

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **7 January 2022**

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

**Public Redacted Version of the ‘Response of the Common Legal Representative of the Victims of the Attacks to the “Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan”’,
ICC-01/04-02/06-2724-Conf, dated 6 December 2021**

Source: Office of Public Counsel for Victims (CLR2)

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon

Legal Representatives of the Victims

Mr Dmytro Suprun
Ms Anne Grabowski

Legal Representatives of the Applicants

Ms Sarah Pellet
Ms Caroline Walter

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**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

Detention Section

Victims and Witnesses Unit

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby files his Response to the “Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan” (the “TFV’s Second Update Report”).¹

II. PROCEDURAL BACKGROUND²

2. On 8 March 2021, Trial Chamber VI issued the “Reparations Order” (the “Reparations Order”).³

3. On 8 April 2021, the Legal Representative and the Defence filed their respective Notices of Appeal against the Reparations Order.⁴

4. On 7 June 2021, the Legal Representative⁵ and the Defence⁶ filed their respective Appeal Briefs against the Reparations Order.

5. On 9 June 2021, the TFV submitted its Report on its Preparation for an Initial Draft Implementation Plan with focus on Priority Victims (the “IDIP”),⁷ to which the

¹ See the “Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2723-Conf](#), 23 November 2021 (the “TFV’s Second Update Report”).

² The procedural background included in these submissions is non-exhaustive and primarily focuses on the procedure before the Trial Chamber.

³ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

⁴ See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 April 2021; and the “Defence Notice of Appeal against the Reparations Order”, [ICC-01/04-02/06-2659](#), [No. ICC-01/04-02/06-2669 A5](#), 8 April 2021.

⁵ See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2674 A4](#) (the “CLR2 Appeal”) 7 June 2021.

⁶ See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 OA4](#), 7 June 2021.

⁷ See the “Report on Trust Fund’s Preparation for Draft Implementation Plan With Annex A Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2676-Conf](#) and [No. ICC-01/04-02/06-2676-Conf-AnxA](#), 9 June 2021. On 14 June, the TFV submitted a Corrigendum to said Annex A, [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr](#) and [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr-Anx](#). See also [No. ICC-01/04-02/06-2676-Red](#) and [No. ICC-01/04-02/06-2676-AnxA-Corr-Red2](#).

parties and the Registry were directed to file any observation they may have had by 23 June 2021.⁸

6. On 23 June 2021, the Legal Representative submitted the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan”.⁹ The Common Legal Representative of the Former Child Soldiers¹⁰ and the Defence¹¹ filed their respective responses to the TFV’s IDIP on the same day.

7. On 28 June 2021, the TFV submitted additional observations regarding its IDIP.¹²

8. On 16 July 2021, the TFV submitted a request to postpone the submission of its Draft Implementation Plan (the “DIP”) until 17 December 2021. The TFV highlighted the difficulties posed by the public health situation and the security situation both in the Democratic Republic of the Congo and in Uganda.¹³

⁸ See the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2677](#), 10 June 2021. See also the “Registry Observations on the Trust Fund for Victims’ Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2683](#), 23 June 2021; the “Defence Observations on the TFV initial draft implementation plan”, [No. ICC-01/04-02/06-2682-Conf](#), 23 June 2021; the “Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2681](#), 23 June 2021; and the “Public Redacted Version of the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan” (ICC-01/04-02/06-2680-Conf)”, [No. ICC-01/04-02/06-2680-Red](#), 28 June 2021 (the original confidential submission was filed on 23 June 2021).

⁹ See the “Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims’ Draft Initial Implementation Plan”, [No. ICC-01/04-02/06-2680-Conf](#), 23 June 2021. A public redacted version of these observations was filed as [ICC-01/04-02/06-2680-Red](#) on 28 June 2021 (the “CLR2 Observations on the IDIP”).

¹⁰ See the “Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2681](#), 23 June 2021.

¹¹ See the “Defence Observations on the TFV initial draft implementation plan”, [No. ICC-01/04-02/06-2682-Conf](#), 23 June 2021. A public redacted version of these observations was filed as [ICC-01/04-02/06-2682-Red](#) on 5 November 2021.

¹² See the “Public redacted version of ‘Observations on the responses and observations submitted on the Initial Draft Implementation Plan’, submitted on 28 June 2021”, [No. ICC-01/04-02/06-2687-Red](#), 28 June 2021.

