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**International
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Court**

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TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuccia

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Public Redacted Version of the "Observations of the Common Legal Representative of the Victims of the Attacks on the "Registry's Second Report on Reparations"" (ICC-01/04-02/06-2642-Conf)

Source: Office of Public Counsel for Victims (CLR2)

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his observations on the “Registry’s Second Report on Reparations” (the “Registry’s Second Report” or “Report”).¹ In particular, the Legal Representative will make observations in relation to (i) the victims assessed as potentially ineligible for reparations, and (ii) the mapping of new potential beneficiaries of reparations.

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 7 November 2019, Mr Ntaganda was sentenced to 30 years of imprisonment.³

4. On 5 December 2019, the Single Judge issued the “Order setting deadlines in relation to reparations”, setting a number of deadlines, including the relevant deadlines for the Registry’s, the parties’, the Trust Fund for Victims (the “TFV”), the Prosecution’s and the DRC authorities’ written submissions on reparations.⁴

¹ See the “Registry’s Second Report on Reparations”, [No. ICC-01/04-02/06-2639](#), 15 January 2021 (the “Registry’s Second Report”); with Confidential Annex I, [No. ICC-01/04-02/06-2639-Conf-AnxI](#); Confidential Annex II, [No. ICC-01/04-02/06-2639-Conf-AnxII](#); and Confidential Annex III, [No. ICC-01/04-02/06-2639-Conf-AnxIII](#).

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

³ See the “Sentencing Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

⁴ See the “Order setting deadlines in relation to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2447](#), 5 December 2019.

5. On 28 February 2020, the Legal Representative filed his submissions on reparations.⁵ The Common Legal Representative of the Former Child Soldiers,⁶ the Defence,⁷ the TFV,⁸ the Prosecution⁹ and the Registry¹⁰ also filed their respective submissions on reparations.

6. On 14 May 2020, the Chamber issued the “Decision appointing experts on reparations”.¹¹

7. On 26 June 2020, the Chamber issued the “First Decision on Reparations Process”.¹²

8. On 1 October 2020, the Registry filed its “[...] First Report on Reparations”,¹³ to which the parties responded on 30 October 2020.¹⁴

⁵ 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](#). Corrigenda of these submissions were filed on 20 November 2020. See the “Corrigendum of the ‘Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations’”, [No. ICC-01/04-02/06-2477-Conf-Corr](#), 20 November 2020 and the corresponding public redacted version “Corrigendum of the ‘Public redacted version of the ‘Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations’””, [No. ICC-01/04-02/06-2477-Red-Corr](#), 20 November 2020 (the “CLR2 Submissions on Reparations”).

⁶ See the “Submissions on Reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2474](#), 28 February 2020.

⁷ 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](#).

⁸ See the “Trust Fund for Victims’ observations relevant to reparations”, [No. ICC-01/04-02/06-2476](#), 28 February 2020.

⁹ See the “Prosecution’s Observations on Reparations”, [No. ICC-01/04-02/06-2478](#), 28 February 2020.

¹⁰ 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](#) (the “Registry Submissions on Reparations”), and Confidential *Ex Parte* Annex II, [No. ICC-01/04-02/06-2475-Conf-Exp-AnxII](#), 28 February 2020. A Confidential redacted version of Annex II was filed on 6 July 2020 as [No. ICC-01/04-02/06-2475-Conf-AnxII-Red](#), (the “Annex II to the Registry Submissions on Reparations”).

¹¹ See the “Public redacted version of the ‘Decision appointing experts on reparations’” (Trial Chamber VI), [No. ICC-01/04-02/06-2528-Red](#), 14 May 2020.

¹² See the “First Decision on Reparations Process” (Trial Chamber VI), [No. ICC-01/04-02/06-2547](#), 26 June 2020 (the “First Decision on Reparations”).

