

**Cour
Pénale
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**International
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Court**

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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 “Registry Observations on the Trust Fund for Victims’
Draft Implementation Plan”, 18 May 2022, ICC-01/04-02/06-2766-Conf**

Source: Registry

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

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I. Introduction

1. Pursuant to Trial Chamber II's "Decision on the Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan" (respectively "Chamber" and "Decision"), issued on 24 February 2022,¹ the Registry hereby submits its observations on the Trust Fund for Victims' draft implementation plan² ("TFV" and "DIP" respectively) in the case of *The Prosecutor v. Bosco Ntaganda* ("Ntaganda case").

II. Procedural History

2. On 8 March 2021, the Chamber, in its former composition (former Trial Chamber VI), delivered its Reparations Order in which it, *inter alia*, directed the TFV to submit a DIP for approval by the Chamber by 8 September 2021 ("Reparations Order").³
3. On 23 July 2021, the Chamber granted the TFV an extension of the time limit to submit its DIP until 17 December 2021.⁴
4. On 17 December 2021, the Chamber issued an order directing the parties and the Registry to file their observations on the DIP, if any, by 24 January 2022.⁵
5. On 20 December 2021, the TFV's submission of the DIP was notified.⁶
6. On 18 January 2022, the common legal representative for former child soldiers ("CLR1") submitted a request for (1) an extension of time to submit her

¹ Trial Chamber II, "Decision on the Trust Fund for Victims' Request for Extension of Time to Submit Additional Information on Draft Implementation Plan", 24 February 2022, ICC-01/04-02/06-2749.

² TFV, "Trust Fund for Victims' second submission of Draft Implementation Plan", dated 24 March 2022 and notified on 25 March 2022, ICC-01/04-02/06-2750; this is the updated version of the DIP; see also fn. 6, 15.

³ Trial Chamber VI, "Reparations Order", 8 March 2021, ICC-01/04-02/06-2659.

⁴ Trial Chamber II, "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.

⁵ Trial Chamber II, "Order for the submission of observations on the draft implementation plan", 17 December 2021, ICC-01/04-02/06-2731.

⁶ TFV, "Trust Fund for Victims' submission of Draft Implementation Plan" dated 17 December 2021 and notified on 20 December 2021, ICC-01/04-02/06-2732.

observations until 23 April 2002; and (2) the Chamber to instruct the TFV to supplement its DIP (“CLR1 Request”).⁷

7. On 20 January 2022, [REDACTED]⁸ the Defence⁹ and the TFV¹⁰ submitted observations on the CLR1 Request.
8. On 21 January 2022, the Chamber issued a decision *inter alia* (1) ordering the TFV to supplement the DIP by addressing, to the extent possible, all matters requiring further clarification identified by the CLR1, the CLR2 and the Defence by 24 February 2022; and (2) directing the parties and the Registry to file their observations on the DIP and the TFV’s supplementary filing by 24 March 2022.¹¹
9. [REDACTED].¹²
10. On 18 February 2022, the TFV submitted a request for extension of time to submit a second version of its DIP addressing, to the extent possible, the issues and questions raised by the parties, by 11 April 2022.¹³
11. On 24 February 2022, the Chamber issued its Decision in which *inter alia* it granted an extension of time until 24 March 2022 for the TFV to submit an updated version of the DIP addressing, to the extent possible, all matters requiring further clarification as identified by the CLR1, the CLR2 and the Defence, and extended the deadline for the parties and the Registry to file their observations on the updated DIP to 24 April 2022.¹⁴

⁷ CLR1, “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)”, 18 January 2022, ICC-01/04-02/06-2735-Red.

⁸ [REDACTED].

⁹ Defence, “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.

¹⁰ TFV, “Trust Fund for Victims’ Observations in relation to CLR1’s Request for Extension of Time to Respond to the Draft Implementation Plan”, 20 January 2022, ICC-01/04-02/06-2738.

¹¹ Trial Chamber II, “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”, 21 January 2022, ICC-01/04-02/06-2739.

¹² [REDACTED].

¹³ TFV, “Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan”, 18 February 2022, ICC-01/04-02/06-2746.

¹⁴ Decision, paras. 11 and 12, and operative paragraphs page 7.

