

**Cour
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**International
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Court**

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Date: **17 December 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***

Confidential

**Decision on the TFV's Second Progress Report on the implementation of the Initial
Draft Implementation Plan**

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

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Trial Chamber II of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to articles 75 and 79 of the Rome Statute (‘Statute’), issues this Decision on the TFV’s Second Progress Report on the implementation of the Initial Draft Implementation Plan (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order,¹ *inter alia*, directing the Trust Fund for Victims (‘TFV’) to submit an urgent plan for priority victims.²
2. On 8 June 2021, the TFV submitted the initial draft implementation plan with focus on priority victims (the ‘IDIP’).³ Pursuant to the Chamber’s instructions,⁴ the parties and the Registry submitted observations⁵ and the TFV submitted a reply.⁶
3. On 23 July 2021, the Chamber issued a decision (‘Decision on the IDIP’),⁷ approving the IDIP, subject to certain amendments and additional information to be provided by the TFV. The Chamber also directed the TFV to file progress reports on implementation every two months, and to make an alternative proposal for the administrative eligibility assessment and urgency screening in the next report.

¹ Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Reparations Order (‘Reparations Order’), 8 March 2021, [ICC-01/04-02/06-2659](#).

² Reparations Order, [ICC-01/04-02/06-2659](#), p. 97.

³ Report on Trust Fund’s Preparation for Draft Implementation Plan (notified on 9 June 2021), ICC-01/04-02/06-2676-Conf, with Annex A, Initial Draft Implementation Plan with focus on Priority Victims, ICC-01/04-02/06-2676-Conf-AnxA (a corrigendum was filed on 14 June 2021 and a public redacted version of the cover filing and annex were filed on 15 June 2021, [ICC-01/04-02/06-2676-Red](#) and [ICC-01/04-02/06-2676-AnxA-Corr-Red](#)) (the ‘IDIP’).

⁴ Order for the submission of observations on the initial draft implementation plan with focus on priority victims, 10 June 2021, [ICC-01/04-02/06-2677](#); Email from the Chamber’s Legal Officer to the TFV, the parties, and the Registry, 24 June 2021, 17:43 hrs.

⁵ Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan, 23 June 2021, ICC-01/04-02/06-2680-Conf (a public redacted version was filed on 28 June 2021, [ICC-01/04-02/06-2680-Red](#)); Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims, 23 June 2021, [ICC-01/04-02/06-2681](#); Defence Observations on the TFV initial draft implementation plan, 23 June 2021, ICC-01/04-02/06-2682-Conf; Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan, 23 June 2021, [ICC-01/04-02/06-2683](#).

⁶ Observations on the responses and observations submitted on the Initial Draft Implementation Plan, 28 June 2021, ICC-01/04-02/06-2687-Conf (a public redacted version was filed on the same day [ICC-01/04-02/06-2687-Red](#)).

⁷ Decision on the TFV’s initial draft implementation plan with focus on priority victims (‘Decision on the IDIP’), 23 July 2021, [ICC-01/04-02/06-2696](#).

4. On 28 October 2021, the Chamber issued a decision ('Decision on the TFV's First Report'), *inter alia*, instructing the TFV to clarify and provide additional details on certain issues relevant to the implementation of the IDIP.⁸

5. On 23 November 2021, the TFV submitted its Second Progress Report on the implementation of the IDIP ('Second Report'),⁹ in which it, *inter alia*, (i) provides information on the security situation in Ituri; (ii) submits further details as to the administrative eligibility assessment; (iii) provides clarifications and information pertaining to the implementation of reparations for priority victims with urgent needs; and (iv) elaborates on its activities relating to outreach.

6. On 6 December 2021, the Legal Representatives for Victims ('LRVs', hereafter the 'CLR1'¹⁰, the 'CLR2',¹¹ respectively) submitted their responses¹² and the Defence submitted its observations.¹³

II. SUBMISSIONS AND ANALYSIS

a) Security Situation

7. At the outset, the Chamber notes with concern the TFV's submissions regarding the extremely volatile security situation in Ituri and its 'profound impact' on the ability of the TFV and its partners to implement the IDIP.¹⁴ In particular, the TFV notes that (i) the civilian population in the relevant area has fled their localities to go to safer places, in Bunia or unknown locations, and are not easily reachable; (ii) national and international organisations have ceased their activities in the areas of relevance for the reparations.¹⁵

8. Within this context, the CLR2 submits that a solid strategy of risk mitigation is needed to address not only issues arising from the general insecurity of the area and displacement of

⁸ Decision on the TFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors' decision pursuant to regulation 56 of the Regulations of the Trust Fund ('Decision on the TFV's First Report'), 28 October 2021, [ICC-01/04-02/06-2718-Red](#).

