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Pénale
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**International
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Court**

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

Date: **6 July 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***

Confidential

**Decision on the TFV's Fifth Update Report on the Implementation of the Initial
Draft Implementation Plan**

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:**Legal Representatives of Victims**

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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 75 and 79 of the Rome Statute (‘Statute’) and Regulation 23bis(3) of the Regulations of the Court (‘Regulations’), issues this Decision on the TFV’s Fifth Update Report on the Implementation of the Initial Draft Implementation Plan (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI delivered the Reparations Order,¹ *inter alia*, directing the Trust Fund for Victims (‘TFV’) to submit an urgent plan for priority victims.² On 16 March 2021, Trial Chamber VI was dissolved and the case was assigned to the newly constituted Trial Chamber II.³
2. On 8 June 2021, the TFV submitted the initial draft implementation plan with focus on priority victims (the ‘IDIP’).⁴ Following observations and reply, on 23 July 2021, the Chamber issued a decision (‘Decision on the IDIP’),⁵ approving the IDIP, subject to certain amendments and additional information to be provided by the TFV, and directing the TFV to file bi-monthly progress reports its implementation.
3. On 23 September 2021,⁶ 23 November 2021,⁷ 24 January 2022,⁸ and 24 March 2022,⁹ the TFV submitted progress reports on the IDIP’s implementation. Following the parties’

¹ Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Reparations Order (‘Reparations Order’), 8 March 2021, [ICC-01/04-02/06-2659](#).

² Reparations Order, [ICC-01/04-02/06-2659](#), p. 97.

³ Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#), p. 7.

⁴ Report on Trust Fund’s Preparation for Draft Implementation Plan (notified on 9 June 2021), ICC-01/04-02/06-2676-Conf, with Annex A, Initial Draft Implementation Plan with focus on Priority Victims, ICC-01/04-02/06-2676-Conf-AnxA (a corrigendum was filed on 14 June 2021 and a public redacted version of the cover filing and annex were filed on 15 June 2021, [ICC-01/04-02/06-2676-Red](#) and [ICC-01/04-02/06-2676-AnxA-Corr-Red](#)).

⁵ Decision on the TFV’s initial draft implementation plan with focus on priority victims (‘Decision on the IDIP’), 23 July 2021, [ICC-01/04-02/06-2696](#).

⁶ 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 (‘IDIP First Report’), 23 September 2021, ICC-01/04-02/06-2710-Conf (a public redacted version was filed on 7 October 2021, [ICC-01/04-02/06-2710-Red](#)).

⁷ Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan (‘IDIP Second Report’), 23 November 2021, ICC-01/04-02/06-2723-Conf (a public redacted version was filed on 28 December 2021, [ICC-01/04-02/06-2723-Red](#)).

⁸ Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan, 24 January 2022 (‘IDIP Third Report’), ICC-01/04-02/06-2741-Conf (a public redacted version was filed on the same date, [ICC-01/04-02/06-2741-Red](#)).

⁹ Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 24 March 2022 (‘Fourth Report’), ICC-01/04-02/06-2751-Conf (public redacted version filed on 20 May 2022, [ICC-01/04-02/06-2751-Red](#)) and Annex 1, ICC-01/04-02/06-2751-Conf-Anx1.

observations, on 28 October 2021,¹⁰ 17 December 2021,¹¹ 10 February 2022,¹² and 12 May 2022,¹³ the Chamber issued decisions on the IDIP's First, Second, Third, and Fourth Reports.

4. On 18 May 2022, the Registry submitted observations on the TFV's Draft Implementation Plan ('DIP'),¹⁴ which had been filed by the TFV on 24 March 2022,¹⁵ in a second version as authorised by the Chamber.¹⁶

5. On 24 May 2022, the TFV submitted its Fifth Update Report on the IDIP's implementation ('Fifth Report'),¹⁷ providing updates on: i) the security situation; ii) the issues requiring information pursuant to the Chamber's previous decision, including developments as to the eligibility assessment and the implementation of initial reparations measures; and iii) outreach.¹⁸

6. On 6 June 2022, the Common Legal Representative of the former child soldiers ('CLR 1')¹⁹ and the Defence²⁰ submitted observations on the Fifth Report.

