

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 July 2021**

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Decision on the Trust Fund for Victims' Request to Vary the Time Limit to Submit
Draft Implementation Plan**

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

Legal Representatives of Victims

Ms Sarah Pellet
Ms Caroline Walter

Counsel for the Defence

Mr Stéphane Bourgon

Mr Dmytro Suprun
Ms Anne Grabowski
Ms Nadia Galinier

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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Trust Fund for Victims

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**Victims Participation and Reparations
Section**

Mr Philipp Ambach

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Mr Jean-Claude Aubert
Ms Jelena Vukasinovic

Trial Chamber II of the International Criminal Court (the ‘ICC’ or the ‘Court’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to regulation 35 of the Regulations of the Court (‘Regulations’), issues the following Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan (‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI, in charge of the case at the time,¹ issued the Reparations Order,² in which it, *inter alia*, instructed the Trust Fund for Victims (‘TFV’) to prepare a Draft Implementation Plan (the ‘DIP’) and submit it for the Chamber’s approval within six months.³
2. On 16 July 2021, the TFV submitted the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan (the ‘TFV’s Request’), asking for an extension of the time limit to submit the DIP until 17 December 2021.⁴
3. On 22 July 2021, as authorised by the Chamber,⁵ the Registry informed the Chamber that it had no observations on the TFV’s Request.⁶ The Legal Representatives of Victims (‘LRVs’)⁷ and the Defence⁸ informed the Chamber of their support to the TFV’s Request (‘Observations’).

II. ANALYSIS

4. The TFV submits that the recent developments related to the COVID-19 pandemic in the Democratic Republic of the Congo (‘DRC’) and Uganda, prevent it from conducting field

¹ On 16 March 2021 the case was referred to Trial Chamber II, *see* Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#).

² Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

³ Reparations Order, [ICC-01/04-02/06-2659](#), para. 249.

⁴ Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan (‘TFV’s Request’), 16 July 2021, [ICC-01/04-02/06-2693](#).

⁵ Email from the Chamber’s Legal Officer to the parties and the Registry, 19 July 2021, at 10:24 hrs.

⁶ Email from the Registry to the Chamber’s Legal Officer, 22 July 2021, at 11:10 hrs.

⁷ Joint Response of the Common Legal Representatives of Victims to the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan” (‘LRVs Joint Observations’), 22 July 2021, [ICC-01/04-02/06-2694](#).

⁸ Observations on Behalf of Mr Ntaganda on the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, 22 July 2021 (‘Defence Observations’), [ICC-01/04-02/06-2695](#).

activities such as consultations and data collection that are needed for the preparation and presentation of a comprehensive DIP, in line with the Reparations Order.⁹

5. In particular, the TFV notes that it conducted numerous consultations in the field in May and June 2021 and had planned for July and August 2021 a number of follow up activities, including consultations with the DRC Government in Kinshasa and a second round of consultations with other actors, to be conducted by Bunia-based staff reinforced by a field mission of Hague-based staff.¹⁰ However, due to COVID-19 related restrictions imposed in the DRC as of 15 June 2021, including a national curfew, with police patrols to enforce it, and other measures aiming at limiting contaminations in gatherings and promoting social distancing, the Registry recommended against the mission and the TFV decided to cancel it.¹¹

6. Similarly, TFV had planned a mission to Uganda in June 2021, where a number of displaced potential victims are thought to reside in and around refugee camps.¹² However, TFV staff was not able to enter Uganda or travel through Uganda to reach Mahagi, in the north of the Ituri Province, due to the stringent lockdown measures that were re-imposed at the beginning of June and for a period of 42 days.¹³

7. In this context, the TFV claims that good cause is shown for extending the time limit for its submission of the DIP.¹⁴ Consequently, it requests a three month extension until 17 December 2021.¹⁵ Although noting that the operational situation in the DRC remains uncertain and unpredictable, the TFV indicate its expectation that, within the proposed three months extension, it will be able to conduct all the necessary field activities for the finalisation of the DIP.¹⁶

8. In their Observations, although supporting the TFV's Request, the LRVs note that the extension sought should not have a negative impact on the necessary preparatory steps to be taken by the TFV in relation to the Initial Draft Implementation Plan ('IDIP') for the benefit of priority victims.¹⁷ Accordingly, the LRVs submit that the TFV should be directed to find all

⁹ TFV's Request, [ICC-01/04-02/06-2693](#), para. 10.

¹⁰ TFV's Request, [ICC-01/04-02/06-2693](#), para. 6.

¹¹ TFV's Request, [ICC-01/04-02/06-2693](#), para. 7.

¹² TFV's Request, [ICC-01/04-02/06-2693](#), para. 8.

