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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

Response of the Common Legal Representative of the Victims of the Attacks to the “Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers”

Source: Office of Public Counsel for Victims (CLR2)

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

Legal Representatives of the Victims

Ms Sarah Pellet

Mr Tars Van Litsenborgh

Mr Dmytro Suprun

Ms Fiona Lau

Counsel for the Defence

Mr Stéphane Bourgon

Ms Kate Gibson

Mr Benjamin Willame

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Office of the Prosecutor

States' Representatives

Amicus Curiae

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

Ms Franziska Eckelmans

Others

I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative” or “CLR2”) herewith submits his response to the “Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers” (the “Defence’s Request” or “Request”).¹

2. The Legal Representative submits that the Defence’s Request for the lifting of redactions applied in the dossiers of the victims of the attacks included in the Sample must be dismissed. None of the concerned victims consented to have their identities disclosed to the Defence and thus the redactions should be maintained. The lifting of the remaining redactions in the victims’ dossiers sought by the Defence in confidential Annex A has a *real* likelihood of leading to the identification of the victims. Accordingly, all current redactions should be maintained to protect the safety, security, well-being, dignity and privacy of the concerned victims. Furthermore, the currently redacted information does not undermine the Defence’s ability to make meaningful observations on the eligibility of the victims for reparations. Such information is only relevant for the Trust Fund for Victims (the “TFV”) to determine an appropriate form of reparations for the concerned victims at the implementation stage.

II. PROCEDURAL BACKGROUND

3. On 8 March 2021, Trial Chamber VI issued the “Reparations Order”.²

¹ See the “Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers”, [No. ICC-01/04-02/06-2838](#), 29 March 2023 (the “Defence’s Request”).

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

4. On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II (the “Chamber”).³

5. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeals against the Reparations Order (the “Appeals Judgment”).⁴ The Appeals Chamber remanded the Reparations Order to the Chamber to the extent that it found that Trial Chamber VI failed to, *inter alia*, “make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number”; “assess and rule upon victims’ applications for reparations”; and “lay out at least the most fundamental parameters of a procedure for the Trust Fund for Victims to carry out the eligibility assessment”⁵ (the “Issues pertaining to the Sample”).

6. On 25 October 2022, the Chamber issued an Order for the implementation of the Appeals Judgment (the “Order of 25 October 2022”),⁶ which set in motion processes to address and implement the Appeals Judgment. This included a procedure for the constitution of a Sample in addition to instructions for submissions, if any, from the parties and participants to address the Issues pertaining to the Sample.

7. On 25 November 2022, the Chamber issued a decision (the “Decision of 25 November 2022”) directing *inter alia* that (i) the legal representatives of victims (the “LRVs”) immediately proceed to contact their clients included in the Sample and to consult with them as to whether they consent to their identities being disclosed to the Defence, and to inform the Victims Participation and Reparations Section (the “VPRS”) and the Defence of the results on a rolling basis and within thirty days from the

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 “Judgment 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 (the “Appeals Judgment”).

⁵ *Idem*, p. 11.

⁶ See 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’” (Trial Chamber II), [No. ICC-01/04-02/06-2786](#), 25 October 2022 (the “Order of 25 October 2022”).

notification of the present decision; (ii) the VPRS implements redactions to the victims' dossiers as appropriate and transmits them to the Defence on a rolling basis and within thirty days from the date it receives the information from the LRVs; and (iii) the LRVs provide submissions and complement the victims' dossiers within thirty days of the last transmission of the victims' dossiers to the Defence.⁷

8. On 12 December,⁸ 21 December⁹ and 28 December 2022,¹⁰ the Legal Representative informed the Defence and the Registry that: (i) he had consulted 12, 50 and 10 of his clients respectively; (ii) none of them agreed to have their identities disclosed to the Defence; and (iii) the identities of 10 of the victims included in the Sample is already known to the Defence, as these individuals are either dual status individuals, victims called to present evidence, or victims called to present views and concerns.¹¹

9. On 11 January, 23 January and 27 January 2023, the Registry transmitted to the Defence, respectively, 12, 50 and 79 redacted dossiers pertaining to the victims of the attacks.¹²

10. On 3 March 2023, the Legal Representative filed his submissions on the dossiers of the victims included in the Sample (the "CLR2's Submissions on the victims'

⁷ See the "Decision on 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'" (Trial Chamber II), [No. ICC-01/04-02/06-2794](#), 25 November 2022 (the "Decision of 25 November 2022"), with Public Annex 1, [No. ICC-01/04-02/06-2794-Anx1](#), p. 23.

⁸ See the Email correspondence from the Legal Representative dated 12 December 2022 at 13:40.

⁹ See the Email correspondence from the Legal Representative dated 21 December 2022 at 08:13.

