

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: 18 December 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 Request of the Common Legal Representative of the Victims of the
Attacks for an Order to the Registry to collect information pertaining to reparations**

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

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Mr Stéphane Bourgon

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Ms Sarah Pellet
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Legal Representatives of Applicants

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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

States' Representatives

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REGISTRY

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Mr Peter Lewis

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Section**

Mr Philipp Ambach

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Others

JUDGE CHANG-HO CHUNG, acting as Single Judge of Trial Chamber VI (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to article 75 of the Rome Statute (the ‘Statute’) and rules 85 and 97 of the Rules of Procedure and Evidence (the ‘Rules’), issues this Decision on the Request of the Common Legal Representative of the Victims of the Attacks for an order to the Registry to collect information pertaining to reparations (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 July 2019, the Chamber issued its Judgment, convicting Mr Bosco Ntaganda (‘Mr Ntaganda’) of five counts of crimes against humanity and thirteen counts of war crimes.¹
2. On 5 December 2019, the Single Judge, issued an Order (the ‘December 2019 Order’),² *inter alia*, instructing the Registry to carry out a preliminary mapping of potential new beneficiaries of reparations and an assessment of how many participating victims in the case and in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (the ‘Lubanga case’) may potentially be eligible for reparations in the *Ntaganda* case.³
3. On 28 February 2020, the Registry presented submissions on reparations,⁴ indicating that, following a preliminary mapping exercise, it has estimated that there may be at least approximately 1,100 new potential applicants as victims of the attacks.⁵
4. On 14 May 2020, the Chamber appointed four experts (the ‘Appointed Experts’) and instructed them to submit a report on four issues identified by the Chamber.⁶
5. On 26 June 2020, the Chamber issued the ‘First Decision on Reparations Process’,⁷ *inter alia*, instructing the Registry to finalise the assessments and mapping instructed in the December 2019 Order and to prepare a sample of potential beneficiaries of reparations.⁸

¹ Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#) (with Annexes A, B, and C).

² Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#) (‘December 2019 Order’).

³ December 2019 Order, [ICC-01/04-02/06-2447](#), para. 9(a).

⁴ Annex I, *annexed to* Registry’s Observations on Reparations, 28 February 2020, [ICC-01/04-02/06-2475-AnxI](#) (‘Registry February 2020 Submissions’).

⁵ Registry February 2020 Submission, [ICC-01/04-02/06-2475-AnxI](#), para. 25.

⁶ Decision appointing experts on reparations, 14 May 2020, ICC-01/04-02/06-2528-Conf (public redacted version notified on the same day [ICC-01/04-02/06-2528-Red](#)).

⁷ [ICC-01/04-02/06-2547](#) (‘First Decision on Reparations’).

⁸ First Decision on Reparations, [ICC-01/04-02/06-2547](#), para. 44.

6. On 30 September 2020, the Registry submitted its ‘First Report on Reparations’ (the ‘First Report’),⁹ providing, *inter alia*, a first update on the assessment exercise for participating victims and victims of the *Lubanga* case and a report on the methodology applied in the preparation of the sample and the completion of mapping of potential new beneficiaries.
7. On 30 October 2020, the Registry transmitted two experts reports,¹⁰ where the Appointed Experts indicate that it can be estimated that at least approximately 3,500 victims are potentially eligible for reparations in the *Ntaganda* case.¹¹
8. On 9 November 2020, the Common Legal Representative of the Victims of the Attacks (the ‘CLR2’) submitted a request (the ‘Request’), asking the Single Judge to order the Registry to obtain the official census of the persons residing in the affected areas at the time of the events. In the argument of the CLR2, such information is ‘vital’ to enable the Chamber to consider their previous proposals on reparations and its concrete implications.¹²
9. On 18 November 2020, as instructed by the Chamber,¹³ the Registry submitted its observations on the Request (the ‘Observations’) indicating, *inter alia*, that, if granted, it would be in a position to present first results of such enquires, at the earliest, in its third report on reparations due on 30 March 2020.¹⁴
10. On 20 November 2020, the Defence submitted its response to the Request (the ‘Response’) opposing it, arguing that the CLR2 has not shown that the request was necessary at this stage, nor has it identified any legal basis.¹⁵

⁹ First Report, [ICC-01/04-02/06-2602](#) (with confidential Annexes I to V. A public redacted version of Annex I was filed on 26 October 2020, [ICC-01/04-02/06-2602-AnexI-Red](#)).

¹⁰ Registry Transmission of Appointed Experts’ Reports, [ICC-01/04-02/06-2623](#) (with two Annexes, Confidential *Ex Parte*, available only to the Registry, public redacted versions notified on 3 November 2020, [ICC-01/04-02/06-2623-Anx1-Red2](#), submitted by Dr Karine Bonneau, Mr Eric Mongo Malolo, and Dr Norbert Wühler and [ICC-01/04-02/06-2623-Anx2-Red2](#), submitted by Dr Sunneva Gilmore).

¹¹ First Experts Report, [ICC-01/04-02/06-2623-Anx1-Red2](#), paras 25-29.

¹² Request of the Common Legal Representatives of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, 9 November 2020, [ICC-01/04-02/06-2624](#) (‘Request’).

¹³ Email from Trial Chamber VI to the Registry of 10 November 2020, at 09:29 hrs.

¹⁴ Registry’s Observations on the “Request of the Common Legal Representatives of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations” of 9 November 2020, ICC-01/04-02/06-2624, 18 November 2020, [ICC-01/04-02/06-2627](#) (‘Observations’).

