

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-02/06**
Date: **29 September 2020**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Decision on the Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry 30 September Report

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Ms Kate Gibson

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparation**

Unrepresented Victims

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

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

Mr Pieter de Baan

Others

Judge Chang-ho Chung, acting as Single Judge on behalf of Trial Chamber VI (‘Single Judge’ and ‘Chamber’, respectively) of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to regulation 35(2) of the Regulations of the Court (‘Regulations’), issues this Decision on the Defence request seeking clarifications and/or further guidance following the ‘First Decision on Reparations Process’ and Request seeking an extension of time to submit observations on the Registry 30 September Report.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 5 December 2019, the Single Judge, issued the ‘Order setting deadlines in relation to reparations’ (‘December 2019 Order’),¹ *inter alia*, instructing the Registry, in consultation with the LRVs and/or the Trust Fund for Victims (‘TFV’), as appropriate, to (i) continue to carry out a preliminary mapping of potential new beneficiaries of reparations; (ii) carry out an assessment of how many participating victims in the case may potentially be eligible for reparations; and (iii) carry out an assessment of how many of the victims eligible for reparations in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (‘Lubanga case’) are also potentially eligible for reparations in the *Ntaganda* case.²
2. On 26 June 2020, the Chamber issued the ‘First Decision on Reparations Process’ (‘First Decision on Reparations’).³ Among other things, the Chamber instructed the Registry to (i) finalise, as soon as practicable, in consultation with the respective LRV and TFV, as appropriate, the assessments and mapping instructed in the December 2019 Order; (ii) prepare, in consultation with the parties and the TFV, a sample of potential beneficiaries of reparations; (iii) report to the Chamber on the aforementioned activities, together with any request for guidance as to any legal and factual issues, by 30 September 2020, and thereafter every three months (‘Registry’s Report’).⁴ The Chamber also indicated that the parties may submit observations in relation to any key legal and factual issues identified by the Registry within the regular time limits in accordance with regulation 34 of the Regulations.⁵

¹ Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#) (‘December 2019 Order’).

² December 2019 Order, [ICC-01/04-02/06-2447](#), para. 9(a).

³ [ICC-01/04-02/06-2547](#) (‘First Decision on Reparations’).

⁴ First Decision on Reparations, [ICC-01/04-02/06-2547](#), paras 43-44.

⁵ First Decision on Reparations, [ICC-01/04-02/06-2547](#), para. 44.

3. On 11 September 2020, the Defence submitted its Request ('Defence Request'),⁶ arguing that it needed clarifications and further guidance from the Chamber and that the Defence should be effectively involved, as a party to the reparations proceedings, and be provided with the means to do so.⁷ Accordingly, the Defence requests guidance from the Chamber on the: (i) Defence input in finalising the list of participating victims potentially eligible for reparations considering the reduced scope of the Judgment, noting that this should be completed by the Registry in consultation with the respective LRV and the TFV, disagreeing with having been excluded from the process and stressing the need for the Defence to have access to the application forms of all participating victims;⁸ (ii) Preparation of the sample pursuant to the First Order on Reparations, indicating that it consider necessary to include some additional information in the matrix prepared by the VPRS for this purpose and arguing that, in order to play a meaningful role in the preparation of the sample it needed to be provided with the complete application forms of the three categories victims included in the sample;⁹ and (iii) Transmission by the Registry of the application forms of the newly identified potential beneficiaries of reparations, indicating that it is concerned that the Chamber had not ruled on the 'three-group system' proposed by the VPRS, which it opposes, considering that it was essential that the Chamber pronounces itself on the issue.¹⁰ Lastly, considering that the appeal oral hearings will take place from 12 to 14 October 2020, the Defence requests a 10-day extension to the deadline to submit observations to the Registry's Report or that the deadline is postponed until 30 October 2020.¹¹
4. On 24 September 2020, the LRVs jointly responded to the Defence Request.¹² The LRVs argue that the Defence Request seeks reconsideration of the Chamber's December 2019 Order and the First Decision on Reparations, where the stringent criteria for reconsideration are not fulfilled and there is no basis for the Chamber to

⁶ Defence request seeking clarifications and/or further guidance following the "First Decision on Reparations Process" and Request seeking an extension of time to submit observations on the Registry 30 September Report, [ICC-01/04-02/06-2578](#) ('Defence Request').

⁷ Defence Request, [ICC-01/04-02/06-2578](#), paras 1-2.

⁸ Defence Request, [ICC-01/04-02/06-2578](#), paras 9-12.

⁹ Defence Request, [ICC-01/04-02/06-2578](#), paras 13-19.

