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TRIAL CHAMBER II

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

**SITUATION: DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF**

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public Redacted version of

**Filing regarding symbolic collective reparations
projects with
Confidential Annex: Draft Request for Proposals,
ICC-01/04-01/06-3223-Conf**

Source:

The Trust Fund for Victims

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

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I. Introduction

1. On 3 March 2015, the Appeals Chamber issued its judgment on the reparations appeals in the *Lubanga* case, including as an annex the amended order for reparations (hereinafter “Appeals Chamber Reparations Judgment” and “Amended Order for Reparation”).¹
2. On 3 November 2015, the Trust Fund for Victims (hereinafter “Trust Fund”) submitted its “Filing on Reparations and Draft Implementation Plan”,² to which it annexed its draft implementation plan for collective reparations (hereinafter “Draft Implementation Plan”).³
3. On 15 July 2016, the Trial Chamber issued the “Request Concerning the Feasibility of Applying Symbolic Collective Reparations” (hereinafter “Request of 15 July 2016”),⁴ in which it requested that the Trust Fund “study the feasibility of developing a concrete project aiming at providing prompt symbolic reparations”.⁵ The Trial Chamber observed that such a project could “take the form of, *inter alia*, a commemoration and/or building a statue”.⁶ Finally, the Trial Chamber requested that the Trust Fund include in its filing “concrete information regarding: a) the estimated costs of such a project; b) the time frame for its completion; and c) any concrete proposal(s) related to this matter”.⁷
4. In compliance with the Request of 15 July 2016, the Trust Fund hereby submits the requested information aimed at providing symbolic reparations in the present case.
5. In making this submission, the Trust Fund has endeavoured to provide the Trial Chamber with all the relevant background that has informed the design of concrete proposals which are contained in the form of a project framework. This project framework will then serve as the foundation for inviting technical and financial proposals from prospective implementing partners through a procurement process in accordance with the Court’s applicable rules and regulations. The present submission is therefore structured in the following manner: 1) discussion of aspects of the decisions under articles 74 and 76, as well as the Amended Order

¹ Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, 3 March 2015, ICC-01/04-01/06- 3129; AMENDED order for reparations, 3 March 2015, ICC-01/04-01/06- 3129-AnxA.

² ICC-01/04-01/06-3177-Red.

³ ICC-01/04-01/06-3177-AnxA.

⁴ ICC-01/04-01/06-3219.

⁵ Request of 15 July 2016, para. 12.

⁶ *Ibid.*

⁷ *Ibid.*

for Reparations that are relevant to symbolic collective reparations, including the views expressed in this regard by the victims in the case and those who participated in the May and June 2015 community consultations jointly conducted by the Trust Fund and the Registry in Ituri, which informed the Trust Fund's submissions in its Draft Implementation Plan and the present filing; 2) presentation of the requested symbolic reparations project framework, including an implementation timeline that the Trust Fund considers to be feasible to implement; 3) information relevant to the procedure and timeline for the procurement of implementing partners; and 4) observations on the potential participation by Mr Lubanga.

6. The project framework for symbolic reparations in this filing is accompanied by an annex containing a draft Request for Proposals (RFP), which can be initiated by the Trust Fund once the Trial Chamber has approved the project framework in its final form. The Trust Fund took the liberty of converting the information contained in this submission into a draft RFP at this stage to demonstrate its responsiveness to the Trial Chamber's stated desire to have symbolic reparations projects implemented "promptly". By so doing, the Trust Fund will be able to respond to any affirmative decision from the Trial Chamber, including making any needed adjustments based on the Trial Chamber's eventual decision. The Trust Fund does however wish to clarify that the draft RFP is not being submitted for approval, but rather for informative and illustrative purposes.

7. In this regard, the RFP procedure is indicative of the standard implementation practice of the Trust Fund in accordance with ICC procurement regulations. The draft RFP allows the Trial Chamber to appreciate the operational procedure as well as the standing practice of the Trust Fund to use the RFP process as a means to obtain further relevant information and specific project activity suggestions from prospective implementing partners, who should possess a detailed understanding of local conditions and dynamics that are relevant to successful project implementation.

8. The Trust Fund wishes to inform the Trial Chamber of its willingness and commitment to provide any further information in relation to this submission that the Trial Chamber deems necessary. Further, the Trust Fund will regularly update the Trial Chamber of developments so that it may fulfil its responsibility of oversight and monitoring throughout. Reporting, in the form of progress updates in accordance with regulation 58 of the Regulations of the Trust Fund, shall comprise the following elements: (i) reporting on process milestones, such as on

the selection of the implementing partner(s) as approved by the Trust Fund Board of Directors, following the RFP procedure indicated in the preceding paragraph and described in more detail in section VI of this filing; (ii) bi-annual reporting on progress made during the implementation of the symbolic collective reparations awards, based on progress reports and results achieved received by the Trust Fund from the implementing partner(s); and (iii) at the end of the project implementation period, a final financial and narrative report.

II. Classification of the present submission

9. The Trust Fund Fund has classified the present filing and attached annex *confidential* pursuant to regulation 23 *bis* (1) of the Regulations of the Court due to the preliminary and currently unapproved nature of the project proposals made herein and the need to avoid inappropriately raising expectations as to the details of any proposed project, particularly in terms of potential project locations and budgets. The Trust Fund will file a public redacted version at the same time that it files the present submission.

