

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06
Date: 17 December 2018

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 request for leave to submit *amicus curiae* observations

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 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

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Mr Hamuli Rety

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Rule 103 of the Rules of Procedure and Evidence ('Rules') and Regulation 24 of the Regulations of the Court ('Regulations'), issues the following 'Decision on request for leave to submit *amicus curiae* observations'.

1. On 12 December 2018, Mr Hamuli Rety ('Applicant') submitted a document ('Application'),¹ seeking leave to submit *amicus curiae* observations 'in order to invite the Chamber to proceed with the exact identification of Mr Bosco Ntaganda' ('Request').²
2. Should the Request be granted, the Applicant intends to demonstrate that Mr Ntaganda should not be referred to as a Congolese national, arguing, *inter alia*, that Mr Ntaganda was born in Rwanda, and that there is insufficient information to establish his Congolese nationality.³
3. Should the Request be rejected, the Applicant requests, in the alternative, that the Chamber determine that it has no power to withdraw Mr Ntaganda's Rwandan nationality or to attribute to him Congolese nationality, and refrain from making any statement that would have an equivalent effect. Rather than presenting Mr Ntaganda's Congolese nationality as an established fact, the Applicant posits that the Chamber should, if necessary, identify Mr Ntaganda as merely referring to himself as a Congolese national. Further, the Applicant requests that the Chamber refrain from pre-judging any decision which would ordinarily fall

¹ Demande d'autorisation de déposer un *Amicus Curiae* dans l'Affaire le Procureur c. Bosco Ntaganda aux fins d'inviter la Chambre de première instance VI à procéder à l'exacte identification de monsieur Bosco Ntaganda, 11 December 2018 (notified on 12 December 2018), ICC-01/04-02/06-2323, with Confidential Annex 1 and Public Annex 2.

² Application, ICC-01/04-02/06-2323, para. 1 (In the French original: 'aux fins d'inviter la Chambre à procéder à l'exacte identification de monsieur Bosco Ntaganda').

³ Application, ICC-01/04-02/06-2323, pages 6-14.

under the remit of the International Court of Justice, or other institutions resolving disputes between states ('Alternative Request').⁴

4. Before dealing with the substance of the Application under Rule 103(1) of the Rules, the Chamber recalls Rule 103(2), which provides that '[t]he Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1'. The Chamber considers that Rule 103(2) only envisages the possibility of responses to actual observations, rather than to requests to submit such observations. Furthermore, the Chamber notes that the Applicant's submissions do not constitute 'a document filed by any participant', to which the parties would be entitled to respond in accordance with Regulation 24(1) of the Regulations. Under these conditions, the Chamber will decide on the Application without awaiting or seeking observations from the parties.
5. Turning to the merits of the Request, the Chamber recalls that in accordance with Rule 103(1) of the Rules, the Chamber may, at any stage of the proceedings, grant leave to a person to submit observations on any issue that the Chamber considers appropriate 'if it considers it desirable for the proper determination of the case'. In this respect, the Chamber notes that the Appeals Chamber has previously underlined that the relevant chamber has the discretion to determine whether to grant such a request, if it may assist in the proper determination of the case.⁵
6. In the situation at hand, the Chamber does not consider that the proposed *amicus curiae* observations are necessary in order to conduct a proper determination of the present case.

⁴ Application, ICC-01/04-02/06-2323, pages 14-15.

⁵ *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence', 22 April 2008, ICC-01/04-01/06-1289, para. 8.

7. Regarding the Alternative Request, the Chamber considers that it exceeds the applicable scope for a request to submit *amicus curiae* observations, and as such, the Chamber will not consider it.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

REJECTS the Alternative Request.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 17th December 2018

At The Hague, The Netherlands