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

Date: **8 April 2019**

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, 1st Vice-President
Judge Marc Perrin de Brichambaut, 2nd Vice-President

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public with Public Annexes A to D

**Request for disclosure concerning the visit of the Registrar to Japan on 21 and 22
January 2019**

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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(Participation / Reparation)**

**The Office of Public Counsel for
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Amicus Curiae

REGISTRY

Registrar

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**Victims Participation and Reparations
Section**

Further to the Notification of the Decision of the Plenary of Judges pursuant to Article 40 of the Rome Statute issued by the Presidency on 22 March 2019 (“Presidency Notification”),¹ and the Request for disclosure concerning the Decision of the plenary of Judges on the judicial independence of Judge Ozaki filed on 1 April 2019 (“Ntaganda Defence Request for Disclosure”),² Counsel representing Mr. Ntaganda (“Defence”) hereby submits this:

**Request for disclosure concerning the visit of the Registrar to Japan on 21 and 22
January 2019**

INTRODUCTION

1. Public information available on the Ministry of Foreign Affairs of Japan website and Ministry of Justice of Japan website establish that the Registrar of the International Criminal Court (“Court”) paid an official visit to Japan on or about 21 and 22 January 2019.³
2. 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 request to resign as a full-time Judge, or her potential appointment as Ambassador to Estonia, were discussed. If so, disclosure of the content of those discussions is requested, as well as whether the content of those discussions was conveyed to the Judges.

BACKGROUND

3. On 13 February 2019, Judge Kuniko Ozaki became an employee of the Ministry of Foreign Affairs of Japan, having been appointed Ambassador to Estonia.

¹ Annex to the Notification of the Decision of the Plenary of Judges pursuant to article 40 of the Rome Statute, 22 March 2019, ICC-01/04-02/06-2326 (“Presidency Notification”).

² See Request for disclosure concerning the Decision of the plenary of Judges on the judicial independence of Judge Ozaki, 1 April 2019, ICC-01/04-02/06-2327 (“Ntaganda Defence Request for Disclosure”).

³ Annex A and B.

4. As far as the record now shows, no one at the International Criminal Court was informed of this appointment when it happened. Judge Ozaki apparently first informed the Court of this appointment on 18 February 2019.⁴
5. This appointment followed a request by Judge Ozaki on 7 January 2019 to cease being a full-time Judge of the Court, and become instead a non-full-time judge under Article 35(3). This request was based on “personal reasons and without mention of any future activities or occupation.”⁵ The date on which Judge Ozaki requested her non-full-time status to commence, 12 February 2019, was the same day that the Japanese Cabinet appointed her Japanese Ambassador to Estonia.
6. In seeking retroactive approval for her appointment from the Judges under Article 40(2), Judge Ozaki asserted, *inter alia*, that “she would commence such duties on 3 April 2013.”⁶ Press releases indicate, however, that her appointment was official as of 13 February 2019,⁷ and that she was engaging in official duties in Estonia no later than 26 March 2019.⁸
7. On 22 March 2019, the Defence was notified of an Internal memorandum dated 19 March 2019 from “The Judges” to Judge Ozaki with the subject line “Decision on your request of 18 February 2019.” The internal memorandum recites some of the procedural history leading up to her retroactive request, and memorialises an *ex parte* decision that had been taken by a majority of the Judges sitting in Plenary on 4 March 2019. The Majority of the Judges found that Judge Ozaki’s employment with the Government of Japan did not “affect

⁴ Presidency Notification, para. 5 (“On 18 February 2019, Judge Kuniko Ozaki sent a memorandum to the Presidency and all Judges communicating that she had been appointed as the Japanese Ambassador to the Republic of Estonia”).

⁵ Presidency Notification, para. 3.

⁶ Presidency Notification, para. 5.

⁷ Annex C (“The official date is 13th”).

