

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/04-02/06**  
Date: **13 November 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***

**Confidential**

**Defence request seeking leave to reply to the Joint Response of the Common Legal  
Representatives of the Victims**

**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 Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Trust Fund for Victims**

Ms Deborah Ruiz Verduzco

Further to the First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations issued by Trial Chamber II ("Chamber") on 11 August 2023 ("First Decision on Updated DIP"),<sup>1</sup> the Trust Fund for Victims' Submission of Additional Information on the Draft Implementation Plan, filed on 3 November 2023 ("TFV Additional Information"),<sup>2</sup> the Registry Submission pursuant to ICC-01/04-02/06-2860-Red, filed on 3 November 2023 ("Registry Additional Information"),<sup>3</sup> the Defence request seeking a limited extension of time as well as leave to exceed the applicable page limit to respond to the TFV Additional Information and Registry Additional Information submitted on 8 November 2023 ("Defence Request for Additional Time and Pages")<sup>4</sup> and the Joint Response to the Defence Request for Additional Time and Pages submitted by the Common Legal Representatives of the Victims ("CLRs") on 10 November 2023 ("CLRs Joint Response"),<sup>5</sup> Counsel for the Convicted Person ("Defence") hereby submits this:

**Defence request seeking leave to reply to the Joint Response of the Common Legal Representatives of the Victims**

**"Defence Request for Leave to Reply"**

---

<sup>1</sup> First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations, 11 August 2023, ICC-01/04-02/06-2860 ("First Decision on Updated DIP").

<sup>2</sup> Trust Fund for Victims' Submission of Additional Information on the Draft Implementation Plan, 3 November 2023, ICC-01/04-02/06-2877 ("TFV Additional Information").

<sup>3</sup> Registry Submission pursuant to ICC-01/04-02/06-2860-Red, 3 November 2023, ICC-01/04-02/06-2878 ("Registry Additional Information").

<sup>4</sup> Defence request seeking a limited extension of time as well as leave to exceed the applicable page limit to respond to the Trust Fund for Victims' and the Registry's submission of additional information on the Draft Implementation Plan for Reparations", 8 November 2023, ICC-01/04-02/06-2879 ("Defence Request for Additional Time and Pages).

<sup>5</sup> Joint Response of the Common Legal Representatives of the Victims to the "Defence request seeking a limited extension of time as well as leave to exceed the applicable page limit to respond to the Trust Fund for Victims' and the Registry's submission of additional information on the Draft Implementation Plan for Reparations" (ICC-01/04-02/06-2879-Conf), 10 November 2023, ICC-01/04-02/06-2880 ("CLRs Joint Response")

## INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court (“RoC”), the Defence respectfully seeks leave to submit a limited reply addressing the three issues set out below, drawn from the CLR’s Joint Response.

2. Regulation 24(5) 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.”<sup>6</sup>

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”<sup>7</sup> and (ii) “explain why a reply to the aforementioned issues is otherwise warranted.”<sup>8</sup>

4. Requests for leave to reply must be filed within three days of the response sought to be addressed in the reply.<sup>9</sup>

---

<sup>6</sup> 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.

<sup>7</sup> Ntaganda Appeal Decision on Replies, para.13.

<sup>8</sup> *Ibid*, para 14.

<sup>9</sup> Regulation 34(c) RoC

## CONFIDENTIALITY

5. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, this Defence Request for Leave to Reply is classified as confidential as it refers to submissions likewise classified as confidential.

## SUBMISSIONS

6. A limited reply to the CLR's Joint Response is necessary to address the erroneous submissions and omissions. Despite the CLR's attempt from the beginning to exclude the Defence from the reparations proceedings, the arguments put forward by the CLR's could not have been anticipated.

7. Should leave to reply be granted, the Defence intends to address the following submissions in the CLR's Joint Response.

8. First, the CLR's erroneously submit that "[...] the Defence had ample opportunity to submit observations on the Updated DIP."<sup>10</sup> In reply, the Defence would address *inter alia*, (i) when the Defence submitted observations on the TFV Updated DIP<sup>11</sup> on 18 May 2022<sup>12</sup> and observations on the joint TFV / Registry submission on the process of eligibility<sup>13</sup> (an administrative submission overtaken by events now that the Registry through the VPRS is responsible for the eligibility

---

<sup>10</sup> CLR's Joint Response, para.20.

<sup>11</sup> Trust Fund for Victims' second submission of Draft Implementation Plan, 24 March 2022, ICC-01/04-02/06-2750, with Annex 1 ("Updated DIP").

