

1 International Criminal Court
2 Trial Chamber II
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Germain Katanga - ICC-01/04-01/07
5 Presiding Judge Marc Perrin de Brichambaut, Judge Olga Herrera Carbuccion and
6 Judge Péter Kovács
7 Delivery of Decision on Reparations - Courtroom 1
8 Friday, 24 March 2017
9 (The hearing starts in open session at 10.05 a.m.)
10 THE COURT USHER: [10:05:54] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:06:30] (Interpretation) Good
14 morning, ladies and gentlemen.
15 Court officer, please call the case.
16 THE COURT OFFICER: [10:06:37] (Interpretation) Thank you, Mr President.
17 Situation in the Democratic Republic of Congo, The Prosecutor versus
18 Germain Katanga, reference ICC-01/04-01/07.
19 We are in open session.
20 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:06:53] (Interpretation)
21 Thank you.
22 I would like to ask the Legal Representative of Victims, the Office of Public Counsel
23 for Victims, the counsel for Mr Katanga and the Trust Fund for Victims to introduce
24 themselves for the record.
25 The Legal Representative of Victims, please, I would like to point out that the

1 Legal Representative is in the field office of the Court in Bunia, from where he will
2 follow the order of reparations to be presented later to an enlarged group of victims.

3 MR NSITA: [10:07:41] (Via video link) (Interpretation) Your Honours, as you have just
4 said, I am following the hearing from Bunia in the company of the legal assistant of
5 the team, Maître Flora Mbuyu Anjelani. And in the courtroom in The Hague, we
6 have the legal assistant of the team, Maître Julie Goffin and the case manager,
7 Ms Nadia Galinier. Here in Bunia we are accompanied by a group of five victims
8 selected in a representative manner, including three men and two women.

9 Thank you, Mr President, for giving me the floor.

10 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:08:44] (Interpretation) The
11 OPCV, please introduce yourselves.

12 MS MASSIDDA: [10:08:49] (Interpretation) Good morning, Mr President, your
13 Honours. The Office of the Public Counsel for Victims was recently designated to
14 represent some claimants unrepresented in these proceedings, today the team of the
15 bureau is as follows: Mr Orchlon Narantsetseg, legal officer; Mr Alexis Larivière,
16 legal officer; and myself, Paolina Massidda, lead counsel.

17 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:09:26] (Interpretation) Thank
18 you.

19 Counsel for Mr Katanga, please, I would like to note that Mr Katanga is supposed to
20 be following the decision on the order of reparations through a video link from the
21 Makala prison, in Kinshasa, in the Democratic Republic of the Congo.

22 MR HOOPER: [10:10:09] Good morning. Sorry for that slight slip. As far as I
23 understand it, Mr Katanga is watching this on a streaming link from his prison cell in
24 Makala prison in Kinshasa. He is represented today by myself, David Hooper;
25 Caroline Buisman; and Sophie Menegon.

1 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:10:34] (Interpretation) Thank
2 you, Counsel.

3 The Fund, please.

4 MR DE BAAN: [10:10:41] (Interpretation) Good morning, Mr President. The Fund
5 for victims is represented today by myself Pieter de Baan, executive director.

6 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:10:51] (Interpretation) Thank
7 you.

8 I shall begin today by giving a brief procedural background of the case.

9 Trial Chamber II of the International Criminal Court recalls that it was seized by the
10 presidency of the reparations proceedings in the case The Prosecutor versus

11 Germain Katanga, pursuant to Article 75 of the Statute.

12 The case relates to the attack of 24 February 2003, in Bogoro, Ituri, in the Democratic
13 Republic of the Congo.

14 On 8 May 2015, the Chamber ordered the Legal Representative, in cooperation with
15 the Registrar, to collate and file by 1 October, at the latest, all applications for

16 participation and/or reparation initially submitted by victims who are participants
17 and the claimants for reparations, and to the extent possible attach the supporting

18 materials defining the scope of the harm suffered and the causal link between the

19 alleged harm and the crimes committed; the Chamber further ordered the Registry to

20 disclose to the Chamber and the parties redacted versions of any other applications

21 for reparations from individuals who may not have made themselves known earlier

22 attaching also any available materials in support of their applications. Lastly, the

23 Legal Representative was ordered to represent any applicants for reparations who

24 might be identified subsequently.

25 Between 12 November 2015 and 29 February 2016, the Legal Representative

1 forwarded a total of 304 requests for reparations to the Registry. The Defence filed
2 general observations on the 304 applications for reparations, as well as specific
3 observations on each of those applications. On 6 September 2016, the Chamber
4 decided to take into consideration 38 files of individuals to whom Trial Chamber II, in
5 its previous iteration, had granted the status of participating victims in the case
6 against Mr Katanga, as well as the forms of three others who had submitted
7 applications for reparations in 2008. On 20 September 2016, the Defence filed its
8 observations on the said materials.

