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**International
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TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Public Redacted Version of the “Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the “Order to provide information on the impact of COVID-19 measures on operational capacity””

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. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby files his submissions pursuant to the “Order to provide information on the impact of COVID-19 measures on operational capacity” (the “Order”).¹

II. PROCEDURAL BACKGROUND

2. On 8 July 2019, Trial Chamber VI (the “Chamber”) found Mr Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity.²

3. On 25 July 2019, the Chamber issued an order whereby it designated the Single Judge for reparations issues.³ The same day the Single Judge issued the “Order setting deadlines in relation to reparations”.⁴

4. On 5 September 2019, the Registry filed the “Registry’s observations pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”.⁵

5. On 3 October 2019, the Trust Fund for Victims (the “TFV”),⁶ both teams of the Common Legal Representatives of Victims,⁷ and the Defence⁸ filed their respective observations in response to the Registry’s observations of 5 September 2019.⁹

¹ See the “Order to provide information on the impact of COVID-19 measures on operational capacity” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2507](#), 9 April 2020.

² See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

³ See the “Decision notifying the designation of a Single Judge” (Trial Chamber VI), [No. ICC-01/04-02/06-2365](#), 25 July 2019, para 3.

⁴ See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), para. 9.

⁵ See the “Registry’s observations pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, ICC-01/04-02/06-2366”, [No. ICC-01/04-02/06-2391](#), 6 September 2019.

⁶ See the “Trust Fund for Victims’ response to the Registry’s Preliminary Observations pursuant to the Order for Preliminary Information on Reparations”, [No. ICC-01/04-02/06-2428](#), 3 October 2019.

⁷ See the “Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2430](#), 3 October 2019.

6. Following the re-composition of the Chamber on 20 November 2019,¹⁰ Judge Chang-ho Chung was elected as the Presiding Judge of the Chamber and as the Single Judge for the reparations phase of the proceedings.¹¹

7. On 5 December 2019, the Single Judge issued the “Order setting deadlines in relation to reparations” (the “5 December 2019 Order”), whereby he *inter alia* ordered the Registry, the parties, and the TFV to make submissions on reparations, by 28 February 2020.¹² The Single Judge further invited the Prosecution and the authorities of the Democratic Republic of the Congo (the “DRC”) to file submissions by the same deadline, and specified that any interested organisation could apply for the filing of submissions as *amicus curiae* by 10 January 2020.¹³

8. On 17 January 2020, following a request pursuant to Rule 103 of the Rules of Procedure and Evidence,¹⁴ the Single Judge granted the International Organisation for Migration (the “IOM”) leave to submit observations on a number of issues identified in the 5 December 2019 Order, by 28 February 2020.¹⁵

⁸ See the “Response on behalf of Mr. Ntaganda to Registry’s preliminary observations on reparations”, [No. ICC-01/04-02/06-2431](#), 3 October 2019.

⁹ See Email communication from the Chamber to the parties and Registry of 18 September 2019 at 18:05. See also the “Request for a variation of time limit to submit the Defence response to ‘Registry’s observations, pursuant to the Single Judge’s ‘Order for preliminary information on reparations’ of 25 July 2019, No. ICC-01/04-02/06-2366”, [No. ICC-01/04-02/06-2411](#), 18 September 2019.

¹⁰ See the “Decision re-composing Trial Chamber VI” (Presidency), [No. ICC-01/04-02/06-2444](#), 20 November 2019, p. 3.

¹¹ See the “Decision notifying the election of the Presiding Judge and the designation of a Single Judge” (Trial Chamber VI), [No. ICC-01/04-02/06-2445](#), 22 November 2019, para. 5.

¹² See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019.

¹³ *Idem*, para. 9e.

¹⁴ See the “Request for Leave to Submit Observations on the issue set out under point 9 (c) of the Order ICC-01/04-02/06-2447”, [No. ICC-01/04-02/06-2455](#), 10 January 2020.

¹⁵ See the “Decision on request for leave to submit Amicus Curiae observations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2460](#), 17 January 2020.

9. On 28 February 2020, both teams of Common Legal Representatives,¹⁶ the Defence,¹⁷ the TFV,¹⁸ the Prosecution¹⁹ and the Registry²⁰ filed their respective submissions on reparations.

10. On 3 and 6 March 2020, the DRC and the IOM filed their respective observations on reparations.²¹

11. On 9 April 2020, the Single Judge issued the Order²² whereby the parties and participants were instructed to provide information, by 21 April 2020, on “*whether, and if so to what extent, the [COVID-19] measures currently in place impact on the proposals made in their respective submissions and on their ability to carry out their duties in relation to the reparation proceedings, including with regard to any scheduled field missions*”.²³

III. CLASSIFICATION

12. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, the present submissions are classified as confidential *Ex Parte* available only to CLR1, CLR2, Registry and TFV, since they refer to the content of Annex II to the “Registry’s

¹⁶ See the “Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations”, [No. ICC-01/04-02/06-2477-Conf](#), 28 February 2020. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2477-Red](#) (the “Submissions on Reparations”). See also the “Submissions on Reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2474](#), 28 February 2020.

