

**Cour
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**International
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TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Observations on the impact of COVID-19 measures on operational capacity
on behalf of the former child soldiers**

Source: Office of Public Counsel for Victims (CLR1)

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

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I. PROCEDURAL BACKGROUND

1. On 8 July 2019, the Chamber – in a different composition – found Mr Ntaganda guilty of 18 counts of war crimes and crimes against humanity.¹
2. On 25 July 2019, the Single Judge issued the “Order for preliminary information on reparations”, requesting the Registry to submit observations on a number of issues.² The Single Judge noted that the Chamber intended to order the legal representatives of victims (the “LRVs”), the Defence, the Office of the Prosecutor (the “Prosecution”), the Registry and the Trust Fund for Victims (the “TFV”) to submit observations on reparations six weeks after the issuance of the Chamber’s sentencing decision pursuant to Article 76 of the Rome Statute (the “Statute”).³
3. On 5 September 2019, the Registry filed its Observations on Reparations.⁴
4. On 3 October 2019, the LRVs, the Defence, the TFV, and the Prosecution filed their responses.⁵
5. On 7 November 2019, the Chamber sentenced Mr Ntaganda to 30 years of imprisonment.⁶

¹ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

² See the “Order for preliminary information on reparations” (Single Judge, Trial Chamber VI), [No. ICC-01/04-02/06-2366](#), 25 July 2019, para. 4.

³ *Idem*, para. 5.

⁴ See the “Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”, [No. ICC-01/04-02/06-2391](#), 5 September 2019. The observations have been submitted in the Annex I thereto, “Registry’s Preliminary Observations on Reparations”, [No. ICC-01/04-02/06-2391-Anx1](#), 6 September 2019.

⁵ See the “Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2430](#), 3 October 2019; the “Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations”, [No. ICC-01/04-02/06-2431](#), 3 October 2019; the “Prosecution’s response to the Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ (ICC-01/04-02/06-2391-Anx1)”, [No. ICC-01/04-02/06-2429](#), 3 October 2019; and the “Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations”, [No. ICC-01/04-02/06-2428](#), 3 October 2019.

⁶ See the “Sentencing judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

6. On 5 December 2019, the Single Judge issued the “Order setting deadlines in relation to reparations”, requesting submissions from the LRVs, the Defence, the Registry, the TFV, the Prosecution and the Democratic Republic of the Congo (the “DRC”) authorities by 28 February 2020 with respect to reparations proceedings, including *inter alia* the criteria and methodology to be applied, the types and modalities of reparations, and the identification of potential experts.⁷

7. On 4 February 2020, the Registry provided the LRVs and the Defence with a list of 31 candidates who may qualify as Experts in the case, as assessed by an external consultant. A final list of 34 candidates was sent on 6 February 2020.⁸

8. On 19 February 2020, in compliance with the Order Setting Deadlines, the Registry filed its list of proposed experts on reparations.⁹

9. On 28 February 2020, in compliance with the Order Setting Deadlines, the Legal Representatives,¹⁰ the Registry,¹¹ the Trust Fund for Victims,¹² the Prosecution,¹³ the Defence,¹⁴ and the DRC authorities¹⁵ submitted their respective observations on reparations.

⁷ See the “Order setting deadlines in relation to reparations” (Single Judge, Trial Chamber VI), [No. ICC-01/04-02/06-2447](#), 5 December 2019, para. 9(c) (the “Order Setting Deadlines”).

⁸ See the emails from the Registry to the LRVs and the Defence dated 4 February 2020, at 12.42, and 6 February 2020, at 16.25.

⁹ See the “Registry List of Proposed Experts on Reparations Pursuant to Trial Chamber VI’s Order of 5 December 2019”, [No. ICC-01/04-02/06-2472](#), 19 February 2020. Upon the Registry’s request sent by email on 27 January at 18.05, the Chamber granted an extension of time until 19 February 2020 to submit the List by email dated 29 January 2020, at 15.55.

¹⁰ See the “Submissions on reparations of behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2474](#), 28 February 2020 and the “Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations”, [No. ICC-01/04-02/06-2477](#), 28 February 2020.

¹¹ See the “Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2475](#), 28 February 2020.

¹² See the “Trust Fund for Victims’ observations relevant to reparation”, [No. ICC-01/04-02/06-2476](#), 28 February 2020.

¹³ See the “Prosecution’s Observations on Reparations”, [No. ICC-01/04-02/06-2478](#), 28 February 2020.

¹⁴ See the “Defence Submissions on Reparations”, [No. ICC-01/04-02/06-2479](#), 28 February 2020

¹⁵ See the “Transmission des observations de la République démocratique du Congo”, [No. ICC-01/04-02/06-2480](#), 3 March 2020 (dated 2 March 2020).

