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TRIAL CHAMBER VI

Before: **Judge Robert Fremr, Presiding Judge**
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR V. BOSCO NTAGANDA

Public

Submissions on behalf of Mr Ntaganda on the conduct of proceedings and on modalities of victims' participation at trial

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 requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial*" issued by Trial Chamber VI ("Chamber") of the International Criminal Court ("Court") on 12 March 2015 ("Order"), Counsel representing Mr Ntaganda ("Mr Ntaganda" or "Defence") hereby submit these:

Submissions on behalf of Mr Ntaganda on the conduct of proceedings and on modalities of victims' participation at trial

("Defence Submissions")

INTRODUCTION

1. As requested by the Chamber, the Defence hereby provides its submissions regarding conduct of proceedings pursuant to Rule 140 of the Rules of Procedure and Evidence ("Rules"), and the modalities of victims' participation at trial.

2. In preparing its submissions, the Defence met with the Prosecution on 2 April 2015 with a view to adopting common position where possible. In many respects, this meeting was successful. The issues and topics on which the Parties hold different views are highlighted herein.

3. The Defence takes this opportunity to respectfully underscore the importance for the Chamber to adopt clear guidelines regarding the conduct of proceedings and the modalities of victims' participation at trial. Indeed, it is paramount for the guidelines adopted to fully protect the rights of the Accused – without which Mr Ntaganda cannot benefit from a fair trial – and to make it possible to avoid oral litigation before the Chamber at trial.

4. The Defence Submissions are presented using the same paragraph numbering as in the Order.

SUBMISSIONS

A. Opening statements

Paragraph 4

5. In the course of discussions held between representatives of the Prosecution and the Defence on 2 April 2015, the Defence has been informed that the Prosecution will request 4 hours to deliver its opening statement.

6. The Defence estimates that 3 hours will be sufficient to make its own opening statement.

7. While it is not strictly necessary to allow the same period of time to the Parties for the presentation of their opening statements, the Defence takes the view that any difference between the time allotted to the Parties should not be too long. This is especially important in the event that the Legal Representatives of the Victims ("LRVs") are authorised to present an opening statement, as they will inevitably support the Prosecution's position.

8. The Defence will in all likelihood make use of audio-visual aids during the presentation of its opening statement, more particularly videos and photographs, and possibly maps. For this purpose, the Defence solely requires the use of an overhead projector.

9. The Defence acknowledges that for the purposes of the opening statement, the Prosecution is not under the obligation to disclose to the Defence the materials it intends to rely upon, as these materials have already been disclosed.

10. However, the Defence takes the view that fairness of the proceedings applies at all stages of the trial, including the presentation of opening statements. Accordingly, in the course of its discussions with the Prosecution, the Defence put forward the suggestion that the Prosecution provide advance notice to the

Chamber, the Defence and the participants of the materials it intends to use during its opening statement. Should the Chamber be inclined to order the Prosecution to do so, the Defence undertakes to notify the Chamber, the Prosecution and the participants of the materials which will be referred to in the course of its opening statement.

11. The Defence understands that the preparation of an opening statement is an ongoing process, which is usually finalized shortly before its presentation. Should the opening statements be held in Bunia, bearing in mind travel arrangements, the Defence posits that a 3-day notice would suffice. If the opening statements are to be presented at the seat of the Court, a 2-day notice appears to the Defence to be reasonable.

Paragraph 5

12. The interests of justice strongly militate in favour of holding all stages of the trial publicly, including the presentation of opening statements. Thus, the Chamber should encourage the Parties to avoid as much as possible using private and closed sessions during their opening statements. Accordingly, Parties should keep references to confidential information to a minimum and cluster them with a view to avoiding continuous migration from public to closed/private session.

13. At this stage, the Defence envisages a very limited recourse to private session.

B. Prosecution's case

Paragraph 6 i)

14. The Defence has reviewed the Prosecution's estimate of the time needed for the examination-in-chief of its witnesses. While the Defence is not in a position to provide specific comments on the time requested by the

Prosecution for each individual witness, it appears to the Defence that the Prosecution's estimates of time are overall reasonable.

15. That being said, any rule adopted concerning the time allotted to the cross-examining party, whether the Prosecution or the Defence, is of high importance to the Defence. In fact, both Parties expressed a particular interest during consultations.

