

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 17 June 2015

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
with
Public Annex A**

**Prosecution's Request to Designate a Person Authorised to Witness a
Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. To streamline the presentation of its case, the Office of the Prosecutor (“Prosecution”) intends to introduce the prior statements/testimony of certain of its witnesses in whole or part at trial. The Prosecution thus requests that the Trial Chamber VI (“Chamber”) designate a person authorised to witness a declaration under rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).

2. In view of the scheduling of trial, and considering the logistical arrangements necessary to obtaining the required declarations, the Prosecution requests that the Chamber grant the requested relief as expeditiously as possible.

II. Submissions

3. The Prosecution envisages introducing in its case in chief the prior recorded statement/testimony of a number of witnesses, in whole or part, under rule 68(2)(b) of the Rules. As noted, the Prosecution believes that this may assist in a more concise and streamlined presentation of evidence, both for witnesses it intends to call at trial, and witnesses whose appearance is not necessary, or may not otherwise materialise.

4. For such evidence to be admitted in a witness’ absence, the prior recorded testimony needs to be “accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person’s knowledge and belief.”¹

5. The declaration itself “must be witnessed by a person authorised to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing the date and place of the declaration, and that the person making the

¹ Rule 68(2)(b)(ii) of the Rules.

declaration:

- is the person identified in the prior recorded testimony;
- assures that he or she is making the declaration voluntarily and without undue influence;
- states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct; and
- was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.”²

6. The Registry informs the Prosecution that, as yet, there is no established Court procedure addressing rule 68(2)(b)(iii) declarations. Although the rule equally permits their witnessing by persons authorised to do so under national laws and procedures, the Prosecution considers that the Chamber’s designation of such an individual (e.g., a Legal Officer of the Chamber or Registry staff member) is necessary here for two reasons: (1) not all states provide for procedural mechanisms allowing an authorised official to administer the required warning to prospective declarants concerning the consequences of falsely attesting to the truth of their prior statement/testimony³; and (2) perhaps more importantly, the authorisation of a Legal Officer of the Chamber or a member of the Registry avoids this problem entirely. It also promotes efficiency in the process, and ensures the consistency of practice not only within the case, but contributes to developing a uniform Court-wide practice.

7. Because rule 68(2)(b)(ii) and (iii) of the Rules are nearly identical in form to

² Rule 68(2)(b)(ii) of the Rules.

³ Rule 68(2)(b)(iii) of the Rules provides that the individual who has given the prior recorded statement needs to be informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony. In essence, the certification process converts the prior recorded statement into testimony. In doing so, it makes such “testimony” subject to article 70 proceedings.

rule 92*bis*(B)(i) and (ii) of the ICTY's Rules and Procedure and Evidence,⁴ for the Chamber's convenience and consideration the Prosecution provides adapted forms used by the ICTY's Registry in its well-established practice. The attached Annex provides forms both for the declarant and for the person authorised to witness the declaration.

III. Relief Requested

8. Based on the foregoing, the Prosecution requests the Chamber to designate a person authorised to witness declarations made under rule 68(2)(b) of the Rules. The Prosecution is prepared to liaise directly with such person or unit to provide all necessary information, and logistical or practical arrangements concerning the relevant witnesses.



Fatou Bensouda, Prosecutor

Dated this 17th Day of June 2015

At The Hague, The Netherlands

⁴ Providing: "the person witnessing the declaration verifies in writing: (a) that the person making the statement is the person identified in the said statement; (b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct; (c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and (d) the date and place of the declaration."