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**International
Criminal
Court**



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No.: ICC-01/04-02/06
Date: 8 November 2023

TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovacs
Judge Maria del Socorro Flores Liera

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Confidential

**Defence request seeking a limited extension of time as well as leave to exceed
the applicable page limit to respond to the Trust Fund for Victims'
and the Registry's submission of additional information on the
Draft Implementation Plan for Reparations**

Source: Defence Team of Mr Bosco Ntaganda

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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Trust Fund for Victims

Ms Deborah Ruiz Verduzco

Further to the First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations issued by Trial Chamber II ("Chamber") on 11 August 2023 ("First Decision on Updated DIP"),¹ the Trust Fund for Victims' Submission of Additional Information on the Draft Implementation Plan, filed on 3 November 2023 ("TFV Additional Information")² and the Registry Submission pursuant to ICC-01/04-02/06-2860-Red, filed on 3 November 2023 ("Registry Additional Information"),³ Counsel for the Convicted Person ("Defence") hereby submits this:

**Defence request seeking a limited extension of time as well as leave to exceed
the applicable page limit to respond to the Trust Fund for Victims'
and the Registry's submission of additional information on the
Draft Implementation Plan for Reparations**

"Defence Request – Additional Time and Pages"

INTRODUCTION

1. Pursuant to Regulations 35(2) and 37(2) of the Regulations of the Court ("RoC") and for the reasons set out below, which constitute good cause and exceptional circumstances, the Defence respectfully moves the Chamber to grant a limited extension of time of 25 days and to authorize the Defence to submit observations, not exceeding 40 pages, on the TFV Additional Information on DIP and the Registry Additional Information on DIP.

2. The Defence acknowledges the necessity for the implementation of reparations in this case to proceed as quickly as possible. However, considering the length of the TFV Additional Information and Registry Additional Information, the number of

¹ First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations, 11 August 2023, ICC-01/04-02/06-2860 ("First Decision on Updated DIP").

² Trust Fund for Victims' Submission of Additional Information on the Draft Implementation Plan, 3 November 2023, ICC-01/04-02/06-2877 ("TFV Additional Information").

³ the Registry Submission pursuant to ICC-01/04-02/06-2860-Red, 3 November 2023, ICC-01/04-02/06-2878 ("Registry Additional Information").

topics addressed therein and the importance of these issues for the proper implementation of reparations in this case, it is in the interest of justice that the Defence be provided with an opportunity to submit meaningful submissions.

3. In addition, the inability of the TFV to provide concrete and practical additional information on several topics, due at least in part to the fact that the Appeals Chamber has yet to pronounce on the LRV2 and Defence's requests for suspensive effect of their respective appeals against the 14 July Addendum,⁴ militates strongly in favour of granting the Defence Request – Additional Time and Pages.

CONFIDENTIALITY

4. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, this Defence Appellant Brief is classified confidential as it refers to documents bearing the same classification.

SUBMISSIONS

5. The TFV Additional Information and the Registry Additional Information, initially due on 13 October 2023, were filed and notified to the Defence on 3 November 2023 pursuant to the First Decision on Updated DIP. Accordingly, the parties are scheduled to submit observations thereon by 16 November 2023,⁵ in filings limited to 20 pages.⁶ The Defence respectfully submits that the present conditions do not allow for the submission of meaningful observations capable of assisting the Chamber in steering the implementation of reparations in the right direction.

⁴ Request for the Defence appeal against the Addendum issued by Trial Chamber II on 14 July 2023 to be given suspensive effect, 16 August 2023, ICC-01/04-02/06-2864; Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659, and Request for Suspensive Effect in relation to Trial Chamber II's Decision on the eligibility of Victims a/01636/13, a/00212/13, a/00199/13 and a/00215/13, 16 August 2023, ICC-01/04-02/06-2862.

⁵ First Decision on Updated DIP, Disposition.

⁶ Regulation 37(1) ROC.

