

Pursuant to Trial Chamber II instruction dated 06 March 2024 this document is reclassified as Public

**Cour
Pénale
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**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06
Date: 10 November 2023

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

**Joint Response of the Common Legal Representatives of the Victims to the
“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” (ICC-01/04-02/06-2879-Conf)**

Source: Office of Public Counsel for Victims (CLR1 and CLR2)

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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

Counsel for the Defence

Mr Stéphane Bourgon

Ms Kate Gibson

Mr Benjamin Willame

Unrepresented Victims**Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for
Victims****Office of the Prosecutor****States' Representatives****Amicus Curiae****REGISTRY**

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Ms Deborah Ruiz Verduzco

Others

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers and the Common Legal Representative of the Victims of the Attacks (the “CLR2”) (jointly the “Legal Representatives”) hereby file a joint response to the “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” (the “Defence Request” or the “Request”).¹

2. The Legal Representatives submit that the Defence has not shown good cause for an extension of the time limit as required pursuant to regulation 35(2) of the Regulations of the Court (the “Regulations”), and that there are no exceptional circumstances which would justify an extension of the page limit as per regulation 37(2) of the Regulations. Accordingly, the Defence Request should be denied in its entirety.

II. PROCEDURAL BACKGROUND

3. On 8 July 2019, Trial Chamber VI convicted Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes,² a conviction that was fully confirmed by the Appeals Chamber on 30 March 2021.³

¹ See the “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”, [No. ICC-01/04-02/06-2879-Conf](#), 8 November 2023 (the “Defence Request”).

² See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

³ See the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A2](#), 30 March 2021 with [AnxA](#) and [AnxB](#); as well as the “Separate opinion of Judge Howard Morrison and Judge Piotr Hofmański on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx1 A2](#); the “Separate opinion of Judge Howard Morrison on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx2 A2](#); the “Separate opinion of Judge Luz Del Carmen Ibáñez Carranza on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx3 A2](#); the “Separate opinion of Judge Solomy Balungi Bossa on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx4 A2](#); and the “Corrected version of partly concurring opinion of Judge Chile Eboe-Osuji”, [No. ICC-01/04-02/06-2666-Anx5-Corr A2](#).

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4. On 7 November 2019, Trial Chamber VI issued the Sentencing Judgment, imposing individual sentences for each of the counts of which Mr Ntaganda had been convicted and a joint sentence of 30 years,⁴ a decision which was also entirely confirmed by the Appeals Chamber on 30 March 2021.⁵

5. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”.⁶ Said Order was subsequently appealed by the CLR27 and by the Defence,⁸ which filed a request for suspensive effect of its appeal. The Appeals Chamber rejected said request,⁹ and issued its “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” on 12 September 2022, partially reversing the Reparations Order and remanding the matters at stake to Trial Chamber II (the “Chamber”).¹⁰

6. On 14 July 2023, the Chamber issued its “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (the “Addendum”).¹¹

7. On 11 August 2023, the Chamber issued its “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations”, approving the Trust Fund for Victims’ (the “TFV”) updated draft implementation plan (the “Updated DIP”) subject

⁴ See the “Sentencing judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

⁵ See the “Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2667-Red A3](#), 30 March 2021.

⁶ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

⁷ See the “Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparation Order”, [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021. See also the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 April 2021.

⁸ See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 OA4](#), 7 June 2021. See also the “Defence Notice of Appeal against the Reparations Order”, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669 A5](#), 8 April 2021.

⁹ See the “Decision on the Defence request for suspensive effect” (Appeals Chamber), [No. ICC-01/04-02/06-2691 A4 A5](#), 2 July 2021.

¹⁰ See the “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2782 A4 A5](#), and its Annexes [A](#) and [B](#), 12 September 2022.

¹¹ See the “Public Redacted Version of Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (Trial Chamber II), [No. ICC-01/04-02/06-2858-Red](#) and its Annexes [I](#) and [III](#), 14 July 2023 (the “Addendum”).

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to the conditions and directions set out in the Decision.¹² The Chamber *inter alia* instructed the TFV to provide it with additional specific information within 60 days of the notification of said decision.¹³ The Chamber also instructed the Registry, through the Victims Participation and Reparations Section (the “VPRS”), to provide the Chamber with specific information within the same deadline.¹⁴

8. On 1 September 2023, the Chamber issued its Decision on the TFV’s Ninth to Twelfth Update Reports on the Implementation of the Initial Draft Implementation Plan.¹⁵

9. On 28 September 2023, the TFV submitted, by email, a request for an extension of time until 3 November 2023 to submit the additional information solicited by the Chamber.¹⁶

10. On 29 September 2023, the Legal Representatives,¹⁷ the Registry,¹⁸ and the Defence¹⁹ informed the Chamber, by email, that they did not oppose the TFV’s request for an extension of time.

