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**International
Criminal
Court**

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Date: **24 March 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

With 1 confidential annex and 1 confidential *ex parte* annex, available to the CLR

Trust Fund for Victims' second submission of Draft Implementation Plan

Source: The Trust Fund for Victims

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

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**Victims Participation and Reparations
Section**

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I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI (“Trial Chamber”)¹ issued an order for reparations against Mr Ntaganda (the “Reparations Order”), directing the Trust Fund to submit an initial draft implementation plan for victims in an urgent situation by 8 June 2021 as well as a draft implementation plan (“DIP”) by 8 September 2021.²
2. On 8 June 2021, the Trust Fund for Victims (the “Trust Fund” or “TFV”) submitted its initial draft implementation plan³ (the “Initial Draft Implementation Plan” or “IDIP”) to the Trial Chamber.⁴
3. On 23 July 2021, the Trial Chamber issued its Decision on the Trust Fund’s IDIP (“Decision of 23 July 2021”),⁵ approving the IDIP subject to amendments and additional information. The Trial Chamber directed the Trust Fund to report on the details of the IDIP implementation every two months requesting it to provide the requested amendments and additional information in its first report.
4. On the same day, the Trial Chamber granted a Trust Fund’s request for extension of time and set the deadline for submission of the DIP to 17 December 2021.⁶
5. On 23 September 2021, 23 November 2021, and 4 February 2022 respectively, the Trust Fund submitted its first, second and third update reports on the IDIP.⁷ On 29 October 2021, 23

¹ On 16 March 2021, the Presidency recomposed the Trial Chamber and referred the case to Trial Chamber II (Decision assigning judges to divisions and recomposing Chambers, [ICC-01/04-02/06-2663](#), page 7).

² Reparations Order, [ICC-01/04-02/06-2659](#), paras 249-253 and 257, and disposition.

³ The Trial Chamber and the participants used the full title ‘initial draft implementation plan’, hence the acronym ‘IDIP’; therefore, the Trust Fund will adopt this abbreviation in these observations.

⁴ Public redacted version of “Report on Trust Fund’s Preparation for Draft Implementation Plan”, submitted on 8 June 2021, [ICC-01/04-02/06-2676-Red](#), with Annex A, Public redacted version of “Initial Draft Implementation Plan with focus on Priority Victims”, [ICC-01/04-02/06-2676-AnxA-Corr-Red](#) (the ‘Initial Draft Implementation Plan’).

⁵ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#).

⁶ Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, [ICC-01/04-02/06-2697](#).

⁷ 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, [ICC-01/04-02/06-2710-](#)

November 2021 and 24 January 2022, the Trial Chamber issued its decision on the first update report,⁸ decision on the second update report⁹ and decision on the third update report¹⁰ respectively.

6. On 17 December 2021, the Trust Fund submitted its DIP.¹¹

7. On the same date, ruling on a Defence's request for extension of time,¹² the Trial Chamber issued an order setting the deadline for the parties to submit observations on the DIP to 24 January 2022.¹³

8. On 18 January 2022, the common legal representative for former child soldiers ("CLR1") submitted a request for extension of time to submit her observations, together with a request for an order for supplementary information to be provided by the Trust Fund on nine identified issues ("Request").¹⁴

[Conf](#); Trust Fund's Second Update report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2723-Conf](#); Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2741-Conf](#).

⁸ Decision on the TFV's First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors' decision pursuant to regulation 56 of the Regulations of the Trust Fund, [ICC-01/04-02/06-2718-Conf](#).

⁹ Decision on the TFV's Second Progress Report on the implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2730-Conf](#).

¹⁰ Decision on the TFV's Third Update report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2745](#).

¹¹ Trust Fund for Victims' submission of Draft Implementation Plan, [ICC-01/04-02/06-2732](#), with one confidential annex. A public redacted version was filed on 25 January 2022: [ICC-01/04-02/06-2732-AnxA-Red](#).

¹² Defence request for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan ('Request'), 15 December 2021, [ICC-01/04-02/06-2728](#).

¹³ Order for the submission of observations on the draft implementation plan, [ICC-01/04-02/06-2731](#).

