



Original: English

No.: ICC-01/04-02/06  
Date: 14 November 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 “Common Legal Representative of the Former Child Soldiers’ Submissions pursuant to the ‘Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”,  
No. ICC-01/04-02/06-2790-Conf, dated 9 November 2022**

**Source:** Office of Public Counsel for Victims (CLR1)

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

**Legal Representatives of the Victims**

Ms Sarah Pellet

Mr Tars Van Litsenborgh

Mr Dmytro Suprun

Ms Fiona Lau

**Counsel for the Defence**

Mr Stéphane Bourgon

Ms Benjamin Willame

Mr Jacopo Ricci

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**Office of the Prosecutor**

**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**

Ms Franziska Eckelmans

**Others**

## I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “CLR” or the “Common Legal Representative”) hereby files her submissions on the procedure for the constitution of the sample pursuant to paragraph 34(e) of the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (the “Order”).<sup>1</sup>

2. The Common Legal Representative agrees with the methodology adopted for the constitution of the sample. She believes that the criteria are fully responsive to the Appeals Chamber’s Judgment and sufficient to ensure the representativeness of former child soldiers within the sample.

3. The Common Legal Representative further welcomes the procedure according to which applicants deemed ineligible within the context of the sample exercise to be conducted by the Chamber, will have an opportunity to supplement their applications and clarify their accounts at the implementation stage.<sup>2</sup>

4. Lastly, in relation to the 39 [REDACTED] application forms [REDACTED] transmitted to the VPRS in December 2020, while the Common Legal Representative deplores the circumstances surrounding the collection and storage of these applications, she believes that the applicants themselves cannot be penalised by said circumstances and commits to assisting these individuals to the best of her ability, if and when required.

---

<sup>1</sup> See the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, [No. ICC-01/04-02/06-2786](#), 25 October 2022 (the “Order”).

<sup>2</sup> *Idem*, para. 10.

## II. LEVEL OF CLASSIFICATION

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the present submission is filed as confidential, because it contains confidential information not known to the public. A public redacted version will be filed in due course.

## III. PROCEDURAL BACKGROUND

6. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”.<sup>3</sup> On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).<sup>4</sup>

7. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the Reparations Order (the “Appeals Judgment”).<sup>5</sup>

8. On 25 October 2022, the Chamber issued the Order, establishing, *inter alia*, the methodology and criteria in relation to the constitution of a sample of victims and setting out a procedure and a calendar for the parties to comment thereon.<sup>6</sup>

9. On 8 November 2022, the Registry filed its submissions in compliance with the Order.<sup>7</sup>

## IV. SUBMISSIONS

10. As a preliminary matter, the Common Legal Representative underlines that the present proceedings ought to be conducted with the utmost diligence as victims have now been awaiting reparations for a considerable amount of time. Not only were they

---

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

<sup>4</sup> See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

<sup>5</sup> See the “Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, [No. ICC-01/04-02/06-2782](#), 12 September 2022 (the “Appeals Judgment”).

<sup>6</sup> See the Order, *supra* note 1.

<sup>7</sup> See the “Registry submission in compliance with the ‘Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’ (ICC-01/04-02/06-2786)”, with two confidential *ex parte* annexes only available to the Registry, [No. ICC-01/04-02/06-2788](#), 8 November 2022 (the “Registry Submissions”).

subjected to the crimes some 20 years ago, but the issuance of the Reparations Order in March 2021 increased their expectations that reparations would be awarded relatively rapidly. Further, former child soldiers are generally aware that some victims are benefitting from reparations, either in the context of the *Lubanga* proceedings or through the interim reparation measures awarded as per the Initial Draft Implementation Plan (the “IDIP”). Accordingly, and taking into account the consistently deteriorating security situation in Ituri, the CLR emphasises the paramount importance of conducting the present proceedings with expeditiousness.

11. It is in this spirit that the Common Legal Representative – upon being requested by the VPRS to provide comments on the redactions it intends to apply to application forms randomly extracted to be included in the sample<sup>8</sup> – invited the Registry to limit the redactions to the regime set forth in the relevant part of the Order,<sup>9</sup> and to avoid applying excessive redactions.<sup>10</sup> The CLR believes that such a reasonable approach will permit a focussed and swift litigation, thereby avoiding further delays in the award of reparations to her clients.

