³ Judgment, para. 862.

⁶⁴ Judgment, para. 814.

the murder of Matia Babona;⁶⁵ and the murders of seven family members of Victim a/0196/08 (Witness P-161).⁶⁶ This harm is therefore no longer open to dispute.

94. Here, the Defence does not dispute that an applicant who establishes the death of a close relative on the basis of a death certificate and a certificate of kinship is entitled to claim reparations for psychological harm caused by that loss.⁶⁷

95. As evidence of the death of a close relative, almost all the victims (at least 90 per cent) have appended a death certificate to their request. Contrary to what the Defence contends, there is no doubt that these documents are trustworthy, especially given the victims' inability to produce other documentation and above all given that these certificates were issued on the strength of information gathered from people who either saw the person concerned being killed or had indirect information that corroborated the accounts of others. These accounts were related to prominent figures. It must be remembered that Bogoro is a small village where people know each other and prominent individuals act as "father figures", who watch over the members of their community (see above, paras. 12 and 13).

96. Kinship may be established in a number of ways depending on the specific features of each dossier. A certificate of kinship may be used, but also identity documents. Voting cards and some pupil identification cards contain the names of fathers and mothers, and the Legal Representative agreed for this information to be disclosed to the Defence.

97. Lastly, the Legal Representative recalls that, in the context of the case and in any event, the concept of family structure must be understood in a Congolese context.⁶⁸ Accordingly, the notion of a "close relative" is not restricted to parents and children; it extends to uncles, aunts and cousins. The extended family system gives a person a level of security that is regarded as irreplaceable, and withdrawal into the

⁶⁵ Judgment, paras. 823, 836 and 865.

⁶⁶ Judgment, paras. 228, 816, 858 and 861.

⁶⁷ ICC-01/04-01/07-3681, para. 30.

⁶⁸ ICC-01/04-01/06-3129-Anx A, para. 7.

nuclear family is not encouraged. For example, the notions of “father” and “uncle” are akin. Similarly, the terms “brothers” and “sisters” go beyond the notions of first cousins, half siblings and siblings and can encompass cousins. This understanding of close family that covers uncles, aunts and cousins is particularly strong in rural, more traditional areas such as Bogoro where families live in close proximity or in the same house and share in each other’s daily lives.

98. The applicants’ dossiers, and in particular their accounts, provide sufficient information to establish the relationship between the applicants and the deceased.

99. It should be noted that the moral harm suffered by victims is not restricted to the loss of a dear one: most of the victims could not afford to arrange funerals.⁶⁹

(iii) *Harm linked to forced departure, displacement and separation from family members*

100. In its Sentencing Decision, the Chamber took particular cognisance of the fact that “[t]he survivors of the massacres were forced to flee, leaving behind all their possessions.”⁷⁰ It observed that, “many locals have since been forced to start life afresh away from Bogoro, where they chose not to return as they would have had to start again from scratch or simply did not have the means”.⁷¹

101. These victims suffered as a result of a forced and abrupt departure that also separated families. For a long time, some victims “suffered because they had no news of what had happened to their relatives”.⁷² This temporary or permanent forced departure caused suffering to the internally displaced persons and those living in Ugandan refugee camps. Several victims experience pain at the thought that they might never return to their ancestral land and feel uprooted.

102. This harm is directly linked to Germain Katanga’s crimes: civilians in Bogoro had no choice but to flee. This is established by the accounts of the applicants in

⁶⁹ In this respect, see Sentencing Decision, para. 50.

⁷⁰ Sentencing Decision, para. 50.

⁷¹ Sentencing Decision, para. 52.

⁷² Sentencing Decision, para. 50.

question. In view of the rural context in which the crimes were committed and the victims' attachment to their land and livestock, established by their testimony and the Chamber's findings of fact in its Judgment and Sentencing Decision, it is more than likely that victims who were compelled to flee Bogoro temporarily or permanently have, to a greater or lesser extent, suffered harm in connection with enforced departure that is distinct from the general attack-related trauma.

