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

Date: **26 August 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

Public Redacted Version of “Observations on behalf of the convicted person on the Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan”, dated 5 August 2022, ICC-01/04-02/06-2780-Conf

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 Decision¹ issued by Trial Chamber II (“Chamber”) on the Trust Fund for Victims (“TFV”)’s Fifth Update Report on the Implementation of the Initial Draft Implementation Plan (“TFV Fifth Update Report” and “IDIP”) and the submission by the TFV of its Sixth Update Report on the Implementation of the IDIP (“TFV Sixth Update Report”),² Counsel for the convicted person (“Defence”) hereby submits this:

**Observations on behalf of the convicted person on the Trust Fund for Victims’
Sixth Update Report on the Implementation of the Initial Draft Implementation
Plan**

“Defence Observations”

INTRODUCTION

1. As requested by the Chamber,³ the TFV Sixth Update Report provides information mostly of an operational nature regarding the number of victims assessed and/or who have actually started benefiting from the IDIP, thereby leaving scarce opportunity for substantive observations on behalf of the convicted person.

2. In addition, taking into consideration the Chamber’s holding in its Decision on Fifth Update Report that it does not consider it necessary to rule on other matters raised by the Defence, on the basis that it has already addressed the same issues on various occasions,⁴ these Defence observations are limited in scope.

3. Nonetheless, the convicted person has an interest in following, monitoring and where necessary, making observations on the implementation of reparations, in the context of both the IDIP and the DIP.

¹ Decision on the TFV’s Fifth Update report on the Implementation of the Initial Draft Implementation Plan, 6 July 2022, ICC-01/04-02/06-2772 (“Decision on Fifth Update Report”).

² Trust Fund for Victims’ Sixth Update Report on the Implementation of the Initial Draft Implementation Plan, 25 July 2022, ICC-01/04-02/06-2775-Conf (“TFV Sixth Update Report”).

³ Decision on Fifth Update Report, paras.10,13, Dispositions.

⁴ Decision on Fifth Update Report, para.7.

CONFIDENTIALITY

4. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, these Defence Observations are classified as confidential as they respond to submissions likewise classified as confidential.

OBSERVATIONS

5. Information provided by the TFCV. As a preliminary matter, the Defence observes that the information provided in the TFCV Sixth Update Report is very general. As such, it does not allow the Chamber to have a proper understanding of what is happening on the ground. No information is provided on the identity, location and/or nature of the harm suffered by the victims assessed so far. Whether any substantive issues came up during the identification and determination of the eligibility of these victims is not mentioned. The same applies to the information based on which the urgency requirement was assessed. In the absence of anyone representing the interests of the convicted person in the eligibility determination process, the Defence respectfully posits that more information should be provided to the Chamber, in particular, at the beginning of this process.

6. From the point of view of the convicted person, the fact that no information is provided regarding the background of the victims being assessed, *i.e.* whether they are members of, or associated with, militias previously or presently active in Ituri, is a source of concern. For the assessment process to be transparent, the TFCV should at a minimum be required to explain what measures, if any, are taken to make that determination possible.

7. Security Situation. Regarding the security situation, much has been said⁵ and the Defence does not intend to repeat previous submissions on this issue.

⁵ See for instance Defence observations on the TFCV Second Progress Report on the implementation of the Initial Draft Implementation Plan, 6 December 2021, ICC-01/04-02/06-2726-Conf, paras.4-7; Defence observations on the Trust Fund for Victims' Third Update Report on the Implementation of the Initial Draft Implementation Plan, 4 February 2022, ICC-01/04-02/06-2744-Conf, paras.7-13; Defence

Nevertheless, the Defence deplores the fact that the information provided by the TFV regarding the security situation is both slim and devoid of any details. More importantly, the security situation in Ituri continues to be addressed solely from the perspective of its impact on the ability to locate victims whereas its impact on the ground is much broader in scope and importance.

8. Training dispensed by the TFV. At paragraph 27, the TFV states that it envisages to provide a first training to [REDACTED] staff by the end of September/beginning of October 2022, followed by a second training to be organized by legal staff from headquarters.⁶ While the training of personnel from the implementing partner is certainly a sound initiative, the aim of such training should not and cannot be for the implementing partner's personnel to identify new potential victims. The role of the implementing partner's staff is to assist with the identification of new potential victims and it should not be extended.

9. Outreach and identification of new potential victims. Lastly, at paragraph 33, the TFV refers to the implementation of an outreach campaign by way of messages broadcasted on the radio for the purpose of identifying new potential victims.⁷ The content of the messages broadcasted on the radio in selected, yet unidentified, communities remains unknown to the Chamber and the parties. Considering the potential damage both to victims as well as to the process itself if the wrong message is broadcasted, or broadcasted in the wrong communities, the Defence respectfully submits that the TFV should be instructed to disclose the content of these messages and as well as the identity of the targeted communities, to the Chamber and the parties.

observations on the Trust Fund for Victims' Fourth Update Report on the Implementation of the Initial Draft Implementation Plan, 7 April 2022, ICC-01/04-02/06-2755-Conf, paras.8-13; Defence observations on the Trust Fund for Victims' Fifth Update Report on the Implementation of the Initial Draft Implementation Plan, 6 June 2022, ICC-01/04-02/06-2769-Conf ("Defence Observations on Fifth Update Report"), paras.19-29.

⁶ TFV Sixth Update Report, para.27.

⁷ TFV Sixth Update Report, para.33.

Although similar observations were raised by the Defence in its observations on the TFV Fifth Update Report,⁸ the Chamber neither addressed nor ruled on the matter.

CONCLUSION

10. This concludes the Defence limited Observations on the TFV Sixth Update Report.

11. On behalf of the convicted person, the Defence will continue to monitor the implementation of the IDIP and, where necessary, to make observations for the benefit of the Chamber.

RESPECTFULLY SUBMITTED ON THIS 26th DAY OF AUGUST 2022

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

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

The Hague, The Netherlands

⁸ Defence Observations on Fifth Update Report, paras.28-29,35.