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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

Public redacted version of the “Response of the Common Legal Representative of the Former Child Soldiers 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’ (ICC-01/04-02/06-2838)”

No. ICC-01/04-02/06-2841-Conf, dated 11 April 2023

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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 “Common Legal Representative”) hereby files her 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 “Request”).¹

2. She submits that all redactions are fully in line with Trial Chamber II’s instructions and remain strictly necessary in light of the dire security situation in Ituri. Accordingly, the part of the Request seeking the lifting of redactions applied to the victims’ dossiers should be rejected in its entirety.

II. PROCEDURAL BACKGROUND

3. Following the issuance of the Judgment on the appeal against the Reparations Order on 12 September 2022,² Trial Chamber II (the “Chamber”) constituted a representative sample of victims for the purpose of ruling on their eligibility for reparations. To that end, the Chamber first set out the methodology and criteria for the constitution of the sample, as well as a calendar for the parties to comment thereon, by way of an order issued on 25 October 2022.³ The Chamber then proceeded to approve the actual composition of the sample as constituted by the Victims Participation and

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](#) and [No. ICC-01/04-02/06-2838-Conf-AnxA](#), 29 March 2023 (the “Request”).

² See the “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2782](#), 12 September 2022 (the “Appeals Judgment”).

³ 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 “25 October 2022 Order”).

Reparations Section (the “VPRS”), by way of a decision issued on 25 November 2022 (the “25 November 2022 Decision”).⁴

4. In the 25 November 2022 Decision, the Chamber further directed, *inter alia*:

- (i) the legal representatives of victims (the “LRVs”) to immediately contact their clients included in the sample with a view to determining whether they consent to disclosing their identity to the Defence; and to inform the VPRS and the Defence of the result of this consultation by 28 December 2022 at the latest;
- (ii) the VPRS to implement redactions to the victims’ dossiers as appropriate and transmit them to the Defence, on a rolling basis and no later than within thirty days of the last transmission by the LRVs, *i.e.* on 30 January 2023 at the latest;
- (iii) the LRVs to make submissions and complement the victims’ dossiers within 30 days of their transmission to the Defence *i.e.* on 3 March 2023;⁵ and
- (iv) the Defence to make submissions on the dossiers within 30 days of receipt of the LRVs’ submissions, *i.e.* on 3 April 2023.⁶

⁴ 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](#) and [No. ICC-01/04-02/06-2794-Anx1](#), 25 November 2022 (the “25 November 2022 Decision”).

⁵ Although the VPRS transmitted the last redacted applications on 27 January 2023, they were only made available to the Defence on 31 January.

⁶ See the 25 November 2022 Decision, *supra* note 4, para. 34 (b)-(h).

5. On 12 December 2022,⁷ on 28 December 2022,⁸ and on 26 January 2023,⁹ the Common Legal Representative informed the Registry and the Defence that none of the 24 clients she had managed to contact consented to disclosing their identity to the Defence.¹⁰

6. On 9 January 2023, the Common Legal Representative specified that, in relation to the 14 victims she was not able to contact, redactions to their identity shall be maintained, as they are currently unable to consent to its disclosure to the Defence. She added that *“it [was] reasonable to assume that the reasons advanced by the clients [she was] able to reach (fear for their security, and/or that of their family and the general volatile security situation in Ituri) also concern victims who could not be reached prior to the expiration of the 28 December deadline”*.¹¹

⁷ See the email from the Common Legal Representative of Victims to the Registry and the Defence on 12 December 2022 at 10:40 entitled “Information regarding Former Child Soldiers’ consent for their identity to be disclosed – 1st transmission”.

⁸ See the email from the Common Legal Representative of Victims to the Registry and the Defence on 28 December 2022 at 11:57 entitled “Information regarding Former Child Soldiers’ consent for their identity to be disclosed – 2nd transmission”.

⁹ See the email from the Common Legal Representative of Victims to the Registry and the Defence on 26 January 2023 at 15:54 entitled “Information regarding Former Child Soldiers’ consent for their identity to be disclosed – 3rd transmission”. Pursuant to the “Decision on the Trust Fund for Victims’ submission of information on certain victims selected in Trial Chamber II’s approved sample”, [No. ICC-01/04-02/06-2808](#), 9 January 2023, three of the Common Legal Representative’s clients initially selected for the sample were excluded as having already benefitted from reparations in the *Lubanga* case (a/30383/15, a/30453/15, and a/00707/13) and replaced by one randomly selected victim (see footnote 29 in this regard). See also, the “Decision on the Registry Transmission of One Victim Dossier in Compliance with the ‘Decision on the Trust Fund for Victims’ submission of information on certain victims selected in Trial Chamber II’s approved sample” (ICC-01/04-02/06-2808), [No. ICC-01/04-02/06-2813](#), 19 January 2023, approving the selection of a/30057/15 as part of the sample and setting deadlines accordingly.