III. Background informing the feasibility and scope of the project framework

10. In its Draft Implementation Plan, the Trust Fund proposed memorialization projects that would be community-driven and “take a range of forms, including written, audio, artistic, events or other mediums”,⁸ as well as symbolic initiatives that would reinforce and complement the objectives of, *inter alia*, reconciliation and reintegration of former child soldiers with their families and their communities.⁹ The Trust Fund proposed that symbolic reparations include public condemnation of the crimes of enlisting, conscripting and using child soldiers to participate actively in hostilities, as well as acknowledgment and discussion of the harms and continuing consequences of these crimes.¹⁰

11. The Trust Fund notes that, in the Order of 15 July 2016, the Trial Chamber reiterated that, as stated in its earlier order of 9 February 2016, it considered the Trust Fund’s proposals to be in line with the modalities ordered in the Amended Order for Reparations, but that the information and descriptions in the Draft Implementation Plan were insufficiently detailed.¹¹

⁸ Draft Implementation Plan, para. 145 (5).

⁹ Draft Implementation Plan, para. 146.

¹⁰ *Ibid.*

¹¹ Order of 15 July 2016, para. 10.

12. The Trust Fund has accordingly understood that, in making a concrete project proposal in the present submission, it would expand upon the programme description already contained in its Draft Implementation Plan. At the same time, the Trust Fund recognizes that it may also be of assistance if it provided more explanation regarding the considerations that informed the programme articulated in the Draft Implementation Plan. The Trust Fund hopes that this additional background will assist the Trial Chamber in reviewing whether the Trust Fund has complied with the instructions in the Amended Order for Reparations, in accordance with the Trial Chamber's approval authority of the Draft Implementation Plan as provided in regulation 69 of the Regulations of the Trust Fund. This information may also hopefully provide more transparency in terms of demonstrating how the concrete project proposals made herein relate to the Draft Implementation Plan.

13. The Trial Chamber has inquired about the feasibility of developing a project framework for symbolic reparations "in parallel to other projects for victims, and be directed at affected communities"¹². The Trust Fund respectfully submits that such a symbolic reparations project is indeed feasible as long as it is not conceived as a stand-alone undertaking, disconnected from forthcoming service-based reparations awards. Mindful of the observations of Judge Herrera Carbuca,¹³ the Trust Fund reiterates that the central tenet of symbolic reparations, as developed in its Draft Implementation Plan, is to form an integral part of the comprehensive reparative response to the harm suffered by victims in this case. Redress, rehabilitation, and reintegration of former child soldiers require an active engagement with the communities affected by the convicted crimes. Therefore, the feasibility of the proposed project framework is expressed in the envisaged project outcome, which is that symbolic reparations lead to awareness and acknowledgement within affected communities that the enlistment, conscription, and use of child soldiers under the age of 15 years constitutes an international crime, rather than being a cause for heroification or vilification of former child soldiers. Furthermore, that the harms caused by these crimes have an enduring negative impact on victims and on their current behaviour, which in turn often negatively affects their relationship with the communities where they reside, leading to further stigmatization and

¹² See *ibid*, para. 11

¹³ See Opinion de Mme la Juge Herrera Carbuca, annex to "Ordonnance rendue en application de la règle 103 du Règlement de procédure et de preuve", 15 July 2016, ICC-01/04-01/06-3217-Anx, para. 4.

discrimination. Thus, another envisaged outcome of symbolic reparations is that this awareness and acknowledgement will further enable the communities' acceptance of subsequent service based awards to direct and indirect victims. A subsequent significant decrease of stigma on former child soldiers may encourage victims to participate in service-based reparations. Such a safe environment may extend to a diminished chance of being censured by family or their community for participating in reparations or for being labeled as 'false' victims. Thus, successfully implemented symbolic reparations awards may increase the level of participation and relevance of the overall collective reparations programme in this case. Finally, the Trust Fund notes that the present project framework for symbolic reparations should not exclude the possibility that further symbolic reparations be considered during the implementation of the collective service-based reparations awards.

14. The Trust Fund notes that the review and confirmation of the feasibility of a symbolic collective reparations project in this case is incomplete without also considering and addressing the inherent risks. On this point, the Trust Fund makes the following observations specific to the integrity of the comprehensive collective reparations programme in this case, while other risks are addressed further below. As a precursor and potential enabler of successful service-based collective reparations, the symbolic reparations project is bound to create expectations with potentially eligible direct and indirect victims in this case about the subsequent collective reparations projects. Therefore, the Trust Fund respectfully submits that it will be important to launch the service-based collective reparations during the implementation of the symbolic reparations project, in order to not lose the momentum and in particular keep both the communities and victims engaged regarding the purpose and benefits of the entire Court-ordered collective reparations programme. Conversely, any inadvertent disconnect between the implementation of symbolic and service-based collective reparations projects will greatly diminish the value and efficiency and effectiveness of both. It will therefore be important to resolve the victim screening or identification process in the service-based reparations projects in such a way as to avoid undue delays and/or challenges to the rights and well-being of potentially eligible victims in this case, as highlighted by the Trust Fund in its submissions to the Trial Chamber in May and June 2016.

A. Considerations that informed the Draft Implementation Plan’s memorialisation and symbolic initiative proposals

1. The specific circumstances of the *Lubanga* case and the crimes for which Mr Lubanga was convicted

15. The limited scope of the charges and corresponding convictions in the present case has important implications in terms of how reconciliation and reintegration should be understood for purposes of symbolic reparations initiatives. As succinctly expressed by the Legal Representative of Victims V01 more than four years ago: “The child soldiers participating in the present proceedings are often in conflict with their own communities”¹⁴ due to the fact that the crimes at issue were carried out by community leaders against minor members (i.e. children) of their own community, often with the acceptance of the broader community or, in the case of the crime of conscription, by the coercive tactic of pressure being applied on family members by other members of the community. Based on the Trust Fund’s work on the ground in the affected communities, it is submitted that this tension continues to be the reality today. Thus, based on the specific circumstances of this case, a main objective of any memorialization or symbolic initiative is awareness raising within the broader community aimed towards acknowledgment and acceptance of how these crimes harmed the child soldiers and their families, including in terms of negative behaviours that manifested after the child soldiers returned to their families and communities.