### **1) On the methodology for the constitution of the sample**

12. The Common Legal Representative understands that, following the Appeals Judgment, the Chamber decided to order the Registry to constitute a sample which must be drawn from a universe of victims comprised of: (i) all participating victims (1837 victims of the attacks and 284 former child soldiers<sup>11</sup>), including those found not

---

<sup>8</sup> See the email from the VPRS to the Common Legal Representative entitled “Ntaganda Reparations – consultation on redaction guidelines”, dated 31 October 2022 at 17:56.

<sup>9</sup> See the Order, *supra* note 1, paras. 35-36.

<sup>10</sup> See the email from the Common Legal Representative to the VPRS entitled “RE: Ntaganda Reparations – consultation on redaction guidelines”, dated 2 November 2022 at 16:28, in which she indicated to the VPRS that, unless concretely identifying, no redactions are required concerning the ethnic group of a victim or the information provided in relation to the harm.

<sup>11</sup> Incidentally, the Common Legal Representative notes that although being privy to the result of the reassessment exercise performed by the Registry back in February 2021, she had never been notified of the file of a/00209/13. See the “Public Redacted Version of Annex I (ICC-01/04-02/06-2639-Conf-AnxI) notified on 15 January 2021 Registry Second Report on Reparations”, [No. ICC-01/04-02/06-2639-AnxI-Red](#), 10 February 2021, para. 7, and footnote 13.

to be eligible by the Registry but excluding individuals already recognised as victims in the *Lubanga* case;<sup>12</sup> (ii) all the forms collected during the attempted mapping of the victim population conducted by the Registry, that is all 25 “long forms” collected from non-participating victims,<sup>13</sup> plus the additional 28 long forms not previously notified to the Chamber;<sup>14</sup> and (iii) the 39 [REDACTED] application forms [REDACTED] transmitted to the VPRS in December 2020 (the “[REDACTED] Forms”).<sup>15</sup> In addition, all 69 (45 victims of the attacks and 24 former child soldiers) application forms emanating from individuals currently benefitting from the IDIP (the “IDIP victims”) will be included in the sample.<sup>16</sup>

13. The sample must be drawn by dividing the universe of victims into two groups: victims of the attacks, on the one hand, and former child soldiers, on the other hand; and by extracting 5% of the total number of each group, in addition to the IDIP victims who all must be part of the sample.<sup>17</sup>

14. Accordingly, a sample of 36 former child soldiers will be selected, that is 24 IDIP forms and 12 additional victims.<sup>18</sup>

15. The CLR is satisfied with the methodology adopted for the constitution of the sample, as designed by the Chamber. She believes that the criteria are fully responsive to the Appeals Judgment and sufficient to ensure the representativeness of former child soldiers within the sample.

---

<sup>12</sup> See the Order, *supra* note 1, paras. 23-25.

<sup>13</sup> *Idem*, para. 25.

<sup>14</sup> See the email from the Chamber to the parties entitled “RE: Ntaganda case: VPRS request to add victims to the sample universe”, dated 2 November 2022 at 13:19. In addition to these 53 long forms from non-participating victims, the Registry also indicated that it had collected 28 short forms (that is information supplementing applications from participating victims). See the “Public Redacted Version of Annex I (ICC-01/04-02/06-2639-Conf-AnxI) notified on 15 January 2021 Registry Second Report on Reparations”, *supra* note 11, para. 19.

<sup>15</sup> See the email from the Chamber to the parties entitled “RE: Ntaganda case: VPRS request to add victims to the sample universe”, dated 2 November 2022 at 13:19.

<sup>16</sup> See the Order, *supra* note 1, para. 20. It is noted that all 69 IDIP victims are participating victims.

<sup>17</sup> *Idem*, paras. 33 and 34(ii).

<sup>18</sup> See the Registry Submissions, *supra* note 7, paras. 14-17.

16. She also agrees that the Appeals Judgment does not affect the conduct of the IDIP and that, unless otherwise decided by the Chamber, her clients shall continue to benefit from it. In the same vein, she agrees with the fact that victims already admitted to participate in the *Lubanga* case are to be excluded from the universe of victims for the purpose of constituting the sample.

17. The Common Legal Representative further agrees that the requirement to act with expeditiousness and the ‘do no harm’ principle command to avoid that new applications from non-participating victims are collected.<sup>19</sup> The information available on the case record at this stage is abundantly sufficient for the constitution of the sample. In this respect, she agrees – with the important caveat set out below<sup>20</sup> – with the fact that participation forms, taken together with supplementary information and/or her observations thereon, are sufficient to qualify as applications for reparations for the purpose of the sampling exercise.

