



Original: **English**

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

Date: **18 April 2019**

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Marc Perrin de Brichambaut, Second Vice-President
Judge Howard Morrison

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

Public, with two public annexes

Decision concerning the “Request for disclosure concerning the Decision of the plenary of Judges on the judicial independence of Judge Ozaki” and the “Request for disclosure concerning the visit of the Registrar to Japan on 21 and 22 January 2019”

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court***to:****The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Mr Stéphane Bourgon

Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet

Mr Dmytro Suprun

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for
Participation/Reparation****The Office of Public Counsel for Victims****The Office of Public Counsel for the
Defence****States Representatives****REGISTRY****Registrar**

Mr Peter Lewis

Others

Trial Chamber VI

Victims and Witness Unit**Victims Participation and Reparations
Section**

1. The Presidency of the International Criminal Court (the ‘Court’) has before it the Defence “Request for disclosure concerning the Decision of the plenary of Judges on the judicial independence of Judge Ozaki” dated 1 April 2018 (the ‘Request’)¹ seeking disclosure of information and communications (excluding the content of internal deliberations of the judges) concerning the change of status of Judge Ozaki and her appointment as Ambassador of Japan to Estonia. According to the Defence, it has serious grounds and intends to bring a request in this regard before the Presidency or other applicable body and seeks to be fully informed of the facts, particularly those which are not set out in the Decision of the plenary of judges.² The Presidency also has before it the Defence “Request for disclosure concerning the visit of the Registrar to Japan on 21 and 22 January 2019” dated 8 April 2019 (the ‘Request for the Registrar’), in which the Defence requests the Presidency to invite the Registrar to disclose whether during his meetings with the Japanese Government on 21 and 22 January 2019, the issue of Judge Ozaki’s resignation request was discussed and, if so, inviting disclosure of the content of those discussions and whether they were conveyed to the Judges.³

2. It is noted that the present Decision is taken in consultation with all judges of the Court who participated in the plenary session of 4 March 2019, except insofar as follows. On 5 April 2019, Vice-President Fremr made a request for excusal from his functions as a member of the Presidency in relation to the Request, as well as in relation to any further decision potentially made by the Plenary on this matter. On 10 April 2019, the excusal was granted by the *ad hoc* Presidency consisting of Judges Eboe-Osuji, Perrin de Brichambaut and Morrison.⁴ On 11 April 2019, Judge Chung made a request for excusal from his functions in respect of any Plenary discussions of the Request, which was subsequently granted by the *ad hoc* Presidency of Judges Eboe-Osuji, Perrin de Brichambaut and Morrison.⁵ These excusal decisions, initially rendered confidentially, are annexed to the present Decision.

¹ ICC-01/04-02/06-2327.

² *Ibid.*, para. 8.

³ ICC-01/04-02/06-2332.

⁴ Annex I.

⁵ Annex II.

3. The Presidency considers that, on an apparent view, the requests amount to an exercise in a form of fishing expedition.⁶ What is more, there is currently no legal basis for the Request or the Request for the Registrar. They are hereby summarily dismissed.

The Request and the Request for the Registrar are *hereby* summarily dismissed.

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



Judge Chile Eboe-Osuji

President

Dated this 18 April 2019

At The Hague, The Netherlands

⁶ Exercises in the form of fishing expeditions have been rejected by international tribunals, even in the context of litigation between parties in criminal cases: *Prosecutor v Kordic & Cerkez*, Order on Pasko Ljubcic's Motion for Access to Confidential Supporting Materials, Transcripts and Exhibits in the *Kordic and Cerkez Case*, 19 July 2002 [ICTY Appeals Chamber]; *Prosecutor v Karemera*, Decision on Defence Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses, 23 August 2005, para 8 [ICTR Trial Chamber]; and, *Prosecutor v Ayyash*, Decision on Prosecution Witness Expenses, 9 May 2014, para 11 [STL Trial Chamber].