9 I should specify at this point that the order for reparations being issued today,
10 pursuant to Article 75(2) of the Statute, is based on 341 requests for reparations.
11 The Chamber recalls that the purpose of reparations proceedings is to oblige those
12 responsible for serious crimes to repair the harm they caused to the victims and to
13 enable the Court to ensure that offenders account for their acts. The proceedings are
14 a public acknowledgment by the Court of the suffering caused to victims as a result of
15 the serious crimes committed by the convicted persons and renders justice to the
16 victims while mitigating the consequences of the criminal acts to the extent possible.
17 To this end, the Chamber recalls that it is the Court's duty to do everything possible to
18 ensure that the reparations are significant for the victims who should, whenever
19 feasible, be granted reparations that are appropriate, adequate and timely.

20 Furthermore, it is of crucial importance that reparations should be granted and I
21 quote, "without adverse distinction on the grounds of gender, age, race, colour,
22 language, religion or belief, political or other opinion, sexual orientation, national,
23 ethnic or social origin, wealth, birth or other status."

24 The Chamber wishes to emphasise that even though the reparations proceedings
25 before this Court are adversarial, the parties thereto, namely, the Legal Representative

1 and the Defence, have been working in tandem throughout the duration of the
2 proceedings in order to ensure that they are concluded as expeditiously as possible.

3 And I thank them for that.

4 In light of the fact that this is a reparations order encompassing the entire gamut of
5 issues relevant to reparations, the Chamber decided to make a comprehensive
6 presentation of its approach in this open session. The presentation is a summary of
7 the order for reparations, and reflects the most salient points underlying the
8 reasoning of the Trial Chamber, only the full text of the order shall be authoritative
9 and binding on the Court.

10 The Chamber equally alive to the fact that this hearing is being followed by some of
11 the victims and that it is of direct concern to them. With that in mind, the Chamber
12 has, therefore, made it a point to highlight the issues to which it has found it
13 necessary to provide responses.

14 Before reading out the summary, I should like to observe that the order for
15 reparations is divided into two parts. Part one, which is the operative part of the
16 document, or the main document, sets out the principles that guided the reparations
17 proceedings in the instant case as well as the methodology adopted by
18 Trial Chamber II for the purpose of analysing individually each of the 341 requests for
19 reparations brought before it. It contains an operative part with the decisions of
20 the Chamber.

21 Part two covers the actual analysis of the 341 requests for reparations. It is more
22 than 1,000 pages long. For practical reasons, it is included as an annex to the main
23 document. It is classified for the time being as an ex parte confidential document in
24 order to protect the identities of the claimants for reparations. It shall however be
25 reclassified as public at a later date after the necessary redactions would have been

1 adopted by the Chamber upon the proposals of the parties.

2 Let us consider the background of the Katanga case. The attack on Bogoro took
3 place on 24 February 2003. Bogoro village is located at the intersection between the
4 localities of Bagaya and Dodoy in Ituri. It is the headquarters of the Babiase
5 groupement, itself a part of the collectivité of Bahema South.

6 Trial Chamber II, in its previous composition, estimated that Bogoro was home to at
7 least 800 civilians in 2003.

8 In its judgment of 7 March 2014 convicting Mr Katanga, the Chamber established, and
9 I quote, "beyond reasonable doubt that Germain Katanga's intentional contribution to
10 the crimes of murder as a war crime and as a crime against humanity, attack against
11 civilians, destruction of property and pillaging as war crimes were significant and
12 made in the knowledge of the intention of the group to commit the crimes."

13 The Chamber by majority found Mr Katanga guilty under Article 25(3)(d) of the
14 Statute as an accessory to the crimes committed on 24 February 2003 in Bogoro of
15 murder as a crime against humanity, of murder as a war crime, of attack against
16 a civilian population, as such, or against individual civilians not taking direct part in
17 hostilities, as a war crime of destruction of enemy property as a war crime and of
18 pillaging as a war crime. The Chamber unanimously found Mr Katanga not guilty
19 under Article 25(3)(d) of the Statute as an accessory to the crimes of rape and sexual
20 slavery as crimes against humanity and of rape and sexual slavery as war crimes.

21 The Chamber unanimously found Mr Katanga not guilty under Article 25(3)(a)
22 of the Statute of the crime of using children under the age of 15 years to participate
23 actively in hostilities as a war crime.

24 I will now move on to the five essential criteria of an order for reparations which
25 guided the general approach of the Chamber.