16. The Defence acknowledges that a one-for-one approach may be helpful in determining the time necessary for cross-examination. However, the Defence posits that such approach should only serve as an indication for planning purposes and must not be binding on the cross-examining party. While, in most cases, the cross-examining party will indeed use the same time as that allotted to the calling party, there are circumstances where the provision of the same time to the cross-examining party will unduly impair its ability to properly test the evidence elicited from the witness by the calling party. Such circumstances include, but are not limited to: (i) the case where the scope of the evidence which can be elicited in cross-examination is more extensive than the topics covered during examination-in-chief; (ii) the case where testing the credibility of a witness requires extensive time; and (iii) the case where the examination of a witness took less time than what the calling party had indicated. In such cases, it is likely that the cross-examining party will require longer more time than the calling party, in certain circumstances up to three-for-one.

17. Accordingly, at this stage, the Defence is not in a position to call into question the Prosecution's preliminary evaluation that the Defence will use, for the cross-examination of all Prosecution witnesses, the same amount of time it requires for examination-in-chief purposes. This estimate, however, should not be binding on the Defence. As stated below, the Defence undertakes to

provide the Chamber, the Parties and the participants with a final estimate of the time needed for cross-examination on a monthly basis.

Paragraph 6 ii)

18. The Defence understands from paragraph 6 ii) of the Order that the Prosecution will include in its submissions it intends to call before the summer recess, in the event that the trial proceeds according to the current schedule.

19. However, in its Request for Postponement of the Prosecution's Case,[1] the Defence requests the Chamber to postpone the presentation of the Prosecution's case until 2 November 2015.[2]

20. Accordingly, should the Request for the Postponement of the Prosecution's Case be granted, the timeframe set out by the Chamber for the provision of the list of the first Prosecution witnesses – i.e. two months[3] – should apply *mutatis mutandis*. Hence, the Prosecution should be ordered to provide a list of the first witnesses it intends to call before the winter recess by 2 September 2015.[4]

Paragraph 6 iii)

21. The Defence submits that the Prosecution should provide, one week prior to the commencement of the trial, a complete list setting out the order in which it intends to call all of its witnesses as well as its final time estimates for the

[1] "Urgent request on behalf of Mr NTAGANDA seeking to postpone the presentation of the Prosecution's Case until 2 November 2015 at the earliest with Public Annex A", ICC-01/04-02/06-541-Red ("Request for Postponement of the Prosecution's Case").
[2] Request for Postponement of the Prosecution's Case, para.75.
[3] In its Order, the Chamber directed the Prosecution to provide by 7 April 2015 a list indicating, in order, the witnesses it intends to call before the summer recess: Order, para.6(ii), p.11. According to the current schedule, the Prosecution's case is likely to commence on the week of 8 June 2015.
[4] This practically corresponds to the period of time between the currently scheduled commencement of the Prosecution's case and the summer recess (approximately six weeks).

examination-in-chief of each witness. This list should be accompanied by the witnesses' final will-say, updated if necessary.

22. Given that such order is necessarily dependent on logistical considerations, an updated sequential list of Prosecution witnesses to be called during a given month ("Prosecution Monthly List of Witnesses") should be provided on the first working day of the previous month. This list should also include a final estimate of the time necessary for the Prosecution's examination-in-chief.

23. Should the Chamber be inclined to adopt the above practice, the Defence undertakes to notify the Chamber, the Parties and the participants 21 days following reception of the Prosecution Monthly List of Witnesses, its final estimate of the time it will require for the cross-examination of the witnesses thereon and to provide, where applicable, the reasons why more time is required.

Paragraph 6 iv)

24. With respect to the issue of self-incrimination, the Defence submits that the Parties must inform the Chamber, the other party and the participants that this issue will arise during the testimony of any of their witnesses when providing their monthly list of witnesses that will be called. As for the procedure to be adopted in such cases, the Defence takes the view that Rule 74 of the Rules must be applied *stricto sensu*.

Paragraph 6 v)

25. The Defence has no particular views on the timing and manner that requests for in-court protective measures pursuant to Rules 87 and 88 of the Rules should be made. However, the Defence takes the view that in-court protective measures should only be granted following the holding of a *voir-dire*, if only to verify the veracity of the witness's concerns.

