

**Cour
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**International
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Court**



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Date: 20 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***

Confidential

**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)"**

Source: Office of Public Counsel for Victims (CLR2)

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Trust Fund for Victims

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response 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)” (the “CLR1 Request”).¹ The Request essentially consists of two interrelated requests, namely (i) a request for an extension of time for consultation purposes of three calendar months (the “Request for Extension of Time”), and (ii) a request for an order for supplementary information directed at the Trust Fund for Victims (the “TFV”) in relation to the Draft Implementation Plan (the “DIP”) filed on 20 December 2021 (the “Request for Supplementary Information”).

2. From the information available to the Legal Representative, the Request for Extension of Time appears to be *prima facie* well founded. Accordingly, the Legal Representative does not oppose said request.

3. As regards the Request for Supplementary Information, the Legal Representative supports the request.

4. The DIP submitted by the TFV is largely devoid of sufficient detail that would have enabled meaningful discussions and consultations with the Legal Representative’s clients. Accordingly, the Legal Representative intended to file observations outlining which parts of the DIP are deficient in their current state and where further details and information is needed to substantiate some of the proposals put forth by the TFV. Thus, the Legal Representative would, in any event, not have been in a position to provide substantive observations on the DIP by 24 January 2022.

¹ See 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)”, [No. ICC-01/04-02/06-2735-Red](#), 18 January 2022 (the “CLR1 Request”).

He would have had to limit himself to equally generalised submissions. These would ultimately not have moved the process forward and only resulted in further delays, as he, too, intended to request Trial Chamber II (the “Chamber”) to order the TFV to provide an amended DIP.

5. Accordingly, the Legal Representative supports the Request for Supplementary Information in relation to the topics identified by the CLR1, and respectfully requests that additional topics of particular relevance to the victims of the attacks be added to the instructions to the TFV.

II. PROCEDURAL BACKGROUND²

6. On 8 March 2021, Trial Chamber VI issued the “Reparations Order” (the “Reparations Order”),³ whereby it *inter alia* instructed the TFV to file the DIP in this case within six months of that decision.⁴

7. On 16 July 2021, the TFV submitted a request for the variation of the time limit for the submission of the DIP. In particular, the TFV sought an extension of time until 17 December 2021.⁵

8. On 22 July 2021, the parties expressed their support for the TFV’s request.⁶ The Registry informed the Chamber that it had no observations to make on the matter.⁷

² The procedural background included in these submissions is non-exhaustive and primarily focuses on the procedure relevant to these submissions, omitting the procedure before the Appeals Chamber and submissions in relation to the Initial Draft Implementation Plan (the “IDIP”).

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

⁴ *Idem*, para. 249.

⁵ 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.

⁶ See 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; “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.

⁷ See the Email correspondence from the Registry to the Chamber on 22 July 2021 at 11:10.

9. On 23 July 2021, the Chamber granted the TFV an extension of time to submit its DIP by 17 December 2021.⁸ The Chamber did not indicate when the parties and participants were to respond.

10. On 15 December 2021, the Defence filed the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, seeking an extension until 24 January 2022.⁹

11. As instructed by the Chamber,¹⁰ the Legal Representatives responded to the Defence request for an extension of time by noon on 17 December 2021 supporting the request.¹¹

12. The TFV conveyed to the Chamber, parties and participants that it did not intend to respond to the Defence request for an extension of time, and that it intended to file the DIP before midnight on 17 December 2021.¹²

13. The Registry informed the Chamber that it did not have observations on the Defence request for an extension of time.¹³

⁸ 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.

⁹ See the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2728](#), 15 December 2021.

¹⁰ See the Email correspondence from the Chamber to the parties and participants on 15 December 2021 at 19:49.

¹¹ See the “Joint Response of the Common Legal Representatives of the Victims to the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2729](#), 17 December 2021.

¹² See the Email correspondence from the TFV to the Chamber, parties and participants on 17 December 2021 at 11:23.

¹³ See the Email correspondence from the VPRS to the Chamber on 17 December 2021 at 12:13.

14. On 20 December 2021, the TFV filed the DIP.¹⁴ At the request of the Legal Representative,¹⁵ the TFV had previously provided a courtesy copy thereof on 18 December 2021.¹⁶

15. On 14 January 2022, the Defence requested an extension of the page limit to 30 pages for its observations on the DIP.¹⁷

16. On 17 January 2022, the Chamber directed the Common Legal Representatives, the TFV and the Registry to file any observations on the Defence request by 19 January 2022.¹⁸

17. On the same day, the TFV¹⁹ and the Registry²⁰ informed the Chamber that they did not have observations on the Defence request for an extension of time.

