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TRIAL CHAMBER II

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***

URGENT

Public Redacted Version of

**Decision on the Matter of the Transgenerational Harm Alleged by Some
Applicants for Reparations Remanded by the Appeals Chamber in its Judgment
of 8 March 2018**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

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**Victims Participation and Reparations
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TRIAL CHAMBER II (“Chamber”) of the International Criminal Court (“Court”), in accordance with articles 68 and 75 of the Rome Statute, rules 85 and 89 of the Rules of Procedure and Evidence, and regulation 86 of the Regulations of the Court, decides as follows.

I. PROCEDURAL HISTORY

1. On 24 March 2017, the Chamber handed down its Order for Reparations against Germain Katanga (“Order for Reparations” and “Mr Katanga”, respectively), in which it found that 297 of the 341 applicants for reparations in the case had shown, to the standard of proof of a balance of probabilities, that they were victims of the crimes of which Mr Katanga was convicted.¹ The Chamber decided, accordingly, to award reparations in the case to those 297 victims.² Among the applications for reparations that it rejected, the Chamber found in respect of five applicants that, although they “are, in all likelihood, suffering from transgenerational psychological harm [...], no evidence is laid before the Chamber to establish on a balance of probabilities the causal nexus between the trauma suffered and the attack on Bogoro [of 24 February 2003]” (“attack on Bogoro” or “Attack”).³
2. On 25 July 2017, having been granted two extensions of time,⁴ the Trust Fund submitted its draft implementation plan (“Draft Implementation Plan”).⁵

¹ “Order for Reparations pursuant to Article 75 of the Statute”, 24 March 2017, ICC-01/04-01/07-3728-tENG, p. 118, a public annex and a confidential *ex parte* annex, Legal Representative of Victims, Office of Public Counsel for the Defence, and Defence team for Germain Katanga, ICC-01/04-01/07-3728-Conf-Exp-AnxII (“Annex II”).

² Order for Reparations, ICC-01/04-01/07-3728-tENG, p. 118.

³ Order for Reparations, ICC-01/04-01/07-3728-tENG, para. 134.

⁴ “Decision granting the Trust Fund for victims an extension of time for submission of the Draft Implementation Plan”, 22 June 2017, ICC-01/04-01/07-3744-tENG, and “Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of Time Limit to Submit the Draft Implementation Plan for Reparations”, 11 July 2017, ICC-01/04-01/07-3749-tENG.

⁵ “Draft Implementation plan relevant to Trial Chamber II’s order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)”, 25 July 2017, ICC-01/04-01/07-3751-Conf, [French translation registered on 21 August 2017], and a confidential annex, a public annex, a confidential *ex parte* annex, Registry, a confidential *ex parte* annex, Office of Public Counsel for Victims, and a confidential *ex parte* annex,

3. On 8 March 2018, the Appeals Chamber handed down its judgment on the appeals⁶ against the Order for Reparations (“Appeal Judgment on Reparations”).⁷ The Appeals Chamber rejected the four grounds raised by the Defence team (“Defence”) in its appeal; the only ground raised by the Office of Public Counsel for Victims in its appeal; and the second ground raised by the Legal Representative of Victims (“Legal Representative”) in his appeal.⁸ With respect to the first ground of the Legal Representative’s appeal – concerning the Chamber’s decision not to recognize the transgenerational harm suffered by certain applicants (“Applicants Concerned”) – the Appeals Chamber remanded the matter to this Chamber for it to reassess the causal nexus between the psychological harm suffered by the Applicants Concerned and the crimes of which Mr Katanga was convicted and, accordingly, to decide whether the applicants should be awarded reparations.⁹

4. On 16 March 2018, the Chamber instructed the Legal Representative and the Defence to file submissions on the matter remanded by the Appeals Chamber (“Order of 16 March 2018”).¹⁰ The Chamber also instructed the Legal Representative and the Defence to file submissions on the possible impact on Mr Katanga’s liability for reparations and on the Draft Implementation Plan if the Chamber were to decide in favour of one or more of the Applicants Concerned.¹¹

Legal Representative of Victims. A redacted version was filed on 25 July, and the redacted French version on 21 August 2017.

⁶ “Defence Notice of Appeal against the ‘Ordonnance de réparation en vertu de l’article 75 du Statut’”, 26 April 2017, ICC-01/04-01/07-3738; “Notice of Appeal against the Reparations Order and its Annex II issued in accordance with article 75 of the Statute on 24 March 2017”, 26 April 2017, ICC-01/04-01/07-3739; “Notice of Appeal against the ‘Ordonnance de réparation en vertu de l’article 75 du Statut’ and its Annex II”, 25 April 2017, ICC-01/04-01/07-3737-tENG.

⁷ “Confidential Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled ‘Order for Reparations pursuant to Article 75 of the Statute’”, 8 March 2018, ICC-01/04-01/07-3778-Conf. On 9 March 2018, a public redacted version of the judgment was issued, ICC-01/04-01/07-3778-Red.

⁸ Appeal Judgment on Reparations, ICC-01/04-01/07-3778-Red, paras. 92, 127, 149, 191, 220, 257.

⁹ Appeal Judgment on Reparations, ICC-01/04-01/07-3778-Red, para. 260.

¹⁰ “Order Instructing the Legal Representative of Victims and the Defence Team for Germain Katanga to File Submissions Further to the Appeals Chamber Judgment on Reparations of 8 March 2018”, 16 March 2018, ICC-01/04-01/07-3779-tENG.

¹¹ Order of 16 March 2018, ICC-01/04-01/07-3779-tENG, para. 4. In its Order of 16 March 2018, after reiterating the finding of the Order for Reparations that, although five applicants “in all likelihood [were] suffering from transgenerational harm, no evidence is laid before the Chamber to establish [...]

