Cour Pénale Internationale

International Criminal Court

Original: **English**

No.**: ICC-01/04-02/06**
Date: **14 May 2019**

THE PRESIDENCY

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

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

Public

Decision on the "Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute" (ICC-01/04-02/06-2337) and the "Request for Reconsideration of 'Decision concerning the "Request for disclosure concerning the Decision of the plenary of Judges on the judicial independence of Judge Ozaki", the "Request for disclosure concerning the visit of the Registrar to Japan on 21 and 22 January 2019"' (Filing #2336), and for Additional Disclosure" (ICC-01/04-02/06-2339) and related requests

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 "Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute" of 30 April 2019 (the 'Article 40 Request for Reconsideration')[1] in which the Defence for Mr Bosco Ntaganda requests that the plenary of judges should reverse their decision taken pursuant to article 40(4) of the Rome Statute (the 'Statute') on 4 March 2019 and further requesting a finding that Judge Ozaki's service as a diplomatic representative of Japan 'gives rise to a reasonable doubt in Judge Ozaki's impartiality under Article 41(2)(a)' of the Rome Statute. The Presidency also has before it a closely related "Request for Reconsideration of '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"' (Filing #2336), and for Additional Disclosure" of 2 May 2019 (the 'Disclosure Request for Reconsideration'),[2] which seeks reconsideration of a previous decision on two separate disclosure applications and, further, seeks additional disclosure.

I. Relevant Procedural History

2. On 22 March 2019, the Presidency filed a public notification of a decision of the plenary of judges, acting by majority, that 'the assumption by Judge Ozaki of the role of Ambassador of Japan to Estonia while she continues to serve as a non-full-time judge of the Court does not violate any aspect of article 40 of the Statute'.[3]
3. On 1 April 2019, the Defence for Mr Ntaganda filed a request before the Presidency seeking disclosure of facts relevant to Judge Ozaki's appointment as Ambassador of Japan to Estonia (the 'Defence Request of 1 April 2019').[4] On 8 April 2019, the Defence for Mr Ntaganda filed a further request before the Presidency requesting the latter to invite the Registrar to disclose certain potential contents of his discussions with the Japanese government on 21 and 22 January 2019 or at any other time (the 'Defence Request of 8 April 2019').[5]

[1] ICC-01/04-02/06-2337 ('Article 40 Request for Reconsideration').
[2] ICC-01/04-02/06-2339 ('Disclosure Request for Reconsideration').
[3] ICC-01/04-02/06-2326-Anx1, para. 16.
[4] ICC-01/04-02/06-2327, para. 15 ('Defence Request of 1 April 2019').
[5] ICC-01/04-02/06-2332, para. 14.

4. On 18 April 2019, an *ad hoc* Presidency, consisting of Judges Eboe-Osuji, Perrin de Brichambaut and Morrison, after having consulted with the judges, summarily dismissed the defence requests of 1 and 8 April 2019 as lacking in legal basis and as a form of fishing expedition (the 'Disclosure Decision').[6]
5. On 30 April 2019, the Defence for Mr Ntaganda filed the Article 40 Request for Reconsideration.
6. On 1 May 2019, the *ad hoc* Presidency filed a public notification that the resignation of Judge Ozaki as Japanese Ambassador to Estonia had been accepted by the Japanese government on 18 April 2019 (the 'Notification of Resignation').[7]
7. On 2 May 2019, the Defence for Mr Ntaganda filed the Disclosure Request for Reconsideration. The Disclosure Request for Reconsideration further submits that none of the Defence requests are rendered moot by the resignation of Judge Ozaki as Japanese Ambassador to Estonia.[8]
8. On 8 May 2019, the Prosecution filed a response to the Article 40 Request for Reconsideration (the 'Prosecution Response to the Article 40 Request'),[9] arguing that the latter is rendered moot by Judge Ozaki's resignation as Japanese Ambassador to Estonia, as a result of which the Defence Request was based on an incorrect premise, further submitting that it also fails on its merits.[10] The Prosecution further argues that the Defence references to Judge Ozaki's disqualification are unsupported and wholly speculative.[11] That same date, the Prosecution also filed a response to the Disclosure Request for Reconsideration,[12] submitting that all aspects of it should be dismissed (the 'Prosecution Response to the Disclosure Request').
9. On 9 May 2019, the Defence for Mr Ntaganda requested leave to reply to the Prosecution Response to the Article 40 Request.[13] On 10 May 2019, the Defence for

