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

Date: **17 March 2016**

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

Public redacted version of “Submissions on behalf of Mr Ntaganda on certain matters related to the conduct of proceedings”, 17 March 2016, ICC-01/04-02/06-1217-Conf

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 certain matters related to the conduct of proceedings*” issued by Trial Chamber VI (“Chamber”) on 8 March 2016 (“Order”),¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit these:

Submissions on behalf of Mr Ntaganda on certain matters related to the conduct of proceedings

“Defence Submissions”

1. As invited by the Chamber, the Defence hereby provides its submissions on the items set out in the Order. The Defence concurs with the Chamber that it is timely and appropriate, at this juncture of the proceedings, to revisit certain procedural issues and consider bringing some adjustments to the conduct of proceedings.

SUBMISSIONS

1. **Issues (i) and (ii) – The length of evidentiary blocks and the sitting schedule**
2. The Defence respectfully submits that it is necessary for the trial to continue to proceed on the basis of ‘evidentiary blocks’ – with a minimum of a three-week break in between² – at least until completion of the testimony of so-called insider witnesses relied upon by the Office of the Prosecutor (“Prosecution”).³
3. Hearing the testimony of witnesses during evidentiary blocks, rather than on a continuous basis, has the benefit of enabling the parties to better prepare for examination and cross-examination of the witnesses, in particular for so-called insider witnesses, for whom the material to be reviewed ahead of their

¹ ICC-01/04-02/06-1198.

² With the exception of the jointly proposed (Prosecution and Defence) two-week break between the fifth and sixth evidentiary blocks.

³ According to the summaries of testimony provided by the Prosecution, remaining Prosecution insider witnesses are: [REDACTED] (‘military insiders’); [REDACTED] (‘political insider’); [REDACTED] (‘political member’); [REDACTED] (‘former FPLC soldiers’).

testimony often comprises thousands of pages. Moreover, it provides the Defence with invaluable time to conduct the minimum necessary investigations in the field with a view to gathering evidence that can be used to effectively challenge the evidence of upcoming witnesses.

4. The fact that the current proceedings involve a single accused also militates in favour of maintaining evidentiary blocks. Indeed, the burden imposed on the parties in single-accused cases is greater as all evidence adduced is directed at the same person. Moreover, there is virtually no preparation time left after the end of cross-examination of a witness, which is immediately followed by examination-in-chief of the subsequent witness.
5. The need to continue to proceed on the basis of evidentiary blocks is further compounded by the present situation faced by the Defence team of Mr Ntaganda whereby a new Associate Counsel must familiarize himself with the facts of the case in order to be able to cross-examine Prosecution witnesses at the beginning of the fifth evidentiary block. In addition, it is noteworthy that thereafter, the responsibility to cross-examine witnesses on behalf of Mr Ntaganda will be shared by only two lawyers,⁴ whereas the Prosecution team is composed of at least four examining lawyers.
6. Once the testimony of Prosecution's insider witnesses is completed, the Defence is willing to explore the possibility of increasing the number of consecutive sitting weeks as well as reducing the length of breaks in between, with a view to allowing the trial to proceed in a more continuous manner.
7. Consistent with its commitment to facilitate the expeditious conduct of the proceedings, the Defence is also inclined to consider sitting five hours daily. To accommodate such a schedule, the Defence is not opposed to hearings beginning at 09h00 and/or to reducing lunch breaks to one hour, if need be.

⁴ In this regard, the Defence notes the likelihood of being able to rely on Defence Legal Assistants to cross-examine certain witnesses at some point during the presentation of the Prosecution's case.

However, the Defence posits that hearings should conclude as early as possible and, in any event, no later than 16h00 in order to provide the parties with sufficient time to take stock of what happened during the day's hearing, prepare for the following day as well as to address internal or procedural matters that could not be dealt with during the day due to Counsel being present in the courtroom.