(iv) Harm linked to loss of social status

103. Apart from the harm described above, several applicants state that they have suffered harm in connection with their loss of social status.

104. The heads of several families express their profound suffering caused by the destitution in which the attack left them and by their inability, even more than 10 years afterwards, to provide adequately for their families.

105. For numerous families, the attack completely destroyed property built up over generations, in particular herds. As the Chamber observed in its Judgement, the Hema are herders by tradition.⁷³ Raising livestock was not just a form of economic activity; it also played an important role in family and societal relationships. As Victim a/0196/08 (Witness P-166) explained,

[TRANSLATION] when a Hema dies, his son takes over his activities as a herdsman. When girls reach marriageable age, these girls... the girl's family receive cattle from her husband's family. People who don't have cattle can agree with the girl's family to give money instead of cows. But this sum must represent the value of a cow. Raising cattle is very important for people of Hema ethnicity.⁷⁴

106. By looting all their property and occupying Bogoro, the attackers pillaged and consumed⁷⁵ many families' "savings accounts". As the Chamber remarked in its Judgment, the looted property represented a significant proportion of what victims

⁷³ Judgment, para. 724.

⁷⁴ P-166, T. 225, p. 56, lines 9-16 [Emphasis added].

⁷⁵ During the occupation of Bogoro, the attackers consumed crops that were ripe; see in particular: P-166, T. 225, pp. 57-59; D3-44, T. 292, pp. 22-23; D2-176, T. 256, p. 28, lines 14-15.

owned and accordingly had great value in their eyes. Its loss had significant repercussions on victims' lives.⁷⁶

107. Heads of family suffer if they are unable to give a daughter a dowry or pass on an inheritance to their children. As the Chamber further noted in the Sentencing Decision, after the pillaging and destruction of Bogoro, "many people found themselves excluded from their community's economic and social life".⁷⁷

108. In the case at hand, it may be considered that harm linked to the loss of social status is more than likely among victims who, as their requests make clear, were heads of family.

(v) *Moral harm linked to bodily injury*

109. As stated at paragraph 78 above, some victims suffered bodily injury as a result of the attack. This injury also caused moral harm since their physical abilities and/or appearance were affected. This is particularly true of victims of sexual abuse, given their rejection by their community and/or stigmatization.⁷⁸ The Legal Representative reiterates that there is no question of holding Germain Katanga criminally responsible for the *crime* of rape. It is rather a question of enabling victims to claim reparations for moral harm caused by another form of bodily injury arising out of the attack against the civilian population, a crime of which he was convicted.

2.3. Material or economic harm

110. This harm results from the attack against the civilian population, which forced victims to flee and abandon all their property with no opportunity to return within a reasonable time. It was caused by the killings and also by the pillaging and destruction that followed the attack.

⁷⁶ Judgment, paras. 928 and 953.

⁷⁷ Sentencing Decision, para. 59.

⁷⁸ See in particular Judgment, para. 204: "The Chamber is alive to the fact, as recalled by the witness, that women who are victims of such acts run a very high risk of being rejected by their own community when they decide to tell the truth about their ordeal." [Emphasis added.]

111. In its Judgment, the Chamber observed that civilians had fled from Bogoro leaving everything behind. It found that most of the pillaging took place during the attack.⁷⁹ It concluded that,

during the attack on Bogoro on 24 February 2003, after the village was overrun, property belonging to the predominantly Hema civilian population of Bogoro, which was essential to its daily life, including roofing sheets, furniture and various other personal effects, food, and livestock and animals, was taken away by the attackers and by women and children, some armed, who had come to assist.⁸⁰

It found that acts of destruction of houses and public buildings “took place throughout the village and throughout the day, including once it had fallen into the grip of the attackers”.⁸¹

112. The material harm inflicted on applicants consists not only of damage to property that was destroyed or depreciated in value, but also the financial consequences of that destruction or loss.

