

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**

Date: **03 October 2024**

Original Date: **06 February 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***

**Public
with Confidential Annex 1**

**Public redacted version of Decision on Request on behalf of Mr Ntaganda for disclosure
of material relied upon in the Gilmore Expert Report**

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:**Legal Representatives of Victims**

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Appointed Experts

Trial Chamber II of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘*Ntaganda* case’), having regard to articles 68 and 75 of the Rome Statute (‘Statute’), rules 87 and 97(2) of the Rules of Procedure and Evidence (‘Rules’), and regulation 23*bis* of the Regulations of the Court (‘Regulations’), issues this Decision on Request on behalf of Mr Ntaganda for disclosure of material relied upon in the Gilmore Expert Report (the ‘Decision’).

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 14 May 2020, Trial Chamber VI issued its Decision appointing four experts on reparations (‘Appointed Experts’), including Dr Sunneva Gilmore (‘Appointed Expert’).¹
2. On 30 October 2020, the Registry transmitted² two expert reports (‘Reports’), including the ‘Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare’, submitted by the Appointed Expert (the ‘Report’).³
3. On 8 March 2021, Trial Chamber VI delivered the Reparations Order.⁴ On 16 March 2021, Trial Chamber VI was dissolved and the case was assigned to Trial Chamber II.⁵ Hereafter, both Trial Chamber VI and Trial Chamber II are referred to as the ‘Chamber’.
4. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Appeals Judgment’).⁶ The Appeals Judgment remanded the matter to the Chamber, as it partially reversed the Reparations Order to the extent that it found that the Chamber failed to, *inter alia*, provide reasons in relation to the assessment of harm concerning the health centre in Sayo and the breaks in the chain of causation when establishing harm caused by the destruction of that health centre.⁷
5. On 25 October 2022, the Chamber issued its Order for the implementation of the Appeals Judgment (‘25 October 2022 Order’), *inter alia*, (i) instructing all parties and

¹ Decision appointing experts on reparations, 14 May 2020, [ICC-01/04-02/06-2528-Red](#), para. 9.

² Registry Transmission of Appointed Experts’ Reports, [ICC-01/04-02/06-2623](#) (with two Annexes, Confidential Ex Parte, available only to the Registry, public redacted versions notified on 3 November 2020).

³ Annex 2 to the Registry Transmission of Appointed Experts’ Reports, 3 November 2020, [ICC-01/04-02/06-2623-Anx2-Red4](#) (‘Second Expert Report’).

⁴ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

⁵ Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, [ICC-01/04-02/06-2663](#), p. 7.

⁶ Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

⁷ Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

participants, including the Office of the Prosecutor, the DRC Government and, if available, the Appointed Experts, to provide further submissions and possible evidence on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo;⁸ and (ii) the Appointed Experts, if available, to review the redactions to their Reports and additional information, indicating whether lesser redacted versions of the confidential and public redacted versions could be filed or justify the need to maintain their current classification.⁹

6. On 12 December 2022, in light of a Defence request,¹⁰ the Chamber issued a Decision extending the deadline for all the submissions and possible evidence on issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo.¹¹

7. On 21 December 2022, in accordance with the 25 October 2022 Order, the Registry submitted lesser redacted confidential and public versions of the two Reports.¹² The Registry informed that some redactions were maintained in both versions, primarily to protect potentially identifying information.¹³

8. On 16 January 2023, the Defence submitted a request ('Request')¹⁴ seeking: (i) the disclosure of certain material relied upon by the Appointed Expert in her Report, which were relevant to her conclusions as to the damage to the Sayo health centre.¹⁵ These included, [REDACTED], [REDACTED], 'interview 37', and information provided by ' [REDACTED] health care provider' and collected by an 'intermediary' ('Requested Material');¹⁶ and (ii) an adjustment of the deadline for submissions on these matters.¹⁷

9. On 17 January 2023, the Chamber instructed the Registry to seek the views of the Appointed Expert as to the disclosure with necessary redactions of the Requested Material.¹⁸

⁸ Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order" (25 October 2022 Order), 25 October 2022, [ICC-01/04-02/06-2786](#), para. 42.

⁹ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 43.

¹⁰ Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II, 6 December 2022 (public redacted version filed on 7 December 2022), [ICC-01/04-02/06-2798-Red](#), paras 1-3.

¹¹ Decision on the Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II, 12 December 2022, [ICC-01/04-02/06-2803](#), paras 10-11.

¹² Registry Transmission of Confidential Lesser Redacted Version and Public Lesser Redacted Version of Two Reparation Experts' Reports ('Registry Transmission'), 21 December 2022, [ICC-01/04-02/06-2806](#) (With Two Confidential Lesser Redacted Annexes and Two Public Lesser Redacted Annexes).

¹³ Registry Transmission, 21 December 2022, [ICC-01/04-02/06-2806](#), para. 11.

¹⁴ Request on behalf of Mr Ntaganda for disclosure of material relied upon in the Gilmore Expert Report ('Request'), 16 January 2023, ICC-01/04-02/06-2812-Conf, paras 1-3.

¹⁵ Request, ICC-01/04-02/06-2812-Conf, paras 1-3.

¹⁶ Request, ICC-01/04-02/06-2812-Conf, paras 2, 3.

