

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **9 January 2023**

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 Trust Fund for Victims' submission of information on
certain victims selected in Trial Chamber II's approved sample**

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

Legal Representatives of Victims

Ms Sarah Pellet

Mr Tars van Litsenborgh

Mr Dmytro Suprun

Ms Fiona Lau

Ms Cherine Luzaisu

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon

Mr Benjamin Willame

Ms Kate Gibson

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

Office of the Prosecutor

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

Ms Franziska Eckelmans

Others

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 64(2), 64(6)(f), and 75 of the Rome Statute, issues this Decision on the Trust Fund for Victims’ submission of information on certain victims selected in Trial Chamber II’s approved sample (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order.¹
2. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Appeals Judgment’).² The Appeals Judgment remanded the matter to the Chamber, as it partially reversed the Reparations Order to the extent that Trial Chamber VI failed to, *inter alia*, (i) ‘make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number’; (ii) ‘provide an appropriate calculation, or set out sufficient reasoning, for the amount of the monetary award against Mr Ntaganda’; and (iii) ‘assess and rule upon victims’ applications for reparations’.³
3. On 25 October 2022, the Chamber issued its Order for the implementation of the Appeals Judgment (‘25 October 2022 Order’), *inter alia*, setting forth the methodology and instructing the Registry, through the Victims Participation and Reparations Section (‘VPRS’), to assemble a limited but representative sample of victims’ dossiers.⁴
4. On 25 November 2022, having analysed the Registry’s submission in compliance with the 25 October 2022 Order (‘Submission on the Sample’)⁵ and the parties’ submissions,⁶ the

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

² Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

³ Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

⁴ 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 Order’), 25 October 2022, [ICC-01/04-02/06-2786](#).

⁵ Registry submission in compliance with the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (ICC-01/04-02/06-2786) (‘Submission on Sample’), 8 November 2022, [ICC-01/04-02/06-2788](#).

⁶ Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order (‘Defence Submission’), 9 November 2022, [ICC-01/04-02/06-2791](#), with Public Annex I, [ICC-01/04-02/06-2791-AnxI](#); Common Legal Representative of the Former Child Soldiers’ Submissions pursuant to the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, 9 November 2022, ICC-01/04-02/06-2790-Conf (public redacted version filed on 14 November 2022, [ICC-01/04-02/06-2790-Red](#)); Submissions of the Common Legal Representative of the Victims of the Attacks pursuant to the “Order for the implementation of the Judgement

Chamber issued its Decision on the Registry submission in compliance with the 25 October 2022 Order ('Decision on the Registry Submission'), *inter alia*, approving the sample as assembled by the VPRS, as sufficiently representative of the universe of potential victims in the case.⁷

5. On 22 December 2022, the Trust Fund for Victims ('TFV') filed a submission providing information on certain victims included in the sample approved by the Chamber ('Submission').⁸ No responses were submitted by the parties.

II. SUBMISSIONS AND ANALYSIS

6. The Chamber recalls that in its 25 October 2022 Order, it elaborated on the methodology for the Registry, through the VPRS, to assemble a limited but representative sample composed of the victims' dossiers of: (a) all 69 victims so far found eligible to benefit from the Initial Draft Implementation Plan ('IDIP') by the TFV; and (b) a randomly selected group from the total universe of victims, amounting to 5% of the victims of the attacks and a 5% of the victims of crimes against child soldiers, to be assessed and ruled upon by the Chamber.⁹

7. In the 25 October 2022 Order, the Chamber further stressed that the universe of victims from where the randomised part of the sample should be extracted should include: (i) all victims who participated in the trial proceedings, including those found not to be eligible by the Registry, but excluding the individuals who also qualify as victims in the *Lubanga* case and all 69 victims already found eligible for the IDIP purposes, as the later will be necessarily assessed and not randomly selected; and ii) all non-participating victims who have already submitted long forms to the Registry within the context of the mapping exercise.¹⁰

8. The Chamber further notes that the reason to include within the sample to be assessed and ruled upon by the Chamber all victims already found eligible for the IDIP, was directed at ensuring that all issues on remand for which the Appeals Chamber found errors in the

on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 9 November 2022, [ICC-01/04-02/06-2789](#).

⁷ Decision on the Registry submission in compliance with the "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" ('Decision on the Registry submission'), 25 November 2022, [ICC-01/04-02/06-2794](#), with Annex 1, [ICC-01/04-02/06-2794-Anx1](#).

⁸ Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample ('TFV submission'), 22 December 2022, [ICC-01/04-02/06-2807](#).

⁹ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(a)-(b).

¹⁰ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 26-27, footnote 67.

Reparations Order were also addressed in the IDIP context.¹¹ However, as stressed in a previous ruling, the overlapping victims of the *Lubanga* and *Ntaganda* cases should be given priority to start benefiting from the various components of the *Lubanga* service-based collective reparations without delay and not be integrated into the *Ntaganda* IDIP, unless and for such a time that their urgent needs shall be addressed as an emergency response within the IDIP.¹²

9. As to the reasons for not including the *Lubanga* victims in the sample, as the 25 October 2022 Order clearly indicated, considering that in the *Lubanga* case the relevant Chamber already ruled on a sample of applications, this Chamber did not deem it necessary to rule again on a sample of the applications of the same victims, as it can rely on the assessments and findings already made in the *Lubanga* case.¹³

