

## The Prosecutor v. Bosco Ntaganda

Update: 8 March 2021

ICC-01/04-02/06

### Questions and Answers on the Reparations order in the Ntaganda case, 8 March 2021

#### FOR WHICH CRIMES WAS MR NTAGANDA CONVICTED?

On 8 July 2019, Trial Chamber VI of the International Criminal Court (ICC) [found Bosco Ntaganda guilty](#) beyond reasonable doubt, of 18 counts of war crimes and crimes against humanity committed in Ituri, the Democratic Republic of the Congo (DRC), between 2002-2003. On 7 November 2019, he was [sentenced](#) to a total of 30 years of imprisonment. Mr Ntaganda and the Prosecutor appealed the [verdict](#) and Mr Ntaganda appealed the [sentencing judgement](#). Judgements on these appeals will be delivered in due course. Trial Chamber VI found that there was at least one non-international armed conflict in the Ituri district of the DRC, from on or about 6 August 2002 to on or about 31 December 2003, between the Union des Patriotes Congolais (UPC) and its military wing, the Forces Patriotiques pour la Libération du Congo (FPLC) and, at all times, at least one opposing party. The Chamber also found that a widespread and systematic attack against the civilian population was conducted by UPC/FPLC between August 2002 and May 2003.

In this context, the Chamber found Mr Ntaganda, the former Deputy Chief of Staff of the UPC/FPLC, guilty of crimes against humanity (murder and attempted murder, rape, sexual slavery, persecution, forcible transfer and deportation) and war crimes (murder and attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, ordering the displacement of the civilian population, conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the adversary's property as a war crime).

#### WHAT DID ICC JUDGES DECIDE REGARDING REPARATIONS TO VICTIMS IN THE NTAGANDA CASE?

The Chamber issued an order for collective reparations with individualised components against Mr Ntaganda, to be made through the Trust Fund for Victims.

The Chamber recalled the large scope of the case and the potential large number of victims eligible to receive reparations. In light of the circumstances of the case, bearing in mind the rights of the convicted person, and taking a conservative approach, the Chamber set the total reparations award for which Mr Ntaganda is liable at USD 30,000,000.

#### WHAT TYPE AND MODALITIES OF REPARATIONS WILL BE GRANTED TO VICTIMS AND WHY?

The Chamber decided to award collective reparations with individualised components, considering that they were the most appropriate type of reparations for this case, as they may provide a more holistic approach to address the multi-faceted harm suffered by the large number of victims eligible to receive reparations.

The decision was taken in light of the scope of the case, the potentially large number of unidentified eligible victims and the extent of the harm the victims suffered. The Chamber reached this decision, after receiving submissions from the parties and various participants in the proceedings, the Trust Fund for Victims, Experts and the ICC Registry. It particularly took into account the victims' wish not to be granted any form of memorialisation or other types of symbolic reparations, unless they would serve practical purposes, but to receive awards aiming at supporting sustainable and long-term livelihood and well-being, rather than simply addressing their needs on a short-term basis.

The modalities of reparations may include measures of restitution, compensation, rehabilitation, and satisfaction, which may incorporate, when appropriate, a symbolic, preventative, or transformative value.

The reparations shall be designed taking into consideration a number of principles including, a Gender-inclusive and sensitive approach to reparations, giving due consideration and addressing the specific needs of all individuals, without discrimination on the basis of sex or gender identity. Reparations shall also have a transformative or rectification effect to confront social exclusion. Reparations to victims and affected communities should not lead to further or secondary victimisation; should not create or exacerbate security concerns or tensions among communities; and victims should not be endangered or stigmatised as a result.

### WHO WILL IMPLEMENT THESE REPARATIONS AND WHEN?

Because the convicted person was found indigent, the order against Mr Ntaganda is to be made through the Trust Fund for Victims. The Chamber ordered the Trust Fund to design an implementation plan on the basis of the identified modalities of reparations, in consultation with the victims.

The Chamber set deadlines for the Trust Fund to submit its general draft implementation plan by 8 September 2021, at the latest, and an urgent plan for the priority victims no later than 8 June 2021.

### WHO WILL BENEFIT FROM THE REPARATIONS?

The Chamber awarded collective reparations with individualised components to all victims of the crimes for which Mr Ntaganda was convicted, establishing the eligibility criteria for reparations, in order to enable the identification of victims by the Trust Fund. The Chamber stressed that eligibility is determined by the territorial, temporal, and subject matter scope of the crimes for which Mr Ntaganda was convicted, including victims of attacks, victims of crimes against child soldiers, victims of rape and sexual slavery, and children born out of rape and sexual slavery.

The Chamber noted that priority shall be given to individuals who require immediate medical and psychological care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers.

### HOW DID THE CHAMBER ASSESS THE AMOUNT OF MR NTAGANDA'S LIABILITY AND HOW WILL IT BE PAID?

The Chamber assessed the liability of Mr Ntaganda for the crimes at USD 30,000,000, resolving uncertainties in favour of the convicted person and taking a conservative approach. The Chamber took into account the large scope of the case in terms of the crimes for which Mr Ntaganda was convicted and the potential large number of victims of such crimes eligible to receive reparations. The Chamber also received estimates as to the cost to repair the harm caused to victims from Appointed Experts and the Trust Fund for Victims and considered figures and assessments made by Trial Chamber II in the context of the Lubanga and Katanga cases, relating to crimes committed in Ituri during the same time-frame. The goal of assessing the liability is to set an amount that is fair and properly reflects the rights of the victims, bearing in mind the rights of the convicted person.

Mr Ntaganda is liable to repair the full extent of the harm caused to the direct and indirect victims of all crimes for which he was convicted.

Since the Chamber found Mr Ntaganda to be indigent for the purposes of reparations, it encouraged the Trust Fund for Victims to complement the reparation awards to the extent possible within its available resources and to engage in additional fundraising efforts as necessary to complement the totality of the award.

However, Mr Ntaganda remains liable to reimburse the funds that the Trust Fund for Victims may eventually use to complement the reparations awards. The Court will continue exploring whether Mr Ntaganda possesses any undiscovered assets and monitoring his financial situation.

### IS THIS DECISION FINAL?

No. The Defence and the Legal representatives of the victims may appeal this decision.

In addition, the verdict and the sentence delivered against Mr Ntaganda are subject to appeals. If the Appeals Chamber reverses the conviction, reparations proceedings will be discontinued.

### WHAT IS THE IMPACT OF THIS DECISION ON REPARATIONS IN THE LUBANGA CASE?

As to the shared liability of Mr Ntaganda and his co-perpetrators in the crimes, including Mr Thomas Lubanga, the Chamber considered them all jointly liable *in solidum* to repair the full extent of the harm caused to the victims. The Chamber also highlighted a principle governing reparations which is "no over compensation". Reparations may neither 'enrich' nor 'impoverish' the victim, but adequately repair the harm caused, to the extent possible.

The Chamber considered reasonable to adopt, for the purposes of reparations in this case, the reparation programmes ordered by Trial Chamber II in the *Lubanga* case, in relation to the overlapping former child soldiers victims in both cases. The Chamber noted the Trust Fund for Victims' submission that the reparation programmes in the *Lubanga* case constitute a collective award aimed at comprehensively repairing the harm suffered by all direct and indirect victims of that case. As a result, these programmes should be understood to repair the overlapping victims' harm on behalf of both, Mr Lubanga and Mr Ntaganda.

This does not diminishes Mr Ntaganda's liability. To the contrary, Mr Lubanga and Mr Ntaganda are jointly and severally liable to repair in full the harm suffered by the overlapping victims and both remain liable to reimburse the funds to the Trust Fund.



Regarding the additional harm suffered by the victims of rape and sexual slavery within the UPC/FPLC and victims of recruitment beyond the temporal scope of the *Lubanga* case, for which Mr Ntaganda bears sole liability, additional reparation measures should be implemented.