5. On 13 April 2018 and 1 May 2018 respectively, the Legal Representative¹² and the Defence¹³ filed their submissions on the matter remanded by the Appeals Chamber.

the causal nexus between the trauma suffered and the attack on Bogoro” [Emphasis added], the Chamber also noted that in the English translation of the Order for Reparations, to which the Appeals Chamber referred, the word “*vraisemblablement*” is translated as “in all likelihood”. The Chamber made clear that this translation does not correspond to the findings it made on the basis of the evidence submitted to it. In its view, the phrase “in all likelihood” evokes a higher degree of probability, which in French might be rendered as “*selon toute vraisemblance*”, whereas the Chamber’s use of the word “*vraisemblablement*” was intended to describe “a probability” or simply “a possibility” (Order of 16 March 2018, ICC-01/04-01/07-3779-tENG, para. 6).

¹² “*Observations du Représentant légal déposées conformément à l’Ordonnance enjoignant au Représentant légal des victimes et à l’équipe de la défense de Germain Katanga de déposer des observations suite à l’arrêt de la Chambre d’appel sur les réparations*”, 13 April 2018, ICC-01/04-01/07-3788-Conf (“Legal Representative’s Submissions of 13 April 2018”), and a public annex. A public redacted version was filed on 16 April 2018, ICC-01/04-01/07-3788-Red.

¹³ “*Defence Observations pursuant to the ‘Ordonnance enjoignant au Représentant légal des victimes et à l’équipe de la défense de Germain Katanga de déposer des observations suite à l’arrêt de la Chambre d’appel sur les réparations du 8 mars 2018’*”, dated 30 April and registered on 1 May 2018, ICC-01/04-01/07-3790-Conf (“Defence Submissions of 1 May 2018”).

II. INTRODUCTION

6. The Chamber notes, in the Appeal Judgment on Reparations, the Appeals Chamber's finding that this Chamber

erred in failing to properly reason its decision in relation to the causal nexus between the attack on Bogoro and the harm suffered by the Five Applicants. This makes it impossible for the Appeals Chamber to assess the reasonableness of the Trial Chamber's finding that the causal nexus had not been established to a balance of probabilities.¹⁴

7. The Appeals Chamber added: "bearing in mind that the number of applications alleging transgenerational harm is low, the Appeals Chamber considers it appropriate that these applications be reassessed".¹⁵ Accordingly, the Appeals Chamber decided that it was

appropriate to reverse the Trial Chamber's findings in relation to the Five Applicants and to remand the matter to the Trial Chamber, which has detailed knowledge of the case, for it to reassess the question of the causal nexus between the crimes for which Mr Katanga was convicted and their psychological harm and whether they should be awarded reparations.¹⁶

8. The Chamber takes note that the scope of the remand is limited to reassessing the matter of the causal nexus between the crimes of which Mr Katanga was convicted and the psychological harm suffered by the Applicants Concerned and then reassessing whether they should be awarded reparations.¹⁷

¹⁴ Appeal Judgment on Reparations, ICC-01/04-01/07-3778-Red, para. 239.

¹⁵ Appeal Judgment on Reparations, ICC-01/04-01/07-3778-Red, para. 260.

¹⁶ Appeal Judgment on Reparations, ICC-01/04-01/07-3778-Red, para. 260.

¹⁷ Appeal Judgment on Reparations, ICC-01/04-01/07-3778-Red, para. 260: "The Appeals Chamber recalls that, in this case, the Trial Chamber assessed all applications for reparations individually with a view to determining whether the applicants were victims and the harm suffered. These determinations were then the basis for awarding symbolic individual as well as collective reparations. While the Appeals Chamber has expressed concerns about this approach in this case, it has not found that it amounted to an error of law or an abuse of discretion. In these circumstances, and bearing in mind that the number of applications alleging transgenerational harm is low, the Appeals Chamber considers it appropriate that these applications be reassessed. Thus, the Appeals Chamber considers it appropriate to reverse the Trial Chamber's findings in relation to the Five Applicants and to remand the matter to the Trial Chamber, which has detailed knowledge of the case, for it to reassess the question of the causal nexus between the crimes for which Mr Katanga was convicted and their psychological harm and whether they should be awarded reparations."

III. TRANSGENERATIONAL TRANSMISSION OF TRAUMA

9. Although the scope of the remand is restricted to the matter of the causal nexus, the Chamber considers that this matter should encompass the nature of transgenerational transmission of trauma.

10. In this regard, the Chamber recalls its finding that transgenerational harm is “a phenomenon, whereby social violence is passed on from ascendants to descendants with traumatic consequences for the latter”.¹⁸

11. An analysis covering the scientific literature on the phenomenon presented by the Legal Representative,¹⁹ the Legal Representative’s submissions²⁰ and the Expert Report of 26 May 2017²¹ reveals two schools of thought, each advancing a different explanation for the transgenerational transmission of trauma. The epigenetic transmission theory in neuropsychiatry is based on the study of parent-to-child transmission of epigenetic marks that retain a memory of traumatic events experienced by the parents. The social transmission theory focuses instead on the impact of upbringing and emotional learning on the child’s emotional development.²² Both theories posit a relationship between the trauma to which the

¹⁸ Order for Reparations, ICC-01/04-01/07-3728-tENG, para. 132.

¹⁹ “Annex to the ‘Observations du Représentant légal déposées conformément à l’Ordonnance enjoignant au Représentant légal des victimes et à l’équipe de la défense de Germain Katanga de déposer des observations suite à l’arrêt de la Chambre d’appel sur les réparations du 8 mars 2018 (ICC-01/04-01/07-3779)’”, 13 April 2018, ICC-01/04-01/07-3788-Anx.

²⁰ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red.

²¹ “Transmission of the ‘Expert Report on the evaluation of the mental health of child victims of the attack on Bogoro of 24 February 2003’”, 26 May 2016, ICC-01/04-01/07-3692-Conf-Exp-tENG (“Legal Representative’s Submissions on the Expert Report of 26 May 2016”), a confidential *ex parte* annex, Legal Representative (“Expert Report of 26 May 2016”), ICC-01/04-01/07-3692-Conf-Exp-Anx1-tENG, and a confidential annex. A confidential redacted version was filed on 31 May 2016 with a confidential redacted annex and a confidential annex. A public redacted version was also filed on 31 May 2016 with a confidential redacted annex and a confidential annex. See also “Addendum to the document entitled ‘Transmission du “Rapport d’expertise sur l’évaluation de l’état psychique des enfants victimes de l’attaque de Bogoro du 24 février 2003”’ (ICC-01/04-01/07-3692-Conf-Red)”, 10 June 2016, ICC-01/04-01/07-3698-Conf-tENG, and two public annexes.

