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TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding
Judge Péter Kovács
Judge María del Socorro Flores Liera

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

THE PROSECUTOR v. THOMAS LUBANGA DYILO

Public Redacted Version

Seventeenth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019

With Confidential *ex parte* Annex A only available to the LRV01, the Trust Fund for Victims and the VPRS and Confidential *ex parte* Annexes B and C only available to the LRV01, the LRV02, the OPCV and the Trust Fund for Victims

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. BACKGROUND

1. Following Trial Chamber II's ("Trial Chamber") decisions of 21 October 2016, 6 April 2017 and 7 February 2019, approving, respectively, the programmatic framework for collective symbolic reparations as submitted by the Trust Fund for Victims ("Trust Fund"),¹ the programmatic framework for the service-based collective reparations as submitted by the Trust Fund,² and the Trust Fund's proposal in relation to the process for locating new applicants and determining their eligibility,³ and recalling its previous progress reports in this regard, the Trust Fund hereby submits its seventeenth progress report.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

2. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified the report as confidential, and its annexes as confidential *ex parte*, as they contain very detailed information related to operational aspects of the on-going implementation of reparations and sensitive information related to victims.

III. RELEVANT PROCEDURAL HISTORY

3. The Trust Fund recalls the procedural history set out in the Sixteenth progress report on the implementation of collective reparations ("Sixteenth progress report") submitted on 4 February 2022.⁴

¹ Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparation, 21 October 2016, [ICC-01/04-01/06-3251](#).

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 Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations, 7 February 2019, [ICC-01/04-01/06-3440-Red-tENG](#).

⁴ Sixteenth progress report on the implementation of collective reparations as per Trial Chamber II's decisions of 21 October 2016, 6 April 2017 and 7 February 2019 ("Sixteenth progress report"), With Confidential *ex parte* Annex A only available to the LRV01, the Trust Fund for Victims and the VPRS and Confidential *ex parte* Annex B only available to the LRV01, the LRV02, the OPCV, the Trust Fund for Victims, 4 February 2022, [ICC-01/04-01/06-3530-Red](#).

4. On 18 February 2022, the Legal Representatives V01 (“LRV01”), Legal Representatives V02 (“LRV02”), and the Office of Public Counsel for Victims (“OPCV”) (all together “the LRVs”) submitted their joint response to the Sixteenth progress report.⁵

5. On 10 March 2022, the Trial Chamber issued the Eighth Decision on the TFV’s administrative decisions on applications for reparations and additional matters.⁶

IV. PROGRESS REPORT

6. The Trust Fund hereby submits its seventeenth progress report, with information on the implementation of the collective reparations awards, as well as on the status of admissibility decisions.

A. Security Situation

7. On 18 April 2022, the state of siege in the provinces of Ituri and North-Kivu was prolonged for the twenty-second time. Based on the Court’s security assessment shared with the Trust Fund, the security situation in Ituri remains volatile and unpredictable. Various armed groups continue to carry out deadly attacks against the Armed Forces of the DRC (“FARDC”) and the civilian population. These armed groups are also engaged in fierce battles with each other, including over control of the mining areas around Mongbwalu and others. Attacks against the civilian population continue to take place on an ongoing basis. Lately, on 1 February 2022, an attack involving children described as one of the biggest assaults in almost a year in the country’s eastern region has been recorded at the Plaine Savo camp, which, according to some sources, resulted in the death of 60 people and injury of at least 50.⁷ Following this, a crash of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) helicopter occurred on 29 March 2022 in North Kivu, which resulted in the death of eight peacekeepers from Pakistan,

⁵ Réponse commune des Représentants légaux des victimes au Seizième Rapport sur le progrès de la mise en œuvre des réparations collectives déposé par le Fonds au profit des victimes le 4 février 2022, 18 février 2022, [ICC-01/04-01/06-3531-Red](#).

⁶ Eighth Decision on the TFV’s administrative decisions on applications for reparations and additional matters, 23 November 2021, ICC-01/04-01/06-3532-Conf.

