



Original: English

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

Date: 30 March 2020

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuca

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Registry Observations on the Defence request for reclassification of Annexes II and III of the “Registry’s Observations on Reparations” (ICC-01/04-02/06-2493)

Source: Registry

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

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I. Introduction

1. The Registry hereby presents its observations on the Defence's "Request on behalf of Mr. Ntaganda seeking reclassification of Annex II and III to the 'Registry's Observations on Reparations'" ("Defence Request"),¹ pursuant to the order of Trial Chamber VI ("Chamber") conveyed by email on 23 March 2020² in the case of the *Prosecutor v. Bosco Ntaganda* ("Ntaganda case"). In brief, the Registry does not oppose to providing the Defence with a confidential-redacted version of annex II of its Observations on Reparations of 28 February 2020 (respectively "Annex II" and "Registry Observations"),³ should the Chamber so order. Regarding annex III of the Registry Observations ("Annex III"), prior authorisation from Trial Chamber II would be necessary before the Registry may disclose it to the Defence, as it contains confidential information related to *The Prosecutor v. Thomas Lubanga* case ("Lubanga case").

II. Procedural History

2. On 8 July 2019, Trial Chamber VI ("Chamber") issued its Judgment in the Case, convicting Mr Ntaganda of war crimes and crimes against humanity.⁴
3. On 25 July 2019, the Single Judge issued an Order for preliminary information on reparations, requesting the Registry to provide, *inter alia*, information on, and any proposed methodology for, the identification of victims not yet participating ("25 July 2019 Order").⁵

¹ Defence, "Request on behalf of Mr. Ntaganda seeking reclassification of Annex II and III to the 'Registry's Observations on Reparations'", 23 March 2020, ICC-01/04-02/06-2493 ("Defence Request").

² Trial Chamber VI Communications, "Observations on ICC-01/04-02/06-2493", 23 March 2020, 18:55.

³ Registry, "Registry's Observations on Reparations", 28 February 2020, ICC-01/04-02/06-2475 ("Registry's Observations").

⁴ Trial Chamber VI, "Judgment", 8 July 2019, ICC-01/04-02/06-2359 ("Ntaganda Judgment").

⁵ Trial Chamber VI, "Order for preliminary information on reparations", 25 July 2019, ICC-01/04-02/06-2366, para. 4.

4. On 5 September 2019, the Registry submitted its preliminary observations on reparations pursuant to the 25 July 2019 Order setting out, *inter alia* the Registry's proposal for the identification and registration of potential beneficiaries in the *Ntaganda* case ("Registry's Preliminary Observations").⁶
5. On 3 October 2019, the Prosecution,⁷ Defence,⁸ Legal Representatives of Victims⁹ ("LRVs") and Trust Fund for Victims¹⁰ ("TFV") each filed their responses to the Registry's Preliminary Observations.
6. On 5 December 2019, the Single Judge issued the Order setting deadlines in relation to reparations, directing the Registry to, *inter alia*, in consultation with the LRVs and/or the TFV, as appropriate (...) (i) continue to carry out its preliminary mapping of potential new beneficiaries of reparations; (ii) carry out an assessment of how many of the victims participating in the *Ntaganda* case may potentially be eligible for reparations given the scope of the Judgment; and (iii) carry out an assessment of how many of the victims eligible for reparations as direct victim beneficiaries in the *Lubanga* case are also potentially eligible for reparations in the *Ntaganda* case (5 December 2019 Order").¹¹
7. On 28 February 2020, the Registry,¹² Defence,¹³ Prosecution,¹⁴ LRVs¹⁵ and TFV¹⁶ each filed their observations on reparations in the *Ntaganda* case.

⁶ Registry, "Registry's observations, pursuant to the Single Judge's "Order for preliminary information on reparations" of 25 July 2019, ICC-01/04-02/06-2366", 6 September 2019, ICC-01/04-02/06-2391.

⁷ Office of the Prosecutor, "Prosecution's response to the Registry's observations, pursuant to the Single Judge's 'Order for preliminary information on reparations' (ICC-01/04-02/06-2391-Anx1)", 3 October 2019, ICC-01/04-02/06-2429.

⁸ Defence, "Response on behalf of Mr. Ntaganda to Registry's preliminary observations on reparations", 3 October 2019, ICC-01/04-02/06-2431 ("Defence Request").

⁹ Legal Representatives of Victims, "Joint Response of the Legal Representatives of Victims to the Registry's Observations on Reparations", 3 October 2019, ICC-01/04-02/06-2430.

¹⁰ Trust Fund for Victims, "Trust Fund for Victims' response to the Registry's Preliminary Observations pursuant to the Order for Preliminary Information on Reparations", 3 October 2019, ICC-01/04-02/06-2428.

¹¹ Trial Chamber VI, "Order setting deadlines in relation to reparations", 5 December 2019, ICC-01/04-02/06-2447, para. 9(a).

