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

Date: **20 January 2022**

TRIAL CHAMBER II

Before: Judge Chang-ho Chung, Presiding Judge
Judge Péter Kovacs
Judge Maria del Socorro Flores Liera

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Response on behalf of Mr Ntaganda to the CLR1's request for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan

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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Further to the submission of the “Public Redacted version of the “URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan” (ICC-01/04-02/06-2735-Conf-Exp)” (“CLR1 Request”),¹ Counsel for Bosco Ntaganda (“Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to the CLR1’s request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan

“Defence Response”

INTRODUCTION

1. The CLR1 submissions, in which she seeks a three-month extension to respond to the Draft Implementation Plan (“DIP”), and an amended version of the DIP itself, are undermined by the anomalies as set out below. While the Defence agrees with the CLR1’s overall assessment that the DIP is not a workable implementation plan in its current form, the request for revisions is procedurally misplaced in a request for an extension of time. Nor is a sufficient link demonstrated between the obstacles identified and the protracted extension sought.

PROCEDURAL BACKGROUND

2. On 8 March 2021, Trial Chamber VI issued its Reparations Order, in which it instructed the Trust Fund for Victims (“TFV”) to submit a DIP before 8 September 2021.²

¹ Public Redacted version of the “URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan” (ICC-01/04-02/06-2735-Conf-Exp), 18 January 2022, [ICC-01/04-02/06-2735-Red.](#)

² Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), Disposition.

3. On 16 July 2021, the TFV requested Trial Chamber II (“Chamber”) for an extension of the time limit until 17 December 2021,³ which was granted by the Chamber on 23 July 2021.⁴

4. On 15 December 2021, the Defence filed a request for an extension of time to respond to the DIP until 24 January 2022.⁵ On 17 December 2021, the Chamber granted the request.⁶

5. On 17 December 2021, the TFV submitted the DIP.⁷

6. On 18 January 2022, the CLR1 filed her Request.⁸

SUBMISSIONS

(a) Timing of the Request

7. The parties’ responses to the DIP are due in five days time. None of the purported obstacles cited by the CLR1 in support of an extension have recently arisen, rather they have been known to her for weeks. In this context, the CLR1 Request cannot be considered timely. Importantly, its timing has precluded meaningful consultation which could have allowed the parties to bring a joint proposal to the Chamber within a reasonable delay, and the more efficient use of the Court’s and parties’ resources. Regardless, the Defence will address the substance of the CLR1 request below.

³ Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 16 July 2021, [ICC-01/04-02/06-2693](#).

⁴ Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, [ICC-01/04-02/06-2697](#).

⁵ Defence request for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan, 15 December 2021, [ICC-01/04-02/06-2728](#).

⁶ Order for the submission of observations on the draft implementation plan, 17 December 2021, [ICC-01/04-02/06-2731](#).

⁷ Trust Fund of Victims’ submission of Draft Implementation Plan, 17 December 2021, [ICC-01/04-02/06-2732](#), with Confidential Annex I.

⁸ [CLR1 Request](#).

(b) Substance of the Request

8. Despite being characterised as a request for an extension of time, the CLR1 Request actually makes two requests of the Chamber. First, the CLR1 asks that the Chamber grant a three-month extension of time to file a response to the DIP.⁹ Second, she asks that the TFV be ordered to file an **amended** DIP in the course of the next month, to include the information she designates as either missing, absent, or in her view, incomplete.¹⁰

9. As regards the request for an extension of time, the CLR1 cites difficulties in client consultations resulting from the ongoing volatile situation in Ituri and the Covid-19 pandemic as providing good cause for a three-month extension. There is no doubt that the existing security situation in Ituri is a significant factor bearing on any assessment of the DIP, which the parties will undoubtedly discuss in their forthcoming responses. However, it is unclear how this situation justifies a variation of the time limit by three months. The CLR1 offers no link between this protracted period, and any potential improvement in the situation that could facilitate the client consultations she says are being impacted. The risk being, that should the security situation not improve, the precedent will be set for additional and ongoing extensions on this basis.

10. Should the Chamber nonetheless find that this or any extension is justified, the Defence notes the CLR1's lack of objection to the parties being afforded the same deadline, and would ask that the deadline be extended for all parties.

11. As regards the request for an amended DIP, the CLR1 submissions are detailed and substantive in content, and cannot reasonably be linked to the request for an extension of time. The CLR1 Request, in practical terms, seeks to present CLR1's initial views and critiques on the substance of the DIP. While the Defence agrees with CLR1 that the DIP in its current form is far from resembling a workable implementation plan, the CLR1 approach of seeking an amended DIP at this point through the pretext of an

⁹ [CLR1 Request](#), paras.15-21.

¹⁰ [CLR1 Request](#), paras.22-24.

extension of time, circumvents the other parties to the reparations proceedings and is procedurally misplaced. On this basis, the request for an amended DIP should be dismissed.

(c) Level of Classification

12. The CLR1 fails to justify the *ex parte* classification of the Request. She makes no distinction between the public and the parties as regards the confidential nature of the information in question. Nor is the fact that information is not **currently** known by the parties, justification for an *ex parte* filing. On this basis, the Defence requests that the CLR1 be ordered to file a confidential version of the Request, with redactions as strictly necessary, and that the Chamber decline to take into consideration submissions not made available to the parties in its adjudication of the Request.

RELIEF SOUGHT

13. In light of the foregoing, the Defence respectfully requests that the Chamber:
- **ORDER** the CLR1 submit a confidential redacted version of the CLR1 Request, with redactions as strictly necessary;
 - **DISREGARD** any *ex parte* submissions made in support of the CLR1 Request;
 - **DETERMINE**, in light of the foregoing, whether any extension of time is warranted and, if so, grant this extension to the CLR2, VPRS and the Defence;
 - **DISREGARD** at this stage the CLR1's substantive submissions as regards the DIP; and
 - **DISREGARD** at this stage, the CLR1's request for the TFV to submit an amended DIP.

RESPECTFULLY SUBMITTED ON THIS 20th DAY OF JANUARY 2022



Me Stéphane Bourgon *Ad.E.*, Counsel for Bosco Ntaganda

The Hague, The Netherlands