

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

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

Date: 7 June 2018

**PRE-TRIAL CHAMBER I**

**Before**

**Judge Peter Kovacs, Presiding Judge  
Judge Marc Pierre Perrin de Brichambaut  
Judge Reine Alapini-Ganso**

**Request to Submit an *Amicus Curiae* brief pursuant to rule 103(1) of the Rules of Procedure and Evidence on the 'Prosecutions Request for a Ruling on Jurisdiction under Article 19(3) of the Statute'**

**Public**

**Request for Leave to Submit Amicus Curiae Observations by Guernica 37  
International Justice Chambers (pursuant to Rule 103 of the Rules)**

**Source: Guernica 37 International Justice Chambers**

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor  
Mr James Stewart

**Counsel for the Defence**

**Legal Representatives of the Victims**

[1 name per team maximum]

**Legal Representatives of the Applicants**

[1 name per team maximum]

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keita

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

M. Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## 1. Introduction

- 1.1. On 9 April 2018, the Office of The Prosecutor (OTP) at the International Criminal Court (ICC) sought a ruling on a question of jurisdiction, concerning whether the Court “*may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh*”<sup>1</sup>
- 1.2. Reports concerning the treatment and what can only on any objective viewpoint, be seen as the persecution of the Rohingya peoples, have been consistently made for decades, with accusations levied at the Myanmar Government concerning a number of incidents that may amount to the commission of Crimes Against Humanity.
- 1.3. The situation however, has arguably reached a new level of persecution since August 2017 on the basis that as reported in the OTP submission of 9 April, over 670,000 Rohingya citizens, citizens notably “*lawfully present in Myanmar*”<sup>2,3</sup>, have been “*intentionally deported across the international border into Bangladesh*”<sup>4</sup>
- 1.4. The situation has now reached such a level of gravity, that the UN High Commissioner for Human Rights (UNHCHR) has described the crisis as “*a textbook example of ethnic cleansing*”<sup>5</sup>.
- 1.5. It has been further noted by the UN Special Envoy for human rights in Myanmar, and that the situation, as it has developed, could be viewed as having the “*hallmarks of a genocide*”<sup>6</sup>

---

<sup>1</sup> [https://www.icc-cpi.int/CourtRecords/CR2018\\_02057.PDF](https://www.icc-cpi.int/CourtRecords/CR2018_02057.PDF) at paragraph 1

<sup>2</sup> *Ibid* at para. 2

<sup>3</sup> For the purposes of this submission, the assumption is made that the OTP, and therefore the pre-trial Chamber are accepting of the position that the Rohingya are lawful citizens, and not, as is the position advanced by the Government of Myanmar, refugees from Bangladesh and therefore not present lawfully, thus resulting in them not being citizens.

<sup>4</sup> *Ibid*

<sup>5</sup> High Commissioner for Human Rights, [Opening Statement to the 36<sup>th</sup> session of the Human Rights Council](#), 11 September 2011; see also OHCHR, [Brutal attacks on Rohingya meant to make their return almost impossible – UN human rights report](#), 11 October 2017, para. 10.

<sup>6</sup> Report of the Special Rapporteur on the situation of human rights in Myanmar, Advance Unedited Version, [A/HRC/37/70](#), 9 March 2018, para. 65.

- 1.6. At first glance however, on the basis that Myanmar, and therefore the country responsible for the actions, is not a State Party to the Rome Statute, the ICC, in the absence of a UN Security Council Resolution, is unable to investigate the situation.
- 1.7. It is argued however that the situation in the instant case can be distinguished from other situations or potential situations, on the basis that, and as per the OTP submission, “...*an essential legal element of the crime – crossing an international border – occurred on the territory of a State which is a part to the Rome Statute (Bangladesh)*”<sup>7</sup>, and therefore, despite Myanmar not being a State party to the Statute “...*the Court may nonetheless exercise jurisdiction under article 12(2)(a) of the Statute*”.
- 1.8. On the 11 April 2018, the President of the Pre-Trial Division assigned the Prosecutor’s request to the Chamber.<sup>8</sup>
- 1.9. On 11 May 2018, the Pre-Trial Chamber considered the request, and issued its order convening a ‘status conference’ to take place on 20 June 2018.<sup>9</sup>
- 1.10. It is also important to note, that on 7 May 2018, the Pre-Trial Chamber invited the Government of Bangladesh to submit observations<sup>10</sup>, pursuant to Rule 103(1) of the Rule of Procedure and Evidence (the Rules)<sup>11</sup>, to be filed no later than 11 June 2018 at 16:00 hrs.<sup>12</sup>
- 1.11. It is anticipated therefore that the Pre-Trial Chamber will rule on the issue on, or about the 20 June 2018.