¹⁴ URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan, ICC-01/04-02/06-2735-Conf-Exp. A public redacted version was filed on the same day: [ICC-01/04-02/06-2735-Red](#) ('CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp').

9. On 21 January 2022, having received the observations by the common legal representative of victims of the attacks (“CLR2”, collectively with the CLR1, “CLR”),¹⁵ the Trust Fund,¹⁶ and the Defence,¹⁷ the Trial Chamber issued a decision granting the Request, specifically ordering the Trust Fund to submit additional information, to the extent possible, on the issues identified by the CLR and by the Defence by 24 February 2022.¹⁸ Further, on 24 January 2022, the Defence identified additional issues that require clarification in its view, in addition to the matters identified by the CLR.¹⁹

10. On 18 February 2022, the TFV submitted a request for extension of time to submit the additional information on the DIP, in a second version of its DIP, by 11 April 2022.²⁰

11. On 22 February 2022, in accordance with the Chamber’s instructions, the CLR²¹ and the Defence²² submitted their responses to the Request, opposing this extension.

¹⁵ Response of the Common Legal Representative of the Victims of the Attacks to the “Public Redacted version of the ‘URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’ (ICC-01/04-02/06-2735-Conf-Exp)”, 20 January 2022, ICC-01/04-02/06-2737-Conf (‘CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf).

¹⁶ Trust Fund for Victims’ Observations in relation to CLR1’s Request for Extension of Time to Respond to the Draft Implementation Plan (‘TFV Observations’), 20 January 2022, [ICC-01/04-02/06-2738](#).

¹⁷ Response on behalf of Mr Ntaganda to the CLR1’s request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan, 20 January 2022, [ICC-01/04-02/06-2736](#).

¹⁸ Decision on the ‘Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’ and additional request by the TFV, [ICC-01/04-02/06-2739](#). The Trial Chamber also ordered that the Defence submits any additional matters on which they seek to receive additional information by 24 January (Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims, ICC-01/04-02/06-2740-Conf).

¹⁹ Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims, ICC-01/04-02/06-2740-Conf (‘Defence Additional Matters, ICC-01/04-02/06-2740-Conf’).

²⁰ Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan, [ICC-01/04-02/06-2746](#).

²¹ Joint Response of the Common Legal Representatives of the Victims to the “Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan”, ICC-01/04-02/06-2747.

²² Defence response to the “Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan”, ICC-01/04-02/06-2748.

12. On 24 February 2022, the Trial Chamber issued a decision on the Trust Fund's request for extension of time granting an extension until 24 March 2022 and authorising the Trust Fund to submit a second version of the DIP.²³

13. The Trust Fund submits the second version of the DIP for reparations as Annex 1 to the present submission.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

14. This present submission is classified as public but annex 1 is classified as confidential pursuant to regulation 23 *bis* (1) of the Regulations of the Court because it contains details related to the operations of the Trust Fund/Court. A public redacted version of annex 1 will be submitted shortly. Annex 2 is confidential *ex parte*, available to the CLRs only, as it contains details related to the implementation of the *Lubanga* case.

III. TRUST FUND'S SUBMISSIONS AND REQUESTS

15. As pointed out in its Request for Extension of Time, the Trust Fund notes that the CLR1 requests that the Trust Fund provides further clarifications on nine discreet issues.²⁴ In parallel, the CLR2 requests that 17 issues be further addressed by the Trust Fund to be in a position to make meaningful observations.²⁵ Lastly, the Defence identified 22 issues that require clarification in its view, in addition to the matters identified by the CLRs.²⁶

16. The Trust Fund has assessed the nature of the information sought by the parties and has identified the information that can be provided at this stage, drawing from the lessons learned in the *Lubanga* case and pending the selection of an implementing partner for the Victims of the Attacks. The Trust Fund provides its answers in two ways.

²³ Decision on the Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan, ICC-01/04-02/06-2749, para. 11 and disposition.

²⁴ CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 22.

²⁵ CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28.

²⁶ Defence Additional Matters, ICC-01/04-02/06-2740-Conf, paras 5-8.

17. First, as authorised by the Trial Chamber, it has included additional information in the DIP (annex 1). For ease of references by the parties and the Trial Chamber, the additional information is included in track changes mode.

