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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 public Annex

**Observations of the victims on the principles and procedures to be applied to
reparations**

Source: Common Legal Representative of Victims

No. **ICC-01/04-01/07**

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I. PROCEDURAL HISTORY

1. On 7 March 2014, G. Katanga was found guilty of crimes against humanity and war crimes committed during the attack on Bogoro of 24 February 2003.¹
2. On 23 May 2014, Trial Chamber II (“the Chamber”), acting by majority, sentenced G. Katanga to 12 years of imprisonment.²
3. On 21 August 2014, the Common Legal Representative of Victims (“the Legal Representative”) requested the Chamber to set a timetable for the submission of observations on the principles applicable to reparations and the procedure to be followed.³
4. By an Order of 27 August 2014, the Chamber requested the Registry to file a report setting out, in particular, (1) detailed and up-to-date information on the harm suffered by the participating victims (or the victims who had filed an application for reparations)⁴ and the reparations sought by those victims; (2) recommendations on the types and modalities of the reparations which could be awarded (including the award of reparations on an individualised or collective basis), and (3) information on any measures that may already have been taken by the Trust Fund for Victims (“the Trust Fund” or “TFV”), or any other organisation, to redress the damage and harm caused by the attack on Bororo of 24 February 2003.⁵ In connection with the implementation of said

¹ “Judgment pursuant to article 74 of the Statute”, ICC-01/04-01/07-3436-tENG.

² “Decision on Sentence pursuant to article 76 of the Statute”, ICC-01/04-01/07-3484-tENG.

³ “*Requête sollicitant la fixation d’un calendrier en vue de permettre aux victimes de soumettre leurs observations sur les réparations (Article 68, 75 et 76 du Statut)*”, ICC-01/04-01/07-3507.

⁴ Unless otherwise specified, all subsequent references to “victims” concern the 350 victims admitted to participate and the 14 victims who have filed applications for reparations.

⁵ “Order instructing the Registry to report on applications for reparations”, ICC-01/04-01/07-3508 (“Order no. 3508”). See also: “Order on the ‘Request for an Extension of Time to Report on Applications for Reparations Pursuant to Regulation 35 of the Regulations of the Court’”, 24 November 2014, ICC-01/04-01/07-3511. This decision extended the time limit to 15 December 2014.

Order, the Chamber invited the Registry to work in close consultation and collaboration with the Legal Representative.⁶

5. On 15 December 2014, the Registry filed its report in accordance with the Order (“the Registry Report”).⁷
6. On 27 January 2015, the Legal Representative filed observations on the Registry Report submitted in accordance with the Chamber’s Order (ICC-01/04-01/07-3508).⁸
7. On 12 March 2015, the Legal Representative filed a request for clarification regarding the implementation of rule 94 of the Rules of Procedure and Evidence (“the Rules”).⁹
8. By an Order of 1 April 2015, the Chamber fixed a timetable for filing observations as part of the procedure set out in article 75 of the Rome Statute (“the Statute”). The Chamber also invited the parties, the Registry, the Prosecutor and the Trust Fund to submit their observations on: (a) the principles for reparations, and (b) the scope and extent of any damage, loss or injury to, or in respect of, victims, as well as the appropriate types and modalities of reparations.¹⁰

⁶ ICC-01/04-01/07-3508, para. 8.

⁷ “Registry Report on Applications for Reparations in accordance with Trial Chamber II’s Order of 27 August 2014”, 15 December 2014, transmitted on 16 December 2014, ICC-01/04-01/07-3512. A public redacted version of Annex 1 was filed on 21 January 2015, ICC-01/04-01/07-3512-Anx1-Red2 (“Annex 1 to the Registry Report”).

⁸ “*Observations des victimes sur les réparations (Articles 68-3 et 75 du Statut; Règles 89 à 93 et 97 du Règlement de procédure et de preuve)*”, filed on 27 January 2015, transmitted on 28 January 2015, ICC-01/04-01/07-3514.

⁹ “*Demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve*”, 12 March 2015, ICC-01/04-01/07-3527.

¹⁰ “Order instructing the parties and participants to file observations in respect of the reparations proceedings”, ICC-01/04-01/07-3532-tENG; “*Ordonnance autorisant le dépôt d’observations en application de l’article 75-3 du Statut*”, ICC-01/04-01/07-3533-Red.

9. In this respect, the Chamber wished to obtain the views of the parties, the Registry, the Trust Fund, and the victims admitted to file their observations on the reparations procedure, on the following points:

- Victims and groups of victims eligible to benefit from reparations;
- Identification of victims;
- Harm;
- Standard of causation;
- Scope of Mr Germain Katanga's liability for reparations;
- Modalities and forms of reparations;
- Objective of reparations;
- Transmission of requests for reparations to the Trust Fund for Victims;
and
- Draft implementation plan.

10. On 8 May 2015, the Chamber issued its decision on the request for clarification regarding the implementation of rule 94 of the Rules and future stages of the proceedings.¹¹

11. These observations are filed in accordance with articles 68 and 75 of the Statute and rules 89-93, 97 and 98 of the Rules.

12. In his submission, the Legal Representative of Victims will set out the views and concerns of the victims which were conveyed during the various collective meetings and individual interviews that were held with said victims, including those conducted as part of the consultation exercise organised by the Registry.¹² The views and concerns of the victims participating in the proceedings are fundamental to the issue of reparations as they are the first to be concerned by

¹¹ "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", 8 May 2015, ICC-01/04-01/07-3546-tENG.

¹² ICC-01/04-01/07-3512-Anx1-Red, paras. 31-55.

the award of reparations and they have been following the proceedings closely for several years. They have had time to reflect on the problems and issues.

II. THE CONTEXT OF THE ATTACK

13. On 24 February 2003, the village of Bogoro, where UPC fighters were based, was attacked very early in the morning when it was still dark and the villagers were still asleep. The attackers arrived from all directions, making escape very difficult. The predominantly Hema population of Bogoro was pursued, mistreated, wounded or killed during the attack. The acts of murder were committed by machete or by gunfire. In its judgment on the question of guilt, the Chamber held that the attackers pursued those who were fleeing from the UPC camp, non-combatant villagers and combatants alike, killing many of them, including women, children and elderly persons, either by shooting them or by striking them with machetes. The attackers also entered houses to seek out and kill villagers who were hiding inside.
14. Some of the victims were spared only because they pretended not to be Hema. The Bogoro operation took place in the context of an armed ethnic conflict between, on the one hand, the Lendu and Ngiti and, on the other hand, the Hema, and not only between armed groups.
15. After the battle, the village of Bogoro was cleared of its Hema population. Some of them were forced to flee and others perished during the hostilities. Once the village had fallen into the hands of the attackers and the fighting had ceased, the attackers continued to pursue the inhabitants hiding in the bush, sexually assaulted some of the women, captured people whom they found hiding and killed others.

16. After control was taken of the village, property belonging to the civilian population that was essential to its daily life, including livestock and animals, food, crops ready for harvest, metal sheeting, doors and windows from houses, furniture, kitchen utensils and various other items, was taken away by the attackers. They also burned the houses, the roofs of which were made of straw.
17. To date, according to the statements made by the victims themselves, none of them have been able to recover the standard of living that they had enjoyed before the attack. This is simply because they were deprived, within the space of a few hours, of all the property that they had struggled hard to acquire throughout their lifetime. Most of the victims are trying hard to restart their lives elsewhere and have no desire to return to Bogoro, where they would have to start all over again. Some of them simply do not have the means.¹³

III. PRINCIPLES AND PROCEDURES TO BE APPLIED TO REPARATIONS

18. According to article 75(1) of the Statute, the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
19. Pursuant to rule 97(1) of the Rules, the Court may award reparations on an individualised basis or, where it deems it appropriate, on a collective basis or both.

¹³ P-166, EVD-OTP-00202, para. 15; ICC-01/04-01/07-T-225-Red-FRA, pp. 54-55.

20. Rule 98 states:

1. Individual awards for reparations shall be made directly against a convicted person.
2. The Court may order that an award for reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.
3. The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.
4. Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.
5. Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79.