²² Dr Schauer summarized the different theories to the Court in *The Prosecutor v. Thomas Lubanga Dyilo*, Case 01/04-01/06, T-166-ENG, transcript of trial proceedings - testimony of Trial Chamber expert Dr Elizabeth Schauer, pp.30-31. On this point, see also a document describing the extent of transgenerational and intergenerational trauma in the context of the proceedings before the ECCC, at http://www.d.dccam.org/Publication/Monographs/pdf/Cambodia_Hidden_Scars_Second_Edition.pdf (accessed on 12 May 2018), pp. 100-119.

parents were exposed and the behaviour of the children who were not exposed directly to the parents' traumatic experience.

12. The Chamber notes that researchers have relied on these two theories to try and answer the question of how exposure to trauma is transmitted from parent to child. In one study, Dr Rachel Yehuda, a professor of psychiatry and neuroscience – on whose work the Legal Representative bases his arguments – demonstrated with various colleagues that post-traumatic stress disorder (PTSD) in parents increases the risk of their children developing PTSD as adults.²³ To make that finding, the researchers measured the level of cortisol (a steroid hormone secreted by the adrenal glands in response, *inter alia*, to stress) in the urine, secretions, saliva and plasma of the offspring of Holocaust survivors, and detected cortisol levels significantly below normal.²⁴ The Chamber notes similar experiments – carried out with comparable results – by these researchers, for example on women who were pregnant when the 9 September 2001 attacks took place in the United States,²⁵ and by others on women who were pregnant in 1994 at the time of the Tutsi genocide in Rwanda.²⁶ The Chamber also notes, however, the observation made by researchers that “[t]here have been no empirical demonstrations of epigenetic modifications per se in

²³ S. Matthews and D. Phillips, “Minireview: Transgenerational inheritance of the stress response: A new frontier in stress research”, *Endocrin*, 151 (2010), pp. 7-13. See also R. Yehuda, J. Schmeidler, E. Labinsky, A. Bell, A. Morris, S. Zelman and R. Grossman, “Ten-year follow-up study of PTSD diagnosis symptom severity and psychosocial indices in aging Holocaust survivors”, *Acta Psychiatr Scand*, 119 (2009), pp. 25-34.

²⁴ R. Yehuda, J. Schmeidler, E. Labinsky, A. Bell, A. Morris, S. Zelman and R. Grossman, “Ten-year follow-up study of PTSD diagnosis symptom severity and psychosocial indices in aging Holocaust survivors”, *Acta Psychiatr Scand*, 119 (2009), pp. 25-34.

²⁵ R. Yehuda, S. Engel, S. Brand, J. Seckl, S. Marcus and G. Berkowitz, “Transgenerational effects of posttraumatic stress disorder in babies of mothers exposed to the World Trade Center attacks during pregnancy”, *Journal of Clinical Endocrinology and Metabolism*, 90 (2005), pp. 4115–4118. R. Yehuda, G. Cai, J. Golier, C. Sarapas, S. Galea, M. Ising, T. Rein, J. Schmeidler, B. Müller-Myhsok, F. Holsboer and J. Buxbaum, “Gene expression patterns associated with posttraumatic stress disorder following exposure to the World Trade Center attacks”, *Biol Psychiatry*, 66 (2009), pp. 708-711. See also C. Sarapas, G. Cai, L. Bierer, J. Golier, C. Sandro, I. Marcus *et al.*, “Genetic markers for PTSD risk and resilience among survivors of the World Trade Center attacks”, *Disease Markers*, 30 (2011), pp. 101-110.

²⁶ N. Perroud, E. Rutembesa, A. Paoloni-Giacobino, J. Mutabaruka, L. Mutesa, L. Stenz *et al.*, “The Tutsi genocide and transgenerational transmission of maternal stress: Epigenetics and biology of the HPA axis”, *World J Biol Psychiatry*, 15 (2014), pp. 334-345.

association with PTSD or PTSD risk”,²⁷ and that, “[d]espite more than 500 studies published, however we are still unable to sufficiently explain exactly how the unconscious trauma of a PTSD parent can be genetically transmitted to a child and to verify this idea with sufficient empirical evidence”.²⁸ The Chamber notes, nonetheless, that some researchers believe that epigenetic theory offers “a promising new and more comprehensive explanatory variable of Transgenerational Transmission of Trauma (TTT) than the earlier [theories]”.²⁹

13. Regarding the social transmission school, the Chamber notes that other researchers, such as John Bowlby, the founder of attachment theory,³⁰ explain the link between parental trauma and the development of post-traumatic stress disorder in children through the parent’s role as primary caregiver in the child’s emotional development. According to this school, a parent exposed to trauma or suffering from psychopathology would considerably increase the likelihood that the child would have “disorganized attachment” and exhibit the same symptoms of trauma as the parent.³¹

14. The Chamber takes note of the theories of transgenerational transmission of trauma outlined above and the current state of the scientific debate.

²⁷ R. Yehuda and L. Bierer, “The relevance of epigenetics to PTSD: Implications for the DSM”, *V.J Trauma Stress*, 22 (2009), p. 430.

²⁸ N. Kellermann, “Epigenetic transmission of Holocaust Trauma: Can nightmares be inherited?”, *ISR J Psychiatry Relat Sci*, Vol. 50, No 1 (2013).

²⁹ On this point, see N. Kellermann, “Epigenetic transmission of Holocaust Trauma: Can nightmares be inherited?”, *ISR J Psychiatry Relat Sci*, Vol. 50, No 1 (2013), p. 34, and R. Yehuda and L. Bierer, “The relevance of epigenetics to PTSD: Implications for the DSM”, *V.J Trauma Stress*, 22 (2009), p. 430.

³⁰ R. Karen, *Becoming Attached: Unfolding the Mystery of the Infant-Mother Bond and Its Impact on Later Life* (1994).