12. On 24 March 2022, the TFV submitted an updated version of the DIP.¹⁵

13. On 8 April 2022, following a Registry request to this effect,¹⁶ the Chamber extended the deadline for the DRC authorities to submit observations on the DIP, if any, by 4 May 2022 and also extended the deadline for the parties and the Registry to file their observations on the DPI to 18 May 2022 (“Decision of 8 April 2022”).¹⁷

III. Classification

14. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this document is classified as “confidential” in accordance with the classification of some information it refers to.¹⁸ The Registry will file shortly a public redacted version of the present document.

IV. Applicable Law

15. The present filing is submitted in accordance with the Decision of 24 February 2022 and the Decision of 8 April 2022.

V. Submission

Preliminary remarks

16. At the outset, the Registry wishes to commend the TFV for the crafting of its DIP in its present form.¹⁹ The *Ntaganda* case reparations process is of a high complexity (not least due to its connectivity to the *Lubanga* case, but also for a number of circumstantial factors on the ground) and the DIP attempts to find a viable solution that benefits victims most appropriately.

¹⁵ TFV, “Trust Fund for Victims’ second submission of Draft Implementation Plan”, dated 24 March 2022 and notified on 25 March 2022, ICC-01/04-02/06-2750. A corrigendum of the public redacted version of Annex I of this document, containing the DPI, was notified on 14 April 2022 (ICC-01/04-02/06-2750-Anx1-Red-Corr).

¹⁶ Email communications from the Registry’s Legal Officer to the Chamber, on 5 April 2022 at 13:12 and 7 April 2022 at 17:33.

¹⁷ Email communication from the Chamber’s Legal Officer to the Registry, on 8 April 2022 at 10:54.

¹⁸ For example, information mentioned by the Defence and CLR2 (see *supra* footnotes 8 and 12).

¹⁹ See fn. 15.

17. As a general premise, the Registry reiterates its willingness and preparedness to assist and collaborate with the TFV in the implementation of reparations as this is a key – and common – objective enshrined in the Rome Statute system.
18. Presently, the Registry wishes to provide observations on the DIP's eligibility mechanism, and more specifically (1) an update on the identification of potential beneficiaries in the field by the Registry, and (2) the Registry's capacity to support the verification process through the Victims Participation and Reparations Section ("VPRS").

Update on the identification of potential beneficiaries in the field

19. Firstly, on the issue of presently "unidentified victims",²⁰ the Registry wishes to inform the Chamber that on 17 March 2022 it brought to the TFV's attention that as a result of activities conducted in the field, it had mapped out approximately 780 potential beneficiaries²¹ who have been affected by the current conflict in Ituri and who have never been in contact with the ICC.²² These victims would be distributed in different locations in Djugu territory. The Registry believes these victims are accounted for to a major extent in the Registry's Preliminary Mapping exercise and the reported overall number of potential reparation beneficiaries there.²³

²⁰ See DIP, para. 313.

²¹ These victims may fall under the group of "Former Child soldiers" or the group of "Victims of the Attacks". On the latter, the Registry wishes to clarify the terminology it has been using when referring to "Victims of Attacks", to ensure a common understanding since in the DIP the TFV refers to "Victims of the (two) attacks" (see for example DIP, para. 143). In line with the Chamber's findings, when grouping victims, the Registry has differentiated between the two military operations (ie. UPC/FPLC activities conducted between 20 November 2002 and 6 December 2002 in relation to the Banyali-Kilo collectivité and referred to by the Chamber as the "First Operation", on the one hand, and between on or about 12 February 2003 and on or about 27 February 2003 in relation to the Walendu-Djatsi collectivité and referred to by the Chamber as the "Second Operation", on the other), each military operation itself encompassing several "attacks" or "incidents". See Trial Chamber VI, "Judgment", 8 July 2019, ICC-01/04-02/06-2359, para. 33.

²² Email from the Chief of Country Office to the TFV, 17 March 2022 at 11:37. The Registry further notes that, as eluded to at para. 328 of the DIP, its field staff played an important role in the pre-identification of potential beneficiaries in the context of the *Lubanga* case (which would therefore also be considered as potential beneficiaries for reparations in the *Ntaganda* case), by referring around 1,000 victims to the TFV and the OPCV from 2016 to 2021 and taking part in eligibility interviews.

²³ Registry, "Registry's Observations on Reparations", 28 February 2020, ICC-01/04-02/06-2475.

