

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 August 2021

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***

Public

**Decision on the Application on behalf of Mr Bosco Ntaganda seeking leave to appeal
the Decision on the TFV's initial draft implementation plan with focus on priority
victims**

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

Legal Representatives of Victims

Ms Sarah Pellet
Ms Anna Bonini

Mr Dmytro Suprun
Ms Anne Grabowski

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**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

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 article 82(1)(d) of the Rome Statute (‘Statute’) issues this Decision on the Application on behalf of Mr Bosco Ntaganda seeking leave to appeal the Decision on the TFV’s initial draft implementation plan with focus on priority victims (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI, issued the Reparations Order,¹ *inter alia*, directing the Trust Fund for Victims (TFV) to submit a plan for priority victims by 8 June 2021.²
2. On 8 June 2021, the TFV submitted the initial draft implementation plan (IDIP).³ As instructed by the Chamber,⁴ on 23 June 2021, the Legal Representatives of Victims (LRVs),⁵ the Defence,⁶ and the Registry⁷ submitted their observations on the IDIP. As authorised by the Chamber,⁸ on 28 June 2021 the TFV submitted a reply.⁹
3. On 23 July 2021, the Chamber issued its Decision on the TFV’s initial draft implementation plan with focus on priority victims (‘Impugned Decision’), approving the IDIP subject to the amendments and additional conditions specified therein.¹⁰
4. On 2 August 2021, the Defence submitted leave to appeal the Impugned Decision, identifying five grounds of appeal (‘Leave to Appeal’).¹¹

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

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

³ Report on Trust Fund’s Preparation for Draft Implementation Plan, Annex A, Initial Draft Implementation Plan with focus on Priority Victims (corrigendum, 14 June 2021, public redacted version, 15 June 2021, [ICC-01/04-02/06-2676-Red](#) and [ICC-01/04-02/06-2676-AnxA-Corr-Red](#)).

⁴ Order for the submission of observations on the initial draft implementation plan with focus on priority victims, 10 June 2021, [ICC-01/04-02/06-2677](#).

⁵ Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan, 23 June 2021 (public redacted version, 28 June 2021, [ICC-01/04-02/06-2680-Red](#)); and Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims, 23 June 2021, [ICC-01/04-02/06-2681](#).

⁶ Defence Observations on the TFV initial draft implementation plan, 23 June 2021, ICC-01/04-02/06-2682-Conf.

⁷ Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan, 23 June 2021, [ICC-01/04-02/06-2683](#).

⁸ Email from the Chamber’s Legal Officer to the TFV, the parties, and the Registry, 24 June 2021, 17:43 hrs.

⁹ Observations on the responses and observations submitted on the Initial Draft Implementation Plan, 28 June 2021, ICC-01/04-02/06-2687-Conf (a public redacted version was filed on the same day [ICC-01/04-02/06-2687-Red](#)).

¹⁰ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#) (‘Impugned Decision’).

¹¹ Application on behalf of Mr Bosco Ntaganda seeking leave to appeal Decision on the TFV’s initial draft implementation plan with focus on priority victims, 2 August 2021, [ICC-01/04-02/06-2698](#) (‘Leave to Appeal’).

5. On 6 August 2021, the LRVs submitted a joint response to the Leave to Appeal, requesting the Chamber to dismiss it in its entirety ('Response').¹²