21. In the *Lubanga* case, Trial Chamber I held that:

reparations, as provided in the Statute and Rules, are to be applied in a broad and flexible manner, allowing the Chamber to approve the widest possible remedies for the violations of the rights of the victims and the means of implementation.¹⁴

It stressed the importance of the central role of the victims, their families and their communities throughout the reparations process and that they should “receive adequate support in order to make their participation substantive and effective”.¹⁵

A. Objectives of the reparations

22. According to the Appeals Chamber in *Lubanga*, reparations fulfil two main purposes: they oblige those responsible for serious crimes to repair the harm

¹⁴ ICC-01/04-01/06-2904, para. 180.

¹⁵ “Decision establishing the principles and procedures to be applied to reparations”, 7 August 2012, ICC-01/04-01/06-2904, para. 203.

they caused to the victims and they enable the Court to ensure that offenders account for their acts.¹⁶

23. In the instant case, the victims are of the opinion that the conviction and sentence imposed on G. Katanga were insufficient.¹⁷ For many of them, the reparative function of the judgment itself has been met only to a very limited extent and they hope that this will not be the case for the reparations.

24. The right to reparation extends beyond mere financial considerations and must take account of human beings as a whole, together with their aspirations, and promote their development as human beings and the restoration of human dignity.¹⁸

25. Far from demanding the principle that the function of reparations is to wipe out “all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”,¹⁹ the reparations sought by the victims are aimed, above all, at meeting a number of basic needs that are essential to daily life in the place where they are living so that they can live in dignity.

26. The victims have clearly stated what they are expecting in terms of reparations.²⁰ Their expectations correspond to the distress that they have

¹⁶ “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 (Annex A) and public annexes 1 and 2”, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 2.

¹⁷ ICC-01/04-01/07-3514, para. 31.

¹⁸ Inter-American Court of Human Rights, *Loayza Tamayo v. Peru*, Judgment of 27 November 1998 (Reparations), paras. 148, 150-151.

¹⁹ Permanent Court of International Justice, *Case Concerning the Factory at Chorzów* (Claim for Indemnity), (Merits), Series A, No. 17, 13 September 1928, p. 47.

²⁰ ICC-01/04-01/07-3512-Anx1-Red, paras. 45-55; ICC-01/04-01/07-3514, paras. 13-25.

been enduring, which stems directly from the harm they suffered as a result of the crimes of which G. Katanga has been convicted.

27. They are aware that full reparations for the harm they have suffered would probably be difficult to achieve, not only with regard to the nature of the harm suffered but also owing to budgetary constraints.
28. The victims of the attack on Bogoro of 24 February 2003 need to be able to reconstruct and, in most cases, recover a decent standard of living. In the present case, the objectives of the reparation must be to enable the victims to ease the suffering caused by the attack.
29. In order to give the reparations meaning and to spare the victims further frustration, the Chamber must draw a clear distinction between what it must order judicially in terms of reparations for the victims of the case and what it could recommend extrajudicially for other categories of victims or affected communities, if this is to be the case.
30. Lastly, the Legal Representative wishes to recall that the victims in *Katanga* stated nonetheless that, should reparations ever be awarded to “[TRANSLATION] victims in general”, their tormentors could also become beneficiaries. Such a situation would prejudice the very objective of reparations.

B. Victims and groups of victims benefitting from reparations

31. Rule 85 of the Rules states:

- a) “Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

and

- b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

32. It is also appropriate to interpret the definition of victim in the light of the 1985 Declaration of Basic Principles of Justice²¹ and the 2005 Basic Principles and Guidelines on the Right to Reparation.²²

33. These two texts interpret the definition of “victim” broadly to include the indirect victims of a crime, i.e. members of the immediate family or household or dependants of the direct victim and persons who suffered harm in intervening to assist victims.²³

34. In order to determine whether the applicants conform to the definition of victim as laid down in rule 85(a) of the Rules, the Chambers have applied four criteria,²⁴ namely: (1) establishing the identity of the natural person or legal

²¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly, A/RES/40/34, 29 November 1985, principle 2.

²² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 16 December 2005, principle 8 (“the Basic Principles and Guidelines on the Right to Reparation”).

²³ Judgment on the reparations, para. 190, referring to the “Redacted version of the ‘Decision on indirect victims’”, 8 April 2009, ICC-01/04-01/06-1813, paras. 50-52.

²⁴ “Decision on the application for participation in the proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6”, 17 January 2006, transmitted on 22 March 2006, ICC-01/04-101-tEN-Corr, paras. 79, 94; “Decision on applications for participation in proceedings a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*”, 20 October 2006, ICC-01/04-01/06-601-tEN, p. 9; “Decision on the Requests for Leave to Appeal the Decision on the Application for Participation of Victims in the Proceedings in the Situation”, 6 February 2008, ICC-02/05-121, p. 8; “Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08”, 2 April 2008, ICC-01/04-01/07-357, p. 8; “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”, 10 June 2008, ICC-01/04-01/07-578-Conf, para. 65; “Decision on the Application for Participation of Witness 166”, 23 June 2008, ICC-01/04-01/07-631-Conf, para. 4; “Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, 11 July 2008, ICC-01/04-01/06-1432, paras. 61-65.

entity, (2) verifying whether the applicant has suffered harm, (3) verifying whether a crime within the Court's jurisdiction can be established, and (4) verifying whether harm has been suffered as a result of the commission of a crime within the jurisdiction of the Court.

35. With respect to legal entities, Pre-Trial Chamber I has set out the following criteria: (1) any organisation or institution dedicated to religion, education,²⁵ art or science or charitable purposes, a historical monument, hospital or other place or object used for humanitarian purposes; (2) the organisation or institution must have sustained direct harm; (3) the crime from which the harm arises must fall within the jurisdiction of the Court; and (4) there must be a direct causal link between the crime and the harm.²⁶

36. The Appeals Chamber has also held that the harm suffered by the victim must be personal harm, either direct or indirect, and must be correlated with the charges confirmed against the accused.²⁷

37. The Legal Representative considers that the victims and groups of victims eligible to benefit from the reparations to be ordered against G. Katanga must satisfy the definition of "victim"²⁸ as specified in rule 85 of the Rules, as well

²⁵ Pre-Trial Chamber I has thus granted victim status to a school, as a legal entity (a/0071/08): "Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case", 10 June 2008, ICC-01/04-01/07-578-Conf, paras. 133-135.

²⁶ "Corrigendum to the 'Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06'", 31 January 2008, ICC-01/04-423-Corr-tENG, paras. 139-141.

²⁷ ICC-01/04-01/06-1432, para. 32.

²⁸ "Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008", 11 July 2008; "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 29 August 2011, ICC-01/09-02/11-

as in the 1985 Declaration on the Basic Principles of Justice and the 2005 Basic Principles and Guidelines on the right to reparation. For this purpose, it is necessary, in principle, for the victim to file an application for reparations in accordance with rule 94 of the Rules and regulation 88 of the Regulations of the Court. He wishes, however, to recall that victim status has already been granted to the 350 victims whom he represents²⁹ and who have already participated in the hearings on the merits. There is, therefore, no need to re-examine their case, especially as they expressed the wish to participate in all stages of the proceedings in their application to participate. This group of 350 victims must therefore be admitted to participate in the proceedings automatically.

38. In its decision of 8 May 2015, the Chamber opened up the possibility for the victims of the attack on Bogoro, who had not identified themselves thus far, to file an application for reparations by 1 October 2015 at the latest.³⁰

267; "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 15 January 2014, ICC-01/04-02/06-211.