[6] ICC-01/04-02/06-2336.
[7] ICC-01/04-02/06-2338.
[8] Disclosure Request for Reconsideration, paras. 2, 32, 34-36, 40, 42.
[9] ICC-01/04-02/06-2340 ('Prosecution Request').
[10] *Ibid*., paras. 1-3, 14-28.
[11] *Ibid*., paras. 29-33.
[12] *The Prosecutor v. Bosco Ntaganda*, "Prosecution's Response to the Defence "Request for Reconsideration of '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' (Filing #2336), and for Additional Disclosure", 2 May 2019, ICC-01/04-02/06-2339", ICC-01/04-02/06-2341.
[13] *The Prosecutor v. Bosco Ntaganda*, "Request for leave to reply to 'Prosecution's Response to the Defence "Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute" (ICC-01/04-02/06-2337)'", ICC-01/04-02/06-2342.

Mr Ntaganda requested leave to reply to the Prosecution Response to the Disclosure Request[14] (collectively, the "Requests for Leave to Reply").

10. The Prosecution responded to the Requests for Leave to Reply on 13 May 2019[15] and 14 May 2019.[16]

II. Preliminary Matters

11. The Requests for Leave to Reply are rejected as entirely without merit.
12. The Article 40 Request for Reconsideration must be decided by the same body which took the initial plenary decision under article 40(4) of 4 March 2019,[17] with the exception of Judges Fremr and Chung who have subsequently been excused from subsequent related matters due to the strong likelihood of a potential pending challenge to Judge Ozaki's capacity to continue sitting in the *Ntaganda* case, which has since become apparent.[18]
13. The Disclosure Request for Reconsideration pertains to the Disclosure Decision, which was taken by the Presidency, in consultation with all judges who participated in the plenary session of 4 March 2019, except Judges Fremr and Chung. It is, therefore, the Presidency, in consultation with all judges as set out above, who render the present Decision concerning the Disclosure Request for Reconsideration.
14. Nonetheless, for the sake of convenience, the Presidency shall continue to serve as the channel of communication.

[14] *The Prosecutor v. Bosco Ntaganda*, "Request for leave to reply to 'Prosecution's Response etc.', (ICC-01/04-02/06-2341) of 8 May 2019 Concerning Disclosure", ICC-01/04-02/06-2343.
[15] *The Prosecutor v. Bosco Ntaganda*, "Prosecution's Response to the Defence 'Request for leave to reply to 'Prosecution's Response to the Defence "Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute"' (ICC-01/04-02/06-2337)', ICC-01/04-02/06-2342", ICC-01/04-02/06-2344.
[16] *The Prosecutor v. Bosco Ntaganda*, "Prosecution's Response to the Defence 'Request for leave to reply to "Prosecution's Response etc," (ICC-01/04-02/06-2341) of 8 May 2019 concerning Disclosure', ICC-01/04-02/06-2343", ICC-01/04-02/06-2345.
[17] It is noted that the submissions of the Prosecutor concerning the voting threshold of a plenary session at footnote 43 of the Prosecution Response to the Article 40 Request are accurate.
[18] ICC-01/04-02/06-2336-Anx1, p. 4 and ICC-01/04-02/06-2336-Anx2, p. 4.

III. Article 40 Request for Reconsideration

15. The Article 40 Request for Reconsideration contains both procedural and substantive grounds in support of reconsideration. The Article 40 Request for Reconsideration submits that the judges in plenary have an inherent power to reconsider decisions already taken. It argues that the plenary decision on independence should be reconsidered because it was taken on an *ex parte* basis, included participation by two Judges who were later excused and because there are new arguments and facts.[19]

16. Commencing with the procedural grounds, the Article 40 Request for Reconsideration mischaracterises the nature of a decision of the judges taken pursuant to article 40(4) of the Statute. As the *ad hoc* Presidency clearly stated in its decisions concerning the requests for excusal of Judges Fremr and Chung, 'a distinction must be drawn between the exercise of an internal administrative function connected to questions of the independence of a judge, which is entrusted by article 40(4) of the Rome Statute to all judges other than an individual judge concerned, and the potential judicial matter of the capacity of a judge to sit in a specific case'.[20] Such distinction has been further elaborated by the Bureau of the International Tribunal for the former Yugoslavia (the 'ICTY') in similar circumstances in the following manner:

> The Bureau holds the view that a distinction must be drawn between two different issues: (i) that of the requirements for a person to serve as a Judge of the ICTY and the connected question of what conduct or situations are incompatible with the discharge of judicial functions, and (ii) the issue of the grounds of disqualification of a Judge from sitting in a particular case.
>
> …
>
> The first issue relates to the question of whether or not a Judge possesses all the necessary requirements for serving as a Judge of the Tribunal. This is a matter of an administrative nature, internal to the Tribunal. It can only be settled by the relevant bodies of the Tribunal. If these bodies are satisfied that the Judge does not fulfil one of the requisite conditions, for instance because he or she has engaged in political or administrative functions incompatible with the judicial function, the Judge is duty bound either to abandon those incompatible functions or to resign from the position of Judge.

[19] Article 40 Request for Reconsideration, para. 15.
[20] ICC-01/04-02/06-2336-Anx1, p. 4 and ICC-01/04-02/06-2336-Anx2, p. 4.

> By contrast, the other issue is a judicial matter, which may be raised not only by the Judge concerned but also by any party to the proceedings before a Trial Chamber or the Appeals Chamber. It relates to the right of a Judge to sit in a specific case. If the Judge does not fulfil the requirements referred to in Rule 15(B), he or she is disqualified from hearing that particular case, although he or she is fully entitled to continue to exercise the functions of a Judge of the Tribunal and sit in other cases.
>
> Of course there may be some overlap between the two issues. This may happen when a party to a trial or appellate proceedings claims that the fact that a Judge sitting in that case has engaged in political, administrative or professional activities entails the consequence that this Judge has a "personal interest" in the case or has some "association" with the case causing the Judge to be biased and hence to lack the required impartiality. Clearly, in this case the party raising the issue of disqualification must show that the alleged incompatibilities with the judicial function are such as to bring about a lack of impartiality in the case at issue. In other words, that party must show a link between the activity allegedly incompatible with the judicial function and the particular case at issue. It would not be sufficient for that party to claim merely that the Judge in question is exercising a political, administrative or professional activity incompatible with his or her judicial functions. This is an administrative matter reserved to the Judges for any decision… [21]

17. Although the applicable statutory regimes of the ICTY and the Court differ, the principle remains that there is a distinction to be drawn between a decision on an administrative issue concerning whether an activity of a judge, in general, is likely to affect confidence in a judge's independence (article 40 of the Statute) and the question of a judge's capacity to continue to sit in a particular case because his or her impartiality might reasonably be doubted on any ground (article 41 of the Statute). The fact that, at the Court, the decision-making authority in respect of both types of decisions is vested in the judges, has no bearing on the distinct nature of these two decision-making processes. Nor does the fact that, as a judge serving pursuant to article 36(10) of the Statute, Judge Ozaki's only remaining judicial duty at the Court is completing the *Ntaganda* trial.
18. The decision of the judges under article 40(4) of the Statute, taken on 4 March 2019, memorialised in written form on 19 March 2019 and notified to the Defence for Mr Ntaganda on 22 March 2019, is an internal administrative decision of the judges concerning a question of judicial independence, not a decision pertaining to Judge Ozaki's capacity to sit in the *Ntaganda* case, with the latter issue not yet having

[21] *The Prosecutor v. Mucić et. al*, IT-96-21, "Decision of the Bureau to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves", 25 October 1999, paras. 6, 9-10. http://www.icty.org/x/cases/mucic/acdec/en/91025DQX12987.htm.

arisen. The suggestion that the decision of the judges acting under article 40 is somehow impugned by the participation of Judges Fremr and Chung,[22] who were merely, together with fellow judges, performing an internal administrative function assigned to them under article 40(4) of the Statute, outside of the context of consideration of the *Ntaganda* case, must be rejected.