⁸ Annex D (“Pleased to receive the copies of Credentials from H.E. Ms. Kuniko Ozaki, new Ambassador of #Japan to #Estonia.”)

confidence in her independence.”⁹ A minority of the Judges disagreed, finding that “it was evident that the performance of an executive or political function for a State Party by an individual who remained a Judge of the Court was entirely likely to affect public confidence in judicial independence.”¹⁰

8. On 1 April 2019, the Defence requested a fuller record of the factual basis on which the Decision was taken, including disclosure of Judge Ozaki’s “full communications with the Presidency” concerning both her withdrawal as a full-time Judge, and her appointment as Japanese Ambassador.¹¹
9. On 3 April 2019, the Defence was informed *via* public information on the websites of the Japanese Ministry of Foreign Affairs and Ministry of Justice that the ICC Registrar travelled to Japan on or about 21 and 22 January 2019 and met with high-level officials of the Government of Japan.¹²

SUBMISSIONS

10. On 21 and 22 January 2019, while Judge Ozaki’s request to become a non-full time Judge was pending, the Registrar of the Court paid a “courtesy visit” to Japan, accompanied by Judge Akane.¹³ The Registrar met, amongst other Japanese officials, the Japanese Deputy Foreign Minister. Although this meeting was advertised on the Japanese Ministry of Foreign Affairs website, there is no mention of this visit on the ICC website or ICC Twitter feed.
11. In the circumstances, the omission of publication of these high-level contacts between the Registrar and the Court’s largest donor (by a wide margin)¹⁴ is a matter of concern. At that very moment, Judge Ozaki’s request to no longer sit as a full-time Judge was pending. Exactly 22 days after the Registrar’s visit

⁹ Presidency Notification, paras. 13-14.

¹⁰ Presidency Notification, para. 15.

¹¹ Ntaganda Defence Request for Disclosure, para. 15.

¹² *Supra*, fn. 3.

¹³ Annexes A and B.

¹⁴ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-12-ENG.pdf, Annex, Schedule 1.

with the Deputy Foreign Minister, Judge Ozaki was appointed to a senior position within that Foreign Ministry. The meeting itself, and the omission to publicize this meeting on the ICC website are highly relevant to Judge Ozaki's situation, in particular with regards to appearance of judicial independence.

12. The Registrar, in these circumstances, should be invited to indicate whether the issue of Judge's Ozaki's request to no longer sit as a full-time Judge, or her potential appointment as Ambassador to Estonia, were discussed. If so, the content of these discussions should be made public and the Registrar should be asked to confirm whether he conveyed, in any shape or form, any information concerning these discussions to any ICC Judge, directly or indirectly. Any such information, and any transmittal of such information, especially in the context of discussions about the scale of Japan's contributions to the Court,¹⁵ would be highly relevant to assessing whether Judge Ozaki's appointment as a Japanese Ministry of Foreign Affairs Official affects confidence in her judicial independence.
13. All Parties and Participants have an interest in safeguarding the institutional integrity of the Court. Transparency is required to ensure that this institutional integrity is maintained. All those involved in the present trial who are committed to a fair trial should be equally concerned to ensure that States do not attempt unofficial communications to the judiciary about matters *sub judice*, including decisions about judicial assignments and, most importantly, about judicial independence itself.

CONCLUSION AND RELIEF REQUESTED

14. The Defence requests the Presidency to invite the Registrar to disclose whether during his discussions with the Japanese Government, on 21 and 22

¹⁵ Annex A (Google Translate) ("While deputy minister Abe stated Japan's support for the International Criminal Court (ICC), [she] urged the Japanese to increase their opportunities to work at the ICC. In addition, as Japan, the ICC's largest financial contribution country, we called for the efficient operation of the ICC.")

January 2019 or at any other time, the matter of Judge Ozaki's request to resign as a full-time Judge or her potential appointment as Ambassador to Estonia was raised. If so, disclosure of the content of those discussions is requested, as well as whether any of that content was conveyed to any Judge while the issue of her resignation as a full-time, or of her judicial independence, was under consideration.

RESPECTFULLY SUBMITTED OF THIS 8TH DAY OF APRIL 2019

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands