

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 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

With one Annex in a confidential *ex parte* version, only available to the Registry, the Legal representatives of the Victims and the Trust Fund for Victims, and in a confidential redacted version

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)

Source: Registry

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

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I. Introduction

1. The present Registry submission is transmitted in compliance with Trial Chamber II's ("Chamber") "Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'"¹ ("Order") and its "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'"² ("Decision") in the case of *The Prosecutor v. Bosco Ntaganda* ("Case").

II. Procedural History

2. On 28 February 2020, the Registry filed its Observations on Reparations ("Observations on Reparations").³
3. On 30 September 2020 and 15 January 2021, the Registry submitted, respectively, its First⁴ and Second Reports⁵ on Reparations.
4. On 9 November 2020, the Legal Representative of Victims of the Attacks ("CLR2") requested the former Trial Chamber in charge of the Case (Trial Chamber VI) to order the Registry to obtain information pertaining to the reparations proceedings, in particular on the official census of persons residing

¹ Trial Chamber II, "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, para. 34 (d) and Disposition, p. 21.

² Trial Chamber II, "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'", 25 November 2022, ICC-01/04-02/06-2794.

³ Annex I to Registry, "Registry Observations on Reparations", 28 February 2020, ICC-01/04-02/06-2475-AnxI. The Registry provided to the Chamber, in confidential *ex parte* Annex II, available only to the Chamber, the legal representatives of victims and the Trust Fund for Victims the detailed results of its preliminary mapping. A confidential redacted version of Annex II was notified on 6 July 2020 (ICC-01/04-02/06-2475-Conf-AnxII-Red).

⁴ Annex I to Registry, "First Report on Reparations", dated 30 September 2020 and registered on 1 October 2020, ICC-01/04-02/06-2602-Conf-AnxI. A public redacted version was notified on 26 October 2020 (ICC-01/04-02/06-2602-AnxI-Red).

⁵ Annex I to Registry, "Second Report on Reparations", 15 January 2021, ICC-01/04-02/06-2639-Conf-AnxI. A public redacted version was notified on 10 February 2021, ICC-01/04-02/06-2639-AnxI-Red.

in the areas affected by the crimes committed in the Case at the time of the events (“CLR2 Request”).⁶

5. On 8 March 2021, Trial Chamber VI issued its Reparations Order.⁷
6. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the Reparations Order.⁸
7. On 25 October 2022, the Chamber issued its Order, in which it *inter alia* instructed the parties and participants, including the Registry’s Victims Participation and Reparations Section (“VPRS”), the Trust Fund for Victims (“TFV”) and the reparation experts previously appointed to report on specific reparation matters (“Appointed Experts”), if available, to provide further submissions and information on the issue related to transgenerational harm, within sixty days of the notification of the Order.⁹ The Chamber also instructed the Registry to create a random sample of victims pursuant to criteria outlined in the Order.¹⁰
8. On 9 November 2022, the Defence filed submissions on the procedure of the sample established by the Order.¹¹
9. On 25 November 2022, the Chamber issued the Decision, directing the parties, the TFV, the Registry and the Office of the Prosecutor to further complement their above-mentioned submissions, providing any additional information or documentation they might have as to the estimated total number of potential

⁶ CLR2, “Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations”, 9 November 2020, ICC-01/04-02/06-2624.

⁷ Trial Chamber VI, “Reparations Order”, 8 March 2021, ICC-01/04-02/06-2659.

⁸ Appeals Chamber, “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.

⁹ Order, para. 40 and Disposition, p. 21. The Chamber also instructed the Office of the Prosecutor, the DRC government and, if available, the Appointed Experts, to provide further submissions and possible evidence, on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo, as detailed in paragraph 42 of the Order, within sixty days of the notification of the Order. The Registry informed the Appointed Experts accordingly (emails from VPRS to Appointed Experts, 28 October 2022, at 15:58, and 13 December 2022, at 12:32) and received confirmation that the Appointed Experts would make no submission on this issue.

¹⁰ Order, paras. 4 *et seq.*

¹¹ Defence, “Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order”, 9 November 2022, ICC-01/04-02/06-2791.

beneficiaries of reparations in the Case, along with an explanation of the methodology used to provide such estimate.¹²

10. On 6 December 2022, the Defence submitted a request for an extension of the deadline to file both aforementioned submissions.¹³

11. On 12 December 2022, the Chamber granted the Defence's extension request and extended the deadline until 30 January 2023 for *inter alia* the VPRS to 1) provide further submissions and information on issues related to transgenerational harm; and 2) complement its previous submissions as to the estimated total number of potential beneficiaries of reparations in the Case.¹⁴

III. Classification

12. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the annex to this document is notified confidential *ex parte*, only available to the Registry, the Legal Representatives of Victims and the TFV, because it contains sensitive information that may impact the safety and physical well-being of victims, intermediaries and other third parties. For the same reasons the annex is notified in a confidential redacted version also available to the parties.¹⁵

IV. Applicable Law

13. The present transmission is submitted in accordance with the Order and the Decision.

V. Submissions

¹² Decision, para. 37, and Disposition, p. 24.