18. Second, in relation to a number of specific queries raised by the CLR²⁷ consisting in providing more details in relation to certain measures proposed, the Trust Fund communicates, by way of annex 2 to the present filing, the current reparations package as applicable in the *Lubanga* case. This information is purely indicative but consists in the most up to date and detailed information on the services offered and their per capita cost. By way of example, the locations indicated in the attached document are those where *Lubanga* beneficiaries currently find themselves. These locations are bound to evolve and expand as more beneficiaries benefit from the programme. The Trust Fund recalls in this regard that its implementing partner is in a position to provide services throughout Ituri. These figures have not been included in the DIP as they are purely indicative and are only shared with the CLR²⁷ to satisfy their request for as many details as possible. While their relevance is readily understood in relation to the group of former child soldiers, the Trust Fund hereby underlines, as set out in the DIP, that the programme for the Victims of the Attacks aims at providing similar services, but that these numbers will likely not be the same, given further changes in costs and prices. In addition, the programme for the Victims of the Attacks may also distribute the services in different ways, i.e. it may provide for a starter sum and then provide a lesser amount for the start of income-generating activities. In any case, the concrete packages available to the victims will depend on the voluntary contributions available to the Trust Fund to run the programmes.

19. This annex is not shared with the Defence as it concerns details of the implementation in the *Lubanga* case and does not touch upon any matters relevant to the amount of liability of the convicted person. In fact, this annex is not considered part of the DIP, but only provided to make sure the CLR² has the same information as the CLR¹, given the former is not Counsel in the *Lubanga* case.

²⁷ CLR¹ Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 20(ii), 20(iii) and 20(v) and CLR² Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(xii).

20. The Trust Fund would like to underline that it takes it very seriously that the Former Child Soldiers are both victims of Mr Lubanga and of Mr Ntaganda. Therefore, even though they are already subject to the *Lubanga* Amended Reparations Order issued by the Appeals Chamber, the Trust Fund has not chosen to present the *Lubanga* programme as a *fait accompli*. Specifically, rather than proposing that what exists now be copied and pasted and that the very same services be provided to these individuals, the Trust Fund has conducted an assessment of the harm suffered by the Former Child Soldiers and has analysed how best to address it taking into account the instructions contained in the *Ntaganda* Reparations Order and developed the programme for these Former Child Soldiers hand in hand with that of the Victims of the Attacks. The Trust Fund therefore developed this implementation plan in accordance with the parameters set out in the *Al Mahdi* case²⁸ and as endorsed by the *Ntaganda* Trial Chamber.²⁹

21. Evidently, the Trust Fund has been informed in developing the DIP by its years-long interaction with Former Child Soldiers, their need for confidentiality and protection, and with the consciousness of the sensitivity of their situation. In addition, the Trust Fund has also been informed in this exercise by the interaction of its implementing partner with the beneficiaries in *Lubanga* from the start of the programme in 2021, and the issues they raised. Since January 2022, this interaction also included the legal representatives in *Lubanga*, who also raised issues, including on behalf of their clients. As of the end of 2021, the implementing partner and the Trust Fund assessed in detail which aspects of the programme work well, or would need to be adapted. This led to some limited re-adjustments relevant to certain aspects of the programme. The Trust Fund underlines that, while beneficiaries in *Lubanga* continue to get services and while the intake continues, at the time of the submission of the second version of the DIP, the Trust Fund still continues the dialogue with the legal representatives in *Lubanga*, as issues relevant to the precise scope of available reparative measures continue to be raised by them. However, the Trust Fund

²⁸ *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Reparations Order, 17 August 2017, ICC-01/12-01/15-236, para. 136.

²⁹ Reparations Order, ICC-01/04-02/06-2659, para. 249. *See also* Decision of 23 July 2021, ICC-01/04-02/06-2696, para. 10; Decision on the Third Update Report, ICC-01/04-02/06-2739, paras 8-10.

has concluded the phase of re-adjustments with the implementing partner and therefore includes this information comprehensively in Annex B.

22. The Trust Fund once more underlines that the person liable to provide reparations is the convicted person. Given Mr Ntaganda's current indigence, the effective and equitable access of victim beneficiaries to all reparations measures is contingent on voluntary contributions available at the Trust Fund. Accordingly, the Trust Fund will only be able to finance the implementation of reparations measures within its financial means, and as supported by its donors.

