

Annex A

to

“Fifth 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*

available to the Registrar, V01, V02 and OPCV Legal Representatives only

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, 2 October 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 fifth progress report.

A. Service-based reparations

a. Programme refinement

As indicated in its submissions of 13 April 2018,³ the Trust Fund conducted a review of the specific activities contemplated under the service-based reparations with respect to the changed victim profile presented by the group of 425 victims found to be eligible as reparations beneficiaries by the Trial Chamber in its decision of 15 December 2017.⁴ On the

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.

³ ICC-01/04-01/06-3399-Conf.

⁴ Corrected version of the « Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu », 21 December 2017, ICC-01/04-01/06-3379-Red-Corr, with two public annexes (Annex I and Annex III) and one confidential annex, *ex parte* Registry, Trust Fund for Victims, Legal Representatives of V01 and V02 groups of Victims and Office of Public Counsel for Victims (Annex II), and a confidential redacted version of

basis of this review, the Trust Fund prepared a draft revised programme description document.

On 28 June 2018, the Trust Fund held a working session with the V01, V02, and OPCV legal representative teams (“Legal Representatives”) to present and receive feedback on the draft programme document. Further feedback and proposed modifications were proposed by the Legal Representatives via email exchanges following the meeting. Particular attention was paid to addressing reparations responses to the harms suffered by indirect victims, victims located in non-urban areas, and the situation of vulnerable victims known to the Legal Representatives (e.g. elderly, particularly stigmatized direct victims).

The Trust Fund wishes to express its sincere appreciation to the Legal Representatives for their constructive and very helpful collaboration with the Trust Fund during this process. While the process has unavoidably taken longer than anticipated, the Trust Fund considers that the significant amount of work carried out was not only necessary, but has also greatly improved its service-based reparations programme document in ensuring that it is meaningfully responsive to the harms, needs and current situations of the 425 eligible reparations beneficiaries.

In addition, the Trust Fund and Legal Representatives agreed upon an Excel spreadsheet template with fields providing further relevant information in relation to the 425 reparations beneficiaries that was to be completed by the Legal Representatives for their respective clients by the end of August 2018. Due to competing work obligations of all the parties, this final step is still ongoing.

b. Procurement process

In regards to the Expression of Interest (“EOI”), the Trust Fund completed its eligibility criteria review and ■ applicant organisations have been found to be qualified. Upon receipt of the Excel spreadsheet, the Trust Fund intends to convert the refined programme document into a draft request for proposal (“RFP”) that will be circulated to the Legal Representatives for comment. In this regard, certain comments received from the Legal Representatives, in regard of such aspects as the holistic approach of the service-based programme and intake aspects, are not currently in the programme document because of its format, but will be

Annex II. The decision and annexes were filed on 15 December 2017 and the corrected versions were filed on 21 December 2017.

contained in the draft RFP. Once this consultation process is complete, the draft RFP will be filed before the Trial Chamber and then communicated to the qualifying organisations.

Recalling its submissions in the fourth progress report, the Trust Fund informs the Trial Chamber that it does not consider it necessary to re-open the EOI for further applicant organisations.

B. Symbolic reparations

With regard to the symbolic reparations component, the Trust Fund is actively considering options to engage on the potential re-launch of symbolic reparations awards in view of the expanded scope of the programme and in consultation with the Legal Representatives.

In addition, the Trust Fund is currently providing support to the V01 and V02 legal representative teams in the early exploration of a possible symbolic reparations initiative, potentially involving the participation of Mr Lubanga. The Trust Fund wishes to be clear that, at this point in time, this is a victim-led initiative to which the Trust Fund is lending support as requested, but is not leading or guiding. In agreement with the V01 and V02 legal representatives, OPCV will be kept fully apprised of any developments in regards to this initiative, though at this point in time it is not participating in the exploration stage. Should this initiative develop into a concrete proposal, the Trust Fund will promptly revert to the Trial Chamber with additional details.

C. Identification of potential additional reparations beneficiaries

During the week of 25 September 2018, the Trust Fund provided support to a mission carried out by the V02 legal representative in regards to a limited group of individuals, namely the family members of direct victims admitted in the group of 425 eligible beneficiaries. This mission did not involve any screening or the completion of any reparations applications as this would be premature given the present state of proceedings.

In this regard, the Trust Fund recalls that it and the Legal Representatives have made submissions before the Trial Chamber in relation to the administrative screening process relevant to additional reparations beneficiaries. The Trust Fund reiterates its willingness to continue to work directly with the Legal Representatives to attempt to reach an agreement on various points of disagreement or concern raised in their respective responses to the Trust Fund's submissions. At the same time, the Trust Fund would also appreciate receiving any

guidance or determinations from the Trial Chamber that it may have reached on these same matters.

D. 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.