II. SUBMISSIONS AND ANALYSIS

7. In its Decision on the IDIP's Fourth Report, the Chamber instructed the TFV to provide precise and concrete information as to: i) the exact dates and number of victims that have actually started benefiting from the IDIP and its two programmes during the contractual year

¹⁰ Decision on the TFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors' decision pursuant to regulation 56 of the Regulations of the Trust Fund ('Decision on the IDIP's First Report'), 28 October 2021, [ICC-01/04-02/06-2718-Red](#).

¹¹ Decision on the TFV's Second Progress Report on the implementation of the Initial Draft Implementation Plan ('Decision on the IDIP's Second Report'), 17 December 2021, [ICC-01/04-02/06-2730](#).

¹² Decision on the TFV's Third Update Report on the Implementation of the Initial Draft Implementation Plan, 10 February 2022, a corrigendum was filed on 26 April 2022, [ICC-01/04-02/06-2745-Corr](#) ('Decision on the IDIP's Third Report').

¹³ 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](#).

¹⁴ Registry Observations on the Trust Fund for Victims' Draft Implementation Plan ('Registry Observation on DIP'), 18 May 2022, ICC-01/04-02/06-2766-Conf.

¹⁵ Trust Fund for Victims' second submission of Draft Implementation Plan, 24 March 2022 (notified on 25 March 2022) (with one confidential annex, ICC-01/04-02/06-2750-conf-anx1, and 1 confidential *ex parte* annex, available to the CLRs, ICC-01/04-02/06-2750-conf-anx1), ICC-01/04-02/06-2750. A corrigendum of the public redacted version of the annex, containing the DIP, was notified on 14 April 2022 (ICC-01/04-02/06-2750-Anx1-Red-Cor).

¹⁶ Decision on the Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan, 24 February 2022, ICC-01/04-02/06-2749, disposition.

¹⁷ Trust Fund for Victims' Fifth Update Report on the Implementation of the Initial Draft Implementation Plan ('Fifth Report'), 24 May 2022, ICC-01/04-02/06-2767-Conf.

¹⁸ Fifth Report, ICC-01/04-02/06-2767-Conf, paras 11-23.

¹⁹ 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) ('CLR1's Observations'), 6 June 2022, ICC-01/04-02/06-2770-Conf.

²⁰ Defence observations on the Trust Fund for Victims' Fifth Update Report on the Implementation of the Initial Draft Implementation Plan ('Defence Observations'), 6 June 2022, ICC-01/04-02/06-2769-Conf.

ending by 30 April 2022, in addition to having been under assessment for the purposes of eligibility, urgency screening, and project's intake; (ii) whether any surplus related to the projects not having reached their full capacity or not having provided actual services during the previous contractual year will be reinvested or used in the future;²¹ and iii) the number of victims assessed in the context of the IDIP's screening.²² Hereafter, the Chamber will assess the relevant submissions of the TFV, the CLR1, the Defence in relation to each of the abovementioned issues. Regarding other matters raised by the Defence in particular, the Chamber does not consider it necessary to rule on them, having already addressed the same issues on various occasions.²³

a) Victims that have actually started benefiting from the IDIP and its two programmes

8. The Chamber welcomes the TFV's information as to the number of victims that have actually started benefiting from the IDIP and its two programmes.²⁴ The TFV informs that the implementing partners have commenced granting initial reparations measures to 24 out of the 31 priority victims referred to them in the context of the IDIP, i.e. 13 victims of the attacks and 11 former child soldier victims.²⁵ According to the TFV, the implementing partners continue their efforts to reach the other 7 priority victims, 6 victims of the attacks and 1 former child soldier.²⁶ As noted by the TFV, the security situation continues to have an impact on the implementing partners' ability to contact and locate victims.²⁷

9. The TFV further submits that the priority victims started benefiting from physical and psychological rehabilitation, and socio-economic measures.²⁸ In addition, 18 of the 19 former child soldiers with urgent needs who are victims of both, the *Lubanga* and *Ntaganda* cases, are currently benefitting from the *Lubanga* reparations programme, with one beneficiary yet to be reached.²⁹

²¹ Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 13.

²² Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 14.

²³ As to the procedural and substantive requirements of the eligibility and urgency of priority victims, see Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), paras 15-23 and Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), paras 14-27; as to the security situation, see Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 28; as to the socio-economic measures see Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 10; as to the distinction between the assistance and reparations mandates of the TFV, see Decision on the IDIP, [ICC-01/04-02/06-2696](#), paras 25-26.

²⁴ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 19.

²⁵ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 19.

²⁶ Fifth Report, ICC-01/04-02/06-2767-Conf, footnotes 30-31.

²⁷ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 12.