10. On 9 April 2020, the Single Judge issued an “Order to provide information on the impact of COVID-19 measures on operational capacity”.¹⁶

II. PRELIMINARY CONSIDERATION

11. Having been invited by the Single Judge to provide observations on the possible impact of measures in place in response to the COVID-19 pandemic on the proposals made in her submissions on reparations filed on 28 February 2020, the Legal Representative will oblige. She posits, however, that since the Chamber has not yet ruled on the various proposals made by parties, the TFV and the Registry from October 2019 onwards, the impact of said measures on her proposals and her ability to carry out her duties in relation to the reparation proceedings is difficult to assess and remains largely a matter of speculation and approximation.

III. SUBMISSIONS

A. The COVID-19 situation in the DRC

12. Since the onset of the pandemic on the territory of the DRC on 10 March 2020, national authorities have put in place measures to limit further contamination. A first set of measures issued on 18 March 2020 were subsequently reinforced on 25 March 2020. Although only a few cases of contamination have been reported within the DRC,¹⁷ the limited compliance with social distancing measures in Kinshasa could lead to an exponential growth of the pandemic in early May in the capital.¹⁸ As of 20 April 2020, 5 provinces were concerned by the pandemic, included Ituri.¹⁹

13. As of 20 March 2020, all flights to the DRC from countries at risk have been suspended until further notice and all borders have been closed except for trucks,

¹⁶ See the “Order to provide information on the impact of COVID-19 measures on operational capacity” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2507](#), 9 April 2020.

¹⁷ See RADIO OKAPI, “[Coronavirus: les cas confirmés atteignent la barre de 350](#)”, 20 April 2020.

¹⁸ See RADIO OKAPI, “[Coronavirus: le secrétariat technique déplore le relâchement des mesures de distanciation sociale à Kinshasa](#)”, 15 April 2020.

¹⁹ See RADIO OKAPI, “[RDC-COVID-19: 332 cas confirmés, 25 décès, et 27 personnes guéries](#)”, 20 April 2020.

ships and cargo planes with freight. Moreover, national flights from and to Kinshasa have been suspended. The same holds true with regard to road and fluvial transport of passengers.²⁰

14. In Ituri, the lockdown measures adopted are limited and some flights are still operating locally (to and from Goma, Kisangani, Butembo, Kalemie *etc.*). But the pandemic situation in the region is coupled with growing insecurity in the Djugu territory, where the militia *Coopérative pour le développement du Congo* (the “CODECO”) is fighting the FARDC to expand its territorial control. In mid-April, the Chief of the Walendu Watsi *chefferie* announced that 18 villages are controlled by the CODECO militia and the population is fleeing,²¹ which is an aggravating factor with regard to the COVID-19 pandemic.²² The UNHRC reported large-scale displacement in the region since early April and insisted that the volatility of the security situation prevailing in Ituri renders it impossible for its staff and local partners to implement COVID-19 prevention activities.²³ It is also reported that the CODECO militiamen are now in and around Mahagi.²⁴ In addition, since 9 April 2020, the road between Bunia and Mahagi is completely blocked, depriving the population of the whole Djugu territory of food and other essential goods.²⁵

²⁰ See the “[Message à la Nation de S.E.M Felix-Antoine Tshisekedi Tshilombo, Président de la République, Chef de l’Etat, relatif à la Pandémie du Coronavirus, COVID-19](#)”, 24 March 2020. See also the website of the Prime Minister, <https://www.primature.cd/public/mesures-preventives/>.

²¹ See RADIO OKAPI, “[Ituri: un afflux de déplacés observé à Muzi-Pela, à la suite des combats entre FARDC et CODECO](#)”, 13 April 2020. On 18 April, the FARDC announced having regained control over 14 localities in the Djugu territory. See RADIO OKAPI, “[RDC: L’armée récupère 14 localités à Djugu et Mahagi des mains des miliciens](#)”. But the situation is extremely volatile as acknowledged by the United Nations High Commissioner for Human Rights during [the press briefing](#) held on 17 April 2020 and by the victims residing in the area.

²² In this sense, see UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, “[Ongoing insecurity in eastern DRC could derail coronavirus containment](#)”, 17 April 2020.

²³ See ACTUALITE.CD, “[RDC: plus de 2 000 familles déplacées enregistrées depuis avril à Djugu](#)”, 16 April 2020.

²⁴ See RADIO OKAPI, “[Ituri: un afflux de déplacés observé à Muzi-Pela, à la suite des combats entre FARDC et CODECO](#)”, 13 April 2020 and “[Ituri: des hommes armés non identifiés tuent trois personnes à Mahagi](#)”, 18 April 2020.

²⁵ See RADIO OKAPI, “[RDC: 200 véhicules bloqués sur la route Bunia-Mahagi par les miliciens de la CODECO](#)”, 14 April 2020. On 19 April 2020, the traffic seems to have resumed although the CODECO militiamen are still active in the region. See RADIO OKAPI, “[Ituri: reprise de trafic sur le tronçon routier Bunia-Mahagi](#)”, 20 April 2020.

