

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 April 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

Registry Observations on Defence Request (ICC-01/04-02/06-2838)

Source: Registry

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

The Office of the Prosecutor

Karim A. A. Khan
Nicole Samson

Counsel for the Defence

Stéphane Bourgon
Kate Gibson
Benjamin Willame

Legal Representatives of the Victims

Sarah Pellet
Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Trust Fund for Victims

Franziska Eckelmans

Others

I. Introduction

1. Pursuant to Trial Chamber II (“Chamber”)’s order, conveyed by email on 29 March 2023 (“Order”),¹ the Registry hereby provides its observations on the Defence request to lift certain redactions applied by the Registry’s Victims Participation and Reparations Section (“VPRS”) to victims’ dossiers (“Request”).²

II. Procedural History

2. On 25 October 2022, the Chamber issued its “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’” (“Implementation Order”),³ in which it ordered *inter alia* the Registry to submit to the Chamber a list of individuals to be included in a sample of victim applications to be assessed and ruled upon by the Chamber (“Sample”).⁴ The Registry complied on 8 November 2022, and submitted to the Chamber a list of 173 victim dossiers together with a table containing details extracted from these victims’ dossiers.⁵
3. On 25 November 2022, the Chamber issued a decision (“Decision on Sample”)⁶ in which it approved the Sample and instructed the VPRS to transmit the unredacted dossiers of the victims included in the Sample to the Chamber and the common legal representatives of Victims (“CLR(s)").⁷ The Registry

¹ Email from Chamber to VPRS, 29 March 2023 at 16:12.

² Defence, “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”, 29 March 2023, ICC-01/04-02/06-2838.

³ Trial Chamber II, “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.

⁴ Implementation Order, para. 34 and Disposition, p. 21.

⁵ Registry, “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)”, 8 November 2022, ICC-01/04-02/06-2788.

⁶ Trial Chamber II, “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, para. 34 (a) and Disposition, p. 23.

⁷ The Registry notes that Ms Sarah Pellet, represents the group of the “victims of crimes against child soldiers” (“CLR1”), and Mr Dmytro Suprun represents the group of “victims of the attacks” (“CLR2”).

complied with the Chamber's instruction on 28 November 2022,⁸ and 12 January 2023, respectively.⁹

4. From 11 January to 6 February 2023, in accordance with the Decision on Sample,¹⁰ the Registry transmitted to the Defence and the respective CLR's batches of respectively, 28, 50, 92 and one victim dossiers,¹¹ redacted in accordance with the criteria outlined in the Decision on Sample,¹² and in consultation with the CLR's.
5. On 2 March 2023, pursuant to the Chamber's instruction in the Decision on Sample for the Defence, "to raise any challenge it may have to the redactions applied directly with the VPRS, seizing the Chamber only exceptionally when no agreement can be reached",¹³ the Defence transmitted to the VPRS two annexes containing tables listing the redactions it contested in the victim dossiers.¹⁴
6. On 21 and 23 March 2023, following consultations it held with the CLR's,¹⁵ the VPRS transmitted to the Defence consolidated tables which listed the redactions

⁸ Registry, "Registry Transmission of 173 Unredacted Victims' Dossiers to the Chamber and the Legal Representatives of Victims", 28 November 2022, ICC-01/04-02/06-2795.

⁹ Registry, "Registry Transmission of One Victim Dossier in Compliance with the 'Decision on the Trust Fund for Victims' submission of information on certain victims selected in Trial Chamber II's approved sample' (ICC-01/04-02/06-2808)", 12 January 2023, ICC-01/04-02/06-2810. CLR1 obtained access to the victim's dossier on 20 January 2023.

¹⁰ Decision on Sample, para. 34 (d) and Disposition, p. 23.

¹¹ Registry, "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 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 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", 6 February 2023, ICC-01/04-02/06-2825.

¹² Implementation Order, paras 35-36, and Decision on Sample, paras 29-30.

¹³ Decision on Sample, para. 30.

¹⁴ Email from Defence to VPRS, 2 March 2023 at 19:10.

¹⁵ The VPRS initiated the consultation with the CLR's by transmitting the Defence's lists of contested redactions to the respective CLR's, along with the victims' dossiers, asking the CLR's to either lift any redactions they find appropriate, or provide justification for maintaining redactions. Emails from VPRS to CLR1, 8 March 2023 at 22:11 and 14 March 2023 at 11:49; and from VPRS to CLR2, 8 March 2023 at 21:40. On, respectively, 10 and 13 March 2023, the CLR's answered the VPRS by indicating which redactions could be lifted and which redactions remain, with justifications. Emails from CLR2 to VPRS, 10 March 2023 at 15:38; and from CLR1 to VPRS on 13 March 2023 at 11:37 and 14 March 2023 at 12:11. The VPRS then proceeded to analyse and organize the CLR's' respective answers in consolidated tables in order to convey them to the Defence.