¹⁰ See the Email correspondence from the Legal Representative dated 28 December 2022 at 10:33.

¹¹ See the Email correspondence from the Legal Representative dated 28 December 2022 at 10:33.

¹² See the "First Transmission to the Defence of 28 Redacted Victim Dossiers pursuant to Trial Chamber II Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2809](#) (11 January 2023), with 12 confidential *ex parte* annexes available to the Legal Representative and the Defence; the "Second Transmission to the Defence of 50 Redacted Victim Dossiers pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2814](#), 20 January 2023, with 58 confidential *ex parte* annexes available to the Legal Representative and the Defence; and the "Third Transmission to the Defence of 92 Redacted Victim Dossiers pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2816](#), 27 January 2023, with confidential *ex parte* Annexes 18 to 97 only available to the Legal Representative and the Defence.

dossiers”), with Confidential *Ex Parte* Annexes 1-43 available only to the CLR2, and Confidential Redacted Annexes 1-43.¹³

11. On 7 March 2023, the VPRS transmitted to the Legal Representative the Defence’s request dated 2 March 2023 for the lifting of redactions applied in the dossiers of the victims included in the Sample (the “Defence’s Request of 2 March 2023”).¹⁴ On 8 March 2023, the VPRS transmitted to the Legal Representative the particulars of information for which the lifting of redactions was requested by the Defence.¹⁵

12. On 9 March 2023, the Defence requested, by email, the Legal Representative to lift some redactions applied in the victims’ supplementary information contained in Annexes 3, 5-7, 12, 15, 19-21, 24-26, 32, 35 and 38-39 to his Submissions on the victims’ dossiers (the “Defence’s Request of 9 March 2023”).¹⁶

13. On 10 March 2023, the Legal Representative responded, by email, to the Defence’s Request of 9 March 2023 in agreeing to lift some redactions contained in Annexes 6, 19-21 and 38-39. He however opposed the lifting of the remaining redactions in arguing that the redacted information can lead to the identification of the concerned victims and that accordingly the current redactions should be maintained.¹⁷

14. On the same date, the Legal Representative provided to the VPRS his views on the Defence’s Request of 2 March 2023.¹⁸

¹³ See the “Submissions by the Common Legal Representative of the Victims of the Attacks on the dossiers of the victims included in the Sample”, [No. ICC-01/04-02/06-2836](#), 3 March 2023 (the “CLR2’s Submissions on the victims’ dossiers”), with Confidential *Ex Parte* Annexes 1-43 available only to the CLR2, and Confidential Redacted Annexes 1-43.

¹⁴ See the Email correspondence from the VPRS to the Legal Representative dated 7 March 2023 at 17:31. See also the Email correspondence from the Defence to the VPRS dated 2 March 2023 at 19:10.

¹⁵ See the Email correspondence from the VPRS to the Legal Representative dated 8 March 2023 at 21:40.

¹⁶ See the Email correspondence from the Defence to the Legal Representative dated 9 March 2023 at 15:09.

¹⁷ See the Email correspondence from the Legal Representative to the Defence dated 10 March 2023 at 15:40.

¹⁸ See the Email correspondence from the Legal Representative to the VPRS dated 10 March 2023 at 15:38.

15. On 20 March 2023, the Legal Representative filed confidential lesser redacted versions of Annexes 6, 19-21, and 38-39 to his Submissions on the victims' dossiers.¹⁹

16. On 21 March 2023, the VPRS responded, by email, to the Defence's Request of 2 March 2023.²⁰

17. On 24 March 2023, following a request from the Defence,²¹ the Chamber extended the deadline for the Defence's submissions on the dossiers of the victims included in the Sample to 1 May 2023.²²

18. On 29 March 2023, the Defence filed its Request.²³ On the same date, the Chamber ordered the TFV and the Registry to address the issues raised in the Defence's Request within the same deadline as for the parties' responses pursuant to regulation 34(b) of the Regulations of the Court.²⁴

III. SUBMISSIONS

19. The Legal Representative notes first that following the Defence's Requests of 2 and 9 March 2023 he agreed to lift all redactions applied to the victims' ethnic groups, and some specific redactions applied in the victims' dossiers, in particular, the place where the victim resided at the time of the events;²⁵ the place where the victim fled;²⁶ brands or other particulars of the property which was pillaged;²⁷ the names of the victim's relatives (because the victims gave these names during their testimony or

¹⁹ See [No. ICC-01/04-02/06-2836-Conf-Anx6-Red2](#), [No. ICC-01/04-02/06-2836-Conf-Anx19-Red2](#), [No. ICC-01/04-02/06-2836-Conf-Anx20-Red2](#), [No. ICC-01/04-02/06-2836-Conf-Anx21-Red2](#), [No. ICC-01/04-02/06-2836-Conf-Anx38-Red2](#), [No. ICC-01/04-02/06-2836-Conf-Anx39-Red2](#).