1 The Chamber recalls that an order for reparations pursuant to Article 75(2) of the
2 Statute must meet at least five essential criteria as set out by the Appeals Chamber:

3 1) The order for reparations must be made against the convicted person;

4 2) The Chamber must identify the victims eligible to benefit from reparations or set
5 out the criteria of eligibility based on the link between the harm suffered by the
6 victims and the crimes for which the person was convicted;

7 3) The Chamber must define the harm caused to the victims as a result of the crimes
8 for which the person was convicted. To that end, the Chamber notes that for the
9 purpose of determining the nature and/or extent of the reparations to be awarded, the
10 assessment of the scope of the harm caused to the victims may be conducted by
11 a Trial Chamber as part of its order for reparations or by the fund for victims once the
12 order for reparations has been issued;

13 4) The Chamber must establish and inform the convicted person of his or her liability
14 with respect to reparations. In other words, the Chamber must specify the scope of
15 the liability by setting the monetary amount of liability in the specific circumstances.
16 To this effect, the Chamber notes that the liability of the convicted persons with
17 respect to reparations must be based on and limited to the harm caused as a result of
18 the crimes for which the person was convicted. In fact, the Appeals Chamber
19 emphasised that the need for the person who is the subject of a reparations order to be
20 aware of the precise scope of his or her liability as a result thereof was not in dispute
21 mindful in particular of the right of appeal actionable under Article 82(4)
22 of the Statute. The convicted person's scope of liability must be defined by
23 the Chamber concerned within the framework of a judicial process;

24 5) The Chamber must specify and provide reasons for the type of reparations order
25 either collective, individual or both, pursuant to Rules 97(1) and 98 of the Rules of

1 Procedure and Evidence. It must also identify the modalities of reparations that
2 the Chamber considers appropriate based on the circumstances of the specific case
3 before it.

4 Under the specific circumstances of the instant case the Chamber is of the view that
5 the most appropriate approach is to carry out an individual analysis of the requests
6 for reparations submitted by the claimants. Based on its individual analysis of the
7 applications for reparations brought before it and on the value of the corresponding
8 harm assessed, the Chamber believes that it is in a position to evaluate the degree of
9 harm caused to each of the victims.

10 And on the basis in particular of its evaluation of the total extent of the harm suffered
11 by the claimants, the Chamber determines the amount of the liability of Mr Katanga
12 in terms of reparation. The Chamber is of the opinion that this approach makes it
13 possible to define Mr Katanga's liability with respect to reparations in a just and fair
14 manner as well as the resultant amount in reparations chargeable to him. At the end
15 of this process the parties shall have the possibility to exercise their right of appeal in
16 a comprehensive manner under Article 82(4) of the Statute.

17 The procedure followed by the Chamber.

18 The Chamber individually analyses each of the 345 requests for reparations submitted
19 to it in light of the conditions stipulated in Rule 85 of the Rules of Procedure and
20 Evidence and the jurisprudence of the Court for the purpose of granting or not the
21 status of victims to the applicants for reparations.

22 The evidence criteria applied by the Chamber.

23 The Chamber recalls that it is incumbent on the claimant for reparations to provide
24 sufficient proof of his or her identity, the harm suffered and the causal link between
25 the said harm and the crime for which the person was convicted.

1 In order to determine the standard of proof applicable to reparations proceedings,
2 the Chamber takes into consideration the specific circumstances of the case and in
3 particular the difficulties victims may face in obtaining evidence in support of their
4 claims for reparations due to the destruction or unavailability of such evidence in the
5 context at hand. In this particular case the Chamber recalls that the attack on Bogoro
6 took place 14 years ago.

7 Rule 94(1) of the Rules of Procedure and Evidence stipulates that requests for
8 reparations under Article 75 of the Statute shall contain the following particulars:

- 9 1) The full name and address of the claimant;
- 10 2) A description of the injury, loss or harm;
- 11 3) The location and date of the incident and to the extent possible the identity of the
12 person or persons the victim believes to be responsible for the injury, loss or harm;
- 13 4) Where restitution of assets, property or over tangible items is sought a description
14 of them;
- 15 5) Claims for compensation;
- 16 6) Claims for rehabilitation and other forms of remedy;
- 17 7) To the extent possible, any relevant supporting documentation, including names
18 and addresses of witnesses.

19 The Chamber recalls that at this stage of the proceedings the victims are required to
20 prove their allegations based on the balance of probabilities which is a standard less
21 exacting than the "beyond a reasonable doubt" standard applicable during the trial
22 phase.

23 Furthermore, the Chamber notes that Rule 94(1)(g) of the Rules of Procedure and
24 Evidence requires victims to produce supporting documentation for their reparations
25 claims "to the extent possible", quote, unquote. The Chamber considers this rule as

1 taking into account the difficulties the victims may face in collecting the supporting
2 materials and particularly the time that has elapsed ever since the commission of the
3 crimes in question.

4 Under these circumstances and considering the settled practice of the Inter-American
5 Court as well as certain transitional justice mechanisms, the Chamber is of the view
6 that it would be appropriate for it to rely on circumstantial and indirect evidence for
7 the purpose of establishing certain facts in the present case.

8 I will come now to the methodology used by the Chamber to analyse the harm
9 alleged by the claimants:

10 The Chamber recalls that it must define the harm caused to natural persons or legal
11 entities as a result of one or several crimes committed by the convicted person.

12 For that purpose, the Chamber identifies the harm alleged by the claimants in their
13 requests for reparations. Then the Chamber determines whether the alleged harm
14 was caused by the crimes for which Mr Katanga was found guilty by referring to the
15 decision pursuant to Article 74 of the Statute as well as to the sentencing decision.