---

<sup>7</sup> Bangladesh ratified the Rome Statute on 23 March 2010.

<sup>8</sup> <sup>2</sup> President of the Pre-Trial Division, “Decision assigning the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’ to Pre-Trial Chamber I”, 11 April 2018, ICC-RoC46(3)- 01/18-2.

<sup>9</sup> [https://www.icc-cpi.int/CourtRecords/CR2018\\_02522.PDF](https://www.icc-cpi.int/CourtRecords/CR2018_02522.PDF)

<sup>10</sup> [https://www.icc-cpi.int/CourtRecords/CR2018\\_02487.PDF](https://www.icc-cpi.int/CourtRecords/CR2018_02487.PDF)

<sup>11</sup> <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>

<sup>12</sup> [https://www.icc-cpi.int/CourtRecords/CR2018\\_02487.PDF](https://www.icc-cpi.int/CourtRecords/CR2018_02487.PDF) at part (a) of the order.

1.12. Having regard to the above position, Guernica 37 International Justice Chambers and its anonymous partners<sup>13</sup>, seek leave to file submissions on an *amicus curiae* basis, as per Rule 103 of the Rules.

## 2. Legal and Procedural Framework in considering requests under Rule 103

### *International Criminal Court*

2.1. The basis upon which an *amicus curiae* (amicus) brief can be admitted by the Court in respect of a given proceedings, is as per Rule 103(1) of the Rules of Procedure and Evidence of the ICC, in which it is provided.

*“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, organisation or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.”*<sup>14</sup>

2.2. Accordingly, there is a procedural framework for an application to be submitted without invitation, and therefore on a spontaneous basis, by any such State, organisation, or individual that has an interest in, or seeks to participate in the proceedings before the Court.

2.3. Guernica 37 International Justice Chamber is one such organisation.

2.4. The Chamber, in the instant case, the Pre-Trial Chamber, in determining whether or not leave to admit observations submitted by an applicant as amicus, will have regard to the previously established principles.

---

<sup>13</sup> Please see part 3 of this submission as to why ‘partners’ are to remain anonymous at this stage.

<sup>14</sup> <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>

2.5. In particular, reference is drawn to the ‘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”’.<sup>15</sup>

2.6. Specifically, that leave to appeal was granted on the basis that in doing so, it “...*it may assist the Appeals Chamber in the proper determination of the case*”.<sup>16</sup>

2.7. Further to the above, and therefore loosely, what can be referred to as being the first limb of the ‘test’, regard is had to a similar application made by Child Soldiers International, in the case of *The Prosecutor v. Dominic Ongwen*<sup>17</sup>, where in the submission made referred to a ‘two-limb’ approach, and accordingly:

*“Thus, the question of whether to grant leave to an organisation to submit an amicus curiae brief will depend upon:*

*(i) The extent to which the identified issue is deemed appropriate; and*

*(ii) Whether the Chamber considers additional submission ‘desirable for the proper determination of the case’*<sup>18</sup>

2.8. That application further highlights the position that “*whether or not to allow an amicus intervention is a matter entirely within the discretion of the Chamber*.”<sup>19</sup>

2.9. Drawing reference to the decision in the case of *Prosecutor v. Katanga*<sup>20</sup>, the tribunal, in considering whether to grant leave, will consider the extent to which the amicus submission will “*enable the Chamber to be more fully informed*” in relation to the issue under

<sup>15</sup> [https://www.icc-cpi.int/CourtRecords/CR2008\\_02102.PDF](https://www.icc-cpi.int/CourtRecords/CR2008_02102.PDF)

<sup>16</sup> *Ibid* at paragraph 8

<sup>17</sup> [https://www.icc-cpi.int/CourtRecords/CR2016\\_25367.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_25367.PDF)

<sup>18</sup> *Ibid* at paragraph 9

<sup>19</sup> *Ibid* at paragraph 10, applying *Prosecutor v. Lubanga* ‘Decision on “Motion for Leave to File Proposed Amicus Curiae Submission on the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence”’. ICC-01/04-01/06, 22 April 2008, para 8.

