



Original: English

No.: ICC-01/04-02/06
Date: 8 September 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
With Public Annex A**

Public Redacted Version of “Defence observations on the Trust Fund for Victims’ Tenth Update Report on the Implementation of the Initial Draft Implementation Plan”, dated 11 April 2021, ICC-01/04-02/06-2843-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

Mr Tars Van Litsenborgh

Mr Dmytro Suprun

Ms Cherine Luzaisu

Ms Fiona Lau

Counsel for the Defence

Me Stéphane Bourgon, *Ad.E.*

Mrs Kate Gibson

Mr Benjamin Willame

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

Further to the submission of the Defence observations on the Trust Fund for Victims' Ninth Update Report on the Implementation of the Initial Draft Implementation Plan on 10 February 2023 ("Defence Observations – TFV Ninth Update Report")¹ and the Trust Fund for Victims ("TFV")'s submission of its Trust Fund for Victims' Tenth Update Report on the Implementation of the Initial Draft Implementation Plan, on 30 March 2023 ("TFV Tenth Update Report"),² Counsel for the Convicted Person ("Defence") hereby submits this:

**Defence observations on the Trust Fund for Victims' Tenth Update Report
on the Implementation of the Initial Draft Implementation Plan**

"Defence Observations"

INTRODUCTION

1. Having reviewed the TFV Tenth Update Report, the Defence hereby offers the following observations.
2. As a preliminary matter, the Defence notes that despite the detailed submissions in the 10 February 2023 Defence Observations – TFV Ninth Update Report, Trial Chamber II ("Chamber") did not issue any guidance or decision with a view to obtaining more information from the TFV. Meanwhile, civilians continue to be targeted and killed in areas relevant to the reparations process in this case. Accordingly, the Defence deems it appropriate to continue bringing relevant additional information to the attention of the Chamber regarding the situation as it unfolds on the ground.

¹ Defence observations on the Trust Fund for Victims' Ninth Update Report on the Implementation of the Initial Draft Implementation Plan, 10 February 2023, [ICC-01/04-02/06-2829-Conf](#) ("Defence Observations – TFV Ninth Update Report").

² Trust Fund for Victims' Tenth Update Report on the Implementation of the Initial Draft Implementation Plan, 30 March 2023, [ICC-01/04-02/06-2839-Conf](#) ("TFV Tenth Update Report").

CONFIDENTIALITY

3. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, these Defence Observations are classified confidential as they respond to submissions likewise classified confidential. A public redacted version will be prepared and filed at the earliest opportunity.

SUBMISSIONS

4. These Defence Observations follow the same presentation as the topics addressed in the TFV Tenth Update Report, namely (i) update on the security situation; (ii) update on the eligibility assessment; and (iii) update on implementation of initial reparations measures.

I. Update on the security situation

5. In this section, after mentioning that the security in the areas where it is operating has not improved – and that an increase of violence between the various armed groups *in the region* is noticeable³ - the TFV focusses on the activities of the *Mouvement du 23 mars* (“M23”) in North Kivu⁴ as well as on increasing and persistent attacks against civilians attributed to the *Coopérative pour le développement du Congo* (“CODECO”) and the *Allied Democratic Forces* (“ADF”).⁵

6. First, as previously noted in the Defence Observations – TFV Ninth Update Report,⁶ although M23 activities in North Kivu are an important consideration in trying to understand the dynamics of the overall situation in the DRC, this situation has very little, if any, relevance regarding the reparations proceedings in this case.

³ [TFV Tenth Update Report](#), para.11.

⁴ [TFV Tenth Update Report](#), para.12.

⁵ [TFV Tenth Update Report](#), para.13.

⁶ [Defence observations – TFV Ninth Update Report](#), para.9.

7. Second, even though the words *increasing* and *persistent* are used⁷ to describe attacks launched by CODECO and ADF, very little information is provided. The parties and the Chamber in particular, should and must be provided with more information on the situation unfolding in Ituri province, due to the activities of these and other armed groups that are linked to the Lendu ethnic group. In fact, the two attacks reported by the TFV⁸ are but the tip of the iceberg regarding what is going on in Ituri. Annex A to these Defence Observations provides additional information regarding the activities of armed groups in Ituri as well as on the challenges arising from these events. Most of the information provided is very recent.

8. More importantly, the TFV Tenth Update Report is silent regarding the impact of the ongoing and increasing violence in the areas it is operating on the implementation of reparations. In the light of attacks launched by armed groups comprising members of the Lendu ethnic group in areas inhabited by members of the Lendu community, it is not sufficient for the TFV to state that the implementing partners know how to cope with the situation because they are familiar with the areas in which potential victims live.⁹ At a minimum, the generic identity of the attackers, the generic identity and the origin of the victims injured or killed and the justifications put forward by the attackers must be considered and assessed with a view to understanding the dynamics of the ongoing violence. Likewise, awarding reparations requires a thorough analysis of the background of potential victims.

9. Admittedly, the level of activities arising from the IDIP is limited. This is likely to change however as the Chamber prepares to issue a new order for reparations. The application of the *do no harm* principle is not limited to the potential

⁷ [TFV Tenth Update Report](#), para.13.

