

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **14 May 2020**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuccia

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Public redacted version of ‘Decision appointing experts on reparations’

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Ms Kate Gibson

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

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REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Article 75 of the Rome Statute ('Statute') and Rule 97(2) of the Rules of Procedure and Evidence ('Rules'), issues this 'Decision appointing experts on reparations'.

1. On 5 December 2019, Judge Chang-ho Chung, acting as Single Judge on behalf of the Chamber, issued an 'Order setting deadlines in relation to reparations' ('Order'),¹ *inter alia*, instructing the Registry, in consultation with the parties, to submit by 14 February 2020 a list of proposed experts on certain topics identified by the Chamber as relevant for the reparations proceedings in the *Ntaganda* case, namely: (i) the scope of liability of the convicted person; (ii) the scope, extent, and evolution of the harm suffered by both direct and indirect victims, including the long-term consequences of the crimes on the affected communities and including the potential cost of repair; (iii) appropriate modalities of reparations; (iv) sexual violence, in particular sexual slavery, and the consequences thereof on direct and indirect victims; and (v) any other matter deemed relevant after the aforesaid consultation.²
2. On 29 January 2020, following a request from the Registry,³ the Chamber granted an extension of time until 19 February 2020 for the submission of the list of proposed experts.⁴
3. On 19 February 2019, the Registry submitted a list of proposed experts.⁵
4. On 28 February 2020, in line with the deadline set in the Order,⁶ the Defence,⁷ the LRVs,⁸ the Office of the Prosecutor ('Prosecution'),⁹ and the TFV¹⁰ submitted their

¹ ICC-01/04-02/06-2447.

² Order, para. 9(b).

³ Email from Registry to Trial Chamber VI on 27 January 2020, at 18:05.

⁴ Email from the Single Judge to the Registry, the parties, and the TFV on 29 January 2020, at 15:55.

⁵ Registry List of Proposed Experts on Reparations Pursuant to Trial Chamber VI's Order of 5 December 2019, ICC-01/04-02/06-2472 (with 35 confidential annexes, available only to the Defence and the Legal Representatives of Victims, 'List of Proposed Experts').

⁶ Order, para. 9(c).

⁷ Defence submissions on reparations, ICC-01/04-02/06-2479-Conf (the Defence's submissions initially filed as public were reclassified as confidential pursuant to the instruction of the Single Judge dated 6 March 2020; a public redacted version was filed on 6 March 2020 as ICC-01/04-02/06-2479-Red, 'Defence Submissions').

⁸ Submissions on Reparations on behalf of the Former Child Soldiers, ICC-01/04-02/06-2474 (with one public annex, 'LRV1 Submissions'); and Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations, ICC-01/04-02/06-2477-Conf (a public redacted version was filed the same day as ICC-01/04-02/06-2477-Red, 'LRV2 Submissions').

views on, *inter alia*, the proposed experts and/or generally on the necessity to appoint experts on reparations in the present case. The LRV1 avers that the Court already received, in other cases, a significant number of reports from organisations, which may be referred to by the Chamber, without any need to request new reports.¹¹ Should the Chamber nevertheless determine that it is necessary to call experts, the LRV1 posits that an expert very familiar with the Ituri context may be of assistance to the Chamber.¹² The LRV2 submits that, instead of appointing experts in the present case, the Chamber could take judicial notice of the expertise provided by the four experts in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, so as to avoid incurring additional costs and raising expectations among the local community.¹³ Should the Chamber however, in the exercise of its discretion, wish to appoint experts, the LRV2 suggests that an eventual expert should be fully acquainted with the 2002-2003 events in Ituri and the current realities in the field.¹⁴ The Defence, *inter alia*, notes that any appointed experts should be neutral and carry out their mandate with impartiality and independence and takes issue with four of the proposed experts.¹⁵ The TFV notes that experts could be of added value to existing in-house expertise in relation to harm resulting from sexual and gender-based violence (‘SGBV’) crimes and could offer advice on the adoption of reparations principles concerning victims of such crimes.¹⁶

5. On 10 March 2020, the Single Judge instructed the Registry to carry out relevant background checks in relation to four proposed experts preliminarily selected for the purposes of appointment pursuant to Rule 97(2) of the Rules and to report back to the Chamber on the outcome thereof.¹⁷
6. On 1, 6, and 20 April 2020, the Registry informed the Chamber that the relevant internal procedures as regards the four preliminarily selected experts had been completed.¹⁸

⁹ Prosecution’s Observations on Reparations, ICC-01/04-02/06-2478 (with public Annex A).

¹⁰ Trust Fund for Victims’ observations relevant to reparations, ICC-01/04-02/06-2476 (‘TFV Submissions’).