113. Specifically, as the Defence does not dispute, the scale of the attack and the destruction of all of Bogoro’s dwellings pre-suppose that the houses and property of all homeowners in the village were destroyed during the attack. The Legal Representative has already explained above (paras. 50 *et seq.*) that, contrary to what the Defence would seem to suggest, the Chamber can consider the certificates of residence appended to the requests reliable. The loss of property should be considered established by the documents tendered in the dossiers, including the applicants’ accounts and their residence certificates.

114. The same is applicable to loss of livestock. The Defence disputes that cattle were present in Bogoro at the time of the attack (above, para. 62). As explained, the victims do not deny that some graziers with large herds may have moved some of their animals. However, given the importance of herding in the Hema tradition, most

⁷⁹ Judgment, paras. 932, 950, 953 and 956.

⁸⁰ Judgment, paras. 932, 950, 953 and 956.

⁸¹ Judgment, para. 924, and Sentencing Decision, para. 51.

victims had kept some of their cattle as a way of meeting their everyday needs. Others did not have the financial means to move their animals elsewhere.

115. The victims would also farm their land.⁸² This fact is not in dispute. It would be reasonable for the Chamber to find that, in addition to their house, all applicants living in Bogoro had, in addition to a dwelling place, land that they farmed first and foremost to meet their everyday needs or to sell small quantities of produce at market.

116. The loss by a family of the property that it used to generate its income, including cattle, has repercussions for all family members who depend on this property. The head of the family can no longer provide for his dependents, which includes not being able to afford fees for children's education and training. In the absence of the breadwinner or the property that generates a family's income, the costs of education and training can no longer be met, since the family's survival is paramount. Not only does harm arise from the fact that children have to drop out of school completely or delay their education; they are also deprived of the opportunity to start an apprenticeship in a remunerative activity because of their family's impoverishment or the death of its breadwinner.⁸³

117. Moreover, the destruction or looting of property deprives of an inheritance those dependents who are rightful heirs.

118. The killings are the cause or an aggravating factor of various types of economic harm. Loss of the person who completely or partly provided for the family is likely to cause harm to a significant number of people, who thus find themselves on the bread-line. This loss may result in survivors becoming responsible for a greater number of people. This is particularly true of "big brothers" and "big sisters" (in a broad sense that includes cousins) who have to provide for their younger siblings when their parents die. They are indirect victims of these deaths not only

⁸² Judgment, para. 724.

⁸³ Loss of opportunity is covered by the "other" category in the overviews of the various types of harm included in reparation requests.

from a psychological point of view (i.e. emotional harm) but also from a financial standpoint: they experience direct harm owing to the increased number of people for whom they have to provide, usually coupled with the loss of their family's property which they will no longer inherit. This situation can be one of great hardship and pain for many victims who were young adolescents at the time of the attack and became responsible for younger children, even though they themselves were not able to finish their education or training and cannot enjoy the property left to them by their parents since it was destroyed during the attack if it was located in Bogoro. These victims suffer twice over from their predicament: the attack robbed them of their plans for the future and they cannot offer their younger siblings any such plans either.

119. It must be emphasized that, while addressing the dossiers, the Legal Representative was careful to take account of possible family relationships between applicants. Contrary to what the Defence would seem to consider,⁸⁴ where harm affects more than one person (for example, the loss of the family home), the applicants in question claim reparations for their share of the object and not for the entire object. "Double" compensation is not then awarded to several applicants for the same material harm.

120. Lastly, significant economic harm was experienced by applicants who sustained a physical injury during the attack that affected their capacity to work and who lost some or all of their income as a result.

121. In its observations, the Defence claims that applicants who lived or owned property in areas purportedly far from the village centre cannot allege harm in connection with the crimes of which Germain Katanga was convicted.⁸⁵ In actual fact, these areas are in the immediate vicinity of the centre of Bogoro. As the Chamber

⁸⁴ ICC 01/04-01/07-3681.