³¹ On this point, see F. Calicis, “La transmission transgénérationnelle des traumatismes et de la souffrance non dite”, *Thérapie familiale* (2006), at <https://www.cairn.info/revue-therapie-2006-3-page-229.htm> (accessed on 13 June 2018). See also M. Bosquet Enlow, B. Egeland, E. Carlson, E. Blood and R. Wright, “Mother-Infant Attachment and the Intergenerational Transmission of Posttraumatic Stress Disorder”, *Dev Psychopathol* (2014), at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4145695> (accessed on 13 June 2018).

IV. ANALYSIS

A. Principles and standards applicable to the assessment of causation

15. As mentioned above, the scope of this remand is limited to reassessing the causal nexus between the crimes of which Mr Katanga was convicted and the psychological harm suffered by the Applicants Concerned. In that regard, the Chamber recalls its conclusions in the Order for Reparations on the principles and the applicable standard of causation:

The Appeals Chamber held that the standard of causation is a but-for relationship between the harm and the crime. There is a further requirement that the crimes of which the person was convicted were the proximate cause of the harm for which reparations are sought.³²

16. In addition to those conclusions in the Order for Reparations, the Chamber deems it useful, in the context of the matter remanded by the Appeals Chamber, to elaborate on the proximate cause standard. The Chamber notes that, in general terms, the proximate cause standard is a limitation placed by some courts on a person's liability for the consequences of his or her actions. This means that the liability of the person who committed an act is limited to the causes that are closely connected to the result of that act and that are significant enough to justify a finding of liability.³³

17. The standard is of particular importance when harm appears to have more than one cause. The Chamber notes that, according to a wide range of case law, the chain of causation between an act and its result is broken when an event which the person who committed the initial act could not have reasonably foreseen occurs after

³² Order for Reparations, ICC-01/04-01/07-3728-tENG, para. 162.

³³ B. Garner (ed.), *Black's Law Dictionary* (8th edition, 2004), p. 662. *Black's Law Dictionary* also gives the following definitions: "An event that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury"; "An intervening act or force that the law considers sufficient to override the cause for which the original tortfeasor was responsible, thereby exonerating the tortfeasor from liability" (B. Garner (ed.) *Black's Law Dictionary* (Minnesota: Thomson West, 3rd Pocket Edition, 2006), p. 90).

the commission of the initial act and affects its result.³⁴ In other words, if the person who committed the initial act could not have reasonably foreseen the event in question, the initial act cannot be considered to be the proximate cause of the harm suffered by the victim³⁵ and, consequently, the person who committed the initial act cannot be held liable for the harm in question.³⁶ In other words, the rationale for applying the proximate cause standard is the need to place just and fair limits on the consequences of the crimes that can be attributed to the convicted person.³⁷

18. The Chamber recalls that in its Order for Reparations it accepted that “Mr Katanga had a part in conceiving the design to attack Bogoro, that he provided weapons to the Ngiti combatants, but also that combatants other than the Ngiti took part in the attack on Bogoro”.³⁸ On that basis, the Chamber found that, “where the

³⁴ See e.g. Canada, Supreme Court of Canada, *R. v. Maybin* 2012 SCC 24, [2012] 2 S.C.R. 30, 18 May 2012, paras. 60-61; Tribunal Fédéral [Federal Court], “Judgment of 28 June 2017” (4A_60/2017), para. 3.7; Texas, Supreme Court, *Phan Son Van v. Peña*, 1 April 1999, No. 97-0900.

³⁵ See, e.g., Switzerland, Federal Court, “Judgment of 28 June 2017” (4A_60/2017), para. 3.7: “[TRANSLATION] Causation [...] may be interrupted by an extraordinary or exceptional event that could not have been foreseen – a natural disaster, an act by the injured party or an act by a third party – and that is so significant that it becomes the most immediate cause of the injury, relegating to the background the other factors that contributed to bring it about – including the act attributable to the defendant” [Emphasis added]; France, Cour de cassation, Deuxième chambre civile [Court of Cassation, 2nd Civil Chamber], 8 February 2018, No. 17-10.516; Texas, Supreme Court, *Phan Son Van v. Peña*, 1 April 1999, No. 97-0900; L. Meier, “Using Tort Law to Understand the Causation Prong of Standing”, *Fordham L. Rev.*, 80 (2011) at p. 1241, pp. 1259-1263; L. Castellanos-Jankiewicz, “Causation and International State Responsibility”, SHARES Research Paper, *ACIL*, 7 (2012), pp. 46 *et seq.*; I. Plakokefalos, “Causation in the Law of State Responsibility and the Problem of Overdetermination: In Search of Clarity”, *EJIL*, Vol. 26, No. 2 (2015), pp. 471-492, p. 488; P. Nash Swisher, “Causation Requirements in Tort and Insurance Law Practice: Demystifying Some Legal Causation Riddles”, *Tort Trial & Ins. Prac. L.J.*, 43, 1 (2007), pp. 22-24.

³⁶ L. Meier, “Using Tort Law to Understand the Causation Prong of Standing”, *Fordham L. Rev.*, 80 (2011) at p. 1241, pp. 1259-1263; L. Castellanos-Jankiewicz, “Causation and International State Responsibility”, SHARES Research Paper, *ACIL*, 7 (2012), pp. 46-47. The Chamber notes that the Court of Cassation found that an act by a third party “[TRANSLATION] of an unforeseeable or unpreventable nature constitute[d] a case of *force majeure* exonerating the person who committed the initial act” (France, Court of Cassation, 2nd Civil Chamber, 8 February 2018, No. 17-10.516 [Emphasis added]); Canada, Supreme Court of Canada, *R. v. Maybin* 2012 SCC 24, [2012] 2 S.C.R. 30, 18 May 2012, para. 60: “[A]n independent and intentional act by a third party may in some cases make it unfair to hold the accused responsible” and “ILC Articles on State Responsibility”, in *Yearbook 2001*, p. 93, para. 13.

³⁷ A. Honoré, “Causation in the Law”, in *Stanford Encyclopedia of Philosophy*, 2010: “These limiting theories are invoked because if every causally relevant condition (cause-in-fact) is treated as grounding responsibility for the outcomes to which it is causally relevant the extent of legal responsibility will extend almost indefinitely”.