²⁹ Pre-Trial Chamber I, "Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08", 2 April 2008, ICC-01/04-01/07-357; "Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case", 10 June 2008, ICC-01/04-01/07-578-Conf; "Decision on the Application for Participation of Witness 166", 23 June 2008, ICC-01/04-01/07-631-Conf; Trial Chamber II, "Corrigendum of Operative part of the Decision on the 345 applications for participation as victims in the proceedings", 31 July 2009, ICC-01/04-01/07-1347-Corr-tENG; "Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims", 23 September 2009, ICC-01/04-01/07-1491-Red-tENG; "Operative Part of the Second Decision on the Applications by Victims for Participation in the Proceedings", 23 November 2009, ICC-01/04-01/07-1669-tENG; "*Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*", 22 December 2009, ICC-01/04-01/07-1737; "*Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*", 17 March 2010, ICC-01/04-01/07-1967; "*Cinquième décision relative à 2 demandes de participation de victimes à la procédure*", 9 February 2011, ICC-01/04-01/07-2693; "Decision on the maintenance of participating victim status of Victims a/0381/09 and a/0363/09 and on Mr Nsita Luvengika's request for leave to terminate his mandate as said victims' Legal Representative", 7 July 2011, ICC-01/04-01/07-3064-tENG; "*Notification du désistement d'une victime (a/0317/09)*", 31 October 2014, ICC-01/04-01/07-3509. The Legal Representative has recently discovered that the file for victim a/0208/09 is actually a duplicate of the file for victim a/0210/08; this is one and the same person.

³⁰ "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.

This decision is an opportunity for said group of victims to assert their right to receive reparations. For this reason, the Legal Representative, in consultation with the Registry, plans to conduct investigations aimed at identifying the victims for the purpose of inviting their applications for reparations.

39. Thus far, 14 applications to participate in the proceedings and/or for reparations have been filed at the Registry, authorising the Legal Representative to represent them during the conduct of the proceedings in this case.³¹

40. The Legal Representative recalls that, at present, 364 victims (and applicants) have expressed their wish not only to participate in the reparations proceedings but also to benefit from the reparations.

41. The Legal Representative submits that anyone who satisfies the conditions as defined above will necessarily be eligible to benefit from the reparations. In the instant case, the definition of “victim” must be limited to those victims who have suffered as a result of the crimes for which G. Katanga has been convicted, namely: murder as a crime against humanity and as a war crime; attacking a civilian population; destroying property and pillaging as a war crime.³² The definition of victim must also be limited in its geographical and temporal scopes, as established by the Pre-Trial Chamber.³³

³¹ “Notification des demandes en réparation aux parties”, 30 September 2010, ICC-01/04-01/07-2430; “Notification à la Défense de 8 formulaires de demande de réparation en application de la règle 94(2) du Règlement de procédure et de preuve”, 13 August 2013, ICC-01/04-01/07-3395; the Legal Representative also filed annexes to five applications for reparations at the Registry by e-mail on 8 May 2014.

³² ICC-01/04-01/07-3436-tENG, pp. 658-659.

³³ “Decision on the confirmation of charges”, 28 September 2008, ICC-01/04-01/07-716-Conf.

42. With respect to the question of whether any other communities were affected, the Legal Representative submits that the crimes of which G. Katanga has been convicted concerned only one community: Bogoro. The victims of the attack on Bogoro of 24 February 2003 suffered individual and personal harm in addition to suffering collective harm as a community. Awarding reparations to individuals is tantamount to awarding reparations to the community. For example, awarding reparations for harm suffered by a victim that is a legal entity would benefit the community as a whole.³⁴
43. There are those who would like the Chamber to broaden the definition of “victim” so that other communities which have been the victims of crimes committed during the conflict in Ituri could benefit from reparations.³⁵ The participating victims recognise that exceedingly large numbers of people suffered during the conflict in Ituri. The Chamber must, however, refrain from broadening the definition of “victim” to avoid the risk of acting beyond the scope of its judicial mandate in the instant case and venturing into the realm of providing humanitarian relief and assistance.
44. Outside the judicial process, it is the responsibility of the Trust Fund to assist these other communities as part of its general mandate to provide assistance.³⁶ Furthermore, the Trust Fund has already implemented projects in Ituri for the benefit of the affected communities.³⁷ Including other communities in the

³⁴ “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”, 10 June 2008, ICC-01/04-01/07-578-Conf, paras. 133-135.

³⁵ “Application by the United Nations for leave to submit observations pursuant to Article 75 of the Statute”, 13 February 2015, ICC-01/04-01/07-3523, paras. 22(b)(ix) and 28; ICC-01/04-01/07-3512-Anx1-Red, para. 94(f), p. 47.

³⁶ Regulation 50(a) of the Regulations of the Trust Fund for Victims; ICC-01/04-01/06-3129, paras. 206-215.

³⁷ The Trust Fund for Victims, Programme Progress Report Summer 2014, pp. 11-34; Programme Progress Report Winter 2014, Support to Victim Survivors of Sexual and Gender-Based Violence, Winter 2014, pp. 6-23 and 25-27 (available at <http://www.trustfundforvictims.org>).

reparations proceedings would be a new affront to the victims in this case and would prejudice the very objective of the reparations as defined in article 75 of the Statute.

Victims of the crimes of which G. Katanga has been acquitted

45. The Chamber acquitted G. Katanga of the crimes of rape and sexual slavery as crimes against humanity and war crimes, as well as the crime of using children under the age of 15 years to participate actively in hostilities as a war crime.³⁸

46. Nevertheless, the Chamber found that there was evidence beyond reasonable doubt that the crimes of rape and sexual slavery had been committed.³⁹ Although the Chamber was not satisfied that there was evidence “beyond reasonable doubt” for a conviction with respect to G. Katanga’s responsibility for these crimes, the Chamber did acknowledge that these crimes had been committed and hence also the fact that people had been the victims of these crimes.⁴⁰ Moreover, the Chamber relied upon these facts to establish the crime of attacking civilians.⁴¹

47. The Legal Representative therefore considers that the victims of the crimes of rape and sexual slavery will have to be included in the reparations programmes that the Chamber orders, without that share being charged to G. Katanga.

48. As regards the victims who are former child soldiers, the Chamber found in its judgment that there were children within the Ngiti militia and among the

³⁸ ICC-01/04-01/07-3436-tENG, p. 659.

³⁹ *Ibid.*, paras. 995, 999, 1008, 1020 and 1023.

⁴⁰ *Ibid.*, para. 1023.

⁴¹ *Ibid.*, paras. 876 and 879.

combatants who were in Bogoro on the day of the attack but it was unable to find that the crime of using child soldiers had been committed.⁴²

49. However, these victims must not be neglected. As the Appeals Chamber held,⁴³ the Legal Representative considers that the victims who are former child soldiers may benefit, irrespective of the order on reparations, from the programmes established by the Trust Fund as part of its general mandate to provide assistance, in order to remedy the harm they have suffered. Regulation 50(a) of the Regulations of the Trust Fund for Victims allows the Trust Fund to provide assistance to victims who are not eligible to benefit from the reparations awarded against the accused.

C. The scope and extent of the damage, loss or harm suffered

50. Neither the Statute nor the Rules provide any guidance on the definition of “harm”.

51. In the absence of a definition of harm or damage, the Appeals Chamber⁴⁴ relied upon the definition reflected by principle 8 of the 2005 Basic Principles and Guidelines on the right to reparation. According to this principle, the following can be considered as harm: “physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights”.⁴⁵

⁴² *Ibid.*, 1084-1088.

⁴³ ICC-01/04-01/06-3129, para. 199.

⁴⁴ ICC-01/04-01/06-1432, paras. 33-35.

⁴⁵ Basic Principles and Guidelines on the Right to Reparation, principle 8: “For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.” (emphasis added).

52. With respect to the types of harm to be taken into consideration, the Legal Representative considers that only the harm resulting from the crimes of which G. Katanga has been convicted needs to be addressed in the reparations order. It should be noted that these crimes were proven beyond reasonable doubt and the Defence had been given the opportunity to introduce evidence and advance submissions.

53. In the instant case, the victims who have been admitted to participate in the proceedings and who have always expressed the wish to participate in all the stages of the trial have suffered different types of harm as a result of the crimes of which G. Katanga was convicted, including: various injuries and physical trauma, psychological trauma and the development of psychological disorders, material deprivation following the death of a family member (especially in the case of widows and orphans), disruption of schooling, separation of families, exile and forced displacement, pillaging, destruction of property and loss of income.

54. The Legal Representative would like to recall, at this point, his observations on the scope and extent of the damage caused, as set out in his observations on the sentencing.⁴⁶

55. It has been established that at least 800 civilians, most of whom were Hema, were living in Bogoro at the time of the attack of 24 February 2003.⁴⁷ In its *Katanga* judgment, the Chamber gave the number of people killed during the

⁴⁶ "Observations du représentant légal relatives à la fixation de la peine", 7 April 2014, ICC-01/04-01/07-3457-Red, paras. 10-25.