¹⁰ The actual number of sampled victims contacted is 22 (as opposed to 24), as the Common Legal Representative had initially managed to contact two of the victims who were subsequently excluded from the sample (a/00707/13 and a/30383/18). The victim added to the sample on 19 January 2023 (a/30057/15) was successfully contacted and this was shared with the Registry and the Defence on 26 January 2023. See the email from the Common Legal Representative of Victims to the Registry and the Defence on 26 January 2023 at 15:54 entitled “Information regarding Former Child Soldiers’ consent for their identity to be disclosed – 3rd transmission”.

¹¹ See the email from the Common Legal Representative of Victims to the Registry and the Defence on 9 January 2023 at 12:27 entitled “RE: Information regarding Former Child Soldiers’ consent for their identity to be disclosed – 2nd transmission”.

7. On 11 January 2023,¹² 27 January 2023,¹³ and 6 February 2023,¹⁴ the Registry transmitted 16, 17 and one redacted applications to the Defence, respectively.

8. On 3 March 2023, the LRVs filed their submissions on the victims' dossiers.¹⁵

9. On 24 March 2023, the Chamber extended the deadline for the Defence to make submissions on the victims' dossiers to 1 May 2023, at the latest,¹⁶ following a request from the Defence.¹⁷

10. On 29 March 2023, the Defence filed the Request.¹⁸

III. CLASSIFICATION

11. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the present response is filed confidential because it contains information not known to the public at this stage. A public redacted version will be filed in due course.

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](#) with 16 confidential *ex parte* annexes available to the Common Legal Representative and the Defence, 11 January 2023.

¹³ See the "Third Transmission to the Defence of 92 Redacted Victim Dossiers pursuant to Trial Chamber II Decision ICC-01/04-02/06-2794", [No. ICC-01/04-02/06-2816](#) with 17 confidential *ex parte* annexes available to the Common Legal Representative and the Defence, 27 January 2023.

¹⁴ See the "Transmission to the Defence of One Redacted Victim Dossier pursuant to Trial Chamber II's Decision ICC-01/04-02/06-2813", [No. ICC-01/04-02/06-2825](#) with one confidential *ex parte* annex available to the Common Legal Representative and the Defence, 6 February 2023.

¹⁵ See the "Common Legal Representative of the Former Child Soldiers' submissions on the 34 applications constituting the sample", [No. ICC-01/04-02/06-2835](#) with one confidential *ex parte* annex available to the Common Legal Representative and the Trust Fund for Victims, and one confidential redacted annex, 3 March 2023; and 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](#) with 43 confidential *ex parte* annexes available to the Common Legal Representative of the Victims of the Attacks, and 43 confidential redacted annexes, 3 March 2023.

¹⁶ See the email from the Chamber to the Defence, the LRVs, the Registry and the Trust Fund for Victims on 24 March 2023 at 08:28 entitled "Re: The Prosecutor v. Bosco Ntaganda: ICC-01/04-02/06-2837 - Defence request for a limited extension of the time limit set to make submissions on the dossiers of the victims included in the sample".

¹⁷ 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.

¹⁸ See the Request, *supra* note 1.

IV. SUBMISSIONS

12. The Common Legal Representative limits her response to the part of the Request seeking the lifting of redactions applied by the Registry and the LRVs to the victims' dossiers.

13. The Common Legal Representative recalls the established redaction procedure according to which "[...] *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*".¹⁹ As explained by the Chamber, and contrary to what the Defence seems to suggest,²⁰ this redaction procedure "*strike[s] a balance between the need to provide for an appropriate measure of protection for the victims, as set forth in article 68(1) of the Statute, and safeguarding the rights of the Defence*", and is authoritative.²¹

14. Indeed, the Common Legal Representative observes that the Defence did not seek to appeal the redaction procedure as set out in the 22 October 2022 Order and in the 25 November 2022 Decision. Instead, it now attempts to relitigate the matter, thereby demonstrating its disagreement with the Chamber. She regrets this course of action which results in further delays in the award of reparations to her clients, who have been waiting for over 20 years to benefit from reparations for crimes they suffered from when they were under the age of 15.

¹⁹ See the 25 November 2022 Decision, *supra* note 4, paras. 25, and 30, referring to the 25 October 2022 Order, *supra* note 3, para. 36 (emphasis added).

²⁰ See the Request, *supra* note 1, para. 14.

²¹ See the 25 November 2022 Decision, *supra* note 4, para. 30.

