



Original: English

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

Date: 18 January 2022

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 document

**Public Redacted version of the “URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”
(ICC-01/04-02/06-2735-Conf-Exp)**

Source: Office of Public Counsel for Victims (CLR1)

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

The Office of the Prosecutor

Counsel for the Defence

Mr Stéphane Bourgon

Ms Judy Mionki

Mr Jacopo Ricci

Legal Representatives of the Victims

Ms Sarah Pellet

Ms Caroline Walter

Mr Dmytro Suprun

Ms Anne Grabowski

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby files an urgent request for an extension of time to respond to the Trust Fund for Victims’ Draft Implementation Plan for reparations (the “DIP”).¹

2. The Legal Representatives previously supported² a Defence’s Request for extension³ which was granted by the Chamber.⁴ They shared the view that the DIP was expected to be of an unprecedented scope which will in any event require considerable time to analyse and discuss with their clients. The timeline suggested by the Defence at the time was a reasonably conservative estimate in the circumstances and the Legal Representatives informed the Chamber then that it was likely that it will not suffice. In particular, they underscored that the prevailing and deteriorating volatile security and public health situation in Ituri poses a significant obstacle to effective and prompt consultations with the victims, which are essential in the process. Just a few weeks later, the Legal Representative is compelled to ask for a further extension in order to secure appropriate and meaningful consultations with her clients.

II. LEVEL OF CLASSIFICATION

3. Pursuant to regulation 23bis(1) of the Regulations of the Court (the “ROC”), the present submission is filed confidential *ex parte* only available to the TFV, because it contains confidential information not known to the public, the Defence or the Common

¹ See the “Trust Fund for Victims’ submission of Draft Implementation Plan”, [No. ICC-01/04-02/06-2732](#) + [Conf-AnxA](#), 20 December 2021 (the “DIP”).

² See the “Joint Response of the Common Legal Representatives of the Victims to the ‘Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’”, [No. ICC-01/04-02/06-2729](#), 17 December 2021.

³ See the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2728](#), 15 December 2021 (the “Defence Request”).

⁴ See the “Order for the submission of observations on the draft implementation plan” (Trial Chamber II), [No. ICC-01/04-02/06-2731](#), 17 December 2021.

Legal Representative of the Victims of the Attacks regarding a specific group of victims [REDACTED]. A public redacted version is filed simultaneously.

III. PROCEDURAL BACKGROUND⁵

4. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”,⁶ whereby it, *inter alia*, instructed the Trust Fund for Victims (the “TFV”) to file the DIP in the present case within six months of that decision.⁷

5. On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).⁸ Judge Chang-ho Chung was subsequently elected Presiding Judge of the Chamber.⁹

6. On 16 July 2021, the TFV submitted a request for the variation of the time limit for the submission of the DIP. In particular, the TFV sought an extension of time until 17 December 2021.¹⁰

7. On 22 July 2021, the parties expressed their support for the TFV’s request.¹¹ The Registry informed the Chamber that it had no observations to make on the matter.¹²

⁵ The procedural background included in these submissions is non-exhaustive and primarily focuses on the procedure relevant to these submissions. They also omit the various procedural steps taken before the Appeals Chamber.

⁶ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

⁷ *Idem*, para. 249.

⁸ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁹ See the “Decision on the Election of the Presiding Judge” (Trial Chamber II), [No. ICC-01/04-02/06-2664](#), 22 March 2021, para. 2.

¹⁰ See the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2693](#), 16 July 2021.

¹¹ See the “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”, [No. ICC-01/04-02/06-2694](#), 22 July 2021; “Observations on Behalf of Mr Ntaganda on the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2695](#), 22 July 2021.

¹² See the Email communication from the Registry to the Chamber’s Legal Officer, 22 July 2021, at 11:10.

8. On 23 July 2021, the Chamber granted the TFV an extension of time limit to submit its DIP by 17 December 2021.¹³ The Chamber did not indicate when the parties were to respond.

9. On 15 December 2021, the Defence filed the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”.¹⁴

10. On the same date, the Chamber shortened the deadline for any responses to the Defence Request to 17 December 2021 at noon.¹⁵ On 17 December, the Legal Representatives of victims submitted their response to said request.¹⁶

11. The same day, the Chamber granted the Defence’s Request and ordered the parties and the Registry to file their observations on the DIP, if any, by 24 January 2022.¹⁷ The Chamber also issued a separate Decision on the TFV’s Second Progress Report on the implementation of the Initial DIP, ordering further details and information to be provided.¹⁸

12. On 20 December 2021, the TFV filed its DIP.¹⁹

13. On 14 January 2022, the Defence filed a request seeking an extension of the page limit to respond to the DIP.²⁰ On 17 January 2022, the Chamber shortened the deadline for any responses to the Defence Request to 19 December 2021.²¹ On 18 January 2022,

¹³ See the “Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2697](#), 23 July 2021.

