



Original: **English**

No.: **ICC-01/04-02/06**

Date: **1 August 2022**

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

**Observations on behalf of the convicted person on the Joint Submission of the
Trust Fund for Victims and Registry on the process of eligibility**

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 instructions addressed to the Trust Fund for Victims (“TFV”) and the Registry by Trial Chamber II (“Chamber”) by way of electronic correspondence on 20 June 2022 (“Chamber’s Instructions”)¹ and the filing of the Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility (“Joint TFV Registry Submission”)² on 21 July 2022, Counsel for the convicted person (“Defence”) hereby submits this:

**Observations on behalf of the convicted person on the Joint Submission
of the Trust Fund for Victims and Registry on the process of eligibility**

“Defence Observations”

INTRODUCTION

1. For the reasons set out herein, the Defence takes issue with, and opposes, the mechanism proposed in the 21 July Joint TFV Registry Submission.

OBSERVATIONS

2. As highlighted in the Chamber’s Instructions, the TFV proposals for the Draft Implementation Plan (“DIP”) verification process³ and the Registry’s observations on the same⁴ reveal significantly different views on the way regarding the process of eligibility.

3. Yet, it stems from the Joint TFV Registry Submission that the TFV maintained the position it has been advocating since the submission of its first DIP in December 2021 (a one-step verification process, *i.e.* one verification body only: Verification by the

¹ Email of Trial Chamber II on 20 June 2022 at 12:09 (“Chamber’s Instructions”).

² Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility, 21 July 2021, ICC-01/04-02/06-2774 (“Joint TFV Registry Submission”).

³ Annex A to the “Trust Fund for Victims’ submission of Draft Implementation Plan”, 17 December 2022, ICC-01/04-02/06-2732-Conf-AnxA, paras.330-341; Annex 1 to the “Trust Fund for Victims’ second submission of Draft Implementation Plan”, 25 March 2022, ICC-01/04-02/06-2750-Conf-Anx1 (“DIP”), paras.370-379.

⁴ Registry Observations on the Trust Fund for Victims’ Draft Implementation Plan, 18 May 2022, ICC-01/04-02/06-2766, paras.20-34.

TFV *with the assistance of a Registry staff*)⁵ while the Registry's position displays a marked departure from that advocated in its 18 May observations on the TFV DIP.

4. The Registry's volte-face appears to rest on its understanding / acceptance that the TFV cannot delegate the entire process to the VPRS,⁶ which is incorrect. Even the TFV acknowledges that it was asked by the Chamber to consider delegating the verification process to the VPRS, in whole or in part.⁷

5. More importantly, while the mechanism envisaged in the Joint TFV Registry Submission may appear convenient for administrative and budgetary considerations⁸, it fails to address the shortfalls associated with the multi-faceted role of the TFV in the reparations process, as underscored in the Observations on behalf of the convicted person on the Trust Fund for Victims' Updated Draft Implementation Plan of 18 May 2022 ("Defence Observations – Updated DIP").⁹

6. Indeed, Annex I to the Joint TFV Registry Submission provides an overview of the eligibility determination process identical to that advocated in its Updated DIP with the exception that one staff member of the Registry (VPRS) would now work almost exclusively on the eligibility process, subject to the approval of the TFV Legal Officer and his team. In other words, the mechanism resulting from negotiations between the TFV Director and the Registry Director of the Judicial Support Services

⁵ Annex 1 to the "Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility", 21 July 2021, ICC-01/04-02/06-2774-Anx1, paras.8.13,21,24 (Emphasis added). *See also* Joint TFV Registry Submission, paras.11,15.

⁶ Annex 2 to the "Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility", 21 July 2021, ICC-01/04-02/06-2774-Anx2. *See also* Annex 1 to the "Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility", 21 July 2021, ICC-01/04-02/06-2774-Anx1, paras.13.

⁷ DIP, paras.305,374.

⁸ *See for instance* Annex 1 to the "Joint Submission of the Trust Fund for Victims and Registry on the process of eligibility", 21 July 2021, ICC-01/04-02/06-2774-Anx1, paras.2,28; Joint TFV Registry Submission, para.16.

⁹ 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-Conf ("Defence Observations – Updated DIP"), paras.6,15,111-115.

changes nothing to the TFV's aim from the beginning, to exercise control over the entire reparations process.

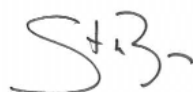
7. In this regard, the Defence deems it appropriate to recall its submissions in the Defence Observations – Updated DIP concerning the identification, verification, eligibility and review process, more particularly Sections VI, VIII and IX thereof. Although there are certain advantages to having one organization responsible for the implementation of reparations, one and the same organization cannot be entrusted with the responsibility to design and implement the outreach campaign at identifying new potential victims, to identify new potential victims, to obtain the information required for the eligibility determination process from the new potential victims, to determine the eligibility of new potential victims and to be responsible to pronounce on / review any challenges to its own eligibility determinations. Allowing one entity to perform all of these functions in the absence of any oversight exercised by the Chamber is contrary to the most basic administrative process.

8. The Defence stands ready to make additional more elaborate submissions on this issue when the Chamber pronounces on the Updated DIP.

CONCLUSION

9. In light of the foregoing, the Defence respectfully submits that the mechanism foreseen in the Joint TFV Registry Submission should not be approved, at least until the Chamber has pronounced on the parties' observations submitted on 18 May and approval of the Updated DIP.

RESPECTFULLY SUBMITTED ON THIS 1th DAY OF AUGUST 2022



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