

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 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

With one confidential annex

Public redacted version of “Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan”, submitted on 24 January 2022

Source: The Trust Fund for Victims

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

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Section**

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I. BACKGROUND

1. On 8 March 2021, Trial Chamber VI (the ‘Trial Chamber’) issued an order for reparations against Mr Ntaganda (the ‘Reparations Order’).¹
2. On 8 June 2021, the Trust Fund for Victims (the ‘Trust Fund’ or ‘TFV’) submitted its initial draft implementation plan² (the ‘Initial Draft Implementation Plan’ or ‘IDIP’)³ and on 23 July 2021, the Trial Chamber issued a decision approving it with amendments, and directing the Trust Fund to report on the IDIP implementation every two months.⁴
3. On 23 September 2021, the Trust Fund submitted its first update report⁵ and on 29 October 2021, the Trial Chamber issued a decision approving the proposals contained therein and directing the Trust Fund to provide clarifications in relation to six issues.⁶

¹ [Reparations Order](#), ICC-01/04-02/06-2659, paras 249-253 and 257, and disposition.

² The Trial Chamber and the participants used the full title ‘initial draft implementation plan’, hence the acronym ‘IDIP’; therefore, the Trust Fund will adopt this abbreviation in these observations.

³ [Public redacted version of “Report on Trust Fund’s Preparation for Draft Implementation Plan”, submitted on 8 June 2021](#), ICC-01/04-02/06-2676-Red, with [Annex A, Public redacted version of “Initial Draft Implementation Plan with focus on Priority Victims”](#), ICC-01/04-02/06-2676-AnxA-Corr-Red.

⁴ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696 \(“Decision of 23 July 2021”\)](#).

⁵ 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, [ICC-01/04-02/06-2710-Conf](#). A public redacted version was filed on 7 October 2021: [ICC-01/04-02/06-2710-Red](#).

⁶ Decision on TFV’s 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, [ICC-01/04-02/06-2718-Conf](#). A public redacted version was notified on 28 October 2021: [ICC-01/04-02/06-2718-Red](#) (Decision on First IDIP Report, [ICC-01/04-02/06-2718-Red](#)).

4. On 23 November 2021, the Trust Fund submitted its second update report on the IDIP⁷ and on 17 December 2021, having heard the observations of the parties,⁸ the Trial Chamber issued a decision thereon (“Decision on Second Update Report”).⁹

II. UPDATE REPORT OF 24 JANUARY 2022

5. This update report covers the activities relevant to the implementation of the IDIP conducted between 23 November 2021 to 24 January 2022. In addition, it responds to the Trial Chamber’s instructions contained in the Decision on Second Update Report of 17 December 2021.

6. The Trial Chamber directed the Trust Fund to submit further information on three substantive issues. First, the Trial Chamber instructed the Trust Fund to provide concrete information as to how the security situation affects the implementation of the IDIP and, if necessary, propose strategies to mitigate the possible risks.¹⁰ Second, the Trial Chamber encouraged the Trust Fund to provide additional details as to the way it will substantively assess eligibility and urgency for the purposes of the IDIP.¹¹ Third and lastly, in relation to former child soldiers in urgent needs the Trial Chamber rejected the Trust Fund’s proposal that they be integrated in the *Lubanga* service-based reparations programme. While taking into consideration the Trust Fund’s indication that from a contractual perspective, it is not possible to expand the scope of the relevant assistance programmes, the Trial Chamber directed the Trust Fund to

⁷ Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2723-Conf](#). A public redacted version was filed on 28 December 2021: [ICC-01/04-02/06-2723-Red](#) (“Second IDIP Update Report”).

⁸ 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”, 6 December 2021, [ICC-01/04-02/06-2724-Red](#); 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 (ICC-01/04-02/06-2723-Conf), 6 December 2021, [ICC-01/04-02/06-2725-Red](#); Defence observations on the TFV Second Progress Report on the Implementation of the Initial Draft Implementation Plan, 6 December 2021, [ICC-01/04-02/06-2726-Red](#) (“Defence Observations on Second Update Report”).

⁹ Decision on the TFV’s Second Progress Report on the implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2730-Conf](#).

¹⁰ Decision on Second Update Report, [ICC-01/04-02/06-2730-Conf](#), para. 9.

¹¹ Decision on Second Update Report, [ICC-01/04-02/06-2730-Conf](#), para. 12.

propose an alternative way of addressing the urgent needs of these victims, taking into account the possibility to directly implement urgent measures.¹²

7. Immediately upon the conclusion of the winter recess, the Trust Fund started the necessary activities to be in a position to respond to the three instructions, which all require a combination of field work and desk work and have not yet been fully concluded. The Trust Fund opted to report instead of asking for an extension of time given the reporting takes place on a two-monthly basis. Accordingly, further information will be provided on a rolling basis to the legal representatives of victims and in the next update report.