23. In this context and in relation to the query by the CLR2 concerning the expected cost per capita of the reparations for his clients,³⁰ the Trust Fund is not in a position to provide information for the following reasons other than by reference to the current cost of the reparations package applicable in the *Lubanga* case. First, the reparations ordered are collective in nature, designed accordingly, thus not following a cost per capita budgeting logic, notwithstanding the eventual individualised benefits that beneficiaries may receive. Second, the nature of the crimes and corresponding harms are so varied that the associated reparative measures will vary depending on each individual. A victim demonstrating physical harm will benefit from medical services that a victim having suffered only socio-economic harm will not benefit from. Consequently, standardised cost per capita calculations cannot be derived from the programme-based reparations budget.

24. As a final point, the Trust Fund has not addressed a very limited number of issues either because the information sought is confidential,³¹ or because it is not available yet or because detailed information has already been provided in the DIP and no further information is available at the present stage.³²

³⁰ CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(v).

³¹ Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(iv) in relation to information emanating from the *Lubanga* case. This information is nonetheless provided to the CLRs.

³² CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 20(ix) and CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(viii); Defence Additional Matter, ICC-01/04-02/06-2740-Conf, paras 8(xi) et 8(xii) in relation to the satisfaction measures envisaged, which are already set out in the DIP and for which the Trust Fund fails to see what additional information is expected.

25. With the exception of these limited issues, the Trust Fund is confident that the present filings and its two annexes provide all the clarifications required for the CLR1, CLR2 and the Defence to be in a position to submit their observations.

26. *Amendment of the DIP following Appeals Chamber's judgment on the Reparations Order*

– In relation to the argued lack of clear indications provided by the Trust Fund in the DIP in relation to any potential future amendments of it following the judgment to be rendered by the Appeals Chamber,³³ the Trust Fund would like to underline that it has developed an implementation plan based on its experience, its assessment of how best to achieve rehabilitation in the current circumstances in Ituri and on the basis of available funds. The Trust Fund submits that the applicable legal framework has been set already in the Reparations Order and is not subject to argument at this stage, let alone by the Trust Fund. In this context and as previously submitted and as correctly pointed out by the parties, the Trust Fund underlines that the Reparations Order is currently under appeal. Upon issuance of the appeals judgment and with sanction of the Trial Chamber, the Trust Fund is prepared to analyse that judgment's impact on the DIP and submit a next version swiftly thereafter.

27. *Approval of the DIP and consolidated quarterly reports* – In the annexes to the present filing, the Trust Fund presents for a second time the DIP for reparations in the *Ntaganda* case and seeks the Trial Chamber's approval thereof. In respect of the issue which is adequate authority to be in charge of verifying the eligibility of victims, the Trust Fund respectfully notes that consultations with other stakeholders at the Court are still ongoing in light of the significant operational implications of this determination, including in terms of human resources, financial resources and on the modalities of implementation of the reparations. The Trust Fund will provide further information to the Trial Chamber on this discrete issue as soon as consultations are concluded. The Trust Fund also reiterates its request to be authorised to submit consolidated quarterly reports once the DIP is approved.³⁴

³³ Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(i).

³⁴ Trust Fund for Victims' submission of Draft Implementation Plan, [ICC-01/04-02/06-2732](#), paras 12-18.

28. The DIP has not changed in substance, but follows the same structure and includes the same proposals, logical frameworks, risk assessments and timelines as the first version. The second version has merely been updated, including with additional details, and further reviewed and refined. Therefore, the Trust Fund does not suggest that it be translated and submitted again to the authorities of the Democratic Republic of the Congo, given they received the first version in translation. It is suggested that, only once the Reparations Order is final, also the final version of the DIP be translated into French and sent to the authorities of the Democratic Republic of the Congo.

FOR THE FOREGOING REASONS,

29. The Trust Fund requests that the Trial Chamber:

- approves the DIP in the version submitted in Annex 1; and
- authorizes the Trust Fund to submit consolidated quarterly update reports.



Pieter W.I. de Baan
Executive Director, Trust Fund for Victims

On behalf of the Board of Directors of the Trust Fund

Dated this 24 March 2022
At The Hague, The Netherlands