C. Scope, order and mode of questioning

Paragraph 8

26. In the course of their *inter partes* discussions held on 2 April 2015, the Prosecution and the Defence agreed that the contradictory nature of the proceedings before the Court militates in favour of leaving to the parties the responsibility of examining witnesses, subject to the possibility for judges to ask questions at anytime. The parties also agreed that they should be the main actors in eliciting evidence from witnesses. This adversarial approach finds support in the general economy of the Court's legal framework.[5]

27. To cite but one example, the Defence notes that in spite of a provision setting out as a principle the examination of witnesses by the judges,[6] the Trial Chamber of the Special Tribunal for Lebanon vested the parties with the responsibility of questioning the witnesses.[7]

28. Mindful of the fact that judges can ask questions at any time,[8] the Defence respectfully submits that such questions should only be aimed at clarifying the testimonies. This approach would ensure that the equilibrium which must exist between the Prosecution and the Defence is preserved.[9]

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[5] *See inter alia* Article 66(2) ("The onus is on the Prosecutor to prove the guilt of the accused") and Article 74(2) ("[…] The Court may base its decision only on evidence *submitted* and *discussed* before it at the trial") of the Statute (emphasis added). *See also* ICC-01/04-01/06 OA 9 OA 10, para.93; ICC-01/04-01/07-3436-AnxI, para.93.

[6] Statute of the Special Tribunal for Lebanon, S/RES/1757, Article 20(2) ("Unless otherwise decided by the Trial Chamber in the interests of justice, examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence"). *See also* Rules of Procedure and Evidence of the Special Tribunal for Lebanon, STL-BD-2009-01-Rev.7, Rule 145(A).

[7] "Directions on the Conduct of the Proceedings", STL-11-01/T/TC F1326/20140116/R253776-253781/EN/nc, 16 January 2014, paras. 11, 13 and 15.

[8] Rule 140(2)(c) of the Rules.

[9] *Cf.* ICC-01/09-01/11-460, para. 14 and references cited therein.

Paragraph 9 i)

29. During their *inter partes* consultations, the Parties agreed that the scope of cross-examination must not be limited to the issues raised during the examination-in-chief of a witness. Rather, in light of Rule 140(2)(b) of the Rules, the cross-examining party should be allowed to touch upon any issues that support its case as well as any matters related to the credibility of the witness.

Paragraph 9 ii)

30. The Defence takes the view that the cross-examining party has an obligation to put its case to the witness.[10] This involves confronting the witness with all matters pertaining to his/her credibility known to the cross-examining party at the time. Failure of the cross-examining party to do so – either inadvertently or wilfully – should be taken into account in the Chamber's evaluation of the party's arguments in relation to the witness' credibility. In the event further probative information concerning the credibility of a witness is acquired by the cross-examining party after the testimony of the witness, it should be granted – upon request showing good cause – an opportunity to recall the witness for the purpose of putting the new information to the witness.

D. Documentary evidence

Paragraph 10 i)

31. The issue of use of material during questioning was discussed between the Parties during their *inter partes* consultations.

[10] ICC-01/09-01/11-900, para.19.

32. The Defence takes the view that the calling part should provide a 5-working day advance notification to the Chamber, the other party and the participants of the material it intends to use during questioning, provided that the documents have already been disclosed to the cross-examining party. Objections to the use of any document should be raised 2 days prior to the commencement of the examination-in-chief.

33. With respect to documents to be used during cross-examination, the Defence submits that the cross-examining party should provide the Chamber, the calling party and the participants 24 hours prior to the start of cross-examination, with a list of the material it intends to use, with the caveat that such notification can only be provided once the examination-in-chief has commenced.

34. Before presenting a document to a witness, the questioning party must ask the witness about his knowledge and involvement, if any, with the document with a view to establishing a material relationship between the witness and the document. In other words, the questioning party should demonstrate that the witness is in a position to assist the Court in commenting on the document. Parties should not be allowed to ask questions to witnesses on documents unless they meet this threshold.

Paragraph 10 ii)

35. The Defence underscores that the principles underlying admission of material tendered through a witness *as evidence* are different from those guiding the use of the same during questioning. Even when a party has not objected to the use of a document during questioning of a witness, it may still object to its admission. Admissibility principles should apply *mutatis mutandis*.

36. The Defence submits that the tendering party should seek admission of exhibits on a document-by-document basis, rather than waiting at the end of the testimony of the witness.

Paragraph 10 iii)

37. With respect to the admission of documents through a bar-table motion, the Defence submits that the moving party must establish, at a minimum: (i) the authenticity of the documents; (ii) the reasons why the documents could not be tendered through a witness; and (iii) the relevance of the documents for the moving party's case.

38. As for the procedures envisioned in Rule 68 of the Rules, the Defence defers to the procedure established in this provision. In this regard, bearing in mind the paucity of applicable provisions in the legal framework of the Court, it is very likely that further briefing by the Parties will be required with a view to adopting clear procedures that will fully respect the rights of the Accused.

E. Charges

Paragraph 11 i)

39. On behalf of Mr Ntaganda, the Defence agrees to provide to the Chamber a certification, ahead of the commencement of the trial, that he has read and understood the "*Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda*".[11]

Paragraph 11 ii)

40. The Defence agrees that the right of the Accused to have the charges read out at the commencement of trial pursuant Article 64(8)(a) of the Statute can be

[11] ICC-01/04-02/06-309.

fulfilled by a reading of the counts section of the Updated Document Containing the Charges, namely Section H-ii.[12]

41. Furthermore, upon certification being provided by the Defence that Mr Ntaganda has read and understood the charges previously confirmed by the Pre-Trial Chamber, Mr Ntaganda is prepared to waive his right to have the charges read to him at the commencement of the trial pursuant to Article 64(8)(a) of the Statute.

F. Agreements as to evidence

42. Pursuant to the Chamber's instructions, the Prosecution and the Defence have entered into discussions on agreed facts. On 3 April 2015, the Prosecution provided the Defence with a first set of proposed facts on which the Parties could agree. Pursuant to the current schedule, as set out in the Order, the Defence is scheduled to respond by 1 May 2015.

43. However, due to circumstances highlighted in its Request for Postponement of the Prosecution's Case, it is unlikely that the Parties will be able to submit to the Chamber by 6 May 2015, a list of proposed agreed facts going beyond the most obvious facts of the case. Indeed, it is not possible for the Defence to consider proposed agreed facts unless it has acquired an overall knowledge and understanding of the evidence intended to be adduced by the Prosecution and obtain the consent of the Accused.[13]

44. The Defence reiterates that it is a firm believer in the benefit of agreed facts, which have the potential to concentrate the proceedings on the facts actually disputed by the Parties. Agreed facts also pave the way to more focused examination and cross-examination of witnesses.

[12] ICC-01/04-02/06-458-AnxA, p.60-65.
[13] Request for Postponement of the Prosecution's Case, paras.72-77.

45. In light of the circumstances described in its Request for Postponement of the Prosecution's Case, the Defence recalls that it will not be possible for it to contribute meaningfully to the exercise of agreed facts.

46. Should its Request for Postponement of the Prosecution's Case be granted, the Defence respectfully submits that the Parties will be able to engage much thoroughly in considering additional proposed agreed facts. In this regard, the Defence notes that it intends to communicate its own list of proposed agreed facts to the Prosecution.

G. Modalities of victims' participation at trial

Paragraph 16 i)

47. As a preliminary observation, the Defence notes that before the Extraordinary Chambers in the Courts of Cambodia, legal representatives of the victims were not authorised to present an opening statement as this is no where provided in the applicable instruments.[14] Likewise, the possibility for LRVs to make an opening statement is not provided for the Court's legal framework.

48. Nonetheless, the Defence acknowledges that other trial chambers of the Court have allowed legal representatives of victims to make opening and closing statements.[15] Accordingly, the Defence does not formally oppose to the LRVs being authorised to present a focused and limited opening statement.

49. In this regard, the Defence insists on the fact that LRVs' opening statements are neither meant to reproduce the Prosecution's opening statement, nor to advocate how the evidence purportedly leads to the guilt of the Accused. In fact, the Defence respectfully submits that it is paramount for the Chamber to ensure that LRVs' opening statements are be limited to: (i) neutral and

[14] *See*, for instance, "Scheduling Order for Opening Statements and Hearing on the Substance in Case 002", No. 002/19-09-2007/ECCC/TC, 18 October 2011, p.3.
[15] *See*, for instance, the *Ruto and Sang* case: ICC-01/09-01/11-847, para.4; ICC-01/09-01/11-T-27-ENG ET WT 10-09-2013, p.35, l.12 *et ss*.

impartial observations regarding the impact of the facts of the case on the victims they represent; and (ii) recalling the importance of ensuring that the views and concerns of the alleged victims are taken into account in the course of the trial.

Paragraph 16 ii)

50. The Defence does not oppose to the participation of the LRVs in public, private and closed sessions. However, the Defence takes the view that LRVs should not be entitled to attend *ex parte* proceedings due to the nature of such proceedings.

