



**Original: English**

No. **ICC-01/19**  
Date: **21 November 2023**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Reine Adélaïde Sophie Alapini-Gansou  
Judge María del Socorro Flores Liera

**SITUATION IN THE PEOPLE'S REPUBLIC OF BANGLADESH/REPUBLIC  
OF THE UNION OF MYANMAR**

**PUBLIC**

Decision dismissing *in limine* a request for the adoption of a protocol and for access to the confidential record

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan  
Ms Nazhat Shameem Khan  
Ms Melissa Pack

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda  
Ms Ludovica Vetrucchio  
Ms Diletta Marchesi

**The Office of Public Counsel for the Defence**

Mr Xavier-Jean Keïta  
Ms Marie O’Leary

**States Representative**

**Others**

Ms Meghan Hirst  
Ms Kate Gibson  
Ms Clare Brown  
Mr Nicholas Leddy

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section Other**

**PRE-TRIAL CHAMBER I** (‘the Chamber’) of the International Criminal Court issues this decision dismissing *in limine* a request for the adoption of a protocol and for access to the confidential record.

## **I. Procedural history and relevant submissions**

1. On 6 September 2018, the Chamber issued its ‘Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”’ (the ‘Jurisdictional Decision’).<sup>1</sup>

2. On 14 November 2019, the Chamber authorised the commencement of an investigation into the situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (the ‘Decision Authorising an Investigation’).<sup>2</sup>

3. On 2 November 2023, the Registry transmitted to the Chamber a request filed on 25 October 2023 by four individuals (the ‘Applicants’) for the adoption of a protocol and for access to the confidential record in the present situation (the ‘Request’).<sup>3</sup>

4. On 10 November 2023, the Office of Public Counsel for Victims (the ‘OPCV’) filed a request to appear pursuant to regulation 81(4) of the Regulations of the Court (the ‘OPCV Request’) in order to represent the general interest of the victims in relation to the Request.<sup>4</sup> The OPCV does not make submissions on the *locus standi* of the Applicants.

5. On 13 November 2023, the Office of Public Counsel for the Defence (the ‘OPCD’) filed a request for leave to make submissions on the Request pursuant to regulation 77(4)(a) of the Regulations of the Court (the ‘OPCD Request’).<sup>5</sup> The OPCD does not make submissions on the *locus standi* of the Applicants.

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<sup>1</sup> [Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute’](#), ICC-RoC46(3)-01/18-37.

<sup>2</sup> [Decision pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar](#), ICC-01/19-27.

<sup>3</sup> [Annex 1 to the Registry’s Transmission of a ‘Request for the Adoption of a Protocol and for Access to the Confidential Record’](#), ICC-01/19-52, ICC-01/19-52-Anx1-Conf (public redacted version filed on 3 November 2023, ICC-01/19-52-Anx1-Red).

<sup>4</sup> [Request to appear pursuant to regulation 81\(4\)\(b\) of the Regulations of the Court](#), ICC-01/19-55-Corr. A corrigendum was filed on 13 November 2023. While the request was originally filed as confidential, further to a request by the OPCV (email from the OPCV, 14 November 2023, 18:21), the Chamber instructed the Registry to reclassify it as public (email from the Chamber, 15 November 2023, at 13:42).

<sup>5</sup> [OPCD Request for leave to make submissions regarding the LRVs request for the adoption of a protocol and for access to the confidential record](#), ICC-01/19-56.

6. On 20 November 2023, the Prosecution filed its response to the Request (the ‘Response’).<sup>6</sup> The Prosecution submits, *inter alia*, that the Request should be dismissed *in limine* due to lack of standing by the Applicants.<sup>7</sup> It contends that victims have not yet been formally admitted to participate in the proceedings pursuant to rule 89 of the Rules of Procedure and Evidence (the ‘Rules’) and that the Chamber has not ‘sought their views on any subject’ pursuant to rule 93 of the Rules.<sup>8</sup>

## II. Analysis

7. For the reasons that follow, the Chamber considers that the Applicants lack *locus standi* to submit requests and/or observations at this stage of the proceedings.

8. In affirming their standing to submit the Request, the Applicants rely<sup>9</sup> on the following finding made by Pre-Trial Chamber III in this situation:

On the plain reading of article 68(3) it is clear that the Court maintains wide powers to consider the interests of victims through their legal representatives, at stages of the proceedings the Court determines are appropriate, provided that this is done in [*sic*] manner that is not prejudicial or inconsistent with the rights of an accused to a fair trial.<sup>10</sup>

9. The Applicants further rely on the consideration afforded to their views on specific matters concerning this situation, namely on a jurisdictional matter raised by the Prosecution and on the Prosecution’s request to authorise the opening of an investigation.<sup>11</sup>

10. The Chamber notes that, contrary to the Applicant’s apparent suggestion, neither of these precedents established a right for victims’ intervention in the proceedings outside the Court’s legal framework. In this regard, it is appropriate to recall a decision issued by this Chamber in similar circumstances. In that decision, the

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<sup>6</sup> [Prosecution’s Response to Submission for the Adoption of a Protocol and for Access to the Confidential Record](#), ICC-01/19-57. See also [Prosecution’s Request pursuant to regulation 35 for an extension of the time limit to respond to the Submission for the Adoption of a Protocol and for Access to the Confidential Record](#), 9 November 2023, ICC-01/19-53; and [Decision granting the Prosecution’s request for an extension of time](#), 10 November 2023, ICC-01/19-54.