⁴⁷ ICC-01/04-01/07-3436-tENG, para. 730. See also P-166, EVD-OTP-00202, paras. 13-14; P-323, T. 116, p.69, lines 8-10; D02-176, T. 256, p. 46; P-233, T. 83, p. 20 (all references to the hearing transcriptions in the present case refer to the final French versions).

attack as 60.⁴⁸ This is a minimum figure, however: according to the actual wording of the judgment, the attack claimed considerably more lives.⁴⁹ According to the judgment, numerous people were wounded during the attack.⁵⁰

56. The witnesses who were heard during the proceedings stated that the village was littered with corpses including women, children and elderly persons.⁵¹ Furthermore, the people who did not manage to flee from the Institute were also killed.⁵² In this respect, the testimony of Witness P-268 was particularly significant. This witness, who was captured and forcibly taken to the Institute, saw numerous corpses of women, children and elderly persons who had been hacked by machete or shot. These corpses were to be found scattered throughout the village and at the Institute (inside and outside the classrooms).⁵³

57. Numerous people were also wounded during the attack.⁵⁴ Witnesses P-132, P-249 and P-287 were wounded by bullets while fleeing. They described how civilians were trying to flee as the attackers shot at them. They witnessed civilians being wounded by the attackers' gunfire.⁵⁵ Witness P-317, who was in Bunia immediately after the attack, encountered several of the wounded in

⁴⁸ ICC-01/04-01/07-3436-tENG, para. 838.

⁴⁹ *Ibid.*, para. 839.

⁵⁰ *Ibid.*, paras. 819-820.

⁵¹ P-233, T. 86, p. 10, lines 2-11; P-132, T. 138, p. 79, l. 10-15; pp. 81-82; P-249, T. 135, pp. 46-47.

⁵² P-323, T. 117, p. 27, lines 19-20; p. 47, lines 12-18; V-4, T. 234, p. 7; D2-176, T. 255, p. 36, lines 14-23; T. 256, p. 31, lines 11-14, pp. 33-34; P-166, T. 225, p. 62, lines 21-26, T. 226, pp. 4-5, T. 227, p. 6, lines 15-28.

⁵³ P-268, T. 107, p. 15, lines 21-22; p. 17, lines 1-9; pp. 44-47; p. 57-61; see also: P-287, T-129, pp. 38-39.

⁵⁴ P-323, T. 117, p. 35, lines 8-15; P-268, T. 107, p.15, lines 21-22. See also the references below.

⁵⁵ P-132, T. 138, p. 79, lines 2 and 12; p. 81, lines 16-20; T. 139, p. 8; see the report of expert witness: EVD-OTP-00055. P-249, T. 135, p. 41, lines 1-16; p. 46, lines 12-14; T. 136, p. 61, lines 20-22; see the report of expert witness: EVD-OTP-00056; P-287, T. 129, p. 29, lines 5-9; pp. 38-39, line 1; see the report of expert witness: EVD-OTP-00057.

the hospital. According to her, the victims had been gravely wounded and some of them had already been receiving hospital treatment for a month.⁵⁶

58. The extent of the harm caused to the victims and their families cannot be measured solely in terms of the numbers of people killed or wounded during the attack. It extends to the consequences, still felt to this day, including the loss of one or more family members.

59. Many victims are still suffering to this day because they were unable to bury their friends and relatives who were killed during the attack. Witness P-166 reported that, after the village had been occupied by the attackers, the inhabitants of Bogoro were unable to bury their dead. Furthermore, the attackers buried some of the bodies in a mass grave close to the camp.⁵⁷ It is easy to imagine the suffering of these families who have not recovered the bodies of their friends and relatives and who, to this day, have been unable to mourn them.⁵⁸

60. Furthermore, during the attack, people fled in any way they could. Families were separated with the pain of not knowing, for a long time, whether husbands, wives, children, fathers, mothers, sisters or brothers were still alive.⁵⁹ Some families were left with only one parent and some children became orphans. For these families, the loss of a husband or wife directly and inevitably resulted in the loss of income and/or support that was essential to the family (including the upbringing and education of the children). In most cases, widows cannot meet the needs of the family. As a direct consequence of

⁵⁶ P-317, T. 229, p. 33, lines 9-12.

⁵⁷ P-166, T. 225, pp. 62-64; P-317, EVD-OTP-00206, para. 66, and EVD-OTP-00205, para. 68.

⁵⁸ Regarding the consideration of this factor, see in particular ICTY, Trial Chamber I (section A), *Prosecutor v. M. Nikolić*, IT-02-60/1-S, "Sentencing Judgement", 2 December 2003, paras. 113 and 121.

⁵⁹ See the factual findings in the Judgment, ICC-01/04-01/07-3436-tENG, paras. 1007, 1010 and 1018.

this, many children can no longer attend school since school fees are too expensive.

61. In the judgment it was also established that women, including Witness P-132, had been the victims of rape and sexual slavery during the attack on Bogoro of 24 February 2003 and/or during the aftermath. Accordingly, these facts were relied upon to establish that the crime of an attack against civilians had been committed.⁶⁰ Acts such as these destroy the lives not only of those affected but also of their families and the communities to which they belong. As explained by Witnesses P-353 and P-132, women who are the victims of sexual violence are often rejected by their community.⁶¹ Society as a whole becomes the victim of such acts.

62. In addition to the losses and damage caused on a human level, the attack also caused economic losses. At the time of the attack, Bogoro was a village inhabited by a large number of civilians who had their homes there. It had several churches that were attended by members of its population. The *groupement* of Bogoro was an important livestock rearing centre. Local livestock rearing organisations had established their dispensary there. Most of the inhabitants of the *groupement* owned cows, goats and chickens.⁶² They also cultivated the land, either for their own needs or to generate income.⁶³

63. Several witnesses have described how, on 24 February 2003, the attackers pillaged and then destroyed Bogoro, including its schools and churches,⁶⁴ and

⁶⁰ ICC-01/04-01/07-3436-tENG, para. 876.

⁶¹ P-353, T-215, p. 27; P-132, T-139, p. 17. See also ICC-01/04-01/07-3436-tENG, para. 204.

⁶² P-166, T. 225, pp. 55- 57; Site visit, pp. 13 to 14.

⁶³ P-166, T. 225, pp. 58-59; V-2, T. 231, pp. 48-49.

⁶⁴ P-233, T. 83, p. 47, lines 12-16; p. 50, lines 14-19; p. 64, lines 6-10; pp. 74-75; T-84, pp. 35-36; T-86, pp. 9-10; P-166, T. 225, pp. 60-62; P-323, T. 117, pp. 40-41, pp. 59-60; T. 118, pp. 37-38; P-268, T. 107,

thus employing a genuine method of warfare.⁶⁵ In its judgment, the Majority concluded that:

on 24 February 2003 in Bogoro, the attackers demolished and/or set ablaze or removed the roofs of the houses owned and occupied by the predominantly Hema population of Bogoro, as well as the buildings of Diguna Mission, including the CECA 20 church, which the population attended.⁶⁶

The Majority also found that property belonging to the civilian population had been pillaged by the attackers: the pillaging of roofing sheets covering the houses, furniture that had been abandoned inside the houses, animals including, in particular, the cows belonging to the villagers, as well as food.⁶⁷

64. The present case does not involve a few items of property that were destroyed and pillaged here and there. The village of Bogoro was literally reduced to nothing. According to several eye witnesses, most of the buildings were burnt or destroyed.⁶⁸ Witness P-233 stated that after the attack there were only three or four houses left in Bogoro; the other houses had been burnt.⁶⁹

65. The losses were not just quantitative, they were also qualitative. The inhabitants of Bogoro have been deprived not only of property representing one of their main sources of income, and which was essential to their daily life, but also of property which was essential to their local social structure. The produce from the fields was used to purchase goods, such as clothing, or to pay school or medical fees. For example, in May 2014, the average price of a cow was around USD 200, according to the Chief of the Babiase *groupement*.

p. 26, lines 8-25; T. 108, p. 10, lines 11-16, p. 72, lines 2-5; V-2, T. 231, p. 47, lines 18-24; V-4, T. 234, p. 24, lines 13-22; D2-176, T. 256, p. 34, lines 1-3, and p. 54, lines 23-27.

