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No.: **ICC-01/04-02/06**
Date: **15 December 2021**

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 an extension of the time limit to respond
to the Trust Fund for Victims' Draft Implementation Plan**

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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Ahead of the submission of the Trust Fund for Victims' Draft Implementation Plan on 17 December 2021 ("TFV" and "DIP"), Counsel for Bosco Ntaganda ("Defence") hereby submit this:

**Defence request for an extension of the time limit to respond
to the Trust Fund for Victims' Draft Implementation Plan**

"Defence Extension of Time Request"

INTRODUCTION

1. Pursuant to Regulation 35 of the Regulations of the Court ("RoC"), the Defence respectfully moves Trial Chamber II ("Chamber") for an extension of time until Monday 24 January 2022 to respond to the TFV's DIP.¹

PROCEDURAL BACKGROUND

2. On 8 March 2021, Trial Chamber VI issued the Reparations Order ("8 March Reparations Order") in which, *inter alia*, it instructed the TFV to submit a DIP for its approval, on 8 September 2021.²

3. On 16 July 2021, the TFV requested the Chamber to vary the time limit to submit the DIP. Citing, *inter alia*, the comprehensive nature of the DIP, the TFV requested a further 3 months, until 17 December 2021.³

4. On 23 July 2021, the Chamber granted the TFV's request.⁴

¹ Two weeks following the end of the winter judicial recess on 10 January 2022, 9h00.

² Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#) ("8 March Reparations Order").

³ Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan, 16 July 2021, [ICC-01/04-02/06-2693](#).

⁴ Decision on the Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, [ICC-01/04-02/06-2697](#) ("Decision on TFV's Request for Extension of Time").

SUBMISSIONS

5. Regulation 35(2) RoC provides that the Chamber “may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.”⁵

6. In the absence of a timeline in the 8 March Reparations Order and specific instructions from the Chamber, the applicable time limit to respond to the DIP is ten (10) days, as provided by Regulation 34(b) RoC, *i.e.* 30 December. Considering the upcoming winter judicial recess and official Court holidays,⁶ the Defence posits that this time limit is too short and inappropriate with a view to providing a meaningful response. Indeed, if the reparations process is to remain meaningful and fair, the Defence must have adequate time to provide observations. The same applies to the Legal Representatives of Victims (“LRV”) and the Registry through the Victims Participation and Reparations Section (“VPRS”).

7. The Defence recalls the comprehensive nature of the DIP as instructed by Trial Chamber VI. In particular, the DIP shall contain “details of the proposed collective awards, each of the collective projects with individualized components, and the modalities of the reparations identified in this Order considered appropriated to address each of the harms. The TFV should also clearly indicate the methods of implementation, steps to be taken, direct and indirect costs, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects’ development and implementation.”⁷

8. The comprehensive nature of the DIP formed part of the basis for the TFV’s request for an extension of the time limit, which was subsequently granted by the Chamber.⁸ It is in this same vein that the Defence requests a time extension. In essence,

⁵ Regulation 35(2) RoC.

⁶ The 2021 winter judicial recess will commence on Friday 17 December 2021, 17h30 until Monday 10 January 2022, 09h00. Within this period, the official ICC holidays are 27-28 December and 3 January.

⁷ [8 March Reparations Order](#), para.249.

⁸ [Decision on TFV’s Request for Extension of Time](#), Disposition.

the Defence anticipates a lengthy document with hitherto unavailable information on contentious issues, and thus, requires reasonable time to be able to provide a meaningful contribution.

9. Notably, the DIP will, for the first time, provide information on the manner in which the TFV intends to address each of the harms listed in the 8 March Reparations Order, including in relation to the hybrid nature of the reparations awarded in this case. Further, this will be the first time that the TFV clearly elaborates on the eligibility assessment in relation to the legal requirements and the related review process. The Defence underscores its submissions in this regard, that is, to this date, the TFV has yet to submit any information on how it intends to assess the burden and standard of proof in practice.⁹

10. The Defence reiterates in this regard that such information should have been provided in the context of the Initial Draft Implementation Plan (“IDIP”) and the follow-up progress reports. However, the TFV has consistently provided little to no information on most of these issues. The two reports submitted thus far remain inordinately vague despite continuous submissions requesting clarity. What is more, the TFV’s recent invitation to provide comments on the proposed DIP eligibility assessment mechanism provided very limited room for the Defence to contribute to the process, let alone to propose modifications thereto. Therefore, the DIP will be the first time the Defence has an opportunity to assess information and provide observations that are vital for the reparations process.

11. In addition, it must be underlined that this is the first time that reparations will be of a hybrid nature, *i.e.* collective with individual components. Detailed submissions on the TFV’s proposed projects are thus warranted.