in the victim dossiers that the CLR's agreed to lift pursuant to the Defence's 2 March request, and the justifications for each redaction that the CLR's confirmed should remain.¹⁶

7. On 29 March 2023, the Defence filed its Request.

III. Applicable Law

8. The present observations are submitted in accordance with the Order.

IV. Submissions

9. The Registry notes the Chamber's instruction to redact information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims.¹⁷
10. The Registry considers that, after years of representing and communicating regularly with their clients, and in view of the current volatile situation in Ituri,¹⁸ the CLR's are in the best position to assess their clients' security situation,

¹⁶ Emails from VPRS to Defence, 21 March 2023 at 20:25 (pertaining to the dossiers of victims represented by CLR2) and 23 March 2023 at 10:14 (pertaining to the dossiers of victims represented by CLR1). The VPRS further informed the Defence that lesser redacted versions of the dossiers would be transmitted in due course.

¹⁷ Decision on Sample, para. 30. The Registry also notes paragraphs 35 and 36 of the Implementation Order, in which the Chamber instructed the Registry to "redact any identifying information from the victims' dossiers", further indicating that "any 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, should not be redacted, except for information that might reveal the identities of victims, current residence or other contact information that may be used to locate the victims". Moreover, the Appeal Chamber's Judgement, referred to in the Implementation Order (paragraph 35), indicates that the Defence is to be "provided with a reasonable opportunity to rebut presumptions in proceedings before the Trial Chamber, for example, by having access to at least a minimum amount of information contained in the applications for reparations, so as to be able to make specific submissions and provide evidence to rebut presumptions that may not be applicable to such applications". Appeals Chamber, "Judgment on the appeal against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022, ICC-01/04-02/06-2782, para. 689.

¹⁸ As reported, for instance, by the Trust Fund for Victims ("TFV") in its latest update on the security situation, "the security situation in eastern DRC remained volatile and unpredictable. [...] and an increase of violence between the different armed groups operating in the region is noticeable". TFV, "Trust Fund for Victims' Tenth Update Report on the Implementation of the Initial Draft Implementation Plan, dated 30 March 2023, ICC-01/04-02/06-2839-Conf", ICC-01/04-02/06-2839-Red, paras 11 to 13.

including the type of information in their clients' application forms that may lead to their identification. This is the reason why the VPRS has systematically engaged with the CLRs (i) to prepare the redacted versions of the victim dossiers,¹⁹ and (ii) to address the 2 March request of the Defence to lift a certain number of redactions.²⁰ The VPRS lifted the redactions based on the CLRs' feedback, and relayed to the Defence the CLRs' justification for the remaining redactions.²¹

11. In this regard, the CLRs confirmed to the VPRS that the information remaining redacted subsequent to the 2 March Defence request (i) may identify or locate the concerned victims; and (ii) is in the CLRs' view "not necessary for the Defence to make meaningful observation[s] on the eligibility of the concerned victims for reparations given in particular that the reparations in the present case are collective in nature and thus no specific scrutiny of the multi-dimensional harm suffered by the victims is required."²²
12. Finally, the Registry notes, based on its practice, that while certain redacted information in some victims' dossiers, assessed in isolation, would not necessarily lead to the identification or location of an individual, they however do lead to the identification and/or reveal the location of the victim if they are connected to other (unredacted) pieces of information in the specific context. This justifies why – even if not always obvious – information such as an uncommon ethnic group, or a particular occupation, when the individual lives

¹⁹ See for example, Registry, "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, fn 14. In this exercise the VPRS also availed itself of the assistance of the Registry's Victims and Witnesses Section. Moreover the VPRS informed the CLRs that information related to its intermediaries should remain redacted. This is in line with the Chamber's practice. See the oral decision issued on 3 May 2016, ICC-01/04-02/06-T-94-Red2-ENG, p. 34, line 12, to p. 35, line 25.

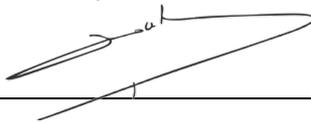
²⁰ See *infra*, para. 6.

²¹ Where necessary, the VPRS made deductions in specific instances from the CLRs' general indications in order to provide the Defence with a detailed justification for the maintaining of redactions in an individualised fashion on information which was deemed to be identifying according to the CLRs.

²² Email from CLR2 to VPRS, 3 April 2023 at 16:14. CLR1 similarly argues that some of the redactions that the Defence requested to lift are "not necessary for the Defence to proceed with the meaningful assessment of the victims' eligibility". Email from CLR1 to VPRS, 14 March 2023 at 12:11.

or lived in a small community, may distinguish that individual from others, potentially leading to his or her identification, and therefore should be redacted.

13. The Registry stands ready to implement any further instructions on redactions given by the Chamber.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 11 April 2023

At The Hague, the Netherlands