16. An additional relevant consideration arising from the conviction decision in the present case is the Trial Chamber’s findings, as confirmed by the Appeals Chamber, regarding where the crimes were committed. In this respect, it is considered important that memorialisation and symbolic initiatives reach, using diverse mediums, all of the areas identified as having been affected by the crimes.

17. Finally, in terms of how the harms suffered by child soldiers continues to manifest itself in negative behaviours that result in further stigmatisation and prevents successful reintegration into the community, the Trust Fund has taken into account the original Trial

¹⁴ See Legal Representative of Victims V01, Observations on the sentence and reparations by Victims a/0001/06, a/0003/06, a/0007/06, a/00049/06, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0149/08, a/0404/08, a/0405/08, a/0406/08, a/0407/08, a/0409/08, a/0523/08, a/0610/08, a/0611/08, a/0053/, ICC-01/04-01/06-2864-tENG (hereinafter “Legal Representative of Victims V01 Reparations Observations”), 18 April 2012, para. 16.

Chamber's findings in its decision on sentence under article 76 of the Statute.¹⁵ The Trial Chamber stated that, in assessing the gravity of the crimes, it had considered as a part of the "general background"¹⁶ expert testimony provided by witness Elisabeth Schauer who conducted "studies with former child soldiers in various countries including Uganda and the DRC between 2004 and 2008".¹⁷ The Trial Chamber noted the following:

A significant percentage of the former child soldiers who were the subject of the study had abused drugs or alcohol; they suffered from depression and dissociation; and some demonstrated suicidal behaviour. According to the report, "[r]esearch shows that former child soldiers have difficulties in controlling aggressive impulses and have little skills to handle life without violence. These children show ongoing aggressiveness within their families and communities even after relocation to their home villages."¹⁸ [Footnotes omitted.]

2. The Amended Order for Reparations

18. In the Appeals Chamber Reparations Judgment, the Trust Fund was "ordered to implement the [Amended Order for Reparations]",¹⁹ which in relation to the modalities of reparations ordered, includes "other types of reparations such as those with symbolic, preventative or transformative value".²⁰ The Amended Order states that "reparations should aim at reconciling the victims with their families and the affected communities"²¹ and, as an overarching objective, "must [...] contribute to the effective reintegration of former child soldiers".²² In this regard, "the reparations awards should, in part, be directed at [...] raising awareness that the effective reintegration of the [former child soldiers] requires eradicating the victimisation, discrimination and stigmatisation of young people".²³ Clearly and consistently the Amended Order references the significance of gender and gender equality to

¹⁵ Decision on Sentence Pursuant to Article 76 of the Statute, 10 July 2012, ICC-01/04-01/06-2901 (hereinafter "Sentencing Decision").

¹⁶ Sentencing Decision, para. 44.

¹⁷ Sentencing Decision, para. 40, referring to Expert Report of Ms Schauer (CHM-00001), The Psychological Impact of Child Soldiering, ICC-01/04-01/06-1729-Anxl (EVD-CHM-00001).

¹⁸ Sentencing Decision, para. 41.

¹⁹ See p. 2. See also "Appropriate Relief", para. 252.

²⁰ Amended Order for Reparations, para. 67.

²¹ Amended Order for Reparations, para. 46.

²² Amended Order for Reparations, para. 71.

²³ Amended Order for Reparations, para. 67, vii.

the design and delivery of reparations, stating “gender parity in all aspects of reparations is an important goal of the Court.”²⁴ Finally, the Amended Order explicitly acknowledges that the objectives of rehabilitation, reconciliation, and reintegration of former child soldiers may be accomplished through symbolic and transformative reparations projects in stating that:

The steps taken to rehabilitate and reintegrate former child soldiers may also include their local communities, to the extent that the reparations programmes are implemented where their communities are located. Programmes that have transformative objectives, however limited, can help prevent future victimisation, and symbolic reparations, such as commemorations and tributes, may also contribute to the process of rehabilitation.²⁵

19. With regard to the task of designing the awards for reparations, the Amended Order instructs the Trust Fund to take into account the views expressed during community consultations, as well as “the views and proposals already submitted in the course of the reparations proceedings”.²⁶ This last instruction is further specified in the Appeals Chamber Reparations Judgment, wherein it is recalled that “through their Legal Representatives, the victims who had filed requests for individual reparations also supported reparations being awarded on a collective basis and made submissions relevant to the design and nature of any collective reparation award”.²⁷

3. The views and proposals submitted by the legal representatives of victims during the reparations proceedings

20. During the reparations proceedings before the original Trial Chamber preceding the issuance of the order for reparations, the Legal Representative of Victims V01 expressed the following on behalf of the victims he represents:

17. [S]ome initiatives [that] may be considered collective are likely to benefit the social group of former child soldiers as a whole without being perceived as unjust or encouraging the enlistment of children in future conflicts, in particular

²⁴ Amended Order for Reparations, para. 18.

²⁵ Amended Order for Reparations, para. 67, v.

²⁶ Amended Order for Reparations, para. 79.

