

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/04-02/06**
Date: **28 November 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 Redacted Version

**Trust Fund for Victims' Eighth Update Report on the Implementation of the Initial Draft
Implementation Plan**

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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**Victims Participation and Reparations
Section**

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I. BACKGROUND

1. On 8 July 2019, Trial Chamber VI (the “Trial Chamber”) issued its Judgment, convicting Mr Bosco Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes.¹
2. On 15 December 2020, following various submissions made in the context of the reparations proceedings, the Trial Chamber issued a decision ruling on a number of issues raised by the Registry in relation to the scope of the conviction.²
3. On 8 March 2021, the Trial Chamber issued an order for reparations against Mr Ntaganda (“Reparations Order”).³
4. On 8 June 2021, the Trust Fund for Victims (the “Trust Fund” or “TFV”) submitted its initial draft implementation plan⁴ (the “Initial Draft Implementation Plan” or “IDIP”)⁵ and, on 23 July 2021, the Trial Chamber issued a decision approving it with amendments, and directed the Trust Fund to report on the IDIP implementation every two months.⁶
5. On 23 September 2021, the Trust Fund submitted its first update report⁷ and, on 29 October 2021, the Trial Chamber issued a decision approving the proposals contained therein, directing the Trust Fund to provide certain clarifications.⁸

¹ Judgment, [ICC-01/04-02/06-2359](#).

² Decision on issues raised in the Registry’s First Report on Reparations, [ICC-01/04-02/06-2630](#).

³ Reparations Order, [ICC-01/04-02/06-2659](#), paras 249-253 and 257, and disposition.

⁴ 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.

⁵ 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](#).

⁶ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#).

⁷ 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](#).

⁸ 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](#).

6. On 23 November 2021, the Trust Fund submitted its second update report on the IDIP⁹ and, on 17 December 2021, having heard the observations of the parties,¹⁰ the Trial Chamber issued a decision thereon.¹¹

7. On 24 January 2022, the Trust Fund submitted its third update report on the IDIP¹² (“Third Update Report”) and, on 10 February 2022, having heard the observations of the parties, the Trial Chamber issued a decision thereon (“Decision on Third Update Report”).¹³

8. On 24 March 2022, the Trust Fund submitted its fourth update report on the IDIP¹⁴ (“Fourth Update Report”) and, on 12 May 2022, having heard the observations of the parties,¹⁵ the Trial Chamber issued a decision thereon (“Decision on Fourth Update Report”) in which it approved *inter alia* the mechanism for addressing urgent needs of former child soldiers who are not SGBV victims or children born out of rape or sexual slavery.¹⁶

⁹ 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 Update Report”).

¹⁰ 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 TFFV 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”).

¹¹ Decision on the TFFV’s Second Progress Report on the implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2730-Conf](#).

¹² Trust Fund for Victims’ Third Update report on the Implementation of the Initial Draft Implementation Plan, ICC-01/04-02/06-2741-Conf. A public redacted version was filed on the same day: [ICC-01/04-02/06-2741-Red](#).

¹³ Decision on the TFFV’s Third Update report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2745-Corr](#).

¹⁴ Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 April 2022, [ICC-01/04-02/06-2751-Conf](#). With one confidential annex, A public redacted version was filed on 20 May 2022: [ICC-01/04-02/06-2751-Red](#).

¹⁵ Observations of the Common Legal Representative of the Former Child Soldiers on the “Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan” (ICC-01/04-02/06-2751-Conf), 7 April 2022, [ICC-01/04-02/06-2754-Conf](#), A public redacted version was filed on 20 May 2022: [ICC-01/04-02/06-2754-Red](#); Defence observations on the Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 7 April 2022, [ICC-01/04-02/06-2755-Conf](#), A public redacted version was filed on 20 May 2022: [ICC-01/04-02/06-2755-Red](#).

¹⁶ Decision on the TFFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 12 May 2022, [ICC-01/04-02/06-2761-Conf](#).