¹³ See the “Registry’s First Report on Reparations”, [No. ICC-01/04-02/06-2602](#), 1 October 2020; with Confidential Annex I, [No. ICC-01/04-02/06-2602-Conf-AnxI](#) (the “Registry’s First Report”); Confidential Annex II, [No. ICC-01/04-02/06-2602-Conf-AnxII](#); Confidential Annex III, [No. ICC-01/04-02/06-2602-Conf-AnxIII](#); Confidential Annex IV, [No. ICC-01/04-02/06-2602-Conf-AnxIV](#); and Confidential Annex V, [No. ICC-01/04-02/06-2602-Conf-AnxV](#).

¹⁴ See the “Observations of the Common Legal Representative of the Former Child Soldiers on the ‘Registry’s First Report on Reparations’”, [No. ICC-01/04-02/06-2620-Conf](#), 30 October 2020; the

9. On 2 November 2020, the Registry filed its “[...] Transmission of Appointed Experts’ Reports” with two ‘confidential *ex parte* Registry only’ Annexes,¹⁵ and subsequently filed the confidential redacted versions of the Experts’ Reports,¹⁶ and the public redacted versions of the Experts’ Reports.¹⁷

10. On 15 December 2020, the Chamber issued the “Decision on issues raised in the Registry’s First Report on Reparations” (the “15 December 2020 Decision”),¹⁸ wherein it provided guidance to the Registry in the context of its assessment of the potential eligibility of victims.¹⁹

11. On 18 December 2020, the Legal Representative,²⁰ the Common Legal Representative of the Former Child Soldiers,²¹ the TFV,²² and the Defence²³ filed their final observations on reparations.

12. On 15 January 2021, the Registry filed its Second Report.²⁴

“Observations of the Common Legal Representative of the Victims of the Attacks on the Registry’s First Report on Reparations”, [No. ICC-01/04-02/06-2621](#), 30 October 2020 (the “CLR2 Observations on the Registry’s First Report”); and the “Defence Observations on the Registry First Report on Reparations”, [No. ICC-01/04-02/06-2622-Conf](#), 30 October 2020.

¹⁵ See the “Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623](#), 30 October 2020.

¹⁶ See the “Annex 1 to the Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Conf-Anx1-Red](#), 2 November 2020; and the “Annex 2 to the Registry Transmission of Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Conf-Anx2-Red](#), 2 November 2020.

¹⁷ See the “Annex 1 to the Registry Transmission of the Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Anx1-Red2](#), 3 November 2020 (the “First Expert Report”); and the “Annex 2 to the Registry Transmission of the Appointed Experts’ Reports”, [No. ICC-01/04-02/06-2623-Anx2-Red2](#), 3 November 2020 (the “Second Expert Report”).

¹⁸ See the “Decision on issues raised in the Registry’s First Report on Reparations” (Trial Chamber VI), [No. ICC-01/04-02/06-2630](#), 15 December 2020 (the “15 December 2020 Decision”).

¹⁹ *Idem*, para. 12.

²⁰ See the “Final Observations on Reparations of the Common Legal Representative of the Victims of the Attack”, [No. ICC-01/04-02/06-2633-Conf](#), 18 December 2020. A public redacted version was filed on 21 December 2020 as [No. ICC-01/04-02/06-2633-Red](#), (the “CLR2 Final Observations on Reparations”).

²¹ See the “Observations on the Appointed Experts’ Reports and further submissions on reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2632](#), 18 December 2020.

²² See the “Trust Fund for Victims’ Final Observations on the reparations proceedings”, [No. ICC-01/04-02/06-2635-Conf](#), 18 December 2020. A public redacted version was filed on the same day as [No. ICC-01/04-02/06-2635-Red](#).

²³ See the “Defence Submissions on Reparations”, [No. ICC-01/04-02/06-2634-Conf](#), 18 December 2020.

²⁴ See the [Registry’s Second Report](#), *supra* note 1.

13. In accordance with regulation 24(2) of the Regulations of the Court, the Legal Representative herewith submits his observations on the Registry's Second Report.

III. CONFIDENTIALITY

14. The present observations are classified as confidential pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, since they refer to the content of Annexes I and II to the Registry's Second Report likewise classified as confidential. A public redacted version of these observations will be filed in due course.

