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

Date: **29 March 2023**

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
With Confidential Annex A**

**Request on behalf of the Convicted Person seeking communication of material by the
Trust Fund for Victims and the lifting of redactions applied by the Registry and the
Legal Representatives of Victims to the victims' dossiers**

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 Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order” issued by Trial Chamber II (“Chamber”) on 25 October 2022 (“Implementation Order”)¹; the 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’”² rendered by the Chamber on 25 November 2022 (“25 November Decision”); transmission to the Defence of 171 dossiers of the victims included in the *sample*, between 11 January 2023 and 6 February 2023³; the submissions of the Legal Representatives of Victims (“LRVs”) on the dossiers of the victims included in the *sample*, on 3 March 2023;⁴ and the decision rendered by the Chamber *via* electronic correspondence granting a limited extension of the time limit set to make submissions on the dossiers of the victims included in the *sample*,⁵ Counsel for the Convicted Person (“Defence”) hereby submits this:

Request on behalf of the Convicted Person seeking communication of material by the Trust Fund for Victims and the lifting of redactions applied by the Registry and the Legal Representatives of Victims to the victims’ dossiers

“Defence Request – TFV Material and the Lifting of Redactions”

INTRODUCTION

1. Through this Defence Request – TFV Material and Lifting of Redactions, the Defence hereby moves Trial Chamber II (“Chamber”) to ensure that the Trust Fund for Victims transmits to the Defence without delay, any relevant information or documentation taken into account

¹ 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, [ICC-01/04-02/06-2786](#) (“Implementation Order”).

² 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, [ICC-01/04-02/06-2794](#) (“25 November Decision”).

³ First Transmission to the Defence of 28 Redacted Victim Dossiers pursuant to Trial Chamber II Decision ICC-01/04-02/06-2794, 11 January 2023, [ICC-01/04-02/06-2809](#); Second Transmission to the Defence of 50 Redacted Victim Dossiers pursuant to Trial Chamber II’s Decision ICC-01/04-02/06-2794, 20 January 2023, [ICC-01/04-02/06-2814](#); Third Transmission to the Defence of 92 Redacted Victim Dossiers pursuant to Trial Chamber II’s Decision ICC-01/04-02/06-2794, 27 January 2023, [ICC-01/04-02/06-2816](#); Transmission to the Defence of One Redacted Victim Dossier pursuant to Trial Chamber II’s Decision ICC-01/04-02/06-2813, 6 February 2023, [ICC-01/04-02/06-2825](#).

⁴ Common Legal Representative of the Former Child Soldiers’ submissions on the 34 applications constituting the *sample*, 3 March 2023, [ICC-01/04-02/06-2835](#); Submissions by the Common Legal Representative of the Victims of the Attacks on the dossiers of the victims included in the *Sample*, 3 March 2023, [ICC-01/04-02/06-2836](#).

⁵ Email from Trial Chamber II to the parties on 24 March 2023 at 08:28.

when reaching the administrative decision on the 69 victims already found eligible for the IDIP purposes, as previously instructed to do so by the Chamber in the 25 November Decision.⁶

2. The Defence also respectfully requests the Chamber to review and order the lifting of the redactions applied by the VPRS and the LRVs to the dossiers of the victims included in the sample, in accordance with the instructions set out in its 25 November Decision.⁷ Lifting these redactions is necessary for the purpose of allowing the Defence to make meaningful submissions on the victims' dossiers.

CONFIDENTIALITY

3. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, Annex A to this Defence Request – TFV Material and Lifting of Redactions is classified as confidential as it contains information drawn from the dossiers of the victims included in the sample.

SUBMISSIONS

I. TFV information and documentation concerning the 69 IDIP victims found eligible

4. In the 25 November Decision, the Chamber set out the applicable procedure regarding the composition of the sample and the decision to be rendered on the eligibility of the victims included therein, holding *inter alia*:

“f. Within the same timeframe as above, the TFV shall also provide the Chamber and the parties with any relevant information or documentation taken into account when reaching the administrative decision on the 69 victims already found eligible for the IDIP purposes;”⁸

5. In the Disposition of the same 25 November Decision, the Chamber unequivocally instructed the TFV to:

“[...] provide the Chamber and the parties with any relevant information or documentation taken into account when reaching the administrative decision on the 69 victims already found eligible for the IDIP purposes, within thirty days from the last transmission of the victims' dossiers to the Defence, at the latest.”⁹

6. To this day, the TFV has not transmitted any such information or documentation to the Defence. This was mentioned in the Defence request for a limited extension of the time set to

⁶ [25 November Decision](#), para.34(f).

