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No.: ICC-01/04-02/06  
Date: 8 February 2023

**TRIAL CHAMBER II**

**Before:** Judge Chang-ho Chung, Presiding Judge  
Judge Péter Kovács  
Judge María del Socorro Flores Liera

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR V. BOSCO NTAGANDA***

**Public**

**Public Redacted Version of "Prosecution's submissions pursuant to the "Order for the implementation of the judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order""", ICC-01/04-02/06-2827-Conf, 7 February 2023**

**Source:** Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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## **I. Introduction**

1. Pursuant to Trial Chamber II’s “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, the Prosecution provides submissions on issues relevant to the assessment of the actual damage and harm caused to the health centre in Sayo.<sup>1</sup>

## **II. Confidentiality**

2. These submissions are filed confidentially pursuant to regulation 23*bis*(1), (2) of the Regulations of the Court, because they contain confidential information regarding witnesses who are the subject of protective measures. The Prosecution will file a public redacted version of this filing.

## **III. Procedural history**

3. On 8 July 2019, Trial Chamber VI convicted Bosco Ntaganda, as an indirect co-perpetrator under Article 25(3)(a) of the Statute, of the war crime of intentionally directing attacks against a protected object, namely the health centre in Sayo, in the context of the First Operation (count 17).<sup>2</sup>

4. On 8 March 2021, Trial Chamber VI issued its Reparations Order, which included reparations for damage caused to the health centre in Sayo and the loss of adequate healthcare provision to the community that benefited from it.<sup>3</sup> On 16 March 2021, the Presidency assigned the present case to the newly constituted Trial Chamber II.<sup>4</sup>

5. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeals against the Reparations Order, reversing Trial Chamber VI’s findings in relation to the Sayo health centre and remanding the matter to Trial Chamber II for it to address it again, taking into account submissions by the parties.<sup>5</sup>

6. On 25 October 2022, Trial Chamber II ordered all parties and participants, including the Office of the Prosecutor, to provide submissions on “the issue of the actual damage and any

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<sup>1</sup> ICC-01/04-02/06-2786, p. 21 and para. 42.

<sup>2</sup> ICC-01/04-02/06-2359, p. 529.

<sup>3</sup> ICC-01/04-02/06-2659, p. 67.

<sup>4</sup> ICC-01/04-02/06-2663, p. 7.

<sup>5</sup> ICC-01/04-02/06-2782, paras. 519-550.

harm caused to the health centre in Sayo, the individual victims, and the community as a whole for loss of adequate healthcare provision, and the causal nexus between any harm and the crime of intentionally directing attacks against protected objects, namely the health centre in Sayo, for which Mr Ntaganda was convicted”.<sup>6</sup>

#### IV. Submissions

7. The evidence<sup>7</sup> shows that the UPC/FPLC’s attack on the health centre in Sayo caused damage to the physical structure of the centre in the form of broken doors and windows as well as bullet holes in some of its walls.<sup>8</sup> Moreover, the attack resulted in a complete loss of medical equipment, staff, and supplies,<sup>9</sup> which caused a severe and prolonged disruption of the health centre’s services and deprived the community of these essential services.

8. When the UPC/FPLC attacked Mongbwalu, as part of the First Operation, injured people from Mongbwalu fled the town and went to seek medical assistance at the Sayo health centre. As the UPC/FPLC advanced through Sayo, it deliberately fired projectiles at the health centre, including with rocket launchers, destroying a house behind the centre, wounding a guard at the health centre who was hit by a shell fragment, and causing people present at the centre to flee because of the danger. [REDACTED]. Some patients at the centre, however, were unable to flee. Three seriously injured men as well as a Lendu woman and her child were left behind at the centre. This woman was killed by the UPC/FPLC during its assault and her child also died in this context.<sup>10</sup>

9. [REDACTED], a Sayo resident at the time of the attack, returned to the village some days after the attack and found that 27 partly decomposing bodies of dead men, some dismembered or otherwise mutilated, had been left underneath the beds inside a room of the Sayo health centre. [REDACTED]. Near the health centre’s guard post, [REDACTED] found the dead body of the woman killed by the UPC/FPLC with a baby on her back, and buried them

<sup>6</sup> ICC-01/04-02/06-2786, p. 21 and para. 42.