Paragraph 16 iii)

51. As held in the *Lubanga* case: "the process of victims 'expressing their views and concerns' is not the same as 'giving evidence'. The former is, in essence, the equivalent of presenting submissions, and although any views and concerns of the victims may assist the Chamber in its approach to the evidence in the case, these statements by victims (made personally or advances by their legal representatives) will not form part of the trial evidence".[16]

52. Accordingly, the Defence does not oppose LRVs seeking authorisation for the alleged victims to present their views and concerns to the Chamber.

53. Nevertheless, considering that alleged victims will be represented in virtually all phases of the proceedings *via* the LRVs, the Defence takes the view that such requests should be kept to a minimum and respectfully submits that the Chamber should ensure that the expected accounts to be provided: (i) are not

[16] ICC-01/04-01/06-2032-Anx, para.25.

repetitive of submissions already made by LRVs; (ii) are representative of a larger number of alleged victims; (iii) are limited to issues that directly affect the personal interests of the alleged victims; and (iv) are limited to issues that will assist the Chamber in approaching the evidence without taking a stance on the nature or the probative value of the evidence adduced at trial.

54. As to the proper timing for the presentation of alleged victims' views and concerns, the Defence takes the view that it should take place, if at all, in one session as well as after the close of the Parties' cases and before the presentation of the Parties' closing arguments. This is necessary to ensure and to underscore the particular nature of the alleged victims' 'views and concerns', which are not part of the evidentiary record.

Paragraph 16 iv)

55. Although a specific agreement was not reached, this issue was discussed in the course of *inter partes* consultations with the Prosecution during which the Parties expressed similar views and concerns.

56. With a view to incorporating any LRVs requests for authorisation from the Chamber in order to question a witness or to present evidence at trial in the proposed overall procedure and timeline for the notification of witnesses to be called, the Defence proposes that LRVs requests be submitted to the Chamber and the Parties 14 calendar days following reception of the Prosecution Monthly List of Witnesses, i.e. 7 calendar days before the submission by the Defence of its final estimates of the time required to cross-examine the witnesses expected to testify in the coming month. Pursuant to this timeline, Parties would submit their responses, if any, no later than 7 calendar days following of the submission of the LRVs requests.

57. Furthermore, the Defence posits that LRVs requests must include the specific questions which they intend to pose to the witnesses as well as the reasons

why it is necessary to put such questions to the witnesses, bearing in mind the duties of the Prosecution and Defence regarding the questioning of witnesses and the issues and questions which are likely to be put to the witnesses by the Prosecution and the Defence. In other words, the LRVs should make clear to the Chamber the added value to the establishment of the truth, of being authorised to put specific questions to the witnesses.

Paragraph 16 v)

58. In the event the Chamber is inclined to authorise LRVs to put questions to witnesses, the Defence respectfully submits that it is of the utmost importance for the Chamber to ensure that any questions put by the LRVs to the witnesses: (i) are not repetitive of questions likely to be put by the Parties; (ii) are precisely limited to issues that directly affect the personal interests of the alleged victims; and (iii) are limited to issues that will assist the Chamber in its truth-seeking exercise without, directly or indirectly, overstepping their neutrality and impartiality.

59. With respect to the possibility for LRVs to put follow-up questions during the testimony of a witness, the Defence takes the view that specific authorisation should be sought from the Chamber in the course of a *voir-dire*, i.e. laying out the specific question intended to be asked as well as the exceptional justification warranting such question at this stage, without the witness being present.

H. Other issues

Paragraph 17 i)

60. The Defence recalls its position that the interests of justice strongly militate in favour of holding as much as possible the hearings publicly. Accordingly, recourse to private and/or closed session should be limited to a minimum.

61. During their *inter partes* consultations held on 2 April 2015, the Parties agreed that the use of a 'protection information sheet' would not be a workable way of limiting recourse to private session. Indeed, such a 'protection information sheet' has proven to be difficult to implement in practice.

62. In order to avoid overusing private sessions as well as continuously migrating from public to private session, the Defence submits that the Chamber should encourage the Parties to cluster as much as possible the questions, which necessitate having recourse to private sessions.

63. Furthermore, the Defence underscores the importance of the fundamental difference which exists between: (i) questions which refer to the involvement of a given witness or person benefiting from protective measures, in the facts of the case; and (ii) questions which are likely to reveal the involvement of a given witness or person benefiting from protective measures, with the Court. Whereas the latter might necessitate the use of private sessions, the former clearly does not.