A. UPDATE ON THE SECURITY SITUATION

8. On 18 December 2021, the state of siege in the provinces of Ituri and North-Kivu was prolonged for a fourteenth time. Based on the Court's security assessment shared with the Trust Fund, the security situation in Ituri remains volatile and unpredictable. Various armed groups continue to carry out deadly attacks against the Armed Forces of the DRC ("FARDC") and the civilian population. These armed groups are also engaged in fierce battles, fueled by ethnic tensions and attempts to control the mining areas around Mongbwalu and others. Attacks against the civilian population and the FARDC are recorded within 10 km of Bunia. The Trust Fund was informed by a humanitarian organization that attacks have been orchestrated at a sustained pace in the Djugu territory, including in IDP camps. Rumors of attacks keep on contributing to further movements of population. For instance, residents of Saïo and Nzebi as well as a few other surrounding area had to flee in the bush following rumors of an imminent attack.

9. The security situation is such that movements are unpredictable and it is nearly impossible to anticipate scenarios from one day to another. Accordingly, the most important risk to the programme is that the victims cannot be located, or change location once services started. In order to address this risk, the TFV is benefitting from the help of the CLR's. They proceed to a first contact with victims in order to make sure *inter alia* they may be reachable easily. They provide the list with the contact details to the TFV. Thereafter the implementing partner is

¹² Decision on Second Update Report, [ICC-01/04-02/06-2730-Conf](#), paras 14-16.

contacting the victims and is, in a first step, also verifying the contact details. The implementing partner will also ensure to collect enough information from the victims in order to be able to track them in case they become unreachable as a result of the security situation. The data collected by the implementing partner is in turn shared with the CLR, who have expressed preparedness to provide further support.

10. Some victims may be located in an area in which implementing activities are not feasible due to the current lack of infrastructure or the security risks in relation to the safety of victims and/or the implementing partner's staff and operations. Where such circumstances exist, the implementing partner may opt for the most adequate solution based on the nature of victim needs. For socio-economic activities, cash transfer may be organized. For psychological support, remote sessions may be organized if connectivity allows. If not, the transfer of the victim to a safe location where they can properly receive adequate services may be arranged. The same applies to physical support, keeping in mind that adequate treatment may require more important logistical arrangements, such as travels outside of Ituri. The implementing partners and the Trust Fund are taking this situation very seriously and intend to address the individual situation of each beneficiary in close cooperation. The Trust Fund will keep the CLR informed with regular updates.

11. With regard to the Defence's concerns in relation to "the possible involvement of potential beneficiaries in the events undermining the security situation",¹³ the Trust Fund is fully mindful of this risk and in the event such individuals are identified, the Trust Fund would inform their CLR and submit the situation to the Trial Chamber.

12. In relation to the risks of possible tensions, animosity, and jealousy among affected communities, the Trust Fund will continue its outreach effort in collaboration with the CLR.

¹³Defence observations on Second Update Report, [ICC-01/04-02/06-2726-Red](#), paras 4-7; *See also*, Decision on Second Update Report, [ICC-01/04-02/06-2730-Conf](#), para. 8.

13. As a general matter, the support of the CLR's will be requested everytime the situation requires it as it is currently the case in relation to victims the implementing partner could not reach.

B. UPDATE ON THE ELIGIBILITY AND URGENCY SCREENING

14. During the reporting period, the Trust Fund fine-tuned and put in place the mechanism to determine the eligibility of victims to access the initial reparations programme. The first evaluations of the eligibility have started. On 16 November 2021, the Trust Fund requested from the CLR's that they update the list of priority victims transmitted in April and May 2021.¹⁴ On 19 November 2021,¹⁵ and 2 December 2021¹⁶ respectively, the CLR1 and CLR2 communicated an updated list of priority victims. On 29 November 2021, the Trust Fund requested VPRS to access the application forms and supporting documents.¹⁷ The Trust Fund reiterates the great importance, for the expeditiousness of the process, of being granted access by VPRS to application forms and other documents in VPRS' possession, and relating to victims under IDIP eligibility assessment, within as short term, possibly within five working days as in line with the most recent and efficient coordination practice set by the Trust Fund and VPRS in this regard.

