

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06
Date: 9 November 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

**Request of the Common Legal Representative of the Victims of the Attacks for an
Order to the Registry to collect information pertaining to reparations**

Source: Office of Public Counsel for Victims (CLR2)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby respectfully requests the Single Judge to order the Registry to obtain information pertaining to the reparations proceedings, in particular on the official census of persons residing in the affected areas at the time of the events.

2. In light of the fact that this information has not been provided by either the Registry or the Appointed Experts in their Reports, the Legal Representative requests that said information be obtained at this stage, namely at the earliest possible opportunity.

3. The Legal Representative submits that the present request is timely and necessary at this stage. It also causes no prejudice to the other parties. In light of the Legal Representative’s previous Submissions on Reparations, the information sought is vital to enabling the Chamber to consider the proposals therein as well as their concrete implications. Moreover, it is important that the information be obtained by a neutral entity, rather than a party to the reparations proceedings.

II. PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI (the “Chamber”) found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.¹

5. On 25 July 2019, the Single Judge issued the “Order setting deadlines in relation to reparations”.²

¹ See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

² See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), para. 9.

6. On 5 September 2019, the Registry filed its “[...] [O]bservations pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”.³

7. On 3 October 2019, the Trust Fund for Victims (the “TFV”),⁴ both teams of the Common Legal Representatives of Victims,⁵ and the Defence⁶ filed their respective observations in response to the Registry’s observations of 5 September 2019.⁷

8. On 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.⁸

9. On 5 December 2019, the Single Judge issued the “Order setting deadlines in relation to reparations” (the “5 December 2019 Order”), whereby he *inter alia* ordered the Registry, the parties, and the TFV to make submissions on reparations, by 28 February 2020.⁹ The Single Judge further invited the Prosecution and the authorities of the Democratic Republic of the Congo (the “DRC”) to file submissions by the same deadline.¹⁰

³ See the “Registry’s observations pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”, [No. ICC-01/04-02/06-2391](#), 6 September 2019.

⁴ See the “Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations”, [No. ICC-01/04-02/06-2428](#), 3 October 2019.

⁵ See the “Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2430](#), 3 October 2019.

⁶ See the “Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations”, [No. ICC-01/04-02/06-2431](#), 3 October 2019.

⁷ See Email communication from the Chamber to the parties and Registry of 18 September 2019 at 18:05. See also the “Request for a variation of time limit to submit the Defence response to ‘Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, No. ICC-01/04-02/06-2366””, [No. ICC-01/04-02/06-2411](#), 18 September 2019.

⁸ See the “Sentencing Judgment” (Trial Chamber VI), No. [ICC-01/04-02/06-2442](#), 7 November 2019.

⁹ See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019.

¹⁰ *Idem*, para. 9e.

10. On 28 February 2020, the Legal Representative filed his submissions on reparations.¹¹ The Common Legal Representative for the former Child Soldiers,¹² the Defence,¹³ the TFV,¹⁴ the Prosecution¹⁵ and the Registry¹⁶ also filed their respective submissions on reparations.

11. On 9 April 2020, the Single Judge issued an order, whereby the parties and participants were instructed to provide information on the impact of the COVID-19 measures on their ability to carry out their duties in relation to the reparations proceedings by 21 April 2020.¹⁷

12. On 21 April 2020, the Legal Representatives filed the “Submissions [...] pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’” (the “COVID-19 Submissions”).¹⁸ Also on 21 April 2020, the other parties and participants filed their respective submissions on the impact of the COVID-19 measures.¹⁹

¹¹ See the “Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations”, [No. ICC-01/04-02/06-2477-Conf](#), 28 February 2020. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2477-Red](#) (the “Submissions on Reparations”).

¹² See the “Submissions on Reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2474](#), 28 February 2020.

¹³ See the “Defence Submissions on Reparations”, [No. ICC-01/04-02/06-2479-Conf](#), 28 February 2020. A public redacted version was filed on 6 March 2020 as [No. ICC-01/04-02/06-2479-Red](#).

¹⁴ See the “Trust Fund for Victims’ observations relevant to reparations”, [No. ICC-01/04-02/06-2476](#), 28 February 2020.

¹⁵ See the “Prosecution’s Observations on Reparations”, [No. ICC-01/04-02/06-2478](#), 28 February 2020.