B. The impact of the situation on reparation proceedings

15. The current COVID-19 pandemic does not in any way impact on the Chamber's ability to issue its order on reparations. Indeed, as set out by the Appeals Chamber in the *Lubanga* case, five elements, at a minimum, need to be addressed by the Chamber in its reparations order:

- i. The order should be directed against the convicted person, and establish and inform him of his liability;
- ii. The order should set out the type of reparations ordered (individual, collective or both) and reasons underpinning said determination;
- iii. The order should define the harm caused to direct and indirect victims;
- iv. The order should identify the modalities of reparations; and
- v. The order should identify the victims eligible or set out eligibility criteria.²⁶

16. None of these elements are affected by the COVID-19 pandemic and the Chamber can issue its reparations order based on the submissions already before it. Since the Chamber did not issue any decision with regard to the possible appointment of experts to assist its determinations during the reparations phase, the Legal Representative reiterates that, as mentioned in her previous submissions, the Court already received, in other cases, a significant number of reports from organisations and experts addressing issues, general in nature, of reparations. This material is part of the public record of those cases and the Chamber may refer to it, as documentary evidence, without any need to request new reports from experts.²⁷ This will not only avoid litigation, streamline the proceedings and ensure that the limited financial resources available are used for the benefit of victims,²⁸ but it will also avoid

²⁶ See the "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2" (Appeals Chamber), [No. ICC-01/04-01/06-3129 A A2 A3](#), 3 March 2015, para. 32 (the "*Lubanga* 2015 Appeals Judgment on Reparations").

²⁷ See the "Submissions on reparations of behalf of the Former Child Soldiers", *supra* note 10, para. 85 and its annex. See also "Joint Response of the Legal Representatives of Victims to the Registry's Observations on Reparations", *supra* note 5, para. 40.

²⁸ See the "Submissions on reparations of behalf of the Former Child Soldiers", *supra* note 10, para. 85.

any further delay in the Chamber issuing its reparation order, particularly in light of the constraints arising from the COVID-19 situation. Indeed, should the Chamber appoint experts, any such expertise will be delayed by the current COVID-19 pandemic, impacting in turn on the timeline of the reparation proceedings as a whole.

17. With regard to the establishment of eligibility criteria, the Legal Representative recalls, for the reasons identified in her 28 February 2020 submissions,²⁹ that the Chamber can avail itself of the existing *Lubanga* sample to draw meaningful conclusions as to the eligibility criteria and provide guidance for the work of the TFV at the implementation stage.³⁰ Accordingly, this component of the reparation proceedings is not impacted by the COVID-19 pandemic.

C. The necessity of finding alternative means to carry out outreach activities

18. As noted over the years, the crimes for which Mr Ntaganda was convicted took place almost 17 years ago. Since then, the overwhelming majority of victims, if not all of them, have not benefited from any sort of assistance. They live in a situation of extreme poverty, permanent insecurity, and humanitarian conditions classified by the United Nations over many years as a humanitarian crisis of high level.³¹ Reparations in the case will need to address harm unaddressed and accumulated since 2002-2003, including trans-generational harm, loss of opportunities and life plans, deaths, and post-traumatic stress disorders. Indeed, victims have consistently complained that they are not benefiting from the TFV projects or from any other support.³²

19. With regard to the current situation, the COVID-19 pandemic is taking place in the aftermath of the Ebola outbreak and multiple security crises in Ituri, which

²⁹ *Idem*, paras. 36-37.

³⁰ *Idem*, para. 37.

³¹ See for all the "Thirteenth Periodic Report on Victims in the Case and their General Situation With one Confidential EX PARTE Annex, only available to the Registry and both Legal Representatives of Victims, [No. ICC-01/04-02/06-2353](#), 6 June 2019.

³² *Ibid.*

precluded the Legal Representative and her field counsel from travelling as often as they would have desired to the relevant areas to meet with their clients. As a result of the measures in place both in the DRC and in the Netherlands, it is anticipated that travels restrictions will continue to be in place in the coming weeks, and potentially beyond. The Legal Representative and her field counsel endeavour however to maintain regular contact with victims individually through phone calls, owing to the complete dedication of the field counsel in particular. Moreover, since the lockdown is only partial in Ituri, contact persons are able to carry out individual meetings. But despite these activities, and despite the Legal Representative's and her field counsel's best efforts, victims are losing faith in international criminal justice. It is therefore of paramount importance that alternate means of outreach are set up – such as outreach through videos and radio programs.

20. Finally, 17 years after the events, the Legal representative respectfully submits that it is crucial that reparations proceedings proceed efficiently and without undue delay in order for any reparation measures to be meaningful and to fully address the needs of the victims.

Respectfully submitted,



Sarah Pellet
Common Legal Representative of the former
Child soldiers

Dated this 21th Day of April 2020

At The Hague, The Netherlands