18. On 18 January 2022, the Common Legal Representatives jointly responded to the Defence request for an extension of the page limit, not opposing said request.²¹

19. On the same day, the Chamber granted the Defence request for an extension of the page limit.²²

20. Also on 18 January 2022, the Common Legal Representative or the Former Child Soldiers filed the "Public Redacted version of the 'URGENT Request of the Common

¹⁴ See the "Draft Implementation Plan ("DIP") of the Trust Fund for Victims for the collective reparations awarded to the victims of the crimes for which Mr Bosco Ntaganda has been convicted by the International Criminal Court", [No. ICC-01/04-02/06-2732-Conf-AnxA](#), 20 December 2021 (the "DIP").

¹⁵ See the Email correspondence from the Legal Representative to the TFV on 17 December 2021 at 11:37.

¹⁶ See the Email correspondence from the TFV to the Chamber, parties and participants on 18 December 2021 at 01:08.

¹⁷ See the "Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims", [No. ICC-01/04-02/06-2733](#), 14 January 2022.

¹⁸ See the Email correspondence from the Chamber to the parties and participants on 17 January 2022 at 11:48.

¹⁹ See the Email correspondence from the TFV to the Chamber on 17 January 2022 at 12:15.

²⁰ See the Email correspondence from the VRPS to the Chamber on 17 January 2022 at 13:40.

²¹ See the "Joint Response of the Common Legal Representatives of the Victims to the 'Request on behalf of Mr Ntaganda seeking an extension of the page limit to respond to the Draft Implementation Plan of the Trust Fund for Victims'", [No. ICC-01/04-02/06-2734](#), 18 January 2022.

²² See the Email correspondence from the Chamber to the parties and participants on 18 January 2022 at 12:49.

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)".²³

21. On the same day, the Chamber directed the Common Legal Representatives, the TFV and the Registry to file any observations on the CLR1 request by 20 January 2022.²⁴

III. CLASSIFICATION

22. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court (the "ROC"), the present submissions are classified as confidential, since they refer to the content of the DIP, which is likewise classified as confidential.

IV. SUBMISSIONS

(a) *Request for Extension of Time*

23. The Legal Representative takes note of the CLR1's submissions to the extent that he has been notified thereof.²⁵ As such, he has no reason to doubt that the criteria of regulation 35(2) of the ROC are fulfilled and that an extension of time is warranted in the circumstances.

24. Accordingly, the Legal Representative does not oppose the Request for Extension of Time as such, provided the related Request for Supplementary Information is granted by the Chamber.

(b) *Request for Supplementary Information*

25. The DIP submitted by the TFV lacks specificity in relation to many key aspects, such as (i) details on intended reparations programmes, (ii) details on the modalities of reparations, (iii) basic information on some intended forms of reparations, and – as an

²³ See the CLR1 Request, *supra* note 1.

²⁴ See the Email correspondence from the Chamber to the parties and participants on 18 January 2022 at 17:31.

²⁵ See the CLR1 Request, *supra* note 1, paras. 16-17, 19 and 21.

overarching theme – (iv) a lack of information on the budgetary implications of the proposals put forward.

26. Other proposals put forth in the DIP, although largely undeveloped, were never discussed with the Legal Representative in the extensive consultation process that has taken place over the last ten months. These proposals largely concern the TFV's intention of providing cash payments of various sorts and classification to different groups of eligible beneficiaries. As such, these proposals do not conform with the views of the victims of the attacks about their individual expectations expressed in the reparations proceedings so far. This in turn requires that these proposals be thoroughly discussed with the Legal Representative's clients. However, the proposals as presented are deficient for this purpose. The TFV does not elaborate on the intended sums of these cash payments, nor does the TFV explain how these payments are intended to ultimately relate to other forms of reparations, such as educational programmes or socio-economic initiatives ordered by Trial Chamber VI.

27. In order to facilitate the reparations process and to enable the Legal Representative to convey to the Chamber the views of his clients, the TFV should be requested to provide further detail and elaborate on some of its proposals included in the DIP.

