

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-RoC46(3)-01/18

Date: 2 June 2018

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács Title
Judge Marc Pierre Perrin de Brichambaut Title
Judge Reine Alapini-Gansou Title

**UNDER REGULATION 46(3) OF THE REGULATIONS OF THE
COURT**

Public Document

**Request for Leave to Submit Amicus Curiae Observations by the International
Commission of Jurists (pursuant to Rule 103 of the Rules)**

Source: Dr. Mohammad Hadi Zakerhossein

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

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Mr James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Applicant, who is an expert in international criminal law, request leave to submit *amici curiae* observations in the form of a written brief pursuant to Rule 103(1) of the Rules of Procedure and Evidence (“the Rules”) on the territorial jurisdiction issue raised by the Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, which are currently under consideration by Pre-Trial Chamber I (“the Chamber”). The Applicant’s submission might assist the Chamber in the proper determination of the Court’s territorial jurisdiction scope that has not been previously litigated before this Court.

II. Procedural History

2. On 9 April 2018, the Prosecutor submitted a request for a ruling under Article 19(3) on whether the Court may exercise jurisdiction over the forced deportation of the Rohingya people from Myanmar to Bangladesh.¹
3. On 11 April 2018, the President of the Pre-Trial Division assigned the Prosecutor’s request to the Chamber.
4. On 7 May 2018, the Chamber invited the competent authorities of Bangladesh to submit written observations, either publicly or confidentially, on the Prosecutor’s request.

III. Applicable Law

5. Rule 103(1) of the Rules provides that, “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”.
6. The Appeals Chamber of this Court has previously allowed *amicus curiae* submissions when they were “desirable for the proper determination of the case” and in cases where the novelty of the issues raised could benefit from *amicus curiae* submissions.²
7. The current Chamber thereby has the full discretion to grant *amicus curiae* observations where there is reason to believe that such submissions will help the Chamber reach the right decision on the jurisdictional issue before it. The Court previously held that the core rationale underlying an *amicus curiae* submission is that the Chamber be assisted in the determination of the case by an independent intervener having no other standing in the proceeding.³

¹ ICC-RoC46(3)-01/18-1.

² Appeals Chamber, “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.

³ *Situation in the Republic of Kenya*, Decision on Application for Leave to Submit *Amicus Curiae* Observations, Pre-Trial Chamber II, ICC-01/09-35, 18 January 2011, para. 6

IV. Specific Issues to be Addressed

8. The Applicants respectfully request to submit observations on the following issue: The scope of territorial jurisdiction under Article 12(2).
9. On Article 12(2), the Applicant will provide analysis on the scope of territorial jurisdiction under this provision by providing comparative analysis on the national exercise of territorial jurisdiction. According to Article 21 (3), "general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards" are applicable to the Court as sources of legal interpretation. In this regard, the Applicant will provide the Court with the definition of the territorial jurisdiction and its relevant principles as reflected in some Islamic countries, including Iran, Afghanistan, Iraq and Egypt, that could represent an independent legal system of the world as referred to in Article 21 (3).
10. The Applicants will support the Prosecutor's view that the ICC territorial jurisdiction is based on the so-called 'effect doctrine' or 'objective territorial jurisdiction' that gives jurisdiction to all states on their territories a part or the result of a crime takes place; a viewpoint that has been supported by Islamic legal systems.
11. Considering this *amicus curiae* diversifies the sources the Chamber takes into account and helps the Chamber to derive general principles of law in a more precise way.

V. Expertise of the Applicants

12. Dr Mohammad Hadi Zakerhossein is currently holding a PhD in international criminal Law awarded by Tilburg University, the Netherlands. His PhD research project addressed the situation selection regime at the ICC that has been published as a book. He has published various analytical and critical articles on different issues within the ICC in both English and Farsi. He did a master in criminal law.

Conclusion

For the reasons mentioned above, the Applicant respectfully requests the Chamber to grant him leave to submit observations pursuant to Rule 103(1).

Dr. Mohammad Hadi Zakerhossein



Dated this 2 June 2018

At Leiden, the Netherlands