⁹ Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan ('IDIP Second Report'), 23 November 2021, ICC-01/04-02/06-2723-Conf.

¹⁰ Common Legal Representative of the former child soldiers.

¹¹ Common Legal Representative of the victims of the attacks.

¹² Response of the Common Legal Representative of the Former Child Soldiers to the Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan ('CLR1 Response'), 6 December 2021, ICC-01/04-02/06-2725-Conf; Response of the Common Legal Representative of the Victims of the Attacks to the "Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan" ('CLR2 Response'), 6 December 2021, ICC-01/04-02/06-2724-Conf.

¹³ Defence observations on the TFV Second Progress Report on the implementation of the Initial Draft Implementation Plan ('Defence Observations'), 6 December 2021, ICC-01/04-02/06-2726-Conf.

¹⁴ IDIP Second Report, ICC-01/04-02/06-2723-Conf, paras 7-11.

¹⁵ IDIP Second Report, ICC-01/04-02/06-2723-Conf, paras 7-11.

potential beneficiaries but also the risks of possible tensions, animosity, and jealousy among affected communities.¹⁶ The Defence further notes the lack of concrete details provided by the TFV as to the impact of the security situation on the implementation of the IDIP, particularly regarding the situation of the implementing partners and the possible involvement of potential beneficiaries in the events undermining the security situation.¹⁷

9. Having assessed these submissions, the Chamber considers that the TFV should indeed provide in its next report to the Chamber concrete information as to how the security situation actually affects the implementation of the IDIP and, if necessary, propose strategies to mitigate the possible risks.

b) Eligibility assessment and urgency screening

10. Regarding the administrative eligibility assessment, the Chamber recalls that it has approved the TFV's alternative proposal, based on the information provided by the TFV.¹⁸ Nevertheless, the Chamber encouraged the TFV to provide additional details, notably as to the supporting documents required to satisfy the standard of proof.¹⁹ The Chamber notes, however, that the TFV did not provide any substantive information in its Second Report. In effect, the TFV primarily repeats the same information previously provided regarding the procedure to be followed,²⁰ while adding details as to the information to be collected by the implementing partners.²¹

11. The Chamber notes with concern that the TFV does not even refer to the urgency screening in its Second Report, and again indicates that it obtains from the LRVs 'an updated list of priority victims',²² which may continue creating confusion as to who should benefit from the IDIP.²³ In relation to this, the Chamber reiterates, once again, that 'the IDIP's purpose is not to initiate the implementation of reparations for all priority victims, but to take the necessary measures to address, in the interim, the most urgent needs of vulnerable victims that require

¹⁶ CLR2 Response, ICC-01/04-02/06-2724-Conf, para. 17.

¹⁷ Defence Observations, ICC-01/04-02/06-2726-Conf, paras 4-7.

¹⁸ Decision on the TFV's First Report, [ICC-01/04-02/06-2718-Red](#), para. 15, p. 13.

¹⁹ Decision on the TFV's First Report, [ICC-01/04-02/06-2718-Red](#), para. 24.

²⁰ *See, for instance*, Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations of the Trust Fund, 23 September 2021, [ICC-01/04-02/06-2710-Red](#), para. 40.

²¹ IDIP Second Report, ICC-01/04-02/06-2723-Conf, para. 17.

²² IDIP Second Report, ICC-01/04-02/06-2723-Conf, para. 13.

²³ *See, for example*, CLR1 Response, ICC-01/04-02/06-2725-Conf, para. 13, indicating that all child soldiers are part of the priority group.

priority treatment'.²⁴ Within that context, as ordered by the Chamber, in addition to the eligibility assessment, an urgency screening shall be conducted in order to 'determine whether any of the victims requiring priority treatment are currently in a situation in which they need to receive immediate physical and/or psychological medical care, and/or support due to financial hardship that endangers their life [...] by applying the same standard and burden of proof [...].'²⁵

12. In light of the above, as the TFV is yet to provide substantive, as opposed to procedural, information regarding the eligibility assessment and urgency screening, the Chamber once again encourages the TFV to provide additional details as to the way it will substantively assess eligibility and urgency for the purposes of the IDIP.

13. As to the Defence submission that the Chamber should play a more active role in the eligibility assessment, especially regarding negative determinations,²⁶ the Chamber reiterates that it has delegated the identification of victims and the assessment of their eligibility to the TFV.²⁷ The Chamber reiterates that it does not consider it necessary to play a role in the administrative eligibility assessment and urgency screening that would go beyond overseeing the design of the process as a whole and receiving progress reports and statistical information as to the victims' eligibility assessments.²⁸

c) Child soldiers victims in need of urgent assistance, who are not SGBV victims or children born out of rape or sexual slavery

14. Regarding former child soldiers victims in urgent need, the Chamber notes the TFV's reiterated proposal, which the CLR1 supports,²⁹ that they be integrated in the *Lubanga* service-based collective reparation programme.³⁰

15. The Chamber recalls its previous finding that the service-based reparations programme in the *Lubanga* case is not adequate to efficiently and effectively address, on an emergency basis, the most urgent needs of the victims that require priority treatment in the *Ntaganda* case.³¹ In addition, the Chamber reiterates its view that integrating these former child soldiers

²⁴ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 9.

²⁵ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 32.

²⁶ Defence Observations, ICC-01/04-02/06-2726-Conf, paras 8-14, 18.

²⁷ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 35, referring to Reparations Order, [ICC-01/04-02/06-2659](#), paras 105, 140, 253.

²⁸ Decision on the TFV's First Progress Report, [ICC-01/04-02/06-2718-Red](#), para. 17.

²⁹ CLR1 Response, 6 December 2021, ICC-01/04-02/06-2725-Conf, para. 16.

³⁰ IDIP Second Report, ICC-01/04-02/06-2723-Conf, paras 28-32.

³¹ Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 21-22.

into the *Lubanga* reparations programme may lead to the unintended consequence of their preferential treatment vis-à-vis the victims of the attacks, creating or fuelling tensions, jealousy, or animosity among the different groups of victims.³² Further, as previously noted, this would go against the IDIP's nature – as an interim and emergency measure – and its purpose of addressing the needs of victims requiring urgent assistance pending the development and implementation of the full DIP.³³

16. The Chamber further notes the TFV's indication that, from a contractual and an operational point of view, it is not possible to expand the scope of the relevant assistance project in order to incorporate all former child soldiers in need of urgent assistance.³⁴ Accordingly, the Chamber instructs the TFV to propose an alternative way of addressing the urgent needs of these victims, taking into account the considerations set forth by the Chamber in its previous decisions, particularly the possibility for the TFV to directly implement urgent measures.³⁵

d) Outreach and confidentiality

17. The Chamber welcomes the TFV's submission regarding the design of a general outreach strategy together with the Registry, as well as the TFV's commitment to keep the Chamber apprised as to the costs.³⁶

18. Finally, in line with its previous instructions,³⁷ the Chamber directs the TFV, the LRVs, and the Defence to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 7 January 2022.

³² Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 20.

³³ Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 8-9.

³⁴ IDIP Second Report, ICC-01/04-02/06-2723-Conf, para. 28

³⁵ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 27.

³⁶ IDIP Second Report, ICC-01/04-02/06-2723-Conf, paras 35-37.

³⁷ Decision on the TFV's First Progress Report, [ICC-01/04-02/06-2718-Red](#), para. 29.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

INSTRUCTS the TFV to provide in its next report concrete information as to how the security situation actually affects the implementation of the IDIP and, if necessary, propose strategies to mitigate the possible risks;

ENCOURAGES the TFV to provide additional details as to the way it will substantively assess eligibility and urgency for the purposes of the IDIP;

INSTRUCTS the TFV to propose an alternative way of addressing the urgent needs of former child soldiers who are not SGBV victims or children born out of rape or sexual slavery, taking into account the considerations set forth by the Chamber in its previous decisions, particularly the possibility for the TFV to directly implement urgent measures; and

DIRECTS the TFV, the LRVs, and the Defence to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 7 January 2022.

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, 17 December 2021

At The Hague, The Netherlands