¹¹ LRV1 Submissions, paras 85-86.

¹² LRV1 Submission, para. 87.

¹³ LRV2 Submissions, paras 88-96.

¹⁴ LRV2 Submissions, paras 97-98.

¹⁵ Defence Submissions, para. 119.

¹⁶ TFV Submissions, para. 140.

¹⁷ Email from the Single Judge to the Registry on 10 March 2020, at 15:27.

¹⁸ Email from the Registry to the Chamber on 1 April 2020, at 18:00; email from the Registry to the Chamber on 6 April 2020, at 15:09; and email from the Registry to the Chamber on 20 April 2020, at 14:59.

7. On 9 April 2020, the Single Judge noted that travel between and within countries had been severely restricted in response to the COVID-19 pandemic.¹⁹ He ordered the LRVs, the Defence, the Registry, and the TFV to inform the Chamber by 21 April 2020 whether, and if so to what extent, such measures impact on the proposals made in their earlier submissions and on their ability to carry out their duties in relation to the reparations proceedings.²⁰
8. On 21 April 2020, the LRVs,²¹ the Defence,²² the Registry,²³ and the TFV²⁴ made their respective submissions pursuant to the order of the Single Judge. As part of its submissions, the Registry, *inter alia*, informed the Chamber on the travel restrictions to and within the Democratic Republic of the Congo ('DRC') currently in place, as well as of the fact that all missions to the country are currently suspended until further notice.²⁵ It also noted that any potential field-related activities of the experts will have to be planned and scheduled in accordance with developing travel restrictions.²⁶
9. Having considered the background and indicated areas of expertise of the persons listed in the proposed list of experts and the benefits of having a multidisciplinary team of experts, including knowledge of the local context to ensure the production of a comprehensive report, the Chamber appoints the following experts:

- Ms [REDACTED];²⁷

¹⁹ Order to provide information on the impact of COVID-19 measures on operational capacity, ICC-01/04-02/06-2507 ('Order to Provide Information'), para. 4.

²⁰ Order to Provide Information, paras 4-5.

²¹ Observations on the impact of COVID-19 measures on operational capacity on behalf of the former child soldiers, ICC-01/04-02/06-2516; and Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the "Order to provide information on the impact of COVID-19 measures on operational capacity", ICC-01/04-02/06-2518-Conf-Exp (confidential *ex parte*, available only to the LRVs, the Registry, and the TFV; a public redacted version was filed the same day as ICC-01/04-02/06-2518-Red).

²² Defence observations pursuant to 'Order to provide information on the impact of COVID-19 measures on operational capacity', ICC-01/04-02/06-2515.

²³ 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, ICC-01/04-02/06-2519-Conf (a public redacted version was filed the same day as ICC-01/04-02/06-2519-Red; with confidential Annex I and confidential *ex parte* Annex II, available only to the Registry; a confidential redacted version of Annex II was filed on 6 May 2020; 'Registry COVID-19 Submissions').

²⁴ Trust Fund for Victims' observations on the impact of COVID-19 on operational capacity, ICC-01/04-02/06-2517.

²⁵ Registry COVID-19 Submissions, paras 4-10.

²⁶ Registry COVID-19 Submissions, para. 10.

²⁷ Head of [REDACTED], previously [REDACTED]; worked with victims of sexual violence committed in [REDACTED], documenting the crimes for, *inter alia*, the purposes of a [REDACTED] report in relation to

- Ms [REDACTED];²⁸
- Mr [REDACTED];²⁹ and
- Mr [REDACTED]³⁰ (‘Experts’).

10. The Chamber has taken note of the Defence’s objection in relation to one of the Experts. Specifically, the Defence argues that Mr [REDACTED] is not suitable as an expert in the *Ntaganda* case, because [REDACTED], he has worked with certain communities of the victims of some of the crimes for which Mr Ntaganda was convicted, which, in the Defence’s submission, affects his neutrality.³¹ In the view of the Chamber, this does not, without more, affect Mr [REDACTED]’s neutrality. To the contrary, the expert’s knowledge [REDACTED], including of some of the affected victim communities, is likely to be of assistance and facilitate the completion of the Experts’ report,³² particularly in circumstances where travel to the DRC may be difficult. Furthermore, the Chamber recalls that the Defence will be provided with an opportunity to make submissions on the Experts’ report.³³

11. The Experts shall provide their report on issues (i) to (iv) identified in paragraph 9(b) of the Order, as set out above.³⁴ The Experts may communicate with the parties and the TFV and seek their views. The Experts should endeavour to submit a joint report. This report may contain sections on some of the issues identified by the Chamber that are authored only by one or by some of the experts.

their requests for reparations; and [REDACTED] a programme on sexual crimes in the DRC, documenting obstacles to reparations for victims of crimes committed in the country.