6. For the reasons set out below, good cause justifies granting the Defence a limited extension of 25 days (35 days in total) for the submission of its observations. Exceptional circumstances arising from the submission of the TFV Additional Information and Registry Additional Information warrant authorising the Defence to submit observations not exceeding 40 pages (20-page extension).

7. Should the LRV1 and/or LRV2 require similar extensions of time and page limit, the Defence would not oppose their substantiated requests.

8. As a preliminary matter, the Defence underscores that the issues addressed in the TFV Additional Information and Registry Additional Information cover a wide range of topics and relevant issues for the implementation of reparations in this case. Notably, these submissions comprise no less than 110 pages. More specifically, the TFV Additional Information, along with its two annexes, includes 40 pages. As for the Registry Additional Information, it includes a 4-page cover filing along with three annexes of respectively 24, 18 and 24 pages, for a total of 70 pages.

9. Second, it is noteworthy that further to the 14 July Addendum issued by the Chamber,⁷ which is presently the object of appeals submitted by the LRV2 and the Defence, this is the Defence's first opportunity to make observations on the Updated DIP submitted by the TFV on 24 March 2022, based on the 8 March Reparations Order. Whereas the parties had the opportunity to submit observations on the TFV Updated DIP on 18 May 2022,⁸ 4 months before the Appeals Judgment was rendered on 12 September 2022,⁹ the Chamber neither ruled nor issued any guidelines concerning the

⁷ Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659, 14 July 2023, ICC-01/04-02/06-2858.

⁸ Common Legal Representative of the Former Child Soldiers' Response to the "Trust Fund for Victims' second submission of Draft Implementation Plan" (ICC-01/04-02/06-2750), 18 May 2023, ICC 01/04-02/06-2763; Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims' Updated Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2764; Observations on behalf of the convicted person on the Trust Fund for Victims' Updated Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2765.

⁹ Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order," 12 September 2022, ICC-01/04-02/06-2782.

TFV Updated DIP at the time. In this regard, even though the observations to be filed by the Defence should - and will - address the TFV Additional Information and the Registry Additional Information, this exercise requires a thorough analysis of the TFV Updated DIP, taking into consideration all developments that have taken place since.

10. When the TFV submitted its first DIP on 17 December 2021,¹⁰ the parties had more than 35 days to submit their observations. And when the TFV submitted its Updated DIP,¹¹ taking into consideration some input by the parties but no judicial decision thereon, the parties had 54 days to submit their observations. The parties' observations at the time, did not factor in the Appeals Judgment. The situation has significantly changed since then and it is necessary for the parties to take these developments into consideration, which requires time.

11. When submitting their observations on the TFV Updated DIP, the parties were authorized to exceed the applicable page limit and to file submissions not exceeding 40 pages.¹²

12. Third, further to the transfer of the Convicted Person to Belgium to serve the remainder of his sentence, in December 2022, the ability of the Defence to communicate with the Convicted Person has been significantly hindered. For example, Defence team members are unable to initiate calls to the Convicted Person. Only the Convicted Person can place calls, incurring extremely high costs due to the location of Defence team members. Moreover, even though the Defence succeeded in setting up audio-video conference calls with the Convicted Person for work purposes, this is only possible once per week, when the system works. To provide but one example, the planned audio-video conference with the Convicted Person on Tuesday

¹⁰ Trust Fund for Victims' submission of Draft Implementation Plan, 17 December 2021, ICC-01/04-02/06-2732 with Annex A, ICC-01/04-02/06-2732-Conf-AnxA.

¹¹ Trust Fund for Victims' second submission of Draft Implementation Plan, 24 March 2022, ICC-01/04-02/06-2750 with Annex 1, ICC-01/04-02/06-2750-Anx1-Red-Corr ("Updated DIP").

¹² The Defence Observations comprise 40 pages; the LRV1 observations comprise 22 pages; the LRV2 observations comprise 36 pages.

7 November, did not materialize for technical reasons. It is now necessary to wait until next week for the next audio-video conference call.