<sup>20</sup> ICC-01/04-01/07, 7 March 2013

[http://www.worldcourts.com/icc/eng/decisions/2013.03.07\\_Prosecutor\\_v\\_Katanga.pdf](http://www.worldcourts.com/icc/eng/decisions/2013.03.07_Prosecutor_v_Katanga.pdf)

consideration,<sup>21</sup> and thus feeding into the second limb of the test as outlined at paragraph 2.7 (ii).

- 2.10. ICC jurisprudence therefore would appear to be clear, however, it is respectfully submitted to be of assistance in respect of this matter, to look wider, and consider the approaches taken by alternative international tribunals when faced with similar such application.

*Other Relevant International Tribunals*

- 2.11. International Courts and tribunals other than the ICC have, and continue to, permitted the intervention of third parties in circumstances that have been deemed to be appropriate, for example, the International Criminal Tribunal for the former Yugoslavia (ICTY)<sup>22</sup>, the International Criminal Tribunal for Rwanda (ICTR)<sup>23</sup>, and the Special Court for Sierra Leone (SCSL)<sup>24</sup>, all on a basis akin to that of Rule 103(1).
- 2.12. The ICTR and the SCSL in particular, have received submissions from third parties where it was considered that they would assist the tribunal concerned to reach the correct decision.<sup>25</sup>
- 2.13. As indicated by the Appeals Chamber of the SCSL in its decision granting REDRESS and others the opportunity to file an amicus brief, and to present oral submissions:

*“The issue is whether it is desirable to receive such assistance, and ‘desirable’ does not mean ‘essential’ (which would be over-restrictive) nor does it have an over-permissive meaning such as ‘convenient’ or ‘interesting’. The discretion will be exercised in favour of an application where there is a real reason to*

---

<sup>21</sup> *Ibid* at para. 12

<sup>22</sup> Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia.

<sup>23</sup> Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda.

<sup>24</sup> Rule 74 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

<sup>25</sup> *Prosecutor v Prlic et al* ‘Order Appointing an Amicus Curiae’ IT-04-74-T, 3 July 2009 (ICTY); *Prosecutor v Akayesu* ‘Order Granting Leave for Amicus Curiae to Appear’, ICTR-96-4-T, 12 February 1998 (ICTR); and *Prosecutor v Kallon* ‘Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Arguments’ SCSL-2003-07, 1 November 2003 (SCSL).

*believe that written submissions, or such submissions supplemented by oral argument, will help the Court to reach the right decision on the issue before it.”*<sup>26</sup>

- 2.14. In considering the application in the case of *Prosecutor v. Saif al-Islam Gaddafi and Abdullah Al-Senussi*<sup>27</sup>, the Chamber deemed it appropriate to note that the Applicants state that they:

*“have been following a closely monitoring the institutional developments that have been taking place pursuant to the end of the revolution in Libya”*

and further, that they have

*“conducted training and are working closely with the legal community in Libya”,*

and still further, that the Applicants did:

*“not purport to speak on behalf of specific victims, victims-applicants or potential applicants who seek to participate in proceedings nor to take a position as to the merits of the admissibility challenge”*<sup>28</sup>

- 2.15. In furtherance of the final point made above however, it is also to be noted that in the case of Ongwen, the Trial Chamber concluded that *“Impartiality on the part of the applicant, while preferable, is not determinative”*.<sup>29</sup>

- 2.16. The Chamber further went on to note:

*“At the International Criminal Tribunal for Rwanda (ICTR), the Trial Chamber in Bagasora observed that it would take ‘into consideration that such briefs are filed by a party, not part of the action, but one with strong interests in or views on the subject matter before the court’”*.<sup>30</sup>

<sup>26</sup> SCSL-2003-07 of 1 November 2003, *ibid.*, at para 5.

