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

Date: **20 November 2020**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Defence response to “Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations”, 9 November 2020, ICC-01/04-02/06-2624

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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**Unrepresented Applicants
(Participation / Reparation)**

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Further to the Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations,¹ Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submits this:

Defence response to “Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations”, 9 November 2020, ICC-01/04-02/06-2624

(“Defence Response”)

INTRODUCTION

1. The Request of the Common Legal Representative of the Victims of the Attack (“CLR2”) for an order by the Single Judge to the Registry to collect data pertaining to reparations should be dismissed. The CLR2 has not shown that its Request was necessary at this stage. Nor has the CLR2 identified any legal basis for requesting the Single Judge such an order. This data is not necessary for Trial Chamber VI (“Chamber”) to issue its reparation order in accordance with Article 75 of the Rome Statute.

2. The CLR2 Request is not timely since the Chamber has not yet established the type of reparations that will be adopted and the parties and the Trust Fund for Victims (“TFV”) have not yet filed their final observations on reparations, as acknowledged by the CLR2.²

PROCEDURAL BACKGROUND

3. On 8 July 2019, the Chamber convicted Mr Bosco Ntaganda of 18 counts of war crimes and crimes against humanity.³

¹ Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations, 9 November 2020, [ICC-01/04-02/06-2624](#) (“CLR2 Request”).

² [CLR2 Request](#), para.23.

³ Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#).

4. On 25 July 2019, the Single Judge issued the First Order concerning reparations.⁴

5. On 5 September 2019, as requested in the Order for Preliminary Information, the Registry submitted its Registry Preliminary Observations.⁵

6. On 3 October 2019, as also requested in the Order for Preliminary Information, the LRVs,⁶ the TFV,⁷ the Prosecution⁸ and the Defence⁹ submitted their responses to the Registry Preliminary Observations.

7. On 5 December 2019, the Single Judge issued his Second Order on Reparations.¹⁰

8. On 28 February 2020, pursuant to the Order issued by the Single Judge on 5 December 2019, the Registry submitted the Registry observations while the LRVs,¹¹ TFV,¹² Prosecution¹³ and Defence¹⁴ filed their submissions on the issues raised therein by the Single Judge.

⁴ Order for preliminary information on reparations, 25 July 2019, [ICC-01/04-02/06-2366](#).

⁵ 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, 5 September 2019, [ICC-01/04-02/06-2391](#).

⁶ Joint Response of the Legal Representatives of Victims to the Registry's Observations on Reparations, 3 October 2019, [ICC-01/04-02/06-2430](#).

⁷ 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](#).

⁸ Prosecution Response to the Registry's Observations, pursuant to the Single Judge's "Order for Preliminary Observations on reparations" (ICC-01/04-02/06-2391-Anx1), 3 October 2019, [ICC-01/04-02/06-2429](#).

⁹ Response on behalf of Mr. Ntaganda to Registry's preliminary observations on reparations, 3 October 2019, [ICC-01/04-02/06-2431](#).

¹⁰ Order setting deadlines in relation to reparations, 5 December 2019, [ICC-01/04-02/06-2447](#).

¹¹ Public Redacted Version of "Submissions by the Common Legal Representatives of the Victims on Reparations", 28 February 2020, [ICC-01/04-02/06-2477-Red](#); Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, [ICC-01/04-02/06-2474](#).

¹² Trust Fund for Victims' observations relevant to reparations, 28 February 2020, [ICC-01/04-02/06-2476](#).

¹³ Prosecution's Observations on Reparations, 28 February 2020, [ICC-01/04-02/06-2478](#).

¹⁴ Public Redacted Version of "Defence submissions on reparations", 28 February 2020, ICC-01/04-02/06-2479, 6 March 2020, [ICC-01/04-02/06-2479-Red](#).