⁶⁵ D3-44, T-292, pp. 22-23.

⁶⁶ ICC-01/04-01/07-3436-tENG, para. 924.

⁶⁷ *Ibid.*, paras. 925-932.

⁶⁸ P-317, T. 228, p. 27, lines 9-13; EVD-OTP-00206, para. 66; EVD-OTP-00205, para. 69; P-12, T. 196, pp. 6-7; T. 197, p. 70; V-2, T. 231, p. 43, lines 13-23; T. 232, pp. 39-40; V-4, T. 234, p. 33, lines 17-22.

⁶⁹ P-323, T. 117, p. 60, lines 3-7; P-268, T. 108, pp. 30-31.

Anyone who owned a few such animals could increase the size of his or her herd by investing in the purchase of other cows.⁷⁰

66. However, the rearing of livestock was not just an economic activity. For the predominantly Hema population, traditionally composed of livestock rearers, it also played an important role in family and societal relationships. As explained by Witness P-166:

[TRANSLATION] when a Hema dies, his son takes over his livestock rearing activities. And when girls reached marriageable age, the girl's family would receive cattle from the family of the future husband. People who did not have cattle could agree with the girl's family that they would give cash instead of giving cattle. However, the money paid should be based on the value of a cow. The rearing of cattle is a matter of capital importance to the Hema.⁷¹

67. In Hema culture, another social function of livestock is to compensate a family if one of its members has been killed by a third party. According to one community leader, such use is currently widespread throughout the entire region of Ituri. He stated:

[TRANSLATION] ... When a person leaves home [he] goes looking for his enemy at his own house or in his field with the intent to kill him. He plans his day, arrives at his enemy's house and kills him. It is intentional and grave. He must pay compensation in the form of 115 cows. For some time, this practice has been spreading. Even the other tribes follow this practice here in Bunia. As for the prosecution, once the families have reached a compromise, they report to the magistrate who will take note and drop the reparations aspects. As regards the criminal element, he himself will pursue the matter without the victim's family being present.⁷²

Another social function of the cow relates to the mourning ceremony. Consequently, the victims have never been able to arrange mourning ceremonies quite simply because they cannot afford to.

⁷⁰ In May 2014, the average price of a cow was approximately USD 200, according to the Chief of the Babiasse *groupement*, see T.334-Red-FRA, p. 14, lines 3-14.

⁷¹ P-166, T. 225, p. 56, lines 9-16 (emphasis added).

⁷² Statements made by a/0050/08 during a group meeting held in Bunia in August 2014 and approved by all who attended.

68. By pillaging all the property and occupying Bogoro, the attackers have done nothing other than to raid and drain⁷³ the “[TRANSLATION] savings accounts” of numerous families. As noted in the judgment, the pillaged property represented the bulk of its owners’ possessions and was therefore of great value to them. Its appropriation had significant consequences for the lives of the victims.⁷⁴
69. The extent of the destruction and pillaging carried out by the attackers together with their occupation of Bogoro also meant that the vast majority of the victims had no other choice but to flee with no possibility of return. Many of them were forced to live in extremely difficult conditions and, in some cases, this included living in camps.⁷⁵
70. To this day, none of the victims have been able to recover the standard of living they enjoyed before the attack because they simply lost everything. Most of them do not have the means to return to Bogoro.⁷⁶
71. To date, the Legal Representative has recorded several cases of death among the victims. Unfortunately this figure will continue to grow.⁷⁷ The Legal

⁷³ During the occupation of Bogoro, the attackers consumed the crops that were ready for harvest; 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.

⁷⁴ ICC-01/04-01/07-3436-tENG, paras. 928 and 953.

⁷⁵ See in particular: V2, T. 231, pp. 43-45; V-4, T. 234, p. 33, p. 35, lines 8-13, T. 235, p. 32, lines 5-10, lines 26-28; P-166, T. 225, p. 16, lines 24-28, p. 35, lines 3-9; P-233, T. 83, p. 52, lines 8-11; P-166, T. 227, pp. 20-21; P-233, T. 83, p. 53, lines 7-24; P-12, T. 197, pp. 66-70.

⁷⁶ P-166, EVD-OTP-00202, para. 15; ICC-01/04-01/07-T-225-Red-FRA, pp. 54-55.

⁷⁷ On 15 May 2015, the Legal Representative was aware of 29 cases of death among the victims he represents. The Chamber has authorised the resumption of action in nine cases, namely the cases of Victims a/0207/08, a/0120/09, a/0051/08, a/0197/08, a/0025/08, a/0311/09, a/0253/09, a/0170/08 and a/0294/09; see: “*Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*”, 22 December 2009, ICC-01/04-01/07-1737; “*Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*”, 17 March 2010, ICC-01/04-01/07-1967; “*Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09*”, 14 June 2011, ICC-01/04-01/07-3018-tENG; “*Corrigendum of the decision on the applications to resume action submitted by the family members of deceased Victims*

Representative considers that these deaths are due to a lack of appropriate care resulting from the penury into which the victims have been plunged. This penury is a direct result of the crimes of which G. Katanga has been convicted. The Legal Representative regrets that this indirect harm can never be repaired.

72. The harm done to the victims and their needs must be a matter of primary concern to the Chamber if its order is to be more than a merely symbolic measure and instead one that is aimed at actually giving the victims back their dignity while meeting their needs.

73. When determining the extent of the damage, loss or harm caused to the victims, the Chamber must take into account all the types of harm which may result from the commission of the crimes of which G. Katanga has been convicted.

D. The standard of proof and causal link

74. In accordance with rule 85(a) of the Rules, victims are: “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”.

75. As Trial Chamber I has emphasized, once the article 74 stage of the trial has concluded, the standard of “a balance of probabilities” is sufficient and

a/0025/08 and a/0311/09”, 24 October 2011, ICC-01/04-01/07-3185-Corr-tENG; “Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09”, 10 June 2013, ICC-01/04-01/07-3383-tENG; “Decision on the applications for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09”, 11 May 2015, ICC-01/04-01/07-3547-tENG.

proportionate to establish the facts that are relevant to an order for reparations when it is directed against the convicted person.⁷⁸

76. Furthermore, the Appeals Chamber has confirmed this standard of proof,⁷⁹ according to which:

at a minimum the Court must be satisfied that there exists a “but/for” relationship between the crime and the harm and, moreover, the crimes for which Mr Lubanga was convicted were the “proximate cause” of the harm for which reparations are sought.⁸⁰

77. It is worth reiterating that, with regard to reparations proceedings, Trial Chamber I decided to adopt the approach taken during the trial to establish the identity of the persons seeking to participate in the proceedings.⁸¹

78. The standard of proof that has been applied by the various Chambers⁸² with respect to the eligibility of the victims to participate at the trial stage would also be appropriate in this case. It must be applied to the evidence of harm and the causal link. It should be noted that the harm for which the reparations

⁷⁸ “Decision establishing the principles and procedures to be applied to reparations”, 7 August 2012, ICC-01/04-01/06-2904, paras. 251-254. See also “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 (Annex A) and public annexes 1 and 2”, 3 March 2015, ICC-01/04-01/06-3129, paras. 83-84.

⁷⁹ ICC-01/04-01/06-3129, paras. 120-129.

⁸⁰ ICC-01/04-01/06-2904, paras. 247-250, in particular para. 250.

⁸¹ *Ibid.*, paras. 198-199.

⁸² “Corrigendum to the ‘Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06’”, 31 January 2008, ICC-01/04-423-Corr-tENG, para. 18; “Annex to the Corrigendum to the Decision on the applications by victims to participate in the proceedings”, 13 January 2009, ICC-01/04-01/06-1556-Corr-Anx1, para. 89; “Decision on the treatment of applications for participation”, 26 February 2009, ICC-01/04-01/07-933-tENG, para. 34; “Decision on the Registry Report on six applications to participate in the proceedings”, 17 October 2011, ICC-02/05-03/09-231, para. 24.

are being requested was established during the trial and is not in dispute at this stage of the proceedings.