II. Issue (iii) – Witness preparation sessions

8. In light of recent experience regarding the conduct of witness preparation sessions, the Defence submits that the "*Witness preparation protocol*"⁵ ("Witness Preparation Protocol") needs to be amended with a view to ensuring that the aim of allowing the preparation of witnesses – *i.e.* to facilitate the testimony of witnesses by allowing them to review their prior statements and to favour the expeditious conduct of the proceedings – is fulfilled without impeding on the rights of the Accused.
9. As a preliminary matter, the Defence deems necessary to underscore that in cases before other Chambers of the Court, witness preparation has not been authorised.⁶ Hence, if witness preparation is to be maintained in this case, it is imperative to ensure that this practice yields solely positive results.
10. A first problem associated with the preparation of witnesses is the Prosecution's practice to have witnesses travel to The Hague weeks prior to the commencement of their testimony, thereby leaving no flexibility to modify the hearing schedule should unexpected circumstances arise. In addition, this practice makes it virtually impossible for the Defence to meet with a Prosecution witness should it desire to do so, as Prosecution witness preparation sessions often end very shortly before the testimony of the witness.

⁵ 16 June 2015, ICC-01/04-02/06-652-Anx.

⁶ See *Gbagbo et al.* case, *Bemba et al.* case.

11. In this regard, the Defence posits that the Witness Preparation Protocol should include a provision limiting the temporal scope of preparation sessions to five days as well as for the possibility for the Defence to meet with the witness prior to the beginning of his testimony. Accordingly, witnesses would not be required to travel to The Hague more than seven to eight days prior to their testimonies.
12. A second problem with the existing Witness Preparation Protocol is that it precludes the Defence from meeting with a Prosecution witness, either alone or without providing the Prosecution with a recording of the interview. Consequently, with a view to avoiding revealing its cross-examination strategy to the Prosecution, the Defence has opted on most occasions. not to meet with Prosecution witnesses.
13. On the other hand, the Witness Preparation Protocol allows the Prosecution to engage its witnesses on the substance of their prior statements without providing an audio-visual recording of the interview to the Defence, unless it can be demonstrated that the Prosecution violated the Witness Preparation Protocol. In this regard, the Defence respectfully submits that it misunderstood this aspect of the Witness Preparation Protocol when adhering to the same before the beginning of trial.
14. Consequently, with a view to ensuring the fairness of witness preparation sessions as well as to ensuring that the calling party does not make use of preparation sessions to further its investigations – whether intentionally or not – the Defence posits that the Witness Preparation Protocol should be modified to include a provision limiting preparations sessions to providing the witness with an opportunity to review his material and to bring any correction to his prior statements.
15. Should the calling party wish to clarify certain aspects of the witness's prior statement(s) or to engage the witness in any way concerning the contents of

his prior statement(s), the Defence submits that the Witness Preparation Protocol should provide for the opposing party to be present during this type of session. This practice would ensure that both parties are informed concurrently of any additional information provided by a witness before his testimony, which in turn will avoid unnecessary litigation. It would also favour the conduct of focused examination-in-chief and cross-examination of witnesses.

16. Should the Chamber wish to cancel witness preparation altogether, rather than to amend the Witness Preparation Protocol, the Defence would agree entirely.

III. Issue (iv) – The implementation of in-court protective measures

17. As a preliminary matter, the Defence wishes to address the cumulative impact of the Chamber's various decisions on in-court protective measures on the right of the Accused to a public hearing pursuant to Article 67(1) of the Statute.
18. The Defence underscores that as a result of the in-court protective measures put in place by the Chamber, all Prosecution witnesses who have testified thus far in this case – except for expert Witness P-0931 – have completed their testimony without the public being informed of their identity.⁷ The Defence acknowledges that Prosecution requests⁸ for in-court protective measures are adjudicated on an individual basis. However, the Defence is concerned that Prosecution requests for in-court protective measures are routinely made for all of its witnesses – other than expert witnesses and Witness [REDACTED] – on the basis of general and unproved allegations.
19. In the context of a criminal trial arising from an armed conflict opposing various groups, any witness – whether Prosecution or Defence – is bound to

⁷ [REDACTED].

⁸ With the exception of Witness [REDACTED], in respect of whom in-court protective measures have been implemented further to a recommendation from Victims and Witnesses Unit.

feel uncomfortable when testifying before the Court, if only because their testimony might be seen unfavourably by members of opposing groups. That is not to say that all witnesses require in-court protective measures when testifying before the Court.