²⁸ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 19.

²⁹ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 20, footnotes 32.

10. Having analysed the information above, the Chamber considers that it has been sufficiently informed. In addition, the Chamber requests the TFV to continue providing regular updates as to the number of victims that are being progressively integrated into the two programmes and start to actually benefit from the IDIP.

11. The Chamber also notes the CLR1's complaint that the TFV did not provide information as to whether and how her clients' harms requiring urgent treatment are being addressed in the *Lubanga* programme, in order to ascertain whether their exclusion from the *Ntaganda* case IDIP is justified.³⁰ The CLR1 also takes issue with the 'lack of clear and transparent communication' from the TFV and the implementing partner as to why the *Lubanga* beneficiaries have been rejected from the *Ntaganda* IDIP, after having been contacted for intake.³¹

12. Regarding the issues above raised by the CLR1, reiterating its previous clarifications,³² the Chamber does not consider it necessary for the TFV to justify the exclusion of beneficiaries from the *Ntaganda* IDIP, for as long as they have actually already started benefiting from the *Lubanga* service-based collective reparations, as reported by the TFV.³³ However, the TFV should adequately explain the reasons for their decisions to all victims who have been invited for intake into the *Ntaganda* IDIP, in accordance with the *do-no-harm* principle.³⁴ The Chamber therefore directs the TFV and the implementing partner to develop a clear and transparent communication strategy to adequately inform the victims of their assessments results within the context of the *Ntaganda* IDIP.

b) Whether any surplus related to the projects not having reached their full capacity or not having provided actual services during the entire previous contractual year will be reinvested or used in the future

13. The Chamber welcomes the TFV's submissions that the contracts with the implementing partners have been renewed as of 1 May 2022 and that the implementing partners will continue to proceed to the intake of further beneficiaries without a financial increase of the initial budget allocated for the first year of implementation.³⁵ The Chamber also notes that the TFV submits that it will continue to monitor the situation and to take additional measures,

³⁰ CLR1's Observations, ICC-01/04-02/06-2770-Conf, paras 8-9.

³¹ CLR1's Observations, ICC-01/04-02/06-2770-Conf, para. 10.

³² Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 17.

³³ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 20, footnote 32.

³⁴ Reparations Order, [ICC-01/04-02/06-2659](#), paras 50, 52.

³⁵ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 21.

as necessary, to enable the implementing partners to take in more victims than originally foreseen.³⁶ As such, the Chamber is satisfied with the clarification provided by the TFV, who shall continue to keep the Chamber apprised of any developments relating to the capacity of the implementing partners to integrate victims into the IDIP and any associated costs.³⁷

c) The number of victims assessed in the context of the IDIP's screening

14. The Chamber notes the TFV's submission that it has to date conducted the screening of 48 priority victims for the IDIP purposes.³⁸ In particular, by the submission of its Fourth Report, the TFV had conducted the assessment of 46 priority victims, i.e. (i) 29 former child soldiers, of which 17 are victims in both *Lubanga* and *Ntaganda* cases and 12 are exclusively *Ntaganda* victims, and (ii) 17 victims of the attacks.³⁹ In addition, by the submission its Fifth Report, the TFV had additionally assessed 2 priority victims of the attacks,⁴⁰ and took several steps into the screening process of 18 additional victims of the attacks referred to it by the CLR2.⁴¹ Further, according to the TFV, it had contacted the LRVs to indicate additional victims who would qualify as priority victims with urgent needs and have updated contact details so as to proceed with the necessary steps to ensure their integration into the IDIP.⁴² Finally, the TFV submits that it requested the CLR1 to provide updated contact information of 33 participating former child soldiers she has identified as priority victims in urgent needs, to integrate them into the IDIP.⁴³

15. The Chamber notes the Defence's request for the Chamber to instruct the TFV to limit the IDIP to participating victims,⁴⁴ considering that (i) in the reporting period the TFV assessed only 2 additional beneficiaries for the IDIP purposes,⁴⁵ (ii) no information as to victims who may qualify for the IDIP but are not participating victims has been provided,⁴⁶ (iii) the slow pace of the eligibility assessment and urgent screening, in light of the fact that the implementation of the DIP may begin soon.⁴⁷

³⁶ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 21.

³⁷ See Decision on the IDIP's Fourth Report, [ICC-01/04-02/06-2761](#), para. 12.

³⁸ Fifth Report, ICC-01/04-02/06-2767-Conf, paras 14, 15.

³⁹ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 14.

⁴⁰ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 15.

⁴¹ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 16.

⁴² Fifth Report, ICC-01/04-02/06-2767-Conf, para. 17.

⁴³ Fifth Report, ICC-01/04-02/06-2767-Conf, para. 19.

⁴⁴ Defence Observations, ICC-01/04-02/06-2769-Conf, para. 10.

⁴⁵ Defence Observations, ICC-01/04-02/06-2769-Conf, para. 8.

⁴⁶ Defence Observations, ICC-01/04-02/06-2769-Conf, para. 9.

⁴⁷ Defence Observations, ICC-01/04-02/06-2769-Conf, para. 10.

16. On this point, the Chamber recalls its Decision on the IDIP whereby it indicated that enrolment into the IDIP programmes could be phased as follows: (i) in the first place, priority victims in urgent need who participated in the trial proceedings; (ii) in the second place, priority victims in urgent need identified so far - because they have submitted applications forms or were registered as new potential beneficiaries - but who did not participate in the trial proceedings; iii) and lastly, other not yet identified priority victims who may have urgent needs.⁴⁸

17. Further, the Chamber recalls that in its Decision on the IDIP's First Report, it agreed with the TFV's approach to focus first on screening and enrolling into the IDIP the victims already identified by the LRVs as in urgent need.⁴⁹ However, in relation to the second group of victims to be enrolled into the programmes, i.e. victims identified so far – because they have submitted applications forms or were registered as new potential beneficiaries – but who did not participate in the trial proceedings, the Chamber clearly indicated that they could already be preliminarily assessed by the VPRS.⁵⁰ The Chamber also encouraged the TFV to start coordinating with the VPRS for it to commence, as soon as practicable, with the preliminary assessment of eligibility for reparations of those victims and, potentially, their preliminary urgency screening.⁵¹

18. The Chamber also notes that in its observations on the TFV's DIP, the Registry submitted that, as a result of activities conducted in the field, it mapped out approximately 780 potential beneficiaries who have been affected by the current conflict in Ituri and who have never been in contact with the Court.⁵² The Registry also indicates that these victims are likely accounted to a large extent in its preliminary mapping exercise and the overall number of potential reparation beneficiaries reported therein.⁵³

19. In light of the above, and sharing in the concern of the Defence that only 2 additional priority victims have been assessed in the reporting period, the Chamber hereby directs the TFV to expeditiously i) coordinate with the LRVs and finalise in the shortest time possible the screening and integration into the IDIP of all priority victims in urgent need who participated in the trial proceedings; ii) coordinate with the VPRS and start the screening and integration

⁴⁸ Decision on the IDIP, [ICC-01/04-02/06-2696](#), para. 29.

⁴⁹ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 18.

⁵⁰ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 23.

⁵¹ Decision on the IDIP's First Report, [ICC-01/04-02/06-2718-Red](#), para. 23.

⁵² Registry Observation on DIP, ICC-01/04-02/06-2766-Conf, para. 19.

⁵³ Registry Observation on DIP, ICC-01/04-02/06-2766-Conf, para. 19.

into the IDIP of the second category of priority victims with urgent needs, i.e. the priority victims in urgent need identified so far but who did not participate in the trial proceedings.

d) Publicity

20. Finally, in line with its previous instructions,⁵⁴ the Chamber directs the TFV, the CLR1, and the Defence to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 20 July 2022. The Chamber reiterates that it expects public redacted versions of confidential documents to be filed as expeditiously as possible, preferably simultaneously.

⁵⁴ Decision on the TFV's First Progress Report, [ICC-01/04-02/06-2718-Red](#), para. 29.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

REQUESTS the TFV to continue providing regular updates as to the number of victims that are being progressively integrated into the two programmes and start to actually benefit from the IDIP;

DIRECTS the TFV and the implementing partner to develop a clear and transparent communication strategy to adequately inform the victims of their assessments results within the context of the *Ntaganda* IDIP;

ENCOURAGES the TFV to continue to keep the Chamber apprised of any developments relating to the capacity of the implementing partners to integrate victims into the IDIP and any associated costs;

DIRECTS the TFV to expeditiously continue with the screening and integration of priority victims in urgent need into the IDIP, as detailed at paragraph 19 above;

DIRECTS the TFV, the CLR1, and the Defence to review their underlying submissions and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential by 20 July 2022.

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 Wednesday, 6 July 2022

At The Hague, The Netherlands