⁷ “They Survived Guns and Machetes in Congo. They Want the World to Know”, *The New York Times*, accessible at < <https://www.nytimes.com/2022/02/04/world/africa/congo-attack-survivors.html?referringSource=articleShare> >

the Russian Federation and the Republic of Serbia, according to the United Nations Security Council.⁸

B. Public Health Situation

8. The COVID-19 situation is not thoroughly monitored throughout the country. Testing is not systematic, so the available statistics are not very reliable. The Country Office reports a resurgence of new cases. On 14 February 2022, the Government of the DRC has relaxed measures concerning COVID-19 in terms of the previously established curfew and preventive measures against travellers from outside of the DRC who are no longer required to get tested provided they are fully vaccinated. Although there are no new preventive measures taken by the Congolese Government, other measures previously established by the Government, the UN and the Registry's Occupational Health Unit are still in force and are respected during all implementation activities.

C. Admissibility Decisions

9. The Trust Fund hereby provides information regarding the ninth transmission of decisions on admissibility as verified by the Board of Directors.

10. During the reporting period, the Trust Fund received two batches of victims' applications from the VPRS, consisting of 245 applications in total.

11. Following verification and adoption of a final list by the Board of Directors, the Trust Fund hereby submits a list of 92 administrative decisions to the Trial Chamber for its approval.⁹ In order to facilitate the Trial Chamber's access to the complete files of all applicants,¹⁰ the Trust Fund will share an Excel table with the VPRS listing all the applicants included in this transmission.

12. To date, out of the 1736 files received from the VPRS since 2019, 602 files are awaiting further processing by the Trust Fund.¹¹ The Trust Fund issued 1122 admissibility decisions (1030

⁸ United Nations Security Council, Security Council Press Statement on Crash of United Nations Organization Stabilization Mission Helicopter in Democratic Republic of Congo (29 March 2022), 1 April 2022, accessible at <<https://reliefweb.int/report/democratic-republic-congo/security-council-press-statement-crash-united-nations-organization>>

⁹ See Annex A.

¹⁰ *Ordonnance enjoignant au Fonds au profit des victimes et à la Section de la participation des victimes et des réparations de donner accès à la Chambre aux nouvelles demandes en réparation*, 30 April 2020, ICC-01/04-01/06-3475-Conf ; 20 May 2020 Decision, para. 16.

¹¹ 12 additional applications collected and transmitted relate to victims that Trial Chamber II had already recognized as beneficiaries.

approved by the Trial Chamber and the 92 hereby submitted), all positive. To date, the total number of beneficiaries stands therefore at 1455.¹²

13. The VPRS continues with the processing of the applications submitted by the cut-off date of 1 October 2021. The Trust Fund will continue to receive additional transmissions during the next reporting period. As soon as the Trust Fund receives the last transmission, it will provide the Trial Chamber with the final number of applicants.

D. Collective Service-Based Reparations

14. A total of 555 beneficiaries are currently benefitting from the collective service-based reparations. To date, the Trust Fund has referred a total of 764 beneficiaries to the implementing partner.¹³

15. Reparations received: 85% of the 555 beneficiaries (470) are receiving psychological support, and 45% (247) are receiving medical care (in this regard, expenses related to some beneficiaries' medical fees have been extremely high and up to USD 6000 – USD 8000 due to the seriousness of their physical harm). 132 beneficiaries, or 24%, are receiving schooling support for themselves or their dependents (primary school and/or high-school), while 12 beneficiaries and 53 dependents of beneficiaries are currently receiving support for their university tuitions. 229 beneficiaries, i.e. 41%, have benefitted to date from short or long-term training courses, of which 133, i.e. 24%, are benefitting from IGAs.

16. The above mentioned 555 beneficiaries continue to be referred to activities that correspond to their need/harm. In parallel, the Trust Fund and the implementing partner aim to progressively include all the other beneficiaries awaiting intake into the programme without delay.