²⁷ Appeals Chamber Reparations Judgment, paras 156, 204.

initiatives that could encourage the reintegration of former child soldiers into society.

18. The majority of former child soldiers in group V01 (9 of 12) thus support the idea of an outreach campaign in the community to combat the unsavoury reputation of former child soldiers (bad, violent, or delinquent boys, “sullied” girls) and to encourage respect for and solidarity with these victims. This view is shared by the two parents who were consulted.

19. The creation of a memorial to the children who died in combat and to denounce the horror of recruitment of children was also well received by the victims (10 of 14).²⁸

4. The expert conference

21. During the Trust Fund’s expert consultation, held between May 26 and June 2, 2015 at the Transitional Justice Institute (TJI), Ulster University, based in Belfast Northern Ireland, as provided for in regulation 70 of the Regulations of the Trust Fund, the experts underlined the key importance of symbolic reparations as a complementary undertaking to service-based reparations awards to victims, referencing the findings of the Appeals Chamber and drawing on their individual expertise.

5. The views expressed during the community consultations

22. In May and June 2015, the Trust Fund and the Registry jointly conducted community consultations²⁹ in 22 locations³⁰ in the Ituri region. Over 1,200 individuals participated, including:

²⁸ Legal Representative of Victims V01 Reparations Observations, paras 17-19.

²⁹ The community consultations involved plenary discussions as well as focus groups.

³⁰ The criteria for identifying communities were: 1) locations where former child soldiers might currently be found; 2) locations where children were enlisted and conscripted; 3) locations where child soldiers were trained (training camps); 4) locations where battles took place under the UPC; 5) locations where demobilisation occurred of former child soldiers/CAAFG belonging to the UPC were established; and 5) locations where mass reunifications took place of former child soldiers/CAAFGs belonging to the UPC. Priority was given to communities that live together. Communities situated nearest to each other (at a maximum distance of 7 km) were grouped together for consultation purposes. The target locations were the following: **Djugu territory**: Bule, Fataki, Drodro, Iga Barriere/Nizi, Lopa, Mongwalu, Katoto, Mandro, and Tchomia. **Irumu territory**: Marabo/Nyakunde/Irumu, Centrale Solenyama, Kasenyi (disarmament site, Children Associated with Armed Forces and Groups (CAAFG_s deployed), Shari/Rwampara (training camp), Bogoro (CAAFGs deployed), and Bunia (UPC headquarters). **Mahagi territory**: Nioka, Ngote, Amee, Mahagi-Centre, Ndrele, Djalasiga, and Nyalebe. **Aru Territory**: districts of Aru and Ariwara.

- a. Young people (former child soldiers and others) aged between 18 and 30 (male and female), who accounted for 40% of the participants;
- b. Community members, including family members of former child soldiers;
- c. Political and administrative authorities (heads of post, police commissioners, local leaders);
- d. Religious leaders (Protestant, Catholic, Muslim, etc.);
- e. Representatives of young people's associations;
- f. Representatives of civil society;
- g. Non-governmental Organisations (NGO), community based organisations (CBO), and human rights bodies;
- h. Local development associations and initiatives;
- i. Women's groups and business people;
- j. Socio-professional education centres;
- k. Heads of educational institutions (primary schools, secondary schools, universities);
- l. Staff working in the health system (hospitals and health centres);
- m. Community leaders (heads of chiefdoms; *groupement* leaders; leaders of commercial centres; village chiefs; representatives of the UPC; elders; and prominent figures in the location, etc.).

23. During the plenary discussions, Trust Fund field staff who were conducting the consultations noted that many participants expressed strong negative perceptions of former child soldiers who had returned to their communities. The staff noted that these perceptions stigmatized former child soldiers as, for example, "thieves", "drunks and drug users", "disrespectful", "uncontrollable" and "violent". Former child soldiers were referred to as a "lost generation" who were viewed by many participants as unable to readjust to civilian life. Consultations confirmed that social stigma and lower social status are a common consequences particularly visited upon girls and young women returning to their communities as former child soldiers. Consultation participants expressed that former child soldiers were feared by their own families and communities, stating for example that former child soldiers

“think they can kill other people easily or sexually abuse women and think these are normal behaviours”.

24. Further to these expressed negative perceptions, Trust Fund staff decided to engage the participants in dialogue regarding how these views may cause further stigmatization and discrimination of former child soldiers, as well as a discussion of how these negative behaviours are linked to the harms suffered by the child soldiers due to their enlistment, conscription and use in hostilities. While these discussions were limited in scope, the Trust Fund staff nonetheless observed a noticeable shift in tone as these issues were delved into in more detail, with the discussion moving from expressions of frustration and fear to identifying ways in which former child soldiers and their families could be supported by the community in addressing and mitigating these negative behaviours.

25. Further, specifically with regard to how symbolic reparations were understood in the communities and the types of award designs that would be positively received, the following views were consistently expressed:

- a. A strong view was expressed for the construction of a structure, which would need to have an aspect of permanence in order for it to be seen as “symbolic”. In this respect, it was conveyed that the concept of “reparations” is understood as something more substantial and permanent than purely activity-based reconciliation and memorialization projects associated with the assistance mandate projects (ex. small temporary structures) or other humanitarian aid projects that have been undertaken in the affected areas.
- b. A strong preference was expressed for a “living” memorial in the sense that the structure should be the site of symbolic and commemorative interactive aspects such as organized activities (ex. community dialogue, art, dance, and theatre), as opposed to a purely “passive” structure, such as a stand-alone statue.
- c. The view was expressed that the structure should be used solely for reparations purposes. Thus, the renting of an existing space for activities to be conducted for a limited period of time was not viewed as constituting a symbolic reparations project.
- d. A frustration was expressed regarding other structures that have been built in the area that are viewed as poorly constructed and not durable. Thus, the view was expressed

that any structure needs to be well-constructed and substantial in size (i.e. with multiple rooms).