<sup>27</sup> [https://www.icc-cpi.int/CourtRecords/CR2012\\_06268.PDF](https://www.icc-cpi.int/CourtRecords/CR2012_06268.PDF)

<sup>28</sup> *Ibid* at para. 4

<sup>29</sup> [https://www.icc-cpi.int/CourtRecords/CR2016\\_25367.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_25367.PDF) at para.12

<sup>30</sup> *Ibid*

2.17. The SCSL Appeals Chamber has previously observed that a party seeking to intervene in a matter may be seen as having an interest in the issue where the decision:

“...will be likely to create a precedent affecting [it] in the future” or where a “State or NGO or campaigning group may wish to have the law clarified or declared or developed in a particular way”.<sup>31</sup>

2.18. Accordingly, in the cases of *Brdjanin and Talic*, before the ICTY Appeals Chamber, an amicus brief submitted on behalf of over 30 media organisations in a case where the imposition of a *subpoena* raised issues of journalistic privilege, was admitted.<sup>32</sup>

2.19. Similarly, in the case of *Furundzija*, a group of women’s organisations were granted leave to file an amicus brief on issues of discrimination against women, concerning the evidentiary standard to be applied to victims of sexual offences.<sup>33</sup>

2.20. The position would therefore appear to be one where relatively wide discretion is used in deciding whether to admit such a filing or otherwise.

### 3. Guernica 37 International Justice Chambers

3.1. Leave to adduce an Amicus brief is sought by Guernica 37 International Justice Chambers, a London based Barristers Chambers, and part of the Guernica Group.

3.2. The application for leave, is supported by specific civil society organisations in Myanmar, however, through fear of reprisal, such groups are not in a position to publicly endorse

---

<sup>31</sup> *Prosecutor v Kallon* ‘Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Arguments’ SCSL-2003-07, 1 November 2003 (SCSL) at para 4.

<sup>32</sup> *Prosecutor v Brdjanin and Talic* ‘Decision on Motion to Set Aside Confidential Subpoena to Give Evidence’, 7 June 2002.

<sup>33</sup> <http://www.icty.org/x/cases/furundzija/tord/en/81110AA24608.htm>

the application, indicative of the approach taken by the Government of Myanmar towards freedom of expression, and further, associated fundamental rights and freedoms.

- 3.3. It is appropriate to note however, that the observations that Guernica seek to introduce do have the support of civil society, and by extension, can be inferred as having the support of the victims of the forcible transfer of population from Myanmar, into Bangladesh, and accordingly, the support of those likely to be affected by the decision of the Pre-trial Chamber on this issue.
- 3.4. **Guernica 37** is an innovative International Justice Chambers specializing in transnational litigation enforcing human rights and international criminal norms in national courts. Our international structure provides a diverse team of lawyers from Europe, United Kingdom and United States of America with proven professional experience building legal accountability strategies around the globe drawn upon direct experience in multiple national jurisdictions and international bodies.
- 3.5. Members of Chambers provide highly technical legal services assisting individuals, civil society groups, businesses and government institutions to further transitional justice, defend human rights, enforce international criminal law and international norms. Our work seeks to transform societies assisting them to achieve equity, justice and lasting security.
- 3.6. Chambers, through its members, has the notion of accountability as a key mechanism at its core. Members use the Law to transform societies emerging from conflict to achieve peace, justice and security. Chambers provides legal representation and advisory services to victims, civil society groups, businesses, and governments to further transitional justice, defend human rights, enforce international norms and international criminal law.
- 3.7. **Guernica 37** is international in its structure and vision. It comprises a team of lawyers from Europe, the United Kingdom, and the United States, with unparalleled experience,

and a proven record of pioneering legal strategies around the globe. We build genuinely international legal teams with in-country partners to foster and exchange expertise among legal cultures, institutions, civil society groups, and victim communities.

- 3.8. As noted, Guernica 37 is part of the wider Guernica Group, an international initiative that brings together experienced litigators, investigators and other professionals who work to bring perpetrators of international crimes and grave human rights violations to justice; seize their ill-gotten assets for the benefit of their victims; and strengthen systems of accountability, truth-telling, reparation, and non-recurrence. Working in country and in partnership with affected communities, we offer a range of highly specialized skills to achieve accountability.
- 3.9. It supports transitional justice processes partnering with national actors in identifying alternative jurisdictions to initiate legal actions that seek to impact the relevant country encouraging domestic accountability with transformative effects.
- 3.10. In an effort to create a truly international and sustainable platform, **The Guernica Group** comprises three independent entities that share mission and values: **Guernica 37 International Justice Chambers** in London, an innovative, mission-driven, Barrister Chambers dedicated exclusively to international legal work; **G37 Despacho Internacional** in Madrid, the first legal office in Madrid specialized in international criminal law, universal and extraterritorial jurisdiction; and **The Guernica Centre for International Justice** in San Francisco, the first non-profit law firm in the State of California that seeks to represent all victims in their pursue for justice and accountability.
- 3.11. It is therefore respectfully submitted that Guernica is an appropriately qualified and experienced group to make such an Amicus submission.