¹⁰ Defence Request, [ICC-01/04-02/06-2578](#), paras 20-23.

¹¹ Defence Request, [ICC-01/04-02/06-2578](#), paras 24-25.

¹² Joint Response of the Common Legal Representatives of Victims to the "Defence request seeking clarifications and/or further guidance following the 'First Decision on Reparations Process' and Request seeking an extension of time to submit observations on the Registry 30 September Report", [ICC-01/04-02/06-2600](#) ('LRVs Response').

either reconsider or clarify them.¹³ The LRVs argue that the Chamber deliberately envisaged different roles for the VPRS, the TFV, the LRVs and the Defence and clearly excluded the Defence from consultations pertaining to the list of participating victims potentially eligible for reparations.¹⁴ The LRVs argue that the Defence Request is a reiteration of the Defence's repeated attempt to gain access to the application forms filed by various categories of victims and maintain their position that no application forms should be transmitted to the Defence.¹⁵ The LRVs submit that the Court's jurisprudence does not bestow upon the convicted person an unfettered right to access victims' application forms nor to challenge each individual's entitlement to reparations.¹⁶ They also argue that application forms are not necessary or required for the Defence to make meaningful submissions on the sample and that transmission of any applications would, ultimately, only cause undue delay to the reparation process.¹⁷ The LRVs also submit that it is unnecessary for the Chamber to rule on the 'three-group system' proposed by the VPRS at this stage, as there will be no individual assessment of the applications by the Chamber at this point in time.¹⁸ As to the request for extension of time to submit observations to the Registry's Report, the LRVs do not oppose, provided that the same extension is granted to them.¹⁹

II. ANALYSIS

5. As to the requests for clarification and guidance included in the Defence Request, the Single Judge is of the view that the Chamber clearly articulated in both, the December 2019 Order and in the First Decision on Reparations, the different roles and functions assigned at this stage of the proceedings to the VPRS, the TFV, the LRVs and the Defence. The Chamber also clearly indicated that, since the Chamber has not yet determined the types and modalities of reparations, any application forms will not be subject of an individual assessment by the Chamber at this point in time.²⁰
6. The Single Judge notes the Court's consistent jurisprudence indicating that, in principle, consistent with the need to preserve legal certainty, there is no statutory basis

¹³ LRVs Response, [ICC-01/04-02/06-2600](#), paras 1, 16.

¹⁴ LRVs Response, [ICC-01/04-02/06-2600](#), paras 2, 13-15.

¹⁵ LRVs Response, [ICC-01/04-02/06-2600](#), paras 3, 17-19.

¹⁶ LRVs Response, [ICC-01/04-02/06-2600](#), paras 20-24.

¹⁷ LRVs Response, [ICC-01/04-02/06-2600](#), paras 25-30.

¹⁸ LRVs Response, [ICC-01/04-02/06-2600](#), paras 4, 31-32.

¹⁹ LRVs Response, [ICC-01/04-02/06-2600](#), paras 5, 35-36.

²⁰ First Decision on Reparations, [ICC-01/04-02/06-2547](#), para. 36.

in the Court's instruments allowing for reconsideration of a Chamber's past decisions.²¹ Only in extreme circumstances, pursuant to its powers under articles 64(2) and 67 of the Rome Statute, a Chamber may reconsider its own decisions, as an exceptional measure which should only be undertaken if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.²² The Chamber considers that such circumstances are not met in the case at hand.

7. Regarding the request for extension of time to submit observations to the Registry's Report, pursuant to regulation 35(2) of the Regulations, the Single Judge considers that the Defence and the LRVs have sufficiently demonstrated good cause to extend the time limit.
8. In light of the foregoing, the Single Judge rejects the Defence's requests for clarification or guidance and grants the request to postpone the deadline to submit observations to the Registry's Report, ordering the Defence and the LRVs to file any observations in relation to any key legal and factual issues identified by the Registry by Friday, 30 October 2020, at the latest.

Done in both English and French, the English version being authoritative.



**Judge Chang-ho Chung,
Single Judge**

Dated this Tuesday, 29 September 2020

At The Hague, The Netherlands

²¹ Pre-Trial Chamber II, Prosecutor v. Callixte Mbarushimana, Decision on "Second Defence request for interim release", 28 July 2011, [ICC-01/04-01/10-319](#), page 6.

²² Decision on Defence request seeking partial reconsideration of the 'Decision on Defence request for admission of evidence from the bar table', 22 February 2018, [ICC-01/04-02/06-2241](#), para. 5.