13. In these circumstances, it is very difficult to obtain instructions from the Convicted Person, which seriously impedes the work of the Defence. In addition, it is not possible to exchange and/or show documents to the Convicted Person. To provide but one example, a mission plan was recently submitted for the purpose of having a member of the Defence team co-located with the Convicted Person during the last week before submitting the Defence Appellant Brief with the aim of obtaining input from the Convicted Person daily. Unfortunately, due to administrative requirements and a complicated procedure, the Defence team member was not able to obtain the necessary visa in time to be able to travel to Belgium, which impacted the ability of the Defence to obtain instructions from the Convicted Person.

14. Fourth, the Defence is currently in the process of drafting its Respondent Brief to the LRV2 Appellant Brief against the Addendum to the Reparations Order,¹³ with a deadline set for 2 January 2023 pursuant to Regulation 59(1) RoC. This is a time and resource consuming endeavour, which impedes the ability of the Defence to draft its observations to the TFV Additional Information and the Registry Additional Information.

15. Fifth, as previously mentioned,¹⁴ the composition of the Defence team at this stage of the reparations process is limited to a bare minimum, *i.e.* Counsel and Case Manager with the part time assistance of an Associate Counsel, and the resources available do not allow to secure additional assistance. Moreover, the situation is

¹³ Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659”, 30 October 2023, ICC-01/04-02/06-2875.

¹⁴ See for instance Defence request for a limited extension of the time limit set to make submissions on the dossiers of the victims included in the sample, 20 March 2023, ICC-01/04-02/06-2837, para.10.

compounded by the fact that Defence team members presently work in different time zones, making effective coordination more challenging.

16. Sixth, it is noteworthy that the TFV was not able to provide additional information on all topics it was requested to address due to the ongoing security situation and the fact that the Appeals Chamber has yet to rule on the LRV2 and Defence requests for suspensive effect of their respective appeals.¹⁵ The upcoming decision on the requests for suspensive effect is indeed a very important consideration. As for the security situation, particularly in Sayo, it continues to impact the implementation of reparations in this case and it is unlikely that the situation will improve until the upcoming elections in the DRC and the status of the MONUSCO is confirmed, one way or another.¹⁶

17. The TFV Additional Information includes a request to be authorized to submit additional information on the topics that remain unaddressed until 21 days following the Appeals Chamber's decision on the requests for suspensive effect.¹⁷ Hence, granting the Defence additional time to submit its observations would not prejudice the parties or the reparations process itself. Moreover, should the TFV request be granted, the Defence should also be given an opportunity to provide observations on the additional information provided at that stage.¹⁸

18. The Defence respectfully submits that the above constitute good cause pursuant to Regulation 35(2) RoC and also demonstrates the existence of exceptional circumstances in accordance with Regulation 37(2) RoC.

¹⁵ See *inter alia* TFV Additional Information, paras.35,47-48,94,103.

¹⁶ TFV Additional Information, para.96.

¹⁷ TFV Additional Information, para.35

¹⁸ The TFV intends to provide additional information regarding, *inter alia*, the consequence of the requests for suspensive effect, socio-economic starter sum, Sayo health center, missing persons-related measures, lump sum *in lieu*, expense pre-approval or reimbursement procedure, security situation and consultations and risk assessment regarding the location and the naming of a center after Abbé Bwanalonga.

RELIEF SOUGHT

19. Considering the foregoing, the Defence respectfully requests the Chamber to:

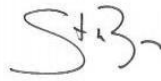
GRANT the Defence Request – Additional Time and Pages;

GRANT the Defence 25 additional days, for a total of 35 days, to submit its observations on the TFV Additional Information and the Registry Additional Information;

AUTHORIZE the Defence to submit observations not exceeding 40 pages; and

PROVIDE the Defence with an opportunity to submit observations on any additional information submitted at a later time by the TFV or the Registry .

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF NOVEMBER 2023



Me Stéphane Bourgon *Ad.E.*, Counsel for Bosco Ntaganda

The Hague, The Netherlands