⁹ Defence observations on the TFV Second Progress Report on the implementation of the Initial Draft Implementation Plan, 06 December 2021, [ICC-01/04-02/06-2726-Conf](#) (“Defence Observations on the Second IDIP Report”), paras.8-12.

12. Furthermore, it is of note that the financial reparations award granted by Trial Chamber VI is the highest before the Court so far. The Chamber, in relation to the IDIP, has previously requested information with regard to direct and indirect costs.¹⁰ This information remains unavailable. Both the Defence¹¹ and the Legal Representative for the Victims of Attacks (“LRV2”),¹² have pointed to the vagueness and lack of specificity in relation to costs. Thus, this will be the first opportunity for the parties to view and comment upon a concrete budget proposal.

13. Indeed, the issues to be covered in the DIP are complex, involving – as suggested by some – a very high, if not the highest, number of direct and indirect victims, most of whom have yet to be identified. Therefore, a reasonable extension of time for the Defence to respond is in the interest of justice. It is noteworthy in this regard that pursuant to the previous practice of the Court, 30 days has been the minimum time granted to the Defence to provide observations on the DIP.¹³

¹⁰ Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#), para.16.

¹¹ [Defence Observations on the Second IDIP Report](#), para.16.

¹² Response of the Common Legal Representative of the Victims of the Attacks to the “Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan”, 06 December 2021, [ICC-01/04-02/06-2724-Conf](#), paras.18,22.

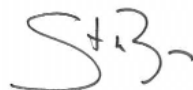
¹³ The Defence was granted 90 days in *Lubanga*, 48 days in *Katanga* and 30 days in *Al-Mahdi*. See *Prosecutor v. Thomas Lubanga Dyilo*, Filing on Reparations and Draft Implementation Plan, 3 November 2015, [ICC-01/04-01/06-3177-Red](#); *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the request of the Office of Public Counsel for Victims and the request of the Legal Representatives of Victims V02, 13 January 2016, [ICC-01/04-01/06-3190-tENG](#), Disposition; *Prosecutor v. Thomas Lubanga Dyilo*, Version publique expurgée des « Observations de la Défense de M. Thomas Lubanga relatives au « Filing on Reparations and Draft Implementation Plan », daté du 3 novembre 2015 », déposées le 1er février 2016 (ICC-01/04-01/06-3196-Conf), 2 February 2016, [ICC-01/04-01/06-3196-Red2](#); *Prosecutor v. Germain Katanga* Draft implementation plan relevant to Trial Chamber II’s order for reparations of 24 March 2017 (ICC-01/04-01/07-3728), 25 July 2017, [ICC-01/04-01/07-3751-Red](#); *Prosecutor v. Germain Katanga*, Decision Granting an Extension of the Time Limit to File Observations on the Draft Implementation Plan of 25 July 2017, 29 August 2017, [ICC-01/04-01/07-3759-tENG](#), Disposition; *Prosecutor v. Germain Katanga*, Defence Observations on the TFV’s Draft implementation plan, 11 September 2017, [ICC-01/04-01/07-3764](#); *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#), Disposition; *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Public redacted version of “Corrected version of Draft Implementation Plan for Reparations, With public redacted Annex I, 20 April 2018, ICC-01/12-01/15-265-Conf”, 30 April 2018, ICC-01/12-01/15-265-Conf-Corr+Corr-Anx, 18 May 2018, [ICC-01/12-01/15-265-Corr-Red](#); *Prosecutor v. Ahmad Al Faqi Al Mahdi*, « Observations de la Défense sur le projet de plan de mise en œuvre des réparations ICC-01/12-01/15-265-Conf + Conf-AnxI soumis par le Fonds au profit des victimes », 23 mai 2018, ICC-01/12-01/15-268-Conf, 27 July 2018, [ICC-01/12-01/15-268-Red](#).

14. The Defence acknowledges of course that the reparations process should unfold as expeditiously as possible. However, the Defence is of the view that granting the limited extension of time requested will not unduly delay the proceedings and/or prejudice any victim or stakeholder. In fact, the reasonable amount of additional time requested, coupled with the fact that all situations of urgency are already provided for in the context of the IDIP, mitigate in favour of granting the limited extension of time requested. This would ensure adequate time for the Defence, as well as for the LRVs and the Registry through the VPRS, to respond to the DIP, hence allowing for a meaningful contribution to a fair and efficient reparations process.

RELIEF SOUGHT

15. In light of the foregoing, the Defence submits that it has shown good cause to extend the applicable time limit to respond to the DIP. Thus, the Defence respectfully requests the Chamber to grant an extension of the prescribed time limit until Monday 24 January 2022.

RESPECTFULLY SUBMITTED ON THIS 15th DAY OF DECEMBER 2021



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