16 The Chamber notes that the requests for reparation submitted by the claimants
17 include allegations relating to material, physical and psychological, as well as sui
18 generis harm.

19 The Chamber recalls that the notion of harm within the meaning of Rule 85(a)
20 of the Rules of Procedure and Evidence refers to an injury, a loss or damage. It
21 denotes the concepts of hurt, injury and damage. Furthermore, the Chamber recalls
22 that Article 85 of the Rules of Procedure and Evidence covers harm that may be
23 material, physical or psychological so long as it is personal to the victim.

24 The Chamber recalls that the question of whether a person suffered harm or not as a
25 result of the commission of one or several crimes by the convicted person and is

1 therefore recognised as a victim by the Court should be decided in light of the
2 circumstances.

3 I will move on now to the concrete aspects. The harm resulting from the crimes for
4 which Mr Katanga was convicted and which have been identified for the Chamber:
5 One, material harm.

6 Destruction of houses, annexes to the houses or outhouses and professional premises.

7 The Chamber notes that in their requests for reparations the claimants allege as
8 a general rule that during the attack on Bogoro they suffered material harm as a result
9 of the destruction of their houses, annexes to their houses and professional premises.

10 That being the case, the Chamber is of the opinion that subject to the specific
11 circumstances confirmed in the course of the individual analysis of the requests for
12 reparations and the observations of the Defence, the material harm resulting from the
13 destruction of a house and annex to a house or a professional premises has been
14 established on the balance of probabilities.

15 Second category: Pillaging of furniture, personal belongings and goods.

16 The Chamber notes that in their requests for reparations the claimants allege having
17 suffered material damage as a result of the pillaging of their furniture and other
18 personal belongings and goods.

19 The Chamber is of the view that it is reasonable to presume that the vast majority of
20 people who were living in Bogoro were in possession of belongings that were
21 essential to their daily lives and that as a result of the destruction of their houses, the
22 annexes to their houses and their professional premises during the attack on Bogoro,
23 the property that was inside those structures was either looted or destroyed.

24 That said, the Chamber considers that from the moment that the claimant declared
25 having suffered material prejudice due to the destruction of a house and annex to the

1 house or a professional structure the material harm resulting from the pillaging of
2 furniture, personal belongings or goods is presumed to have been established without
3 any other specific items of evidence having to be produced.

4 In the case of the claimant who alleges only that personal belongings essential to his
5 or her daily life were destroyed or pillaged the Chamber considers that such harm has
6 been established if, on the basis of a body of evidence, the claimant proves that he or
7 she was present or living in Bogoro at the time of the attack.

8 Third category of material harm: Pillaging of cattle, the destruction of farms or
9 harvests or the pillaging of harvests.

10 The Chamber notes that in their requests for reparations the claimants declare having
11 suffered material harm due to the pillaging of their cattle or other livestock as well as
12 the destruction of their fields and their harvests or the pillaging of their harvests.

13 Mindful of the importance of agricultural and animal husbandry in the local society, it
14 is reasonable to presume that the vast majority of the inhabitants of Bogoro owned
15 cattle and/or farms in order to meet their daily needs. It follows that on the balance
16 of probabilities the destruction of houses during the attack on Bogoro, cattle farms
17 and harvests were also pillaged or destroyed.

18 In light of the foregoing, the Chamber considers that insofar as the claimant has
19 established that harm was caused by the destruction of a house, the material harm
20 owing to the pillaging of cattle or other livestock, as well as the destruction of farms
21 or harvests or the pillaging of harvests is presumed to have suffered without any
22 other item of evidence having to be produced.

23 As to the extent of the alleged harm, the Chamber is not able to make a determination
24 in most of the cases with respect to the type and quantity of cattle pillaged, the size of
25 the farms destroyed or the type and quantity of harvests pillaged in the absence of

1 precise evidence. Consequently, as a general rule, the Chamber considers that such
2 harm would be equivalent to individual levels of consumption.

3 I will now move on to psychological harm. It is the Chamber's view that in order to
4 establish psychological harm resulting from the death of a relative or a loved one
5 during the attack on Bogoro on the basis of the preponderance of evidence the
6 claimant must prove: One, the death of a person during the attack on Bogoro; and
7 secondly, their relationship between the claimant and the direct victim.

8 Consequently, once the death of the direct victim during the attack on Bogoro and the
9 filial relationship between the direct victim and the claimant have been established in
10 light of all the materials and evidence provided in support of the request for
11 reparations, the direct personal link and by extension the psychological harm caused
12 by the death of a loved one is presumed to have been established.

13 The Chamber considered that each of the claimants, having proven that they had
14 suffered harm of some sort following the attack on Bogoro or that they had been
15 present during the said attack suffered psychological harm linked to the attack on
16 Bogoro. The Chamber indeed noted that the attack on Bogoro was of a nature to
17 cause varying types of trauma to the victims of the attack.