¹³ See the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2693](#), 16 July 2021.

9. On 22 July 2021, the Legal Representatives and the Defence filed their response in support of the TFFV's said request.¹⁴

10. On 23 July 2021, Trial Chamber II (the "Trial Chamber") issued the "Decision on the TFFV's initial draft implementation plan with focus on priority victims", approving the IDIP subject to amendments and additional information to be provided by the TFFV in its next report.¹⁵

11. Also on 23 July 2021, the Trial Chamber granted the TFFV an extension of time limit to submit its DIP by 17 December 2021.¹⁶

12. On 23 September 2021, the TFFV provided the First Progress Report on the implementation of the IDIP.¹⁷

13. On 4 October 2021, the Defence filed the "Defence observations on the TFFV First Progress Report on the implementation of the Initial Draft Implementation Plan".¹⁸

14. On 29 October 2021, the Trial Chamber issued the "Decision on the TFFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations

¹⁴ See the "Observations on Behalf of Mr Ntaganda on the 'Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan'", [No. ICC-01/04-02/06-2695](#), 22 July 2021; the "Joint Response of the Common Legal Representatives of Victims to the 'Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan'", [No. ICC-01/04-02/06-2694](#), 22 July 2021.

¹⁵ See the "Decision on the TFFV's initial draft implementation plan with focus on priority victims" (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021 (the "Decision on the IDIP").

¹⁶ See the "Decision on the Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan" (Trial Chamber II), [No. ICC-01/04-02/06-2697](#), 23 July 2021.

¹⁷ See the "Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director's decision pursuant to regulation 56 of the Regulations of the Trust Fund", [No. ICC-01/04-02/06-2710-Conf](#), 23 September 2021. A public redacted version of the report was filed as [ICC-01/04-02/06-2710-Red](#) on 7 October 2021.

¹⁸ See the "Defence observations on the TFFV First Progress Report on the implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2714-Conf](#), 4 October 2021. A public redacted version of these observations was filed as [No. ICC-01/04-02/06-2714-Red](#) on 5 November 2021.

of the Trust Fund”,¹⁹ requesting the TFCV to provide further detail on a number of issues in future reports.²⁰

15. On 23 November 2021, the TFCV filed the Second Update Report,²¹ in which it *inter alia* requested that the Trial Chamber approve certain amendments to the IDIP.²²

III. CLASSIFICATION

16. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, the present submissions are classified as confidential, since they refer to the content of the documents likewise classified as confidential.

IV. SUBMISSIONS

17. The Legal Representative first takes note of the TFCV’s preliminary remarks in relation to the security situation in the field with entailing factors likely to have an impact on the manner and the pace of the implementation of the IDIP.²³ In this regard, he wishes to stress that a solid strategy of risk mitigation is needed in the first place in order to address not only issues arising from the general insecurity in the area and from the large extent of the displacement of potential beneficiaries of reparations, but also, and as argued previously,²⁴ the risks of possible tensions, animosity and jealousy among affected communities and between co-habiting groups in the areas where the victims of the attacks reside. In developing a mitigation strategy, the parties, the Registry and relevant external stakeholders should be comprehensively consulted. This key issue should not be taken lightly, as, for instance, the very fact alone that only very

¹⁹ See the “Decision on the TFCV’s First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund” (Trial Chamber II), [No. ICC-01/04-02/06-2718-Conf](#), 29 October 2021. A public redacted version was issued on the same date as [No. ICC-01/04-02/06-2718-Red](#).

²⁰ *Idem*, p. 13.

²¹ See the TFCV’s Second Update Report, *supra* note 1.

²² *Idem*, paras. 29-33 and 38.

²³ *Idem*, paras. 7-11.

²⁴ See the CLR2 Observations on the IDIP, *supra* note 9, paras. 20-22.

few persons will initially be benefiting from the IDIP has the real potential of having devastating effects on the wider victims community, should this not be adequately countered through tailored messages.

18. Second, the Legal Representative notes that, as regards the Trial Chamber's question on the budget of the relevant implementing partners,²⁵ the TFV's explanation is rather vague and lacks specificity. Accordingly, the TFV should be requested to provide more details in this regard in order to enable the parties and the Trial Chamber to assess the extent of assistance that is meant to be provided to the victims concerned. In the same vein, the TFV should also be requested to provide more concrete detail about the actual budget that has been put forward, and/or the foreseen budget, dedicated to outreach. In fact, this information is needed for the parties and the Trial Chamber in order to assess whether the intended outreach would be sufficiently comprehensive.

