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No.: ICC-01/04-02/06
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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
With Public Redacted Version of Annex A**

Public Redacted Version of “Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims”, dated 24 January 2022, ICC-01/04-02/06-2740-Conf

Source: Defence Team of Mr Bosco Ntaganda

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

Legal Representatives of Victims

Ms Sarah Pellet
Ms Caroline Walters

Mr Dmytro Suprun
Ms Anne Grabowski

Counsel for the Defence

Me Stéphane Bourgon, *Ad.E.*
Me Kate Gibson
Ms Judy Mionki
Me Jacopo Ricci

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Further to the “Decision on the ‘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’ and additional request by the TFCV”, issued by Trial Chamber II (“Chamber”) on 21 January 2022 (“Decision”),¹ Counsel for Bosco Ntaganda (“Defence”) hereby file this:

**Additional matters identified by the Defence in the Draft Implementation Plan
that should be addressed by the Trust Fund for Victims**

INTRODUCTION

1. The Defence is grateful to the Chamber for the opportunity to identify matters in the Draft Implementation Plan (“DIP”) that should be addressed by the Trust Fund for Victims (“TFV”), in addition to the very long list of missing information already identified by the Chamber,² CLR1³ and CLR2.⁴ The Defence has identified 22 additional matters, set out below, which should also be addressed by the TFV before its DIP can be considered a workable document.

2. That said, the Defence respectfully submits that rectifying the deficiencies in the DIP submitted on 17 December 2021⁵ will require more than the TFV inserting missing information. Indeed, rather than the parties simply compiling a list of missing matters, the Defence still needs to address substantive issues about which the Chamber will

¹ Decision on the ‘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’ and additional request by the TFCV, 21 January 2022, [ICC-01/04-02/06-2739](#).

² Decision, para.10-12.

³ 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](#). The CLR1 identified 9 issues requiring additional information from the TFV.

⁴ Response of the Common Legal Representative of the Victims of the Attacks to 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)”, 20 January 2022, [ICC-01/04-02/06-2737-Conf](#). The CLR2 identified 18 issues requiring additional information from the TFV.

⁵ Trust Fund of Victims’ submission of Draft Implementation Plan, 17 December 2021, [ICC-01/04-02/06-2732](#). The DIP was notified to the parties on 20 December 2021.

need to issue additional specific guidance to the TFV, before the DIP can be approved. Meanwhile, the CLR2 and Defence appeals against the Reparations Order are being adjudicated by the Appeals Chamber, which further complicates this process.

3. Thus, further to the Decision, CLRs have more time to consult with their clients and the TFV has more time to provide information missing in its DIP, both laudable objectives, but with little to no room made available to the parties and participants to address substantive issues, which have the potential to derail the reparations process, before 24 March 2022. To provide but one example, the involvement and contribution of VPRS to the reparations process over the next two months is at best unclear. Yet, the TFV's plan to sideline and replace VPRS in the reparations process certainly stands out as one of the remarkable features of the DIP.

4. As for the Chamber's invitation to the DRC authorities to submit observations on the DIP and the TFV's supplementary filing by 10 March 2022,⁶ this is of course welcomed by the Defence. Submissions on the DRC authorities' observations will be included in the Defence observations on the DIP and the TFV's supplementary filing on 24 March 2022.

SUBMISSIONS

(a) Additional matters identified by the Defence in the DIP that should be addressed by the TFV

5. In addition to the very long list of missing information identified by the Chamber, CLR1 and CLR2, the Defence has identified 22 additional matters, which should be addressed by the TFV. Other than the first and second matter, which take precedence, they are set out below in no particular order. Further, as mentioned above and in accordance with the Decision, the matters addressed below are limited to

⁶ [Decision](#), paras.15 and Disposition.

“additional matters in the DIP that should be addressed by the TFV”,⁷ and do not include substantive submission on the part of the Defence.

6. First matter: The Defence notes with concern that the DIP includes a large number of assumptions and assertions, which are unsupported by any basis, foundation or justification. Annex A to this filing, initially intended to be submitted as an annex to the Defence’s 24 January observations, provides a list of such unsupported assumptions and assertions. The Defence underscores the need for such assumptions and assertions to be backed up by relevant and reliable justification and invites the TFV to use the time now at its disposal to provide the information sought.