- e. The community consultations elicited the clearly and consistently expressed view that a permanent building of substantial stature was needed to commemorate the experience of the former child soldiers and their relatives.
- f. The view was expressed that the structure needs to be sustainable so that it can continue to be used by the community once the implementation period of Trust Fund activities is finished. The linkage to symbolic reparations was expressed by the idea that the structure would continue to be used beyond the life of the reparations programme.
- g. The view was expressed that, in addition to the symbolic and commemorative activities occurring inside the building, there should also be a physical commemorative dimension incorporated into the structure itself, of which the exact expression should be determined in further consultation with the community (ex. a plaque, serve as the site for annual day of commemoration, statue, audio/visual display room).

IV. Collective symbolic reparations: the proposed project framework

26. The Trust Fund took into account the considerations and views discussed above in preparing its Draft Implementation Plan. Thus, these considerations continue to serve as the basis for the development of the concrete project framework for symbolic reparations proposed herein.

27. In addition, the Trust Fund developed the project for symbolic reparations in consideration of its own formal strategic and operational framework. The project resonates with the Trust Fund's mission statement, according to which the Trust Fund "responds to the harm resulting from the crimes under the jurisdiction of the ICC by ensuring the rights of victims and their families through the provision of reparations and assistance." In particular, the project is in line with the Trust Fund's first strategic goal: "Victims and their families overcome harm, lead a dignified life and contribute towards reconciliation and peace-building within their communities." The more detailed project framework as presented below is to be considered in conjunction with the intermediate results and results indicators developed the

Trust Fund's Performance Monitoring Plan, part of the Trust Fund's Strategic Plan 2014-2017, which as indicated in the RFP, shall guide the selected implementing partner's reporting on progress and results. Finally, the Trust Fund is and will continue to be mindful of the need to mitigate the relevant priority risks identified in the Trust Fund's formal Risk Management Framework, equally part of the Trust Fund's Strategic Plan 2014-2017, including risks associated with: local security conditions for operations, staff, implementing partners, and victim beneficiaries; selection of implementing partner(s); (in)appropriate programme development; relationship between the Trust Fund and the Court; insufficient staff capacity; and unclear communication in relation to mandates and programmes.

28. The proposed project framework also reflects the limited amount of funds available overall in terms of the Trust Fund's proposed complement. It is designed to retain sufficient funds in order to implement the service-based collective reparations in the Trust Fund's Draft Implementation Plan once those are approved by the Trial Chamber. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. The proposed project framework for symbolic reparations is as follows:

Main objective

The reintegration and rehabilitation of former child soldiers in the *Lubanga* case are enabled by the awareness and acknowledgement of the affected communities that the enlistment, conscription, and use of child soldiers under the age of 15 are crimes, causing enduring harm to the former child soldiers and their families and consequently continuing to disturb the well-being of their affected communities.

Expected outcomes of the project, leading to the main objective

- Symbolic reparations foster *awareness and acknowledgement* within affected communities about the crimes and the on-going harms caused to victims and their families from these crimes.
- The *stigma* attached to former child soldiers within their (adopted) communities, affecting their ability to (re)integrate and rehabilitate, is significantly reduced.
- The affected communities' awareness and acknowledgement of the relevant crimes and resulting harms provide for an *enabling environment* to develop and implement service-based collective reparations awards to direct and indirect victims in the Lubanga case.
- Beyond the affected communities, *other stakeholders in the public domain are informed* about and appreciate the objective and the results achieved of this collective symbolic reparations project as a first expression of the joint reparative justice mandates of the Court and the Trust Fund.

Project components, leading to the expected outcomes

- A) to develop and construct **symbolic structures**, in the form of commemoration centres that will host interactive symbolic activities, in three communities; and
- B) to develop **mobile memorialization** initiatives in five additional communities that will promote awareness raising of the crimes and resulting harms, reintegration, reconciliation, and memorialization.



A. Symbolic structures

31. The selection of the communities to be included in the symbolic reparations project activities is based on the connection of their localities to the various elements of the crimes, their size and prominence as trading centres, and the views expressed regarding the reparations process during the community consultation missions of May and June 2015. ■

[REDACTED]

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

33. In terms of the construction of the commemoration centres, the selected implementing partner should prioritize, within its budgetary restraints, the use of locally available builders and masons, with an emphasis on local organisations who employ former child soldiers trained in masonry, carpentry, etc.

34. The three selected communities will also participate, in consultation with the selected implementing partner, in decision making about certain building design features and the specific symbolic interactive activities to be conducted in the commemoration centres.

35. The building should serve as a “living” space that offers a venue for symbolic activities. The interior of the building could, for example, be utilized to exhibit pictures and artwork created by former child soldiers that depicts the past, present, and their hopes for the future. The structures may also host music, dance, drama, and cultural events. The newly built

³¹ See for findings in relation to these locations Trial Chamber I, Judgment pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842, paras 819, 834, 835 (P-0016), 838, 915.

structures would also provide a venue for community dialogue concerning the crimes, the harms suffered, and reintegration efforts.

36. The Trust Fund and the implementing partner will actively endeavor to ensure that the composition of participants and committee members are gender inclusive and that women and girls are fairly represented and involved in all aspects of planning and implementation.