19. The distinction between the internal administrative question of a judge's satisfaction of essential requirements for being a judge and any judicial issues which arise in the context of a specific case also leads to the rejection of the submissions in the Request for Reconsideration concerning the *ex parte* nature of the article 40 proceedings.[23] Article 40(4) and rule 34 of the Rules of Procedure and Evidence (the 'Rules') set out only a number of limited procedural requirements for decisions thereunder, with any other questions of process which may arise falling to be determined by the judges themselves. Decisions taken under article 40(4) of the Statute are general decisions concerning the functioning of a judge and are not decisions pertaining to the role of a judge in any specific case. It is not a decision which pertains to judicial proceedings and does not impact on the fair trial rights of any accused. By way of illustration, it is commonplace that judges of the Court may sit in multiple cases, with such being inevitable for judges sitting in Pre-Trial Chambers or the Appeals Chamber. Should a question concerning whether an activity of such a judge is consistent with judicial independence arise for determination, it would be extraordinary for there to be a need to seek submissions from multiple parties and participants in every case in which such a judge sits. No such need arises because the decision to be taken by the judges under article 40 is a general and administrative one of a judge's capacity to undertake a certain activity or occupation and not a question of the judge's capacity to sit in a given case.

20. Noting the internal administrative nature of decisions taken by judges acting pursuant to article 40(4), which do not impact upon the rights of an accused, there is no need to consider the submission that there are new arguments and facts which warrant the reconsideration of the article 40 decision by the judges.[24]

[22] Article 40 Request for Reconsideration, paras. 15, 20.
[23] Article 40 Request for Reconsideration, para. 15.
[24] *Ibid*.

21. In the event that questions pertaining to an activity of a judge may impact on his or her impartiality in a specific case, a clear statutory ground exists for a party to raise such concern: namely, article 41(2)(b) of the Statute. It is further noted that rule 34(2) of the Rules expressly states, *inter alia*, that 'a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based'. The Article 40 Request for Reconsideration could be understood as both a request for reconsideration of the decision of the plenary of judges taken under article 40(4) of the Statute and a request for the disqualification of Judge Ozaki from the *Ntaganda* case, pursuant to article 41 of the Statute. This dual nature of the request may be seen throughout the Article 40 Request for Reconsideration,[25] for example, '[t]he Judges should also find that this service gives rise to reasonable doubt in Judge Ozaki's impartiality under Article 41(2)(a)'.[26] Nonetheless, the manner in which the Article 40 Request for Reconsideration sets out the majority of its arguments does not lend itself to being readily interpreted or understood as a disqualification request. As is accurately noted in the Prosecution Response to the Article 40 Request,[27] the Article 40 Request for Reconsideration fails to make submissions addressing the standard for disqualification of a Judge of the Court under article 41(2)(a) of the Statute.
22. Since the time of the Defence Request of 1 April 2019, the Defence for Mr Ntaganda has foreshadowed the potential relevance of article 41(2)(a) of the Statute[28] and continues to do so in the Article 40 Request for Reconsideration. Nonetheless, rather than properly make any such disqualification request, the Defence for Mr Ntaganda has engaged in multiple repeated separate, yet inter-related, procedural filings on various issues. Requests for disqualification must be made as soon as there is knowledge of the grounds on which it is based. Further, the current pattern of filling multiple and inter-related requests serves only to delay and obfuscate. Indeed, in this regard, the Prosecution has now, entirely understandably, already made submissions concerning disqualification in the Prosecution Response to the Article 40 Request.
23. Trial Chamber VI has indicated that 'it will not render any judgment pursuant to Article 74 of the Statute pending resolution of any request for disqualification'.[29] The Defence for Mr Ntaganda's continuous filing of procedural motions not only causes

[25] Article 40 Request for Reconsideration, paras. 4, 14, 18, 51.
[26] Article 40 Request for Reconsideration, para. 51.
[27] Prosecution Request, para. 29.
[28] Defence Request of 1 April 2019, paras. 3, 8, 10-12.
[29] Trial Chamber VI, *The Prosector v. Bosco Ntaganda*, 'Decision on Defence request for temporary stay of proceedings', 18 April 2019, ICC-01/04-02/06-2335, para. 14

confusion and uncertainty, but continues to delay proceedings before Trial Chamber VI. Such situation has become untenable.

