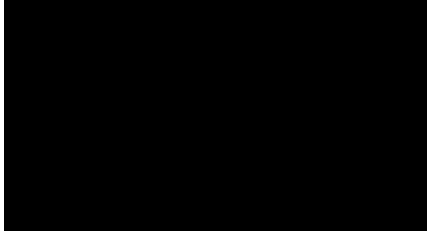


Public redacted version of “Annex A”, ICC-01/04-02/06-2877-Conf-AnxA, submitted on 3 November 2023



**Internal memorandum
Mémorandum interne**

To À	Ms Deborah Ruiz Verduzco, Executive Director – TFV	From De	Ms Sarah Pellet, Counsel – OPCV
Date	6 October 2023	Copies	
Ref.	OPCV/2023/13/SP	Pages	6
Subject Objet	Observations of the Common Legal Representative of the Former Child Soldiers regarding Mr Ntaganda’s possible apology		

Dear Ms Ruiz Verduzco,

1. As Common Legal Representative of the Former Child Soldiers, I hereby provide you with their observations regarding Mr Ntaganda’s possible apology to them. As discussed during the meeting held on 27 September 2023, I would be grateful if you could annex this *Internal Memorandum* to the Trust Fund for Victims’ (the “TFV”) upcoming filing on additional information which it has been ordered to submit to Trial Chamber II (the “Chamber”) by 3 November 2023.¹ I further respectfully request these observations to be filed publicly, as they do not contain any confidential information nor any reference to any confidential document.

2. These observations follow the Chamber’s instructions for the TFV and the Common Legal Representatives of Victims to carry out consultations on how Mr Ntaganda could

¹ See the email sent on behalf of Trial Chamber II on 2 October 2023, at 11:57, granting the Trust Fund for Victims’ Request for extension of time to submit additional information in accordance with Decision No. ICC-01/04-02/06-2860-Conf, dated 29 September 2023 (see corresponding email). See also the “Public Redacted Version of First Decision on the Trust Fund for Victims’ Draft Implementation Plan for Reparations” (Trial Chamber II), [No. ICC-01/04-02/06-2860-Red](#), 30 August 2023, p. 66.

concretely offer an apology to the victims of this case, should he be so inclined.²

3. In this regard, the Defence [REDACTED] on 13 September 2023 [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

4. Following the issuance of the Chamber's First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations (the "Decision"),⁴ and to be able to relay both the direct and indirect victims' contemporary views in this regard, our team consulted again with a representative sample of our clients.

5. In general terms, victims express their discontent with the time that elapsed since the beginning of the present proceedings, as well as with Mr Ntaganda's attitude towards them up until now. At this stage, victims are more concerned with the implementation of the reparations programme(s) than a potential apology from Mr Ntaganda. Indeed, many of them who were inclined to receive an apology from Mr Ntaganda when consulted in the months and years prior to the issuance of the Decision nowadays plainly refuse to consider such an avenue. This being said, the conditions under which the victims would be willing to welcome Mr Ntaganda's apology are presented below.

Divergent opinions on a possible apology to be offered by Mr Ntaganda

6. A little over half of the victims consulted still welcome the possibility of an apology by Mr Ntaganda. However, the other part, although previously being interested and in

² *Idem*, paras. 108 to 110, and p. 66.

³ See the email sent by the Defence of Mr Ntaganda to Trial Chamber II on 13 September 2023 at 18:20, entitled "[REDACTED]". See also the email sent by the Defence of Mr Ntaganda to the TFV and the CLR's on 13 September 2023 at 17:15, entitled "Follow-up to the First Decision on DIP".

⁴ See the "Public Redacted Version of First Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparations" (Trial Chamber II), [No. ICC-01/04-02/06-2860-Red](#), 30 August 2023, paras. 108-110.

agreement with receiving Mr Ntaganda's apology, are doubting whether such a measure would bring them anything meaningful at this stage, and rather refuse to entertain this possibility *at this stage*.

7. Victims explain that such apology no longer appears useful, specifically in light of the time that elapsed since their victimisation, their continued wait to benefit from reparations, as well as Mr Ntaganda's refusal thus far to recognise the existence of or his participation in the crimes he was convicted for.