²⁸ Obstetrician and gynaecologist with experience in treating victims of sexual violence and [REDACTED] on a medico-legal approach to reparations for conflict-related sexual violence.

²⁹ [REDACTED] by education, with 30 years of experience working with communities in Ituri as [REDACTED], including experience in working with community leaders in, *inter alia*, [REDACTED].

³⁰ Lawyer with over 30 years of experience in reparations, restitution and claims programmes, and international dispute settlement.

³¹ Defence Submissions, para. 119(d).

³² See also LRV1 Submissions, para. 87; and LRV2 Submissions, para. 98.

³³ Order, para. 9(f).

³⁴ In para. 1. Based on the experience in other reparations proceedings before the Court, it may be useful for the Experts to consider addressing, *inter alia*, the following issues: the types of harm that should be remedied on a priority basis, if any; in relation to SGBV, the types of collective reparations that could benefit victims who may not be easily identified due to the stigma attached to these crimes; and the impact of the approaches recommended by the Experts on potential perceptions of inequality between victims and any potential perceptions of inequality in the context of the broader local community.

12. In relation to the Defence's³⁵ and the TFV's³⁶ requests to be consulted on the issue of the instruction of any potential experts, the Chamber considers that, as per Rule 97(2) of the Rules, the appointment and, as a corollary, the instruction of experts constitutes a prerogative of the Chamber. In line with the Order,³⁷ the Registry shared the list of proposed experts with the parties on 6 February 2020.³⁸ The parties and the TFV therefore had the opportunity to make submissions on the identification of experts and on any other relevant matter, including instructions, by the 28 February 2020 deadline for submissions. In these circumstances, and considering that the parties and TFV³⁹ will have the opportunity to make submissions on the Experts' report, the Chamber does not consider it necessary to seek additional views from the parties and/or the TFV.
13. The Chamber has taken note of the Defence's submission that the Chamber should not request any potential expert(s) to address the scope of liability of the convicted person, as the Chamber is itself well-equipped and capable of assessing the extent of Mr Ntaganda's liability and any potential expert report ought not to usurp the functions of the Chamber as the ultimate arbiter of law and fact.⁴⁰ The Chamber recalls that the decision on the amount of Mr Ntaganda's liability will be based on the extent of the harm suffered by the victims and the cost to repair it.⁴¹ In assessing these elements, the Chamber may seek the assistance of experts.
14. The TFV suggests that any appointed experts be instructed to provide information in relation to the type and scope of harm resulting from SGBV crimes, including advice on the adoption of reparations principles concerning victims of SGBV, the consequences of such crimes on direct and indirect victims, and modalities of engagement with such victims, including victims' identification and verification

³⁵ Defence Submissions, para. 122.

³⁶ TFV Submissions, para. 142.

³⁷ Order, para. 9(b).

³⁸ List of Proposed Experts, para. 8(6).

³⁹ See para. 19 below.

⁴⁰ Defence Submissions, para. 121, also referring to *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, ICC-01/09-01/11-844, para. 12.

⁴¹ *The Prosecutor v. Germain Katanga*, Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute", 8 March 2018, ICC-01/04-01/07-3778-Conf (confidential, a public redacted version was filed on 9 March 2018 as ICC-01/04-01/07-3778-Red), paras 2, 72.

procedures, considering their potential reluctance to come forward.⁴² The Chamber considers that issues (i) to (iv) as referred to above which shall be addressed in the report cover the consequences of SGBV crimes on direct and indirect victims and may inform the Chamber's consideration of the principles. Nonetheless, considering the unique nature of SGBV crimes, the Chamber invites the Experts to address the modalities of engagement with victims of such crimes.

15. The Registry shall provide the Experts with all the reasonable logistical and security assistance required to facilitate the efficient drafting of their report. This includes facilitating communication among the Experts, as well as the organisation of a field mission, if necessary and feasible.⁴³ Additionally, should the Experts request access to certain filings, transcripts or evidence in the case, the Registry shall facilitate such access, in the version available to the Defence.

16. The Chamber is mindful of the current situation due to the COVID-19 pandemic and the related impact on travel.⁴⁴ However, the Chamber considers that a significant amount of preparatory and other work may be undertaken by the Experts while working remotely, taking full advantage of digital communication tools. The Experts are therefore expected to commence their work as soon as possible. Any difficulties which may have a significant impact on the preparation of the report within the deadline set below should be raised with the Chamber through the Registry as soon as they become apparent.

17. The Chamber notes that its reparations order pursuant to Article 75 of the Statute may draw on the expertise provided by relevant experts in other cases at the Court.⁴⁵ The

⁴² TFV Submissions, paras 140-141.