24. The Defence for Mr Ntaganda is invited to make any disqualification request it wishes to bring by 17:00 on 20 May 2019.[30]

IV. Disclosure Request for Reconsideration

25. The Disclosure Request for Reconsideration encompasses a request to reconsider the Disclosure Decision (which itself addressed two separate but inter-related Defence Requests),[31] as well as containing an additional request for disclosure of documents related to the Notification of Resignation.[32]

1. Reconsideration

26. Turning to the request to reconsider the Disclosure Decision, the Presidency notes that while, indeed, it is well recognised before this Court that reconsideration of a decision may be considered in certain exceptional circumstances,[33] a request for reconsideration should not be used to complement past arguments in response to the rejection of a request. As Trial Chamber IX has noted, in the context of leave to appeal applications, '[t]o entertain such arguments after an adverse ruling challenges the basic principles of judicial finality', with it being expected that all relevant arguments are advanced at the time of an initial request.[34]
27. It is further noted that, in view of the rejection of the Article 40 Request for Reconsideration, the fundamental situation in the Disclosure Decision, namely that

[30] One Judge was of the view that the Presidency could not impose a deadline for the filing of a request for disqualification.
[31] Disclosure Request for Reconsideration, paras. 16-32.
[32] Disclosure Request for Reconsideration, paras. 33-38.
[33] Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Prosecution's Motion for Reconsideration of the Decision Excusing Mr Kenyatta from Continuous Presence at Trial, 26 November 2013, ICC-01/09-02/11, para 11; Trial Chamber V(A), *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para 19; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba et al*., Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance" 24 September 2015, ICC-01/05-01/13-1282, para. 8; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Prosecution Request for Reconsideration of, or Leave to Appeal, Decision on Use of Certain Material during the Testimony of Mr Ntaganda, 23 June 2017, ICC-01/04-02/06-1973, paras. 13 and 14.
[34] *The Prosecutor v. Dominic Ongwen*, "Decision on Request for Leave to Appeal the Decision on Defence Request for Disclosure of Certain RFAs and Related Items", 14 February 2018, ICC-02/04-01/15-1179, para. 7.

there is no legal basis for the Defence Requests of 1 April 2019 and 8 April 2019, remains unchanged.

28. Accordingly, the Disclosure Request for Reconsideration is rejected.

29. One judge expressed a contrary view and, rather, would have favoured partial disclosure of information (other than the records of deliberations amongst the judges) as necessary to safeguard the human right to defence of Mr Ntaganda including the right to ask and receive information required to properly exercise his right to a defence.

2. Additional Request for Disclosure

30. In respect of the additional request for disclosure contained within the Disclosure Request for Reconsideration,[35] the Presidency notes that the Disclosure Request for Reconsideration is entirely speculative, basing itself on mere assumptions, in a manner which could even be perceived as somewhat lacking in contentiousness. The Disclosure Request for Reconsideration submits that:

> Instead of Judge Ozaki notifying the Presidency that she has resigned, it is Japan that has done so. This act, in itself, manifestly creates an appearance that Judge Ozaki is not independent from the Japanese Government. It is nothing short of extraordinary that it is Japan, rather than Judge Ozaki, that would communicate information to the Presidency concerning her judicial independence.[36]

31. The Presidency notes that there was nothing in the Notification of Resignation which stated that Judge Ozaki did not notify the Presidency of her resignation. It is evident that the Notification of Resignation is a brief publication of the most pertinent information and in no way purports, nor is in any way required to be, a comprehensive history of Judge Ozaki's resignation as Ambassador of Japan to Estonia. Further, the use of the language 'confirms' in para. 3 provides a clear indication that the Presidency had received further information in this regard.