18 The Chamber noted that the circumstances of the Bogoro attack was of a nature to
19 bring about trauma. It took into account the fact that it was difficult to carry out an
20 individual evaluation of the psychological state of each of the victims. That being
21 the case, the Chamber considered it reasonable to presume that all the 295 claimants
22 admitted as victims suffered psychological harm linked to the attack on Bogoro.

23 The last category harm: Physical harm.

24 The Chamber notes that in their requests for reparations some of the claimants stated
25 that they suffered physical harm during the attack on Bogoro.

1 The Chamber observes that in support of their allegations most of the claimants
2 produced medical records. The Chamber notes that medical attestations from
3 nongovernmental organisations and others do not specify that the injury mentioned
4 was sustained during the attack on Bogoro. As a result, the causal link in most of the
5 cases has not been established to the standard of proof required.

6 The Chamber's findings after an individual analysis of the requests for reparations.

7 The Chamber received a total of 345 requests for reparations. The Chamber carried
8 out an individual analysis of each of those requests. For purposes of legibility and
9 presentation, the individual analysis of the applications are contained in annex 1 of
10 this order for reparations.

11 The Chamber notes that 297 claimants proved on the preponderance of evidence that
12 they are victims of the crimes for which Mr Katanga was convicted and as a result of
13 that are entitled to the reparations ordered by the Chamber in the present order for
14 reparations.

15 How the Chamber assessed the scope of the harm.

16 The Chamber is of the view that the scope of the harm suffered by the victims in the
17 case for reparations before the Court is in the order of 341 applications for reparations
18 that the Court is seized of reflects the total harm suffered by the victim as recognised
19 by the Court.

20 The Chamber therefore intends to proceed to a monetary assessment of each type of
21 harm defined and thereafter set the amount Mr Katanga shall pay for as contribution
22 to the reparations.

23 The Chamber is aware of the disparity between the value of property lost at the time
24 of the events and their current value and of the difficulties of establishing evidence of
25 the value of property destroyed at the time of the attack on Bogoro and therefore

1 finds that such prejudice or harm must be assessed as at its value today.

2 The context in which Mr Katanga's victims suffered harm.

3 The Chamber is of the view that the monetary assessment of material harm can only
4 be assessed within the economic context of the Ituri region and most specifically in
5 the Bogoro village. To that end, the Chamber requests parties and the Trust Fund to
6 submit their observations on the costs of property alleged to have been destroyed at
7 the time at the local market costs.

8 On the other hand, when it comes to non-material harm, the Chamber is of the view
9 that it is not relevant to take into account the economic situation of the Ituri in
10 determining the amount of reparations to be granted. The monetary assessment of
11 psychological harm suffered by the victims of these terrible events at the time of the
12 attack and the psychological harm arising from the loss of a dear one cannot in any
13 circumstances whatsoever be tied to the economic status of the victim.

14 The monetary assessment of the harm suffered in relation to each of the items of
15 harm.

16 I therefore would like here in parentheses to say by way of caution that prior to
17 stating the monetary value of the harm assessed by the Court, it must be stated clearly
18 that the figures mentioned below are the amounts that the Chamber used in
19 calculating the total scope of harm suffered by the victims based on the applications
20 before the Court and therefore the figure that I will mention does not reflect an
21 amount that will be paid out to the victims who have claimed harm in this matter.

22 Regarding material harm.

23 The Chamber recalls that the certificate of residence produced do not specify the
24 types of houses nor the state of houses. Therefore, the Chamber is of the view that it
25 is appropriate to determine a minimum amount and therefore sets the amount for

1 harm suffered in relation to the destruction of homes at \$600.

2 During its analysis of the application for reparations the Chamber was not able to
3 determine the nature of the annex buildings. It therefore sets the material damage
4 for destruction of annexes at \$100.

5 The Chamber assesses the basic furniture of seven persons at \$500 per house.

6 In relation to personal effects, the Chamber observes that applicants only allege
7 pillaging of clothing and school supplies, and in the absence of specific evidence
8 the Chamber was not able to determine the specific items that were lost. Therefore,
9 loss arising from or harm arising from personal harm is set at US\$75 per person.

10 Where the Chamber was not able to determine the type and exact quantity of cattle
11 owned by an applicant, the harm suffered in relation to the loss of cattle is assessed at
12 \$524, which corresponds to a monetary value of the average herd as determined by
13 the Chamber.

14 When it comes to harvests and given the wide disparity in the land surfaces owned
15 and the types of farming and thereby the attendant scope of harm suffered by the
16 applicants, the Chamber sets the amount at US\$150 per applicant.

17 Let me now turn to psychological harm and its assessment.

18 Psychological harm flowing from the death of a close relative is assessed by
19 the Chamber *ex aequo et bono* at \$8,000 and while psychological harm suffered from
20 the death of a distant relative is assessed *ex aequo et bono* at \$4,000.

21 Psychological harm relating to the attached is assessed at US\$2,000 per applicant and
22 to which could be added, as the case may be, psychological harm from the death of
23 a close relative.