8. However, the majority of victims willing to receive Mr Ntaganda's apology also express the following conditions.

Content of an apology to be offered by Mr Ntaganda

9. All victims consulted are deeply concerned by the fact that up until now, whenever Mr Ntaganda has had the opportunity to provide a statement in the present proceedings, and despite the conviction against him being final for more than two years already,⁵ the latter has never recognised neither the mere existence of the crimes of conscripting or enlisting children under the age of fifteen years old into the UPC/FPLC and/or using them to participate actively in hostilities, nor his very contribution to these crimes. In the same manner, never has he recognised the crimes of rape and sexual slavery committed against child soldiers in his ranks, nor the consequential existence of children born out of these crimes.

10. To the contrary, whenever Mr Ntaganda had the opportunity to address these issues throughout the proceedings, he systematically stated that there were no children below the age of 18 in the UPC/FPLC.⁶ Similarly, he negated the rapes and sexual slavery that occurred

⁵ See the "Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'" (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red](#), 30 March 2021.

⁶ See *e.g.* D-0300: [No. ICC-01/04-02/06-T-239-Red2-ENG CT2 WT](#), p. 15 ("*There weren't troops under the age of 18 years in the FPLC*"); p. 25 ("*But that doesn't mean that there actually were such children under 18 years of age within our forces, although he did deem it necessary to remind us to carry out these checks*"); and p. 83 ("*I have continually repeated that we didn't have any child soldiers below the age of 18. We insisted on this point*"). See also [No. ICC-01/04-02/06-T-209-Red-ENG WT](#), pp. 34-35; and [No. ICC-01/04-02/06-T-268-Red-ENG WT](#), p. 52, lines 4-5 ("*I do not hesitate to tell you I stand by what I said during my testimony*"). Regarding the term 'kadogo', Mr Ntaganda similarly maintained throughout the proceedings that it does not refer to child soldiers in Swahili, although unanimously asserted by lay and expert witnesses in this case, as well as in the *Katanga* and *Lubanga* cases. See *e.g.* [No. ICC-01/04-02/06-T-211-Red2-ENG CT](#)

amongst his recruits.⁷ As previously put before the Chamber, such statements made by Mr Ntaganda, and further dismissed by the Chamber as non-credible,⁸ not only constitute more affronts to the sufferings of the victims, but also perpetuate their stigmatisation and hamper reconciliation efforts amongst affected communities.⁹

11. Consequently, the Former Child Soldiers represented in this case underline their interest in, and openness to, being presented with an apology from Mr Ntaganda, *only if* the latter, together with said apology, also finally admits to the existence of these crimes and his participation in the commission thereof. Absent of such recognition, no apology would be considered sincere and genuine by any of the victims concerned.

12. It is also most important to note that Mr Ntaganda's apology towards the Former Child Soldiers ought to distinctly include:

- Direct victims of these crimes, *i.e.* the now adult individuals who were conscripted or enlisted into the UPC/FPLC and/or used to participate actively in hostilities as children, while being under the age of fifteen and, for some of

[WT](#), pp. 23-24; [No. ICC-01/04-02/06-T-224-Red2-ENG WT](#), pp. 74-75; [No. ICC-01/04-02/06-T-240-ENG CT WT](#), pp. 7-10. See also the "Public redacted version of ICC-01/04-02/06-2276-Conf-Corr, with public Annexes A and B, Closing brief on behalf of the Former Child Soldiers", [No. ICC-01/04-02/06-2276-Corr-Red](#), 7 November 2018 (date of the original: 8 October 2018), paras. 49-53 and corresponding footnotes.

⁷ See *e.g.* D-0300: [No. ICC-01/04-02/06-T-211-Red2-ENG CT WT](#), p. 49; [No. ICC-01/04-02/06-T-214-Red-ENG WT](#), pp. 8-9; [No. ICC-01/04-02/06-T-223-Red2-ENG WT](#), p. 34 ("*If somebody needed to cohabit with or marry one of them, then of course they were free to do so. So some of my bodyguards did marry these female bodyguards. I could not rape my bodyguards, that was strictly impossible*"); and p. 35 (Q. "*And when your bodyguards followed your instructions and did decide to live together with or marry a bodyguard, was that based on the feelings of the two persons or was one of the two coerced, to your knowledge? A. No. It was on the basis of reciprocal love. And I also would help them. If there was the birth of a baby, for instance, I would provide assistance. So it was a matter of love between soul mates, between a boy and a girl*"). See also [No. ICC-01/04-02/06-T-239-Red2-ENG CT2 WT](#), p. 42 ("*If you refer to complaints, then you are insinuating that I raped them or I forced them. Well, I was still young at the time and it would not have been difficult for me to find a woman who would accept me. You see, when it comes to rape, there is no love. You also want to know that I was not a drug addict, I was not an alcoholic, I did not smoke. I therefore do not know what would have pushed me to rape one of my escorts. That is impossible, totally out of the question for me*").

⁸ See *e.g.* the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019, paras. 359, 361, and 407, and corresponding footnotes.

⁹ See the "Public redacted version of ICC-01/04-02/06-2423-Conf, Observations on Sentencing on behalf of the Former Child Soldiers", [No. ICC-01/04-02/06-2423-Red](#), 24 January 2020 (date of the original: 30 September 2019), para. 58.

them, who were raped and/or turned into sexual slaves;

- Children born out of these acts of sexual violence committed against the Former Child Soldiers while in the UPC/FPLC;
- Family members of all these direct victims, who have been suffering the consequences of these crimes;
- Victims of transgenerational harm, considering the magnitude of the effects caused by the crimes for which Mr Ntaganda was convicted, as recognised by the Chamber; and
- All other categories of indirect victims.

13. The recognition of the multi-dimensional impacts of his crimes on individuals, families and communities is likely to constitute one reparative element to which Mr Ntaganda could contribute, aside from serving his sentence, notwithstanding his indigence.

Modalities of an apology to be offered by Mr Ntaganda

14. Should Mr Ntaganda be willing to offer his apology following the above-mentioned terms, most of the Former Child Soldiers would be willing to receive them by audio and/or video means. In this regard, a wide radio and TV dissemination of previously recorded messages would be favoured, throughout the Democratic Republic of the Congo's territory (through National TV, and radio programs transmitted locally and nationally), to reach the victims of his crimes, wherever they currently reside.

15. In addition, and as previously mentioned, the impact of such apologies on families and communities affected by the crimes he committed is not to be overlooked, especially as part of the efforts deployed by the Court to assist communities in overcoming trauma and stigmatisation, support family and community reintegration, and help spread a strong dissuasive message to avoid the recurrence of similar crimes in Ituri.

16. Finally, victims insist on the value of having Mr Ntaganda's apology translated in all the local languages they individually speak. Regarding the group of Former Child Soldiers direct and indirect victims, the main languages concerned are Swahili, Lingala, Alur, and French.

Timing of an apology to be offered by Mr Ntaganda

17. Should Mr Ntaganda agree with the terms of such apology, the timing thereof would have to be carefully considered. Indeed, some of the victims tend to favour that he would do so only once at least the *first full* reparation measures will have been implemented. In addition, the victims consulted who currently refuse to contemplate such an apology are motivating said refusal by the enormous sufferings they are still faced with and might only welcome apology as part of reparative measures to which he would willingly contribute as a further step.

18. However, as previously expressed, another part of the victims consulted did not attach any consideration of time to receiving Mr Ntaganda's apology.

19. Consequently, considering the various positions amongst the group of Former Child Soldiers at this stage, it is essential that particular attention be paid to the communication surrounding the transmission of any possible apology by Mr Ntaganda. It is therefore suggested that specific *simultaneous* efforts are deployed in disseminating well-thought-out and coordinated messages regarding reparations, to avoid any related discontent in the concerned communities.

Kind regards,



Sarah Pellet

Common Legal Representative of the
Former Child Soldiers

Dated this 6th day of October 2023

At The Hague, The Netherlands