

**Cour
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**International
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Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **21 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

Decision on the ‘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’ and additional request by the TFV

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 article 75 of the Rome Statute and Regulations 23 *bis*, 28, and 35(2) of the Regulations of the Court, issues this Decision on the ‘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’ and additional request by the TFV (the ‘Decision’).

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 March 2021, Trial Chamber VI, delivered its Reparations Order,¹ *inter alia*, directing the Trust Fund for Victims (‘TFV’) to submit, by 8 September 2021, a Draft Implementation Plan (‘DIP’).²
2. On 23 July 2021, the Chamber granted the TFV an extension of the time limit to submit its DIP until 17 December 2021.³ On 17 December 2021, following a Defence’s request,⁴ the Chamber directed the parties and the Registry to file their observations on the DIP, if any, by 24 January 2022.⁵
3. On 20 December 2021, the TFV’s submission of the DIP was notified,⁶ whereby the TFV requests, *inter alia*, the Chamber’s approval of the DIP and authorisation for the Democratic Republic of Congo (‘DRC’) authorities to submit observations in response to the DIP.⁷
4. On 18 January 2022, following a Defence’s request,⁸ the Chamber authorised the Defence and the Legal Representatives for Victims (‘LRVs’, hereafter the ‘CLR1’⁹, the ‘CLR2’¹⁰ respectively) to file responses of up to 30 pages each to the DIP.¹¹

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 Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, [ICC-01/04-02/06-2697](#), p. 6.

⁴ Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan, 15 December 2021, [ICC-01/04-02/06-2728](#).

⁵ Order for the submission of observations on the draft implementation plan, 17 December 2021, [ICC-01/04-02/06-2731](#).

⁶ Trust Fund fo [sic] Victims’ submission of Draft Implementation Plan (‘Submission of DIP’), dated 17 December 2021 (submitted on 18 December 2021 at 00:30:53 and notified on 20 December 2021), [ICC-01/04-02/06-2732](#), with 1 Confidential Annex, ICC-01/04-02/06-2732-Conf-AnxA, (‘DIP’).

⁷ Submission of DIP, [ICC-01/04-02/06-2732](#), para. 19.

⁸ 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, 14 January 2022, [ICC-01/04-02/06-2733](#).

⁹ Common Legal Representative of the former child soldiers.

¹⁰ Common Legal Representative of the victims of the attacks.

¹¹ Email from the Chamber’s Legal Officer, 18 January 2022, at 12:49 hrs.

5. On 18 January 2022, the CLR1 submitted an urgent Request for an extension of the time limit to respond to the TFV's DIP (the 'Request').¹² In the Request, the CLR1 argues that, in order to secure appropriate and meaningful consultations with victims, considering the lengthy and complex nature of the DIP and that the ability to organise consultations remains significantly undermined by the volatile security situation in Ituri, an extension of three months to respond to the DIP is *prima facie* reasonable.¹³ In addition, the CLR1 submits that consultations are also affected by the absence of important information and details in the DIP and requests the Chamber to instruct the TFV to supplement the DIP regarding nine matters specified therein.¹⁴

6. On 20 January 2022, as instructed by the Chamber,¹⁵ the Defence,¹⁶ the CLR2,¹⁷ and the TFV¹⁸ filed their responses and observations on the Request. The Registry informed the Chamber that it would not submit observations.¹⁹ The Defence, while agreeing that the DIP is not a workable plan in its current form, argues that the revisions requested are procedurally misplaced and that there is no sufficient link between the obstacles identified and the extension sought.²⁰ The CLR2 does not oppose the Request and identifies 17 additional matters to be added to the instructions for supplementary information from the TFV.²¹

7. The TFV does not oppose the extension of time and leaves that decision to the discretion of the Chamber.²² Regarding the additional matters identified by the CLR1, the TFV observes that, following the Chamber's order, it developed a plan setting out the projects it 'intends to develop' indicating the timeline necessary for the 'projects development and

¹² 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 ('Request'), 18 January 2022, ICC-01/04-02/06-2735-Conf-Exp (public redacted version filed on the same day, [ICC-01/04-02/06-2735-Red](#)).