³⁸ Order for Reparations, ICC-01/04-01/07-3728-tENG, para. 166.

Applicants have established that the harm was a consequence of the attack on Bogoro, they have established the requisite causal nexus for the purposes of the present reparation proceedings.”³⁹

B. New general submissions by the parties

1. The Legal Representative

19. The Legal Representative submits that

[TRANSLATION] a finding of transgenerational psychological harm with an established causal nexus with the crimes that affected the parents requires the following:

- i. The demonstration of psychological suffering in the parent.
- ii. The admission or recognition of a nexus between the psychological injury to the parent(s) and the crimes in question.
- iii. The demonstration of psychological suffering in the child.
- iv. An inference of transgenerational injury in the child on the basis of the elements demonstrated above and the elements of the case conducive to the transmission of trauma, such as the gravity of the attack at the origin of the crimes, its degree of cruelty and the social context of the attack.⁴⁰

20. The Legal Representative also submits that

[TRANSLATION] the Judgment [of conviction] [...] sets out in detail the elements that justify describing the attack on Bogoro as particularly cruel to the civilian population and confirms trauma and other consequences that such an attack inevitably causes for the targeted community. For example, the Judgment of conviction notes that a very large number of people were killed during the attack. Most of the residents were readily identifiable as civilians who were not taking direct part in combat. The Judgment notes that many people were wounded in the attack. According to witnesses, the village was littered with corpses, including of women, children and the elderly. Moreover, the people who did not manage to escape from the Institute were also killed. However, the extent of the harm caused to the victims and their families cannot be measured solely by the number of people killed or injured during the attack. It also extends to the consequences, which persist to this day, of losing family members. Many victims continue to suffer from not having been able to bury loved ones killed in the fighting. The Judgment [of conviction] is also explicit as to the scale of the pillaging and destruction of the village.⁴¹

21. The Legal Representative further submits that

[TRANSLATION] [t]hese elements therefore make it possible to infer a direct connection between the child’s psychological suffering and the parent’s psychological suffering, identified previously as an injury caused by the attack; both are therefore caused by the crimes in question. The recognition of the transgenerational nature of the suffering

³⁹ Order for Reparations, ICC-01/04-01/07-3728-tENG, paras. 162-163, 166. [Footnotes omitted].

⁴⁰ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 35.

⁴¹ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 37.

identified previously in the child inherently contains a finding of a causal nexus with the events that caused the trauma in the parent. The causal nexus with the crimes is established concomitantly with the case-by-case finding of parent-to-child transmission of trauma.⁴²

22. Lastly, the Legal Representative submits that

[TRANSLATION] interviews with victims conducted during the various missions in relation to the implementation of the reparations provided clear and precise confirmation of problem behaviour in many children, readily identifiable with the trauma experienced by the parents who were victims of the attack. The vast majority of the parents recently again expressed the wish to benefit from psychological support, which they instinctively identify as necessary “for the family and for the community”.⁴³

23. The Legal Representative notes that

[TRANSLATION] in the Order for Reparations, the Chamber finds trauma in the child applicants. In the light of all of the foregoing elements and findings regarding the victims’ accounts, the medical findings, the conclusions of the Judgment, the Decision on Sentence and the Order for Reparations, there can be no doubt that it is more probable than not that this trauma originated in the trauma of the parents and therefore in the attack. In any case, this conclusion is a legal inevitability for the three applicants whose parents’ psychological harm was expressly found by the Chamber to be connected to the attack.⁴⁴

24. The Legal Representative then submits that

[TRANSLATION] [t]he Chamber has determined the probable transgenerational nature of the harm. Even if we accept the Chamber’s argument in its Order No. 3779 that the French word “*vraisemblablement*” denotes a lesser probability than “*selon toute vraisemblance*” (i.e. that it is not the same as the expression “*selon toute vraisemblance*” – which is not true), there is still sufficient probability to establish a causal nexus. The Chamber could depart from that finding only if it established a more probable cause of the children’s trauma than transmission from the parents. In other words, it would have to find that it is more probable than not that the trauma observed is not transgenerational. Such a finding is contradicted, however, by its own findings and by all of the elements brought by the Legal Representative and confirmed again by his most recent interviews with the victims.⁴⁵

25. The Legal Representative concludes that

[TRANSLATION] the assessment of these elements cannot lead the Chamber to any finding other than that there is a causal nexus between the attack and the crimes of which [Mr] Katanga was convicted, on the one hand, and the trauma the Chamber found in the [Applicants Concerned], on the other. This is especially true in respect of the three applicants with at least one parent in whom the Chamber found psychological harm

⁴² Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 39. [Footnotes omitted].

⁴³ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 41.

⁴⁴ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 45.

⁴⁵ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 46.

connected to the attack. These applicants should be recognized as victims for the purpose of reparations.⁴⁶

2. The Defence

26. The Defence reiterates its previous submissions:

[REDACTED].⁴⁷

27. The Defence concludes that the Applicants Concerned failed to demonstrate a causal nexus between the alleged transgenerational harm and the crimes of which Mr Katanga was convicted.⁴⁸ Accordingly, it requests the Chamber to confirm its findings regarding the transgenerational harm and to reject these applications for reparations.⁴⁹

C. The Chamber's approach

28. Before proceeding with the assessment *de novo* of the applications for reparations submitted by the Applicants Concerned, the Chamber deems it appropriate to explain its approach. The Chamber will assess the applications for reparations on a case-by-case basis and will consider the circumstantial evidence as a whole to determine whether the psychological harm suffered by each Applicant Concerned was the result of the crimes of which Mr Katanga was convicted. To that end, it will examine the statements and supporting material submitted by the Applicants Concerned, in particular the mental health certificates. In addition the Chamber will take note of the current state of the scientific debate on the phenomenon of transgenerational transmission of trauma, in particular the two schools – the epigenetic school and the social school.⁵⁰

29. In this regard, the Chamber considers in general that, with respect to the transgenerational harm, the closer the date of birth of the Applicant to the date of the Attack, the more likely it is that the Attack had an impact on the Applicant

⁴⁶ Legal Representative's Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 47.