II. SUBMISSIONS

6. The Defence requests leave to appeal the Impugned Decision with respect to the following five issues:

- i. 'Whether the Chamber erred by approving the IDIP in the absence of sufficient information related to the proposed projects and activities, steps to be taken, direct and indirect costs, and timeline for implementation' ('First Issue');
- ii. 'Having rejected the TFV's proposals "[...] to rely on three different administrative eligibility assessments depending on the category of victims [...]" and to delegate parts of the eligibility assessments to external entities, whether the Chamber erred in then approving the IDIP on the basis of an abstract alternative proposal for the eligibility assessment and urgent screening of victims, which had not yet been formulated or presented by the TFV' ('Second Issue');
- iii. 'Whether the Chamber erred by finding that "[...] the rights of the convicted person are guaranteed, as the Defence have had the opportunity to challenge the applicable standards of proof and causation" and "will be able to make submissions on the TFV's proposed administrative eligibility assessment before its approval", when this is not provided for in the 8 March Reparations Order' ('Third Issue');
- iv. 'Whether the Chamber erred by approving the IDIP and finding that the eligibility assessment "[...] shall be made in accordance with the eligibility criteria and the standard and burden of proof as set out in the Reparations Order" and that the urgency screening "[...] should be made by applying the same standard and burden of proof [...]" given the pending LRV2 and Defence appeals against the 8 March Reparations Order – the latter specifically challenging the applicable standard of proof and causation' ('Fourth Issue'); and
- v. 'Having stressed, in accordance with the Statutory framework, the importance of clearly distinguishing the TFV's dual mandate to (i) implement Court ordered reparations, and (ii) provide assistance to victims of the crimes under the jurisdiction

¹² Joint Response of the Common Legal Representatives of Victims to Mr Ntaganda's Request for Leave to Appeal the Decision on the TFV's IDIP (ICC-01/04-02/06-2698), 6 August 2021, [ICC-01/04-02/06-2699](#) ('Response').

of the Court, whether the Chamber then erred in approving the TFV's proposal to use two existing assistance projects for reparations in the Ntaganda case' ('Fifth Issue').

7. The Defence argues that the five issues are appealable and not mere disagreements, as they 'stand at the centre of the Impugned Decision' and 'directly impact the implementation phase of the reparations in this case'. It submits that, much like the errors identified by the parties against the Reparations Order, the five issues 'arise directly from the Chamber's determination to expedite the reparations process in the *Ntaganda* case'. The Defence *inter alia* submits that, although the unnecessary prolongation of the reparations phase is harmful to the victims and the convicted person, a balance must be struck between expeditious proceedings and ensuring that the reparations process is consistent with the Court's framework, the capacity and mandate of the TFV, the rights of the convicted person, and does not circumvent the appellate process.¹³

8. The LRVs submit that none of the issues identified by the Defence arise from the Impugned Decision and are a mere repetition of some of the arguments put forward before the Appeals Chamber by the Defence in relation to the Reparations Order.¹⁴

III. ANALYSIS

9. The Chamber incorporates by reference the applicable law as set out in previous decisions on requests for leave to appeal in the case.¹⁵

10. As noted by the LRVs,¹⁶ all the issues identified by the Defence are currently before the Appeals Chamber in the context of the appeal against the Reparations Order. The Chamber considers that, overall, the Leave to Appeal lacks merit, duplicates other ongoing proceedings and is thus unwarranted. The Chamber has nonetheless analysed the five issues identified by the Defence and concluded that they do not constitute issues arising from the Impugned Decision within the meaning of Article 82(1)(d) of the Statute.

11. Regarding the First and Second Issues, in the Impugned Decision the Chamber clearly indicated that the TFV had provided sufficient information allowing it to consider the proposals overall and found that the IDIP did not need to comply with all requirements of a full DIP.¹⁷

¹³ Leave to Appeal, [ICC-01/04-02/06-2698](#), para. 24.

¹⁴ Response, [ICC-01/04-02/06-2699](#), paras 2, 29, see also paras 31, 35.

¹⁵ See, for example, Trial Chamber VI, Decision on Defence request for leave to appeal the Chamber's decision on postponement of the trial commencement date, 4 August 2015, [ICC-01/04-02/06-760-Red](#), paras 20-21.

¹⁶ Response, [ICC-01/04-02/06-2699](#), para. 37.

¹⁷ Impugned Decision, [ICC-01/04-02/06-2696](#), paras 12-15.

