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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

Submissions of the Common Legal Representative of the Victims of the Attacks pursuant to the “Order for the implementation of the Judgement on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order””

Source: Office of Public Counsel for Victims (CLR2)

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

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I. INTRODUCTION

1. In accordance with the “Order for the implementation of the Judgement on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”” issued by Trial Chamber II (the “Chamber”) on 25 October 2022 (the “Order”),¹ the Common Legal Representative of the Victims of the Attacks (the “Legal Representative” or “CLR2”) hereby files his submissions on the procedure for the constitution of the sample and on the redactions to be applied to the victims’ dossiers.

II. PROCEDURAL BACKGROUND

2. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”.² On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).³

3. On 12 September 2022, the Appeals Chamber issued its Judgement on the appeals against the Reparations Order.⁴

4. On 25 October 2022, the Chamber issued the Order, establishing, *inter alia*, the methodology and criteria for the constitution of a sample of victims and setting out a procedure and a calendar for the parties to comment thereon.⁵

5. On 8 November 2022, the Registry filed its submissions in compliance with the Order.⁶ The Registry determined *inter alia* that, in addition to victims benefitting from

¹ See the “Order for the implementation of the Judgement on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”” (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022 (the “Order”), paras. 34(e) and 36.

² See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

³ See the “Decision assigning judges to divisions and recomposing chambers” (Presidency), [No. ICC-01/04-02/06-2663](#), 16 March 2021, p. 7.

⁴ See the “Judgement on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”” (Appeals Chamber), [No. ICC-01/04-02/06-2782 A4 A5](#), 12 September 2022.

⁵ See the Order, *supra* note 1.

⁶ See the “Registry submission in compliance with the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”

the interim reparations measures awarded as per the Initial Draft Implementation Plan (the “IDIP”), 92 victims’ dossiers had to be randomly selected from the group of victims of the attacks, and 12 victims’ dossiers had to be randomly selected from the group of victims of crimes against child soldiers.⁷

III. SUBMISSIONS

6. As a preliminary matter, the Legal Representative wishes to emphasise that the present proceedings ought to be conducted with the utmost expeditiousness and diligence as the victims have now been awaiting reparations for a considerable amount of time. Not only were they subjected to the crimes about 20 years ago, but the issuance of the Reparations Order in March 2021 increased their expectations that reparations would be awarded relatively soon. Further, the victims are generally aware that a number of them are benefitting from some forms of support and assistance, either in the context of the *Lubanga* reparations proceedings or through the IDIP. Accordingly, the Legal Representative emphasises the paramount importance of conducting the present proceedings with expeditiousness.

7. It is in this spirit that the Legal Representative – upon being requested by the Victims Participation and Reparations Section (the “VPRS”) to give comments on the redactions they intend to apply⁸ – invited the Registry to limit the redactions to the regime set forth in the relevant part of the Order,⁹ and to avoid applying excessive redactions.¹⁰ He believes that such a balanced and pragmatic approach will permit a focussed and swift litigation, thereby avoiding further delays in the award of reparations to the victims.

(ICC-01/04-02/06-2786)”, [No. 01/04-02/06-2788](#), 8 November 2022 (the “Registry Submissions”); with Confidential *ex parte* Annexes 1 and 2.

⁷ *Idem*, para. 15.

⁸ See the Email correspondence from the VPRS on 31 October 2022 at 17:47.

⁹ See the Order, *supra* note 1, paras. 35-36.

¹⁰ See the Email correspondence from the CLR2 on 2 November 2022 at 12:11. In particular, the CLR2 indicated to the VPRS that, unless concretely identifying, no redactions are required concerning the ethnic group of a victim or the information provided in relation to the harm.

1) On the methodology for the constitution of the sample

8. The Legal Representative understands that following the Appeals Judgement, the Chamber has decided to order the Registry to constitute a sample which must be drawn from a universe of victims comprised of: (i) all 69 application forms from individuals currently benefitting from the IDIP (*i.e.* 45 victims of the attacks and 24 former child soldiers, collectively the “IDIP victims”);¹¹ (ii) all participating victims (*i.e.* 1837 victims of the attacks and 284 former child soldiers), including those found not to be eligible by the Registry but excluding individuals already recognised as victims in the *Lubanga* case;¹² (iii) all the “long forms” collected from non-participating victims in the context of the Registry’s mapping exercise, that is all 25 long forms previously notified to the Chamber,¹³ plus the additional 28 long consultation forms not previously notified to the Chamber;¹⁴ and (iv) an additional 39 application forms collected by an external lawyer and transmitted to the VPRS in December 2020.¹⁵

9. The sample must be drawn by dividing the universe of victims into two groups: victims of the attacks on the one hand and former child soldiers on the other hand, and by extracting 5% of the total number of each group, in addition to the IDIP victims who all must be part of the sample.¹⁶

10. The Registry randomly selected 92 victims from the group of victims of the attacks who, together with the 45 IDIP victims, are intended to constitute the sample of the victims of the attacks¹⁷ subject to the Chamber’s approval.¹⁸

¹¹ See the Order, *supra* note 1, para. 20.

¹² *Idem*, paras. 5 and 23-25.

¹³ *Idem*, para. 25.

¹⁴ See the Email correspondence from the Chamber on 2 November 2022 at 13:19.

¹⁵ *Ibid.*

¹⁶ See the Order, *supra* note 1, paras. 33 and 34(b).

¹⁷ See the Registry Submissions, *supra* note 6, paras. 14-17.

