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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 Document

**Joint Response of the Common Legal Representatives of the Victims to the
“Defence request for an extension of the time limit to respond to the Trust Fund
for Victims’ Draft Implementation Plan”**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (jointly the “Legal Representatives”) hereby file a joint response to the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan” (the “Defence Request”).¹

2. The Legal Representatives support the Request in that the arguments put forth therein show good cause for an extension of time to respond to the forthcoming Draft Implementation Plan (the “DIP”) for reparations in this case.

3. The Legal Representatives further support the extension sought by the Defence, namely an extension until 24 January 2022. They share the view that the DIP is expected to be of an unprecedented scope which will in any event require considerable time to analyse and discuss with their clients. The timeline suggested by the Defence is in line with the practice in previous cases and is a reasonably conservative estimate in the circumstances.

4. Noting, however, that the actual complexity and magnitude of the DIP are not yet known to the parties, the Legal Representatives reserve their respective right to request further extensions of time to file their observations, should the circumstances so require.

5. In particular, they underscore that the prevailing and deteriorating volatile security and public health situation in Ituri already at this stage pose a significant obstacle to effective and prompt consultations with the victims which are essential in the process.

¹ See the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”, [No. ICC-01/04-02/06-2728](#), 15 December 2021 (the “Defence Request”).

II. PROCEDURAL BACKGROUND²

6. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”,³ whereby it, *inter alia*, instructed the Trust Fund for Victims (the “TFV”) to file the DIP in the present case within six months of that decision.⁴

7. On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).⁵ Judge Chang-ho Chung was subsequently elected Presiding Judge of the Chamber.⁶

8. On 16 July 2021, the TFV submitted a request for the variation of the time limit for the submission of the DIP. In particular, the TFV sought an extension of time until 17 December 2021.⁷

9. On 22 July 2021, the parties expressed their support for the TFV’s request.⁸ The Registry informed the Chamber that it had no observations to make on the matter.⁹

10. On 23 July 2021, the Chamber granted the TFV an extension of time limit to submit its DIP by 17 December 2021.¹⁰ The Chamber did not indicate when the parties were to respond.

² The procedural background included in these submissions is non-exhaustive and primarily focuses on the procedure relevant to these submissions. They also omit the various procedural steps taken before the Appeals Chamber.

³ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

⁴ *Idem*, para. 249.

⁵ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁶ See the “Decision on the Election of the Presiding Judge” (Trial Chamber II), [No. ICC-01/04-02/06-2664](#), 22 March 2021, para. 2.

⁷ See the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2693](#), 16 July 2021.

⁸ See the “Joint Response of the Common Legal Representatives of Victims to the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2694](#), 22 July 2021; “Observations on Behalf of Mr Ntaganda on the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2695](#), 22 July 2021.

⁹ See the Email communication from the Registry to the Chamber’s Legal Officer, 22 July 2021, at 11:10.

¹⁰ See the “Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2697](#), 23 July 2021.

11. On 15 December 2021, the Defence filed the “Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan”.¹¹

12. On the same date, the Chamber shortened the deadline for any responses to the Defence Request to 17 December 2021 at noon.¹²

III. SUBMISSIONS

13. In the absence of a specific deadline yet set by the Chamber, the Legal Representatives concur with the Defence that the regular time limit of ten days provided under regulation 34(b) of the Regulations of the Court (the “ROC”) should be varied.¹³ Although the Legal Representatives do not share the Defence stance – which has no support in the Court’s practice whereby a special time limit has consistently been set – that the regular ten-day deadline is the “*applicable time limit to respond to the DIP*”,¹⁴ they contend that in the present circumstances, the requirements of regulation 35(2) of the ROC are fulfilled. Indeed, they submit that there exists good cause to extend the deadline for responses to the DIP.

14. Although the DIP will be submitted by 4.00 pm on 17 December 2021, the Legal Representatives share the Defence’s view that it is expected to be a lengthy and complex document that will detail proposals of an unprecedented nature.¹⁵ It is indeed already foreseeable that novel procedures for a much larger group of victims compared to any previous reparations proceedings before the Court will require adequate time for in-depth analysis in order to be able to make meaningful submissions thereon.

15. In this regard, the Legal Representatives’ ability to adequately respond to the DIP is not only subject to having sufficient time for the analysis of the document itself,

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

¹² See the Email communication from Trial Chamber II, 15 December 2021 at 19:49.