¹⁴ See the Defence Request, *supra* note 3.

¹⁵ See the Email communication from Trial Chamber II, 15 December 2021 at 19:49.

¹⁶ See the “Joint Response of the Common Legal Representatives of the Victims to the ‘Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’”, *supra* note 2.

¹⁷ See the “Order for the submission of observations on the draft implementation plan”, *supra* note 4.

¹⁸ See the “Decision on the TFV’s Second Progress Report on the implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2730-Conf](#), 17 December 2021.

¹⁹ See the DIP, *supra* note 1.

²⁰ See the “Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims”, [No. ICC-01/04-02/06-2733](#), 14 January 2022.

²¹ See the Email communication from Trial Chamber II, 17 January 2022, at 11:48.

the Legal Representatives of Victims submitted their Joint response to said request,²² which was granted by the Chamber on the same day.²³

IV. SUBMISSIONS

14. The Legal Representative submits that the requirements of regulation 35(2) of the ROC are fulfilled and that there exists good cause to extend the deadline for responses to the DIP as presented *infra*.

15. Having further regard to the parties' response deadlines in previous cases,²⁴ and being guided by the fact that in all of said cases, extensions of time were necessary to enable the respective legal representatives to carry out consultations, the Legal Representative posits that a further extension of three (3) months is *prima facie* reasonable.²⁵

16. While the Legal Representative is committed to not delaying the process and to providing the victims' views and observations on the TFV's concrete proposals in the

²² See the "Joint Response of the Common Legal Representatives of the Victims to the 'Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims'", [No. ICC-01/04-02/06-2734](#), 18 January 2022.

²³ See the Email communication from Trial Chamber II, 18 January 2022 at 12:49.

²⁴ See the "Public redacted version of the Decision of the 'Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations'" (Trial Chamber VIII), [No. ICC-01/12-01/15-273-Red](#), 12 July 2018, paras. 5-8; "Décision accordant une prorogation de délai afin de déposer des observations sur le projet de plan de mise en œuvre du 25 juillet 2017" (Trial Chamber II), [No. ICC-01/04-01/07-3759](#), 29 August 2017; "Ordonnance fixant calendrier pour le dépôt des observations sur le projet de plan de mise en œuvre déposé par le Fonds au profit des victimes" (Trial Chamber II), [No. ICC-01/04-01/06-3179](#), 12 November 2015.

²⁵ In the *Al Mahdi* case for instance, the legal representative was granted a longer response time than the Defence for the purposes of consultations See the "Public redacted version of the Decision of the 'Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations'" (Trial Chamber VIII), [No. ICC-01/12-01/15-273-Red](#), 12 July 2018, paras. 5-8. In the *Lubanga* case, the parties were granted several extensions leading in the end to them benefitting from almost three full calendar months to submit their observations, in a context where reaching the victims was much easier than in the present case. See the "Decision on the request of the Office of Public Counsel for Victims and the request of the Legal Representatives of Victims V02" (Trial Chamber II), [No. ICC-01/04-01/06-3190-tENG](#), 13 January 2016.

shortest possible time, the realities in the field and the novel character of the DIP must adequately be reflected in the response deadlines for the parties involved.

17. The Legal Representative emphasises that both appropriate consultations and the celerity of the proceedings are at the core of the victims' rights and expectations and underline that these considerations, amongst others, are leading her actions with her clients on a daily basis. Noting that core reparations issues are still pending on appeals, it is reasonable to foresee that the implementation of reparations is unfortunately unlikely to start in the course of the next three months.

18. As previously mentioned²⁶ and illustrated by the most recent request formulated by the Defence,²⁷ the DIP is a lengthy and complex document of 120 pages that addresses issues of an unprecedented nature, requiring adequate time for in-depth analysis and correlative meaningful submissions.²⁸

19. In addition, the Legal Representative's ability to adequately respond to the DIP most importantly presupposes that she is able to organise comprehensive consultations with the victims on these matters, which are of a crucial nature for them. Unfortunately, and despite the best efforts of her team, her ability to conduct said consultations remains significantly undermined by the extremely volatile security situation in Ituri and the correlative displacement of numerous victims. Moreover, field consultations largely rely on assistance from local staff and contact persons, which remain difficult to secure in the midst of on-going clashes and a concerning public health situation due to the COVID-19 pandemic. While the Legal Representative endeavours to mobilise her best efforts and resources to consult her clients and obtain valuable inputs to respond to the DIP in the shortest possible time, communication with her clients since the

²⁶ See the "Joint Response of the Common Legal Representatives of the Victims to the 'Defence request for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan'", *supra* note 2.

²⁷ See the "Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims", *supra* note 20.

²⁸ *Idem*, paras. 8-9.

submission of the DIP has been particularly difficult, affecting her ability to consult with them promptly and effectively.

20. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

21. Furthermore, the Legal Representative is confronted to an extra difficulty in organising the consultations with her clients due to the absence of important information and details in the DIP. Indeed, despite having benefitted from a 6-month extension of time to submit the DIP, the TFV delves deeper (and in greater details) into general procedures than providing specific tangible information as to the expected implementation of the reparations themselves. [REDACTED], benefiting from more comprehensive and concrete information as to what reparations will look like appear all the more necessary to manage expectations of victims beneficiaries and avoid delays and difficulties at a later stage. This is also in line with the *do no harm* principle, which imposes on all actors a duty to protect the victims' well-being, notably by avoiding several unnecessary consultations about the traumatic events they have been suffering from for almost 20 years. The Legal Representative respectfully underlines that everyday passing has an impact on her clients' lives, and the importance of ensuring meaningful and comprehensive submissions from the TFV is intrinsically related to their further ability to lead adequate and effective implementation of the reparations programs at a later stage.

22. In particular, the Legal Representatives notes that the following information is missing and requests the Chamber to instruct the TFV to supplement it as soon as possible and at the latest within a month from this request.

- i. The TFV mentions that it will secure the services of a consultant specialised in gender-sensitive programming specifically in relation to harm suffered by

victims of sexual and gender based crimes.²⁹ More information as to the expected scope of work and impact are requested.

- ii. The DIP refers to socio-economic measures but does not detailed them; in particular it does not specify whether they include educational and vocational trainings and related assistance.³⁰ More tangible information is required.
- iii. The DIP refers to the necessary treatments under the activities to be put in place in relation to the physical health for victims.³¹ Information regarding plans aiming at addressing drug and alcohol addiction is totally absent.
- iv. The DIP refers to the possibility for beneficiaries to opt for an “*in lieu lump sum*” in relation to socio-economic support.³² However, the associated circumstances and conditions of this being applied are not touched upon. In the same vein, the DIP refers to a “*socio-economic support starter sum*” and modest cash transfer, but without providing any further detailed information as to the amounts or the modalities envisaged.³³
- v. The DIP mentions the provision of school fees within educational activities, but does not provide any concrete information in this regard,³⁴ notably on how long this modality would apply for the beneficiaries? Furthermore, the DIP remains silent as to literacy classes (alphabetisation) and the provision of such classes for adults taking into consideration their other current responsibilities as heads of families for instance. Detailed and comprehensive information is necessary in regard.

²⁹ See the DIP, *supra* note 1, paras. 65 and 224.

³⁰ *Idem*, para. 125.

³¹ *Idem*, para. 162.

³² *Idem*, paras. 151 and 170.

³³ *Idem*, paras. 172 *et seq.*

³⁴ *Idem*, para. 182.

- vi. The DIP summarily refers to eligible victims currently residing elsewhere in DRC, Uganda or another country, without providing concrete proposals as to their inclusion in the reparations program.³⁵
- vii. The DIP refers to programmes providing life-long treatment for certain types of illnesses and injuries, but does not provide any information in this regard.³⁶ Similarly, the DIP envisages covering all types of needs in relation to the beneficiaries' health, but does not provide any detailed information as to the intended modalities to be put in place (*i.e.* mobile clinic, locations of medical centres as close as possible to the beneficiaries, provision of mobility, transports and subsistence fees, *etc.*).³⁷
- viii. The DIP refers to reparations foreseen for indirect victims of transgenerational harm without providing much detailed information about it.³⁸
- ix. The DIP refers to satisfaction measures without detailing exactly what kind of harm they intent to cover within the group of former child-soldiers beneficiaries.³⁹

23. For the reasons explained *supra*, the Legal Representative is respectfully asking for an extension of time of three months to respond to the DIP and for the Chamber to instruct the TFV to provide more tangible information for the benefit of victims. This additional time shall give the opportunity to the TFV to provide said information, and in turn to the Legal Representative to lead adequate, comprehensive, constructive and safe consultations with her clients.

³⁵ *Idem*, para. 194.

³⁶ *Idem*, para. 198.

³⁷ *Idem*, pp. 110-111, *Former Child Soldiers Logical Framework*.

³⁸ *Idem*, paras. 125, and 200-201.

³⁹ *Idem*, para. 210.

V. CONCLUSION

24. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant an extension of time until 23 April 2022 to file her submissions on the DIP. She also respectfully requests the Chamber to instruct the TFV to supplement its DIP in accordance with paragraph 22 *supra* as soon as possible, and at the latest within a month from this request.

25. Should the Chamber grant the extension, the Legal Representative has of course no objection to the Legal Representative of the Victims of the Attacks and the Defence to be afforded the same deadline.



Sarah Pellet
Common Legal Representative of the
Former Child soldiers

Dated this 18th day of January 2022

At The Hague, The Netherlands