<sup>7</sup> [Response](#), paras 2-4

<sup>8</sup> [Response](#), paras 3-4.

<sup>9</sup> [Request](#), para. 9.

<sup>10</sup> [Decision on Victims’ joint request concerning hearings outside the host State](#), 27 October 2020, ICC-01/19-38-Corr (original filed on 26 October 2020) (the ‘Decision on Hearings Outside the Host State’), para. 19.

<sup>11</sup> [Request](#), para. 10, referring to the [Jurisdictional Decision](#) and the [Decision Authorising an Investigation](#).

Chamber took note of a previous decision wherein it had found it appropriate to hear from the victims at an earlier stage on the basis that their personal interests were affected by a specific request of the Prosecution.<sup>12</sup> It found, however, that such decision ‘neither established a right for victims’ intervention in the proceedings outside the Court’s legal framework as suggested by the Applicants, nor ha[d] it provided for an automatic right of intervention by any interested entity beyond the scope of the Court’s statutory documents’.<sup>13</sup> On this basis, the Chamber dismissed *in limine* the application for lack of *locus standi*.<sup>14</sup>

11. Turning to the specific circumstances of the present request, the Chamber notes that the prior participation of the Applicants in this situation was limited to the specific issues on which the Chamber deemed it appropriate to hear from the victims at that stage. This was done indeed on the basis of the wide powers that the Chamber retains pursuant to article 68(3) of the Statute and rule 93 of the Rules to invite and/or accept observations presented by victims on a particular issue.<sup>15</sup> As the Appeals Chamber has found, while, pursuant to rule 93 of the Rules, ‘[t]he views of victims may be solicited independently of whether they participate or not in any given proceedings before the Court’, ‘[i]nitiative for soliciting the views of victims [on any subject identified by the Chamber] under this rule rests entirely with a Chamber’.<sup>16</sup>

12. Accordingly, neither the Court’s legal framework nor the Applicants’ prior participation in this situation afford them an automatic right to submit unsolicited requests and observations at this stage of the proceedings when there are no cases yet, no victims have been formally admitted to participate and the Chamber has not sought their views on any particular matter.

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<sup>12</sup> Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, [Decision on the ‘Application pursuant to Article 119\(1\) of the Rome Statute’ and other related requests](#), 14 February 2019, ICC-01/13-89 (the ‘Comoros Decision’), para. 20.

<sup>13</sup> [Comoros Decision](#), para. 21.

<sup>14</sup> [Comoros Decision](#), para. 21.

<sup>15</sup> [Decision on Hearings Outside the Host State](#), para. 19. See also

<sup>16</sup> [Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007](#), 19 December 2008, ICC-01/04-556, para. 48.

13. The Applicants' reliance on a paragraph of a decision rendered by the Presidency in a different situation<sup>17</sup> is also inapposite, considering that: (i) the request that triggered the decision was dismissed; and (ii) the same paragraph relied upon by the Applicants states that the consideration of submissions presented by counsel of potential victims is 'without prejudice to the final determination to be adopted by the [pre]trial chamber' and 'it is for a chamber to take its own decision as to whether to engage with a particular document on the record'.<sup>18</sup>

14. Finally, the Applicants' reference to submissions presented before the Presidency in this situation<sup>19</sup> is equally inapposite considering that (i) the Presidency rejected the request of the Applicants; and (ii) it found that the applicant 'is not a common legal representative chosen by the Court'.<sup>20</sup>

15. Accordingly, the Chamber dismisses *in limine* the Request.

16. In light of the above, considering that the Chamber will not delve into the merits of the Request, the OPCV Request and the OPCD Request are dismissed as moot.

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<sup>17</sup> [Request](#), para. 10, referring to, *Situation in the Islamic Republic of Afghanistan*, [Decision on 'Motion Seeking Remedies for Repeated Administrative Violations'](#), dated 28 January 2022, (ICC-02/17-183-Conf-Anx1) annexed to 'Registry Transmission of a Document submitted before the Presidency', dated 4 March 2022 (ICC-02/17-183), 7 July 2022, ICC-02/17-193 (the 'Afghanistan Decision'), paras 27-28.

<sup>18</sup> [Afghanistan Decision](#), para. 27.

<sup>19</sup> [Request](#), para. 10, referring to, Motion for Review of the Registrar's Decision on Legal Aid, 10 May 2023, ICC-RoR85-01/23-1-Red (confidential version filed on the same date).

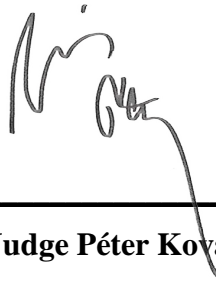
<sup>20</sup> [Decision on the 'Motion for Review of the Registrar's Decision on Legal Aid'](#), dated 10 May 2023 (ICC-RoC85-01/23-1-Conf), 30 June 2023, ICC-ROC85-01/23-2-Red (confidential version filed on 26 May 2023), para. 20.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**DISMISSES *IN LIMINE*** the Request.

**DISMISSES** the OPCV Request and the OPCD Request as moot.

Done in English. A French translation will follow. The English version remains authoritative.



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**Judge Péter Kovács**  
**Presiding Judge**



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**Judge Reine Adélaïde Sophie Alapini-  
Gansou**



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**Judge María del Socorro Flores Liera**

Dated this Tuesday, 21 November 2023

At The Hague, The Netherlands