20. In this regard, the Defence notes that the Prosecution has indicated that it would request in-court protective measures in the form of facial distortion, voice distortion and the use of a pseudonym for all the witnesses it will call during the fourth evidentiary block, except for expert Witness P-0933.⁹ The Defence further observes that the Chamber has recently relied on instances where witnesses – including crime-base witnesses – would have been threatened as a result of their involvement with the Court, as a factor highlighting the existence of an objectively justifiable risk to the safety of a witness not targeted by any threats.¹⁰ Leaving aside the particular situation of insider witnesses, the Chamber's decision implies that any crime-base witness may legitimately expect to benefit from in-court protective measures amounting to hiding his/her identity from the public.
21. In such circumstances, there is a real possibility that the identity of all Prosecution fact witnesses will be shielded from the public. Such an undesirable outcome, when combined with extensive private sessions due to the possibility that certain questions and answers might identify the witness, results in the trial against Mr Ntaganda being virtually conducted out of

⁹ See "Forthcoming Witness List", dated 7 March 2016, attached to an email from Ms Selamawit Yirgou to the Chamber, Defence and participants, 7 March 2016, 16:23, indicating that facial distortion, voice distortion and use of a pseudonym would be requested for the testimony of Witnesses [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Witness [REDACTED] has already been granted these in-court protective measures ([REDACTED]).

¹⁰ "Decision on Prosecution's request for in-court protective and special measures for Witness P-0800", 9 February 2016, ICC-01/04-02/06-1160, para.7, *referring to* the confidential redacted version of the "Response of the Common Legal Representative of victims of the Attacks to the 'Confidential redacted version of 'Corrected version of 'Fifth Prosecution request for in-court protective measures', 14 October 2015, ICC-01/04-02/06-900-Conf-Exp-Corr'", 4 November 2015, ICC-01/04-02/06-977-Conf-Red, paras.13-20.

public scrutiny, a situation that violates the right of the Accused to a public hearing.

22. More importantly, the Defence recalls its earlier submission that making a witness's identity known to the public and/or, at a minimum, hearing his/her testimony in public increases the witness's commitment to tell the truth as well as his/her feeling of public accountability.¹¹
23. That being said, the Defence concurs with the Chamber that too much time is spent in private sessions. In this regard, the Defence respectfully submits that since the beginning of the trial, certain parts of witnesses' testimony have been heard in private sessions, out of an abundance of caution, that could have been heard in public.
24. Once in-court protective measures in the form of voice distortion, facial distortion and the use of a pseudonym are in place in respect of a witness, the Defence posits that the determination as to whether an answer to a given question may reveal the identity of the witness, should take into account the following factors: (i) the nature of the information expected to be elicited through the question; (ii) whether the witness is in an exclusive position to provide the information; and (iii) the number of individuals being in a position to identify the witness as a result of the answer expected to be given.¹²

¹¹ See the unchallenged submission of the Defence in this regard: "Response on behalf of Mr Ntaganda to 'Second Prosecution request for in-court protective measures'", 31 August 2015, ICC-01/04-02/06-801-Conf-Exp ("A recent UNODC manual indicates that the possibility for a witness to benefit from protective measures is considered by some countries to entail a risk that such measures may become an incentive for the witness to give false testimony that he or she believes the Prosecution wants or needs. The Defence submits that making a witness's identity known to the public increases the witness's commitment to tell the truth as well as his/her feeling of public accountability.")

¹² As regard the latter, the Defence recalls that a list of the viewership of the live-streaming through the website of the Court of the *Ntaganda* case from 2 September until 28 September 2015 revealed that only 70 persons in the Democratic Republic of the Congo viewed the live-streaming during this period, which for a country of 74,88 millions of inhabitants is insignificant: "Consolidated response on behalf of Mr Ntaganda to Prosecution applications for protective/special measures under Rule 87 or Rule 88, and for leave to appeal the Decision on Prosecution's request for in-court protective measures for Witness P-0039", 9 November 2015, ICC-01/04-02/06-990-Conf, para.14.