9. On 24 May 2022, the Trust Fund submitted its fifth update report on the IDIP¹⁷ (“Fifth Update Report”) and, on 6 July 2022, having heard the observations of the parties,¹⁸ the Trial Chamber issued a decision thereon (“Decision on Fifth Update Report”).¹⁹

10. On 25 July 2022, the Trust Fund submitted its sixth update report on the IDIP²⁰ (“Sixth Update Report”). On 5 August 2022, the Defence submitted observations on the Sixth Update Report.²¹

11. On 12 September 2022, the Appeals Chamber issued its judgment on the Reparations Order (“Appeals Judgment”).²²

12. On 26 September 2022, the Trust Fund submitted its seventh update report on the IDIP²³ (“Seventh Update Report”). On 7 October 2022, the Defence submitted observations on the Seventh Update Report.²⁴

¹⁷ Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 May 2022, [ICC-01/04-02/06-2767-Conf](#). A public redacted version was filed on 20 July 2022: [ICC-01/04-02/06-2767-Red](#).

¹⁸ Observations of the Common Legal Representative of the Former Child Soldiers on the “Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan” (ICC-01/04-02/06-2767-Conf), 6 June 2022, [ICC-01/04-02/06-2770-Conf](#). A public redacted version was filed on 8 July 2022: [ICC-01/04-02/06-2770-Red](#); Defence observations on the Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 6 June 2022, [ICC-01/04-02/06-2769-Conf](#). A public redacted version was filed on 19 July 2022: [ICC-01/04-02/06-2769-Red](#).

¹⁹ Decision on the TFV’s Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 6 July 2022, [ICC-01/04-02/06-2772-Conf](#).

²⁰ Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 25 July 2022, [ICC-01/04-02/06-2775-Conf](#). A public redacted version was filed the same day.

²¹ Observations on behalf of the convicted person on the Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 5 August 2022, [ICC-01/04-02/06-2780-Conf](#). A public redacted version was filed on 26 August 2022.

²² Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 12 September 2022, [ICC-01/04-02/06-2782](#) (“Appeals Judgment”).

²³ Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 26 September 2022, [ICC-01/04-02/06-2783-Conf](#). A public redacted version was filed on 25 October 2022: [ICC-01/04-02/06-2783-Red](#).

²⁴ Observations on behalf of the convicted person on the Trust Fund for Victims’ Seventh Update Report on the Implementation of the Initial Draft Implementation Plan, 7 October 2022, [ICC-01/04-02/06-2785](#).

13. On 25 October 2022, Trial Chamber II (the “Trial Chamber”) issued its Order for the implementation of the Judgment on the appeals against the Reparations Order (“Order on the Appeals Judgment’s Implementation”).²⁵

14. On 16 November 2022, the Trial Chamber issued its Decision on the TFV’s Sixth and Seventh Update Reports on the Implementation of the IDIP (“Decision on the Sixth and Seventh Update Reports”).²⁶

II. UPDATE REPORT OF 28 NOVEMBER 2022

15. This update report covers the activities relevant to the implementation of the IDIP conducted between 27 September 2022 and 27 November 2022. It provides updated information regarding the security situation (A), the eligibility assessment (B), the implementation of initial reparations measures (C), and outreach (D). In addition, it addresses the issues raised in the Trial Chamber’s Decision on the Sixth and Seventh Update Reports.

A. UPDATE ON THE SECURITY SITUATION

16. The Trust Fund notes that the Trial Chamber, in its Decision on Sixth and Seventh Update Reports, invited the Trust Fund to provide further details on the scope and importance of the security’s impact on the IDIP’s implementation.²⁷

17. In its Third Update Report, in response to the Trial Chamber’s query, the Trust Fund had provided the Trial Chamber with an update on the security situation, including its operational impact on the implementation of the IDIP. Since then, the security situation in the localities where the Trust Fund’s implementing partners are operative has not significantly evolved to a point that allows it to provide further details on the scope and importance of the security situation. This

²⁵ Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 25 October 2022, [ICC-01/04-02/06-2786](#), (“Order on the Appeals Judgment Implementation”).

²⁶ Decision on the TFV’s Sixth and Seventh Update Reports on the Implementation of the Initial Draft Implementation Plan, 16 November 2022, [ICC-01/04-02/06-2792-Conf](#), (“Decision on the Sixth and Seventh Update Reports”).