Observations on the verification process

20. In the DIP, the TFV laid out the following two options for the verification process:

“Option 1: a one-step verification process, i.e. one verification body only: Full delegation by TFV of the verification to VPRS.

Option 2: a one-step verification process, i.e. one verification body only: Verification by the TFV.”²⁴

21. While the two options remain in the DIP, the TFV has chosen to proceed under Option 2 while details of possible Registry assistance are being considered.²⁵

22. During the TFV’s consultation process, and in discussions on Option 1, the VPRS submitted that under Option 1, the assistance provided would be a final product (*i.e.* the required verification) as a result of a number of VPRS-internal work processes completing the product. “Verifications” would be issued through periodic batches of verified forms with recommendations based on predefined criteria. VPRS reiterated that verification services would be rendered from and at Headquarters; the Section does not entertain staff in the field under its direct authority and designated VPR staff in the field is presently extremely reduced and operating across the DRC and Uganda Situations.

23. In contrast, under Option 2 the TFV seemed to foresee that the above service/product be rendered by the TFV itself with Registry assistance through the deployment of individual staff members that would carry out tasks under the TFV’s authority and supervision for an aggregate amount of time, akin to a temporary staff loan.²⁶

²⁴ DIP, para. 376. A third option was also initially considered by the TFV, which consists in the VPRS carrying out a preliminary assessment, followed by a verification by the TFV. This third option is no longer envisaged by the TFV. *See* DIP para. 375.

²⁵ *See* DIP, para. 378 .

²⁶The Registry refers here to the first DIP submitted by the TFV. TFV, “Trust Fund fo[r] Victims’ Submission of Draft Implementation Plan”, dated 17 December 2021 and notified on 20 December 2021, ICC-01/04-02/06-2732-AnxA, para. 341. A public redacted version of the DIP was notified on 25 January 2022, ICC-01/04-02/06-2732-AnxA-Red.

24. During consultations between the Registry and the TFV on the matter,²⁷ the former indicated that the VPRS was at the TFV's disposal as a verification mechanism in the Case as is envisaged under Option 1 of the DIP,²⁸ based on its general role as service provider and its expertise on the matter including reparations. The VPRS would thus provide a service package, in the form of assessments based on pre-defined criteria provided by the TFV,²⁹ in as speedy a manner as possible.³⁰
25. As there should be as little delay as possible between the identification/collection of documents and the assessment of the applications, the 15-day turnaround for the verification body suggested by the TFV³¹ is on its face reasonable. It needs to be considered though that the turnaround timeline heavily depends on the periodicity of application batches of comparable sizes for proper resource deployment by the verification body. Varying levels of completeness and complexity of received forms, as well as competing priorities from other cases before the ICC could also lead to minor deviations from the timeline at times.
26. In order to avoid bottlenecks or variances in the verification process as mentioned in the preceding paragraph, the VPRS further proposed that regular coordination meetings be held between the TFV-led teams involved in the collection of documents and information in the field and the team in charge of the verification process at HQ, for proper resource and workflow planning.

²⁷ As referenced in paras. 295 and 363-367 of the DIP, the Registry provided its views in writing before the first submission of the DIP in December 2021, as well as orally during a meeting held on 1 February 2022 between the TFV, the VPRS and the Office of the Director of the Division of Judicial Services ("1 February 2022 meeting"). The Registry seizes this opportunity to commend the TFV for the consultation exercise which was transparent, effective and fruitful.

²⁸ This position was also expressed in previous Registry submissions, *see* Registry, "Registry Observations on the Trust Fund for Victims' Initial Draft Implementation Plan", 23 June 2021, ICC-01/04-02/06-2683, para. 11.

²⁹ DIP, para. 370.

³⁰ Said assessments can also be used for final determination if so desired, in reference to para. 364 of the DIP.

³¹ DIP, para. 371.

