

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-02/06**
Date: **17 January 2020**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Single Judge

**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 Applicants for
Participation/Reparation**

Unrepresented Victims

The Office of Public Counsel for Victims

Ms Paolina Massidda

**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**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Applicants

International Organization for Migration

Judge Chang-ho Chung, acting as Single Judge on behalf of Trial Chamber VI (‘Single Judge’ and ‘Chamber’, respectively) of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda* (‘Ntaganda case’), having regard to Article 75 of the Rome Statute (‘Statute’) and Rule 103 of the Rules of Procedure and Evidence (‘Rules’) issues this ‘Decision on request for leave to submit *Amicus Curiae* observations’.

I. PROCEDURAL HISTORY

1. On 5 December 2018, the Single Judge issued his ‘Order setting deadlines in relation to reparations’ (‘Order’),¹ in which he, *inter alia*, invited interested organisations to request, by 10 January 2020, leave to make submissions pursuant to Article 75(3) of the Statute and Rule 103 of the Rules.²
2. On 10 January 2020, the International Organization for Migration (‘IOM’) filed a request for leave to submit observations on the issues set out under paragraph 9(c) of the Order.³
3. On 16 January 2020, the Common Legal Representative of the Victims of the Attacks responded to the request (‘LRV Response’).⁴

II. ANALYSIS

4. At the outset, the Single Judge recalls that Rule 103(2) of the Rules provides that ‘[t]he Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1’. The Single Judge considers that this provision only envisages the possibility of responses to actual observations rather than to requests for leave to submit such observations. Furthermore, the Single Judge notes that the IOM’s request does 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 of the Court. In these circumstances, the Single Judge will leave aside

¹ ICC-01/04-02/06-2447.

² Order, para. 9(e).

³ Request for Leave to Submit Observations on the issues set out under point 9 (c) of the Order ICC-01/04-02/06-2447, ICC-01/04-02/06-2455.

⁴ Response of the Common Legal Representative for the Victims of the Attacks to the Request of the International Organization for Migration to provide observations pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/04-02/06-2459.

the LRV Response and decide on the IOM's request without awaiting further responses.

5. According to Rule 103 of the Rules, the Chamber may grant leave to an organisation to submit observations on any issue that the Chamber deems appropriate, and in line with the jurisprudence of the Appeals Chamber, the Chamber shall evaluate any request to make such observations by assessing whether the observations proposed are desirable for the proper determination of the case.⁵
6. The Single Judge observes that the IOM seeks leave to submit observations on the issues set out under paragraph 9(c) of the Order. He further notes that, although the IOM has not further substantiated its request, it is publicly known that the organisation has offices and is involved in project activities in the Democratic Republic of the Congo.⁶ In addition, the Single Judge notes that the IOM has previously been granted leave to submit observations on similar issues related to reparations in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.⁷ Having previously submitted such observations, the IOM is familiar with reparations proceedings, and its observations in the aforementioned case demonstrate its operational experience.⁸ In these circumstances, the Single Judge considers that the IOM is in a position to provide observations which could assist the Chamber in its determinations of the issues relevant to the reparations proceedings in the *Ntaganda* case. However, considering the nature of the issues set out under paragraph 9(c) of the Order and the fact that points (iv) and (v) thereof specifically refer to the parties and the TFV, and the parties, the Registry, and the TFV, respectively, the Single Judge considers that the IOM's observations ought to be limited to the issues identified under points (i), (ii), and (iii) of paragraph 9(c) of the Order.

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.

⁶ See, for example, <https://www.iom.int/countries/democratic-republic-congo>.

⁷ *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Bemba case'), Decision on requests to make submissions pursuant to article 75(3) of the Statute and rule 103 of the Rules of Procedure and Evidence, 26 August 2016, ICC-01/05-01/08-3430.


⁸ See the observations of the IOM in the context of the *Bemba* case: Submission by the International Organization for Migration to the International Criminal Court pursuant to article 75(3) of the statute: on the issues proposed by Trial Chamber III on the 12th August 2016, 17 October 2016, ICC-01/05-01/08-3447.

7. In light of the foregoing, the Single Judge grants the IOM leave to submit observations on the issues identified under paragraph 9(c)(i), (ii), and (iii) of the Order. In line with the Order,⁹ these observations shall not exceed 20 pages and are to be filed by 28 February 2020.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the IOM leave to submit observations of up to 20 pages on the issues identified under paragraph 9(c)(i), (ii), and (iii) of the Order by **28 February 2020**.

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



Judge Chang-ho Chung

Dated 17 January 2020

At The Hague, The Netherlands

⁹ Order, para. 9(e).