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

Date: **8 July 2022**

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

**Public redacted version of the “Observations of the Common Legal Representative of the Former Child Soldiers on the ‘Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan’ (ICC-01/04-02/06-2767-Conf)”,
ICC-01/04-02/06-2770-Conf, dated 6 June 2022**

Source: Office of Public Counsel for Victims (CLR1)

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 Former Child Soldiers (the “Legal Representative”) hereby files her observations on the “Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan” (the “Fifth Update Report”).¹

II. PROCEDURAL BACKGROUND

2. The Legal Representative incorporates by reference the procedural background set out in her “Response to the ‘Trust Fund for Victims’ second submission of Draft Implementation Plan’ (ICC-01/04-02/06-2750)”.²

3. On 24 May 2022, the Trust Fund for Victims (the “TFV”) requested an extension of time to submit its Fifth Update Report after 4pm,³ which Trial Chamber II (the “Chamber”) granted.⁴

4. On 25 May 2022, the Fifth Update Report was filed in the record of the case.⁵

III. LEVEL OF CLASSIFICATION

5. Pursuant to regulation 23bis(2) of the Regulations of the Court, the present filing is classified as “confidential”, since it responds to a document which was filed with

¹ See the “Trust Fund for Victims’ Fifth Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2767-Conf](#), 25 May 2022 (the “Fifth Update Report”).

² See the “Common Legal Representative of the Former Child Soldiers’ Response to the ‘Trust Fund for Victims’ second submission of Draft Implementation Plan’ (ICC-01/04-02/06-2750)”, [No. ICC-01/04-02/06-2763-Conf](#) and [No. ICC-01/04-02/06-2763-Red](#), 18 May 2022, paras. 5-29.

³ See the email from TFV Legal to the Chamber, the Legal Representative, the Common Legal Representative of the Victims of the Attacks and the Defence entitled “Trust Fund’s submissions of Fifth Update Report on the IDIP in the Ntaganda case”, 24 May 2022 at 15:06.

⁴ See the email from the Chamber to TFV Legal, the Legal Representative, the Common Legal Representative of the Victims of the Attacks and the Defence entitled “RE: Trust Fund’s submissions of Fifth Update Report on the IDIP in the Ntaganda case”, 24 May 2022 at 15:47.

⁵ See the Fifth Update Report, *supra* note 1.

the same classification and refers to the content of documents likewise classified as confidential. A public redacted version will be filed in due course.

IV. SUBMISSIONS

6. The Legal Representative recalls her concerns regarding the TFV's decision to reject from the *Ntaganda* IDIP those victims who are already beneficiaries to the *Lubanga* programme; as well as her position according to which her clients facing urgent needs could only be considered to be *no longer* in urgent needs if they have already benefitted from services that precisely addressed their urgent needs through the *Lubanga* programme, which entails that the *assessment* made by [REDACTED] indeed has prioritised the urgency and that the Legal Representative's clients are *currently* benefitting from the relevant services *comprehensively* (and are not waiting for those services).⁶ Consequently, in order for her to be able to agree with the TFV's exclusion of her clients from the *Ntaganda* IDIP, she requested detailed information from the TFV regarding the services said clients have been or will be provided with through the *Lubanga* programme, and – for those waiting – when exactly the intake will take place (*i.e.* on an urgent basis).⁷

7. In this regard, the Chamber, likewise, held that the decision to exclude the *Lubanga* beneficiaries from the *Ntaganda* IDIP “*can only apply to the extent that the harms suffered by the overlapping victims that require urgent treatment, can be and are actually being addressed within the context of the Lubanga reparations programme*”.⁸ It further clarified that “*the Ntaganda victims in urgent need, i.e. those who would qualify as eligible for the*

⁶ See the “Observations of the Common Legal Representative of the Former Child Soldiers on the ‘Trust Fund for Victims’ Fourth Update Report on the Implementation of the Initial Draft Implementation Plan’ (ICC-01/04-02/06-2751-Conf)”, [No. ICC-01/04-02/06-2754-Conf](#) and [No. ICC-01/04-02/06-2754-Red](#), 7 April 2022 (the “Observations on the Fourth Update Report”), para. 22.

⁷ *Idem*, para. 26.

⁸ See the “Decision on the TFV's Fourth Update Report on the Implementation of the Initial Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2761](#), 12 May 2022, para. 17.

purposes of the Ntaganda IDIP, who are also Lubanga beneficiaries, should be given priority to start benefiting from the various components of the Lubanga service-based collective reparations without delay. Otherwise, their urgent needs should be addressed through the Ntaganda IDIP as an emergency response up to the time they are fully integrated into and start benefiting from the Lubanga reparations programme”.⁹

8. The Legal Representative notes that the TFV, except for its general statement that “18 of the 19 Lubanga and Ntaganda Former Child Soldier with urgent needs are currently benefitting from the reparation programme in Lubanga”,¹⁰ does not provide any information as to if and how specifically their harms requiring urgent treatment are being addressed through the *Lubanga* programme. As such, it is impossible to ascertain whether their exclusion from the *Ntaganda* IDIP is justified according to the Chamber’s abovementioned considerations.

9. For that reason, the Legal Representative reiterates her request for the TFV to provide her with detailed information on the services her clients have been benefitting from through the *Lubanga* programme, and on how these services fully address their harms requiring urgent treatment. For the purpose of verifying whether her clients’ urgent needs are indeed being addressed through said services, she also requests access to their completed questionnaires used for the urgency assessment.¹¹

10. The Legal Representative further notes that the Chamber did not address her concerns regarding the lack of clear and transparent communication from the TFV and the implementing partner,¹² and reiterates that such communication is crucial for her clients to understand the reasons why they, although having been contacted and

⁹ *Ibid.*

¹⁰ See the Fifth Update Report, *supra* note 1, para. 20.

¹¹ See, *inter alia*, the “Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan”, with one confidential annex, [No. ICC-01/04-02/06-2741-Conf](#) and [ICC-01/04-02/06-2741-Red](#), 24 January 2022, paras. 15-19; and “Annex 1 to the Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan”, [No. ICC-01/04-02/06-2741-Conf-Anx1](#), 24 January 2022.

¹² See the Observations on the Fourth Update Report, *supra* note 6, para. 27.

having been through the intake, and in some cases even called to benefit from a vocational training, have been excluded from the *Ntaganda* IDIP, that is if their exclusion is indeed justified as set out *supra*.

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to:

- take note of her present observations;
- order the TFV to provide the Legal Representative with the information and the questionnaires mentioned in paragraph 9 *supra*; and
- order the TFV, together with the implementing partner, to design a clear communication strategy with regard to victims impacted by its decision to reject *Lubanga* beneficiaries from the *Ntaganda* IDIP.



Sarah Pellet

Dated this 8th day of July 2022

At The Hague, The Netherlands