¹⁶ See the “Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2475](#), with Public Annex 1, [No. ICC-01/04-02/06-2475-Anx1](#), and Confidential *Ex Parte* Annex II, [No. ICC-01/04-02/06-2475-Conf-Exp-AnxII](#), 28 February 2020 (the “Registry’s Observations on Reparations”).

¹⁷ See the “Order to provide information on the impact of COVID-19 measures on operational capacity” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2507](#), 9 April 2020, paras. 4-5.

¹⁸ See the “Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’”, No. ICC-01/04-02/06-2513-Conf, 21 April 2020. A public redacted version of these submissions was filed the same day as [No. ICC-01/04-02/06-2513-Red](#) (the “COVID-19 Submissions”).

¹⁹ See the “Defence observations pursuant to ‘Order to provide information on the impact of COVID-19 measures on operational capacity’”, [No. ICC-01/04-02/06-2515](#), 21 April 2020; “Observations on the impact of COVID-19 measures on operational capacity on behalf of the former child soldiers”, [No. ICC-01/04-02/06-2516](#), 21 April 2020; “Trust Fund for Victims’ observations on the impact of COVID-19 on operational capacity”, [No. ICC-01/04-02/06-2517](#), 21 April 2020; “Registry Submissions pursuant to the ‘Order to provide information on the impact of COVID-19 measures on operational capacity’”, ICC-01/04-02/06-2507”, No. ICC-01/04-02/06-2519-Conf, 21 April 2020. A public redacted version of the Registry submissions was filed the same day as [No. ICC-01/04-02/06-2519-Red](#).

13. On 14 May 2020, the Chamber appointed four experts (“Appointed Experts”) and ordered them to submit their Report to the Chamber, notifying the parties, the TFFV, the Registry, and the Prosecution by 28 August 2020.²⁰

14. On 20 July 2020, the Chamber granted a request from the Experts, whereby they sought an extension of time to file their report and set the new deadline for 30 October 2020.²¹

15. In accordance with a short adjournment granted by the Chamber,²² the Registry filed the “Registry Transmission of Appointed Experts’ Reports” with two ‘confidential *ex parte* Registry only’ Annexes on 2 November 2020.²³

16. Also on 2 November 2020, the Registry filed the confidential redacted version of one of the Reports.²⁴ The redacted versions of both Expert Reports were filed on 3 November 2020.²⁵

III. SUBMISSIONS

17. In his Submissions on Reparations, the Legal Representative, *inter alia*, suggested that the number of potential beneficiaries for the purposes of setting a reparations award should be estimated on the basis of the number of persons residing or otherwise present in the affected communities at the time of the events.²⁶

²⁰ See the “Decision appointing experts on reparations” (Trial Chamber VI), 14 May 2020, No. ICC-01/04-02/06-2528-Conf. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2528-Red](#).

²¹ See the “Decision on Request for an Extension of Time for Filing Experts’ Report” (Trial Chamber VI), [No. ICC-01/04-02/06-2553](#), 20 July 2020.

²² See the Email communication from the Chamber to the Registry and parties, on 30 October 2020 at 15:56.

²³ See the “Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623](#), 30 October 2020.

²⁴ See the “Annex1 to the Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Conf-Anx1-Red](#), 2 November 2020 (the “Expert Report”).

²⁵ See the “Annex2 to the Registry Transmission of the Appointed Experts’ Reports”, No. [ICC-01/04-02/06-2623-Anx2-Red2](#), 3 November 2020.

²⁶ See the Submissions on Reparations, *supra* note 11, para. 71.

18. In his COVID-19 Submissions, the Legal Representative referred to “*the VPRS estimate [...] that there may be at least approximately 1100 new potential applicants*”,²⁷ and indicated his understanding that this figure solely referred to the number of new potential applicants already identified by the Registry.²⁸

19. In their recent Report, the Appointed Experts estimated that “*at least approximately 3,500 victims of Mr. Ntaganda are potentially eligible for reparations*”,²⁹ without engaging with a further estimation on the total number of victims who can potentially qualify for reparations in the present case.