¹³ Request, [ICC-01/04-02/06-2735-Red](#), paras 2, 15-19.

¹⁴ Request, [ICC-01/04-02/06-2735-Red](#), paras 21-22.

¹⁵ Email from the Chamber's Legal Officer, 18 January 2022, at 17:31 hrs.

¹⁶ Response on behalf of Mr Ntaganda to the CLR1's request for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan ('Defence Response'), 20 January 2022, [ICC-01/04-02/06-2736](#).

¹⁷ Response of the Common Legal Representative of the Victims of the Attacks to the "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)" ('CLR2 Response'), 20 January 2022, ICC-01/04-02/06-2737-Conf.

¹⁸ Trust Fund for Victims' Observations in relation to CLR1's Request for Extension of Time to Respond to the Draft Implementation Plan ('TFV Observations'), 20 January 2022, [ICC-01/04-02/06-2738](#).

¹⁹ Email from the Registry, 20 January 2022, at 13:44 hrs.

²⁰ Defence Response, [ICC-01/04-02/06-2736](#), para. 1.

²¹ CLR2 Response, ICC-01/04-02/06-2737-Conf, paras 5, 24-28.

²² TFV Observations, [ICC-01/04-02/06-2738](#), para. 5.

implementation'.²³ However, the TFV argues that the development of the reparations projects would take place at the procurement stage, through the scope of work developed on the basis of the approved DIP and the proposals received from implementing partners.²⁴ The TFV further indicates that, after the approval of the DIP, there would be a consultation process involving the LRVs, during which their concerns would be addressed.²⁵ Nevertheless, should the Chamber deem it appropriate, the TFV indicates that it stands ready to provide any clarifications available at this stage.²⁶

II. ANALYSIS

8. The Chamber notes that the scope and content of the DIP was clearly defined in the Reparations Order, where the Chamber ordered the TFV to prepare a DIP and submit it for the Chamber's approval,

clearly specify[ing] the objectives, outcomes, and activities identified as necessary in order to give effect to the present order. In particular, the TFV shall describe the reparation projects it intends to develop, indicating the details of the proposed collective awards, each of the collective projects with individualised components, and the modalities of reparations identified in this Order considered appropriate to address each of the harms. The TFV should also clearly indicate the methods of implementation, steps to be taken, direct and indirect costs, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects' development and implementation. The TFV should, to the extent possible, resort to pre-existing structures, programmes, and partners to optimise the costs of implementation of reparations.²⁷

9. As the Chamber later reiterated, the DIP should include four essential elements, namely:

(i) the objectives, outcomes, and activities identified as necessary to give effect to the Reparations Order; (ii) the reparation projects the TFV intends to develop, indicating the details of the proposed collective awards, each of the collective projects with individualised components, and the modalities of reparations considered appropriate to address each of the harms; (iii) the methods of implementation, steps to be taken, direct and indirect costs, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects' development and implementation; and (iv) a detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment.²⁸

²³ TFV Observations, [ICC-01/04-02/06-2738](#), para. 7, referring to 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](#), para. 10.

²⁴ TFV Observations, [ICC-01/04-02/06-2738](#), para. 7.

²⁵ TFV Observations, [ICC-01/04-02/06-2738](#), para. 11.

²⁶ TFV Observations, [ICC-01/04-02/06-2738](#), para. 12.

²⁷ Reparations Order, [ICC-01/04-02/06-2659](#), para. 249.

²⁸ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 10.