⁸⁵ See, in particular, ICC-01/04-01/07-3660-Conf-Exp-AnxA, pp. 13-14.

found, the attackers encircled Bogoro and from every direction converged on its centre.⁸⁶ The Chamber observed that according to several witnesses,

the attackers had entered Bogoro from various directions in particular from Waka mountain and the Gety road, *viz.*, from the direction of Walendu-Bindi *collectivité*, as well as from Zumbe, Katonie and Kasenyi roads, *viz.*, from the direction of Bedu-Ezekere *groupement*.⁸⁷

Moreover, the attackers pursued the villagers far into the bush.⁸⁸ They carried out massacres and looting within a radius of several kilometres from the village centre. The harm alleged by the applicants in question was the direct cause of the crimes committed in the case. But for the attack against the civilian population of which Germain Katanga was convicted, these applicants would not have suffered the harm they describe.

122. In its observations, the Defence argues that some of the harm cited by applicants (including lack of education) arose from the general situation in Ituri.⁸⁹ This argument is, however, contradicted by the Chamber's findings:

Whereas there is a great disparity in the value of the pillaged property – kitchen-ware and furniture but also livestock, goats and chickens, as the case may be – the property represented the bulk of the owners' possessions. To the extent that the civilians were deprived of their personal houseware and even their livestock, property essential to their daily life, the Chamber is of the view that the property was in fact of great value to them. In the view of the Chamber, its appropriation had significant consequences for the people from whom it was taken.⁹⁰

In the Sentencing Decision, it adds:

The loss of this property had significant consequences for the daily lives of the victims, as was corroborated by the village chief, who, on 5 May 2014, testified before the Chamber that one of the most persistent consequences of the battle was poverty. Apparently, many locals have since been forced to start life afresh away from Bogoro, where they chose not to return as they would have had to start again from scratch or simply did not have the means.⁹¹

⁸⁶ Judgment, para. 1709.

⁸⁷ Judgment, para. 735.

⁸⁸ Judgment, para. 831.

⁸⁹ ICC-01/04-01/07-3681, para. 38.

⁹⁰ Judgment, para. 953.

⁹¹ Sentencing Decision, para. 52.

123. In fact, the existence of livestock and the ability to farm their fields meant that the inhabitants of Bogoro had enjoyed reasonable living conditions, in which they could provide for themselves and have their children educated. According to the victims 12 years have passed and they have still not been able to return to a similar standard of living to that enjoyed before the attack. The village's social and economic conditions have deteriorated to such an extent that the community, which has been profoundly affected both collectively and individually, has not even able to restore the *status quo ante* extant in 2003.

CONCLUSION

124. In view of the particular circumstances of the case, and above all the violence of the attack which made it impossible for victims to keep evidence dating from the time of the attack or before, the Legal Representative invites the Chamber to find that the applicants have provided sufficient proof of the causal link between the crime and the harm alleged. The Chamber has sufficient evidence in its possession to establish the harm described above on the basis of a balance of probabilities.

125. The Legal Representative is of the view that this harm should be assessed at a later stage in the light of the specific proposals for reparations that he intends to submit. That process will determine to what extent it is necessary to go into the detail of the individual assessments of each request.

126. Lastly, the victims are far from wishing to "abuse" the process, which is what the Defence would appear to be contending. Over recent years – and in particular during his last field mission – the Legal Representative has constantly endeavoured to inform participants of their rights and to advise them on the best course of action, including how to proceed should it turn out that they are not eligible to claim reparations, thereby enabling them to avoid lengthy proceedings from which they would derive no benefit. Hence, the applicants for reparations whose dossiers have been filed with the Chamber simply wish justice to be done, above all by returning

something of the dignity and financial status that they lost in Bogoro on 24 February 2003.

For these reasons, may it please the Chamber to entertain the present submission.

[signed]

Mr Fidel Nsita Luvengika

Common Legal Representative of victims

Dated this 13 May 2016 in Brussels, Belgium.