11. On the same day, the Defence submitted, by email, a request for an extension of time until 30 October 2023 to submit its appeal brief against the Addendum.²⁰

12. On 2 October 2023, the Chamber granted an extension of time until 3 November 2023 for the TFV and the Registry to submit the additional information, and adjusted the deadline for the parties to respond to said information accordingly.²¹

¹² See the “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations” (Trial Chamber II), [No. ICC-01/04-02/06-2860-Conf](#) and [No. ICC-01/04-02/06-2860-Red](#), 11 August 2023.

¹³ *Idem*, p. 66 and paras. 46, 89, 95, 96, 103, 110, 122, 127, 131, 160, and 199.

¹⁴ *Idem*, paras. 184 (b)-(c), 185(c), and 187.

¹⁵ See the “Decision on the TFV’s Ninth to Twelfth Update Reports on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2868-Conf](#), 1 September 2023.

¹⁶ See the Email correspondence from the TFV dated 28 September 2023 at 17:38.

¹⁷ See the Email correspondence from the Legal Representatives dated 29 September 2023 at 09:34.

¹⁸ See the Email correspondence from the Registry dated 29 September 2023 at 09:46.

¹⁹ See the Email correspondence from the Defence dated 29 September 2023 at 16:22.

²⁰ See the Email correspondence from the Defence dated 29 September 2023 at 19:03.

²¹ See the Email correspondence from Trial Chamber II dated 2 October 2023 at 11:57.

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13. On the same day, the Legal Representatives informed the Appeals Chamber, by email, that they did not oppose the Defence's request for an extension of time.²²

14. On 5 October 2023, the Appeals Chamber decided that the: (i) time limit for the filing of the appeal briefs for the Defence and the CLR2 is extended to 30 October 2023 at 16:00; and (ii) responses may be filed within 60 days of notification of the appeal briefs, pursuant to regulation 59 of the Regulations.²³

15. On 3 November 2023, the TFV²⁴ and the Registry²⁵ submitted additional information as requested by the Chamber on 11 August 2023 (the "TFV Submission" and the "Registry Submission" respectively).

16. On 8 November 2023, the Defence filed its Request.²⁶

17. On the same day, the Chamber decided that the Legal Representatives, the TFV and the Registry may submit observations on the Defence's Request by 10 November 2023, at the latest.²⁷

III. CLASSIFICATION

18. Pursuant to regulation 23*bis*(2) of the Regulations, the present response is filed confidential since the Defence Request bears the same level of classification. A public redacted version will be filed in due course.

²² See the Email correspondence from the CLR2 dated 2 October 2023 at 12:10 and the Email correspondence from the CLR1 dated 2 October 2023 at 12:30 and at 14:34.

²³ See the Email correspondence from the Appeals Chamber dated 5 October 2023 at 15:21.

²⁴ See the "Trust Fund for Victims' Submission of Additional Information on the Draft Implementation Plan", [No. ICC-01/04-02/06-2877-Conf](#), and its annexes [A](#) and [B](#), 3 November 2023.

²⁵ See the "Registry Submission pursuant to ICC-01/04-02/06-2860-Red", [No. ICC-01/04-02/06-2878](#), and its annexes [I](#), [II](#) and [III](#), 3 November 2023.

²⁶ See the Defence Request, *supra* note 1.

²⁷ See the Email correspondence from Trial Chamber II dated 8 November 2023 at 16:45.

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IV. SUBMISSIONS

19. According to regulation 35(2) of the Regulations, “[t]he Chamber may extend or reduce a time limit if good cause is shown [...]”.²⁸ The Chamber thus has the discretionary power to determine whether the grounds on which the variation of time limit is sought by an applicant show the existence of good cause for it to be granted.²⁹ According to regulation 37(2) of the Regulations, “[t]he Chamber may [...] extend the page limit in exceptional circumstances”. The Appeals Chamber clarified that “[a] cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations”.³⁰

20. The Defence asserts that “further to the 14 July Addendum issued by the Chamber, [...], this is the Defence’s first opportunity to make observations on the Updated DIP submitted by the TFV on 24 March 2022”, and that “this exercise requires a thorough analysis of the TFV Updated DIP, taking into consideration all developments that have taken place since”.³¹ In this regard, it is submitted that the Defence clearly fails to consider that the Chamber already approved, in large part, the Updated DIP on 11 August 2023, following extensive submissions from the parties and participants.³² Indeed, the Defence has had ample opportunity to submit observations on the Updated DIP,³³ observations which

²⁸ See regulation 35 of the Regulations of the Court.

