

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

No.: ICC-01/04-02/06

Date: 21 April 2020

**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 redacted version of  
“Registry Submissions pursuant to the ‘Order to provide information on the  
impact of COVID-19 measures on operational capacity’, ICC-01/04-02/06-2507”, 21  
April 2020**

**Source: Registry**

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

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## I. Introduction

1. The Registry submits this report and its related annexes pursuant to the “Order to provide information on the impact of COVID-19 measures on operation capacity,” whereby Judge Chang-ho Chung (“Order” and “Single Judge”) instructed “the LRVs, the Defence, the Registry, and the TFV to inform the Chamber, no later than 21 April 2020, by way of a brief filing, about the impact of COVID-19 measures on their operational capacity in relation to the reparations proceedings in the *Ntaganda* case.”<sup>1</sup>
2. With respect to how the COVID-19 pandemic might impact the reparations proceedings in the Prosecutor v. Bosco Ntaganda case (“Ntaganda case”), and the Registry’s proposal for the conduct of those proceedings specifically (“Registry’s Observations on Reparations”)<sup>2</sup>, the Registry has structured its brief observations in the following manner:
  - (i) Impact of COVID-19 related measures on ICC activities
    - i. General impact
    - ii. Impact on the eligibility assessment of participating victims
    - iii. Impact on the registration and eligibility assessment of potential new applicants
  - (ii) Update on the security and political dynamics in Ituri – Annex I
  - (iii) Impact of recent political developments in Kinshasa – Annex II

## II. Applicable Law

3. The following provisions are, alongside the Order, of particular relevance to the present submissions: article 75 of the Rome Statute, rules 16, 94 and 97 of the Rules of Procedure and Evidence and (“Rules”), regulations 86(9) and 88 of the Regulations of the Court (“RoC”), and regulations 56 and 110(2) of the Regulations of the Registry (“RoR”).

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<sup>1</sup> Trial Chamber VI, “Order to provide information on the impact of COVID-19 measures on operational capacity”, 9 April 2020, ICC-01/04-02/06-2507, para. 5.

<sup>2</sup> Registry, “Registry’s Observations on Reparations”, 28 February 2020, ICC-01/04-02/06-2475 (“Registry’s Observations on Reparations”).

### III. Submissions

#### *Impact of COVID-19 related measures on ICC activities*

##### *General impact*

4. The various responses from states, [REDACTED]<sup>3</sup>, to the COVID-19 pandemic, have [REDACTED] impacted the standard operational capacity of the Registry.
5. As of 15 April 2020, there were 267 confirmed cases of COVID-19 in the DRC, including 22 deaths since an epidemic was declared on 10 March 2020 by the Congolese government.<sup>4</sup>
6. The measures subsequently put in place by the Congolese government have had a significant impact on the possibility to travel to and within the DRC. A state of emergency was declared on 24 March 2020, with an open-ended suspension of inbound and outbound travel. All the borders have been closed until further notice, and [REDACTED]. All travellers arriving in the country are subjected to mandatory temperature screenings and are quarantined for 14 days and may have to undergo further tests. All internal travel between Kinshasa and other urban centres is prohibited.
7. To limit the expansion of COVID-19, the Congolese government has introduced the following measures: prohibition of all gatherings, meetings and celebrations of more than 20 people in public places outside the family home; closure of schools, universities, official and private higher institutions throughout the national territory from March 19 2020 for a period of four weeks; suspension of all services for a period of four weeks from March 19 2020; suspension of sports activities in stadiums and other places of sports gathering until further notice; prohibition, until further notice, of the opening of discos, bars, cafes, terraces and restaurants; a ban on the organization of

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<sup>3</sup> [REDACTED].

<sup>4</sup> Bulletin Quotidien no. 22 du Comité multisectoriel de la riposte à la Pandémie du Covid-19 en RDC (CMR CIVD-19), of 15 April 2020 ; see <https://us3.campaign-archive.com/?u=b34a30571d429859fb249533d&id=a6c087d6ac>, last consulted on 20 April 2020.

mourning in rooms and homes; price charged at government expense all cases tested positive throughout the territory<sup>5</sup>. Embassies and private companies have started to extract non-essential staff members and their dependents on a voluntary basis. Furthermore, some national embassies are advising their citizens to take the first available flight out of Kinshasa, where possible.

8. An initial attempt of lockdown of Kinshasa was announced on 26 March 2020 for a period of three weeks. [REDACTED]. A lockdown has been introduced locally in the Gombe neighbourhood of Kinshasa for 14 days, starting on 6 April 2020.
9. [REDACTED]
10. [REDACTED]

*Impact on the eligibility assessment of participating victims*

11. For the purpose of this filing, a distinction is made between the 2,132 victims who are already participating in the proceedings (“participating victims”) and victims who may also qualify and wish to benefit from reparations in the *Ntaganda* case but have not yet registered (“potential new applicants”). When referring to both groups together, the term “potential beneficiaries” will be used.
12. Despite the significant impact of COVID-19 measures on the operational capacity of the Registry, certain functions remain fully intact. Staff from the Registry’s Victims Participation and Reparations Section (“VPRS”) have remote access to the VPRS database (VAMS) and are in a position to carry out the eligibility assessment of participating victims, as set out in the Registry’s Observation on Reparations,<sup>6</sup> remotely.<sup>7</sup>
13. However, commencing this eligibility assessment of participating victims would require the Chamber’s endorsement of the Registry recommendation

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<sup>5</sup> Bulletin Quotidien no. 23, CMR COVID-19 of 15 April 2020; see <https://us3.campaign-archive.com/?u=b34a30571d429859fb249533d&id=a6c087d6ac>

<sup>6</sup> Registry’s Observations on Reparations, Annex I, paras. 33-39.

<sup>7</sup> If required, VPRS field staff can also assist remotely.

that the same standards for the participation of victims at trial are adopted for the reparations phase of proceedings,<sup>8</sup> or that the same elements of proof required at trial be found suitable for present proceedings.<sup>9</sup> This would enable the VPRS to carry out the eligibility assessment of the participating victims immediately, without potentially having to supplement their applications with additional forms of documentary evidence, which would require field missions by the Legal Representatives of Victims (“LRVs”) or Registry staff.

14. So as to streamline the eligibility assessment process and resolve any unclear matters that may arise from the applications in a fair and consistent manner, the Registry recommends applying the “ABC approach” as outlined in its previous Observations on Reparations,<sup>10</sup> subject to the Chamber’s authorization. Should this approach be deemed suitable, the timeline<sup>11</sup> set out in the Registry’s Observations on Reparations would remain achievable with respect to assessing the eligibility of the 2,132 participating victims in the *Ntaganda* case.

*Impact on the registration and eligibility assessment of potential new applicants*

15. Current measures taken in response to COVID-19 are likely to have a significant negative impact on the Registry’s ability to travel to the relevant areas and register potential new applicants. As stated above, field related activities in the DRC or Uganda related to the direct interaction with victims, partners and leaders in the case locations are currently on hold due to travel restrictions put in place by those countries. Without clear information on how long the travel restrictions will remain in place, it is impossible to know for certain whether, or for how long, the COVID-19 related measures will impact the Registry’s proposal with respect to registering potential new applicants in

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<sup>8</sup> *Id.*, at para. 39.

<sup>9</sup> The Registry refers in this regard to the list of relevant documentation available in the affected areas in the DRC, as per the Registry’s Observations on Reparations, Annex I.

<sup>10</sup> *Id.*, para. 34.

<sup>11</sup> *Id.*, para. 28, chart C6.

the field (let alone any other Registry field activities). At this stage, it is also difficult to predict in which manner COVID-19 will generate certain follow-up health and safety-related restrictions in the field that may require slight adaptations of Registry plans on how to interact with victim groups and communities.<sup>12</sup> This also extends to a reduction of UN operations in Ituri imposed by COVID-19, which would impact the Registry's capacity to move. Finally, post COVID-19 needs of the population can be expected to focus on humanitarian assistance, which may impact victims' expectations regarding potential reparations measures by the Court. Additional explanation on the Court's mandate and the nature of potential reparations from the Ntaganda case – as opposed to humanitarian aid following the COVID-19 crisis - will be required to properly manage victims' expectations.

16. The Registry's proposal on the registration of potential new applicants also allocated time for the preparation of, *inter alia*, a reparations form, training materials for intermediaries, information tools for victims and local leaders,<sup>13</sup> interview methodologies, and guidance for risk prevention. Should the Chamber be minded to follow the Registry's recommendations on the registration and eligibility assessment of potential new applicants as outlined in its Observations on Reparations,<sup>14</sup> the intervening period in which travel restrictions remain in place would be used to carry out the above mentioned activities, with little impact on the Registry's proposed timeline. However, should the travel restrictions remain in place beyond the summer recess, then delays with respect to the Registry's originally proposed timeline related to the registration and eligibility assessment of potential new applicants would be unavoidable. The Registry's proposal would need to be adapted to take into account the new reality, depending on developing circumstances. The Registry respectfully proposes issuing periodic updates to the Chamber on its

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<sup>12</sup> Assumptions are that new travel related rules may also apply, including strict health controls of travellers and lesser travel options, as well as delays.

<sup>13</sup> Such tools are aiming at facilitating the understanding of reparation related activities within relevant communities.

<sup>14</sup> *Id.*, paras. 28-32.

activities and the situation on the ground, particularly for the coming months during which the situation is expected to evolve.

17. With respect to the *Lubanga* victims who may also become potential beneficiaries in the *Ntaganda* case, should the Chamber follow the Registry's proposal, a system can be devised whereby the beneficiaries identified by the Trust Fund for Victims in the *Lubanga* proceedings would be contacted by the appointed LRVs in the *Ntaganda* case,<sup>15</sup> and be asked to indicate whether they wish to be considered for reparations in the *Ntaganda* case. If the *Lubanga* victims indicate that they would like to be so considered, following the VPRS' proposal in the Observations on Reparations,<sup>16</sup> the dossiers submitted in the *Lubanga* proceedings would be transmitted to the *Ntaganda* case for an eligibility assessment by the VPRS, applying the above-referenced "ABC approach". This procedure could in theory also be carried out during ongoing travel restrictions (at least for already identified potential beneficiaries in the *Lubanga* proceedings); however, the identification process in the *Lubanga* proceedings will also likely be impacted by the COVID-19 related travel restrictions, potentially resulting in delays to the completion of the identification process in that case.

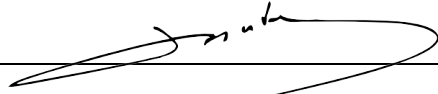
18. In conclusion, while activities that involve direct contact with victims cannot presently take place in the face of the COVID-19 restrictions, staff will be able to work remotely on the training modules and techniques, as well as the design of documentation and registration methodology. Assuming that the measures might be only progressively lifted, the overall timing of the exercise will need to be flexibly adjusted.

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<sup>15</sup> The LRVs in the *Ntaganda* case would be able to perform this task only if the confidential list of victims in the *Lubanga* case were to be provided by the VPRS. This sharing of confidential information would be possible with the *Lubanga* Chamber's prior authorisation.

<sup>16</sup> *Id.*, paras. 37-38.





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Mare Dubuisson  
Director Division of Judicial Services  
on behalf of Peter Lewis, Registrar

Dated this 21 April 2020

At The Hague, the Netherlands