28. As regards the specific topics on which the Legal Representative requires further information for the purposes of informed consultations and resulting observations, he respectfully requests that the TFV be ordered to address the following:

- (i) The basis for its assumptions on the number of potential beneficiaries both direct and indirect victims;²⁶
- (ii) Clarify the contradictory submissions on the extent of the intended programmes to address transgenerational harm, in particular whether

²⁶ See the DIP, *supra* note 14, paras. 88-90 and 103-104.

these programmes should provide psychological assistance only, or also socio-economic and/or educational and/or other support;²⁷

(iii) Provide concrete proposals and set out how the TFF intends to guarantee access to programmes by currently displaced beneficiaries and clarify the locations of such intended programmes;

(iv) Clarify its submissions on who should benefit from school fees and clarify in this regard its understanding of the term 'dependents of beneficiaries';²⁸

(v) Clarify how it projects the per person cost for reparation programmes for the victims of the attacks since its submissions are based on the *Lubanga* programmes (*per capita* cost of 8000 USD);²⁹

(vi) Clarify what in particular it envisages in relation to programmes for SGBV victims and children born out of rape belonging to the victims of the attacks and whether these will be of equal character to the intended programmes for former child soldier SGBV victims and their children born out of rape;³⁰

(vii) Provide concrete and specific proposals in relation to symbolic reparations³¹ that victims can be consulted on;

(viii) What measures other than the installation of a plaque the TFF intends to propose in order to repair the harm caused to the Sayo Health Centre,³² which includes not only damage to the health centre itself but also the loss of adequate healthcare provision to the community that benefited from it;³³

(ix) Clarify the budgetary implications of its proposal to hire a consultant in relation to missing persons;³⁴

(x) Clarify and explain how exactly it has and intends to engage with the DRC authorities to secure action on the latter's part and what kind of support or contribution the TFF expects to obtain from the authorities;³⁵

²⁷ *Idem*, paras. 125a, 171 and 200.

²⁸ *Idem*, para. 182.

²⁹ *Idem*, para. 144.

³⁰ *Idem*, para. 202.

³¹ *Idem*, para. 126.

³² *Idem*, para. 216.

³³ See the Reparations Order, *supra* note 3, para. 183(a)(x).

³⁴ See the DIP, *supra* note 14, para. 225.

³⁵ *Idem*, para. 146.

(xi) Provide further explanations and detail – in particular on the budgetary implications – on the proposed lump sums³⁶ and starter sums³⁷ and specify their intended amount and how they relate to the beneficiaries' ability to benefit from other reparations measures.

(xii) Provide further explanations and detail – in particular on the budgetary implications – on the intended support for educational activities;³⁸

(xiii) Provide further detail on the intended support for socio-economic activities and for social rehabilitation, in particular as far as the victims of the attacks are concerned;³⁹

(xiv) In light of the TFV's submission that the *Lubanga* and *Ntaganda* programmes will be merged,⁴⁰ and absent concrete proposals for intended programmes for the victims of the attacks, clarify how it intends to expend funds to ensure equal and equitable treatment of the victims of the attacks *vis-à-vis* the former child soldiers;

(xv) Clarify its proposal in relation to the apportionment of liability between Mr Lubanga and Mr Ntaganda and the related budgetary implications thereof,⁴¹ and clarify in this regard the reasons why the amount of 12 727 000 USD intended to be expended for the benefit of former child soldiers⁴² is meant to be fully taken from the overall cost to repair set for Mr Ntaganda rather than being shared between the two convicted;

(xvi) Clarify how it intends to integrate the IDIP into the DIP;⁴³

(xvii) Provide further detail on the way it intends to allocate the available funds in relation to the different proposals put forth and given challenges for raising additional funds;⁴⁴

(xviii) Set out one clear proposal on the eligibility assessment and review mechanism.

³⁶ *Idem*, para. 188.

³⁷ *Idem*, para. 175.

³⁸ *Idem*, 178-181.

³⁹ *Idem*, paras. 185-187.

⁴⁰ *Idem*, para. 238.

⁴¹ *Idem*, paras. 248-249.

⁴² *Ibid.*

⁴³ *Idem*, paras. 233-236.

⁴⁴ *Idem*, para. 254.

29. To the extent that the topics identified in the foregoing paragraph differ or are supplementary to those identified by the CLR1,⁴⁵ the Legal Representative respectfully requests that they be added to the instructions to the TFV, should the Chamber grant the Request for Supplementary Information.

V. CONCLUSION

30. The Legal Representative shares the view expressed in the CLR1 Request that the TFV's DIP lacks depth and concrete proposals that would have enabled meaningful consultations and the collection of the victims' views on key aspects of programmes that are to be designed for their benefit. In order to achieve this, the TFV will have to present supplementary information and/or clarifications on the proposals contained in its DIP.

31. Accordingly, the Legal Representative supports the Request for Supplementary Information and has no objection to the Request for Extension of Time being granted as a consequence.

RESPECTFULLY SUBMITTED,



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 20th day of January 2022
At The Hague, The Netherlands

⁴⁵ See the CLR1 Request, *supra* note 1, para. 22.