⁸ [TFV Tenth Update Report](#), para.13.

⁹ Trust Fund for Victims' Eighth Update Report on the Implementation of the Initial Draft Implementation Plan, 28 November 2022, [ICC-01/04-02/06-2796](#), paras.18-19. *See also*, Decision on the TFV's Eighth Update Report on the Implementation of the Initial Draft Implementation Plan, 13 January 2023, [ICC-01/04-02/06-2811](#), para.9.

victims *per se*, it also concerns the population of Ituri province at large and measures are required to ensure that reparations awarded will *do no harm* to all. Now is the time to obtain the information that will steer the eligibility assessment of potential beneficiaries in the right direction.

II. Update on the eligibility assessment

10. It stems from the TFV Tenth Update Report that no priority victims have been referred to the TFV – either by the CLR1 or CLR2 - during the reporting period.¹⁰ No information or justification is provided in this regard other than the fact that the TFV is ready to receive additional requests. Whereas information from the CLR1 and CLR2 as to why they have not referred any additional priority victims could be of assistance, no such information is forthcoming.¹¹

11. It also stems from the TFV Tenth Update Report that the assessment of ten priority victims is presently in the works.¹² These are priority victims referred to the TFV by the CLR2 during the last reporting period, *i.e.* from 30 November 2022 to 30 January 2023. Leaving aside the two priority victims that have not yet been located, the time required by the implementing partner to provide the TFV with the information to be collected from these priority victims, appears quite long.

12. What is more, the *modus operandi* of the implementing partners to collect information from priority victims remains nebulous. In its Defence Observations – TFV Ninth Update Report, the Defence underscored the fact that “(i)t appears from the above that the TFV intends to determine the eligibility of these 12 potential beneficiaries, solely on the basis of the information obtained from the CLR2 and information on their urgent needs obtained from [REDACTED]. There is no mention

¹⁰ [TFV Tenth Update Report](#), para.14,16.

¹¹ The last observations submitted by the CLR1 and the CLR2 in relation to TFV update reports goes back to 6 June 2022 and 6 December 2021 respectively.

¹² [TFV Tenth Update Report](#), para.14.

of the potential beneficiaries having to fill-in a questionnaire or having to produce any additional information.”¹³

13. Consequently, the Defence expressed an interest in being informed: “ [...] (i) whether this is the standard procedure followed by the TFV; (ii) whether the TFV intends to obtain any other information with a view to making its determination; and (iii) whether the questionnaire, that was the object of much debate earlier, is still being used or has been abandoned.”¹⁴ Unfortunately, the TFV did not deem it appropriate to provide any information in this regard in the TFV Tenth Update Report.

III. Update on the implementation of initial reparations measures

14. From the 45 victims integrated into the [REDACTED], [REDACTED].¹⁵ Considering that all victims considered eligible by the TFV have been incorporated in the *sample*, it is paramount for the Defence to be provided with the dossier number of these victims as well as with the documentation and information that was considered by the TFV to determine their eligibility. The Chamber has previously ordered the TFV to provide such information.¹⁶ Moreover, [REDACTED] is a relevant fact concerning their urgency requirement assessment.

¹³ [Defence observations – TFV Ninth Update Report](#), para.23.

¹⁴ [Defence observations – TFV Ninth Update Report](#), para.24.

¹⁵ [TFV Tenth Update Report](#), Fn.33.

¹⁶ 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](#), para.34(f).

15. Regarding victim [REDACTED], whose eligibility determination is pending but who nonetheless appears to have been treated by [REDACTED] as a beneficiary of the IDIP programme,¹⁷ the Defence appreciates being informed of this situation. Likewise, once the TFV has completed its eligibility determination, the Defence would appreciate being informed regarding both the result of the TFV's assessment as well as to what happened regarding this victim. This is all the more important considering that victim [REDACTED] was previously determined not eligible by VPRS.¹⁸

16. Lastly, considering that all priority victims determined by the TFV as eligible have been integrated into either the [REDACTED] or the [REDACTED], the Defence would appreciate obtaining further information concerning paragraph 23 of the TFV Tenth Update Report, which provides that "(i)mplementation of IDIP measures continues for all those beneficiaries who have not yet received the required services by [REDACTED]."¹⁹

IV. Additional observations

17. While the TFV Tenth Update Report does not address the issue of outreach, the Defence respectfully recalls outreach issues raised in the 20 February Defence Observations – TFV Ninth Update Report,²⁰ which have yet to be addressed by the TFV or by the Chamber.

18. The Defence hereby incorporates and reiterates these observations by reference and would appreciate obtaining at least some guidance in this regard.

¹⁷ [TFV Tenth Update Report](#), para.22.

¹⁸ Annex II to Registry's Second Report on Reparations, 15 January 2021, [ICC-01/04-02/06-2639-Conf-AnxII](#), p.15.

¹⁹ [TFV Tenth Update Report](#), para.23.

²⁰ [Defence observations – TFV Ninth Update Report](#), paras.26-30.

CONCLUSION

19. The Defence respectfully requests the Chamber to take note of these Defence Observations.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF SEPTEMBER 2023

A handwritten signature in black ink, appearing to read 'StB-'.

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

The Hague, The Netherlands