17. As already indicated above, not all beneficiaries referred to the implementing partner could be reached. To date, 209 beneficiaries could not be reached despite involving the LRVs and intermediaries of the LRVs in the process. The Trust Fund is appreciative of the support provided

¹² This includes the 425 applications directly assessed positively by the Trial Chamber and excludes the current batch of 100 administrative decisions pending approval.

¹³ As mentioned in previous reports, the Trust Fund referred to the implementing partner 425 beneficiaries found eligible by TCII in 2017 at first. Subsequently, the Trust Fund transmitted to TCII lists of beneficiaries considered as being in a more urgent situation by the LRVs.

by the LRVs and intermediaries in this regard. The efforts of attempting to contact those beneficiaries will continue.

18. Considering the limited number of victims that could be reached initially, the Trust Fund has proceeded to a no cost extension of Year 1 of the contract with the implementing partner until mid-June 2022. The Trust Fund is currently reviewing with the implementing partner the budget for Year 2 of the implementation to be submitted to the Procurement Review Committee (“PRC”) in line with the PRC’s findings when approving the procurement for Year 1. This will in turn enable the Year 2 contract renewal.

19. As set out in the previous report, the implementation of the reparations met a number of obstacles and issues that required direct action and engagement of the Trust Fund and its implementing partner. Given the individualised and confidential character of the implementation process taking place within the communities and sometimes the families of beneficiaries, the Trust Fund expects that implementation continues to encounter difficulties. The Trust Fund was able to increase its Bunia programme team with an Associate Field Programme Officer, which has strengthened its ability to continuously and directly guide and monitor the work of the implementing partner. The Trust Fund strengthened its financial control through unannounced visits to examine the project records of the implementing partner and sub-contractors, and weekly meetings with the implementing partner to monitor the implementation of activities.

20. The Trust Fund has taken measures to strengthen the information dissemination and coordination between the implementing partner and its sub-contractors. In that regard, the Trust Fund supported the partner in the development of procedural guides for activities and inter-actor responsibility matrices, to facilitate coordination and collaboration between project actors, and to reduce the time required for the execution of services. The Trust Fund has, in particular, continued to ensure that all project staff understand the particular character and needs involved in providing Court-ordered reparations to victims and that more detailed direction was provided to project staff on how to communicate and interact with reparation beneficiaries. A refocusing workshop with all partners and sub-contractors was held to improve the quality of care provided to beneficiaries.

21. The Trust Fund has developed specific monitoring tools that allow it to closely work with the implementing partner to ensure the set goals; in particular the development of an action plan

for taking charge of new groups of beneficiaries and the sharing of detailed monthly statements on the implementation of services.

22. One of the main issues raised by the beneficiaries and LRVs is related to the details of the reparations provided, in particular the cash to be received by beneficiaries. Accordingly, the Trust Fund and the implementing partner developed detailed information sheets and explanatory sheets for respectively the LRVs, when communicating with the beneficiaries, as well as for the beneficiaries themselves, with a view to manage and eventually meet their expectations.

23. As part of the expectation management, the Trust Fund also held meetings together with the implementing partner and the LRVs with dissatisfied beneficiaries to enquire about and address their complaints. The Trust Fund underlined in the communication with the LRVs the important role of the complaints mechanism established by the implementing partner to allow the implementing partner to address itself directly any issues and complaints and seek guidance from the Trust Fund. The implementing partner reports monthly to the Trust Fund on the status of complaints, which are mostly received and addressed through this mechanism, while some complaints continue to be conveyed through intermediary of the LRVs. The Trust Fund and its implementing partner will continue to improve this tool and evaluate its use.

24. During the reporting period, the Trust Fund has collaborated closely with the LRVs. The Trust Fund supported the LRVs in the course of their field missions to meet with beneficiaries, provided the LRVs with detailed and specific responses¹⁴ to questions¹⁵ they have formulated, held meetings with the LRVs and exchanged information in various ways regarding the status of implementation.¹⁶ The Trust Fund also received on a rolling basis from the LRVs updated contact information, which it transmitted without delay to the implementing partner.