¹³ Defence, "Request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II", 6 December 2022, ICC-01/04-02/06-2798-Conf. A public redacted version was notified on 7 December 2022, ICC-01/04-02/06-2798-Red.

¹⁴ Trial Chamber II, "Decision on the Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II", 12 December 2022, ICC-01/04-02/06-2803, para. 11 and Disposition page 6.

¹⁵ The Registry notes that at the reparations stage, the parties are the Defence and the Victims.

Transgenerational harm

14. In the Order, the Chamber invited *inter alia* the VPRS to make submissions on the following issues:

“(i) the scientific basis for the concept of transgenerational harm; (ii) the evidence needed to establish it; (iii) what the evidentiary requirements are for an applicant to prove this type of harm; (iv) the need, if any, for a psychological examination of applicants and parents; (v) the need, if any, to exercise caution in assessing applications based on transgenerational harm; and (vi) whether Mr Ntaganda is liable to repair such harm in the specific context of the crimes of which he has been convicted, taking into consideration the impact, if any, that the protracted armed conflict in the DRC may have on the assessment as to whether the trauma associated with transgenerational harm was caused by Mr Ntaganda.”¹⁶

15. On the issue of the evidentiary requirement (iii) to prove transgenerational harm, the Registry respectfully recalls its submissions made on the (non)availability of documentary evidence provided in the context of its preliminary mapping, and the difficulties (in terms of cost and time) that it would represent for victims to obtain them.¹⁷

16. The Registry therefore respectfully submits that the Chamber should take into account the above-mentioned contextual challenges faced by the victims when deciding on the evidentiary requirements for claims related to transgenerational harm.

Estimated total number of potential new beneficiaries of reparations

Estimated number of potential new victims of the attacks

17. Following a preliminary mapping exercise carried out in early and mid-2019, the Registry reported to the Chamber the estimate of at least approximately

¹⁶ Order, para. 40.

¹⁷ Observations on Reparations, paras 23-24, 43-45. Confidential Annex II of the Registry Observations provides more detailed information on the types of documentation that may be available for each locality.

1,100 new potential applicants belonging to the group of victims of the attacks relating to the First and Second Operations¹⁸ who may come forward to claim reparations.¹⁹ In 2022, the Registry further reported to the Chamber and the TFV that it had mapped out approximately 780 potential new applicants– who, for the most part, were believed to have been already accounted for in the context of the preliminary mapping exercise- who had never been in contact with the ICC.²⁰

18. The findings provided to the Chamber in the context of the preliminary mapping and thereafter were conservative estimates, as they were collated in the context of a limited and carefully targeted approach aimed at identifying individuals who did not participate in the Case proceedings, and for whom it could be said with a relative degree of certainty - but still based only on secondary sources consulted- that they suffered harm as a result of at least one of the crimes subject to conviction in the Case.

19. Moreover, the identification and tracking of potential beneficiaries for reparations in the Case is particularly challenging due to population displacements as a result of the ongoing conflict in Ituri.²¹ The Registry notes in this regard that figures provided in the context of the 2019 preliminary mapping exercise were relating to potential beneficiaries who resided in (or had returned to) the localities relating to the First and Second Operations at the time.

¹⁸ The Registry notes that, according to the Judgment in the instant case, the First Operation includes assaults on a number of villages in the Banyali-Kilo collectivité in November/December 2002 and the Second Operation includes assaults on a number of villages in the Walendu-Djatsi collectivité in February 2003 (see Trial Chamber VI, “Judgment”, 8 July 2019, ICC-01/04-02/06-2359, pages 208-219).

¹⁹ Observations on Reparations, para. 25. These are victims had not yet been in contact with the ICC in the context of the Case proceedings.

²⁰ These potential beneficiaries could fall within the group of victims of the attacks and the group of former child soldiers. See, Registry “Registry Observations on the Trust Fund for Victims’ Draft Implementation Plan”, 18 May 2022, ICC-01/04-02/06-2766-Conf, para. 19. A public redacted version was notified on 19 May 2022 (ICC-01/04-02/06-2766-Red).

²¹ The TFV regularly reports on the security situation in the field. See for eg. TFV, “Trust Fund for Victims’ Eighth Update Report on the Implementation of the Initial Draft Implementation Plan”, dated 28 November 2022 and circulated on 29 November 2022, ICC-01/04-02/06-2796-Red, para. 18. See also TFV, “Public redacted version of the Annex A to “Trust Fund for Victims’ submission of Draft Implementation Plan”, ICC-01/04-02/06-2732, dated 17 December 2021”, ICC-01/04-02/06-2732-AnxA-Red, paras 16-23.

