

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 July 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

**Decision on Prosecution's request to designate a person authorised to witness a
declaration under Rule 68(2)(b) of the Rules**

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
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution's request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules'.

1. On 17 June 2015, the Office of the Prosecutor ('Prosecution') submitted a request ('Request')¹ for the Chamber to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules, in order to facilitate the Prosecution 'introducing in its case in chief the prior recorded statement/testimony of a number of witnesses, in whole or in part' under that provision.² The Prosecution notes that there is not yet an established procedure addressing such declarations, and accordingly proposes that the Chamber designate an individual, such as a Legal Officer of the Chamber or Registry staff member, to be the authorised witness pursuant to Rule 68(2)(b)(iii) of the Rules.³ The Prosecution attached to its Request proposed forms to be used for the declarant and for the person authorised to witness the declaration ('Proposed Forms').⁴
2. On 22 June 2015, following the Chamber's instruction,⁵ the Registry filed observations on the Request, submitting that if the Chamber deems it appropriate to designate a representative of the Registry, 'considering the nature of the functions envisioned under [R]ule 68(2)(b)(iii) of the [Rules], the Registry Legal Counsel, or anyone delegated by him, would be best placed'.⁶

¹ Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-01/04-02/06-657.

² Request, ICC-01/04-02/06-657, para. 3.

³ Request, ICC-01/04-02/06-657, paras 5-6.

⁴ Request, ICC-01/04-02/06-657, para. 7 and Annex A.

⁵ See Email communications from Legal officer of the Chamber to Registry on 17 June 2015 at 17:41 and on 19 June 2015 at 10:55.

⁶ Registry's Submission on the "Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence", ICC-01/04-02/06-666, page 3.

3. On 24 June 2015, in accordance with directions from the Chamber,⁷ the defence team of Mr Ntaganda ('Defence') filed its response ('Response'), indicating that it is not in a position to make any relevant observations on the Request on the basis, *inter alia*, that it has no information as to which witnesses the Prosecution intends to introduce the prior recorded testimony of pursuant to Rule 68(2)(b) of the Rules. However, the Defence does not oppose the Prosecution Request.⁸
4. The Chamber notes that Rule 68(2)(b) of the Rules governs the introduction of previously recorded testimony for witnesses not present before the Chamber. It allows for the introduction of such testimony of a witness if several requirements are met, including a requirement that the said testimony must 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'.⁹ Rule 68(2)(b)(iii) of the Rules requires an authorised person to witness this declaration, and states that this authorisation may be given by 'the relevant Chamber or in accordance with the law and procedure of a State'.¹⁰
5. Noting the Prosecution's submission that there is not yet an established procedure in place for such declarations,¹¹ the Chamber considers that the Chamber's designation of such an individual is necessary. Accordingly, the Chamber designates the Registry Legal Counsel, or any appropriate person delegated by him, as the person authorised to witness declarations made pursuant to Rule 68(2)(b) of the Rules. Noting the submission of the Defence on

⁷ See Email communications from Legal officer of the Chamber to Registry on 17 June 2015 at 17:41 and on 19 June 2015 at 10:55.

⁸ Response on behalf of Mr Ntaganda to Prosecution Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-01/04-02/06-668, para. 2 (noting this would actually be para. 3 but for a numbering issue).

⁹ Rule 68(2)(b)(ii) of the Rules.

¹⁰ Rule 68(2)(b)(iii) of the Rules requires the person witnessing the declaration to verify specific points in writing, namely that the person making the declaration: (a) is the person identified in the prior recorded testimony; (b) assures that he or she is making the declaration voluntarily and without undue influence; (c) states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct; and (d) 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.

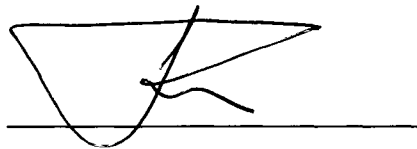
the scope of Rule 68(2)(b) of the Rules,¹² the Chamber considers that this authorisation is without prejudice to the Chamber's case-by-case assessment as to whether the prior recorded testimony of the witnesses concerned fulfils the relevant criteria of that provision.

6. The Chamber finds further that the Proposed Forms are appropriate for the purpose outlined in Rule 68(2)(b)(ii) and (iii) of the Rules.

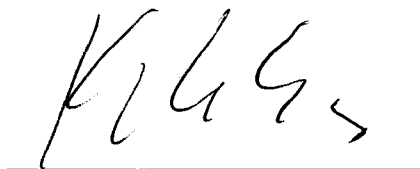
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the Registry Legal Counsel, or any appropriate person delegated by him, to be the person authorised to witness declarations made pursuant to Rule 68(2)(b) of the Rules for the purposes of this case.

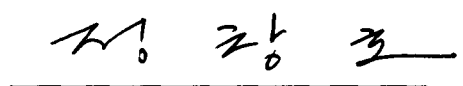
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 16 July 2015

At The Hague, The Netherlands

¹¹ Prosecution Request, ICC-01/04-02/06-657, para. 6.

¹² Response, ICC-01/04-02/06-668, para. 3 (noting this would actually be para. 4 but for a numbering issue).