



Original: English

**No. ICC-01/04-02/06 A2
Date: 24 August 2020**

THE APPEALS CHAMBER

Before:
Judge Howard Morrison, Presiding
Judge Chile Eboe-Osuji
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR V. BOSCO NTAGANDA

Public document

**Decision on the requests for leave to file observations pursuant to rule 103
of the Rules of Procedure and Evidence**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for the Defence

Mr Stéphane Bourgon
Ms Kate Gibson

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Amici Curiae

Mr Roger O’Keefe
Ms Yolanda Gamarra
University of Pretoria
Mr Michael A. Newton
The Antiquities Coalition, Blue Shield
International and Genocide Watch
ALMA - Association for the Promotion of
International Humanitarian Law
Ms Agnieszka Jachec-Neale
Mr Pearce Clancy and Mr Michael Kearney
of Al-Haq
Ms Polina Levina and Ms Kaveri Vaid
Public International Law & Policy Group
Ms Peta-Louise Bagott
Mr Geoffrey S. Corn, Mr Richard Jackson,
Mr Chris Jenks, Mr Eric Talbot Jensen
and Mr James A. Schoettler, Jr.

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the ‘Judgment’ of Trial Chamber VI of 8 July 2019 (ICC-01/04-02/06-2359),

Having before it 12 requests for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence on selected issues arising from the appeal of the Prosecutor,

Pursuant to rule 103 of the Rules of Procedure and Evidence,

Renders the following

DECISION

1. The publicists identified in paragraph 10 of this decision are granted leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence, as *amici curiae*.
2. The *amici curiae* are invited to file written submissions, not exceeding six pages, by 16h00 on Friday, 18 September 2020, on the issues identified in paragraph 15 of the ‘Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence)’ (ICC-01/04-02/06-2554).
3. Mr Bosco Ntaganda, the Prosecutor and the Common Legal Representative of the Victims of the Attacks may respond to the observations at the hearing scheduled for 12 to 14 October 2020, in a manner to be set in due course.

REASONS

I. PROCEDURAL HISTORY

1. On 8 July 2019, Trial Chamber VI convicted Mr Bosco Ntaganda of war crimes and crimes against humanity (the ‘Conviction Decision’).¹ Mr Ntaganda² and the Prosecutor³ lodged appeals against the Conviction Decision.
2. On 7 October 2019, the Prosecutor filed her appeal brief.⁴
3. On 9 December 2019, Mr Ntaganda filed his response to the Prosecutor’s appeal.⁵
4. On 8 January 2020, the Common Legal Representative of the Victims of the Attacks filed observations on the Prosecutor’s appeal.⁶ On 24 January 2020, Mr Ntaganda and the Prosecutor responded to those observations.⁷
5. On 24 July 2020, the Appeals Chamber issued an order inviting expressions of interest under rule 103 of the Rules of Procedure and Evidence (the ‘Rules’) (the ‘Order Inviting Expressions of Interest’).⁸
6. On 3, 12 and 14 August 2020, a total of 12 requests for leave to make observations under rule 103 of the Rules were filed,⁹ and one request, not fulfilling the formatting requirements, was transmitted by the Registry.¹⁰

¹ [Judgment](#), ICC-01/04-02/06-2359, with [Annex A](#) (ICC-01/04-02/06-2359-AnxA) and [Annex B](#) (ICC-01/04-02/06-2359-AnxB).

² [Mr. Ntaganda’s Notice of Appeal against the Judgment pursuant to Article 74 of the Statute](#), ICC-01/04-02/06-2359, ICC-01/04-02/06-2396.

³ [Prosecution notice of appeal](#), ICC-01/04-02/06-2395.

⁴ [Prosecution Appeal Brief](#), ICC-01/04-02/06-2432, with [Annex A](#) (ICC-01/04-02/06-2432-AnxA).

⁵ [Defence Response to Prosecution Appeal Brief, 7 October 2019 \(ICC-01/04-02/06-2432\)](#), ICC-01/04-02/06-2449, with [Annex A](#) (ICC-01/04-02/06-2449-Anx A) and [Annex B](#) (ICC-01/04-02/06-2449-AnxB).

⁶ [Observations of the Common Legal Representative of the Victims of the Attacks on the Prosecution’s Appeal against the Trial Judgment](#), 8 January 2020, ICC-01/04-02/06-2452.

⁷ [Defence Response to “Observations of the Common Legal Representative of the Victims of the Attacks on the Prosecution’s Appeal against the Trial Judgment”](#), 8 January 2020, ICC-01/04-02/06-2452, ICC-01/04-02/06-2462, with [Annex A](#) (ICC-01/04-02/06-2462-AnxA); [Prosecution Response to Observations of the Legal Representatives of Victims \(Attack Victims\) concerning Prosecution Appeal Brief](#), ICC-01/04-02/06-2463.

⁸ [Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)](#), ICC-01/04-02/06-2554.

⁹ Roger O’Keefe, [Request by Professor Roger O’Keefe for leave to submit observations on the merits of the legal questions presented in ‘Order inviting expressions of interest as amici curiae in judicial](#)