20. The Legal Representative maintains and refers to his previous submissions, namely that victimisation in this case extends to entire village communities. Hence, all those who were residing or otherwise lawfully present in the locations in which crimes were committed are potential beneficiaries of reparations.³⁰ This number is expected to largely exceed the Registry’s and Appointed Experts’ estimates put before the Chamber to date. Nevertheless, an accurate estimate cannot be given in the abstract. It depends upon the relevant census for the affected communities at the time of the commission of the crimes.

21. The Registry’s preliminary mapping exercise did not include data on the number of persons residing in and around the locations identified as crime locations in the Judgment at the time of the events.

22. In the absence of such data having been provided by the Registry, the Legal Representative expected that the matter would be addressed by the Appointed Experts in their Reports. However, said Reports merely base their estimate of potential direct victims on the Registry’s mapping exercise and number of victims who participated in the proceedings.

²⁷ See Annex I to the Registry’s Observations on Reparations, *supra* note 16, para. 25 (emphasis added).

²⁸ See COVID-19 Submissions, *supra* note 18, para. 14.

²⁹ See the Expert Report, *supra* note 24, para. 29 (emphasis added).

³⁰ See the Submissions on Reparations, *supra* note 11, para. 71.

23. While, at this stage, the Chamber has not yet made any ruling on reparations and final submissions of the parties and participants are yet to be filed, the Legal Representative nevertheless avers that the matter should be resolved at the earliest possible opportunity.

24. It is the Legal Representative's contention that the number of eligible beneficiaries will be highly relevant to the Chamber's deliberations on a reparation order. The rough estimates thus far provided by the Legal Representative in his Submissions on Reparations, as well as the Registry's limited figures and the Appointed Experts' estimation do not allow the Chamber to appreciate the number of persons resident in the concerned locations at the relevant time.

25. In order for the Chamber to consider the implications of the Legal Representative's proposals contained in his Submissions on Reparations, a near accurate estimation of potentially eligible victims is, however, necessary. The Legal Representative has himself not been able to obtain said data and as a party to these proceedings, he could not engage with local, provincial or central government authorities to obtain relevant records.

26. Since, however, neither the Registry nor the Appointed Experts placed the relevant numbers before the Chamber the Legal Representative respectfully requests that the Registry be ordered to collect said information at the earliest opportunity.

27. In particular, the Legal Representative respectfully requests that the Chamber order the Registry to collect, as part of the latter's mapping of potential reparations beneficiaries,³¹ authoritative information on the number of inhabitants of Mongbwalu, Sayo, Nzebi and Kilo as of November 2002 and the respective surrounding areas,³² as well as the affected villages in the Walendu Djatsi *collectif*,

³¹ See the "First decision on Reparations Process" (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020, para. 34 and p. 19.

³² The term "surrounding areas" should be understood in line with the Registry's proposed flexible inclusive approach. See the "Public redacted version of Annex 1 to the 'Registry's First Report on

namely Kobu, Sangi, Jitchu, Buli, Bambu, Lipri, Tsili, Gola and Nyangaray and the respective surrounding areas,³³ as of February 2003.

28. The Registry, as a neutral organ of the Court, is best placed to obtain such information from relevant sources, such as from local or provincial authorities or the central government authorities in Kinshasa.

29. Finally, the Legal Representative submits that since the request concerns only the collection of neutral information, the rights of the convicted person and the other participating victims are in no way prejudiced. The collection of the information is without prejudice to the Chamber's determination with respect to both the issue of 'surrounding areas' and the forthcoming substantive decisions on reparations. The information would merely enable the Chamber, the parties, and the participants to appreciate the exact scope of the proposals the Legal Representative put forth in his Submissions on Reparations

IV. RELIEF SOUGHT

30. For the reasons set out above, the Legal Representative respectfully requests that the Single Judge order the Registry to collect data on (i) the number of inhabitants of the villages of Mongbwalu, Sayo, Nzebi and Kilo and their surrounding areas as of November 2002, and (ii) the number of inhabitants of the villages of the Walendu Djatsi *collectivité*, namely Kobu, Sangi, Jitchu, Buli, Bambu, Lipri, Tsili, Gola and Nyangaray and the respective surrounding areas, as of February 2003.

Reparations', 1 October 2020, [No. ICC-01/04-02/06-2602-AnxI-Red](#), 26 October 2020, paras 6-10. See also *idem*, footnote 9.

³³ *Ibid.*

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 9th Day of November 2020

At The Hague, The Netherlands