¹⁸ *Idem*, para. 34(f).

11. The Legal Representative is generally satisfied with the methodology adopted for the constitution of the sample. In particular, he welcomes the procedure according to which the victims who might be deemed ineligible within the context of the sample exercise, will have an opportunity to supplement their dossiers and clarify their accounts at the implementation stage.¹⁹

12. The Legal Representative also fully agrees that the requirement to act with expeditiousness and to comply with the *do no harm* principle is important to avoid having to ask the victims to recount their narratives.²⁰ Indeed, the information available on the case record at this stage is sufficient for the constitution of the sample. In this respect, he agrees – with the important caveat set out below²¹ – that the victims' dossiers, when analysed together with submissions from the Common Legal Representatives (the "CLR"), will allow the Chamber to analyse and rule upon a representative sample of them.²²

2) On the subsequent procedure and calendar

13. The Legal Representative understands from the Order that the list of the sampled victims prepared by the Registry is subject to the Chamber's approval and is meant to be finalised by way of a subsequent decision (the "Sample Decision"). The issuance of the Sample Decision will then kick start the 30-day deadline for the Registry to apply redactions prior to transmitting the victims' dossiers to the parties, followed by a further 30 days for the CLR to complement the sampled victims' dossiers.²³

14. The Legal Representative wishes to already flag at this stage that, in light of the current challenges underlined by the Chamber,²⁴ he might be unable to reach, within the established deadline, all the victims of the attacks in the approved sample – an

¹⁹ *Idem*, para. 10.

²⁰ *Idem*, para. 7.

²¹ See *infra*, paras. 13-16.

²² See the Order, *supra* note 1, para. 7.

²³ *Idem*, para. 34(g).

²⁴ *Idem*, para. 10.

expected 137 victims – in order to complement their dossiers as appropriate. The exercise is likely to be particularly challenging with respect to non-participating victims. In fact, the Legal Representative will need to establish contact with said victims based on contact information contained in the long forms collected several years ago, and, given the extent of the population's displacement over the last years, it can be reasonably anticipated that said contact information is out of date.

15. For the purpose of expeditiousness, the Legal Representative respectfully requests that through the Sample Decision, the Chamber instruct the Registry to provide the CLRV with the information on the victims admitted into the sample which includes: (i) victims' codes of participating victims and (ii) unredacted dossiers of non-participating victims.²⁵ This will provide the Legal Representative with more time to be able to reach the victims, to review their dossiers and to supplement them, as necessary. In this regard, the Legal Representative would like to draw the Chamber's attention to the fact that although both teams have been given the same 30-day deadline to make submissions on and complement the victims' dossiers, the Legal Representative will have to deal with an expected 137 dossiers, while in contrast, the Common Legal Representative of the Former Child Soldiers will be reviewing an expected 36 dossiers²⁶ – which encompasses a significantly smaller number of dossiers in which a fair number of them may not require any further supplementary information.

16. Besides and more generally, and without prejudice to his further observations on particular victims' dossiers, the Legal Representative recalls that the circumstances of the commission of the crimes, which led to the population being forced to leave their houses behind for a substantial period of time, and the time elapsed since the

²⁵ The question on redactions to be applied to victims' dossiers will be addressed below.

²⁶ See the Registry Submissions, *supra* note 6, paras. 14-17. The Registry randomly selected 12 victims from the group of victims of crimes against child soldiers who, together with the 24 IDIP victims, are intended to constitute the sample of the victims of crimes against child soldiers.

commission of the crimes and resurgence of the conflict,²⁷ are such that victims are overwhelmingly in no position to produce documents in support of their claims.

3) On redactions to be applied to the victims' dossiers

17. The Legal Representative takes note of the Chamber's instruction to the Registry to redact any identifying information from the victims' dossiers before transmitting them to the parties.²⁸ He posits that this principle should only apply to the Defence. He recalls in this regard that the CLRV already have in their possession unredacted dossiers of their respective clients. As far as non-participating victims are concerned, the CLRV should be provided with the respective dossiers of the concerned victims with no redactions, so as to be able to provide support and assistance to said victims as instructed by the Chamber.²⁹ As already requested *supra*, the CLRV should be provided with unredacted dossiers of non-participating victims upon the issuance of the Sample Decision for the purpose of expeditiousness.

IV. CONCLUSION

18. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to:

- **TAKE NOTE** of the present submissions; and
- **INSTRUCT** the Registry through the Sample Decision to provide the CLRV with the information on the victims admitted into the sample which includes (i)

²⁷ See for instance the "Registry's Observations on Reparations in the *Ntaganda* Case", [No. ICC-01/04-02/06-2475-AnxI](#), 28 February 2020, para. 23. In particular, one of the key findings from the VPRS mapping exercise is that almost no contemporaneous supporting documentation has survived from the 2002-2003 conflict in Ituri. The reasons that the persons consulted reported for this include: 1) deliberate destruction of document storage facilities by the UPC/FPLC during the conflict; 2) loss of documentation due to intervening conflicts and instability; and 3) loss of documentation due to the passage of time.

²⁸ See the Order, *supra* note 1, para. 35.

²⁹ *Idem*, para. 34(i).

victims' codes of participating victims and (ii) unredacted dossiers of non-participating victims.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a small dot at the end.

Dmytro Suprun
Common Legal Representative of the Victims of Attacks

Dated this 9th day of November 2022

At The Hague, The Netherlands