IV. SUBMISSIONS

1) ON THE VICTIMS ASSESSED AS POTENTIALLY INELIGIBLE FOR REPARATIONS

15. The Legal Representative notes that Annex II to the Registry's Second Report contains [REDACTED],²⁵ [REDACTED]. Instead, while pointing to "*a number of issues, including particularly of a geographical nature, [...] difficult to assess after further analysis and consultation with Registry field staff*", the Registry generally indicates that for the purpose of its assessment, it "*has taken a conservative approach in following the letter of the Judgment/Decision on Guidance on these matters in light of the information presently available*", but nonetheless recommends that "*subject to further clarification and precision on these issues including potential supplementary narratives by victims concerned, relevant victim dossiers can be revisited in the appropriate forum at a later stage*".²⁶

16. As regards the territorial scope, the Registry seems to have assessed *the eligibility of the victims* solely based on the villages where the victims were residing or present at the time of the events, as referred to in their respective application forms, thereby automatically assessing as ineligible those originating from the villages deemed "outside the scope" as such.²⁷ Absent any further indication, the Legal Representative contends that it remains unclear to which extent, if at all, the Registry gave due regard

²⁵ See [Annex II to the Registry's Second Report](#), *supra* note 1, pp. 12-15.

²⁶ See [Annex I to the Registry's Second Report](#), *supra* note 1, para. 8.

²⁷ *Idem*, para. 4.

to the Chamber's guidance according to which "*victims alleging to have suffered harm in the forest or bush surrounding locations for which positive findings were included in the Judgment may be eligible for reparations for any of the crimes for which the Chamber entered convictions on the basis of the relevant corresponding conduct having occurred in the forest or bush surrounding those locations*".²⁸ He reiterates his earlier submission that "*in accordance with the Chamber's said guidance and absent of any further indication, any victim who has suffered harm in the forest or bush surrounding locations under 'positive findings' regardless of the relevant victim's original location can be eligible for reparations*".²⁹

17. The Legal Representative recalls that as a result of the UPC/FPLC taking control over the area during its First and Second Operations, the civilian population massively fled throughout the Banyali-Kilo and Walendu-Djatsi *collectivités*, moving from one location to another and taking refuge in surrounding hills, forests and bushes, in order to escape widespread and continuous violence.

18. In particular, he points to the Chamber's findings according to which: many people present in Mongbwalu fled the town during the assault to the bush and to other places such as Sayo and Kilo;³⁰ inhabitants of Sayo often fled to the bush, some fled towards Nzebi, others to Uganda;³¹ a great number of people who fled Mongbwalu arrived in the Walendu-Djatsi *collectivité*; they were concentrated in Lipri, Kobu and Bambu;³² once the UPC/FPLC assault on Lipri had commenced, the populations of Lipri and Tsili fled and sought refuge in the bushes, the populations of Djuba, Katho and Dyalo took refuge on hills nearby, people who fled found themselves in difficult conditions as they had very limited access to food and slept outside;³³ prior to the assault on Kobu, following violence in the region, members of the Lendu population had sought refuge in Kobu;³⁴ people who managed to flee were hiding on the hills and

²⁸ See the [15 December 2020 Decision](#), *supra* note 18, para. 19(f).

²⁹ See the [CLR2 Final Observations on Reparations](#), *supra* note 20, para. 107.

³⁰ See the [Judgment](#), *supra* note 2, para. 497.

³¹ *Idem*, para. 505.

³² *Idem*, para. 549.

³³ *Idem*, para. 568.

³⁴ *Idem*, para. 571.

in the bushes in the area surrounding Kobu, including Buli;³⁵ most of the local population fled from Bambu, including to Buli;³⁶ following assaults on Kobu and Bambu, a large number of individuals fled to Buli;³⁷ during the assault on Buli, people were chased into the surrounding bush, and the UPC/FPLC subsequently searched the bush;³⁸ part of the population of Bambu, Kobu and Camp PM fled towards Mpetsi and Gola, they were forced to endure harsh conditions, living in the bush without adequate food or shelter;³⁹ following assaults on Kobu and Bambu, a number of people fled to Gutsi, they were staying in the bush in difficult conditions;⁴⁰ following assaults on Kobu and Bambu, people fled *inter alia* to Jitchu and hid in the bush, and after the ‘pacification meeting’, villagers again fled to Jitchu and the surrounding forest where UPC/FPLC soldiers continued to chase them and shot at them;⁴¹ as a result of the UPC/FPLC taking control over Nyangaray, the population fled and hid in the bush where they stayed in difficult conditions.⁴²