9. On 14 May 2020, the Chamber issued the Decision appointing the experts, in which they ordered them to submit their report by 28 August 2020.¹⁵

10. Following an extension of the time limits in order to file their reports,¹⁶ the Registry filed confidential redacted versions of the Experts' Reports, on 2 and 3 November 2020.¹⁷

11. On 9 November 2020, the CLR2 submitted their Request for an order to the Registry to collect information pertaining to reparations.

12. On 18 November 2020, the Registry submitted observations on the CLR2 Request.¹⁸

SUBMISSIONS

13. The CLR2 contends that, since the information requested has not been provided by the Registry in its 30 September Report nor by the Experts' reports, it is appropriate for the CLR2 to seek an order from the Single Judge.

14. What the CLR2 is forgetting to consider in its reasoning, is the fact that the Chamber has not requested the Registry or the Experts to provide such data.¹⁹

15. The CLR2 filed observations on 3 October 2019 and 28 February 2020, which contained their proposition that all inhabitants of the affected localities should be considered as potential beneficiaries.²⁰

¹⁵ Decision appointing experts on reparations, 14 May 2020, [ICC-01/04-02/06-2528-Red](#).

¹⁶ Decision on Request for an Extension of Time for Filing Experts' Report, 20 July 2020, [ICC-01/04-02/06-2553](#).

¹⁷ Registry Transmission of Appointed Experts' Reports, 30 October 2020, [ICC-01/04-02/06-2623](#), 30 October 2020, Annex 1 submitted on 2 November 2020, Annex 2 submitted on 3 November 2020.

¹⁸ Registry Observations on the "Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations" of 9 November 2020, ICC-01/04-02/06-2624, 18 November 2020, [ICC-01/04-02/06-2627](#).

¹⁹ Decision appointing experts on reparations, 14 May 2020, [ICC-01/04-02/06-2528-Red](#); First Decision on Reparations Process, 26 June 2020, [ICC-01/04-02/06-2547](#).

²⁰ Public Redacted Version of the "Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations", 28 February 2020, [ICC-01/04-02/06-2477-Red](#), paras.70-72.

16. None of these submissions address the need for an official census on the number of person residing in the affected localities at the time of the events.

17. The reason behind this might be the fact that this data is simply irrelevant at this stage, and perhaps at all stage of the reparations proceedings.

18. In this respect, the Chamber has not yet decided on the type of reparations that will be awarded in this case. In the event that the Chamber would decide that only individual reparations should be awarded, the data requested by the CLR2 would be purposeless. Time and resources, in a context of worldwide pandemic, would be unwisely spent.

19. As way of illustration, Trial Chamber VIII in the *Al Mahdi* case has ordered collective reparations for the community of Timbuktu as a whole for the moral harm that was caused by the demolition of the Protected Buildings.²¹ Nevertheless, Trial Chamber VIII did not request to have the exact number of inhabitants of Timbuktu at the time of the event and affirmed that it is impracticable for the Chamber to identify all the victims.²² The Chamber was still in a position to set out the amount of liability Mr *Al Mahdi* was responsible for.

20. The present case greatly differs from the *Al Mahdi* case, where the harm suffered is related to the destruction of a common good. The type of harms therefore cannot be said to be the same.

21. In the event that the Chamber would decide to award collective reparations for the whole affected localities, the Defence posits that the number of inhabitants of the affected localities at the time of the event is thus not necessary to set the amount of liability, if the Chamber wishes to do so in its reparations order.

²¹ *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#), para.90 ("*Al Mahdi* Reparations Order").

²² [Al Mahdi Reparations Order](#), para.141.

CONCLUSION

22. The Chamber has set out in prior orders and decisions what type of information was necessary at this stage, and the CLR2 should respect that, without seeking a new occasion to repeat its position.

23. For the above reasons, the CLR2 Request is neither necessary nor timely at this stage and should be dismissed.

RESPECTFULLY SUBMITTED ON THIS 20TH DAY OF NOVEMBER 2020

A handwritten signature in dark ink, appearing to read 'S+B' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands