

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **11 April 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

Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023

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, 23 November 2021, 24 January 2022, 24 March 2022, 24 May 2022, 25 July 2022, 26 September 2022, 28 November 2022, 30 January 2023, and 30 March

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](#).

2023 the Trust Fund submitted its first,⁷ second,⁸ third,⁹ fourth,¹⁰ fifth,¹¹ sixth,¹² seventh,¹³ eighth,¹⁴ ninth,¹⁵ and tenth¹⁶ update report on the IDIP, respectively.

6. On 29 October 2021, 17 December 2021, 10 February 2022, 12 May 2022, 6 July 2022, 16 November 2022, 13 January 2023, the Trial Chamber issued its Decision on the TFV's First,¹⁷

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](#) ("First Update Report").

⁸ 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").

⁹ Trust Fund for Victim's 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](#) ("Third Update Report").

¹⁰ 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](#) ("Fourth Update Report").

¹¹ 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](#) ("Fifth Update Report").

¹² 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 ("Sixth Update Report").

¹³ 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](#) ("Seventh Update Report").

¹⁴ Trust Fund for Victims' Eighth Update Report on the Implementation of the Initial Draft Implementation Plan, 28 November 2022, ICC-01/04-02/06-2796-Conf. A public redacted version was filed on the same day: [ICC-01/04-02/06-2796-Red](#) ("Eighth Update Report").

¹⁵ Trust Fund for Victims' Ninth Update Report on the Implementation of the Initial Draft Implementation Plan, 30 January 2023, ICC-01/04-02/06-2817-Conf ("Ninth Update Report"). A public redacted version was filed on 30 March 2023 [ICC-01/04-02/06-2817-Red](#).

¹⁶ Trust Fund for Victims' Tenth Update Report on the Implementation of the Initial Draft Implementation Plan, 30 March 2023, ICC-01/04-02/06-2839-Conf ("Tenth Update Report"). A public redacted version was filed on 31 March 2023: [ICC-01/04-02/06-2839-Red](#).

¹⁷ 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 the First Update Report").

Second,¹⁸ Third,¹⁹ Fourth,²⁰ Fifth,²¹ Sixth,²² Seventh,²³ and Eighth²⁴ Update Report on the Implementation of the IDIP, respectively.

7. On 12 September 2022, the Appeals Chamber issued its judgment on the Reparations Order (“Appeals Judgment”).²⁵

8. On 25 October 2022, Trial Chamber II issued its Order for the implementation of the Judgment on the appeals against the Reparations Order (“Order on the Appeals Judgment’s Implementation”).²⁶ The Trial Chamber thereby *inter alia* instructed the TFV to transmit to the VPRS all information and documentation available in relation to the 69 victims found eligible for the IDIP’s purposes.

9. On 25 November 2022, the Trial Chamber issued 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’” (“Decision on Sample”).²⁷

¹⁸ Decision on the TFV’s Second Progress Report on the implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2730](#) (“Decision on the Second Update Report”).

¹⁹ Decision on the TFV’s Third Update report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2745-Corr](#) (“Decision on the Third Update Report”).

²⁰ Decision on the TFV’s Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 12 May 2022, [ICC-01/04-02/06-2761](#) (“Decision on the Fourth Update Report”).

²¹ 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](#) (“Decision on the Fifth Update Report”).

²² 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](#) (“Decision on the Sixth and Seventh Update Report”).

²³ *Ibid.*

²⁴ Decision on the TFV’s Eighth Update Report on the Implementation of the Initial Draft Implementation Plan, 13 January 2023, [ICC-01/04-02/06-2811-Conf](#) (“Decision on the Eighth Update Report”).

²⁵ 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”).

²⁶ 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”).

²⁷ 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](#).

10. On 22 December 2022, the Trust Fund submitted additional information on certain victims selected in the Trial Chamber’s approved sample.²⁸

11. On 30 January 2023, the Trust Fund filed its submissions pursuant to the Trial Chamber’s Order on the Appeal’s Judgment Implementation.²⁹

12. On 29 March 2023, the Defence filed a request seeking *inter alia* communication of material by the TFV (“Defence’s Request”).³⁰

13. On 29 March 2023, the Trial Chamber ordered the Trust Fund and Registry to address the issues raised in the Defence Request.³¹ On 29 March 2023, the Trial Chamber ordered the Trust Fund and Registry to address the issues raised in the Defence’s Request.³²

II. RESPONSE TO THE DEFENCE’S REQUEST

14. The Trust Fund respectfully submits that, pursuant to the Order on the Appeals Judgment’s Implementation of 25 October 2022, it has transmitted all information and documentation available concerning the eligibility to the IDIP of the 69 victims found eligible to benefit from the programme by email to the VPRS on 31 October 2022³³ and 1 November 2022.³⁴

15. The Trust Fund understands that said information and documentation was transmitted to the Trial Chamber by the Registry’s confidential *ex parte* filing of 8 November 2022,³⁵ through two annexes, to which the Trust Fund does not have access.

²⁸ Trust Fund for Victims’ submission of information on certain victims selected in Trial Chamber II’s approved sample, 22 December 2022, [ICC-01/04-02/06-2807](#).

²⁹ Trust Fund for Victims’ Submission pursuant to Trial Chamber II’s decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order, 30 January 2023, [ICC-01/04-02/06-2819](#).

³⁰ Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers, 29 March 2023, [ICC-01/04-02/06-2838](#).

³¹ Email on behalf of the Trial Chamber to the parties and participants on 29 March 2023, at 16:12.

³² Email on behalf of the Trial Chamber to the parties and participants on 29 March 2023, at 16:12.

³³ Email from the TFV to VPRS on 31 October 2022, at 12:58.

³⁴ Email from the TFV to VPRS on 1 November 2022, at 15:14.

³⁵ 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), 8 November 2022, [ICC-01/04-02/06-2788](#).

16. The Trust Fund has not been included in the process of redacting any such information and documentation by VPRS before its transmission to the Defence, nor in the process of selecting the information to be shared with the Defence.

17. In light of the above, the Trust Fund is not privy to the exact final form and content of the *dossiers* as shared with either the Trial Chamber or with the Defence, and respectfully reiterates it has already shared with VPRS all relevant information and documentation concerning the eligibility to the IDIP of the 69 victims found eligible to benefit from the programme.

18. The Trust Fund respectfully observes that the 69 victims are already beneficiaries of initial reparations. Accordingly, their rights as data subjects, including their right to be informed how their personal data is used, may be a consideration in the decision on the Defence's Request.

19. The Trust Fund stands ready to provide further information to the Trial Chamber if needed.

FOR THE FOREGOING REASONS,

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



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

Dated this 11th Day of April 2023

At The Hague, The Netherlands