10. The Chamber notes that in its Submission on the Sample, the Registry noted that the universe of victims from where the randomised part of the sample was going to be extracted, in accordance with the methodology devised by the Chamber,¹⁴ included 2,077 victims: 1,844 victims of the attacks and 233 victims of crimes against child soldiers.¹⁵ Thereafter, the sample assembled by the VPRS in accordance with the Chamber's instructions, which was subsequently approved as sufficiently representative of the universe of potential victims in the case,¹⁶ included the following 173 victims: (i) the 69 IDIP victims; (ii) 92 victims (5%) randomly selected from the 'victims of the attacks' group; and (iii) 12 victims (5%) randomly selected from the 'victims of crimes against child soldiers' group.¹⁷

11. In its Submission, the TFV informs that further to recent consultations with the Common Legal Representatives of the Former Child Soldiers and its implementing partner, it has determined that three of the victims included in the sample should not have been selected as they were already recognised as beneficiaries of reparations in the *Lubanga* case.¹⁸ Since their beneficiary status in the *Lubanga* case is final, and in light of the Chamber's determination in the 25 October 2022 Order that individuals who also qualify as victims in the *Lubanga* case

¹¹ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 19-20.

¹² Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan ('Decision on the IDIP's Fourth Report'), 12 May 2022, [ICC-01/04-02/06-2761](#), paras 16-17.

¹³ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 24.

¹⁴ After excluding (i) 67 victims who also qualified as beneficiaries in the *Lubanga* case; and (ii) 69 IDIP victims, i.e., 45 victims of the attacks and 24 victims of crimes against child soldiers. See Submission on the Sample, [ICC-01/04-02/06-2788](#), p. 7.

¹⁵ Submission on Sample, [ICC-01/04-02/06-2788](#), p. 7.

¹⁶ Decision on the Registry submission, [ICC-01/04-02/06-2794](#), para. 24.

¹⁷ Annex 1, [ICC-01/04-02/06-2794-Anx1](#).

¹⁸ TFV submission, [ICC-01/04-02/06-2807](#), para. 20.

shall not be included in the sample,¹⁹ the TFV submits that these three victims should be excluded from the sample.²⁰

12. The TFV further informs that two of these victims, a/30383/15 and a/30453/15, are currently benefiting from the IDIP in the *Ntaganda* case.²¹ Although one was recognised as a victim in the *Lubanga* case in 2017 and the other recently in October 2022, due to a variation of surname they were not detected as beneficiaries in both cases.²² The TFV informs that it will ensure their integration into the *Lubanga* programme for services they did not receive within the IDIP.²³ The Chamber notes that the information provided indicates that these victims were wrongly integrated into the IDIP, as opposed to be integrated because their urgent needs had to be addressed within the IDIP as an emergency response.

13. Regarding the third victim, a/00707/13, the TFV informs that it was one of the 12 victims randomly selected from the ‘victims of crimes against child soldiers’ group, although it should have been excluded from the group as it was also recognised as a beneficiary of reparations in the *Lubanga* case in October 2022.²⁴ The duplication could not be detected by the VPRS when selecting the sample because the victim changed its name due to a religious conversion.²⁵

14. Having analysed the TFV’s Submission and in light of the Chamber’s instructions,²⁶ the Chamber agrees with the TFV that the three victims already identified as beneficiaries in the *Lubanga* case, i.e. a/30383/15, a/30453/15, and a/00707/13, should be excluded from the sample of victims that it previously approved.²⁷

15. In order to ensure consistency with the Chamber’s ruling, particularly that the sample should be composed of (i) all IDIP victims – now amounting to 67 as opposed to 69 victims – and (ii) a randomly selected group from the total universe of participating and non-participating victims, amounting to 5% of the victims of the attacks and 5% of the victims of crimes against child soldiers,²⁸ the Chamber considers that another victim should be randomly selected to

¹⁹ TFV submission, [ICC-01/04-02/06-2807](#), para. 23.

²⁰ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 24, 26.

²¹ TFV submission, [ICC-01/04-02/06-2807](#), para. 21.

²² TFV submission, [ICC-01/04-02/06-2807](#), para. 21.

²³ TFV submission, [ICC-01/04-02/06-2807](#), para. 21.

²⁴ TFV submission, [ICC-01/04-02/06-2807](#), para. 22.

²⁵ TFV submission, [ICC-01/04-02/06-2807](#), para. 22.

²⁶ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 26-27, footnote 67; Decision on the IDIP’s Fourth Report, [ICC-01/04-02/06-2761](#), paras 16-17.

²⁷ Decision on the Registry submission, [ICC-01/04-02/06-2794](#), para. 24.

²⁸ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 34(a)-(b).

replace a/00707/13.²⁹ Therefore, the Chamber hereby instructs the VPRS to randomly select, in accordance with the methodology set forth in the 25 October 2022 Order,³⁰ another victim from the ‘victims of crimes against child soldiers’ group and transmit it to the Chamber within three days from the notification of the present Decision.

16. As far as the other two victims are concerned, i.e. a/30383/15 and a/30453/15, the Chamber considers that they do not need to be replaced as they should not have been included in the IDIP in the first place, as noted above, and they shall be transferred to the *Lubanga* service-based collective reparations without delay.

²⁹ Taking into account the Submission on Sample, the Chamber notes that in excluding a/00707/13 from the universe of victims from which the sample was selected brings the number of victims of crimes against child soldiers to 232. Since the sample shall entail 5% of the victims of crimes against child soldiers, this means that still 11,6 victims of crimes against soldiers must be included in the sample.

³⁰ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), paras 26-27, 34(a)-(b), footnotes 67.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

EXCLUDES victims a/30383/15, a/30453/15, and a/00707/13 from the sample of victims to be assessed and ruled upon by the Chamber; and

INSTRUCTS the VPRS to randomly select another victim from the group of ‘victims of crimes against child soldiers’ and transmit it to the Chamber within three days of the notification of the present decision.

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 Monday, 9 January 2023

At The Hague, The Netherlands