## **2) On the subsequent procedure and calendar for the parties to comment on the sampled individuals**

18. The Common Legal Representative notes that the Registry transmitted the list of victims being part of the sample to the Chamber on 8 November 2022, after which the Chamber will review and subsequently accept it by way of a decision (the “Sample Decision”). The issuance of the Sample Decision will trigger the 30-day deadline for the Registry to apply redactions prior to transmitting the application forms to the parties, followed by a further 30 days for the parties to make observations on the applications transmitted. In this regard, while recognising that she is indeed best placed to assess the situation of her clients,<sup>21</sup> having commented on the redactions the VPRS intends to apply to the applications of the sample of former child soldiers,<sup>22</sup> and in order to avoid

---

<sup>19</sup> See the Order, *supra* note 1, para. 7.

<sup>20</sup> See *infra*, para. 20.

<sup>21</sup> See the Registry Submissions, *supra* note 7, footnote 30, p. 9.

<sup>22</sup> See *supra*, para. 11. See also the email from the Common Legal Representative to the VPRS entitled “RE: Ntaganda Reparations – consultation on redaction guidelines”, dated 2 November 2022 at 16:28.

duplication of the tasks, the CLR trusts that the Registry will apply redactions consistently and in accordance with its extensive guidelines and the Order without a need for her to review them. She remains available for cases not foreseen in the guidelines or in the Order.<sup>23</sup>

19. Without prejudice to her further observations on the former child soldiers' applications, the Common Legal Representative does not anticipate that many applications will require supplementary information. Indeed, she agrees that the Chamber can rely on the "*assessments and findings*"<sup>24</sup> reached in the *Lubanga* case and notes that proceeding in any other way would create a double standard among the very same victim population, *i.e.* former child soldiers. Accordingly, the participation forms already meeting the criteria established in the *Lubanga* case will not require further information.

20. However, in respect of the one specific aspect arising in the present case, namely the sexual and gender-based crimes suffered by some of the victims, the Common Legal Representative recalls that the circumstances of the commission of said crimes – *i.e.* the rapes and/or sexual violence which occurred while the victims were forced to serve in the UPC/FPLC, the time elapsed since the commission of said crimes, and the resurgence of the conflict<sup>25</sup> – are such that victims are in no position to produce

---

<sup>23</sup> See the email from the Common Legal Representative to the VPRS entitled "RE: Ntaganda Reparations – consultation on redaction guidelines", dated 2 November 2022 at 16:28. See also the email from the VPRS to the Common Legal Representative entitled "Re: Ntaganda Reparations – consultation on redaction guidelines", dated 2 November 2022 at 16:45, acknowledging and agreeing upon this *modus operandi* "We'll proceed accordingly and only flag items which we consider not covered by the guidelines and the Order".

<sup>24</sup> See the Order, *supra* note 1, para. 24.

<sup>25</sup> See also the "Registry's Observations on Reparations in the *Ntaganda* Case", [No. ICC-01/04-02/06-2475-AnxI](#), 28 February 2020, para. 23 ("One of the key findings from the VPRS mapping exercise is that almost no contemporaneous supporting documentation has survived from the 2002-2003 conflict in Ituri. The reasons that the persons consulted reported for this include: 1) deliberate destruction of document storage facilities by the Union des Patriotes Congolais ('UPC') / Force Patriotique pour la Libération du Congo ('FPLC') during the conflict; 2) loss of documentation due to intervening conflicts and instability; and 3) loss of documentation due to the passage of time").

documents in support of their claims. The CLR incidentally notes that this is not necessary for the standard of proof on a balance of probabilities to be met.

21. In any event, the Common Legal Representative welcomes the procedure set out by the Chamber whereby she will be able to supplement the applications that would be deemed ineligible and to have them re-examined at the implementation stage.<sup>26</sup>

### **3) On the 39 [REDACTED] Forms**

22. The Common Legal Representative takes note of the fact that, on 2 November 2022, the Chamber directed the Registry to include the 39 [REDACTED] Forms in the universe of victims to be considered for the constitution of the sample.<sup>27</sup>

23. At the outset, she clarifies that, should one or more of these individuals become part of the sample, she will do her utmost to assist them. However, she finds herself bound to express her most serious concerns with regard to the circumstances surrounding the collection and storage of these application forms.

24. Indeed, she notes that these forms were stored by the VPRS for almost two years without neither her as CLR for the former child soldiers in the present case, nor the Office of Public Counsel for Victims (the “Office”) – [REDACTED]<sup>28</sup> – having been contacted with regard to said applications prior to the email sent by the VPRS on 2 November 2022.<sup>29</sup>

---

<sup>26</sup> See the Order, *supra* note 1, para. 10.