79. In the instant case, the victims fled in haste without any possibility of taking their property with them. Their property was therefore pillaged, carried away, destroyed or burnt. Owing to the local context in which the victims were living, it is almost impossible for them to produce evidence (including documents relating to livestock, veterinary records, land records, photographs or family record books). In rural areas, plots of land (fields or plots for housing) are allocated by the local chief without the issuance of a title deed or any other administrative document. The victims cannot, therefore, produce any proof of title to a house in Bogoro because such proof simply does not exist. The same applies to those farming a plantation (cassava, bananas, sweet potatoes, etc.). According to land law, land in rural areas such as Bogoro is considered to be “[TRANSLATION] land occupied by the local communities”. The occupants do not receive any specific title deed as it is considered to be public land.⁸³

80. The Legal Representative therefore considers it to be essential for the Chamber to specify a standard of proof that is more flexible than “beyond reasonable doubt” taking into account the context of the attack and the local realities.⁸⁴ It must take account of any difficulties that the victims may encounter in discharging the burden of proof. Unless the Chamber applies a

⁸³ Congolese legislation, Law no. 73-021 of 20 July 1973 on the General Regime of Property, Land Tenure, Real Estate and Securities, sections 388 and 387.

⁸⁴ “Public Redacted Version of the ‘Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case’”, 10 June 2008, ICC-01/04-01/07-579, para. 45; “Transmission to Pre-Trial Chamber II of a Registry report on proof of identity documents available in the Democratic Republic of the Congo”, 25 April 2013, ICC-01/04-02/06-53, Annex 1; “Report on applications for reparations in accordance with Trial Chamber II’s Order of 27 August”, notified on 6 February 2015, ICC-01/04-01/07-3512-Anx1-Red, paras. 91-93.

lower standard of proof, most of the victims who are prevented, for various reasons, from proving the harm they have suffered will be rendered ineligible to receive reparations.

81. In the instant case, the harm for which the victims are demanding reparations is a direct result of the crimes committed during the attack on Bogoro of 24 February 2003 of which G. Katanga has been convicted.

82. In view of the specific nature of the crimes and circumstances of the attack, the Chamber must adopt a flexible approach with respect to both the standard of proof applicable to the harm and to the causal link.

E. The scope of G. Katanga's liability to pay reparations

83. Pursuant to article 75(2) of the Statute, the Court may make an order against a convicted person specifying appropriate reparations to, or in respect of, victims. The form of such reparations includes restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79 of the Statute.

84. As he has already submitted in his observations (ICC-01/04-01/07-3514), the Legal Representative considers it essential, pursuant to article 75(2) of the Statute, that the Chamber make an order against G. Katanga that specifies the reparations even if he does not in fact currently have the funds to remedy the harm suffered by the victims.⁸⁵

⁸⁵ ICC-01/04-01/07-3514, para. 38.

85. Furthermore, on 3 March 2015, the Appeals Chamber addressed the concerns of the victims and ruled that the reparations are strictly linked to persons for whom criminal liability has been established and who have been convicted of the crimes committed.⁸⁶

86. The Chamber may therefore order that G. Katanga's assets and income be allocated for the payment of reparations for the crimes of which he has been convicted, irrespective of whether such assets and income are currently available. It must also specify the portion of the sum to be advanced by the Trust Fund.

87. This is all the more relevant as, under article 110(3) of the Statute, the Court must re-examine G. Katanga's sentence in October 2015 to determine whether it should be reduced.⁸⁷ He could therefore be released shortly and, in view of his age, the victims consider that G. Katanga should devote at least part of his future revenue and/or assets to the reparation of the victims.

88. With regard to the extent of a convicted person's liability, the Appeals Chamber has stated that this must be proportionate to the harm caused and, in particular, his or her degree of participation in the crimes of which he or she was found guilty, in the specific circumstances of the case.⁸⁸

89. The Legal Representative submits that the Chamber must, when making its determination as to the extent of G. Katanga's liability, take into account the gravity of the crimes, and the scope and extent of the harm caused to the

⁸⁶ ICC-01/04-01/06-3129, paras. 103-104, 118, and Annex A, paras. 20-21.

⁸⁷ Article 110(3) of the Statute states: "[w]hen the person has served two thirds of the sentence, [...], the Court shall review the sentence to determine whether it should be reduced. [...]". G. Katanga was sentenced to 12 years of imprisonment and has been held in detention by the Court since 17 October 2007; his sentence can be re-examined after 17 October 2015.

⁸⁸ ICC-01/04-01/06-3129, para. 118, and Annex A, para. 21.

victims. The Chamber acknowledged in its judgment that the latter played a key role in the commission of the crimes of which he was convicted.⁸⁹

90. The victims consider that, had it not been for G. Katanga and the support he gave to the combatants, Bogoro would not have had its inhabitants and property decimated in the way that it did. Thanks to his contribution, the attack of 24 February 2003 was a real show of strength.⁹⁰ G. Katanga's mode of liability has no bearing on his guilt or the extent of his liability. He must remain fully responsible for the reparations.⁹¹

F. Modalities and forms of reparations

91. In accordance with article 75 of the Statute and in keeping with the judgment of the Appeals Chamber,⁹² in the order for reparations the Chamber must identify the most appropriate modalities of reparations, bearing in mind the specific circumstances of the case at hand.

92. Reparations awarded on an individualised and a collective basis are not mutually exclusive: rule 97 of the Rules is clear and unequivocal on this point. These two approaches can be adopted simultaneously. Far from being irreconcilable, they can be awarded on a complementary basis and should be used in a manner that is best suited to the circumstances of the case.

93. In the instant case, to determine the most appropriate modalities for the reparations the Chamber must take the following factors into account:

⁸⁹ ICC-01/04-01/07-3436-tENG, paras. 1670-1681.

⁹⁰ *Ibid.*, paras. 1680-1681.

⁹¹ *Ibid.*, Section C: Legal recharacterisation of the facts.

⁹² ICC-01/04-01/06-3129, para. 200.

- a) the Chamber was seized solely in relation to the attack on Bogoro of 24 February 2003;⁹³
- b) the attack created victims among the civilian population who were in Bogoro at the time of the attack;⁹⁴
- c) some of the victims were not residents of Bogoro but were passing through and spent the fateful night in Bogoro;
- d) other victims had property in Bogoro but were not resident there (such as those who had entrusted their animals to livestock rearers);
- e) the only community affected by the attack is that consisting of the residents of Bogoro. They all make up the Community of Bogoro;
- f) the local socio-familial structure;
- g) the victims also include vulnerable persons such as widows, children, elderly or disabled persons, victims of sexual assault and people who had suffered mental trauma;
- h) the victims in the present case are geographically dispersed;⁹⁵
- i) the victims have suffered various types of harm justifying their state of need;⁹⁶
- j) the local socio-economic and cultural context.

94. The victims clearly expressed their expectations in their applications for reparations, as well as during the consultations coordinated by the Registry; they are seeking reparations that will benefit them individually and which are adapted to their needs, abilities and skills.

95. With respect to the foregoing, the Legal Representative refers to his observations of 27 January 2015,⁹⁷ and to the Registry Report regarding the

⁹³ ICC-01/04-01/07-3436-tENG, para. 10.

⁹⁴ *Ibid.*, para. 1665.

⁹⁵ ICC-01/04-01/07-3512-Anx1-Red, para. 33.

⁹⁶ *Ibid.*, paras. 34-41.

victims' wishes for reparations.⁹⁸ The victims have expressed their almost unanimous wish to benefit individually from the reparations without explicitly stating the nature of the reparations mechanism (individual or collective). They are viewing the situation from the point of view of a beneficiary of reparations. Even if each victim were to benefit personally from the reparations, there would be nothing to prevent one or more reparations mechanisms from being established on a collective basis (e.g. a funding scheme for the reconstruction of houses).⁹⁹ This complies with the Judgment of the Appeals Chamber in which it states: “[w]hen collective reparations are awarded, these should address the harm the victims suffered on an individual and collective basis”.¹⁰⁰

96. In the opinion of the victims, various measures proposed by the Registry which could be regarded as collective (e.g. measures to promote reconciliation between communities, the erection of a monument or commemorative ceremonies) should accompany the reparations process but cannot be deemed reparations as such. They consider that such measures fall within the responsibility of the State.