⁷ [Implementation Order](#), paras.35-36; [25 November Decision](#), para.30, Disposition.

⁸ [25 November Decision](#), para.34(f).

⁹ [25 November Decision](#), Disposition.

make submissions on the dossiers of the victims included in the sample.¹⁰ The TFV opted not to respond to the Defence request for an extension of time,¹¹ thereby indicating that it is well aware of its obligations to provide the Defence with the information now requested.

7. Although the Chamber's instructions in its Implementation Order were slightly different, the latest and more detailed information in the 25 November Decision – which was not challenged by the TFV – is determining in this regard. Moreover, the Chamber's additional instructions addressed *inter alia* to the TFV,

“**INSTRUCTS** the LRVs and the TFV to directly apply any redactions, in accordance with the criteria outlined in the Order and the present Decision, that may be required for the transmission to the Defence of the documents and information referred above;”¹²

confirm that the information and documentation now requested was intended to be transmitted to the Defence.

8. The information or documentation taken into account by the TFV when reaching the administrative decision on the 69 victims already found eligible for the IDIP is crucial for the Defence assessment of the victims' dossiers with a view to making submissions not only on the eligibility of the 69 victims but also on the criteria, material and procedure used by the TFV to determine the eligibility of the victims.

9. The fact that the TFV found some of the 69 victims eligible for reparations despite the preliminary assessment conducted by the VPRS, which had found them *not* to be eligible, militates strongly in favor of allowing the Defence to understand what made the difference.¹³ In order for the Defence assessment and submissions exercise to be meaningful, it is imperative that all material and information obtained from and/or about the 69 victims found eligible by the TFV – more particularly the questionnaire completed by the applicants and subsequently transmitted to the TFV – be provided to the Defence.

10. Considering that the Defence must now file its submissions regarding the 171 victims included in the sample no later than 1 May 2023, time is of the essence and the TFV should be ordered to provide the information and documentation requested as soon as practically possible.

¹⁰ Defence request for a limited extension of the time limit set to make submissions on the dossiers of the victims included in the sample, 20 March 2023, [ICC-01/04-02/06-2837](#), paras.7,12,14.

¹¹ Email from the TFV to Trial Chamber II on 22 March 2023 at 16:57.

¹² [25 November Decision](#), Disposition.

¹³ See for instance a/00199/13, a/00212/13, a/01566/13.

II. Request for certain redactions applied by the VPRS and the LRVs to the victims' dossiers to be lifted

11. The issue of redactions to be applied to the dossiers of the victims included in the sample was addressed by the Chamber in its Implementation Order¹⁴ as well as in the 25 November Decision.¹⁵ In its Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order,¹⁶ the Defence offered detailed observations on the issue of redactions to be applied to the victims' dossiers as well as on the need for a clear mechanism for the resolution of disputes related to redactions.

12. The first issue raised by the Defence referred to the redaction procedure adopted in Lubanga, where the Trial Chamber held that the identities of victims who may be eligible should not be redacted if they have consented to the disclosure of such information to the Defence. On this issue, the Chamber held that it "[...] does not, in principle, disagree with the Defence receiving such information for as long as the victims have consented to their identities being disclosed to the Defence."¹⁷ Consequently, the Chamber directed the LRVs "[...] to consult with the victims they represent [...] as to whether they would consent that their identities are disclosed to the Defence."¹⁸ The Chamber is now aware, contrary to the situation in other cases, that none of the victims consulted by the LRVs in this case consented to have their identities disclosed to the Defence.

13. Notably, at this stage of the reparations proceedings, the victims' absence of consent is the sole factor that precludes the disclosure of their identities to the Defence, as opposed to objective justifications not to disclose their identities to protect their safety, physical and psychological wellbeing, dignity and privacy pursuant to Article 68(1) of the Statute. Indeed, at this stage - Mr Lubanga having already served his sentence and Mr Ntaganda being presently serving his sentence in a State of enforcement in a different continent - there is no requirement for such measures. As for the Defence, bound *inter alia* by its code of conduct and confidentiality obligations, it neither has the resources *nor* the time to conduct investigations that might prejudice the well-being of victims in any way.

¹⁴ [Implementation Order](#), paras.35-36.

¹⁵ [25 November Decision](#), paras.25-30.

¹⁶ Submissions on behalf of the Convicted Person on the procedure for the constitution of the sample established by the Implementation Order, 9 November 2022, [ICC-01/04-02/06-2791](#), paras.47-55.

¹⁷ [25 November Decision](#), para.29.

¹⁸ [Ibidem](#).