⁴⁷ [REDACTED].

⁴⁸ Defence Submissions of 1 May 2018, ICC-01/04-01/07-3790-Conf, para. 9.

⁴⁹ Defence Submissions of 1 May 2018, ICC-01/04-01/07-3790-Conf, para. 10.

⁵⁰ See e.g. para. 12, above.

Concerned, especially if no other potentially traumatic events occurred between 24 February 2003 and the date of the Applicant's birth. In the light of this, the Chamber notes that the mental health certificates issued by the neuropsychiatrists who examined the Applicants Concerned provide details of their "pre-, peri- and postnatal medical history" or report that this history is unknown. In this connection, the Chamber will also examine the discrepancies between the dates of birth on the different documents provided by the Applicants Concerned.

30. Conversely, the Chamber considers that the farther the date of birth of the Applicant Concerned from the date of the attack on Bogoro, the more likely it is that other factors/events may have contributed to the suffering of the Applicants Concerned. In the light of this, the Chamber notes that, during the medical examination of one of the Applicants Concerned, the neuropsychiatrist found that a multifactorial etiology of the Applicant's emotional disorder could not be ruled out.⁵¹ In other words, all of the causes of the pathology in question involve several factors. The Chamber also notes that the Legal Representative concedes that the parents' suffering "is combined with other anxieties such as those triggered by insecurity in the region as well as other contextual factors".⁵² In that regard, the Chamber recalls the principles applicable to causal nexus, in particular the proximate cause standard, which is that the crime must be sufficiently related to the harm to be considered the cause of that harm.⁵³

31. The Chamber considers, furthermore, that it is possible that factors/events predating the attack on Bogoro may also have contributed to the suffering of the Applicants Concerned. The Chamber reiterates its finding in this connection that "the tension between the Hema and Lendu escalated in 2001," emphasizing that "[a]ll the militias which were present in the district of Ituri between 2002 and 2003 and launched attacks assaulted unarmed civilians".⁵⁴

⁵¹ [REDACTED].

⁵² Legal Representative's Submissions on the Expert Report of 26 May 2016, ICC-01/04-01/07-3692-Red2, para. 35.

⁵³ See Section IV(A), above.

⁵⁴ Order for Reparations, ICC-01/04-01/07-3728-tENG, paras. 20-21.

32. Additionally, the Chamber reiterates its conclusion in the Order for Reparations that “it lies with the Applicant to provide sufficient proof of the causal nexus between the harm alleged and the crimes of which the person was convicted”.⁵⁵

33. In this context, the Chamber notes the Legal Representative’s assertion that he expressly asked his clients about those matters on one of his most recent missions. However, the Chamber takes note that he does not submit any document containing those new statements.

34. The Chamber also takes note that the Legal Representative’s reasoning is set out step by step. He fails, however, to demonstrate exactly how his reasoning has a bearing on the applications submitted by the Applicants Concerned, other than the Chamber’s finding that in some cases the parents of the Applicants Concerned had suffered psychological harm connected to the experience of the attack on Bogoro.⁵⁶

D. The assessment *de novo* of the applications for reparations submitted by the Applicants Concerned

1. Applicant [REDACTED]

(a) Introduction

35. In this section, the Chamber outlines the relevant elements of Applicant [REDACTED]’s application for reparations and of the parties’ submissions on which the Chamber relied in handing down the Order for Reparations.

36. [REDACTED].⁵⁷

37. [REDACTED].⁵⁸

⁵⁵ Order for Reparations, ICC-01/04-01/07-3728-tENG, paras. 162-163, 166. [Footnotes omitted].

⁵⁶ Legal Representative’s Submissions of 13 April 2018, ICC-01/04-01/07-3788-Red, para. 45.

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

38. [REDACTED]⁵⁹ [REDACTED].⁶⁰ [REDACTED]⁶¹ [REDACTED].⁶²
[REDACTED].⁶³ [REDACTED].⁶⁴
39. The Chamber further recalls [REDACTED].⁶⁵
40. [REDACTED].⁶⁶ [REDACTED].⁶⁷
41. [REDACTED]⁶⁸ [REDACTED].⁶⁹
42. The Chamber reiterates the Legal Representative's conclusions of 26 May 2016
[REDACTED].⁷⁰
43. [REDACTED].⁷¹
44. [REDACTED]⁷² [REDACTED].⁷³ [REDACTED].⁷⁴ [REDACTED].⁷⁵
45. [REDACTED].⁷⁶ [REDACTED]⁷⁷ [REDACTED].⁷⁸

(b) New specific submissions by the parties

i. The Legal Representative

46. In his filing of 13 April 2018, the Legal Representative made the following submissions:

[REDACTED].⁷⁹

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

47. In his document in support of the appeal against the Order for Reparations, the Legal Representative made the following submissions:

[REDACTED].⁸⁰

ii. The Defence

48. The Defence made no new specific submissions on the harm alleged by Applicant [REDACTED].⁸¹

(c) The Chamber's finding

49. The Chamber recalls its finding, in its Order for Reparations, that [REDACTED].

50. [REDACTED],⁸² [REDACTED].⁸³ [REDACTED].⁸⁴ [REDACTED].

51. [REDACTED].

52. [REDACTED].⁸⁵

53. [REDACTED],⁸⁶ [REDACTED].

54. [REDACTED]⁸⁷ [REDACTED].⁸⁸ [REDACTED].

55. [REDACTED],⁸⁹ [REDACTED].

56. Given that [REDACTED], the Chamber considers that the causal nexus between the psychological harm suffered by Applicant [REDACTED] and the attack on Bogoro has not been established.

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

2. Applicant [REDACTED]

(a) Introduction

57. In this section, the Chamber outlines the relevant elements of [REDACTED]'s application for reparations and of the parties' submissions on which the Chamber relied in handing down the Order for Reparations.

