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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 response to the “Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on 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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Further to the “Decision on the ‘Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’ and additional request by the TFV” issued by Trial Chamber II (“Chamber”) on 21 January 2022 (“Decision Granting an Extension of Time”)¹ and the submission by the Trust Fund for Victims (“TFV”) of its “Request for Extension of Time to Submit Additional Information on Draft Implementation Plan” on 18 February 2022 (“TFV Request”),² Counsel for Bosco Ntaganda (“Defence”) hereby submits this:

Defence response to the “Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan”

“Defence Response”

1. The TFV requests an extension of 46 days to comply with the Decision Granting an Extension of Time, arguing that (i) it has started assessing the nature of the information sought by the parties and is currently identifying the information that can be provided at this stage;³ (ii) completing its stocktaking exercise of the *Lubanga* reparations programme after one year will allow the TFV to share the relevant datapoints drawn from the *Lubanga* programme with the parties in the present case;⁴ and (iii) taking into account that the Draft Implementation Plan (“DIP”) requires approval by the TFV Board of Directors, a second version can only be issued by 11 April 2022 at the earliest.⁵ The TFV avers that these reasons constitute good cause pursuant to Regulation 35 of the Regulations of the Court (“RoC”).

¹ Decision on the ‘Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims’ Draft Implementation Plan’ and additional request by the TFV, 21 January 2022, [ICC-01/04-02/06-2739](#).

² Trust Fund for Victims’ Request for Extension of Time to Submit Additional Information on Draft Implementation Plan, 18 February 2022, [ICC-01/04-02/06-2746](#).

³ [TFV Request](#), para.7.

⁴ [TFV Request](#), para.8.

⁵ [TFV Request](#), para.9.

2. The Defence takes the view that the reasons put forward by the TFV do not constitute good cause justifying the extension of time sought, pursuant to Regulation 35 RoC. However, for reasons of efficiency and in the interest of justice, the Defence does not oppose a limited extension of time being granted to the TFV.

3. The TFV's submission, more than 28 days after the Decision Granting an Extension of Time (and 25 days after the filing of the "Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims"⁶), that it is *currently* identifying the information that can be provided at this stage, without more, is insufficient to constitute good cause. The Defence acknowledges the number of issues raised by the parties. However, no information is provided regarding the difficulties encountered, if any, and no explanation is provided regarding *inter alia*, the TFV's inability to provide certain information sought by the parties. More particularly, in line with previous requests for extension of time,⁷ additional information could have been provided regarding the security situation and its potential impact on the ability of the TFV to "[...] consult with the victims and, where possible, with their families, on the nature of the collective awards and the methods of implementation' and to 'take into account their views and proposals when designing the reparation awards'."⁸ In this regard, the Defence deems it appropriate to underscore the abduction by the CODECO, on or about 16 February 2022, of Thomas Lubanga and others designated by the President of the Democratic Republic of Congo ("DRC") to bring back peace in Ituri.⁹ The fact that the CODECO, linked to the Lendu

⁶ Additional matters identified by the Defence in the Draft Implementation Plan that should be addressed by the Trust Fund for Victims, 24 January 2022, [ICC-01/04-02/06-2740-Conf](#), with confidential Annex A.

⁷ Trust Fund for Victims' Request to Vary the Time Limit to Submit Draft Implementation Plan, 16 July 2021, [ICC-01/04-02/06-2693](#), paras.9-10; Public Redacted version of the "URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan" (ICC-01/04-02/06-2735-Conf-Exp), 18 January 2022, [ICC-01/04-02/06-2735-Red](#), paras.2,19.

⁸ [Decision Granting an Extension of Time](#), para.12.

⁹ Politico.cd, "Ituri : Thomas Lubanga pris « en otage » par une faction des miliciens CODECO à Djugu", 16 February 2022, available at [Ituri : Thomas Lubanga pris « en otage » par une faction des miliciens CODECO à Djugu | Politico.cd](#); Radio Okapi, "RDC : 8 membres de la Task Force prise en otage par les miliciens de la CODECO", 17 February 2022, available at [RDC : 8 membres de la Task Force prise en](#)

community, and possibly to potential beneficiaries, is openly challenging the DRC Government is noteworthy in the context of the Reparations Order.