15. The Common Legal Representative further notes the consistently deteriorating security situation in Ituri,²² and the Chamber's reaffirmation that the victims' security concerns are always paramount.²³ [REDACTED].²⁴ [REDACTED],²⁵ and [REDACTED],²⁶ it now incorrectly claims that there are no "*objective justifications* [to refrain from disclosing the victims'] *identities to protect their safety, physical and psychological wellbeing, dignity and privacy pursuant to Article 68(1) of the Statute*".²⁷ Indeed, the Common Legal Representative posits that the dire security situation, and [REDACTED], clearly show that the victims' security concerns are genuine and objective, contrary to the Defence's assertions.²⁸ This is further demonstrated by the fact that none of the victims consented to disclosing their identity to the Defence.²⁹ As such, the need for protective measures, especially in the form of redactions to the victims' dossiers, remains unequivocal.

16. Mindful of the serious threats to her clients' security and of the Chamber's clear instructions in this regard, and in line with her approach to "*avoid applying excessive redactions*",³⁰ the Common Legal Representative exclusively applied redactions where strictly necessary.

17. More specifically, the Common Legal Representative only applied redactions to information when it was identifying read in conjunction with other information. Indeed, some redacted information, while not necessarily identifying on its own, may ultimately lead to the identification and/or location of her clients when put together

²² See, for instance, the "Tenth Update Report on the Implementation of the Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2839-Conf](#) and [No. ICC-01/04-02/06-2839-Red](#), 30 March 2023, paras. 11-13; and [REDACTED].

²³ See the 25 November 2022 Decision, *supra* note 4, para. 29.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ See the Request, *supra* note 1, para. 13.

²⁸ *Idem*, para. 14.

²⁹ See *supra* para. 5.

³⁰ See the "Common Legal Representative of the Former Child Soldiers' Submissions pursuant to 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'", [No. ICC-01/04-02/06-2790-Conf](#) and [No. ICC-01/04-02/06-2790-Red](#), 9 November 2022, para. 11.

with more general information contained in their dossiers. This is certainly the case, for instance, for victims belonging to an uncommon ethnic group or living in small communities.

18. Applying the same reasoning, the Common Legal Representative agreed to the lifting of redactions which she ultimately deemed not identifying due to their more general nature,³¹ following the Registry's communication of the Defence's request to lift said redactions.³²

19. Finally, the Common Legal Representative submits that the redacted information is not necessary for the Defence in order to provide meaningful observations on the eligibility of the victims concerned, particularly because of the collective nature of reparations in the present case, thus not warranting close scrutiny of the harm suffered by the victims. The Defence does not substantiate its general assertion that the redactions "*significantly impede [its] ability [...] to meaningfully challenge the eligibility of the victims included in the sample*",³³ and seems to ignore the fact that its role is more limited than the one of the Chamber, which will objectively decide on the credibility of dossiers based on all details contained therein. Therefore, information related to the victims' (i) place of recruitment; (ii) commanders/'husband' within the UPC; (iii) ethnicity; (iv) place of flight/escape; (v) hiding place with family; (vi) place of schooling; (vii) location or place of origin; (viii) place of abandonment with their commander's family; (ix) place of transit or mean of transportation; (x) hospital location; (xi) and particular function with a specific commander,³⁴ while potentially relevant for the Chamber's detailed assessment, is not required for the assessment by the Defence that the victims concerned suffered harm as a result of the crimes for which Mr Ntaganda was convicted, and thus for the assessment of their eligibility for

³¹ See the email from the Common Legal Representative to the Registry on 13 March 2023 at 11:37 entitled "RE: Request for the lifting of redactions".

³² See the email from the Registry to the Common Legal Representative on 8 March 2023 at 22:11 entitled "FW: Request for the lifting of redactions".

³³ See the Request, *supra* note 1, paras. 16, and 22.

³⁴ See Annex 1 to the Request, *supra* note 1.

reparations. The Common Legal Representative posits that the Defence is therefore fully able, within the limits of its prerogatives, to meaningfully challenge the victims' dossiers on the basis of all other relevant information in its possession.

20. In this regard, the Common Legal Representative also notes that the redactions of these elements are not systematic, but limited to information which is identifying when read in conjunction with all other relevant information contained in the applications which the Defence has been given access to, and thus specific to each individual dossier. Indeed, the Common Legal Representative posits that the specific redactions are not applied with the purpose of impeding the Defence's ability to challenge the victims' eligibility, but have been implemented with the sole purpose of safeguarding their security in accordance with article 68(1) of the Statute. Therefore, she maintains that all redactions are fully in line with the Chamber's instructions and remain strictly necessary in light of the dire security situation in Ituri, as argued *supra*.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Chamber to reject the part of the Request seeking the lifting of redactions applied to the victims' dossiers submitted by former child soldiers.



Sarah Pellet
Common Legal Representative
of the Former Child soldiers

Dated this 12th day of April 2023
At The Hague, The Netherlands