<sup>7</sup> In accordance with the Trial Chamber’s instruction to “provide further submissions *and possible evidence*” at ICC-01/04-02/06-2786, p. 21 (emphasis added), these submissions refer both to the formal evidentiary record and to other evidence disclosed at trial, but not admitted as such.

<sup>8</sup> **P-0800**, ICC-01/04-02/06-T-68-CONF-ENG, p. 51, ln. 25 to p. 52, ln. 20. *See also* **P-0800**, DRC-OTP-2058-1115, pp. 1119-1120, paras. 27-29.

<sup>9</sup> **P-0815**, ICC-01/04-02/06-T-76-CONF-ENG, p. 60, lns. 2-21; **P-0800**, ICC-01/04-02/06-T-68-CONF-ENG, p. 52, lns. 6-16.

<sup>10</sup> ICC-01/04-02/06-2359, paras. 506, 922; **P-0800**, ICC-01/04-02/06-T-68-CONF-ENG, p. 28, ln. 18 to p. 35, ln. 24. *See also* **P-0800**, DRC-OTP-2058-1115, pp. 1117-1118, paras. 16-19.

both.<sup>11</sup> Some four months later, when P-0800 returned to Sayo in March 2003, the health centre was still closed. There were traces of bullets on the building's walls and its doors and windows had been broken.<sup>12</sup> Inside, everything had been pillaged, including all medical equipment, medication, money, and even mattresses.<sup>13</sup> Witness P-0815, [REDACTED] who returned to Sayo around the same time,<sup>14</sup> confirmed that all of the centre's equipment had been destroyed or looted and that there was no more medicine for treatment.<sup>15</sup> Inside the maternity ward, P-0800 found that the floor was covered with blood and there were bullet cases on the floor.<sup>16</sup>

10. Accordingly, the evidence shows that the UPC/FPLC's attack on the Sayo health centre caused a significant interruption of service both during the attack and for a considerable period thereafter. Not only was its staff prevented from providing its services to patients who needed medical care as the immediate result of the UPC/FPLC's attack and in its aftermath, but it also deprived the community of adequate health services for a significant time after the attack due to the loss of medical personnel, equipment, and supplies. The Prosecution is unaware if the health centre ever recovered its full operational capacity after the attack.

11. The evidence also establishes that the UPC/FPLC's intentional attack on the Sayo health centre was the "proximate cause"<sup>17</sup> for the harm described above. While, based on the evidence presented at trial, Trial Chamber VI could not find beyond reasonable doubt that UPC/FPLC soldiers looted the Sayo health centre, and that Bosco Ntaganda was individually criminally responsible for this crime, it was reasonably foreseeable that the attack on the Sayo health centre would result in:

- i. medical personnel and patients alike fleeing or attempting to flee the centre;
- ii. damage to the health centre's physical structure; and

<sup>11</sup> [REDACTED]. See also [REDACTED].

<sup>12</sup> **P-0800**, ICC-01/04-02/06-T-68-CONF-ENG, p. 51, ln. 25 to p. 52, ln. 20. See also **P-0800**, DRC-OTP-2058-1115, pp. 1119-1120, paras. 27-29.

<sup>13</sup> **P-0800**, ICC-01/04-02/06-T-68-CONF-ENG, p. 51, ln. 25 to p. 52, ln. 20.

<sup>14</sup> **P-0815**, ICC-01/04-02/06-T-76-CONF-ENG, p. 31, lns. 7-24 and p.51, lns. 19-24.

<sup>15</sup> **P-0815**, ICC-01/04-02/06-T-76-CONF-ENG, p. 60, lns. 2-21. See also **P-0815**, DRC-OTP-2062-2260, p. 2265, para. 26.

<sup>16</sup> **P-0800**, ICC-01/04-02/06-T-68-CONF-ENG, p. 52, lns. 6-12 and p. 56, lns. 11-25.

<sup>17</sup> See ICC-01/04-02/06-2359, para. 133, referring to the *Al Mahdi* Reparations Order, ICC-01/12-01/15-236, para. 44 and the *Katanga* Decision on Transgenerational Harm, ICC-01/04-01/07-3804-Red-tENG, para. 16.

- iii. the looting of its equipment and supplies, especially in a context of systematic pillaging.

It was therefore reasonably foreseeable that the attack would cause the disruption of service and capacity loss described above.

## **V. Conclusion**

- 12. The Prosecution respectfully requests the Trial Chamber to consider these submissions.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 8<sup>th</sup> day of February 2023

At The Hague, The Netherlands