58. [REDACTED].⁹⁰

59. [REDACTED].⁹¹

60. [REDACTED].⁹²

61. [REDACTED].⁹³

62. [REDACTED].⁹⁴

63. [REDACTED].⁹⁵ [REDACTED].⁹⁶ [REDACTED].⁹⁷ [REDACTED].⁹⁸
[REDACTED].⁹⁹

64. [REDACTED].¹⁰⁰

65. The Chamber also recalls [REDACTED].¹⁰¹

66. [REDACTED].¹⁰²

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

(b) New specific submissions by the parties

i. The Legal Representative

67. The Legal Representative made no specific submissions in relation to Applicant [REDACTED] in his submissions of 13 April 2018.

68. In his document in support of the appeal against the Order for Reparations, the Legal Representative made the following submissions:

[REDACTED].¹⁰³

ii. The Defence

69. The Defence filed no new specific submissions on the harm alleged by Applicant [REDACTED].

(c) The Chamber's finding

70. The Chamber recalls its finding, in its Order for Reparations, that [REDACTED].¹⁰⁴

71. [REDACTED].¹⁰⁵ [REDACTED].¹⁰⁶ [REDACTED].

72. [REDACTED].¹⁰⁷ [REDACTED].¹⁰⁸

73. [REDACTED].

74. [REDACTED].¹⁰⁹

75. The Chamber further notes [REDACTED].¹¹⁰ [REDACTED].¹¹¹

76. [REDACTED].¹¹²

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

¹⁰⁵ [REDACTED].

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ [REDACTED].

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

77. [REDACTED].

78. Given that [REDACTED], the Chamber finds that the causal nexus between the harm and the attack on Bogoro has not been demonstrated to the standard of proof of a balance of probabilities.

3. Applicant [REDACTED]

(a) Introduction

79. In this section, the Chamber outlines the relevant elements of Applicant [REDACTED]'s application for reparations and of the parties' submissions on which the Chamber relied in handing down the Order for Reparations.

80. [REDACTED].¹¹³

81. [REDACTED].¹¹⁴

82. [REDACTED].¹¹⁵ [REDACTED].¹¹⁶

83. The Chamber also recalls [REDACTED].¹¹⁷

84. [REDACTED].¹¹⁸ [REDACTED].¹¹⁹ [REDACTED].¹²⁰

85. [REDACTED].¹²¹ [REDACTED].¹²²

86. Last, the Chamber notes [REDACTED].¹²³

87. The Chamber recalls [REDACTED].¹²⁴ [REDACTED].¹²⁵ [REDACTED].¹²⁶

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ [REDACTED].

88. The Chamber also recalls that [REDACTED].¹²⁷

89. [REDACTED].¹²⁸

(b) New specific submissions by the parties

i. The Legal Representative

90. In his submissions of 13 April 2018, the Legal Representative made the following submissions:

[REDACTED].¹²⁹

91. In his document in support of the appeal against the Order for Reparations, the Legal Representative made the following submissions:

[REDACTED].¹³⁰

ii. The Defence

92. The Defence made no new specific submissions on the harm alleged by Applicant [REDACTED].

(c) The Chamber's finding

93. [REDACTED].¹³¹ [REDACTED]¹³² [REDACTED].¹³³

94. [REDACTED].

95. [REDACTED].¹³⁴ [REDACTED].

96. The Chamber, furthermore, recalls [REDACTED].¹³⁵

¹²⁵ [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ [REDACTED].

¹²⁸ [REDACTED].

¹²⁹ [REDACTED].

¹³⁰ [REDACTED].

¹³¹ [REDACTED].

¹³² [REDACTED].

¹³³ [REDACTED].

¹³⁴ [REDACTED].

97. [REDACTED]¹³⁶ [REDACTED].

98. In conclusion, given that [REDACTED],¹³⁷ the Chamber considers that the causal nexus between the harm and the attack on Bogoro has not been demonstrated to the standard of proof of a balance of probabilities.

4. Applicant [REDACTED]

(a) Introduction

99. In this section, the Chamber outlines the relevant elements of Applicant [REDACTED]'s application for reparations and of the parties' submissions on which it relied in handing down the Order for Reparations.

100. [REDACTED].¹³⁸

101. [REDACTED],¹³⁹ [REDACTED].¹⁴⁰

102. [REDACTED].¹⁴¹ [REDACTED].¹⁴²

103. [REDACTED].¹⁴³

104. [REDACTED].¹⁴⁴

105. [REDACTED].¹⁴⁵ [REDACTED].¹⁴⁶

106. [REDACTED].¹⁴⁷ [REDACTED].¹⁴⁸ [REDACTED].¹⁴⁹

107. [REDACTED].¹⁵⁰ The following paragraphs are relevant:

¹³⁵ [REDACTED].

¹³⁶ [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ [REDACTED].

¹³⁹ [REDACTED].

¹⁴⁰ [REDACTED].

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

¹⁴⁴ [REDACTED].

¹⁴⁵ [REDACTED].

¹⁴⁶ [REDACTED].

¹⁴⁷ [REDACTED].

¹⁴⁸ [REDACTED].

¹⁴⁹ [REDACTED].

[REDACTED].¹⁵¹

108. The Chamber notes [REDACTED].¹⁵²

109. [REDACTED].¹⁵³

110. [REDACTED].¹⁵⁴

111. [REDACTED].¹⁵⁵ [REDACTED].¹⁵⁶ [REDACTED].¹⁵⁷

(b) New specific submissions by the parties

i. The Legal Representative

112. In his filing of 13 April 2018, the Legal Representative made the following submissions:

[REDACTED].¹⁵⁸

113. In his document in support of the appeal against the Order for Reparations, the Legal Representative made the following submissions:

[REDACTED].¹⁵⁹

ii. The Defence

114. The Defence made no new specific submissions on the harm alleged by Applicant [REDACTED].

(c) The Chamber's finding

115. [REDACTED].¹⁶⁰ [REDACTED]¹⁶¹ [REDACTED].¹⁶²

¹⁵⁰ [REDACTED].

¹⁵¹ [REDACTED].

¹⁵² [REDACTED].

¹⁵³ [REDACTED].

¹⁵⁴ [REDACTED].

¹⁵⁵ [REDACTED].

¹⁵⁶ [REDACTED].

¹⁵⁷ [REDACTED].

¹⁵⁸ [REDACTED]

¹⁵⁹ [REDACTED].

¹⁶⁰ [REDACTED].