25. While certain questions may invite a witness to provide information that very few people are privy to, the above proposed test will ensure that the risk of identification is assessed against objective factors. This, in turn, will facilitate the balancing exercise which must be made between ensuring full respect for the right of the Accused to a public hearing and due regard for the protection of victims and witnesses pursuant to Article 64(2) of the Statute.
26. The Defence posits that this test should apply even more so to witnesses admitted in the ICC Protection Program. In this regard, the Defence submits that to the extent such witnesses benefit from the highest protection measures the Court can afford, including relocation, no extra caution is warranted when determining whether a given question may lead to identifying the witness. The Defence underscores that in some national jurisdictions, insider witnesses do in fact testify publicly.¹³
27. Furthermore, the Defence agrees that moving back and forth between public and private sessions should be avoided to the maximum extent possible and that this could be achieved by the examining party grouping together questions likely to elicit confidential information, bearing in mind that the evolving nature of preparation for cross-examination renders such an endeavour less feasible when cross-examining a witness.

IV. Issue (v) – The modalities of witness’s testimony

- A. Whether increased reliance on Rule 68(3) of the Rules of Procedure and Evidence (“Rules”), as a way to adduce evidence, is appropriate**
28. The Defence acknowledges that in certain circumstances, the expeditious conduct of the proceedings is favoured by admitting the prior recorded testimony of witnesses pursuant to Rule 68(3) of the Rules.

¹³ See e.g. Montreal Gazette, “Examining the seven killings at the heart of SharQc trial”, 16 August 2015, online: <http://montrealgazette.com/news/examining-the-seven-killings-at-the-heart-of-sharqc-trial>.

29. While it is not in a position, at this time, to identify Prosecution witnesses for whom Rule 68(3) could be relied on, the Defence is willing to explore with the Prosecution the possibility of jointly requesting the admission of certain prior recorded testimonies with a view to expediting the proceedings.
30. However, the Defence stresses that admission into evidence of a prior recorded testimony is not appropriate in all circumstances, especially when *inter alia*: (i) there is a minimal overlap between the topics covered in the prior recorded testimony and the topics anticipated to be covered during the witness's examination in the instant case; (ii) the volume of the prior recorded testimony is significant; (iii) the issues covered in the prior recorded testimony are central to the case against the accused; and (ii) the amount of court time saved would be relatively short.¹⁴
31. Furthermore, in order to ensure that the objective of saving court time is not defeated by allowing the calling party to conduct lengthy supplementary examination, the Defence submits that the calling party must confine itself to putting to the witness only clarifying questions based on a summary: (i) prepared in advance and communicated to the opposing party; and (ii) read at the beginning of the witness's testimony, which should last for no more than 30 to 45 minutes.
32. That being said, recourse to Rule 68(3) to admit the prior recorded testimony of a witness must not infringe on the right of the Accused to have examined the witnesses against him. In this regard, the Defence submits that the time allocated to the opposing party to cross-examine the witness should be, at a minimum, the time initially envisaged by the Prosecution to conduct a full examination-in-chief *viva voce*.

¹⁴ "Response on behalf of Mr Ntaganda to 'Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0055'", 19 October 2015, ICC-01/04-02/06-908-Conf ("Response to Prosecution First Rule 68(3) Application"), para.11.

33. The Defence notes that the “*Decision on the conduct of proceedings*”¹⁵ (“Decision on the Conduct of Proceedings”) provides that: (i) requests under Rule 68(3) must be submitted ‘at the earliest opportunity’, but no later than four weeks before the relevant witness is scheduled to testify; and (ii) the intention to make a Rule 68(3) application shall also be reflected, where relevant, in the forthcoming list of witnesses communicated four weeks prior to the start of an evidentiary block.¹⁶
34. Based on past experience, considering *inter alia* the time required by the Chamber to adjudicate Prosecution requests pursuant to Rule 68(3),¹⁷ the Defence submits that the delay provided for in the Decision on the Conduct of Proceedings is too short, bearing in mind that preparing for the cross-examination of a witness testifying pursuant to Rule 68(3) is an entirely different exercise.¹⁸ Additional time is also important for the calling party, which must prepare for a full examination-in-chief as well as for a shorter supplementary examination until the Chamber renders its decision on the Rule 68(3) application. Accordingly, in line with the practice of the *ad hoc* tribunals in this regard,¹⁹ the Defence respectfully submits that it would be appropriate for the Chamber to set a deadline for the submission of all requests under Rule 68(3).

¹⁵ 2 June 2015, ICC-01/04-02/06-619.

¹⁶ Decision on the Conduct of Proceedings, para.41.