¹³ TFV's Request, [ICC-01/04-02/06-2693](#), para. 8.

¹⁴ TFV's Request, [ICC-01/04-02/06-2693](#), para. 12.

¹⁵ TFV's Request, [ICC-01/04-02/06-2693](#), p. 5.

¹⁶ TFV's Request, [ICC-01/04-02/06-2693](#), para. 11.

¹⁷ LRVs Joint Observations, [ICC-01/04-02/06-2694](#), para. 14.

possible alternatives to finalise both its IDIP and its DIP as efficiently and expeditiously as possible.¹⁸

9. For its part, the Defence submits that, should the TFV's Request be granted, the TFV must act in accordance with the instructions provided in the Reparations Order during the additional time available, and refrain from taking any action not yet approved by the Chamber.¹⁹ Furthermore, the Defence argues that delaying the issuance of the DIP, especially while the LRVs' and the Defence's appeals against the Reparations Order are still pending, may possibly avoid wasting scarce resources and contribute to respect the 'do no harm' principle.²⁰

10. The Chamber notes that, pursuant to regulation 35(2) of the Regulations, it may extend or reduce a time limit if good cause is shown, where appropriate, after having given the participants an opportunity to be heard. In the past, other Chambers have considered that factors such as difficulties in organising field missions when they are necessary;²¹ security concerns, weather conditions, and obstacles in the access to all groups of victims in a country;²² and COVID-19 related restrictions or circumstances,²³ are all good causes to extend a time limit.

11. The Chamber notes the difficulties encountered by the TFV to conduct activities in the DRC and Uganda, such as direct consultations with victims and other interlocutors, as well as other field missions to collect information relevant to the DIP, in light of the COVID-19 restrictions that are currently in place in the DRC and Uganda. In these circumstances, in order to ensure that the DIP is conducted in a comprehensive manner, in accordance with the

¹⁸ LRVs Joint Observations, [ICC-01/04-02/06-2694](#), para. 14.

¹⁹ Defence Observations, [ICC-01/04-02/06-2695](#), para. 13.

²⁰ Defence Observations, [ICC-01/04-02/06-2695](#), para. 12.

²¹ Trial Chamber IX, *Prosecutor v. Dominic Ongwen*, Decision on requests for extension of time. 19 July 2021, [ICC-02/04-01/15-1865](#) ('*Ongwen* Decision on Extension'), para. 9; Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the request of the Trust Fund for Victims for an extension of the time limit for the submission of the first batch of files of potential victims, 29 March 2016, [ICC-01/04-01/06-3205](#), paras 2, 4.

²² *Ongwen* Decision on Extension, [ICC-02/04-01/15-1865](#), para. 9; Pre-Trial Chamber III, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, Decision on the Registry's Request for Extension of Notice Period and Submissions on the Article 15(3) Process, 28 June 2019, [ICC-01/19-6](#), para. 14.

²³ *Ongwen* Decision on Extension, [ICC-02/04-01/15-1865](#), para. 9; Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Decision on Request for an Extension of Time for Filing Expert's Report. 20 July 2020, [ICC-01/04-02/06-2553](#), para. 7; Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the submissions by the Legal Representative of Victims V01 in its Response to the Twelfth Report of the Trust Fund for Victims on the implementation of collective reparations, filing ICC-01/04-01/06-3500-Conf-Exp ('*Lubanga* Decision on submissions'), 26 March 2021, [ICC-01/04-01/06-3508](#), paras 14, 16; Trial Chamber X, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial, 12 June 2020, [ICC-01/12-01/18-880](#), para. 10.

Reparations Order, the Chamber finds that good cause has been shown to extend the time limit provided for in the Reparations Order, as requested by the TFV.

12. Notwithstanding the above, the Chamber recalls the principle that reparations must be prompt, which requires the reparation process to be as expeditious as possible, especially when a considerable number of years have elapsed since the commission of the crimes.²⁴ Taking into account the general uncertainty generated by the COVID-19 pandemic and that time limits cannot be extended indefinitely without affecting the victims' rights to prompt reparations,²⁵ the Chamber directs the TFV, to find all possible alternatives to finalise the DIP as efficiently and expeditiously as possible and, at the latest, within the final deadline established in this Decision.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

GRANTS the TFV an extension of the time limit to submit its DIP until 17 December 2021.

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



Judge Chang-Ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Friday, 23 July 2021

At The Hague, The Netherlands

²⁴ Reparations Order, [ICC-01/04-02/06-2659](#), para. 89.

²⁵ *Ongwen* Decision on Extension, [ICC-02/04-01/15-1865](#), para. 12.