97. The Legal Representative reiterates that “[TRANSLATION] while it is correct to consider that the crimes committed on 24 February 2003 had an impact on the social structure of the community of Bogoro, the victims have, from the outset, expressed a preference to see their individual situation reinstated”¹⁰¹ (emphasis added). In the victims' view, the community can, and must, reconstruct itself by firstly enabling each individual to recover. During the

⁹⁷ ICC-01/04-01/07-3514, paras. 26-37.

⁹⁸ ICC-01/04-01/07-3512-Anx1-Red, chapter IV.

⁹⁹ *Ibid.*, §90.

¹⁰⁰ ICC-01/04-01/06-3129-AnxA, para. 33.

¹⁰¹ ICC-01/04-01/07-3514, para. 41.

course of several group meetings, the victims have frequently maintained that “[TRANSLATION] **the community is made up of individuals and it is these individuals who have suffered personal harm**”. They are aware, however, that the crimes committed in Bogoro destroyed not only the lives of those concerned but also the lives of their families and the community to which they belong. The Legal Representative wishes to emphasise here that the crimes of which G. Katanga has been found guilty relate solely to the members of one community, the community of Bogoro.

98. Any decision to grant only “community” reparations (benefitting only the community as a whole) may have the effect of diminishing the reparations that would best meet the victims’ expectations. The Legal Representative therefore reiterates his reservations with respect to recommendation (f) of the Registry Report, which refers to several affected communities as identified by the Trust Fund.¹⁰² He considers that, in the instant case, allocating reparations in a broad manner and including other communities would adversely affect the rights of the victims of the attack on Bogoro to obtain the most appropriate reparations.

99. The victims are aware that G. Katanga is indigent¹⁰³ and that the Trust Fund only has limited reserves for the payment of reparations¹⁰⁴ and these will certainly be insufficient to remedy fully the harm suffered by each victim. The Chamber must, however, take into account the wishes expressed by the victims so that it can determine the most appropriate reparations bearing in mind the context of the instant case.

¹⁰² ICC-01/04-01/07-3512-Anx1-Red, para. 94, pp. 52-53.

¹⁰³ “*Observations du Greffe relatives à la solvabilité, l’indemnisation des victimes et au comportement en détention de Germain Katanga*”, 4 April 2014, ICC-01/04-01/07-3453, paras. 1-2.

¹⁰⁴ The reserve, which is for the benefit of all the cases of which the Court is seized, amounts to 4.8 million euros (Press Release by the Trust Fund for Victims, 20 March 2015, ICC-TFV-20150320-PR1102).

100. The Legal Representative wishes to emphasise that the Chamber is responsible only for establishing the modalities of the reparations, as confirmed by the Appeals Chamber¹⁰⁵.
101. If the victims now wish to receive reparations in the form of compensation or material assistance, this must not under any circumstances be taken to mean that their physical and psychological suffering is quantifiable. No amount of money or property can bring back the parents and family members that the survivors of the attack have lost. What the reparations can achieve, however, is to provide the victims with assistance that will enable them to rebuild and recover some dignity. If the victims have not been able to mourn their friends and relatives, this is also because they still cannot afford to do so.

G. Possible types of reparations

102. On the basis of article 75(1) of the Statute, the Court has established the principles applicable to the types of reparations available to, or in respect of, victims such as restitution, compensation and rehabilitation.
103. The Legal Representative considers that these three types of reparations may, to some extent, meet the needs of the victims in terms of reparations, as set out above.
104. Taking a realistic approach, the victims agree that they are not seeking the restitution of all of their property. In the case of livestock, for example, some of the victims consider that a partial restitution may in fact be sufficient if it enables them to resume their livestock rearing.

¹⁰⁵ ICC-01/04-01/06-3129, para. 200.

105. Restitution could also be contemplated in the form of certain measures, such as housing assistance – which may encourage some of the victims to return to Bogoro, assistance to resume a professional activity (for example, farming or livestock rearing assistance) and educational assistance.¹⁰⁶
106. According to the Legal Representative’s analysis of the findings of the Registry’s consultation of victims, an indemnity or financial compensation would be the type of reparation preferred by the overwhelming majority of the victims.¹⁰⁷ According to most of the victims, economic development and financial measures should be granted in the form of lump-sum financial compensation. The amount of the lump sum would depend on the available funds. The victims also consider that financial compensation could be granted on account of members of their families who were killed during the attack of 24 February 2003 (psychological harm). According to Hema custom, it is common practice to compensate the loss of a human life caused by the act of a third party by means of a payment in the form of a certain number of cows (depending on the circumstances) to the family of the victim by way of compensation¹⁰⁸ (see *infra*).
107. The Legal Representative considers that compensation could cover the following types of harm:
- a) Physical harm, including disfigurement. Many of the victims were wounded by gunfire or machete¹⁰⁹ and bear the scars and other after-effects.

¹⁰⁶ ICC-01/04-01/07-3512-Anx1-Red, para. 94.

¹⁰⁷ *Ibid.*, para. 42.

¹⁰⁸ Collective meetings between the Legal Representative and the victims of Bunia and Kasenyi, August 2014.

¹⁰⁹ **P-323**, T. 117, p. 35, lines 8-15; **P-268**, T. 107, p.15, lines 21-22; **P-132**, T. 138, p. 79, lines 2 and 12; p. 81, lines 16-20; T. 139, p. 8; see the expert report: EVD-OTP00055; **P-249**, T. 135, p. 41, lines 1-16;

- b) Psychological harm resulting from physical, mental or emotional suffering:¹¹⁰ almost all of the victims who are participating in the proceedings lost members of their families during the attack on Bogoro of 24 February 2003. Some of the victims feel that they have been adversely affected as a result of the harm they have suffered and are developing psychosomatic disorders (including high blood pressure, gastric disorders, headaches and insomnia).
- c) Material harm,¹¹¹ including loss of income and the possibility to work, the loss of particular items of property, other types of reduced capacity to work and the loss of savings.
- d) Lost opportunities, including those relating to employment, education and social benefits; loss of status (it should be noted that orphans, widowers and widows, in particular, suffer enormously from the effects of bearing their new status – some would like to remarry but do not have the necessary cows to pay the dowry which, under Congolese law, must be paid and settled before the celebration or registration of a marriage¹¹² – some orphaned women agree to cohabit despite the societal stigma, simply because their suitor has insufficient means).
- e) The costs of medical and psychological care and social assistance: many of the victims have not received any medical or psychological assistance since the attack of 24 February 2003. Some of the victims who were injured during the attack have resorted to traditional treatments that have aggravated their injuries (pain and increased healing time). Other victims have died from infections and/or

p. 46, lines 12-14; T. 136, p. 61, lines 20-22; see the expert report: EVD-OTP-00056; **P-287**, T. 129, p. 29, lines 5-9; pp. 38-39, line 1; see the expert report: EVD-OTP-00057.

¹¹⁰ See in particular **P-132**, T. 139, pp. 13 and 19-21.

¹¹¹ **P-317**, T. 228, p. 27, lines 9-13; EVD-OTP-00206, para. 66; EVD-OTP-00205, para. 69; **P-12**, T. 196, pp. 6-7; T. 197, p. 70; **V-2**, T. 231, p. 43, lines 13-23; T. 232, pp. 39-40; **V-4**, T. 234, p. 33, lines 17-22; **P-323**, T. 117, p. 60, l. 3-7; **P-268**, T. 108, pp. 30-31.

¹¹² Congolese legislation, Law 87-010 of 1 August 1987 on the Family Code, section 361.

psychosomatic illnesses that resulted directly from the attack on Bogoro.