24 For purposes of clarity let me reiterate that the amounts I have mentioned are not to
25 be directly paid out to the victims but constitute the bases on which the Chamber

1 calculated the total amount of harm suffered by all the victims under this reparations
2 procedure.

3 The Chamber's findings on the scope of harm suffered by the victims.

4 A table shall be included in this reparations order outlining the amounts in relation to
5 each type of harm suffered by the victim. It includes a total amount of all the harm
6 and values thereby enabling the Court to determine a monetary value in relation to
7 the scope of the harm suffered by victims identified by the Chamber. The monetary
8 value of the harm as per its scope is therefore set at three million, seven hundred
9 fifty-two -- \$3,752,620.

10 The Chamber's assessment of Mr Katanga's responsibility for reparations.

11 Based on the rule of proportionality the Chamber has determined the scope of
12 Mr Katanga's responsibility in reparations and has set the monetary amount at as
13 appropriate.

14 The Chamber estimates that the financial situation of Mr Katanga, the person found
15 guilty in this case, cannot be considered as a relevant factor in determining the
16 monetary amount that he shall contribute to the reparations.

17 The Court notes that in relation to Mr Katanga's contribution to the harm suffered by
18 the victims, Trial Chamber II in its previous composition found in 2014 beyond a
19 reasonable doubt that the attack on Bogoro had the purpose of eliminating the civil
20 Hema population of the locality. It further found beyond reasonable doubt that
21 "Germain Katanga's intentional contribution to the crimes of murder as a war crime
22 and as a crime against humanity, attack against civilians, destruction of property and
23 pillaging as war crimes was significant and made in the knowledge of the intent of
24 the group to commit the crime."

25 The Chamber notes that the contribution of Mr Katanga falls within the context of

1 a criminal enterprise involving several persons and that although Mr Katanga held
2 the highest position within the Ngiti militia of the Walendu-Bindi collectivity, at least
3 in the months of February 2003, it was not established that the militia at that time
4 constituted an organised power structure with control over the militia and that he
5 had control over the militia and therefore had control over the crimes in the meaning
6 of Article 25(3) of the Statute.

7 The Chamber recalls that the scope of the responsibility of the person found guilty
8 must be proportionate to the harm caused, particularly in relation to his participation
9 in the commission of the crimes for which he has been found guilty within the
10 circumstances of the case.

11 Considering all the factors mentioned above, the Chamber sets Mr Katanga's
12 responsibility for reparations based on the principle of proportionality at \$1 million.

13 Repeat \$1 million.

14 Let me now turn to the types of reparations upheld by the Chamber.

15 The Chamber recalls that pursuant to Rule 77(1) of the Rules of Evidence and
16 Procedure, it may order individual reparations, Rule 98(2); or collective reparations,
17 Rule 98(3); or both. The Chamber further recalls that individual reparations and
18 collective reparations are not mutually exclusive and therefore can be granted
19 concurrently.

20 In coming to its decision the Chamber found that it is primordial to take into account
21 the expectations and needs of the victims as expressed during the various
22 consultations.

23 The Chamber further takes into account factors mentioned in the Rules of Evidence
24 and Procedure, particularly the scope of the harm, the loss and the prejudice, the
25 number of victims, the scope and modalities for reparations as provided for in the

1 regulations. Finally, it takes into account Mr Katanga's responsibility in the matter.
2 The Chamber recalls that reparations must be proportional to the harm suffered, to
3 the loss and damage suffered as established by the Court. They must tend to seek
4 reconciliation between the guilty person and the victims of the crime. When such is
5 possible, reparations should take into consideration the culture and local customs
6 unless they were to become a source of discrimination and exclusion and to prohibit
7 victims from enjoying all their rights. In this connection, the Chamber recalls that
8 reparations must seek to avoid repetition of discriminatory practices that would have
9 occurred before the commission of the crimes.

10 The Chamber considers that to qualify as a recipient for collective reparations, a
11 group or category of persons may be linked by a common experience or by having
12 been victims of a crime or the same violation that is within the competence of the
13 Court. Therefore, collective reparations may be of benefit to a group, notably ethnic,
14 racial, social, political, religious or pre-existing group, but also to any other group
15 which is united in the suffering and the harm collectively suffered as a result of the
16 crimes for which the person convicted was found guilty. The Chamber considers
17 that in this case, it is in order to order both individual reparations under Rule 97(1)
18 and 98(2) of the Rules and collective reparations under Articles 97(1) and 98(3)
19 of the Rules of Procedure and Evidence.

20 The Chamber first would like to underscore the fact that it conducted an individual
21 assessment of the applications from all the victims and found conclusively that 297
22 victims are eligible for reparations in the current proceedings. The Chamber is of the
23 view that 297 victims is a number to which it can grant individual reparations
24 without prejudice to collective reparations. Furthermore, the Chamber is of the view
25 that collective reparations should be ordered targeted at the needs of each victim in

1 order to significantly deal with the suffering or harm suffered by victims of
2 Mr Katanga.