25. This collaboration, through the efforts of the implementing partner and the Trust Fund's programme staff, has allowed to address the discontent of a limited number of beneficiaries, which had peaked on 7 March 2022 with a protest in front of the Bunia Field Office of the implementing partner.

¹⁴ See Annex B.

¹⁵ See Annex C.

¹⁶ Meeting between the LRV01, LRV02, the OPCV and the TFV dated 20 April 2022 at 10:30 am.

26. During their latest meeting dated 20 April 2022, the LRVs and the TFV agreed that the implementation is progressively reaching a smoother rhythm.

27. The Trust Fund considers that the implementation is well underway and that it was able, at this crucial initial stage, to considerably strengthen its own monitoring role as well as the performance of the implementing partner. The Trust Fund is fully aware that continued close monitoring will be required over the next months to ensure that the implementation takes place as approved by the Trial Chamber. In that regard, the Trust Fund does not, in this progress report, raise any question that requires consultations with the Trial Chamber in line with regulation 57 of the Regulations of the Trust Fund.

E. Symbolic Reparations

28. As indicated in the Ninth progress report on the implementation of collective reparations,¹⁷ the Trust Fund asked the LRVs to inform interested victims about consultations held by the implementing partner in relevant localities. The LRVs considered that the notice was too short to invite victims living in locations where the consultations had been organized. Therefore, the Trust Fund and the implementing partner agreed to postpone the consultation meetings. The amended consultation dates have been communicated to the LRVs and the consultation meetings will be held shortly. The Trust Fund recalls that the LRVs have consistently expressed doubt about the community centres component of the symbolic reparations. The Trust Fund recalls that the Scope of Work was adapted to ensure that community consultations including with victims take place before any community structures are built, in consideration of the time elapsed since 2015, date of the initial consultations. Many consultations have already taken place at some of the localities, underlining the need for speedy progress with these specific consultations, the dates of which have been communicated to the LRVs.

29. During the reporting period, the implementing partner considered that the context in the selected localities specifically concerned by the construction of memorial centres raised questions about the management of risks linked to the importance given to symbolic memorial structures and endeavoured to proceed to a risk analysis in order to prevent the project's activities from causing

¹⁷ Annex A to *Neuvième rapport sur le progrès de la mise en œuvre des réparations collectives conformément aux ordonnances de la Chambre de première instance II des 21 octobre 2016 (ICC-01/04-01/06-3251) et 6 avril 2017 (ICC-01/04-01/06-3289) et la Décision du 7 février 2019 (ICC-01/04-01/06-3440-Red)*, 21 April 2020, [ICC-01/04-01/06-3474-AnxA-Red](#).

tension/conflict within the beneficiary communities. In doing so, the implementing partner organized missions in the localities of Tchomia, Katoto, Rwamapara and Mahagi. The Locality of [Redacted] could not be accessed due to the insecurity in the axis Bambu-Kilo. The said missions allowed to:

- Analyse conflict contexts;
- Identify existing and/or latent community conflicts;
- Identify dividers, string-pullers and peace connectors;
- Identify causes, facilitators and effects of conflict;
- Assess local expertise to build the construction team;
- Identify risks and opportunities that need to be considered in the implementation of the project.

30. In addition, the implementing partner has also secured ground related details in three localities subject to community consultations. In parallel, several community-based organisations were identified to accompany the focus group activities for the identification of community therapy needs, family and/or community mediation and commemoration activities in the project area. The Trust Fund met with the implementing partner on multiple occasions to ensure a decent level of progress based on difficulties faced in the field. The Trust Fund and the implementing partner had in particular exchanged on several occasions in order to determine an agreeable timeline. Following the postponement of the consultations, the Trust Fund and the implementing partner agreed the latter would adjust the timeline set and present a new proposal which should be submitted shortly.

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests the Trial Chamber to take note of the present report.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,

Dated this 30th of June 2022

Date of the original: 4 May 2022

At The Hague, The Netherlands