14. In the 25 November Decision, the Chamber recalled that the victims' security concerns are always paramount.¹⁹ The Defence concurs. However, the victims' security concerns must be genuine and objectively demonstrated, which is not the case here. This is even more important when safeguarding the rights of the Convicted Person is at stake. A balancing exercise is required between, on the one hand, the minimum information required to enable the Defence to meaningfully challenge the victims' eligibility and ensure that only victims having suffered harm as a result of the crimes for which Mr Ntaganda was convicted are entitled to receive reparations, and the measures *required* to protect the victims.

15. In the 25 November Decision, the Chamber held that in its Implementation Order, it established "[...] a fair redactions procedure whereby only the information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims should be redacted, and *not* information relating to the description of the harm suffered, the events that caused the harm, and the link between such harm and the crimes of which Mr Ntaganda has been convicted."²⁰

16. Looking at the redactions applied to the victims' dossiers by the LRVs, and by extension, VPRS, the Chamber's holding strikes at the core of the issue as numerous redactions are maintained based on the *possibility*, albeit remote in many instances, that information *might* reveal the identities of victims. This includes, "[...] information relating to the description of the harm suffered, the events that caused the harm and the link between such harm and the crimes of which Mr Ntaganda has been convicted,"²¹ which significantly impedes the ability of the Defence to meaningfully challenge the eligibility of the victims included in the sample.

17. Annex A to this Defence Request – TFV Material and the Lifting of Redactions, sets out the results of Defence correspondence addressed to VPRS, LRV1 and LRV2, seeking the lifting of redactions applied to the dossiers of the victims in the sample.

18. All outstanding Defence requests are presented in one consolidated table, which includes the following information (i) the reference number of the victim; (ii) the Legal Representative of the victim; (iii) the identity of the person or agency to whom the request to lift redactions was addressed; (iv) the description and nature of the information still redacted; (v) reference; (vi) the arguments put forward by the LRVs and/or VPRS in support of

¹⁹ [Ibidem](#).

²⁰ [25 November Decision](#), para.30.

²¹ [Ibidem](#).

maintaining the redactions in Annex A; and (vii) Defence submissions in support of lifting the redactions.

19. On 2 March 2023, having received from VPRS the redacted dossiers of all victims included in the sample, the Defence requested VPRS to reconsider its position in light of the 25 November Decision and to lift certain redactions applied to the victims' dossiers. On 7 March 2023, VPRS responded that it would consult with the LRVs and communicate its views. On 21 March 2023, VPRS communicated its position to the Defence regarding the redactions applied to the dossiers of the victims of the attacks in the sample, based on the views of LRV2. On 22 March 2023, VPRS communicated its positions to the Defence regarding the redactions applied to child soldier victims in the sample, based on the views of LRV1.

20. On 7 March 2023, having received all redacted supplementary material submitted by LRV2 in accordance with the 25 November Decision, the Defence requested LRV2 to reconsider his position and to lift certain redactions applied to the dossiers of victims of the attack included in the sample. On 10 March 2023, LRV2 responded to the Defence request, maintaining certain redactions applied and lifting some.

21. On 7 March 2023, having received all redacted supplementary material submitted by LRV1 in accordance with the 25 November Decision, the Defence requested LRV1 to reconsider her position and to lift certain redactions applied to the dossiers of child soldier victims included in the sample. On 13 March 2023, LRV1 responded to the Defence request, maintaining all redactions applied.

22. The Defence submits that the redactions included in Annex A, applied to the dossiers of the victims in the sample by VPRS and the LRVs - and maintained thereafter despite the requests addressed to the VPRS and the LRVs to lift certain redactions – impede the ability of the Defence to meaningfully challenge the eligibility of the victims included in the sample. Moreover, the redactions maintained by VPRS and the LRVs go beyond the letter and the essence of the redaction procedure set out in the Implementation Order.

23. Consequently, the Defence respectfully requests the Chamber to consider the Defence arguments set out herein as well as in Annex A, and to order the lifting of the redactions in Annex A.

RELIEF SOUGHT

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

GRANT the Defence Request – TFV Material and the Lifting of Redactions;

ORDER the TFV to immediately communicate to the Chamber and the parties any relevant information or documentation taken into account when reaching the administrative decision on the 69 victims already found eligible for the IDIP purposes; and

ORDER the lifting of the redactions in Annex A at the earliest opportunity

RESPECTFULLY SUBMITTED ON THIS 29th DAY OF MARCH 2023

A handwritten signature in black ink, appearing to read 'StB-'.

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

The Hague, The Netherlands