¹² Registry's Observations, *supra* footnote 4.

¹³ Defence, "Defence Submissions on Reparations", 28 February 2020 (public redacted version filed on 6 March 2020), ICC-01/04-02/06-2479-Red.

III. Applicable Law

8. The Registry submits the present observations relevant to reparations in light of articles 68(1) and 75 of the Rome Statute, rules 16 and 97 of the Rules of Procedure and Evidence ("Rules"), regulations 24*bis* and 86(9) of the Regulations of the Court ("RoC"), and regulations 99 and 100 of the Regulations of the Registry ("RoR").

IV. Submissions

Annex II to the Registry's Observations

9. The Registry considers that it has a duty pursuant to article 68(1) of the Rome Statute to take appropriate measures "(...) to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses." As set out in paragraph 9 of the Registry's Observations, Annex II was classified as confidential, only available to the LRVs, TFV and the Registry because "it contains sensitive information that may impact the safety and physical well-being of victims, intermediaries and other third parties."¹⁷
10. With due regard to the rights of the convicted person in these reparations proceedings, the Registry considered that, in the absence of a decision from the Chamber on the methodology to be applied for *inter alia* the screening of potential beneficiaries in the *Ntaganda* case, the potential security implications of disclosure for victims and third parties necessitated the *ex parte* classification

¹⁴ Office of the Prosecutor, "Prosecution's Observations on Reparations", 28 February 2020, ICC-01/04-02/06-2478.

¹⁵ LRV 1, "Submissions on Reparations on behalf of the Former Child Soldiers", 28 February 2020, ICC-01/04-02/06-2474; LRV2, "Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations", 28 February 2020, ICC-01/-04-02/06-2477-Red.

¹⁶ TFV, "Trust Fund for Victims' observations relevant to reparations", 28 February 2020, ICC-01/04-02/06-2476.

¹⁷ Registry's Observations, para. 9.

until the Chamber decides on said methodology. In light of this, and mindful of the Defence's contention that the Registry neither justified nor demonstrated the necessity for the *ex parte* classification of its annexes,¹⁸ the Registry submits that the reasons for the classification of its filing were sufficiently set out in paragraph 9 of the Registry Observations.

11. The Registry notes that if, for example, the Chamber were minded to follow the recommendations posited by either the LRVs or the TFV with respect to the screening of potential beneficiaries in the *Ntaganda* case, this would limit the relevance of certain aspects of Annex II to the reparation proceedings in general and potentially justify the application of heavier redactions of an eventual confidential redacted version of the filing, in order to prevent any unnecessary exposure of victims and/or third parties.
12. If the Chamber is minded to grant the Defence request to provide full access to all information on the *Ntaganda* case record already at the present stage of proceedings, the Registry respectfully proposes that a confidential redacted version of Annex II will be prepared and notified to the Defence in due course.¹⁹
13. Finally, the Registry notes the Defence's recommendation to the Chamber that "[r]edactions to Annex II and Annex III must however be applied by the Registry under judicial control as opposed to *proprio motu*."²⁰ In support of this recommendation, the Defence cites the *Lubanga* proceedings where redaction guidelines were put in place by Trial Chamber II with respect to victims' applications. The Registry respectfully submits that the Defence's recommendations may not be helpful in the present context as Annex II does not contain any victim applications and the information contained in Annex II is not

¹⁸ Defence Request, para. 36.

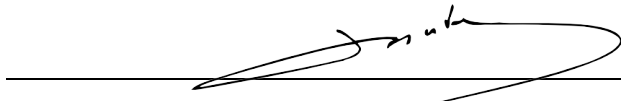
¹⁹ In light of the Defence's submissions, the VPRS considers it important to clarify that it has not commenced with "an assessment of how many of the 2,132 participating victims have been impacted by the reduced scope of the Case following the Judgment" as this would require a decision from the Chamber on the proposed A-B-C approach, amongst other items. *See also* paragraph 39 of the Registry's Observations for further clarification.

²⁰ Defence Request, para. 59.

of a standard nature. Rather, as per general practice, the Registry recommends that the Chamber order the VPRS to apply the redactions the VPRS assesses as necessary in light of the principle of proportionality between the different statutory tenets at stake.

Annex III to the Registry's Observations

14. As noted in the Registry's Observations, "Annex III is filed confidential *ex parte*, only available to the Registry pursuant to Trial Chamber II's decision of 4 February 2020".²¹ Accordingly, the Registry is unable to adjust the classification of Annex III without express prior authorisation from Trial Chamber II. The Registry stands ready to liaise with Trial Chamber II to this end if the Chamber so orders.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 30 March 2020

At The Hague, The Netherlands

²¹ Registry Observations, para. 9 ; see also Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, "Ordonnance relative à la requête de la Section de la participation des victimes et des réparations du 21 janvier 2020", 4 February 2020, ICC-01/04-01/06-3472-Conf.