108. In the opinion of the Legal Representative, it would not be an exaggeration to conclude that a significant number of the deaths recorded to date among the victims have resulted from the penury to which the victims were reduced after the attack on Bogoro.
109. In terms of rehabilitation, the Legal Representative believes that many of the victims require physical and mental rehabilitation even though many of them would prefer economic measures owing to their state of need. The reparations must, therefore, include health-care measures and psychological monitoring.
110. In its order on reparations, the Chamber must, therefore, ensure the rehabilitation of the victims in accordance with the provisions of article 75 of the Statute.
111. Lastly, the Chamber must ensure that the reparations are the most appropriate, and provide satisfaction and a guarantee of non-repetition.¹¹³

H. Appointment of a team of experts

112. Pursuant to rule 97(2) of the Rules, the Court may, on its own motion or at the request of the victims or their legal representatives, or at the request of the convicted person, appoint appropriate experts to assist in determining the scope and extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of

¹¹³ Basic Principles and Guidelines on the Right to Reparation, principles 18 and 23.

reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.

113. In view of the complexity of the case, the Legal Representative considers that the Chamber and the parties will have everything to gain from allowing themselves to be enlightened by a team of experts.
114. He therefore requests that the Chamber appoint a multidisciplinary team of appropriate experts to assist it in determining the scope and extent of the damage, loss and harm suffered by the victims, a team that would be able to offer the Chamber a range of proposals on the appropriate types and modalities of reparations.
115. The Legal Representative considers that the experts should be appointed by the Chamber, on the basis of a proposal by the parties, the Trust Fund and the Registry, from the list maintained by the Registry.¹¹⁴ This team shall report to the Chamber on the progress of its work and submit a report within the specified time limit.
116. He considers that the Registry Report could serve as the working paper for this team. However, the team of experts could, where necessary, conduct other investigations to supplement some of the information.
117. In performing its mandate, the team of experts will need to work closely with the Legal Representative, the Registry and the Trust Fund.

¹¹⁴ List of experts before the ICC as of 25 March 2015 (<http://www.icc-cpi.int/iccdocs/PIDS/other/ListExpertsE-03-2015.pdf>)

118. As an indication only, the Legal Representative would like to suggest certain terms of reference with respect to the mandate for the team of experts, namely to:

- hold preparatory meetings in advance with the Legal Representative, the relevant Registry section and the Trust Fund in order to discuss the performance of its mandate;
- evaluate the scope and extent of the damage and determine, for each category, the various types of harm suffered by the victims, taking into account, in particular, their geographic dispersion;
- list the victims according to the type of harm they have suffered, taking into account the fact some of the victims will fall into more than one category;
- estimate the unit costs of the victims' claims, for example, the price of a cow, the acquisition of decent housing, the education of a child, etc.;
- estimate the total cost of a reparation in one of three forms: individual, collective or both;
- liaise with the Congolese authorities for the purposes of exchanging information with them and to hear their views and concerns on the subject;
- suggest alternative sources of financing for the reparations; and
- enlighten the Chamber and the parties as to the amount of the reparations to be imputed to G. Katanga.

119. The expert report to be drawn up at the end of their mandate will be submitted to the parties and other interested persons, who will then submit their written observations to the Chamber. It is possible that the Chamber may hold a hearing to enable the parties to debate the report for the purposes of clarifying

specific points.¹¹⁵ The Trust Fund should be heard with regard, in particular, to the estimated costs of the reparations and the sum that it will be able to advance. The Chamber will be in a position to give an enlightened order on the reparations only once it has received the report and heard the team of experts.

I. Transmission of the requests for reparations to the Trust Fund for Victims

120. According to regulation 118(2) of the Regulations of the Registry, where an order is issued by the Chamber for an award of reparations through the Trust Fund, the Registrar shall, having regard to confidentiality, provide the Secretariat of the Trust Fund with such information received in the applications sent by the victims and such further information and documents as are necessary for the implementation of the order.

121. In its judgment of 3 March 2015, the Appeals Chamber reiterated the principle established by Trial Chamber I that:

the individual application forms for reparations received thus far by the Registry should be transmitted to the TFV. If the TFV considers it appropriate, victims who have applied for reparations could be included in any reparations programme that is to be implemented by the TFV.¹¹⁶

122. The Appeals Chamber also recalled the principle established by Trial Chamber I, which held: “Reparations are entirely voluntary and the informed consent of the recipient is necessary prior to any award of reparations, including participation in any reparations programme”.¹¹⁷

¹¹⁵ See rule 143 of the Rules.

¹¹⁶ ICC-01/04-01/06-2904, para. 284; ICC-01/04-01/06-3129, paras. 158-162.

¹¹⁷ *Ibid.*, para. 204; ICC-01/04-01/06-3129, paras. 159, 162.

123. The Legal Representative considers that such a communication should be made only once the order on reparations has been made and after the Legal Representative has discussed the scope of the order with the victims and obtained their prior consent to participate in the reparations programmes.
124. Pursuant to article 68 of the Statute, the Registry must not disclose to the Trust Fund information relating to victims who waive the ordered reparations and/or who refuse to give their consent to the disclosure of their confidential information.

J. Draft implementation plan

125. The Legal Representative considers that, in the present circumstances, it would be premature to decide on a draft implementation plan at this stage. He reserves the right to submit observations on this point at a later date.

IV. OTHER QUESTIONS

A. The need to cooperate with the Democratic Republic of the Congo

126. The Legal Representative would like to reiterate the wish he expressed in document ICC-01/04-01/07-3514,¹¹⁸ urging the Court to involve the Democratic Republic of the Congo (DRC) in the reparations proceedings associated with the present case.
127. The victims clearly wish to re-establish peace and reconciliation among the local communities. However, the vast majority of the victims consider that there have already been several attempts and initiatives and none of these have

¹¹⁸ ICC-01/04-01/07-3514, para. 49.

brought about a genuine solution to the problem.¹¹⁹ They nevertheless recognise that, at present, the various ethnic groups are coexisting peacefully and that the real problem concerns the armed militias. They consider, however, that if the region is to re-establish a lasting peace, it is vital that the Congolese State provide a solution to the land dispute (including the demarcation of boundaries between the communities).

128. Both the victims and the Legal Representative consider that the needs which the victims have expressed in terms of reparations make it essential for the DRC to intervene in the reparations proceedings. Measures to promote reconciliation between the communities and the questions relating to local security, including the conflict about division of the land between the communities that has plagued the region for decades, cannot be contemplated without the involvement of the Congolese State.

129. During a recent meeting between the victims and their Legal Representative,¹²⁰ the victims informed the latter of their wish for the Congolese State to be involved, by way of example, in the construction of housing for the victims that might, perhaps, be more suitable than the houses that have so far been built by various organisations.¹²¹

130. The Democratic Republic of the Congo could also intervene financially by making a specific contribution to the Trust Fund. The Legal Representative considers, as confirmed by the Appeals Chamber, that the reparations that the Court may award to the victims of the attack on Bogoro will not absolve the

¹¹⁹ Statements taken during the collective meetings held at Kasenyi and Bogoro, August 2014.

¹²⁰ Statement taken during the collective meetings held at Nyakeru and Bogoro, April 2015.

¹²¹ By way of illustration, the Legal Representative has included photographs of the houses built by these organisations in the annex. These photographs were taken during his last mission to the participating victims in March and April 2015.

DRC from its responsibility to award reparations to its citizens/victims under other treaties or its national legislation.¹²²

B. Execution of the reparations order

131. In accordance with rule 101 of the Rules, the Court may set time limits for the proceedings. In so doing, it must take account of “the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims”. This provision applies to the reparations proceedings.

132. Finally, it is essential to remember that:

The reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. In the Chamber's opinion, the success of the Court is, to some extent, linked to the success of its reparation system.¹²³

FOR THESE REASONS, the Legal Representative **RESPECTFULLY REQUESTS THE CHAMBER TO TAKE INTO ACCOUNT** these observations of the victims on the matter of reparations.

[signed]

Mr Fidel Nsita Luvengika

Common Legal Representative of Victims

Dated this 15 May 2015,
at Brussels, Belgium

¹²² ICC-01/04-01/06-3129-AnxA, para. 50.

¹²³ ICC-01/04-01/06-2904, para. 178, approving and adopting the Corrigendum of Decision on the Prosecution's Application for Warrants of Arrest, Article 58, 10 February 2006, ICC-01/04-01/06-I-US-Exp-Corr, para. 150.