- 3.12. It is of further relevance to briefly consider its members, and their experience in the issues of transitional justice, accountability, and the exercise of jurisdiction by international tribunals.

*Toby Cadman*

- 3.13. Guernica 37 is headed by Mr. Toby Cadman.
- 3.14. Toby is an established international law specialist in the areas of international criminal and humanitarian law, international terrorism, anti-corruption, maritime security, extradition and mutual legal assistance, and human rights law. He lectures extensively on international criminal law, criminal procedure and human rights law and has provided extensive advice and training to judges, lawyers and law enforcement agencies throughout the Balkans, Middle East, North Africa and South Asia.
- 3.15. Toby advises on judicial reform, legislative drafting and institution building in Albania, Bahrain, Bangladesh, Bosnia and Herzegovina, Croatia, Lebanon, Macedonia, Montenegro, Syria and Tunisia. He advises foreign governments, law enforcement agencies, international organisations, corporations and private individuals to develop professional and transparent institutions that protect human rights, combat corruption, and reduce the threat of transborder and transnational crime and develops training curricula for law enforcement, prosecutorial and governmental agencies for the investigation of international crimes. He further offers specialist political and public affairs consultancy services advising clients how best to identify, approach and influence the key decision makers of Westminster, Washington DC, Brussels and further afield.
- 3.16. Toby also serves on the board of ‘The Commission for International Justice and Accountability’ (CIJA), a group key in the investigation and documentation of Crimes Against Humanity and War Crimes committed in Syria, and on the board of the Bianca Jagger Human Rights Foundation.

*Almudena Bernabeu*

- 3.17. Almudena Bernabeu is a co-founder of the Guernica Group and acts as a Director of G37 Despacho Internacional and a Director of the Guernica Centre for International Justice.
- 3.18. Due to her unparalleled contribution to international justice and human rights work, Almudena has received numerous awards, including:
- a) The Letelier-Moffit Human Rights Prize.
  - b) Spanish National Council of Barristers SCEVOLA Award
  - c) Recipient of a *honoris causa* Ph.D. from the University of Santa Clara, California in 2013.
  - d) Program for Torture Victims - Human Rights Hero Award;
  - e) El Pais Top 13 Most Influential Leaders in the Spanish & Latin American World;
  - f) Katherine & George Alexander Law Prize;
  - g) Time Magazine 200 most influential people;
  - h) International Award Yo Dona Magazine "*Best Professional Career 2012*"
- 3.19. Almudena is a renowned international lawyer with a long career in the fields of Transitional Justice and International Criminal and Human Rights Law. During her years as Transitional Justice Director at the U.S.-based organization Center for Justice & Accountability, Ms. Bernabeu successfully litigated more than a dozen civil cases brought under the Alien Tort Statute and criminal cases in Europe under the Principle of Universal Jurisdiction to assist victims to achieve truth and accountability for international crimes. Almudena has been rewarded internationally for her contribution to justice and

accountability mechanisms around the world, in particular, for bringing landmark cases in Guatemala, El Salvador, Peru, Chile, Argentina and Ecuador and many other countries.