<sup>27</sup> See the email from the Chamber to the parties entitled “RE: Ntaganda case: VPRS request to add victims to the sample universe”, dated 2 November 2022 at 13:19.

<sup>28</sup> [REDACTED]; and [REDACTED].

<sup>29</sup> See the email from the VPRS to the Chamber, the parties and the Prosecution entitled “Ntaganda case: VPRS request to add victims to the sample universe”, dated 2 November 2022 at 11:05.

25. Additionally, she understands that these applicants filled out the [REDACTED],<sup>30</sup> [REDACTED].<sup>31</sup> [REDACTED].

26. Further, she understands that [REDACTED]. The CLR notes in this regard that, at the time of the transmission of said applications to the VPRS – *i.e.* December 2020, [REDACTED],<sup>32</sup> [REDACTED],<sup>33</sup> and the Reparations Order in the present case was yet to be issued. Accordingly, she fails to understand why no information whatsoever was shared [REDACTED] at that time.

27. Further, the Common Legal Representative notes that the Chamber, on 23 July 2021, rejecting her request to be appraised of the potential new beneficiaries' files,<sup>34</sup> appointed her to represent *"the interests and the rights of all potential beneficiaries of reparations [in the Ntaganda case], during any litigation or judicial proceedings that may arise in the course of the reparations proceedings until the approval of the final DIP"*.<sup>35</sup> Accordingly, she regrets that no timely action was undertaken to inform her of the existence of these files at that time.

---

<sup>30</sup> Upon receipt of this information by the VPRS by way of email on 2 November 2022 at 11:05, the Office enquired on the circumstances surrounding the receipt of these forms and understood that the VPRS has no information on [REDACTED]. See the email from the VPRS to the OPCV, entitled "RE: Ntaganda case: VPRS request to add victims to the sample universe", dated 3 November 2022 at 18:48.

<sup>31</sup> [REDACTED].

<sup>32</sup> See the "Order concerning the 'Decision Approving the Proposals of the Trust Fund for Victims on the Process for Locating New Applicants and Determining their Eligibility for Reparations' of 7 February 2019" (Trial Chamber II), [No. ICC-01/04-01/06-3469](#), 8 November 2019; and the "*Décision sur la requête du Fonds au profit des victimes du 21 octobre 2020*" (Trial Chamber II), [No. ICC-01/12-01/15-3496](#), 14 December 2020.

<sup>33</sup> See the "Decision on the OPCV's request to participate in the reparations proceedings" (Trial Chamber II), [No. ICC-01/04-01/06-2858](#), 5 April 2012; and the "Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016" (Trial Chamber II), [No. ICC-01/04-01/06-3252-tENG](#), 21 October 2016.

<sup>34</sup> See the "Public Redacted Version of the 'Observations of the Common Legal Representative of the Former Child Soldiers on the Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan' (ICC-01/04-02/06-2743-Conf-Exp, 4 February 2022)", [No. ICC-01/04-02/06-2743-Red2](#), 4 February 2022, paras. 25-28; and the "Corrigendum of 'Decision on the TFFV's Third Update Report on the Implementation of the Initial Draft Implementation Plan'" (Trial Chamber II), [No. ICC-01/04-02/06-2745-Corr](#), 26 April 2022, para. 12, dismissing her request.

<sup>35</sup> 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, para. 40.

28. [REDACTED]. [REDACTED].

29. In short, while the Common Legal Representative deplores the circumstances surrounding the collection and storage of these applications, she believes that the applicants themselves cannot be penalised by said circumstances and reiterates that she will do her utmost to assist these individuals, if and when required.

30. In this regard, should any of said applications be randomly included in the sample, the CLR requests that the Chamber instruct the Registry to notify her of the full unredacted versions of said documents in order to evaluate whether they require supplementary information. In general, if included in the sample, unredacted applications of any non-participating victims former child soldiers (long forms) should be provided to the Common Legal Representative.

**FOR THE FOREGOING REASONS**, the Common Legal Representative respectfully requests the Chamber to:

- Take note of the present submissions; and
- instruct the Registry to provide her with the unredacted dossiers of non-participating victims (long forms and [REDACTED] Forms), if included in the sample.



Sarah Pellet  
Common Legal Representative of the  
Former Child soldiers

Dated this 14<sup>th</sup> day of November 2022

At The Hague, The Netherlands