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

Date: **12 April 2023**

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

Defence request for leave to reply to the “Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023”

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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**Victims Participation and Reparations
Section**

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Further to the Appeals Chamber’s “Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, dated 12 September 2022 (“Appeal Judgment”);¹ 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’” issued by Trial Chamber II (“Trial Chamber”) on 25 October 2022 (“Implementation Order”);² the Trial Chamber’s “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’”³ dated 25 November 2022 (“25 November Decision”); the Defence’s request seeking communication of material by the Trust Fund for Victims (“TFV”) and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers submitted on 29 March 2023 (“Defence Request”)⁴; the email sent by Trial Chamber II on 29 March 2023 ordering the TFV and the Registry to address the issues of the Defence Request within the same deadline as for the parties’ responses pursuant to Regulation 34(b) of the Regulations;⁵ and the “Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023” submitted on 11 April 2023 (“TFV Response”),⁶ Counsel for the Convicted Person (“Defence”) hereby submits this:

Defence request for leave to reply to the “Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023”

“Defence Request for Leave to Reply”

INTRODUCTION

1. The Defence hereby seeks leave to reply to the TFV Response.

¹ Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 12 September 2022, ICC-01/04-02/06-2782 (“Appeal Judgment”).

² Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 25 October 2022, ICC-01/04-02/06-2786 (“Implementation Order”).

³ 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’”, 25 November 2022, ICC-01/04-02/06-2794 (“25 November Decision”).

⁴ 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, 29 March 2023, ICC-01/04-02/06-2838 (“Defence Request”).

⁵ Email sent by Trial Chamber II to the parties on 29 March 2023 at 16:12.

⁶ Observations of the Trust Fund for Victims on the Defence Request of 29 March 2023, 11 April 2023, ICC-01/04-02/06-2844 (“TFV Response”).

APPLICABLE LAW

2. Regulation 24(5) of the Regulations of the Court (“RoC”) prescribes that “(p)articipants may only reply to a response with leave of the Chamber” and that “(u)nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.” Although Regulation 24(5) RoC does not expressly indicate when a reply is warranted (as opposed to indicating the scope of a reply), jurisprudence has consistently held that a reply may be appropriate: (i) “in respect of issues raised in the response which the replying participant could not reasonably have anticipated” and (ii) where “it would otherwise be necessary for the adjudication of the matter.”⁷

3. A request for leave to reply must explain the intended subject-matter of the reply to some extent. As held by the Appeals Chamber, a party seeking leave to reply must: (i) do more than “point [...] to issues” to which it wishes to reply, but must rather “demonstrate [...] why they are new and could not reasonably have been anticipated”⁸ and (ii) “explain why a reply to the aforementioned issues is otherwise warranted.”⁹

4. Requests for leave to reply must be filed within three days of the response sought to be addressed in the reply.¹⁰

ARGUMENT

5. In the interest of the victims and justice and with a view to avoiding further delays, the Defence hereby seeks leave to reply to the TFV Response.

6. First, despite its title, *i.e.* ‘*Observations*’, the TFV Observations constitute a response to the Defence Request of 29 March 2023. Accordingly, Regulation 24(5) of the Regulations of the Court (“RoC”) finds application here.

7. The Defence takes issue with the TFV’s submission that “[...] it has transmitted all information and documentation available concerning the eligibility to the IDIP of the 69 victims found eligible to benefit from the programme by email to the VPRS on 31 October 2022 and 1 November 2022.”¹¹

⁷ Decision on Mr. Ntaganda’s request for leave to reply (“Ntaganda Appeal Decision on Replies”), 17 July 2017, ICC-01/04-02/06-1994, para.9.

⁸ Ntaganda Appeal Decision on Replies, para.13.

⁹ *Ibid*, para 14.

¹⁰ Regulation 34(c) RoC

¹¹ TFV Response, para.14.

8. The TFV's submissions in response require a reply for the following reasons:
- a. The Implementation Order and the 25 November Order instructing / ordering the TFV "[...] to provide the Chamber and the parties with any relevant information or documentation taken into account when reaching the administrative decision on the 69 victims already found eligible for the IDIP"¹² was addressed to the TFV and not to the VPRS";
 - b. The victims' dossiers transmitted to the Defence by the VPRS are limited to heavily redacted victims' applications for participation to the proceedings, later supplemented by additional redacted information provided by the CLRs in accordance with the Implementation Order and 25 November Decision. The victims' dossiers transmitted to the Defence do not contain any information or documentation taken into account by the TFV when reaching the administrative decision on the 69 victims already found eligible for the IDIP;
 - c. It is established that upon receiving a priority victim referral from the CLRs, the TFV forwards the referral to its implementing partners, which locate the victim, collect information from the victim and provide the information obtained to the TFV. Neither the content of a CLR referral to the TFV or the information or documentation transmitted to the TFV by the implementing partners has been communicated to the Defence;
 - d. The absence of such information in the victims' dossiers was highlighted by the Defence on more than one occasion, which, if only in the interest to expediting the proceedings, should have triggered input from the TFV to inform the Chamber and the parties of its position. Waiting until ten days after the submission of the Defence Request is certainly not productive. Neither is it in the interest of the victims.
9. Should leave to reply be granted, the Defence intends to address these issues leading to the conclusion that the TFV's response to the Defence Request is untenable. It thus requires the Chamber to intervene for the purpose of ensuring that the Defence is provided with the information and documentation necessary to assess the victims' dossiers, particularly the dossiers of the 69 victims already found eligible by the TFV for the IDIP.

¹² See for instance, 25 November Decision, para.34(f).

10. If the Defence review and submissions on the victims' dossiers is to have any meaning, it is paramount for all relevant information to be provided to the Defence in a timely manner and for the Defence to have sufficient time to assess the dossiers and make submissions.

RELIEF SOUGHT

11. In light of the foregoing, the Defence respectfully requests the Chamber to:

GRANT the Defence Request for Leave to Reply;

AUTHORIZE the Defence to reply to the TFV Response.

RESPECTFULLY SUBMITTED ON THIS 12th DAY OF APRIL 2023

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