¹⁷ Request, ICC-01/04-02/06-2812-Conf, p. 10.

¹⁸ Email from the Chamber's Legal Officer, 17 January 2023, 12:40.

The Chamber also temporarily suspended the deadline for the Defence's submissions and possible evidence on these issues.¹⁹

10. On 20 January 2022, following a submission from the Common Legal Representative for the Victims of the Attacks ('CLR2'),²⁰ the Chamber extended the temporary suspension of the deadline for submissions and possible evidence related to the actual damage and harm caused to the health centre in Sayo, to all parties and participants, including the Office of the Prosecutor, the DRC Government and, if available, the Appointed Experts.²¹

11. On 23 January 2023, the CLR2 submitted its response to the Request,²² asking the Chamber to reject it. In the alternative, the CLR2 requests the Chamber to ensure that the consent of the concerned individuals for the disclosure of their identities and other identifying and contact information is sought, and, in case of non-consent, that the necessary redactions are applied.

12. On 30 January 2023, the Registry submitted Appointed Expert's views, as requested by the Chamber ('Views').²³ The Appointed Expert indicates that: (i) providing any information relating to the interviewees' identity would compromise their safety and vitiate their consent and confidentiality; (ii) pursuant to her ethical and legal obligations, the personal data of interviewees was not retained beyond the end of her appointment as expert in 2020, and the relevant information from interviews was included in the Report; and (iii) the veracity of her conclusions could be corroborated by directly engaging [REDACTED] without compromising the security of the individuals concerned.

13. On 2 February 2023, following instructions from the Chamber for the VPRS to seek further clarifications from the Appointed Expert, the Registry's VPRS transmitted an email,²⁴ wherein she clarified that all pertinent information from the interviews she carried out were contained in the Report. In addition, the Appointed Expert noted that: (i) the interviews were not transcribed; (ii) the recordings of interviews were deleted upon the Report's completion; and (iii) the interview notes were destroyed in late 2020.

¹⁹ Email from the Chamber's Legal Officer, 17 January 2023, 12:40.

²⁰ Email to the Chamber's Legal Officer, 20 January 2023, 10:56.

²¹ Email from the Chamber's Legal Officer, 16:04.

²² Response of the Common Legal Representative of the Victims of the Attacks to the "Request on behalf of Mr Ntaganda for disclosure of material relied upon in the Gilmore Expert Report" ('Response'), 23 January 2023, ICC-01/04-02/06-2815-Conf, para. 2.

²³ Transmission of Appointed Expert Sunneva Gilmore's views on the Defence Request to disclose material relied upon in her Report (ICC-01/04-02/06-2812-Conf), 30 January 2023, ICC-01/04-02/06-2818-Conf (With one Confidential Annex).

²⁴ Email from the VPRS to the Appointed Expert, 2 February 2023, 22:43. See Annex 1 to the Decision.

II. ANALYSIS

14. Having reviewed the Appointed Expert's submissions and further clarification, the Chamber cannot but conclude that all information the Appointed Expert collected to inform her views were already included in the Report and there is no additional information that could be subject to disclosure. For these reasons, the Chamber considers unnecessary to rule on the arguments raised by the Defence and the CLR2 and dismisses the Request as moot.

15. The Chamber further notes that the Registry has submitted in December 2022, in accordance with the Chamber's instructions,²⁵ confidential and public lesser redacted versions of the two Reports.²⁶ The Chamber has reviewed the redactions and is satisfied that they were kept to the minimum required to protect the identity of the victims and intermediaries contacted by the Appointed Experts in order to inform their views, as detailed in the Reports.

16. The Chamber recalls that, in dealing with the issues on remand in light of the Appeals Judgment, it will consider further submissions and evidence on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo, including the weight to be attached to the Reports.²⁷

17. Accordingly, and in light of its previous instructions, all parties and participants, including the Office of the Prosecutor, the DRC Government and, if available, the Appointed Experts, are hereby directed to provide the relevant submissions and possible evidence within 15 days from the notification of the present Decision.

18. Finally, the Chamber directs the Defence, the CLR2, and the Registry to review their underlying submission and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential, within five days from the notification of the present Decision. The Chamber reiterates that it expects public redacted versions of confidential documents to be filed as expeditiously as possible, preferably simultaneously.

²⁵ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 43.

²⁶ Registry Transmission, [ICC-01/04-02/06-2806](#) (With Two Confidential Lesser Redacted Annexes and Two Public Lesser Redacted Annexes).

²⁷ 25 October 2022 Order, [ICC-01/04-02/06-2786](#), para. 42.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

DISSMISES that the Request as moot;

ENDORSES the redactions to the two Reports;

DIRECTS all parties and participants, including the Office of the Prosecutor, the DRC Government and, if available, the Appointed Experts, to provide further submissions and evidence on the issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo, within 15 days from the notification of the present Decision; and

DIRECTS the Defence, the CLR2 and the Registry to review its underlying submission and either file public redacted version, request the reclassification as public, or justify the need to maintain the current classification as confidential, within five days from the notification of the present Decision.

Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated: 3 October 2024

Original Date: Monday, 6 February 2023

At The Hague, The Netherlands