<sup>12</sup> See Common Legal Representative of the Former Child Soldiers' Response to the "Trust Fund for Victims' second submission of Draft Implementation Plan" (ICC-01/04-02/06-2750), 18 May 2022, ICC-01/04-02/06-2763; Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims' Updated Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2764; Observations on behalf of the convicted person on the Trust Fund for Victims' Updated Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2765; Registry Observations on the Trust Fund for Victims' Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2766.

<sup>13</sup> Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility, 21 July 2022, ICC-01/04-02/06-2774.

determinations) on 1 August 2022,<sup>14</sup> the Appeals Chamber had not yet rendered the Appeals Judgment,<sup>15</sup> which significantly impacted the 8 March Reparations Order;<sup>16</sup> (ii) Further to the 14 July Addendum issued by the Chamber,<sup>17</sup> the parties were not provided with an opportunity to submit observations on the impact of the Appeals Judgment and the Addendum on the TFV Updated DIP, which was based on the 8 March Reparations Order; (iii) one of the aims of the Chamber in seeking additional information from the TFV and the Registry on certain sections and topics in the TFV Updated DIP is to address the change in circumstances and to validate assumptions made by the TFV some 18 months ago when it was responsible for the eligibility determinations; and (iv) although the Defence is on notice of the sections and topics of the TFV Updated DIP on which the Chamber requested additional information, the aim of the Defence in submitting observations, for which limited extensions of time and page limit are requested, is precisely to address the TFV Additional Information and the Registry Additional Information.

9. Second, the CLR's erroneously submit that "[m]ost of the additional information solicited by the Chamber has no impact whatsoever on the Defence's rights, even more so in view of its limited role at the present stage."<sup>18</sup> In reply, the Defence would refer to previous findings by the Appeals Chamber and the Chamber confirming that the rights of the Convicted Person are protected during the implementation phase – from the beginning of eligibility determinations by the Registry following the submission of the TFV Additional Information and the Registry

---

<sup>14</sup> See Observations of the Common Legal Representative of the Former Child Soldiers on the "Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility" (ICC-01/04-02/06-2774), 1 August 2022, ICC-01/04-02/06-2778; Observations on behalf of the convicted person on the Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility, 1 August 2022, ICC-01/04-02/06-2779.

<sup>15</sup> 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.

<sup>16</sup> Reparations Order, 8 March 2021, ICC-01/04-02/06-2659 ("8 March Reparations Order")

<sup>17</sup> Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659, 14 July 2023, ICC-01/04-02/06-2858 ("14 July Addendum").

<sup>18</sup> CLR's Joint Response, para.21.

Additional Information and the Chamber pronouncing on the same – by the ability of the Defence to make observations and challenge the eligibility criteria.<sup>19</sup> The Registry’s understanding of the eligibility criteria set out in the Registry Additional Information, which it intends to use when performing eligibility determinations is highly relevant in this regard. The Defence would also address in reply the scope of the rights of the Convicted Person and of the involvement of the Defence, on behalf of the Convicted Person, in the reparations phase.

10. Third, the CLRs submit that “[t]he Defence thus had plenty of time to organise its workload and its consultations with Mr Ntaganda in the current circumstances, which in no way can be qualified as exceptional.”<sup>20</sup> In reply, the Defence would provide *inter alia*, specific information regarding the importance of obtaining instructions from the Convicted Person – which is misunderstood by the CLRs – and the difficulties encountered in consulting with Mr Ntaganda.

---

<sup>19</sup> See for instance, Decision on the TFV’s First Progress Report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Directors’ decision pursuant to regulation 56 of the Regulations of the Trust Fund, 28 October 2021, ICC-01/04-02/06-2718, para.19 (“Notwithstanding, the Chamber is satisfied that the rights of the defence are still guaranteed as it has been and will continue to be able to make submissions before the Chamber until the proposed administrative eligibility assessment is approved”). See also, Appeals Judgment, para.368.

<sup>20</sup> CLRs Joint Response, para.22.


**REFLIEF SOUGHT**

11. Considering the foregoing, the Defence respectfully requests the Chamber to:

**GRANT** the Defence Request for Leave to Reply; and

**AUTHORIZE** the Defence to submit a limited Reply addressing the three issues at paragraphs 8, 9 and 10 above.

**RESPECTFULLY SUBMITTED ON THIS 13<sup>th</sup> DAY OF NOVEMBER 2023**



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

The Hague, The Netherlands