15. For the purpose of evaluating the urgency of the needs of the victims, the Trust Fund has prepared a questionnaire, to be administered to the victims by the implementing partner under the overall supervision of the Trust Fund. The questionnaire has been designed by the Trust Fund in order to capture factual elements relevant to the evaluation of the urgency of the needs of the victims, in accordance with the criteria set out by the Trial Chamber. In order to address the Trial Chamber's instruction to provide more information as to the substantive criteria used to conduct the eligibility and urgency screening, the Trust Fund attaches the questionnaire as annex 1 to the

¹⁴ Email from Trust Fund to CLR's on 16 November at 17:43 and 17:44.

¹⁵ Email from CLR1 to Trust Fund on 19 November 2021 at 15:52.

¹⁶ Email from CLR2 to Trust Fund on 31 May 2021 at 8:32; Email from CLR2 to Trust Fund on 2 December 2021 at 14:27.

¹⁷ Emails from Trust Fund to VPRS on 29 November 2021 at 14:32 and at 14:52.

present report. Prior to entering in use, the questionnaire was shared with the CLR1s for their comments. The CLR1 made one comment which was taken into account.¹⁸

16. The Trust Fund held meetings with the implementing partners to ensure that they understand and apply the overall needs of the process, including their role in administering the questionnaire and collecting the relevant information about the urgency of the needs of the victims. The TFV provided guidance to the implementing partners about their role and the scope of involvement in this process, which is limited to the gathering of the information and transmitting it to the Trust Fund for analysis.

17. Accordingly, having reviewed the list and supporting documents transmitted by the LRVs, the Trust Fund transmitted on 17 December 2021 the list of 24 priority victims belonging to the group of former child soldiers to [REDACTED], together with the questionnaire and informed them that they should contact the victims.¹⁹ A list of 24 priority victims belonging to the group of victims of the attacks was transmitted on the same day to [REDACTED].²⁰

18. As reported above and as underlined by the CLR1s themselves, the security situation in the field is such that establishing contacts with potential beneficiaries is a challenging task that is requiring a considerably longer amount of time than usual. Thus, at the date of the submission of the report, the implementing partners are still in the process of contacting the victims in order to administer the questionnaire or, depending on the individual situation, to set up a meeting to administer it. Immediately upon receipt of the completed questionnaires, the Trust Fund will proceed to analyse them and determine their eligibility as beneficiaries in the initial reparations programme. The CLR1s will be informed promptly of the determinations concerning their clients. Their intake into the programme will take place promptly thereafter.

19. The questionnaire is a living tool and the Trust Fund may need to make amendments – in consultation with the CLR1s – should the situation in the field evolve in a way requiring it or

¹⁸ Email from CLR1 to Trust Fund on 4 January 2022 at 12:49. The CLR1 indicated that question 7 of the questionnaire should not only cover women but also men.

¹⁹ Email from Trust Fund to [REDACTED] on 17 December 2021 at 16:53.

²⁰ Email from Trust Fund to [REDACTED] on 17 December 2021 at 16:48.

should other factual information be discovered. For the time being, both lists of 24 individuals carefully reviewed by the Trust Fund and transmitted to the implementing partners concerned clear cases of individuals manifestly falling within the scope of the convicted crimes and whose applications did not give rise to any discussion. Should any borderline cases arise, the Trust Fund will bring this to the parties and Trial Chamber's attention in accordance with regulation 57 of the Regulations of the Trust Fund.²¹

20. As a last point, the Trust Fund wishes to inform the Trial Chamber that, as per its instruction,²² the Trust Fund has consulted with all stakeholders involved on the appropriate mechanism for the evaluation of the eligibility. The process has been set out in the Draft Implementation Plan dated 17 December 2021. While consultations are still ongoing in relation to one open matter (the single verification body), all other matters have been agreed between the CLR, VPRS and the Trust Fund and have been put before the Trial Chamber. As expressed in the DIP, the Trust Fund notes that the Defence was not able to agree to a number of the proposals of the Trust Fund.

21. For the purposes of the IDIP and pending the full resolution of this matter, the Trial Chamber approved that the Trust Fund is the single verification body. Accordingly, for the time being, the Trust Fund proposes that the Trust Fund continues to act as the single verification body and that accordingly the administrative review process, as set out in the DIP,²³ also apply to the verification process for the initial reparation programme.

22. In relation to the victims who were interviewed by Registry staff until March 2021, and taking into account what has been expressed in paragraph 21 above, the Trust Fund proposes to proceed in a similar way. The difference between these victims and the victims dealt with in the first batch, is that these victims are represented by CLR in their general interest, and not individually.²⁴ In line with the procedure set out in the DIP, this means that the CLR would only

²¹ See DIP, ICC-01/04-02/06-2732-Conf-AnxA, para. 343.

²² Decision of 23 July 2021, [ICC-01/04-02/06-2696](#), para. 38; [Decision on First IDIP Report, ICC-01/04-02/06-2718-Red](#), paras 22-23.

²³ DIP, ICC-01/04-02/06-2732-Conf-AnxA, para. 345.

²⁴ Decision of 23 July 2021, [ICC-01/04-02/06-2696](#), paras 39-41 and disposition.

become engaged on an individual basis in case of a negative eligibility decision.²⁵ Accordingly, in relation to the victims interviewed by Registry staff, the Trust Fund requests the Trial Chamber's approval to proceed as follows in order to allow for a first identification of urgent needs of these victims:

- a. Request the relevant Registry staff to indicate, which victims may have urgent needs;
- b. Request VPRS to submit the relevant application forms to the TFV.

23. Following the receipt of such information, the TFV would proceed in the same manner as for the represented victims and will inform as proposed in paragraphs 351 to 355 of the DIP with the caveat that it will in any case inform VPRS as the forms have been transmitted through them.

24. Lastly, on 3 November 2021,²⁶ VPRS informed the Trust Fund that, a year earlier, in December 2020, it received applications forms emanating from Former Child Soldiers. These applicants filled out their application with the assistance of a counsel on the list of counsel and on the confidential *Lubanga* application template. The counsel had indicated that these victims only wish to apply to the *Ntaganda* case. It appears that the CLR1 had also not been informed of this situation promptly. Upon enquiry by the Trust Fund, the VPRS indicated that they are not aware of how the counsel received the confidential form.

25. The Trust Fund proposes to treat those victims in the same way as new beneficiaries. Given that the CLRs will continue to provide details of additional beneficiaries from among those who already participated in the *Ntaganda* case and that the Trial Chamber decided that these beneficiaries be prioritized, the Trust Fund will, after consultation with the CLRs, inform in the next update report about the start of the identification process (including information collection) for new beneficiaries.

²⁵ DIP, ICC-01/04-02/06-2732-Conf-AnxA, para. 354.

²⁶ Email from VPRS to Trust Fund on 3 November 2021 at 16:28 and email on 29 November 2021 at 17:18.

C. UPDATE ON URGENT MEASURES FOR FORMER CHILD SOLDIERS

26. In relation to the the Trial Chamber’s instruction to propose an alternative way (to the proposal to using the *Lubanga* reparation programme) of addressing the urgent needs of those Former Child Soldiers, who are not falling within the scope of the [REDACTED] IDIP project, taking into account the possibility to directly implement urgent measures,²⁷ the Trust Fund is currently exploring the available options. The Trust Fund is to hold a meeting with the CLR1 on such options during the week of 31 January 2022 and will report thereon in the Fourth Update Report.

27. In this regard, the Trust Fund needs to consider the existing constraints in relation to engaging the current implementation partners of TFV assistance projects, for the purpose of addressing urgent needs of the Former Child Soldiers. As related in the DIP and in the IDIP,²⁸ these constraints are of legal (procurement) and contractual nature, and as such limit the absorption capacity of the existing assistance projects. Further, the Trust Fund understands the Trial Chamber to imply with “direct implementation” that TFV staff directly implement specific measures. The Trust Fund will need to consider the operational realities of any such direct implementation. To the extent that specialised expertise is required, for instance medical or psychological expertise, Trust Fund staff cannot, and should not be expected, to play this role. Paying/contracting anyone (hospitals, psychologists, providers of goods) to carry out such activities also requires first to run through a procurement, before other modalities (e.g. direct payment by TFV staff for goods or services) can be considered. The *Katanga* reparation implementation has shown how time-intensive such processes are and how much (in particular human) resources, including of the Court, are required to achieve an implementation that accords with the legal framework of the Court and in particular the Financial Regulations and Rules. Different other modalities of (more) direct involvement of TFV staff in addressing urgent needs of victims require consideration of the limited and already significantly burdened staff capacity in the Bunia Country Office, the need to avoid prejudice against existing obligations in relation

²⁷ Decision on Second Update Report, [ICC-01/04-02/06-2730-Conf](#), paras 14-16.

²⁸ IDIP, ICC-01/04-02/06-2676-AnxA-Corr-Red paras 21-24; DIP, ICC-01/04-02/06-2732-Conf-AnxA, attachment 2, page 101.

to the TFV's reparation and assistance activities in the DRC, and the possibility of recourse to extra-ordinary procurement and financing modalities still within the regulatory framework of prevalent administrative procedure..

FOR THE FOREGOING REASONS,

28. The Trust Fund requests that the Trial Chamber take note of the present update report and stands ready to provide further clarifications.



Pieter W.I. de Baan
Executive Director, Trust Fund for Victims

Dated this 24 Day of January 2022

At The Hague, The Netherlands