116. The Chamber first notes [REDACTED]¹⁶³ [REDACTED].¹⁶⁴ [REDACTED]¹⁶⁵ [REDACTED].

117. [REDACTED].¹⁶⁶ The Chamber also notes [REDACTED].¹⁶⁷

118. [REDACTED].

119. [REDACTED].¹⁶⁸ [REDACTED].¹⁶⁹ [REDACTED].¹⁷⁰ [REDACTED].¹⁷¹ [REDACTED].

120. In conclusion, given that [REDACTED]¹⁷² [REDACTED]¹⁷³ [REDACTED], the Chamber considers that the causal nexus between the Applicant [REDACTED]'s harm and the attack on Bogoro has not been demonstrated to the standard of proof of a balance of probabilities.

5. Applicant [REDACTED]

(a) Introduction

121. In this section, the Chamber outlines the relevant elements of Applicant [REDACTED]'s application for reparations and of the parties' submissions on which it relied in handing down the Order for Reparations.

122. [REDACTED].¹⁷⁴

123. [REDACTED].¹⁷⁵

124. [REDACTED].¹⁷⁶ [REDACTED].¹⁷⁷ [REDACTED].¹⁷⁸ [REDACTED].¹⁷⁹

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

¹⁶³ [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ [REDACTED].

¹⁶⁸ [REDACTED].

¹⁶⁹ [REDACTED].

¹⁷⁰ [REDACTED].

¹⁷¹ [REDACTED].

¹⁷² [REDACTED].

¹⁷³ [REDACTED].

¹⁷⁴ [REDACTED].

¹⁷⁵ [REDACTED].

125. [REDACTED].¹⁸⁰

126. [REDACTED].¹⁸¹ [REDACTED].¹⁸² [REDACTED].¹⁸³ [REDACTED].¹⁸⁴
[REDACTED].¹⁸⁵ [REDACTED].¹⁸⁶

127. [REDACTED].¹⁸⁷

128. The Chamber recalls [REDACTED].¹⁸⁸

129. [REDACTED].¹⁸⁹ [REDACTED].¹⁹⁰ [REDACTED].¹⁹¹

(b) New specific submissions by the parties

i. The Legal Representative

130. In his filing of 13 April 2018, the Legal Representative made no new specific submissions on the harm alleged by the applicant.

131. In his document in support of the appeal against the Order for Reparations, the Legal Representative made the following submissions:

[REDACTED].¹⁹²

ii. The Defence

132. The Defence made no new specific submissions on the harm alleged by Applicant [REDACTED].

¹⁷⁶ [REDACTED].

¹⁷⁷ [REDACTED].

¹⁷⁸ [REDACTED].

¹⁷⁹ [REDACTED].

¹⁸⁰ [REDACTED].

¹⁸¹ [REDACTED].

¹⁸² [REDACTED].

¹⁸³ [REDACTED].

¹⁸⁴ [REDACTED].

¹⁸⁵ [REDACTED].

¹⁸⁶ [REDACTED].

¹⁸⁷ [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED].

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

¹⁹² [REDACTED].

(c) The Chamber's finding

133. The Chamber recalls its finding, in its Order for Reparations, that [REDACTED].¹⁹³

134. [REDACTED].¹⁹⁴ [REDACTED].¹⁹⁵ [REDACTED].¹⁹⁶ [REDACTED].¹⁹⁷ [REDACTED].

135. [REDACTED].¹⁹⁸ [REDACTED].¹⁹⁹ [REDACTED].

136. [REDACTED].²⁰⁰ [REDACTED].

137. [REDACTED].²⁰¹

138. [REDACTED].²⁰² [REDACTED].²⁰³ [REDACTED].²⁰⁴ [REDACTED].

139. [REDACTED].²⁰⁵ [REDACTED].²⁰⁶ [REDACTED].²⁰⁷ [REDACTED].

140. In conclusion, given the [REDACTED]²⁰⁸ [REDACTED], the Chamber considers that the causal nexus between the harm and the attack on Bogoro has not been demonstrated to the standard of proof of a balance of probabilities.

E. The Chamber's finding on the assessment *de novo* of the applications for reparations submitted by the Applicants Concerned

141. On the basis of the foregoing, the Chamber considers that the evidence brought in support of the applications for reparations assessed above does not establish, to the standard of proof of a balance of probabilities, the causal nexus

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ [REDACTED].

¹⁹⁹ [REDACTED].

²⁰⁰ [REDACTED].

²⁰¹ [REDACTED].

²⁰² [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ [REDACTED].

²⁰⁵ [REDACTED].

²⁰⁶ [REDACTED].

²⁰⁷ [REDACTED].

²⁰⁸ [REDACTED].

between the psychological harm suffered and the crimes of which Mr Katanga was convicted.

142. Consequently, the Chamber rejects the applications for reparations of the Applicants Concerned.

V. IMPACT ON MR KATANGA'S LIABILITY FOR REPARATIONS AND ON THE DRAFT IMPLEMENTATION PLAN

143. The Chamber recalls that, in its Order of 16 March 2018, it instructed the parties to file submissions on the possible impact of its reassessment of the causal nexus on Mr Katanga's liability for reparations and on the Draft Implementation Plan. In the light of the foregoing, those issues have become irrelevant.

144. The Chamber nevertheless reiterates the invitation to the Trust Fund to afford consideration under its assistance mandate, wherever possible, to the Applicants Concerned, whom the Chamber has not found eligible as victims for the purpose of reparations in this case.²⁰⁹

²⁰⁹ Order for Reparations, ICC-01/04-01/07-3728-tENG, para. 154.

FOR THESE REASONS, the Chamber

FINDS that the Applicants Concerned have not established, to the requisite standard of proof, the causal nexus between the psychological harm suffered and the crimes of which Mr Katanga was convicted;

REJECTS the applications for reparations of the Applicants Concerned;

FINDS that the issue of amending Mr Katanga's liability for reparations and the Draft Implementation Plan has become irrelevant; and

REITERATES its invitation to the Trust Fund to take into account, to the extent possible, the Applicants Concerned under its assistance mandate.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 19 July 2018

At The Hague, Netherlands