37. The selected implementing organisation will be responsible for including in its project proposal, and within the budgetary parameters of the project, the manner in which it will engage the community to determine the design of the commemorative dimension of the building and the symbolic, interactive activities. This envisaged participatory process will provide a forum for the affected community to discuss the consequences of the crimes and to determine for themselves the design of a meaningful commemorative dimension of the centre, as well as identify those activities that the community considers will have a high level of participation and meaning.

B. Mobile memorialization

38. The mobile memorialization component will promote community awareness and sensitization about the harm caused by the enlistment, conscription, and use of child soldiers in hostilities through a range of activities that will culminate in a “commemoration week” event and regular radio programmes. Community sensitization meetings with local leaders and members of the community will be part of commemoration week activities to be held once a year in each location.

39. Local leaders, including youth leaders, representing each of the five locations, will be identified and receive special training about memorialization and reconciliation activities. Following the training, leaders will return to their communities, and will assist with preparations for commemoration week activities. The Trust Fund and its partner shall actively endeavor to ensure that the composition of participants and trainees are gender inclusive and that women and girls are fairly represented and involved in all aspects. Their training shall include modules on the rights of the children, the harms suffered by the enlistment, conscription, and the use of child soldiers in hostilities, as well as mediation techniques that may be applied to address tensions between communities and former child soldiers.

40. It is envisaged that these local leaders will strongly contribute to the organisation of activities by disseminating information and promoting the event in the community. Localized mobilization efforts will be directed to persuading the village chiefs to offer their full support and to mobilizing various groups to actively participate in the week's events.

41. Memorialization activities and events may include the following: a combination of community dialogue, artistic, cultural, and theatrical activities to promote awareness-raising about the convicted crimes and the harms suffered by child soldiers; children's rights and child protection; the negative consequences of enlisting, conscripting, and using children in hostilities; trans-generational and gender related topics including as to the various forms in which former child soldiers and their families experience stigma, and to spread the message of reconciliation, non-repetition, and reintegration. Particular attention will be given to mitigating stigma towards former child soldiers and enhancing understanding. In this respect, the participation of young people in such events is particularly important, as such participation can contribute to reducing stigma and ongoing trauma.

42. Meetings organized during the memorialization week will provide an opportunity for the community to openly acknowledge and discuss how it has been affected by the return of former child soldiers and will facilitate an analysis of the behaviour of community members and former child soldiers, with the aim of improving understanding, reducing conflicts, and facilitating the reintegration of former child soldiers into the daily life of the community. Obstacles to reconciliation and reintegration will be assessed in each of the five locations and strategies to address the obstacles will be developed.

43. In support of the week's activities in the community, this component will also involve regular radio transmissions, programmes, and flash messages, in advance of the memorialization activities and afterwards. The radio transmissions will reinforce the messages of the activities and extend the geographic reach of the initiative. Radio messages will be aired on a regular basis and may be delivered by experts, such as psychologists or child protection experts as well as prominent local, religious, and community leaders. The radio messages will discuss the harm to and perceptions of former child soldiers as well as methods for transformation and reintegration of former child soldiers in the community.

V. Communication and Publication

44. The sharing of clear and consistent information about the scope, content, and implementation of the symbolic collective reparations project will be of crucial importance in direct engagements between the Trust Fund and the project's different stakeholders, as well as in the more general dissemination efforts in the public domain. This will be equally valid for any subsequent implementation of service based collective reparations to victims.

45. The locally based staff of the Trust Fund will work in close conjunction with the Court's relevant structures and services and, on an as needed basis, with its implementing partner(s) on public communication, outreach, and information exchange. From inception and throughout implementation of the symbolic reparations project, the Trust Fund will engage directly and regularly with stakeholders, such as affected communities, local, and national authorities, civil society, potential donors, media, and the public at large, so as to ensure adequate, clear, and consistent information sharing. It will seek to ensure a proper understanding and appreciation amongst the stakeholders of the purpose and outcomes of the symbolic reparations project.

46. Dissemination of information on the symbolic reparations project in the wider public domain, through regular updates and the publication of progress reports on the Trust Fund and ICC websites as well as by way of passing key messages through other channels in social media, will serve to create wide international awareness and understanding of the symbolic reparations project, which, apart from its intrinsic importance to the affected communities and victims, is expected to be closely followed as establishing the record of the ICC's first ever reparations process.

47. The Trust Fund notes that communication and publication activities about reparations must ensure to always be mindful of the rights and interests of the affected communities and victims, including the right to privacy, and should in no case result in any harm to victims, their families, and their communities.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. Information relevant to the procedure and timeline for the procurement of implementing partners

48. Further to the Trial Chamber's eventual approval of the symbolic collective reparations project, as contained in the present filing and in the Request for Proposals (RFP) in Annex, the Trust Fund is obliged to engage a procurement process to identify and select the appropriate implementing partner(s). The procurement process is co-managed with the Registry and should adhere to the relevant regulatory framework, including the ICC's Financial Regulations and Rules and the Regulations of the Trust Fund. The Trust Fund wishes to briefly inform the Trial Chamber of the various procurement process options available, as well as the estimated duration, in order for the Trial Chamber to appreciate the various steps required by ICC regulations to go from approval to actual implementation.

49. The standard process for the procurement of services is an international competitive bidding (ICB) procedure. Before consideration of technical and financial proposals, applicants are screened on the following standard eligibility criteria, as applied by the Trust Fund: (i) registration in DRC for a minimum of two years and compliance with applicable laws and regulations; (ii) relevant experience of implementing similar projects; and (iii) a demonstrable sound financial and administrative organizational structure.

50. A comprehensive ICB procedure is estimated to have a regular duration of 33 weeks³². An alternative procurement modality, with a shorter duration of 18 weeks, is to directly invite one or more parties to submit a proposal in response to the RFP³³. The direct invitational procedure is justifiable in the circumstance that there are only a limited number of parties available in the market possessing the expertise and operational presence to deliver the requested services. Both the comprehensive ICB procedure and the direct invitational procedure should be designed to be in accordance with the requirements of transparency, quality, and value for money in line with the ICC regulatory framework for the procurement of services.

³² ICC Financial Regulations and Rules (FRR), Rule 110.16

³³ FRR, Rule 110.15(d) or 110.17; Regulation 71 of the Regulations of the Trust Fund.

51. The procurement processes for acquiring the services of one or more Trust Fund implementing partners may thus comprise the following steps:

- a. Finalisation / translation of RFP, as approved by the Trust Fund Board of Directors
- b. Decision on procurement modality: comprehensive ICB procedure or direct invitational procedure
- c. Notification of Call for Expressions of Interest (comprehensive ICB procedure only)
- d. Notification of RFP to selected bidders, possibility of questions for clarification, submission of technical and financial proposals
- e. Compilation by Procurement Section of bids and transmission to Trust Fund
- f. Trust Fund for Victims reviews proposals and selects winning bid(s)
- g. Procurement Review Committee: preparation, meeting, clarifications if required, preparation of minutes to be signed by the Registrar; transmission of signed minutes to the Trust Fund
- h. Legal Office prepares services contract(s) and annexes, transmits to selected organisation(s) for signature
- i. Legal Office receives signed original contracts and submits to Trust Fund Executive Director for signature,³⁴ start of project
- j. Trust Fund prepares and issues first disbursement of project funds.

52. Should the Trial Chamber so desire, the Trust Fund can make available a detailed overview of these procedures, including the individual steps and their timelines.

53. The scope and duration of the comprehensive ICB procedure as described above is assuming optimal market conditions. In the case of suboptimal market circumstances, the procedure may be extended in scope and duration, in order to better ensure the quality and relevance of submitted proposals. For instance, in the procedure for the assistance mandate programme in the Central African Republic, the Trust Fund accounted for the less than well-developed services market by holding a proposal development workshop in Bangui for pre-

³⁴ The Trust Fund's Executive Director has the delegated authority to independently sign services contracts with a value of up to €250,000, according to ICC/AI/2013/002 paragraph 1.3.

qualified bidders and by providing additional technical guidance during an extended proposal writing period. Recently in Uganda the procurement process initiated in 2013 for the assistance programme was an unfortunately protracted endeavor that lasted nearly 86 weeks from announcement to project start. In the procedure for the procurement of implementing partners for assistance projects in the Democratic Republic of the Congo, the Trust Fund inserted the step of a Request for Information, relating to the above mentioned eligibility criteria, to the over 100 organisations that responded to the Call for Expressions of Interest, in order to arrive at a manageable number of pre-qualified organisations.

54. For the provision of collective symbolic reparations in the *Lubanga* case the Trust Fund advocates for the direct invitation of proposals, as a relatively swift and still adequate procedure to procure the services of one or more implementing partners. The Trust Fund's long-standing practice in eastern DRC and its in-depth knowledge of the organisational landscape of locally present service providers informs that only a limited number of organisations would possess the required combination of background, experience and organizational capacity to provide the requested services within the quite particular parameters of the collective symbolic reparations programme.

55. Directly inviting 3 to 5 organisations to submit proposals will preserve the competitive element of the procedure while waiving the Call for Expressions of Interest step and – considering the limited number of applicants – expedite the preparation of proposals as well as of the review of the bids and selection of the implementing partner(s) by the Trust Fund. A recent example of this procedure is the selection and contracting of the implementing partner to assist the Trust Fund in the identification and harm assessment of victims in this case.

VII. Potential participation by Mr Lubanga

56. The Trust Fund notes that Mr Lubanga has to date not admitted responsibility for the crimes for which he was convicted. The Trust Fund also notes that, as held by the original Trial Chamber, Mr Lubanga's participation in non-monetary terms, such as by way of an apology, must be voluntary and that he has not chosen to make such a public apology.

57. The Trust Fund nevertheless submits that now may be an appropriate time for the Trial Chamber to revisit potential participation in symbolic reparations with Mr Lubanga. This is because, in the Trust Fund's view, there are other potential actions Mr Lubanga could take

outside of an apology or public acceptance of responsibility that would be of potentially significant benefit to the successful implementation of any symbolic reparations projects, particularly in terms of community participation.

58. In this regard, the Trust Fund would like to recall for the Trial Chamber that, in the context of the review of Mr Lubanga's sentence under article 110 of the Statute, the Legal Representatives of Victims V01 made the following observations regarding the criterion of a positive action undertaken in favour of victims:

13. The attitude of the sentenced person, who continues to wield significant political influence in Ituri, and in particular within the Hema community, has and will have a direct impact on how the participating victims are perceived by their immediate communities, sometimes even by their own families.

14. It will also determine the reparations process to be implemented by the Trust Fund for Victims. The Court has in fact chosen a collective reparations process, which requires a degree of collaboration between the local communities and their leaders, some of whom maintain close links with the political group led by the sentenced person.

