

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Confidential

**Decision on the Defence Request for leave to file further submissions regarding the
Registry 30 January submissions in compliance with the Trial Chamber's
Implementation Order and 25 November Decision**

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

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon

Mrs Kate Gibson

Mr Benjamin Willame

Unrepresented Victims**Unrepresented Applicants for
Participation/Reparation****The Office of Public Counsel for Victims**

Ms Paolina Massidda

Office of the Prosecutor**States' Representatives***Amicus Curiae***REGISTRY**

Registrar

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Ms Franziska Eckelmans

Others

Trial Chamber II of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Bosco Ntaganda* (the ‘Ntaganda case’), having regard to articles 64(6)(f) and 75 of the Rome Statute (‘Statute’), and regulations 23*bis*, 24(5) and 28(2) of the Regulations of the Court (‘Regulations’), issues this Decision on the Defence Request for leave to file further submissions regarding the Registry 30 January submissions in compliance with the Trial Chamber’s Implementation Order and 25 November Decision (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 8 March 2021, Trial Chamber VI issued the Reparations Order.¹
2. On 12 September 2022, the Appeals Chamber issued its Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (the ‘Appeals Judgment’).² The Appeals Judgment remanded the matter to the Chamber, as it partially reversed the Reparations Order to the extent that it found that the Chamber failed to, *inter alia*, make any appropriate determination in relation to the number of potentially eligible or actual victims of the award and/or to provide a reasoned decision in relation to its conclusion about that number.³
3. On 25 October 2022, the Chamber issued its Order for the implementation of the Appeals Judgment (the ‘25 October 2022 Order’), *inter alia*, giving instructions for the constitution of a sample of victims’ dossiers.⁴
4. On 25 November 2022, ruling on the representativeness of the assembled sample (the ‘25 November 2022 Decision’), the Chamber, *inter alia*, directed the parties, the TFV, the Registry, and the Office of the Prosecutor, to further complement their submissions as to the estimated total number of potential beneficiaries of reparations, along with an explanation of the methodology used to provide such estimate.⁵

¹ Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#).

² Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘Appeals Judgment’), 12 September 2022, [ICC-01/04-02/06-2782](#).

³ Appeals Judgment, [ICC-01/04-02/06-2782](#), p. 11.

⁴ Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” (‘25 October 2022 Order’), 25 October 2022, [ICC-01/04-02/06-2786](#), para. 38.

⁵ Decision on the Registry submission in compliance with 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’” (‘25 November 2022 Decision’), 25 November 2022, [ICC-01/04-02/06-2794](#), para. 37.

5. On 30 January 2023, following the term fixed by the Chamber,⁶ the Common Legal Representative of the Former Child Soldiers ('CLR1'),⁷ the Common Legal Representative of the Victims of the Attacks ('CLR2'),⁸ the Defence,⁹ the Registry,¹⁰ and the TFV¹¹ filed their submissions on, *inter alia*, the estimated total number of potential beneficiaries.

6. On 6 February 2023, the Defence submitted a request for leave to file further submissions regarding to the Registry's 30 January 2023 Submission ('Request'), *inter alia*, arguing that it could not have anticipated that the Registry would alter its approach to the determination of the estimated total number of potential beneficiaries.¹²

7. On 8 February 2023, the CLR2 submitted his response to the Defence's Request, asking the Chamber to reject it in its entirety or, in the alternative, to allow him to respond to the Defence's further submissions ('Response').¹³

II. SUBMISSIONS AND ANALYSIS

8. Considering that the 25 November 2022 Decision did not envisage responses, in its Request the Defence seeks leave to file further submissions to the Registry's 30 January 2023 Submission, by analogy, relying on the law applicable to requests for leave to reply.¹⁴ The Defence argues that it could not have anticipated that the Registry would: (i) alter its approach

⁶ Decision on the Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II, 12 December 2022, [ICC-01/04-02/06-2803](#), paras 10-11; *see also* Defence request for an extension of the applicable time limit to file submissions referred to in the Implementation Order issued by Trial Chamber II, 6 December 2022 (public redacted version filed on 7 December 2022), [ICC-01/04-02/06-2798-Red](#), paras 1-3.

⁷ Common Legal Representative of the Former Child Soldiers' additional submissions on the issue of transgenerational harm and on the estimated potential number of reparations beneficiaries, 30 January 2023, [ICC-01/04-02/06-2821](#).

⁸ Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the 25 October 2022 Order and 25 November 2022 Decision, 30 January 2023, [ICC-01/04-02/06-2820](#).