²⁹ See the “Decision on the ‘Defence Application for Extension of Time to Submit Information on Viva Voce Witnesses to be Called at the Confirmation Hearing’” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/09-01/11-176](#), 11 July 2011, para. 12.

³⁰ See the “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007 (Appeals Chamber)”, [No. ICC-01/04-01/06-834 OA8](#), 21 February 2007, para. 7.

³¹ See the Defence Request, *supra* note 1, para. 9.

³² See the “First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations”, *supra* note 12.

³³ See, for instance, the “Observations on behalf of the convicted person on the Trust Fund for Victims’ Updated Draft Implementation Plan”, [No. ICC-01/04-02/06-2765-Conf](#) and [No. ICC-01/04-02/06-2765-Red](#), and its Annexes [A](#) and [B](#), 18 May 2022; and the “Observations on behalf of the convicted person on

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the Chamber took into account in its ruling. Consequently, the Legal Representatives see no reason for the Defence to make further observations on a filing on which there already is a decision which was informed by the Defence's previous submissions, and there is thus no need for the Defence to be authorised – yet again³⁴ – to file submissions up to 40 pages.

21. Furthermore, the Legal Representatives recall that *"the Defence's rights at this stage of the proceedings are limited"*, and that *"the results of the screening process have no impact on the determination of Mr Ntaganda's monetary liability"*, as held by the Chamber, as well as by the Appeals Chamber.³⁵ The TFV Submission, on the one hand, reports on various topics such as the funding of the *Ntaganda* programme, the timeline of its implementation, and specific reparation measures, while the Registry Submission, on the other hand, provides information exclusively on the eligibility process. Most of the additional information solicited by the Chamber has no impact whatsoever on the Defence's rights, even more so in view of its limited role at the present stage. Therefore, the Legal Representatives submit that the TFV Submission and the Registry Submission do not warrant an elaborate response from the Defence, and as such the Defence does not require additional time nor pages for its submissions.

22. Finally, the Legal Representatives note that the Defence was put on notice, as early as 11 August 2023,³⁶ of the specific topics to be addressed in the TFV Submission and the Registry Submission, as well as of the applicable deadlines – which were incidentally extended due to the IT disruptions that the Court faced throughout

the Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility", [No. ICC-01/04-02/06-2779](#), 1 August 2022.

³⁴ See the Defence Request, *supra* note 1, para. 11.

³⁵ See the "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" (Trial Chamber II), [No. ICC-01/04-02/06-2718-Conf](#) and [No. ICC-01/04-02/06-2718-Red](#), 29 October 2021 (dated 28 October 2021), para. 20; and the "Judgment on the appeal of the victims against the 'Reparations Order'" (Appeals Chamber), [No. ICC-01/12-01/15-259-Red2](#), 9 March 2018 (dated 8 March 2018), para. 93.

³⁶ See the "First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations", *supra* note 12.

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September.³⁷ The Defence thus had plenty of time to organise its workload³⁸ and its consultations with Mr Ntaganda³⁹ in the current circumstances, which in no way can be qualified as exceptional.

23. In conclusion, the Legal Representatives submit that the Defence has not shown good cause for an extension of the time limit as required pursuant to regulation 35(2) of the Regulations, and that there are no exceptional circumstances which would justify an extension of the page limit as per regulation 37(2) of the Regulations. Accordingly, the Defence Request should be denied in its entirety.

FOR THE FOREGOING REASONS, the Legal Representatives respectfully request the Chamber to reject the Defence Request in its entirety. Should the Chamber, by extraordinary, be minded to grant the Defence Request, the Legal Representatives respectfully request that the same extensions be granted to the participating victims.



Sarah Pellet
Common Legal Representative of the
Former Child soldiers



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks

Dated this 10th day of November 2023
At The Hague, The Netherlands

³⁷ See the Email correspondence from Trial Chamber II dated 2 October 2023 at 11:57. The Legal Representatives note that, for the same reasons, the Appeals Chamber granted the Defence and the CLR2 an extension of time to file their appeal briefs, thereby also extending the time limit for responses to said briefs. See *supra* para. 14.

³⁸ See the Defence Request, *supra* note 1, paras. 14-15.

³⁹ *Idem*, paras. 12-13.