4. Regarding the TFV stocktaking exercise in the *Lubanga* reparations programme after one year, the Defence acknowledges its potential to yield relevant information in relation to some of the issues raised by the parties. Notably however, no information is provided regarding the relevant datapoints drawn from the *Lubanga* reparations programme, which the TFV intends to share with the parties.¹⁰ This is highly relevant as the TFV ought to already be in possession of this data. Further, as mentioned by the TFV, its stocktaking exercise relates to potential adjustments to the programme within the existing and approved framework rather than to figures concerning the number of potential beneficiaries and/or new beneficiaries, which the parties identified as an issue to be further developed by the TFV. What is more, many of the issues the parties identified as necessitating additional information are *not* related to the Lubanga reparations programme.

5. As for the TFV's *proprio motu* endeavor to submit a "second version"¹¹ of the DIP, no sooner than 11 April 2022, this is an issue of concern for the Defence. First, it must be underscored that the TFV is presently addressing issues identified *by the parties* as necessitating additional information – at times different, if not conflicting – and identifying what further information can be provided, in the absence of judicial guidance or rulings on these issues. Furthermore, in its Decision Granting an Extension of Time, the Chamber specifically ordered the TFV to file a supplementary filing,

[otage par les miliciens de la CODECO | Radio Okapi](#); MediaCongo.net, "Ituri : tout savoir sur le Kidnapping de Thomas Lubanga et sa suite par des miliciens CODECO à Djugu", 17 February 2022, available at [mediacongo.net - Actualités - Ituri : tout savoir sur le Kidnapping de Thomas Lubanga et sa suite par des miliciens CODECO à Djugu](#); TopInfo24, "Ituri :En pleine négociation de paix, les CODECO enlèvent Thomas Lubanga et sa délégation", 17 February 2022, available at [Ituri :En pleine négociation de paix,les CODECO enlèvent Thomas Lubanga et sa délégation - Topinfos24.com](#); Actualite.cd, "RDC: des négociateurs de la présidence "retenus" par un groupe armé en Ituri", 17 February 2022, available at [RDC: des négociateurs de la présidence "retenus" par un groupe armé en Ituri | Actualite.cd](#)

¹⁰ [TFV Request](#), para.8.

¹¹ [TFV Request](#), para.9.

addressing, to the extent possible, all matters requiring further clarification as identified by the LRVs and the Defence, by 24 February 2022.¹² The Chamber did not request the TFV to submit a new, amended or second version of the DIP, but rather to provide the additional information requested. The TFV must thus be stopped in its tracks and ordered to provide, in accordance with the Decision Granting an Extension of Time, only the additional information identified by the parties. Providing such information does not require the approval of the TFV Board of Directors and accordingly does not constitute good cause justifying the extension of time requested, pursuant to Regulation 35 RoC. More importantly, the filing of a new or amended DIP by the TFV at this stage, in the absence of any judicial decision on the content of the DIP submitted on 17 December 2021, has the potential rather than to assist, to further confuse the issues and further delay the approval of the DIP.

6. Notwithstanding the above, the Defence understands from the TFV Request that the TFV is not in a position to meet the 24 February deadline set by the Chamber to provide additional information on the issues identified by the parties.¹³ Consequently - bearing in mind that it is in the interest of justice that the TFV be in a position to carefully assess and develop the issues identified by the parties and provide the supplementary information sought as quickly as possible – the Defence does not oppose a limited extension of time being granted to the TFV, at the Chamber’s discretion.