The additional information and alternative proposal for the eligibility assessment and urgency screening of victims that the Chamber requested the TFV to submit in its next report¹⁸ were not considered essential for the approval of the IDIP, but required as part of the Chamber's role in monitoring and overseeing the implementation¹⁹ of the Reparations Order. Accordingly, the Chamber considers that the First and Second Issues misrepresent the Chamber's ruling, and therefore, do not arise from the Impugned Decision.

12. As to the Third Issue, the Chamber stresses that, as noted by the Defence itself and the LRVs,²⁰ the Defence is in fact currently exercising the right to challenge the applicable standards of proof and causation before the Appeals Chamber. At the same time, in the Impugned Decision the Chamber indeed directed the TFV to provide an alternative proposal for the eligibility assessment and urgency screening in its next report and clearly indicated that the parties and the Registry would be allowed to respond to any issues raised therein.²¹ Accordingly, the Defence fails to demonstrate how these purported errors constitute an appealable issue arising from the Impugned Decision because they were 'not provided for in the 8 March Reparations Order', as framed by the Defence.

13. As to the Fourth Issue, the Chamber notes that the Appeals Chamber has rejected the Defence's request for suspensive effect of the Reparations Order, specifically stressing 'the need to repair the harm suffered by the victims of these crimes as expeditiously as possible'.²² The Appeals Chamber was in effect 'not persuaded that there is a need to halt the entire reparations process at this moment in time on the basis that failing to suspend the [Reparations Order] would lead to an irreversible situation or create consequences that would be difficult to correct, or defeat the purpose of the appeals'.²³ Accordingly, this purported error cannot be considered an issue or topic requiring a decision for its resolution, since the Appeals Chamber has already decided that 'efforts to advance the reparations process should continue throughout the period in which it is examining the appeal briefs'.²⁴

¹⁸ Impugned Decision, [ICC-01/04-02/06-2696](#), paras 16, 38.

¹⁹ See 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](#), Annex A, Order for Reparations (amended), [ICC-01/04-01/06-3129-AnxA](#), para. 76.

²⁰ Leave to Appeal, [ICC-01/04-02/06-2698](#), para. 4; Response, [ICC-01/04-02/06-2699](#), para. 31.

²¹ Impugned Decision, [ICC-01/04-02/06-2696](#), para. 38; operative part, p. 21.

²² Appeals Chamber, Decision on the Defence request for suspensive effect, 2 July 2021, [ICC-01/04-02/06-2691](#) ('Decision on Suspensive Effect'), para. 25.

²³ Decision on Suspensive Effect, [ICC-01/04-02/06-2691](#), para. 26.

²⁴ Decision on Suspensive Effect, [ICC-01/04-02/06-2691](#), para. 25.

14. Lastly, regarding the Fifth Issue, as noted by the LRVs,²⁵ in the Impugned Decision the Chamber stressed the TFV's dual mandate²⁶ and ordered the TFV to implement a clear budgetary and administrative distinction within the assistance projects, to separately account for the services provided to the *Ntaganda* victims. It also instructed the implementation to be accompanied by a targeted and consistent information campaign aimed at clearly explaining to the victims and their communities the emergency nature of the relief to be provided.²⁷ Accordingly, the Chamber considers that the issue does not arise from the Impugned Decision.

15. Having found that the five issues identified by the Defence are not justified and do not constitute appealable issues, it is unnecessary for the Chamber to consider whether the remaining criteria under Article 82(1)(d) are met.

²⁵ Response, [ICC-01/04-02/06-2699](#), paras 33-34.

²⁶ Impugned Decision, [ICC-01/04-02/06-2696](#), para. 23.

²⁷ Impugned Decision, [ICC-01/04-02/06-2696](#), paras 24-26.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

REJECTS the Request for Leave to Appeal.

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 Tuesday, 17 August 2021

At The Hague, The Netherlands