

Annex A

to

“Fourth progress report on the implementation of collective reparations as per Trial Chamber II’s orders of 21 October 2016 and 6 April 2017”

CONFIDENTIAL *EX PARTE*

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SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**IN THE CASE OF****THE PROSECUTOR v. THOMAS LUBANGA DYILO****ICC-01/04-01/06****Reparations phase****Third TFV implementation progress report****on reparations****The Hague, 13 April 2018**

Following the Trial Chamber's approval on 21 October 2016 of the programmatic framework for collective symbolic reparations as submitted by the Trust Fund,¹ and recalling its previous progress reports in this regard, as well as the Trial Chamber's approval on 6 April 2017 of the programmatic framework for the service-based collective reparations as submitted by the Trust Fund,² the Trust Fund hereby submits this fourth progress report.

A. Procurement Process

With regard to the symbolic reparations component, the Trust Fund hereby informs the Trial Chamber of its intention to stop the procurement process due to the current security situation in Ituri. The Trust Fund has reached this decision based on two main considerations.

First, the programme logic of this particular project is no longer valid. In this regard, the Trust Fund recalls that the symbolic reparations were intended to precede the service-based reparations component of the collective awards ordered in this case, with the goal of creating

¹ ICC-01/04-01/06-3223-Conf and its confidential annex (ICC-01/04-01/06-3223-Conf-Anx); a Public redacted version has also been filed in the record of the case: (ICC-01/04-01/06-3223-Red) and its confidential annex (ICC-01/04-01/06-3223-Conf-Anx) 16 September 2016.

² Order approving the proposed programmatic framework for collective service-based reparations submitted by the Trust Fund for Victims, 6 April 2017, ICC-01/04-01/06-3289.

an enabling and supportive environment for victims to feel comfortable coming forward to participate in the service-based programmes. However, particularly in light of the fact that [REDACTED] the current inter-ethnic violence [REDACTED] the Trust Fund is deeply concerned that engaging these communities in regards to Mr Lubanga's crimes risks having the opposite effect, i.e. further inflaming the community's views towards these victims as well as to the prospect of implementation of the collective symbolic reparations by the Trust Fund.

Second, and related to the first consideration, it is the Trust Fund's assessment that it is not operationally feasible or advisable at this point in time to implement such a visible and public project. In this regard, the Trust Fund considers that, even if its implementing partners were able to reach the areas where the community centres would be built, any construction would be at risk of destruction or attack. Accordingly, the Trust Fund considers it appropriate to begin implementing service-based reparations to victims that in its estimation can be delivered in a significantly more discreet and confidential manner. This means that the Trust Fund no longer considers it advisable or feasible to begin with the symbolic reparations to be followed by service-based reparations. As such, the Trust Fund also considers that this fundamental change to the programme logic of this particular activity needs to be reconsidered. The Trust Fund submits that different symbolic activities may be more appropriate once implementation of the service-based reparations has begun.

Based on these considerations, the Trust Fund considers it appropriate to stop the procurement process in regards to this particular project. On 10 April 2018, the Trust Fund met with the Procurement Unit to inform them of this and the Procurement Unit has provided its advice as to how this would be done, including notification of this decision to the selected bidder (see Annex B).

With regard to the collective service-based reparations component, the deadline for interested organisations to apply to the Expression of Interest (EoI) was 31 January 2018. More than 20 organisations submitted the requested qualification documentation set out in the EoI. On 10 April 2018, the Trust Fund met with Procurement to discuss whether there would be any impact on the validity of the present procurement process if it expanded the types of activities and projects in the programme (based on the new and more detailed victim information available to the Trust Fund) or increased the total budget of the programme due to the Trial Chamber setting the amount of reparations at \$10,000,000. Procurement advised that, as the process is

only at the EoI stage, these aspects can still be changed as they were not set in the EoI and the critical moment in which these aspects need to be set for fairness and transparency of the selection process is at the request for proposals (RFP) stage, as the scope of work is a part of the RFP provided to prospective bidders.

However, Procurement also advised that the increased liability amount may mean that the Trust Fund would want to consider permitting international organisations, even if they have no registration or experience in the DRC, applying as they may have relevant experience implementing larger relevant projects elsewhere. Accordingly, after the Trust Fund has reviewed whether and how many of the prospective bidders meet the qualification criteria set out in the EoI and has reviewed the victim data, it will determine whether it should re-open the EoI process for a limited period of time to allow more organisations to apply or whether it can continue directly with sending the qualifying organisations the RFP. A summary of the Procurement Unit's advice on these topics is contained in Annex B.

Finally, as will be set out in more detail to the Trial Chamber in a separate filing first in the *Katanga* proceedings (and referred to in Annex B) and then in this and other cases, in December 2017, the Trust Fund's Board of Directors decided that administrative costs (presented at 15% in previous submissions by the Trust Fund) do not fall within the reparations liability amount, unless explicitly included by a Trial Chamber in its order for reparations. While this does not affect any of the ongoing procurement activities (see explanation above regarding the EoI stage versus the RFP stage), Procurement nonetheless advised that project budgets can be increased up to 20% without needing to return to the Procurement Review Committee (PRC) for approval. Procurement's advice in this regard is contained in Annex B.

In conclusion, as regards the service-based reparations procurement process, the Trust Fund intends to have completed its review of which organisations qualify from the EoI process and to send the RFP to those organisations in July 2018 after it has refined the scope of the requested activities and projects. The decision as to whether a limited re-opening of the EoI to allow additional organisations to apply is necessary will be taken by the Trust Fund in early June at the latest, thus it would not delay the overall process or RFP timeline.

B. Conclusion

The Trust Fund hopes that this progress report adequately conveys the current developments in the implementation of the reparations order since the last report, and is available to respond to any further query the Trial Chamber may have.