²⁷ Decision on the Sixth and Seventh Update Reports, para. 14.

explains the absence of more detailed information provided by the Trust Fund regarding the security situation.

18. During the current reporting period, the security situation has remained volatile and unpredictable. In particular, the security situation in the Nyakunde and Kilo axes has been subject to increasing instability over the last few weeks. The same goes for the locality of Bambu, where the security situation has been disturbed by road blocks on several occasions. As for the locality of Mongbwalu, some turmoil has been reported in the outskirts, but the situation in the centre has remained generally calm. Despite these turbulent conditions, the implementing partner's staff still manages to monitor IDIP beneficiaries very closely and implement activities thanks to the extent to which they are rooted in the localities where the beneficiaries reside.

19. The Trust Fund's implementing partners adapt their implementation strategy to the rapidly changing and highly unpredictable security situation insofar as they proceed with the implementation of reparation measures whenever the security situation allows for it. Considering that the implementing partner's staff is based within the affected communities, they are best placed to assess whether and when it is feasible to proceed with the implementation of reparation measures. The overall impact of the security situation is so far limited in instances where victims are reachable. In general terms, once a first contact is made with a beneficiary, the system put in place to maintain contact with them in all circumstances assures that adequate measures are speedily and steadily implemented despite the security situation. The Trust Fund will inform the Trial Chamber accordingly in the event there is a variation in the impact of the security situation on the implementation of the IDIP.

20. During the reporting period, the Acting Executive Director of the TFCV together with three Kinshasa-based Ambassadors to the Democratic Republic of the Congo (DRC) of Canada, the Netherlands, and Senegal conducted a visibility and monitoring mission to Bunia. They were not permitted to travel outside of Bunia, and within Bunia security was ensured by MONUSCO. This was the first time in years that Ambassadors had come to Bunia, *despite* the security situation. The security situation, in particular in Goma (connecting airport) was particularly difficult during the reporting period. Generally, a shared impression of the three Ambassadors and the Acting

Executive Director was that crimes continue to be committed on large scale in eastern DRC with full impunity. The ICC is the only mechanism to date that has addressed war crimes and crimes against humanity committed in the region during the past 20 years. Justice is urgently required, including as a means to bring peace. More generally, the feedback received indicated that the ICC and the work of the Trust Fund for Victims as the face of the ICC seems to be well known.

B. UPDATE ON THE ELIGIBILITY ASSESSMENT

21. The Trust Fund takes good note of the Trial Chamber’s decision that the Trust Fund has to continue its work in relation to the implementation of the IDIP under the conditions specified in the Decision on the Sixth and Seventh Update Reports, namely that the Trust Fund is instructed to continue applying the same eligibility assessment and urgency screening as already approved by the Trial Chamber.²⁸

22. In particular, the Trust Fund takes note of the fact that, in consideration of all the issues on remand in light of the Appeals Judgment,²⁹ it is instructed, unless otherwise decided, to continue the same eligibility assessment without including any victims claiming to have suffered *only* (i) transgenerational harm, or (ii) harm suffered as a result of the destruction of the health centre in Sayo; as well as without relying on the Reparations Order’s presumption of physical harm for victims of the attacks.³⁰

23. Additionally, in light of the Trial Chamber’s Decision on the Sixth and Seventh Update Reports, the Trust Fund will, together with its periodic update report, provide the Trial Chamber with a list of positively assessed individuals also accessible to legal representatives of victims (jointly the “CLRs”), as well as all available information leading to such assessment.³¹

24. Furthermore, in accordance with paragraph 24 of the Decision on the Sixth and Seventh Update Reports, the TFCV will notify the CLRs of applicants deemed *not* to be eligible for the

²⁸ Decision on the Sixth and Seventh Update Reports, para. 21.

²⁹ Appeals Judgment, paras 470-497, 530-550 and 698-705.

³⁰ Decision on the Sixth and Seventh Update Reports, para. 21.