¹³ See the Defence Request, *supra* note 1, para. 6.

¹⁴ *Ibid.*

¹⁵ *Idem*, paras. 8-9.

but also presupposes that they are able to organise comprehensive consultations with the victims on these matters, which are of a crucial nature for them. The ability of the Legal Representatives to conduct said consultations has been significantly undermined over a protracted period of time by the extremely volatile security situation in Ituri and the correlative displacement of numerous victims. In addition, field consultations largely rely on assistance from local staff and intermediaries, which will be difficult to secure in the midst of on-going clashes and a concerning public health situation due to the COVID-19 pandemic.

16. While the Legal Representatives endeavour to mobilise all their best efforts and resources to consult their clients and to obtain valuable inputs to respond to the DIP in the shortest possible time, they already alert the Chamber to the fact that communication with their clients has been particularly difficult in the current security and pandemic-related circumstances and that this may further affect their ability to consult with them promptly. This will also ultimately depend on the actual length, scope and complexity of the DIP that will be filed on 17 December 2021.

17. Having further regard to the parties' response deadlines in previous cases,¹⁶ and being guided by the fact that in all of these cases, extensions of time were necessary to enable the respective legal representatives to carry out consultations, the Legal Representatives estimate that the extension requested by the Defence is *prima facie* reasonable as it constitutes the minimum period of time previously granted to the parties to respond to a DIP. The Legal Representatives, however, draw the Chamber's attention to the fact that in the *Al Mahdi* case for instance, the legal representative was

¹⁶ See the "Public redacted version of the Decision of the 'Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations'" (Trial Chamber VIII), [No. ICC-01/12-01/15-273-Red](#), 12 July 2018, paras. 5-8; "Décision accordant une prorogation de délai afin de déposer des observations sur le projet de plan de mise en œuvre du 25 juillet 2017" (Trial Chamber II), [No. ICC-01/04-01/07-3759](#), 29 August 2017; "Ordonnance fixant calendrier pour le dépôt des observations sur le projet de plan de mise en œuvre déposé par le Fonds au profit des victimes" (Trial Chamber II), [No. ICC-01/04-01/06-3179](#), 12 November 2015.

granted a longer response time than the Defence for the purposes of consultations.¹⁷ Furthermore, it is worth noting that in the *Lubanga* case, the parties were granted several extensions leading in the end to them benefitting from almost three full calendar months to submit their observations,¹⁸ in a context where reaching the victims was much easier than in the present case.

18. Not being aware of the precise scope of the DIP in this case, the Legal Representatives nevertheless support the Defence's request that the timeline be extended by the indicated period, thus mirroring the response times in other, previous cases. As such, it is already foreseeable that ten days would be insufficient to cover and meaningfully respond to matters that required several weeks in previous cases. In the view of the Legal Representatives, this in itself meets the requirements of regulation 35(2) of the ROC.

19. While the Legal Representatives are committed to not delaying the process and to providing the victims' views and observations on the TFV's concrete proposals in the shortest possible time, the realities in the field and the novel character of the DIP that is going to be proposed must adequately be reflected in the response deadlines for the parties involved. It is for this reason that they support the Defence Request and already express their concerns that such a time-limit is more likely than not to prove insufficient for the reasons explained *supra*.

20. In conclusion, the Legal Representatives underscore that, while the suggested timeline of 24 January 2022 seems *prima facie* reasonable and meets the requirements of regulation 35(2) of the ROC, they herewith reserve their respective right to seize the Chamber regarding further extensions of time should the necessary consultations with their respective clients be impacted to a higher degree than currently foreseeable. In

¹⁷ See the "Public redacted version of the Decision of the 'Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations'" (Trial Chamber VIII), [No. ICC-01/12-01/15-273-Red](#), 12 July 2018, paras. 5-8.

¹⁸ See the "Decision on the request of the Office of Public Counsel for Victims and the request of the Legal Representatives of Victims V02" (Trial Chamber II), [No. ICC-01/04-01/06-3190-tENG](#), 13 January 2016.

this regard, the Legal Representatives emphasise that both appropriate consultations and the celerity of the proceedings are at the core of the victims' rights and expectations and underline that these considerations, amongst others, are leading their actions with their clients on a daily basis.

RESPECTFULLY SUBMITTED,



Sarah Pellet
Common Legal Representative of the
Former Child soldiers



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks

Dated this 17th day of December 2021

At The Hague, The Netherlands