²⁰ See the Email correspondence from the VPRS to the Defence dated 21 March 2023 at 20:25.

²¹ See the "Defence request for a limited extension of the time limit set to make submissions on the dossiers of the victims included in the sample", [No. ICC-01/04-02/06-2837](#), 20 March 2023.

²² See the Email correspondence from the Chamber dated 24 March 2023 at 08:28.

²³ See the Defence's Request, *supra* note 1.

²⁴ See the Email correspondence from the Chamber dated 29 March 2023 at 16:12.

²⁵ See for instance a/00910/13, a/01224/13, a/01572/13, a/01654/13, a/20062/14, a/30069/15, a/01566/13, a/30003/15, a/01269/13, a/20029/14, a/01193/13.

²⁶ See for instance a/00004/13, a/00811/13, a/00828/13, a/00847/13, a/00891/13, a/00824/13, a/20160/14, a/30067/15, a/30275/15, a/30384/15, a/30411/15.

²⁷ See for instance a/00096/13, a/01215/13, a/01650/13, a/20068/14, a/20150/14.

presentation of their views and concerns);²⁸ the number of wives the victim had at the time;²⁹ the victim's kinship with the murdered person and the latter's name and role in the community;³⁰ the place where the victim grew up,³¹ or was born;³² the village where the victim worked at the time;³³ the ethnic group of the victim's father;³⁴ the village where the victim's husband passed away recently.³⁵

20. The Legal Representative opposes the Defence's Request for the lifting of the remaining redactions applied in the dossiers of the victims included in the Sample. Contrary to the Defence's contention that such a request is in accordance with the instructions set out in the Chamber's Decision of 25 November 2022,³⁶ the Legal Representative recalls that the Chamber held that the victims' security concerns are "*always paramount*".³⁷ Furthermore, it was stressed that the Defence may only receive information on the identities of victims *if* the victims have consented to their identities disclosed to the Defence. If this consent is provided, the Registry is still obliged to redact in the victims' dossiers the information that might reveal the current residence or other contact information that may be used to locate the victims.³⁸

21. Indeed, the Chamber held that "*any information relating to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Ntaganda has been convicted, should not be redacted, except for information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims*".³⁹ The Chamber emphasised that the Appeals Judgment clearly indicated that "*in granting the Defence access to the victims' applications, the*

²⁸ See for instance a/00802/13, a/00880/13, a/01635/13.

²⁹ See for instance a/01248/13.

³⁰ See for instance a/01720/13.

³¹ See for instance a/30248/15.

³² See for instance a/30280/15.

³³ See for instance a/30282/15.

³⁴ See for instance a/30282/15.

³⁵ See for instance a/30397/15.

³⁶ See the Defence's Request, *supra* note 1, paras. 11-16.

³⁷ See the Decision of 25 November 2022, *supra* note 7, para. 29.

³⁸ *Ibid.*

³⁹ See the Order of 25 October 2022, *supra* note 6, para. 36.

necessary redactions shall be made to protect the victims' safety, physical and psychological wellbeing, dignity and privacy, pursuant to article 68 of the Statute".⁴⁰ This legal regime is misrepresented by the Defence who contends that the victims' absence of consent is the sole factor that precludes the disclosure of their identities to the Defence.⁴¹

22. On 12 December,⁴² 21 December⁴³ and 28 December 2022,⁴⁴ the Legal Representative informed the Defence that he consulted 12, 50 and 10 of his clients respectively, and none of them agreed to have their identities disclosed to the Defence. It is submitted that under the current legal framework as established by the Chamber in its Order of 25 October 2022 and Decision of 25 November 2022, in the absence of the concerned victims' express consent and in light of the Court's duty to ensure the safety, security, well-being, dignity and privacy of the victims under article 68 of Statute, there is no legal basis for the disclosure of the concerned victims' identities to the Defence. It was open to the Defence to request leave to appeal said decisions, but it opted not to do so. By bringing the matter up again, the Defence seems to be aiming to re-litigate the matter which was already resolved by the Chamber.

23. The lifting of the remaining redactions applied in the dossiers of the victims of the attacks sought by the Defence in confidential Annex A has a *real* likelihood of leading to the identification of the concerned victims. For instance, the following currently redacted information is clearly identifying: the victims' names and contact detail;⁴⁵ the names of the victims' relatives;⁴⁶ the specific position occupied by the victim's father at the time of the events;⁴⁷ the victims' occupation at the time;⁴⁸ the

⁴⁰ *Idem*, para. 35.

⁴¹ See the Defence's Request, *supra* note 1, para. 13.

⁴² See the Email correspondence from the Legal Representative dated 12 December 2022 at 13:40.

⁴³ See the Email correspondence from the Legal Representative dated 21 December 2022 at 08:13.

⁴⁴ See the Email correspondence from the Legal Representative dated 28 December 2022 at 10:33.

⁴⁵ See for instance a/01720/13, a/20068/14, a/30248/15.

⁴⁶ See for instance a/00053/13, a/00140/13, a/01025/13, a/01248/13, a/01469/13, a/01654/13, a/01720/13, a/20062/14, a/30067/15, a/30397/20, a/30406/15.

⁴⁷ See for instance a/30275/15.

⁴⁸ See for instance a/00136/13, a/00140/13, a/00438/13, a/00811/13, a/00824/13, a/30067/15, a/30087/15, a/30275/15, a/30282/15, a/30309/15.

specific place where the victims lived at the time;⁴⁹ the specific places where the victims currently reside;⁵⁰ the specific place of residence where the victim's brother lived at the time;⁵¹ the specific circumstances under which the victim's daughter passed away well after the events;⁵² the name of the educational institution where the victim studied and the years of the completion of the studies.⁵³

24. When the victims lived at the time in small villages, the number of the victims' houses which were burnt,⁵⁴ or the very particulars of the victims' property which was pillaged (referring to the victims' occupation)⁵⁵ can lead to the identification of the concerned victims. In the same vein, when the victim's current residence (a small village) is known to the Defence, the number of the victim's children can be identifying.⁵⁶

25. The Legal Representative further contends that the lifting of some currently redacted information can lead to the identification of the concerned victims when read in conjunction with other information available to the Defence, in particular: the names of the villages where the victims currently reside when details of the victims' experience are known to the Defence;⁵⁷ the victim's occupation at the time when his place of residence at the time is known to the Defence;⁵⁸ or the number of the victim's children who were fleeing together when the fleeing itinerary is known to the Defence.⁵⁹ In the same vein, the names of the villages where the victims presently

⁴⁹ See for instance a/00486/13 and a/00494/13 (specific quartier in a small village), a/30280/15 (specific house).

⁵⁰ See for instance a/00824/13 (specific concession), a/00891/13 (specific house).

⁵¹ See for instance a/01720/13.

⁵² See for instance a/00824/13.

⁵³ See for instance a/30248/15.

⁵⁴ See for instance a/00075/13, a/00096/13, a/00653/13, a/01095/13, a/01116/13, a/01469/13, a/01489/13, a/01497/13, a/01650/13.

⁵⁵ See for instance a/00119/13, a/00140/13, a/00212/13, a/00244/13, a/00438/13, a/00811/13, a/00847/13, a/01116/13, a/01469/13, a/01497/13, a/01530/13, a/01640/13.

⁵⁶ See for instance a/30201/15.

⁵⁷ See for instance a/01370/13, a/20011/14, a/30282/15, a/30397/20.

⁵⁸ See for instance a/00811/13.

⁵⁹ See for instance a/00552/13.

reside, should the respective redactions be lifted, can be used to locate the concerned victims, given that their identities are known to the Defence.⁶⁰

26. The Legal Representative submits that not only the lifting of the current redactions has a real likelihood of leading to the identification of the concerned victims, but furthermore, the current redactions do not undermine in any way the ability of the Defence to make meaningful observations on the eligibility of the victims for reparations. It should be recalled that the purpose of the eligibility assessment is to determine whether the concerned victims suffered harm as a result of the crimes for which Mr Ntaganda was convicted. The specific number of the houses which were burnt, particulars of the property which was pillaged, the number of children the victim currently has or the number of children who were fleeing together with the victim at the time of the events and any other information as referred to *supra*, is not necessary for the Defence to be able to make meaningful observations on the concerned victims' eligibility for reparations, given in particular that the reparations in the present case are collective in nature and thus no specific scrutiny of the multidimensional harm suffered by the victims is required.

27. He recalls in this regard that Trial Chamber VI decided that collective reparations with individualised components are the most appropriate in the present case to provide a *"more holistic approach to the multi-faceted harm suffered"*, and accordingly, an individual assessment of such harm suffered by the victims would be *"resource intensive, time consuming"* and *"disproportionate to what could be achieved"*.⁶¹ Rather, such information is only relevant for the TFV to determine an appropriate form of reparations for the concerned victims at the implementation stage.⁶²

⁶⁰ See for instance a/00802/13 (P-0894), a/00880/13 (P-0892), and a/01635/13 and a/30286/15 (the victims were called by the CLR2 to present their views and concerns).

⁶¹ See the CLR2's Submissions on the victims' dossiers, *supra* note 13, para. 39.

⁶² *Idem*, para. 40.

IV. RELIEF SOUGHT

28. For the abovementioned reasons, the Legal Representative respectfully requests the Chamber to reject the Defence's Request in its entirety.

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 11th day of April 2023
At The Hague, The Netherlands