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

Date: **15 June 2017**

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

Defence List of Expert Witnesses

Source: Defence Team of Mr Bosco Ntaganda

Document 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
Ms Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
Me Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Further to Trial Chamber VI's ("Chamber") *Decision on further matters related to the presentation of evidence by the Defence* of 11 May 2017 ("Decision on presentation of evidence")¹, Counsel representing Mr Ntaganda ("Defence") hereby submit this:

Defence List of Expert Witnesses

PROCEDURAL BACKGROUND

1. On 19 October 2016, the Chamber issued the 'Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution' and instructed the Defence to provide the Chamber, on an *ex parte* basis, with a preliminary list of witnesses it intends to call.²
2. On 16 December 2016, the Defence submitted its Preliminary list of Defence Witnesses on a confidential and *ex parte* basis to the Chamber.³
3. On 30 January 2017, the Chamber issued its directions and schedule in regards to the presentation of evidence by the Defence.⁴
4. On 31 March 2017, the Defence provided its Further Provisional List of Defence Witnesses and Summaries.⁵
5. On 26 April 2017, the Defence provided its Final Lists of Witnesses and Evidence by which it indicated that in addition to its fact witnesses, the Defence intends to call four expert witnesses.⁶

¹ ICC-01/04-02/06-1900.

² Corrigendum of "Order setting certain deadlines related to the presentation of evidence by the Prosecution, 19 October 2016, ICC-01/04-02/06-1588," 12 December 2016, ICC-01/04-02/06-1588-Corr.

³ Preliminary list of Defence Witnesses, ICC-01/04-02/06-1690-Conf-Exp.

⁴ Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations of evidence by the Defence, ICC-01/04-02/06-1757 ("Decision on Conduct of Proceedings for Defence").

⁵ Further Provisional List of Defence Witnesses and Summaries, ICC-01/04-02/06-1843-Conf.

6. On 11 May 2017, the Chamber issued its Decision on presentation of evidence by which it directed that “notice of any proposed expert witnesses is required to be provided by **15 June 2017**, and accompanying expert reports to be transmitted to the Chamber, Prosecution and participants as soon as possible thereafter, and in any event not less than **45 days** before the proposed expert testifies”.⁷

I. List of Expert Witnesses

7. Notice is hereby provided, in accordance with the Decision on presentation of evidence, of the expert witnesses the Defence intends to call. Notice is hereby provided of five expert witnesses. Given the deadline set out in the Decision on presentation of evidence, the Defence does not understand that it is required to seek leave for the addition of the fifth expert but will, of course, seek such leave if the Trial Chamber deems it necessary. The *curriculum vitae* of the Experts have been disclosed to the Chamber and Parties.

A. D-0600, Mr Camil DOUCET, Military Expert

8. Mr Doucet is a former infantry officer and member of the *Royal 22e Régiment* within the Canadian Armed Forces. Mr Doucet retired from the Canadian Armed Forces in 2014; he possesses more than 33 years of military experience. During his career Mr Doucet held various command and staff positions at the battalion, brigade and regional army headquarters in Canada and Germany. He also participated in numerous international missions in Africa, including in Angola in 1991, Sierra Leone in 2000-2001 and Liberia in 2003. Mr Doucet will provide military expert testimony in four specific areas.

⁶ Defence Final Lists of Witnesses and Evidence, ICC-01/04-02/06-1881-Conf, para. 13. A corrigendum was filed on 2 May 2017.

⁷ Decision on presentation of evidence, para. 34.

9. First, Mr Doucet will explain the structure, organization and principles applicable to western armies such as the Canadian Armed Forces, focusing on the conduct of operations at the company, battalion and brigade levels.
10. Secondly, Mr Doucet will explain and share his knowledge of the structure, organization and principles applied in African armies and non-state armed groups, based on his own experience and his own dealings with such armed forces.
11. Third, Mr Doucet will provide a comparative analysis setting out the similarities and differences between western armies and non-state armed groups, focusing on their structure, organization and conduct of operations.
12. In the final part of his report, Mr Doucet will provide his expert opinion on the conduct of operations by the *Forces Patriotiques pour la Libération du Congo* based on evidence adduced in this case.
13. Mr Doucet's expert testimony will be of significant assistance to the Chamber in assessing the evidence adduced in this case.

B. D-0601, Dr Kathryn Jean BARR, Forensic document examiner

14. Dr Barr is a highly qualified forensic document examiner and handwriting expert. Dr Barr has testified in numerous criminal cases before both national courts and international tribunals. Dr Barr has specialised knowledge and experience in, *inter alia*, the comparison of handwritings, signatures, typescripts, photocopies, counterfeit documents, papers, inks and alterations.
15. Dr Barr will provide expert testimony in one specific area. Provided with the original FPLC logbooks admitted in evidence, DRC-OTP-0017-0033 and DRC-OTP-0017-0003 as well as the annotated versions by Witness P-0290 (DRC-OTP-2057-0281 and DRC-OTP-2057-0464), Dr Barr will provide her expert opinion as to whether these entries were written by the same or different authors. Dr

Barr's analysis will include in particular the entries attributed to Prosecution Witness P-0290 and to other individuals during the Prosecution case.

16. Dr Barr's expert testimony will assist the Chamber in understanding certain entries in the FPLC logbooks admitted into evidence.

C. *D-0602, Neal A. St-Denis, Communications Expert*

17. Mr St-Denis is a former member of the Canadian Armed Forces and former member of various Communications / Headquarters and Signals Squadrons. Mr St-Denis retired from the Canadian Armed Forces in 2015; he possesses 35 years of military experience. Mr St-Denis is a qualified radio and teletype technician and operator who possesses expert knowledge in the field of communications at the tactical and operational levels. Having deployed in many international missions, he also possesses comprehensive experience in army field operations. Mr St-Denis will provide expert testimony in two specific areas.
18. First Mr St- Denis will describe and explain the technical characteristics of various army tactical communication devices including the Motorola radio and the so called 'phonie'. He will also describe the use of the field communication devices focusing on the security of communications and the range applicable to various communication devices.
19. In the second part of his report, Mr St-Denis will provide expert evidence on the communication capabilities of armed groups deployed in Ituri based on practical tests conducted personally in certain areas relevant to the Updated Documents Containing the Charges (UDCC).⁸

⁸ ICC-01/04-02/06-458-AnxA.

20. Mr St-Denis's expert testimony will significantly assist the Chamber in assessing evidence adduced in this case regarding tactical and operational radio communications between *inter alia*, members of the *Forces Patriotiques pour la Libération du Congo* (FPLC) and its units at the times relevant to the UDCC.

D. D-0146, Kisembo Bitarama, Historical and Political Context Expert

21. Mr Kisembo Bitarama has long experience as a political leader in Ituri, including as the spokesperson for the PUSIC delegation to the negotiations leading to the 2003 Ituri pacification accords. Mr Bitarama will describe the political and historical context leading to the formation of armed groups in Ituri; the specific context of the formation of the *Union des Patriotes Congolais-Réconciliation et Paix* (UPC-RP) as a political formation; the structure, goals and ideology of the UPC-RP; and the relationship of the UPC-RP with the central government of the DRC and the international community at the times relevant to the Updated Document Containing the Charges.
22. Mr Bitarama's opinions will significantly assist the Trial Chamber in understanding the evidence that has been, and that will be, heard concerning these matters.
23. Mr Bitarama has also been put forward as a fact witness. Although the scope of matters upon which an expert witness may testify is different from that of a fact witness, there is no incompatibility in the same witness being both a witness of fact and an expert witness when appropriate notice is given. Hence, as stated by the ICTR Appeals Chamber:

Thus, while the report and testimony of an expert witness may be based on facts narrated by ordinary witnesses or facts from other evidence, an expert witness cannot, in principle, testify himself or herself on the acts and conduct of accused persons without having been called to testify also as a factual witness and without his or her

statement having been disclosed in accordance with the applicable rules concerning factual witnesses.⁹

E. D-0603, Dr Phil Clark, Human Rights Reporting Expert

24. Dr Phil Clark is a Reader in Comparative and International Politics at the School of Oriental and African Studies, University of London. He previously provided an expert report before the International Criminal Court in the *Mbarushimana* case.¹⁰ He is presented as an expert on the methodology of human rights reporting, in particular, as carried out by the United Nations and non-governmental organizations. He will identify and describe shortcomings of such human rights reporting, in particular, in respect of identification of specific persons or groups purportedly responsible for certain events.
25. Dr. Clark's opinions will significantly assist the Trial Chamber in assessing the methodological shortcomings of a substantial volume of evidence that has been tendered in this case.

RESPECTFULLY SUBMITTED ON THIS 15TH DAY OF JUNE 2017



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁹ *Nahimana et al*, ICTR-99-52-A, Judgement, 28 November 2012, para. 212.

¹⁰ *Mbarushimana*, Decision on Prosecution's application to bar the testimony of a Defence expert if essential documentation is not provided, ICC-01/04-01/10-341, 5 August 2011.