⁹ Defence further submissions on transgenerational harm and the estimated total number of potential beneficiaries, 30 January 2023, ICC-01/04-02/06-2823-Conf.

¹⁰ Registry Submission in compliance with 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-01/04-02/06-2786) ('Registry Submission'), 30 January 2023, [ICC-01/04-02/06-2822](#) (With one Annex in a confidential ex parte version, only available to the Registry, the Legal representatives of the Victims and the Trust Fund for Victims, and in a confidential redacted version, ICC-01/04-02/06-2822-Conf-Anx-Red, reclassified as public on 8 February 2023, [ICC-01/04-02/06-2822-Anx-Red](#)). The Annexes were duly notified to the parties, included the Defence, on 31 January 2023. Email from the Court Management Section, 31 January 2023, at 10:10.

¹¹ Trust Fund for Victims' Submission pursuant to Trial Chamber II's decisions on the implementation of the Appeals Chamber Judgment against the Reparations Order, 30 January 2023, [ICC-01/04-02/06-2819](#).

¹² Defence request for leave to file further submissions regarding the Registry 30 January submissions in compliance with the Trial Chamber's Implementation Order and 25 November Decision ('Request'), 6 February 2023, ICC-01/04-02/06-2826-Conf.

¹³ Response of the Common Legal Representative of the Victims of the Attacks to the "Defence request for leave to file further submissions regarding the Registry 30 January submissions in compliance with the Trial Chamber's Implementation Order and 25 November Decision" ('Response'), 8 February 2023, ICC-01/04-02/06-2828-Conf.

¹⁴ Request, ICC-01/04-02/06-2826-Conf, para. 9.

to the determination of the estimated total number of potential beneficiaries; (ii) provide figures never advanced before, obtained *in extremis*, from unknown sources; (iii) redact the identity of the sources of its new information; and (iv) decide *proprio motu* to send a request to the Government of the Democratic Republic of Congo ('DRC') to obtain figures, without informing the parties and participants, let alone the Trial Chamber, and without considering the downside of such request.¹⁵

9. The Defence submits that it aims to (i) file further submissions regarding the Registry's marked change of approach to the estimation of the total number of potential beneficiaries;¹⁶ (ii) address the reasons put forward by the Registry regarding the relevance of the figures obtained in January 2023, as well as why these figures would not have been available until now;¹⁷ (iii) address the sources/providers of information obtained by the Registry;¹⁸ and (iv) file further submissions on the Registry's request addressed to the DRC Government.¹⁹

10. In his Response, the CLR2 argues that the Defence failed to demonstrate that the applicable criteria under regulation 24(5) of the Regulations has been met.²⁰ In the argument of the CLR2, a mere disagreement with a response does not warrant leave to reply and, even assuming that the Registry's approach could not have been reasonable anticipated, the Defence fails to demonstrate that further submissions are warranted.²¹ In the alternative, if the Chamber were to grant the Defence leave, the CLR2 submits that he should be given an opportunity to respond as the Defence is not only seeking to address the Registry's arguments and approach but also the weight that can be attributed to the data obtained by the Registry and other important topics.²²

11. The Chamber recalls that regulation 24(5) of the Regulations provides that 'participants may only reply to a *response* with leave of the Chamber'. Noting that the Registry's Submission do not constitute a 'response' within the meaning of regulation 24(5) of the Regulations, but a submission within the meaning of regulation 28(1) of the Regulations, the Defence may not seek leave to reply under this regulation. Accordingly, the Defence's request should be rejected.

¹⁵ Request, ICC-01/04-02/06-2826-Conf, para. 12.

¹⁶ Request, ICC-01/04-02/06-2826-Conf, paras 13-19.

¹⁷ Request, ICC-01/04-02/06-2826-Conf, para. 20.

¹⁸ Request, ICC-01/04-02/06-2826-Conf, para. 21.

¹⁹ Request, ICC-01/04-02/06-2826-Conf, para. 22.

²⁰ Response, ICC-01/04-02/06-2828-Conf, para 18.

²¹ Response, ICC-01/04-02/06-2828-Conf, paras 11-13.

²² Response, ICC-01/04-02/06-2828-Conf, para. 19.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

REJECTS the Defence request for leave to reply; and

DIRECTS the Defence and CLR2 to review their underlying submissions, and either file public redacted versions, request the reclassification as public, or justify the need to maintain the current classification as confidential within five days from the notification of the present Decision.

Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Péter Kovács



Judge María del Socorro Flores Liera

Dated this Wednesday, 15 February 2023

At The Hague, The Netherlands