⁴³ As noted above at para. 10, it is expected that one of the Experts will be in a position to contribute particular assistance within the team of experts on the relevant context local context and coordinate the compilation of relevant local information as appropriate and necessary.

⁴⁴ See also Registry COVID-19 Submissions, paras 4-9.

⁴⁵ See, e.g., *The Prosecutor v. Thomas Lubanga Dyilo*: The Psychological Impact of Child Soldiering, 25 February 2009, ICC-01/04-01/06-1729-Anx1; and Filing on Reparations and Draft Implementation Plan, 3 November 2015, ICC-01/04-01/06-3177-Red. *The Prosecutor v. Germain Katanga*: Public redacted document Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728), 25 July 2017, ICC-01/04-01/07-3751-Red. *The Prosecutor v. Jean-Pierre Bemba Gombo*: Expert report of Dr André Tabo, 12 December 2010, CAR-OTP-0065-0043; Mental Health Outcome of Rape, Mass Rape, and other Forms of Sexual Violence, 22 September 2016, ICC-01/05-01/08-3417-AnxA-Red; and Expert report on Reparation Presented to Trial Chamber III, International Criminal Court, 20 November 2017, ICC-01/05-01/08-3575-Anx-Corr2-Red. *The Prosecutor v. Dominic Ongwen*: The Consequences of the Abduction of

Chamber therefore encourages the Experts to consult this expertise should they consider it relevant and to reference it in their report if relied on. The Registry shall facilitate the Experts' access to these reports, in the version available to the public.

18. The Experts shall submit their report to the Chamber by **28 August 2020**.⁴⁶ The report shall be notified to the parties, the TFV, the VPRS, and the Prosecution. Should the Experts consider that any part(s) of the report are to remain confidential, a public redacted version of the report is to be filed on the same day. In line with the Order, the parties may then make submissions of up to 50 pages on the report/information presented, the submissions of other participants, and any other matter they wish for the Chamber to consider in its preparation of the reparations order by **30 October 2020**.⁴⁷
19. The TFV requests to be allowed to make final submissions along with the parties, arguing that this would enable it to provide the Chamber with further relevant observations.⁴⁸ Considering the role of the TFV at the implementation stage of reparations,⁴⁹ the Chamber considers it appropriate to grant the TFV's request. Any such final observations shall not exceed 50 pages and shall also be made by **30 October 2020**.
20. Lastly, the Chamber has taken note of the Defence's observation that the 28 August 2020 deadline imposed on the parties for the submission of any additional information they may wish for the Chamber to consider in its reparations order is unclear.⁵⁰ For the benefit of the Defence, the Chamber hereby clarifies that it is for the parties to consider whether there is anything beyond submissions and the evidence currently on the record in the *Ntaganda* case that they wish the Chamber to consider in its reparations order. The *rationale* for the imposition of such a deadline is to have, as early as possible, a complete record before the Chamber, such that the parties and the TFV have the opportunity to comment, by 30 October 2020, on everything that may be considered by the Chamber in its reparations order.

Children under 15: Implications for Individuals, Families, Communities, and Acholi Society, UGA-PCV-0002-0076.

⁴⁶ Order, para. 9(b).

⁴⁷ Order, para. 9(f).

⁴⁸ TFV Submissions, paras 16, 143.

⁴⁹ See Articles 75(2) and 79 of the Statute; Rule 98 of the Rules; and Rules 59-75 of the Regulations of the TFV.

⁵⁰ Defence Submissions, para. 74.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

APPOINTS the persons indicated in paragraph 9 above as experts for the reparations proceedings in the *Ntaganda* case;

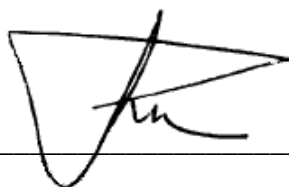
INSTRUCTS the Registry to transmit the present decision to the Experts as well as to provide them with all the reasonable logistical and security assistance required, including access to material in the case record of the *Ntaganda* case and public versions of expert reports in other cases at the Court, as set out in paragraphs 15 and 17 above; and

INSTRUCTS the Experts to submit their report and the parties and the TFV to make submissions in accordance with the deadlines set out in paragraphs 18 and 19 above.

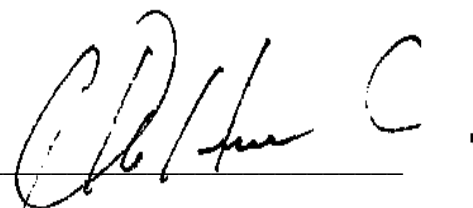
Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Robert Fremr



Judge Olga Herrera Carbuccion

Dated 14 May 2020

At The Hague, The Netherlands