7. Second matter: While the DIP refers to the prevailing security in Ituri, focusing on the resulting difficulties in reaching potential beneficiaries and population movements,⁸ the source of the security problems, *i.e.* CODECO, a Lendu based militia fighting the Government and the national armed forces FARDC, is not even mentioned. The security situation in Ituri must be researched and understood more thoroughly before conclusions are drawn, and monetary compensation is proposed *in lieu* of collective reparations to alleged potential beneficiaries who might be linked to CODECO. In fact, the verification body yet to be determined must have at its disposal all necessary information on the security situation in Ituri since 2003. Without this information, it will not be possible to assess the eligibility of potential beneficiaries based on the applicable standard of proof and causal link. The TFV evidently minimizes the importance of the security situation and its impact on the identification of legitimate potential beneficiaries.

8. In addition, the DIP should be revised to include the following information:

- (i) A “Plan B” to modify the DIP if and when the Appeals Chamber upholds the CLR2 or Defence appeals in whole or in part;

⁷ [Decision](#), paras.11 and Disposition.

⁸ [DIP](#), Sections II(C) and (D), B(1).

- (ii) Estimates regarding the period of time that will be required to implement the reparations;
- (iii) A basis for its estimates on the number of victims and their location;⁹
- (iv) Information regarding the *Lubanga* applicants, including *inter alia*, their numbers and the date of their application as compared to the cut-off date for applications;¹⁰
- (v) Justification for the TFV's intent not to rely on the VPRS estimates in relation to the number of new potential beneficiaries;¹¹
- (vi) Information as to how the TFV intends to address the eligibility of the 600 potential beneficiaries identified by VPRS as ineligible;¹²
- (vii) Sufficient information as to the TFV's estimates regarding the number of SGBV victims;
- (viii) Information as to how the risks arising from a shift to compensation in the form of financial payment will be mitigated, including as regards, *inter alia*, the financing of militias and the likelihood of a large number of applications submitted by ineligible beneficiaries;¹³
- (ix) An explanation as to how financial compensation measures envisioned in the DIP constitute measures of "last resort";¹⁴

⁹ [DIP](#), para. 88-90,101-104,249,278,282,298.

¹⁰ [DIP](#), para.101.

¹¹ [DIP](#), para.278.

¹² [DIP](#), para.275.

¹³ [DIP](#), paras.120,144,172,188,196-197,222.

¹⁴ [DIP](#), para.115.

- (x) An explanation of how the TFV plans to take into consideration and address the difficulties associated with transgenerational harm and children born out of rape;¹⁵
- (xi) Information as regards how the proposed plaque at the Sayo Health Centre¹⁶ will not reignite tensions in the area, and information regarding the Sayo Health Centre's operation since 2003;
- (xii) An explanation of how to identify and assess "indirect victims" who were part of the Abbé Bwanalonga's congregation;¹⁷
- (xiii) Details of the TFV's proposed system to contact beneficiaries, including an explanation of the consequences of not being able to contact them;
- (xiv) Information regarding the content of the TFV's intended outreach messaging,¹⁸ including an acknowledgement of the risks associated with detailed information inviting false claims;
- (xv) Information as to how the TFV intends to mitigate the risks and difficulties that will arise through the use of a simplified form;¹⁹
- (xvi) Information as to how the TFV intends to apply the standard of proof in practice;
- (xvii) Information as to the parameters that the TFV will use to assess and confirm the identity of applicants;
- (xviii) Details of the verification body and an explanation as to how the verification process will operate in practice;²⁰

¹⁵ [DIP](#), paras.75,89, 98,102-103.

¹⁶ [DIP](#), paras.216-220.

¹⁷ [DIP](#), para.83.

¹⁸ [DIP](#), paras.302-309.

¹⁹ [DIP](#), paras.313,351.

²⁰ [DIP](#), paras.331-341.

- (xix) An explanation as to how a 15-day deadline²¹ for the verification process is reasonable given the complexity of this process;
- (xx) Justification for the failure of the DIP to include any oversight and review mechanism, and in particular the circumvention of any other body apart from the TFV itself.²²

CONCLUSION

9. Taking into consideration the numerous deficiencies and the missing information in the DIP, as identified by the Chamber, the CLRs and the Defence, it is evident that approving the DIP in these circumstances would be premature.

10. Much more information needs to be provided by the TFV and the Defence hereby offers its assistance to assist the TFV in understanding what information it needs to provide and why.

11. As for the additional substantive issues referred to above, the Defence stands ready to brief the Chamber, along with the CLRs and participants, with a view to possibly assessing the same in parallel to the additional information that needs to be provided by the TFV.

RESPECTFULLY SUBMITTED ON THIS 13th DAY OF SEPTEMBER 2022



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

The Hague, The Netherlands

²¹ [DIP](#), paras. 332,341,345-346.

²² [DIP](#), paras.342-346.