¹⁵ Defence Response to “Request of the Common Legal Representatives of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations”, 9 November 2020, ICC-01/04-02/06-2624, 20 November 2020, [ICC-01/04-02/06-2628](#) (‘Response’).

11. On 15 December 2020, the Chamber issued a Decision on issues raised on the Registry's First Report (the 'Decision on the First Report').¹⁶

II. SUBMISSIONS AND ANALYSIS

12. The CLR2 submits in the Request that the number of 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, as victimisation in the case extends to entire village communities.¹⁷ The CLR2 further argues that this number would largely exceed the Registry and the Appointed Experts estimates, which, it submits, are not accurate as they were merely based on the Registry's mapping exercise and the number of victims who participated in the proceedings.¹⁸
13. The CLR2 also indicates that the Registry mapping exercise did not include data on the number of persons residing in and around the locations identified as crime locations in the Judgment.¹⁹ Accordingly, the CLR2 requests the Single Judge to order the Registry to collect, as part of the mapping exercise, authoritative information on the number of inhabitants, at the relevant periods, in Mongbwalu, Sayo, Nzebi, Kilo, Kobu, Sangi, Jitchu, Buli, Bambu, Lipri, Tsili, Gola, and Nyangaray, and the respective surrounding areas.²⁰
14. The Defence, in its Response, argues that the requested data is simply irrelevant at this stage, and perhaps at all stages of the reparation proceedings.²¹ The Defence stresses that the Chamber has not yet decided on the type of reparations that would be awarded and notes that, in the event that the Chamber decides to award only individual reparations, the data requested would be purposeless.²² Similarly, the Defence argues that, if collective reparations for the whole affected localities are awarded, the number of inhabitants is not necessary to set the amount of liability.²³

¹⁶ Decision on issues raised in the Registry's First Report on Reparations, 15 December 2020, [ICC-01/04-02/06-2630](#) ('Decision on the First Report').

¹⁷ Request, [ICC-01/04-02/06-2624](#), paras 17, 20.

¹⁸ Request, [ICC-01/04-02/06-2624](#), paras 18-22.

¹⁹ Request, [ICC-01/04-02/06-2624](#), para. 21.

²⁰ Request, [ICC-01/04-02/06-2624](#), paras 27,30.

²¹ Response, [ICC-01/04-02/06-2628](#), para. 17.

²² Response, [ICC-01/04-02/06-2628](#), para. 18.

²³ Response, [ICC-01/04-02/06-2628](#), para. 21.

15. In its Observations, the Registry notes that the figure of 1,100 new potential applicants it has previously given was only an estimate of the minimum number of individuals for which the Registry was fairly confident to be able to establish a link between the harm suffered and the crimes for which Mr Ntaganda was convicted.²⁴ However, the Registry stresses that it does not anticipate the final number to be exponentially higher than the one established thus far during the mapping exercise.²⁵
16. The Single Judge notes that, as stressed by the Chamber in its Decision on the First Report, in order to be entitled to reparations in the *Ntaganda* case, victims must have suffered harm as a result of a crime for which Mr Ntaganda has been convicted, as ‘reparation orders are intrinsically linked to the *individual* whose criminal liability is established in the conviction and whose culpability for those criminal acts is determined in a sentence’.²⁶ Further, as noted in the same decision, the language ‘in or around’ was retained in the Judgment only in relation to houses burned down in two specific locations, i.e., ‘in or around Kobu’ and ‘in or around Sangi’, relevants only for counts 10 and 18 for which Mr Ntaganda was convicted.²⁷
17. In addition, the Single Judge reiterates that the Chamber has yet to decide on the type and modalities of reparations to be awarded to the victims in the present case. In order to make such determination, as stressed by the Appeals Chamber, although ‘the number of victims [is] an important parameter for determining what reparations are appropriate’, the Chamber’s assessment shall be made in light of ‘the scope of the damage *as it is in the current reality*, based on the crimes for which the convicted person was found culpable’.²⁸ The number of victims at the time when the crimes were committed may be a starting point, but other parameters for determining what reparations are appropriate include

²⁴ Observations, [ICC-01/04-02/06-2627](#), para. 17.

²⁵ Observations, [ICC-01/04-02/06-2627](#), para. 18.

²⁶ Decision on the First Report, [ICC-01/04-02/06-2630](#), paras 11, 18, and 60, referring to Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute (with public Annex I and confidential ex parte Annex II), 24 March 2017, [ICC-01/04-01/07-3728](#), para. 37; Trial Chamber VIII, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#), para. 42; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#), para. 65; and Annex A, Order for Reparations (amended), [ICC-01/04-01/06-3129-AnxA](#), para. 20.

²⁷ Decision on the First Report, [ICC-01/04-02/06-2630](#), paras 19(e) and (f), 20, 26.

²⁸ Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 18 July 2019, [ICC-01/04-01/06-3466-Red](#) (*‘Lubanga, Judgment on Size of Reparations Award’*), para. 89.

considerations about the reparation measures envisaged and the number of victims that are likely to come forward and benefit from reparations, a number that 'is likely to be smaller in the current reality than the overall number of victims of the crimes at the time they were committed'.²⁹

18. In light of the above, the Single Judge is of the view that the information requested by the CLR2 is not necessary at this stage of the proceedings for the Chamber to decide on the types and modalities of reparations to be awarded in this case.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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



Judge Chang-ho Chung, Single Judge

Dated this Friday, 18 December 2020

At The Hague, The Netherlands

²⁹ *Lubanga*, Judgment on Size of Reparations Award, [ICC-01/04-01/06-3466-Red](#), para 89.