7. Furthermore, considering that pursuant to the Decision Granting an Extension of Time, the parties were scheduled to submit their observations on the DIP and the TFV’s supplementary filing, on 24 March 2022 - *i.e.* one month following the submission of additional information by the TFV on 24 February 2022 - this date should be amended to one month following the new date set by the Chamber for the TFV to submit the additional information sought by the parties.

¹² [Decision Granting an Extension of Time](#), Disposition.

¹³ [TFV Request](#), para.10.

8. Lastly, the Defence deems it appropriate to address the impact of the TFV Request and of any extension of time granted by the Chamber as a result, on the TFV reporting schedule in respect of the Initial Draft Implementation Plan (“IDIP”). Indeed, when submitting its DIP, the TFV requested – in light of the complementarity between the IDIP and DIP – to be authorized, after the submission of its “Third Update Report on the Implementation of the Initial Draft Implementation Plan” on 24 January 2022, to submit quarterly reports addressing the DIP and IDIP simultaneously on 31 May, 31 August, 31 November, etc.¹⁴ In the same filing, the TFV did not address the applicable ten-day period for the parties to respond to any issue in these reports.¹⁵

9. In the Decision Granting an Extension of Time, the Chamber did not pronounce on the TFV request to submit quarterly reports addressing the IDIP and DIP simultaneously. The Defence thus considers the TFV request to be moot. Moreover, in light of the TFV Request seeking an extension of time to comply with the Decision Granting an Extension of Time, and the inevitable delay in the approval of the DIP if the TFV Request is granted in whole or in part, it is evident that the submission of reports addressing the IDIP and the DIP simultaneously is not possible, at least at this stage. Consequently, taking into consideration the urgent nature of the IDIP,¹⁶ the Defence submits that the applicable two-month reporting period in the context of the IDIP should be maintained and the TFV ordered to submit its next update report on the IDIP on 24 March 2022; followed by the parties’ responses, if any, ten days later. This is all the more important considering the missing information in the TFV Third Report on the IDIP, as highlighted by the parties in their respective submissions,¹⁷ and

¹⁴ Trust Fund for Victims’ submission of Draft Implementation Plan (“TFV Submission of DIP”), 17 December 2021, [ICC-01/04-02/06-2732](#), paras.12-16, 18.

¹⁵ [TFV Submission of DIP](#), para.13.

¹⁶ Decision on the TFV’s Third Update Report on the Implementation of the Initial Draft Implementation Plan (“Decision on third report”), 10 February 2022, [ICC-01/04-02/06-2745](#), para.7.

¹⁷ Public Redacted Version of the “Observations of the Common Legal Representative of the Former Child Soldiers on the Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan” (ICC-01/04-02/06-2743-Conf-Exp, 4 February 2022), 4 February 2022, [ICC-01/04-02/06-2743-Red2](#), paras.22,24,32; Public Redacted Version of “Defence observations on the Trust Fund for Victims’ Third Update Report on the Implementation of the Initial Draft Implementation Plan”, 4 February 2022, 4 February 2022, [ICC-01/04-02/06-2744-Red](#), paras.2-4,8-12,14-16,22-25.

the Chamber's Decision on the TFV's Third Update Report on the Implementation of the Initial Draft Implementation Plan,¹⁸ ordering the TFV, yet again, to provide this information.

10. In light of the foregoing, the Defence respectfully requests the Chamber to:

- **ORDER** the TFV to limit its supplementary filing arising from the Decision Granting an Extension of Time to providing the additional information sought by the parties;
- **GRANT** the TFV a limited extension of time, at its discretion, for the purpose of complying with the Decision Granting an Extension of Time;
- **ADJUST** the date for the submission of the parties' responses / observations on the DIP and the TFV supplementary filing, in accordance with the date set for the TFV to comply with the Decision Granting an Extension of Time; and
- **ORDER** the TFV to submit its next report on the implementation of the IDIP on 24 March 2022, followed by the parties' responses, if any, ten days later.

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF FEBRUARY 2022



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

The Hague, The Netherlands

¹⁸ [Decision on Third Report](#), paras.9-11, Disposition.