However, at that time, more than 70% of the pre-conflict population of these localities had still not returned to their localities of origin.²²

20. In its Observations on Reparations, the Registry further indicated to the Chamber that its findings could be supplemented with any information at the disposal of CLR2.²³ In this regard, the Registry took note of the CLR2 Request and concurs that some crimes for which the Mr Ntaganda was convicted, such as the crimes of attack against a civilian population²⁴ and forcible transfer of population and displacing civilians,²⁵ are likely to have victimized large portions of the populations living at that time in these localities. The Chamber could, as noted by CLR2 in his Request, be further assisted in the exercise of estimating the number of potential beneficiaries of reparations by having access to data on the number of individuals residing in or around each crime location immediately prior to the conflict.²⁶
21. The Registry therefore sought information regarding the population of crime localities immediately prior to the attacks in two ways. First, in January 2023 Registry staff undertook consultations in the field. The details of these consultations, including the sources of the information collected, are found in the annex attached to this submission.
22. In parallel, the Registry addressed a *Note Verbale* to the authorities of the Democratic Republic of Congo ("DRC"), requesting official data on the number

²² Estimate based on information collected in the field by Registry staff following the Decision.

²³ Observations on Reparations, footnote 79.

²⁴ Mr. Ntaganda was found guilty of intentionally directing attacks against civilians as a war crime, as an indirect co-perpetrator, in Mongbwalu and Sayo, in the context of the First Operation, and in Bambu, Jitchu, and Buli, in the context of the Second Operation. See Trial Chamber VI, "Judgment", 8 July 2019, ICC-01/04-02/06-2359, Disposition page 535-536; confirmed by Appeals Chamber, Public redacted version of "Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'", 30 March 2021, ICC-01/04-02/06-2666-Red.

²⁵ Mr. Ntaganda was found guilty of forcible transfer of population as a crime against humanity and of ordering the displacement of the civilian population as a war crime, both as an indirect co-perpetrator, in Mongbwalu, in the context of the First Operation, and in Lipri, Tsili, Kobu, and Bambu, in the context of the Second Operation. See Trial Chamber VI, "Judgment", 8 July 2019, ICC-01/04-02/06-2359, Disposition page 537-538; confirmed by Appeals Chamber, Public redacted version of "Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'", 30 March 2021, ICC-01/04-02/06-2666-Red.

²⁶ CLR2 Request, para. 24.

of inhabitants, immediately before the start of the First and Second Operations, of the following localities: Mongbwalu, Sayo, Nzebi, Kilo (and surrounding villages which are part of these localities' respective *groupements*). The Registry also requested data on the number of inhabitants, immediately prior to the conflict, of the following villages of the collectivity of Walendu Djatsi: Kobu, Sangi, Jitchu, Buli, Bambu, Lipri, Tsili, Gola and Nyangaray (and surrounding villages that are part of the localities' respective *groupements*).²⁷

23. The Registry will duly follow up with the DRC authorities and provide the Chamber and/or the TFV any information it receives in the future, depending on the progress of the reparations proceedings.

Estimated number of potential new victims of crimes committed against child soldiers

24. In view of the overlap between the *Lubanga* and *Ntaganda* cases with respect to the charges related to conscripting, enlisting and using child soldiers to participate actively in hostilities, in its Observations on Reparations the Registry referred to the (then) ongoing process in the *Lubanga* case, as an avenue by which additional potential new beneficiaries for the *Ntaganda* case would be identified.²⁸
25. In October 2022, the TFV communicated that all applications received from the VPRS since 2019 had been processed, and the total number of beneficiaries approved by the Trial Chamber to that date stood at 1547.²⁹
26. As suggested in the Observations on Reparations,³⁰ for all remaining beneficiaries of reparations in the *Lubanga* case who have not yet applied for

²⁷ *Note Verbale* dated 19 January 2023, notified to the DRC authorities on 21 January 2023.

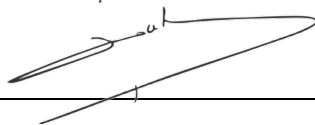
²⁸ Observations on Reparations, para. 26. See also Second Report on Reparations, paras 29-31.

²⁹ *The Prosecutor v. Thomas Lubanga*, TFV, "Notification of 832 administrative decisions from the Trust Fund for Victim's Board of Directors pursuant to Trial Chamber II's "Ninth Decision on the TFV's administrative decisions on applications for reparations and additional matters", 17 June 2022, ICC-01/04-01/06-3536-Red", dated 3 October 2022 and notified on 4 October 2022, ICC-01/04-01/06-3542, para. 9.

³⁰ Registry Observations, para. 38.

reparations in the instant Case, a process could be envisaged whereby these potential beneficiaries would formally indicate whether or not they wish to be considered for reparations in the Case.

27. The Registry stands ready to provide any additional information the Chamber finds useful.

A handwritten signature in black ink, appearing to read 'M. Dubuisson', is written over a horizontal line.

Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 30 January 2023

At The Hague, the Netherlands