19. Third, the Legal Representative has a number of observations in relation to the TFV's request for an amendment of the previously approved IDIP.²⁶ The TFV proposes that the former child soldiers identified as priority victims by the Common Legal Representative of the Former Child Soldiers who have not suffered sexual and gender-based violence ("SGBV") but are in urgent need should be included in the *Lubanga* collective-service-based reparations programmes.²⁷ It elaborates that this proposal derives from both the concern expressed by the Trial Chamber about the inclusion of non-SGBV former child soldiers in the [REDACTED] programme and the fact that the former child soldiers fully overlap in the *Ntaganda* and *Lubanga* cases.²⁸

20. The Legal Representative, in line with his previous submissions²⁹ and his submissions on appeal on these topics,³⁰ wishes to stress that proceeding in this way

²⁵ See the TFV's Second Update Report, *supra* note 1, para. 26.

²⁶ *Idem*, para. 38.

²⁷ *Idem*, para. 29.

²⁸ *Idem*, paras. 28-30.

²⁹ See the CLR2 Observations on the IDIP, *supra* note 9, paras. 19, 20, 40, 42-43 and 51.

³⁰ See the CLR2 Appeal, *supra* note 5, Ground 5, para. 116.

will effectively result in preferential treatment of the former child soldiers *vis-à-vis* the victims of the attacks, as the former child soldiers envisaged to benefit from this proposal will already at this stage be part of the full-fledged reparations programmes designed in the context of the *Lubanga* case pursuant to entirely different pre-conditions. This proposal as such is therefore irreconcilable with the purpose of the IDIP, according to which it “*is an interim and emergency measure aimed at addressing the needs of the victims requiring urgent assistance pending the development and implementation of the full DIP*”.³¹ In this regard, the Trial Chamber made it clear that the TFV’s proposals should not “*create an appearance of hierarchy and different treatment between the victims of the crimes against the former child soldier and victims of the attacks, with the former receiving reparations aimed at addressing comprehensively their harm and the latter being provided with redress for their most urgent needs only*”.³²

21. In addition to the abovementioned specific issue, the TFV’s overall approach is problematic insofar as it creates an appearance of hierarchy and different treatment between the two groups of victims. Indeed, under the IDIP, 250 SGBV victims out of 283 former child soldiers, but only 60 out of 1836 victims of the attacks, will see their urgent needs attended to at this stage. In the TFV’s amendment proposal an additional number of non-SGBV former child soldiers are proposed to be included in the full-fledged *Lubanga* reparations programmes prior to the approval of a full DIP in the present case. Such an imbalance as it appears from the TFV’s proposals is significant. It has the real potential of giving rise to tensions, jealousy and animosity between co-habiting communities, given in particular the highly explosive security situation in the region. Accordingly, the TFV should be requested to amend its proposals with an aim to strike a fair balance of proportionality when addressing the urgent needs of the two groups of victims. Thus, in light of objective differences in the current existing capacities to address priority needs of the two groups of victims, counter-balancing measures are needed to ensure not only the fairness and equality of the treatment of

³¹ See the Decision on the IDIP, *supra* note 15, para. 8.

³² *Idem*, para. 20.

the victims, but also the appearance thereof. This should be done both on a substantive and procedural level. Absent such measures, and despite all the best intentions, former child soldiers are very likely to appear as being favoured in the eyes of any reasonable observer. In any event, the TFV should be requested to propose an alternative way of addressing the urgent needs of non-SGBV former child soldiers.

22. Moreover, the Legal Representative cautions against mixing the *Lubanga* reparations programmes with the IDIP in the present case at this stage because many relevant issues are still pending before the Appeals Chamber. For instance, equal treatment of the two groups of victims, the overlap between the two cases and devising of the overall cost to repair as well as the apportionment between the two groups of victims, and the *per capita* cost to repair, are key issues pending determination by the Appeals Chamber. In case of a reversal or significant amendment of the Reparations Order on those matters, consequences of the inclusion of former child soldiers into the *Lubanga* reparations programmes might not be easily reversible without prejudice to the victims concerned.

RESPECTFULLY SUBMITTED



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 7th day of January 2022

At The Hague, The Netherlands