3 Reparations modalities upheld by the Chamber.

4 Having determined the types of reparations, the Chamber recalls that pursuant to
5 Article 75(1) of the Statute, it has to determine the modalities of reparations that are
6 most appropriate based on the specific circumstances in this case. In this regard, the
7 appropriate modality of reparations has been set mindful of the nature of the harm
8 suffered and the requests for reparations to be remedied. In this context,
9 the Chamber therefore takes into account the needs of the victims.

10 The Legal Representatives and Defence agree that four collective and one individual
11 reparations measure should be granted. More specifically, they propose individual
12 reparations of one symbolic euro and collective reparations which would take the
13 form of assistance for building and supporting income-generating activities, as well as
14 assistance in the area of education and psychological support.

15 The Chamber is of the view that the following four modalities, help to housing,
16 support for income-generating activity, support for education and psychological
17 support, indeed correspond to the needs of Mr Katanga's victims and therefore make
18 it possible to target the needs of each victim.

19 The Chamber is of the view that these four modalities of reparations can significantly
20 contribute to the reparation of harm suffered by victims, both individually and
21 collectively. In this connection therefore, the Chamber considers that compensation
22 to the amount of \$250 as a symbolic amount should be granted to each victim of
23 Mr Katanga.

24 The Chamber underscores the fact that this symbolic compensation does not make up
25 for the totality of the harm. However, it provides relief to the victims significantly in

1 relation to the harm suffered. In fact, the said amount can grant some measure of
2 autonomy to the victims by making it possible for them to engage in some kind of
3 activity, acquire some tools and therefore make relevant decisions pertaining to their
4 current needs.

5 Findings of the Court relating to the execution of this reparations order.

6 Pursuant to provisions 2 and 3 of Rule 98 of the Rules of Procedure and Evidence and
7 also Rule 54 of the Rules of the Fund, the Chamber orders the Fund to prepare a plan
8 for the implementation of this reparations order concerning the victims of

9 Mr Katanga as identified by the Chamber. The Chamber recalls that the project must
10 be compliant with Rules 59, 66-68, 69-72 of the Regulations of the Fund.

11 In order to carry out this mandate in the most efficient way, the Chamber calls for the
12 following process to be upheld for the purposes of approving the project.

13 First, the Chamber orders the Fund to prepare a project and submit to it within three
14 months from the date of the issuance of this reparations order. This project shall
15 contain a programme that outlines the projects that the Fund intends to undertake,
16 with a view to executing these different components and to provide the Court
17 therefore with specific information on this project, such as description of the project,
18 cost, modality of adaption and execution.

19 The Fund shall elaborate such a project based on all reparations modalities outlined
20 by the Chamber pursuant to the section types of modalities of reparations.

21 The Chamber recalls also that the Chamber must take into account the views and
22 proposals of victims in relation to the projects that they consider to be most
23 appropriate. The project should be designed by the Fund to include appropriate
24 measures for security, physical and psychological well-being and protection of
25 victims, taking into account general issues in order for the reparations to be accessible

1 to all.

2 Furthermore, priority may be given to some victims who might be in particularly
3 vulnerable situations or who may need urgent assistance. Once the project would
4 have been submitted to the Chamber, parties would have the possibility to make
5 observations on questions relating to various interests and rights within a time frame
6 of one month from the date on which the project would be submitted to the Chamber.
7 The Chamber will then proceed to examine the project as soon as possible and may
8 make modifications as it deems necessary.

9 The decision by the Chamber to approve the project shall order the Fund to
10 implement all components of the project in its individual and collective components,
11 and the Fund shall provide regular reports to enable the Chamber to monitor the
12 execution of the project.

13 Mr Katanga's contribution to the reparations is what I will now turn to.

14 The Chamber notes that the accused person may contribute to the reparations
15 procedure voluntarily to the victims or groups of victims and in a public or
16 confidential manner.

17 Therefore, the Defence is hereby ordered to contact the Fund and discuss with it the
18 contributions that Mr Katanga may wish to make towards the reparations either by
19 a letter of apology, a public apology or some other public ceremony that might be
20 organised with Mr Katanga's approval.

21 Possible contributions by States and other parties.

22 The Chamber recalls that Article 75(6) of the Statute provides that "nothing in this
23 Article shall be interpreted as prejudicing the rights of victims under national and
24 international law". Therefore, the reparations granted by an order do not absolve
25 any States from responsibility to provide or grant reparations to victims pursuant to

1 other treaties or national legislation.

2 The Chamber further points out that States Parties are under an obligation to fully
3 cooperate with the Court in facilitating the implementation of reparations ordinances
4 and their implementation.

5 The Chamber recalls that on 28 September 2016, the Democratic Republic of the
6 Congo demonstrated an interest in participating in the present proceedings.

7 The Chamber therefore orders the Funds to take into account the request of the Legal
8 Representative and to contact the officials of the DRC and find out how they may
9 contribute to the reparations process.