19. Given that in the present case, while fleeing and/or hiding in the forest or bush, the victims were exposed to continuous violence, danger and threats which resulted in harm,⁴³ the Legal Representative submits that although originating from the villages assessed as being outside the territorial scope, the victims concerned are nonetheless very likely to have suffered harm in the forest or bush surrounding locations under ‘positive findings’. In this regard, he argues that it would be unsound to deem ineligible for reparations, for instance, victims from Djuba, Katho or Dyalo who stayed in difficult conditions in the hills, forest or bush surrounding Lipri while hiding or fleeing violence on account of the UPC/FPLC taking control over the latter location.

³⁵ *Idem*, para. 573.

³⁶ *Idem*, para. 585.

³⁷ *Idem*, para. 603.

³⁸ *Idem*, paras. 604-605.

³⁹ *Idem*, para. 612.

⁴⁰ *Idem*, paras. 615-616.

⁴¹ *Idem*, para. 617.

⁴² *Idem*, para. 640.

⁴³ See the [CLR2 Final Observations on Reparations](#), *supra* note 20, para. 108.

20. The Legal Representative anticipates, however, that it might have been difficult, if not impossible, for the Registry to assess, solely based on the respective application forms, whether the victims concerned effectively suffered any harm in the forest or bush surrounding locations under ‘positive findings’, without further clarification and precision from the victims themselves.

21. Furthermore, it is submitted that the victims cannot be prejudiced because of some relevant information, such as names of locations, was inaccurately recorded by the persons who assisted them in filling out their respective application forms. For instance, the Legal Representative contends that while the name ‘Wadda’ mentioned in the application forms of the victims concerned may refer to a small village known as ‘Waddha’ and located near Lipri, it seems that, as far as the provided narrative refers to the relevant events that occurred in Kobu, the name ‘Wadda’ is *in fact* an incorrectly spelled and recorded name of ‘Wadza’, which was found to be “*in or near the centre of Kobu*” by the Chamber.⁴⁴ In any event, and in order to dissipate any doubts, the victims concerned should be able to clarify, in light of the provided narrative of the events, where the ‘Wadda’ referred to in their application forms is effectively located.

22. In light of the above, considering that “*a further assessment as to the eligibility of the participating victims falling within the scope of the Judgment is not required at this stage*”,⁴⁵ and given that the Registry’s assessment was solely “*based on the information presently on file*”,⁴⁶ the Legal Representative reiterates his earlier submissions that the victims assessed as no longer fulfilling the eligibility criteria, should be presented with an opportunity to clarify their account at a later stage of the reparations process, either through an individual assessment or a screening.⁴⁷

⁴⁴ See the [Judgment](#), *supra* note 2, footnote 1935.

⁴⁵ See the [First Decision on Reparations](#), *supra* note 12, para. 29.

⁴⁶ See [Annex I to the Registry’s Second Report](#), *supra* note 1, para. 2.

⁴⁷ See the [CLR2 Final Observations on Reparations](#), *supra* note 20, para. 110. See also the [CLR2 Observations on the Registry’s First Report](#), *supra* note 14, para. 38.

23. The Legal Representative submits that providing said category of victims with an opportunity to clarify or supplement their account at a later stage is necessary in order to prevent an injustice that may occur, should the Registry's assessment be inaccurate, for instance, because of limited or inaccurate data contained in respective application forms or because of any relevant information being currently unavailable.