32. The Presidency is under no obligation to provide an extensive public account of a matter which is, essentially, a professional matter between Judge Ozaki and the

[35] Disclosure Request for Reconsideration, paras. 33-38.
[36] Disclosure Request for Reconsideration, para. 36.

government of Japan. Indeed it may be considered inappropriate for the Presidency to do so. Nonetheless, in order to rectify the current situation, in which a false assumption concerning a Judge of this Court has been made in a public filing, the Presidency must now provide the following further information.

33. On 12 April 2019, Judge Ozaki, in an email to the Presidency communicated as follows:

> Dear Presidency,
> I am of the view that my responsibility as an extended and non-full-time judge sitting on the Ntaganda case and my activity as the Japanese Ambassador to the Republic of Estonia, for a limited period between the completion of deliberations on major factual and legal issues of Article 74 Judgement and its delivery, is compatible under Article 40 of the Rome Statute, under the conditions I described in my memorandum to the Presidency on 18 February. The Plenary of Judges by majority confirmed such understanding.
> However, I note that there are currently various criticisms to me personally, which may also lead to the deterioration of the public confidence in the Court.
> I do not wish for this situation to continue nor do I wish to invite further unnecessary confusion which may cause a delay in the proceedings. Therefore, on 10th April, I expressed to the government of Japan my intention to resign as the Japanese Ambassador to Estonia.
> I hope this will be of assistance to the efficient and expeditious completion of the Ntaganda case. Please circulate this letter as you deem appropriate.
> With best regards,
> Judge Kuniko Ozaki

34. On 17 April 2019, Judge Ozaki provided further information to the Presidency that the matter of whether her resignation would be accepted was before the applicable authorities of the Japanese government. On 19 April 2019, Judge Ozaki's resignation was accepted by the Japanese Government, with such information being made public. This information was made public by the government of Japan that same date.[37] As the Presidency is unable to read Japanese, it sought further confirmation of the resignation from Japanese authorities through regular channels of communication. This resulted in the receipt of the email communication extracted in the Notification of Resignation. The operative content of this email was provided in full in the Notification of Resignation.

35. The Notification of Resignation, being a brief factual notification of relevant information referred only to the operative fact: namely, that Judge Ozaki's resignation had been accepted by the Japanese government. It did not purport, nor was it required, to provide an exhaustive account of Judge Ozaki's resignation. The Presidency further notes that it was under no obligation to provide the Notification of Resignation. The pertinent information had already had already been made public by the Japanese

[37] https://www.kantei.go.jp/jp/kakugi/2019/kakugi-2019041901.html

government, nonetheless, the Presidency elected to make a filing in order to facilitate access to pertinent information.

36. Finally, the Presidency notes that on 2 May 2019, following the publication of the Notification of Resignation, it received an email sent by the Director of the International Judicial Proceedings Division of the Ministry of Foreign Affairs of Japan, stating that his initial email to the Presidency contained an error and that the date on which Judge Ozaki's resignation as Japanese Ambassador to Estonia was officially accepted by the Government of Japan was 19 April 2019, rather than 18 April 2019.

37. Beyond the above further detail concerning Judge Ozaki's resignation as Ambassador of Japan to Estonia, which was necessitated by the Defence's inaccurate allegations, the request for additional disclosure is hereby summarily dismissed, as it amounts to a form of fishing expedition and currently has no legal basis.

V. DISPOSITION

The Requests for Leave to Reply are *hereby* rejected.

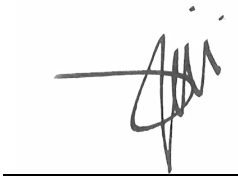
As set out in detail above, the Article 40 Request for Reconsideration and the Disclosure Request for Reconsideration are *hereby* rejected.

As set out at paragraph 24 above, the Defence for Mr Ntaganda may make any request for the disqualification of Judge Ozaki, pursuant to article 41(2)(b) of the Statute by 17:00 on 20 May 2019.

Any party or participant wishing to respond to any request made pursuant to article 41(2)(b) of the Statute shall do so by 17:00 on 27 May 2019.

Judge Ozaki may present comments on any request for disqualification, pursuant to article 41(2)(c) of the Statute and rule 34(2) of the Rules of Procedure and Evidence, by 17:00 on 4 June 2019.

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



Judge Chile Eboe-Osuji

President

Dated this 14 May 2019

At The Hague, The Netherlands