10 Measures for financing reparations.

11 The Chamber notes that Mr Katanga was found indigent for the purposes of the trial.

12 The Chamber also notes that the Registry observed that Mr Katanga does not appear
13 to own any property, any goods or assets that may be used for the purposes of
14 reparations. The Chamber recalls that it has set the amount of responsibility on

15 Mr Katanga for reparations at US \$1 million. Mindful of this situation, the Chamber
16 orders the Board of Directors of the Fund to indicate whether they would be ready or
17 willing to use other resources with a view to funding and implementing the
18 reparations, both individual and collective, and to inform the Court accordingly of the
19 monetary aspects of the project.

20 The Chamber recognised that under Rule 56 of the Rules of the Fund, the decision
21 allocating resources from other sources of the Fund for the purposes of reparations
22 are a matter that fall squarely within the discretionary powers of the Board of the
23 Fund. Therefore, the Chamber notes that Rule 56 provides that the Board of
24 Directors of the Fund will do everything possible to manage the funds, taking into
25 account the need to provide sufficient resources for implementation of the

1 reparations.

2 The Chamber underscores the fact that the allocated amount for individual
3 reparations is only about 6 percent of the total and is therefore a modest amount. In
4 this regard, the Chamber must consider how to take into account the victims'
5 individual circumstances in relation to the prejudice.

6 Similarly, the Board of the Fund may decide to use other resources to enable funding
7 and implementation of the collective reparations, and therefore the Chamber is of the
8 view that other resources could also be used for individual reparations as ordered by
9 the Chamber, subject to the decision of the Board of Directors.

10 The Chamber therefore invites the Board of the Fund to use its discretion to grant
11 reparations that are significant enough to meet the needs of the victims.

12 The Chamber comments to the Board of the Fund to carefully examine the possibility
13 of a compensation package outside of the collective reparations and also to provide
14 other resources for the purposes of individual reparations.

15 Let me therefore read the decision of the Court.

16 For all these reasons, the Court unanimously issues a reparations order in the case of
17 Mr Katanga. The Chamber finds that 297 out of the 341 applicants met the standard
18 of the most -- on the balance of probabilities as being victims of the crimes for which
19 Mr Katanga was found guilty.

20 The Chamber therefore decides that 297 victims should benefit from reparations in
21 the present case.

22 The Chamber has assessed the scope of the prejudice suffered by the 297 victims at
23 \$3,752,620. The Chamber sets the amount to be contributed by Mr Katanga towards
24 the reparations at \$1 million. The Chamber declares that Mr Katanga is still indigent,
25 even in this, in regard to reparations. The Chamber orders individual reparations to

1 the symbolic amount of \$250 and collective reparations targeted for the benefit of each
2 victim by way of help in accommodation, support in income-generating activities,
3 education and psychological support.

4 The Chamber orders the Fund to prepare a project to be implemented mindful of the
5 decision of the Court, which should be submitted by 27 June 2017 at the latest and
6 which should contain the details of the programme it intends to implement.

7 The Chamber orders the Legal Representatives and Defence to submit observations
8 on the project by 28 July 2017 at the latest;

9 The Chamber orders Defence to contact the Fund with a view to discussing the
10 contribution that Mr Katanga could make to the reparations if he wishes to do so;

11 The Chamber orders the Fund to contact the Democratic Republic of the Congo and
12 seek possible collaboration in the accomplishment and implementation of the
13 reparations;

14 The Chamber orders the presidency, with the assistance of the Registry, to continually
15 monitor the financial situation of Mr Katanga, pursuant to Rule 117 of the Regulations
16 of the Court;

17 The Chamber orders, mindful of the financial situation of Mr Katanga, orders the
18 Board to indicate whether it is in a position to use other resources with a view to
19 meeting the reparations, both individual and collective, and to inform the Chamber
20 accordingly;

21 The Chamber invites the Fund to bear into account, within the context of its mandate,
22 whenever possible, various applications that may subsequently arise, particularly in
23 relation to sexual violence, as the case may be;

24 The Chamber orders the Registry to take all necessary measures to publish this
25 reparation order.

1 I will conclude simply by thanking the parties for their contribution and the quality of
2 their work. I also want to thank my two colleagues, Judge Olga Herrera-Carbuccia
3 and Judge Péter Kovács, for their commitment and collegial work which made it
4 possible for us to unanimously issue this ordinance.

5 Our legal assistants, our interns, present and past, put in significant work to this effort
6 and we want to thank them. We also want to thank the Trust Fund for Victims and
7 all those who participated in the proper unfolding of these reparations procedures.

8 The court officers, staff from various sections of the Registry, the interpreters,
9 translators, stenographers, audio-visual technicians, security officers, as well as our
10 colleagues from the IT department and the general services of the Court.

11 The Chamber underscores that without the contribution of all the persons I have
12 mentioned, and I hope I didn't leave out any, these proceedings would not have
13 unfolded hitch free and with such success.

14 THE COURT USHER: All rise.

15 (The hearing ends in open session at 11.11 a.m.)