7. On 20 August 2020, the Appeals Chamber scheduled an oral hearing to be held on 12 to 14 October 2020.¹¹

II. MERITS

8. Rule 103 of the Rules provides, in relevant part, as follows:

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

[proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)’ of 24 July 2020 \(ICC-01/04-02/06-2554\)](#), 3 August 2020, ICC-01/04-02/06-2555; Yolanda Gamarra, [Request for Leave to Submit Observations on the Merits of the Legal Questions Presented in the Appeal of the Prosecutor against the Judgment of Trial Chamber VI of 8 July 2019 \(ICC-01/04-02/06-2359\)](#), 12 August 2020, ICC-01/04-02/06-2556; University of Pretoria, [Expression of Interest as Amici Curiae in Judicial Proceedings](#), 12 August 2020, ICC-01/04-02/06-2557; Michael A. Newton, [Request by Professor Michael A. Newton for leave to submit observations on the merits of the legal questions presented in ‘Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)’ of 24 July 2020 \(ICC-01/04-02/06-2554\)](#), 12 August 2020, ICC-01/04-02/06-2558; The Antiquities Coalition, Blue Shield International and Genocide Watch, [Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence on Behalf of the Antiquities Coalition, Blue Shield International and Genocide Watch](#), 14 August 2020, ICC-01/04-02/06-2559; ALMA - Association for the Promotion of International Humanitarian Law, [Request for Leave to File Submissions Pursuant to Rule 103](#), 14 August 2020, ICC-01/04-02/06-2560; Agnieszka Jachec-Neale, [REQUEST BY DR AGNIESZKA JACHEC-NEALE FOR LEAVE TO SUBMIT OBSERVATIONS ON THE MERITS OF THE LEGAL QUESTIONS PRESENTED IN ‘ORDER INVITING EXPRESSIONS OF INTEREST AS AMICI CURIAE IN JUDICIAL PROCEEDINGS \(PURSUANT TO RULE 103 OF THE RULES OF PROCEDURE AND EVIDENCE\)’ OF 24 JULY 2020 \(ICC-01/04-02/06-2554\)](#), 14 August 2020, ICC-01/04-02/06-2561; Pearce Clancy and Michael Kearney of Al-Haq, [Expression of Interest to Act as Amicus Curiae Pursuant to Rule 103 of the Rules of Procedure and Evidence](#), 14 August 2020, ICC-01/04-02/06-2562; Polina Levina and Kaveri Vaid, [Request by Polina Levina and Kaveri Vaid for leave to submit observations on the merits of the legal questions presented in ‘Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)’ of 24 July 2020 \(ICC-01/04-02/06-2554\)](#), 14 August 2020, ICC-01/04-02/06-2563; PILPG (Public International Law & Policy Group), [Request by Public International Law & Policy Group for leave to submit observations on the merits of the legal questions presented in ‘Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)’ of 24 July 2020 \(ICC-01/04-02/06-2554\)](#), 14 August 2020, ICC-01/04-02/06-2564; Peta-Louise Bagott, [Request of Peta-Louise Bagott for leave to file observations, pursuant to the ‘Order inviting expressions of interest as amici curiae in judicial proceedings’ of 24 July 2020](#), 14 August 2020, ICC-01/04-02/06-2565; Geoffrey S. Corn, Richard Jackson, Chris Jenks, Eric Talbot Jensen and James A. Schoettler, Jr., [Request for Leave to Submit Amicus Curiae Observations on the Legal Questions Presented in the “Order inviting expressions of interest as amici curiae in judicial proceedings \(pursuant to rule 103 of the Rules of Procedure and Evidence\)” of 24 July 2020 \(ICC-01/04-02/06-2554\)](#), 14 August 2020, ICC-01/04-02/06-2566.

¹⁰ Transmission of an “Amicus Curiae Brief”, 14 August 2020, ICC-01/04-02/06-2567, with a confidential Annex (ICC-01/04-02/06-2567-Conf-Anx).

¹¹ [Second order scheduling a hearing](#), ICC-01/04-02/06-2568.

9. The Appeals Chamber's decision pursuant to rule 103(1) of the Rules is discretionary and premised on whether it considers it 'desirable for the proper determination of the case' to grant leave to the applicants to submit observations on the merits of the legal questions presented in the appeal.

10. As noted above, the Appeals Chamber is seized with 12 requests for leave to submit observations pursuant to rule 103 of the Rules as *amici curiae*.¹² Having reviewed the antecedents of the applicants, the Appeals Chamber considers it desirable for the proper determination of the case to invite Mr Roger O'Keefe, Ms Yolanda Gamarra, the University of Pretoria, Mr Michael A. Newton, the Antiquities Coalition, Blue Shield International and Genocide Watch, ALMA (the Association for the Promotion of International Humanitarian Law), Ms Agnieszka Jachec-Neale, Mr Pearce Clancy and Mr Michael Kearney of Al-Haq, Ms Polina Levina and Ms Kaveri Vaid, the Public International Law & Policy Group, Ms Peta-Louise Bagott, and Mr Geoffrey S. Corn, Mr Richard Jackson, Mr Chris Jenks, Mr Eric Talbot Jensen and Mr James A. Schoettler, Jr., to submit, by 16h00 on Friday, 18 September 2020, written observations of no more than six pages, on the issues identified in paragraph 15 of the Order Inviting Expressions of Interest.¹³

11. The Appeals Chamber emphasises that the written observations must adhere, in particular, to the requirements stipulated in regulations 23, 33, and 36 of the Regulations of the Court and regulation 24 of the Regulations of the Registry.

12. Upon receipt of the observations, the Appeals Chamber may invite some of the *amici curiae* to attend, remotely if necessary, the hearing scheduled for 12 to 14 October 2020, to address some of the matters in more detail and/or answer additional questions.

13. The Appeals Chamber is not satisfied that application ICC-01/04-02/06-2567-Conf-Anx has been properly submitted and will not consider it.

14. In accordance with rule 103(2) of the Rules, the Appeals Chamber will permit Mr Ntaganda, the Prosecutor and the Common Legal Representative of the Victims of the Attacks to respond to the written observations of the above-mentioned *amici curiae* at the hearing scheduled for 12 to 14 October 2020.

¹² See *supra* para. 6.

¹³ [Order Inviting Expressions of Interest](#), para. 15.

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



Judge Howard Morrison
Presiding

Dated this 24th day of August 2020

At The Hague, The Netherlands