¹⁷ See the “Defence Submissions on Reparations”, [No. ICC-01/04-02/06-2479-Conf](#), 28 February 2020. A public redacted version was filed on 6 March 2020 as [No. ICC-01/04-02/06-2479-Red](#).

¹⁸ See the “Trust Fund for Victims’ observations relevant to reparations”, [No. ICC-01/04-02/06-2476](#), 28 February 2020.

¹⁹ See the “Prosecution’s Observations on Reparations”, [No. ICC-01/04-02/06-2478](#), 28 February 2020.

²⁰ See the “Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2475](#), with Public Annex 1, [No. ICC-01/04-02/06-2475-Anx1](#), and Confidential *Ex Parte* Annex II, [No. ICC-01/04-02/06-2475-Conf-Exp-AnxII](#), 28 February 2020 (the “Registry’s Observations on Reparations”).

²¹ See the “Transmission des observations de la République démocratique du Congo”, [No. ICC-01/04-02/06-2480](#), with Confidential Annex, [No. ICC-01/04-02/06-2480-Conf-Anx](#), 3 March 2020. See also the “Submission of observations on the issues identified under paragraph 9 (c) (i), (ii), and (iii) pursuant to the ‘Order setting deadlines in relation to reparations’ No. ICC-01/04-02/06”, [No. ICC-01/04/02/06-2483-Conf](#), 6 March 2020.

²² See the Order, *supra* note 1.

²³ *Idem*, paras. 4-5.

Observations on Reparations” likewise classified as confidential *Ex Parte*. A public redacted version of these submissions is filed simultaneously.

IV. SUBMISSIONS

A. REGARDING THE COVID-19 IMPACT ON CLR2 PROPOSALS

13. In his Submissions on Reparations, the Legal Representative suggested that (i) in line with the views of the victims, collective reparations with individualised features are the most appropriate form of proceeding;²⁴ (ii) prior to the reparations order, nothing more than a preliminary mapping exercise of the number of potential beneficiaries should be carried out for the purposes of assessing the cost of repair and thus fixing a reparation award, and that there should not be any collection of forms for reparations at any stage;²⁵ (iii) the cost of the average harm sustained multiplied by the number of beneficiaries will equal the overall cost of repair and therefore inform the sum of the overall reparations award;²⁶ and that (iv) to estimate the number of potential beneficiaries for the purposes of setting an award, and given that entire village communities were victimised, the number of persons residing or otherwise present in the affected communities at the time of the events should serve as appropriate reference.²⁷ The Legal Representative did not suggest calling experts from the Proposed List of Experts but instead to rely on relevant parts of the expertise provided to the Court in other cases, in particular in the *Bemba* case.²⁸ Further, the Legal Representative suggested calling persons involved in the design and implementation of the World Bank DRC Eastern Recovery Project and proposed domains on which the expertise can be requested.²⁹

²⁴ See the Submissions on Reparations, *supra* note 16, paras. 54-55.

²⁵ *Idem*, para. 28.

²⁶ *Idem*, para. 68.

²⁷ *Idem*, para. 71.

²⁸ *Idem*, paras. 88-96.

²⁹ *Idem*, paras. 99-100.

14. In line with the Legal Representative's proposals, at this stage, field activities should primarily be focused on the mapping exercise, to be carried out by the Registry, of the number and the location of potential beneficiaries of reparations. The Legal Representative takes note of the Registry's Observations on Reparations according to which as far as victims of the attacks are concerned "*the VPRS estimates that there may be at least approximately 1100 new potential applicants*".³⁰ It is his understanding that this figure solely refers to the number of new potential applicants already identified by the Registry rather than to the total number of potential beneficiaries of reparations including those not yet identified. Indeed, the Registry acknowledges that [REDACTED].³¹

15. As previously argued by the Legal Representative,³² since entire village communities were targeted and victimised, all those who were residing or otherwise present at the locations of the crimes at the time of the events should be considered as potential beneficiaries of reparations. Therefore, it is suggested that an important step within the mapping exercise should be the collection of information/figures on the number of persons who were residing at the relevant locations at the time of the events for which Mr Ntaganda has been declared guilty. These figures should serve as basis to estimate the number of direct victims. In this regard, the Legal Representative takes note of the information provided by the Registry that [REDACTED].³³ He is however unaware whether records of relevant data may also be available at the level of either Province authorities or the Central government.