10. The Chamber is cognisant that the concrete and detailed specificities of the reparation projects to be implemented in the present case would only be defined after the TFV receives, and later agrees on, any proposals submitted by potential implementing partners. Nevertheless, the scope of work that would determine the content of the proposals to be received can only be based on an approved DIP which is as specific as possible and that contains, at minimum, the four elements referred above.²⁹ In addition, the Chamber's clear instruction for the TFV to resort to 'existing structures, programmes, and partners' should allow the TFV to have a clear understanding of the specific modalities, timelines, and costs involved in the reparation programmes that could be implemented in the present case. The above is all the more applicable in the current circumstances and in light of the TFV's experience. Indeed, the TFV faces the unprecedented scenario of having already implemented reparations in two cases within the same country, region, and regarding crimes committed during the same time-frame.

11. In light of the above, the Chamber considers it appropriate for the TFV to address, to the extent possible and leaving for later only details that could not reasonably be expected to be defined before receiving concrete proposals from potential implementing partners, all matters identified by the LRVs in the Request and in the CLR2 Response. In addition, taking into account the rights of the Defence, the Chamber considers that it should also be granted the opportunity to indicate any additional matters that should be addressed by the TFV.

12. The Chamber further recalls that, in line with its general approach to reparations, the TFV was instructed to 'consult with the victims and, where possible, with their families, on the nature of the collective awards and the methods of implementation' and to 'take into account their views and proposals when designing the reparation awards'.³⁰ Regarding consultations prior to the submission of the DIP, the Chamber notes that the TFV mostly relied on the LRVs submissions and support to organise meetings with a very limited number of victims.³¹

²⁹ See also, Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Order instructing the Trust Fund for Victims to Submit Information regarding Collective Reparations, [ICC-01/04-01/06-3262](#), para. 13; Trial Chamber II, *Prosecutor v. Germain Katanga*, Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations, 12 October 2017, ICC-01/04-01/07-3768-Conf-tENG, paras 10-12; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations, 12 July 2018, [ICC-01/12-01/15-273-Red](#), paras 98-101; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, [ICC-01/12-01/15-324-Red](#), para. 16.

³⁰ Reparations Order, [ICC-01/04-02/06-2659](#), para. 250.

³¹ DIP, ICC-01/04-02/06-2732-Conf-AnxA, para. 60.

13. The Chamber notes that, pursuant to regulation 35(2) of the Regulations, the Chamber may extend or reduce a time limit if good cause is shown, and, where appropriate, after having given the participants an opportunity to be heard.

14. In light of the above, the Chamber considers that the LRVs should be granted a limited extension of time in order to hold consultations with the victims they represent, after having received as many details as possible from the TFV regarding the projected awards, and in order for them to submit meaningful observations on the DIP and continue supporting the TFV's consultations with victims. Consequently, the Chamber considers that good cause has been shown to partly extend the time limit for observations on the DIP.

15. Regarding the TFV's request for observations on the DIP by the DRC authorities, consistent with the Court's jurisprudence,³² the Chamber grants the request and invites the relevant authorities of the DRC to submit observations on the DIP.

³² Trial Chamber VIII, *Prosecutor vs. Ahmad Al Faqi Al Mahdi*, Decision inviting Malian authorities to submit observations on the Trust Fund for Victims' Updated Implementation Plan, 5 November 2018, [ICC-01/12-01/15-293](#).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

ORDERS the Defence to indicate by the original deadline of 24 January 2022, whether it has identified any additional matters in the DIP that should be addressed by the TFV;

ORDERS the TFV to supplement the DIP by addressing, to the extent possible, all matters requiring further clarification as identified by the LRVs and the Defence, by 24 February 2022;

INVITES the DRC authorities to submit observations on the DIP and the TFV's supplementary filing, by 10 March 2022;

DIRECTS the TFV to inform the Registry, by 24 January 2022, whether the DIP can be notified to the DRC authorities in its current confidential form, without redactions, or to submit by the same date the redacted version required for notification;

DIRECTS the parties and the Registry to file their observations on the DIP and the TFV's supplementary filing, by 24 March 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, 21 January 2022

At The Hague, The Netherlands