24. In this regard, the Legal Representative recalls that all victims are to be treated fairly and equally as regards reparations,⁴⁸ are to enjoy equal access to any information relating to their right to reparations and to assistance from the Court, as part of their entitlement to a fair and equal treatment throughout the proceedings,⁴⁹ and that in all matters relating to reparations the Court shall take into account the needs of all victims.⁵⁰ He also refers to the Appointed Experts' submission, to which he fully adheres, that meaningful consultation with victims is required at all phases of the reparations process,⁵¹ including mapping,⁵² and that the Court's engagement with victims should include listening to the victims and responding to what they are saying.⁵³

25. In conclusion, it is submitted that it would be entirely unfair to the victims concerned to ultimately be assessed as ineligible for reparations without previously being meaningfully consulted, listened and effectively heard.

2) ON THE MAPPING OF POTENTIAL NEW BENEFICIARIES

26. The Legal Representative notes that, while acknowledging that *"a margin of individuals previously unaccounted for during the mapping may come forward"*, the Registry indicates that *"[t]his, however, is not expected to generate a major diversion from the*

⁴⁸ See the "Amended Order for Reparations" (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA A A2 A3](#), 3 March 2015, para. 12.

⁴⁹ *Idem*, para. 13.

⁵⁰ *Idem*, para. 14.

⁵¹ See the [First Expert Report](#), *supra* note 17, para. 135.

⁵² *Idem*, para. 132.

⁵³ See the [Second Expert Report](#), *supra* note 17, para. 10.

previously reported approximate figure resulting from the Registry mapping efforts to date”,⁵⁴ namely approximately 1,100 potential new beneficiaries.⁵⁵ It remains unclear, however, whether the Registry has completed, or at least moved on to, [REDACTED]⁵⁶ or whether the figures at hand only reflect the number of new potential beneficiaries reached out [REDACTED].⁵⁷

27. Without wishing to speculate on the effectiveness of the Registry’s mapping exercise, in particular in light of the COVID-19 pandemic, and while mindful of the Single Judge’s recent holding,⁵⁸ the Legal Representative, nevertheless, finds it striking that in the circumstances of the present case where thirteen villages throughout Ituri were found to be affected as a whole, the number of new potential beneficiaries of reparations as identified so far by the Registry is so marginal compared to the population size, based on publicly available sources⁵⁹ and data on the case-record,⁶⁰ of the locations concerned at the time of the events, along with the estimate of the number of civilians affected by the *shika na mukono* operation.⁶¹

28. In light of the above, the Legal Representative respectfully requests the Chamber to treat the Registry’s figures on newly identified potential beneficiaries for

⁵⁴ See [Annex I to the Registry’s Second Report](#), *supra* note 1, para. 56.

⁵⁵ See the [Registry Submissions on Reparations](#), *supra* note 10, para. 25.

⁵⁶ See the [Registry’s First Report](#), *supra* note 13, para. 44.

⁵⁷ *Ibid.*

⁵⁸ See the “Decision on the Request of the Common Legal Representative of the Victims of the Attacks for an Order to the Registry to collect information pertaining to reparations” (Trial Chamber VI, Single Judge), [No. ICC-01/04-02/06-2631](#), 18 December 2020, para. 17. In particular, the Single Judge held that “the number of victims that are likely to come forward and benefit from reparations [...] is likely to be smaller in the current reality than the overall number of victims of the crimes at the time they were committed”.

⁵⁹ In 2002, the population of Mongbwalu alone was around 80,000, with the Lendu population constituting the majority. See the [CLR2 Submissions on Reparations](#), *supra* note 5, para. 71 with footnotes 71 and 72.

⁶⁰ According to the information provided by the Registry, for instance, [REDACTED]. See [Annex II to the Registry Submissions on Reparations](#), *supra* note 10, pp. 12-13.

⁶¹ According to the United Nations, during the *shika na mukono* operation, around 60,000 civilians were forced to flee to the bush surrounding the affected villages in the Walendu-Djatsi *collectivité*. See the [CLR2 Final Observations on Reparations](#), *supra* note 20, para. 108 with footnote 232.

reparations with caution, and reiterates his earlier submissions that these figures cannot serve as an accurate estimate of the real number of potentially eligible victims.⁶²

RESPECTFULLY SUBMITTED



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 12th Day of February 2021

At The Hague, The Netherlands

⁶² See the [CLR2 Final Observations on Reparations](#), *supra* note 20, para. 96.