16. The number of indirect victims who may qualify as potential beneficiaries of reparations seems more difficult to estimate at this stage since it will ultimately depend on the Chamber's approach to eligibility criteria, and on the composition of relevant families. Yet, the Legal Representative notes that at [REDACTED].³⁴

³⁰ See Annex I to the Registry's Observations on Reparations, *supra* note 20, para. 25.

³¹ [REDACTED]

³² See the Submissions on Reparations, *supra* note 16, para. 71.

³³ [REDACTED]

³⁴ [REDACTED]

17. Furthermore, it appears from the results of the Registry's preliminary mapping exercise that the administrative structure of the Banyali-Kilo and Walendu-Djatsi *collectivité* is complex and somehow confusing. In particular, according to the information obtained by the Registry, [REDACTED],³⁵ rather than a separate village; [REDACTED];³⁶ [REDACTED].³⁷ The administrative structure as designed by the Registry³⁸ appears to be incomplete in so far as it does not inform the full structure of the affected communities including all *quartiers*, sub-villages and surrounding settlements. The complete administrative structure of the affected communities is necessary for the purposes of the comprehensive mapping exercise, and it is the Legal Representative's understanding that it can be collected from, or otherwise designed with the assistance of, either local authorities or the Central government.

18. According to the Order issued by President of the DRC on 24 March 2020,³⁹ the state of public health emergency has been proclaimed throughout the country with the initial duration of 30 days and subject to further extension. While national borders are being closed for civil transportation and any travels between Kinshasa and other localities being currently banned, it seems that in-country travels in other areas are still possible, should they be deemed strictly necessary for professional, family or health reasons, with only restrictions on travelling by public transport and on gathering in groups of more than 20 persons.

19. In light of the current travel restrictions, but in order to be able to proceed with reparations proceedings in the circumstances, the Legal Representative suggests considering two options: first, to explore ways for the Registry to collect relevant certified statements as well as information on the complete administrative structure, from local authorities remotely and/or with assistance of local intermediaries, and second, to seek cooperation from the DRC Central government in order to enquire on

³⁵ [REDACTED]

³⁶ [REDACTED]

³⁷ [REDACTED]

³⁸ [REDACTED]

³⁹ See the "[ORDONNANCE: ETAT D'URGENCE SANITAIRE/RD CONGO](#)", 24 March 2020.

the availability of records of relevant data or, if such records are not available, to seek assistance in the collection of relevant certified statements and other relevant data from local authorities.

20. As regards his suggestion to call persons involved in the design and implementation of the World Bank DRC Eastern Recovery Project, the Legal Representative notes that relevant persons have not yet been identified. If the Chamber were to agree with the suggestion, the Legal Representative is of the view that necessary preparatory steps can already be undertaken remotely through channels of written communication and/or virtual meetings via a secure platform like WebEx.

B. REGARDING THE COVID-19 IMPACT ON CLR2 ACTIVITIES

21. In the current circumstances, the CLR2 team maintains regular contact with the victims remotely through phone communication. Since the introduction of the state of public health emergency in the DRC, the daily frequency of phone communication with the victims has significantly increased. The victims, in addition to continuous concerns in relation to the security situation in Ituri which has been volatile over the last years and recently deteriorated again because of CODECO (*Coopérative pour le développement du Congo*) armed group activities,⁴⁰ have expressed many concerns about the impact of COVID-19 on the course of reparations proceedings. While the majority of the victims understand that the reparations proceedings may be somehow impacted, they strongly oppose the suspension of these proceedings despite the circumstances. The Legal Representative echoes the above concerns of the victims and, in light of his suggested approach, is of the view that the reparations proceedings can and should proceed.

⁴⁰ See *Radio Okapi*, "[Djugu: les groupes sociaux de base demandent à la MONUSCO de neutraliser la milice CODECO](#)", 17 April 2020; "[Ituri: 23 morts dans une attaque des miliciens de CODECO deux villages de Djugu](#)", "[Ituri: 18 villages de Walendu Watsi sous contrôle de la CODECO](#)", "[Ituri: la coalition Lamuka appelle l'ONU à neutraliser la milice CODECO](#)", 15 April 2020.

22. Pending the current travel restrictions, no field missions have been scheduled to date. Once the restrictions will be lifted, field missions will re-start/proceed in order to visit at least those affected villages where the Legal Representative was not able to travel, due to insecurity or bad conditions of the roads, prior to filing his submissions on reparations. In the meantime, the Legal Representative stands ready to consult with the victims remotely to the extent of possible, in light of any further directions of the Chamber.

RESPECTFULLY SUBMITTED

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

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 21st Day of April 2020
At The Hague, The Netherlands