27. During the 1 February 2022 meeting, however, the TFV clarified to the Registry that it could not delegate the verification process to the VPRS, as it has to remain in full control of the process. This position was reiterated in the DIP which considers Option 2 as the more suitable way forward.³²
28. In discussing possible Registry assistance to the TFV for Option 2, the question of making available Registry staff to the TFV was raised. The Registry informed that its current staffing level does not allow it to assign VPRS staff member(s) to work exclusively on the *Ntaganda* case verification process to assist the TFV.³³
29. This is for the following reasons: under Option 1, the VPRS would be granted the full responsibility to carry-out the verification process, based on the eligibility criteria set by the Chamber in the Reparations Order, Judgment and related decisions. This role conforms with the VPRS' role as a neutral service provider as well as its expertise from similar exercises in other cases. As the VPRS would be providing a service that incorporates several steps and processes leading to a 'final product' (*ie* the verification result), the Section could use its pre-established workflows and standard operating procedures; this entails workflows that integrate data entry, data processing, legal analysis and reporting across different work units.³⁴ Key to the seamless functioning of this process (*NB* concomitant to similar processes across all cases before the ICC) is the perfect equilibrium of staff across the units, as well as a maximum of flexibility in deployment of individual staff in order to be able to respond to peaks and troughs across cases. This includes the possibility of flexible assignment switches among its staff – within and across units- as necessities in the Case, as well as competing priorities may allow or require.³⁵

³² DIP, para. 378.

³³ See TFV reference to this item in its DIP at para. 367.

³⁴ Two different VPRS units would be involved in the verification process: the Data Processing Unit, which would receive reparations forms, register chain of custody information, perform data entry and verify the existence of any duplicate applications; and the Legal Unit, which would determine the victims' eligibility for reparations in accordance with the balance of probabilities standard of proof and the Chamber's set criteria, as well as any other criteria provided by the TFV.

³⁵ VPRS staff members are not affected to a single Situation or case, but multiple ones. Their work assignments are constantly adapted to the needs dictated by the procedural and judicial deadlines.

30. In contrast, as contemplated under Option 2, the external deployment of VPRS staff member(s) to work under the TFV's authority "to assist,³⁶ at a minimum in times of foreseeable workload peaks",³⁶ would perturb the aforementioned Section-internal resource equilibrium and risk to disrupt workflows. In addition, the full deployment of a staff member on tasks on one single case would go counter to the operation framework of the Section where each staff member has multiple assignments and the deployment per assignment is subject to flexible re-assessment and calibration on a weekly basis, as the necessities across the cases before the ICC command.³⁷
31. It is for this reason that the VPRS indicated to the TFV that it is able to assist with the provision of a service / product in the form of the verification exercise (Option 1), but unfortunately unable to deploy individual staff members to the TFV for the present exercise.³⁸
32. As communicated to the TFV during the 1 February 2022 meeting, while the VPRS is not in a position to detach its own staff member(s) to assist the TFV, the Registry stands ready to envisage other avenues to support and assist the TFV. This includes providing the TFV with any victim-related information extracted from VAMS the TFV would find useful to ensure a swift assessment of the eligibility for reparations of victims who have participated in the proceedings and/or have already submitted reparation forms currently hosted by the VPRS.³⁹
33. As regards the use of the VPRS' database (VAMS), the Registry is grateful to the TFV for further detailing its requirements for its own database.⁴⁰ [REDACTED].
⁴¹ The VPRS however remains available to further explore any use of VAMS by

³⁶ DIP, para. 377.

³⁷ In addition, this would effectively take out a resource from the VPRS at a time where the Assembly of States Parties has just recognised that for the VPRS to continue to live up to its performance requirements in 2022 it actually needs a resource increase.

³⁸ See TFV reference to this in its DIP at para. 367.

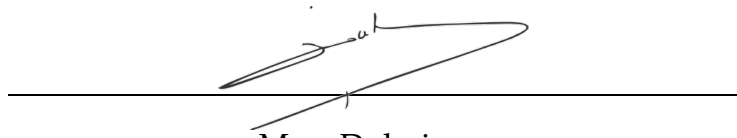
³⁹ See paras. 401 a., c. and d. ; 402 b. of the DIP.

⁴⁰ Email from TFV to VPRS, 14 January 2022 at 18:31.

⁴¹ [REDACTED].

the TFV as an interim solution, as the TFV may see fit.⁴² More importantly, the Registry's Information Management Services Section will be able to assist the TFV in defining the most sensible solution for its IT requirements.⁴³

34. The Registry stands ready to provide any further information and assistance as the Chamber may deem necessary.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 18 May 2022

At The Hague, the Netherlands.

⁴² Yet again, for the reasons explained above, the VPRS will unfortunately not be in a position to detach staff from the Data Processing Unit to work under the supervision of the TFV on data processing matters.

⁴³ Consultations in this regard are ongoing.