15. In a letter of 2 July from their counsel to the Defence, the victims proposed a number of positive actions in favour of the victims which the sentenced person could undertake, even while in detention, and which would be such as to encourage social stability in Ituri and reconciliation between and within communities. They involve drawing up a proposal concerning his participation in the reparations and adopting a public stance to reassure victims, public acknowledgment that children under the age of 15 years were indeed enlisted into the UPC armed forces, an expression of regret in the absence of an apology, a statement affirming the legitimacy of the reparations programme to be put in place and the participation of victims in that programme. The victims also ask that Mr Lubanga call on the members of the former FPLC and on the population of Ituri to cooperate with officials of the Trust Fund for Victims

responsible for implementing the reparations plan and to refrain from any negativity towards the beneficiaries of the programme.³⁵

59. It is the Trust Fund's understanding that no response was given to these suggestions. The Trust Fund would respectfully suggest that the Trial Chamber may wish to invite Mr Lubanga to reconsider the Legal Representative of Victims V01's suggestions and to inquire whether Mr Lubanga would be willing to undertake some or all of the requested actions. The Trust Fund considers that if Mr Lubanga were to only agree to publically calling on members of the UPC/FPLC and the population of Ituri to refrain from any negativity towards participants in reparations projects, this would, on its own, be a positive development that would increase the likelihood of reparation projects achieving their desired outcomes.

VIII. Conclusion

60. In studying the feasibility of developing a concrete project aiming at providing prompt symbolic reparations, the Trust Fund has undertaken an extensive review of aspects the decisions under articles 74 and 76, as well as the Amended Order for Reparations that are relevant to symbolic collective reparations, including the views expressed in this regard by the victims in the case and those who participated in the May and June 2015 community consultations held by the Trust Fund in Ituri that that have informed the relevant parts of the Trust Fund's Draft Implementation Plan of November 2015. The Trust Fund has undertaken additional consultations in Ituri in order to ascertain the pertinence and viability of the specific measures and framework that it was considering to propose for the symbolic reparations project. Further, the Trust Fund has assessed, to the extent possible, the feasibility of the symbolic reparations project in view of the possible risk to the integrity of the comprehensive collective reparations package as well as to ensure the sustainability and acceptance of the proposed measures within the affected communities.

61. The Trust Fund is proposing a carefully constructed and detailed project framework for symbolic collective reparations, of which the main objective is stated to be that the

³⁵ Observations of the V01 group of victims on the possible review of Mr Thomas Lubanga Dyilo's sentence, 10 July 2015, ICC-01/04-01/06-3149-tENG.

reintegration and rehabilitation of former child soldiers in the *Lubanga* case are enabled by the awareness and acknowledgement of the affected communities that the enlistment, conscription and use of child soldiers under the age of 15 are crimes, causing enduring harm to the former child soldiers and their families and consequently continuing to disturb the well-being of the communities.

62. The expected project outcomes that have been identified to substantiate the main objective are (i) that symbolic reparations foster awareness and acknowledgement within affected communities about the crimes and the on-going harms caused to victims and their families from these crimes; (ii) that the *stigma* attached to former child soldiers within their (adopted) communities, affecting their ability to (re)integrate and rehabilitate, is significantly reduced; (iii) that the affected communities' awareness and acknowledgement of the relevant crimes and resulting harms provide for an enabling environment to develop and implement service-based collective reparations awards to direct and indirect victims in the *Lubanga* case; and (iv) that beyond the affected communities, other stakeholders in the public domain are informed about and appreciate the objective and the results achieved of this collective symbolic reparations project as a first expression of the joint reparative justice mandates of the Court and the Trust Fund.

63. In order to achieve the expected project outcomes, the project will have the following two main components:

- a. The development and construction of symbolic structures, in the form of commemoration centres that will host interactive symbolic activities, in three communities; and
- b. The development and implementation of mobile memorialization initiatives in five additional communities that will promote awareness raising of the crimes and resulting harms, reintegration, reconciliation, and memorialization.

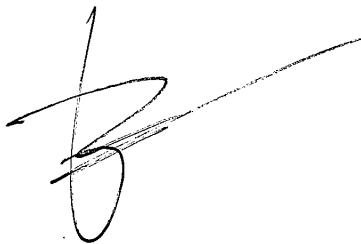
64. The Trust Fund accompanies the proposed project framework with a confidential draft Request for Proposals, in Annex, as an illustration of the procedure to select the implementing partner(s) of the Trust Fund for this project and to allow for a prompt follow up by the Trust Fund on the Chamber's eventual decision and approval.

65. The Trust Fund has established a duration of two years for the project, allowing for the possibility to extend or adapt symbolic reparations measures in consideration of the results achieved in the project, as well as of the harmonisation with other collective reparations measures that are assumed to have become operational by his time. Based on prior experience and field based consultations, the Trust Fund has allocated an amount of [REDACTED] for the implementation of the two project components to be serviced by the implementing partner(s). An additional amount of [REDACTED] has been allocated to the communications and publication activities related to the project, to be operated by the Trust Fund in conjunction with the relevant Court services and structures. The total allocated amount of [REDACTED] will be deducted from the amount of €1 million constituting the Trust Fund's complement of the payment of reparations awards, as provisionally established by the Board of Directors in the Draft Implementation Plan.

66. In this regard, the Trust Fund shares its view that the Court's approval of the proposed project framework for symbolic collective reparations, resulting in the use of financial resources from the aforementioned complement, effectively constitutes an approval of the relevant part of the Draft Implementation Plan.

FOR THE FOREGOING REASONS

The Board of Directors respectfully submits this filing in response to the Trial Chamber's "Request Concerning the Feasibility of Applying Symbolic Collective Reparations" of 15 July 2016.



Pieter W.I. de Baan
Executive Director of the Secretariat of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 19 September 2016

At The Hague, The Netherlands