- 3.20. Among her multiple accomplishments, Almudena led the investigation and prosecution of the massacre of six Jesuit priests, their housekeeper, and her daughter, by members of the Salvadoran Military High Command, an attack that marked a turning point in the Salvadoran conflict. As a result of these investigations, a U.S. Court approved the extradition of Colonel Inocente Orlando Montano to Spain to face trial.
- 3.21. Almudena also led the investigation and prosecution of the Genocide committed against the Mayan people in Guatemala. The process before the Spanish National Court provided the victims the opportunity to tell their stories and present their “truth” about one of the darkest chapters in recent Guatemalan history. This investigation was instrumental in the conviction of the former Guatemalan dictator Efraín Ríos Montt for genocide. Almudena’s contribution to this important case was the subject of the documentary film entitled: “Granito: How to Nail a Dictator”
- 3.22. Almudena investigated and provided essential evidence to secure a civil judgment against Pedro Barrientos Nuñez, a former lieutenant in the Chilean Military responsible for the torture and murder of the popular singer Víctor Jara.
- 3.23. These and other cases demonstrate Almudena’s contribution to the development of International Justice and the impact to strengthen and re-shape international criminal accountability as well as its impact on national processes of transitional justice.
- 3.24. Almudena holds an LLM degree in International Law from the University of Valencia, where she specialized in Public International Law; she is a member of the Valencia and Madrid Bar Associations and the American Bar Association.

#### **4. Purpose of the Amicus**

- 4.1. As outlined in Part 1 of this application, the Pre-Trial Chamber is to consider the issue of jurisdiction, and whether the jurisdiction conferred upon it by virtue of the fact that Bangladesh is a State Party to the Rome Statute, applies to situation in Myanmar, in terms of those refugees that have been forced to cross the border from Myanmar into Bangladesh, and accordingly, are victims of a policy of ‘forcible population transfer’.
- 4.2. Given the work undertaken by members of Guernica 37 previously, it is respectfully submitted that we are ideally, and to an extent, uniquely placed, to offer the Chamber assistance in respect of the question of extra-territorial jurisdiction.
- 4.3. Further, members of Guernica 37 have been involved in a number of different issues in Bangladesh for the past 10-years. Accordingly, they are ideally placed to assist the Chamber on issues specific to the border region that may be taken into consideration when determining the issue of jurisdiction.
- 4.4. Finally, the Chamber will no doubt be aware of the wider application of any ruling, should it be that the Chamber determines that it does have the jurisdiction to consider the situation.
- 4.5. In particular, there is potential for the ruling to be applied in the context of the Syrian situation, and similar issues of population transfer, on the basis that Jordan is a State Party to the Rome Statute.
- 4.6. Accordingly, there is potential for the circumstances of over a million refugees currently living in Jordan, to have their circumstances considered, and thus the potential is raised for a portion of victims of the Assad regime to seek accountability.
- 4.7. Again, given the work previously and currently undertaken concerning the Syrian situation, in particular, the ‘Caesar’ evidence, Universal Jurisdiction cases filed in Europe, and by virtue of being a current board member of CIJA, and previously, the Syrian

Emergency Taskforce (SETF), members of Guernica are ideally placed to address the issue through observations.

- 4.8. In short therefore, the purpose of the amicus brief, should leave be granted to submit the same would be to address three points:
- a) Observations concerning the application of extra-territorial jurisdiction, taking into account the position adopted in a number of previous situations, for example, Central America, Bosnia and the wider Balkans;
  - b) The current situation in Bangladesh regarding Rohingya refugees; and
  - c) The wider application of any ruling of the Chamber.

## **5. Conclusion**

- 5.1. The issue under consideration by the Pre-Trial Chamber has the potential to be a significant step in the development of both the ICC as an organ, and general international jurisprudence.
- 5.2. It is therefore respectfully submitted to be essential that issue is considered on as wide an application as possible.
- 5.3. As a consequence, it is the position of this application, that in considering jurisdiction as it may or may not apply to Bangladesh, it is of importance to consider the application of similar issues of jurisdiction and how they have been ruled upon previously, taking note of the fact that to varying degrees, other tribunals have taken the inspiration for their rulings from the Rome Statute and the ICC, as well as other relevant international jurisprudence.
- 5.4. Further, given the importance of the issue being considered by the Pre-Trial Chamber, it is submitted to be essential so as to reach an informed decision, to consider the wider

application of any judgment, and how it may affect those ongoing situations globally which the OTP and the ICC has no mandate at present to consider.

- 5.5. Taking into account the above, it is submitted to be appropriate to allow the filing of the proposed *Amicus Curiae* brief as it is “*desirable for the proper determination of the case*”.<sup>34</sup>

---



Mr. Toby Cadman,

Guernica 37 International Justice Chambers

Dated this 7 May 2018

At London, United Kingdom

---

<sup>34</sup> <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>