¹⁷ The Chamber issued its “Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0055”, ICC-01/04-02/06-961, on 29 October 2015, while Witness P-0055 was scheduled to commence his testimony on 30 October 2015. The Chamber rendered its “Decision on Prosecution application under Rule 68(3) of the Rules for admission of prior recorded testimony of Witness P-0010”, ICC-01/04-02/06-988, on 6 November 2015, while Witness P-0010’s testimony started on 10 November 2015.

¹⁸ See Response to Prosecution First Rule 68(3) Application, paras.15-18.

¹⁹ See e.g. ICTY, *Popović* case, “Order on Prosecution Submission Pursuant to Rule 92 *bis* Decision Issued 12 September 2006”, 13 December 2006, IT-05-88-T, p.4.

B. Whether increased reliance on video-link testimony, as a way to adduce evidence, is appropriate

35. The Defence submits that reliance on video-link testimony should be exceptional and limited to cases where the witness is unable to travel to The Hague for serious reasons. The interests of justice are better served by live testimony in court as it allows for a proper assessment of the witness's demeanour and credibility. Moreover, the benefits to the expeditious conduct of proceedings of relying on video-link testimony, if any, can be outweighed by the time necessary to solve technical problems which may arise.²⁰

V. Issue (vi) – The mode of questioning

A. Whether background information should be elicited by way of leading questions

36. The Defence agrees that leading questions are an appropriate way of eliciting background and/or context information, insofar as it enables the calling party to proceed swiftly with its examination of the witness on areas that are not disputed. There must be, however, a common understanding of what 'background' information comprises. The Defence submits that 'background' information includes: (i) identification information, such as name, date and place of birth; (ii) education; (iii) career information; (iv) membership in a particular armed group (if not contested); and (v) position(s) held at the relevant time (if not contested).

B. Whether some witnesses should first provide a narrative about the events before the calling party starts asks sets of more specific and narrow questions

37. The Defence has no principle objection to the calling party first asking the witness to provide a narrative, followed by more specific and narrow questions.

²⁰ See e.g. T-40-CONF-ENG, p. 72, l.8 to p.75, l.15.

38. However, inviting a witness to provide a narrative about certain events must not be an indirect way for the calling party to subsequently elicit evidence in a leading way. The calling party should not be allowed, under the guise of 'clarification' questions, to use segments of the narrative as basis for questions that can only be answered by 'yes' or 'no' or that suggest an answer to the witness. Proceeding otherwise would enable the calling party to testify on behalf of the witness, thus seriously undermining the probative value of the witness's testimony. The Defence respectfully submits that the Chamber should exercise utmost vigilance in this regard.
39. Furthermore, in order to avoid in-court litigation as to the appropriateness of the question(s) asked by the calling party to invite the witness to provide a narrative and with a view to ensuring that the witness can provide his/her narrative without disruption, the Defence submits that the calling party should provide the Chamber, the opposing party and the participants with the introductory question(s) it intends to put to the witness no later than five days prior to start of the witness's testimony, along with the list of documents to be used during examination-in-chief.²¹ The opposing party should provide notice of its objection to the question(s) no later than two days prior to the start of the witness's testimony.

VI. Issue (vii) – Interpretation and transcription

40. Like the Chamber, the Defence is concerned with the existence of discrepancies between the French and English transcripts. Consequently, the Defence posits that the parties should, to the extent possible, raise any material issue as to the accuracy of either the French or English transcript as soon as noticed, albeit at an appropriate time during the testimony of the witness with a view to avoiding interruptions in the flow of the testimony. The lifting of the five-day deadline set in the Registry's "*Procedure to be used*

²¹ Decision on the Conduct of Proceedings, para.32.

for corrections and redactions of Transcripts of hearings"²² ("Procedure for Corrections") will facilitate post-testimony review of transcripts given the limited resources and time the parties have at their disposal to conduct such a review.