Paragraph 17 ii)

64. Admittedly, the Defence has little experience with the production of public redacted transcripts further to the testimony of a witness in private or closed session.

65. The importance of ensuring that the evidence elicited from all witnesses be accessible to the public as soon as possible, unless there are specific reasons to maintain the confidentiality thereof, cannot be underestimated. Accordingly, the Defence respectfully takes the view that it is very important as well as in the interests of justice for the Chamber to ensure that a clear and workable procedure is put place for the production of public redacted transcripts, including an appropriate timeline which takes into account the Parties' limited time and resources.

I. Issues raised by the Prosecution

The timing and procedure of a "no case to answer" motion

66. While the legal framework of the Court is silent with respect to the submission of a 'no case to answer' motion – although this is a procedure provided for in the Rules of Procedure and Evidence before the *ad hoc* tribunals[17] – the Parties agree that this is nevertheless open to the Accused to submit such an application after the close of the Prosecution's case.

67. In the event it elects submit such an application, the Defence takes the view that a minimum period of 10 working days must be planned for in the trial schedule for this purpose. Hence, the Defence would submit its application no later than 10 working days following the close of the Prosecution's case.

68. As for the permitted scope and the specific procedure applicable to such a motion, the Defence posits that further submissions from the Parties will be required at a further stage.

The procedure to introduce video evidence at trial

69. Based on *inter partes* consultations with the Prosecution, it is likely that the Parties will definitely make use of video evidence, which highlights the importance of having a clear procedure for the use and admission of video evidence at trial.

70. Regarding the admission of video evidence, the Parties agree that it is necessary to authenticate any video material before it can be admitted.

71. As for the use of video evidence, the Defence deems important to underscore the difference in the applicable procedure between the use of video material during examination-in-chief and the use of video during cross-examination.

[17] *Cf.* Rule 98*bis* of the ICTY Rules of Procedure and Evidence.

72. Indeed, while video material must first be admitted in evidence before it can be used by the calling party, the cross-examining party may use video evidence to test the credibility of witnesses before the admission in evidence of the video material used. Needless to say, should the cross-examining party fail to have the video material used admitted later, this will necessarily be taken into consideration by the Chamber in determining the probative value of the witnesses' evidence during cross-examination.

73. Regarding the specific procedure to be used for the admission of video material, the Defence respectfully submits that further briefing by the Parties will be required in order to adopt a clear procedure that will ensure full respect for the rights of the Accused.

74. Lastly, the Defence takes this opportunity to underscore that video material must not be used by the calling party to lead a witness.

The scope of an unsworn statement by the Accused during trial.

75. With respect to the possibility for Mr Ntaganda providing an unsworn statement, the Defence takes the view that it is too soon to even consider such a possibility. In the event that Mr Ntaganda elects to do so, the Defence will inform the Chamber, the Prosecution and the participants as soon as possible.

The scope and timing of disclosure by the Defence

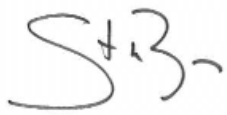
76. Regarding the scope and timing of disclosure by the Defence, the Defence respectfully submits that it is important to bear in mind the difference between the obligations of the Prosecution and that of the Defence to as well as the fact that the Prosecution has the burden of proving its case beyond a reasonable doubt.

77. In this regard, while the Defence agrees in general to the imposition of disclosure obligations similar to that of the Prosecution, there are nevertheless

certain exceptions. For example, no obligations can be imposed on the Defence to provide the Prosecution with its list of witnesses before the end of the Prosecution's case.

78. Accordingly, the Defence suggests the following: (i) 30 calendar days before the presentation of its case, the Defence would provide the Chamber, the Prosecution and the participants with the list of witnesses it intends to rely on, along with a summary of the evidence intended to be elicited from each witness in the form of a 'will-say' or statement, as the case may be, a time-estimate for each as well as the list of the witnesses who will testify during the first month; (ii) after the beginning of its case, the Defence would provide the Chamber, the Prosecution and the participants with a list of the witnesses to be called for the following month; (iii) as for the documents to be used during the testimony of a Defence witness and the provision of a final time estimate, the procedure applied would mirror that applicable to the Prosecution.

RESPECTFULLY SUBMITTED ON THIS 7th DAY OF APRIL 2015



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