³¹ Decision on the Sixth and Seventh Update Reports, para. 23.

purposes of the IDIP programme. Similar to the practice in the *Lubanga* case,³² the TFV will, together with its periodical update report, provide the Trial Chamber and the CLR's with the reasons that have led to a negative assessment regarding their eligibility, as well all available information leading to such assessment.³³

Process until 28 November 2022

25. In the absence of any new transmissions received from either the CLR's or the Registry, the Trust Fund did not proceed to the eligibility assessment of any additional victims for the purposes of the IDIP programme during the reporting period.

26. To date, a total of 24 Former Child Soldiers and 45 Victims of the Attacks have been considered eligible and referred for intake.

Next steps

27. The Trust Fund will continue with the eligibility assessment of any additional participating victims referred to it.

28. With respect to training for [REDACTED] staff regarding information gathering on potential Victims of the Attacks, the Trust Fund confirms that the role of implementing partners in the eligibility assessment and urgency screening will be limited to supporting the Trust Fund in gathering relevant information.

29. The Trust Fund stands ready to receive new transmissions from the CLR's and the Registry, and to subsequently proceed with their eligibility assessment.

³² *Lubanga* Decision approving the proposals of the Trust Fund for Victims on the Process for locating new applicants and determining their eligibility for reparations, [ICC-01/04-01/06-3440-Red-tENG](#), paras 37-38.

³³ Decision on the Sixth and Seventh Update Reports, para. 24.

C. UPDATE ON IMPLEMENTATION OF INITIAL REPARATION MEASURES

30. To date, [REDACTED] has provided initial reparation measures to 24 beneficiaries. [REDACTED].
31. [REDACTED] has provided initial reparation measures to 45 beneficiaries.
32. Implementation of initial measures continues for a number of beneficiaries whose situation requires for it.
33. For the next reporting period, the Trust Fund will not be in a position to report on the inclusion of new beneficiaries. This logically stems from the amended IDIP eligibility procedure which now requires judicial approval, upon submission of lists of beneficiaries and information leading to the assessment that will be made, before the inclusion of any individual into the IDIP.

D. OUTREACH

34. The Trust Fund notes that the Trial Chamber, in its Decision on the Sixth and Seventh Update Reports, encouraged the Trust Fund to provide further details on the content and target communities of the broadcasted messages for outreach purposes.³⁴
35. In essence, messages prepared by the Trust Fund in collaboration with the CLRs and the Registry respond objectively and in a straightforward manner to the following six questions, in a language that is accessible to the communities, based on actual or anticipated concerns, and noting that the CLRs had already provided information to participating victims: (i) “what does the Appeals Judgment say?”; (ii) “are reparations for victims cancelled?”; (iii) “what are the errors detected by the Appeals Chamber?”; (iv) “timing of the implementation of the reparations”; (v) “a short summary of steps preceding the implementation of reparations”; and (vi) “the status of the IDIP in light of the Appeals Judgment”.

³⁴ Decision on the Sixth and Seventh Update Reports, para. 26.

36. In undertaking a cautious approach, the Trust Fund did not immediately commence with broadcasting these messages regarding the Appeals Judgment in light of the brief contestation undertaken by the Defence of the continuation of the implementation of the IDIP.³⁵ In this regard, the Trust Fund welcomes the Trial Chamber's confirmation of the continuous implementation of the IDIP to ensure that victims in urgent need are able to access initial reparation measures in a timely manner. The Trust Fund will proceed shortly with broadcasting this information via radio messages within the affected communities. Considering the generality of the messages broadcasted, there is no risk whatsoever of them being broadcasted in the "wrong communities". In this regard, the Trust Fund recalls that it has permanent staff based in the field working with the implementing partners with an acute awareness of the dynamics between and within communities in Ituri and that messages were reviewed by the CLR's who represent all victims' interests in the present case and the relevant Registry staff with a true understanding of the outreach and the affected communities in the case at hand.

FOR THE FOREGOING REASONS,

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



Franziska Eckelmans
Acting Executive Director of the Trust Fund for Victims,

Dated this 28th Day of November 2022

In London, United Kingdom

³⁵ The Trust Fund notes that the Defence has not appealed any decision confirming and/or justifying the continuation of the IDIP.