41. However, the Defence notes that the Procedure for Corrections does not provide for notification of requests for corrections to the Chamber and the other party. Considering that some purported discrepancies relate to key aspects of the witnesses' evidence, the Defence respectfully submits that the Procedure for Corrections should be amended so as to require the moving party to notify the Chamber and the opposing party of any request for correction as well as to require the Registry to notify the Chamber, the opposing party and the participants of the result of its review.
42. Furthermore, the Defence underscores that the issue of accuracy of translation is not limited to the French and English transcripts, but also extends to the interpretation into French of the answers given by witnesses who testify in Swahili. Over the last months, the parties have noted certain discrepancies between the original answers provided by witnesses and their translation into French. However, the Procedure for Corrections does not provide for the possibility of requesting correction to the French transcript based on the inaccuracy of interpretation from Swahili to French. Considering that there may also be material discrepancies between an answer given in Swahili and its interpretation into French, the Defence respectfully posits that it would be appropriate for the Chamber to amend the Procedure for Corrections so as to allow the parties to request: (i) access to the audio-tape with a view to determining whether there exists a discrepancy between the answer and its translation into French; and (ii) correction to the French and English transcripts in such circumstances.

²² 8 April 2015, ICC-01/04-02/06-549-Conf-Anx1 adopted *per* Decision on the Conduct of Proceedings, para.62.

VII. Any other related matters

43. The Defence wishes to address two additional matters related to the conduct of proceedings, namely the lifting of redactions in witness-related material and the late disclosure of witness-related material pursuant to Article 67 and Rules 76 and 77.

A. **The lifting of redactions in witness-related material**

44. Pursuant to the *“Protocol establishing a redaction regime in the case of The Prosecutor v. Bosco Ntaganda”*²³ (*“Redaction Protocol”*), the Defence understands that it is incumbent upon the party which applied standard redactions authorised pursuant to the Redaction Protocol, to review the same on a continuous basis with a view to lifting redactions no longer required as the circumstances evolve.²⁴

45. The Defence submits that since the beginning of trial, standard redactions are not being lifted by the Prosecution in accordance with the Redaction Protocol. Indeed, to this day, upon receiving the list of forthcoming witnesses, the Defence has had to request with respect to each witness, the lifting of standard redactions. The fact that in most cases, the lifting of standard redactions requested has been agreed to by the Prosecution, highlights that these redactions could and should have been lifted without the need for the Defence requesting the same. While the submission by the Defence of requests to lift standard redactions has become a routine procedure, it has nonetheless taken a heavy toll on the team due to abundant back and forth correspondence between the Defence and Prosecution.

46. The lifting of standard redactions shortly before the testimony of a witness also implies the disclosure of lesser redacted versions of documents, which imposes an additional burden on the Defence as any preparation for cross-

²³ 12 December 2014, ICC-01/04-02/06-411-AnxA.

²⁴ Cf. *“Decision on the Protocol establishing a redaction regime”*, 12 December 2014, ICC-01/04-02/06-411, para.21.

examination conducted earlier needs to be re-examined in light of the newly disclosed material.

47. Consequently, the Defence respectfully submits that it would be appropriate for the Chamber to make clear and/or recall the parties' obligations pursuant to the Redaction Protocol to lift standard redactions as the circumstances change, and not only when a witness is called to testify.

B. The late disclosure of witness-related material pursuant to Article 67 and Rules 76 and 77

48. The Defence deems necessary to underscore that since the beginning of the presentation of the Prosecution's case, on several occasions the Prosecution disclosed witness-related material shortly before the testimony of a witness. In most cases, the late disclosure of this material was triggered by Defence requests – conveyed to the Prosecution for each witness upon receiving the list of forthcoming witnesses – seeking confirmation that the Prosecution has disclosed all material pursuant to Article 67 and Rules 76 and 77.
49. While time and resources have precluded the Defence from submitting requests alleging disclosure violations, the Prosecution's late disclosure of witness-related material has taken a heavy toll on Defence resources. In addition to necessitating abundant back and forth correspondence between the Prosecution and the Defence, the late disclosure has imposed a heavy burden on Defence preparations for cross-examination, which must be updated and re-examined in light of the new information disclosed.
50. While the Defence will be submitting certain requests seeking remedy as a result of disclosure violations, in particular in relation to late disclosure of material, the Defence respectfully submits that it would be appropriate for the Chamber to recall the importance for the Prosecution to timely fulfil its disclosure obligations pursuant to Article 67 and Rules 76 and 77, and not only shortly before a when a witness is called to testify.

CONFIDENTIALITY

51. Pursuant to Regulations 23*bis* (1) and (2) of the Regulations of the Court, these Defence Submissions are classified as confidential as they refer to decisions issued by the Chamber bearing the same classification. The Defence will submit a public redacted version of its Submissions separately.

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF MARCH 2016

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