

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

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

*Date: 12 June 2018*

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Marc Pierre Perrin de Brichambaut  
Judge Reine Alapini-Gansou

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

**Public with Public Annex A**

**Request for Leave to Submit Amicus Curiae Observations by the Bangladeshi  
Non-Governmental Representatives (pursuant to Rule 103 of the Rules)**

**Source:** Bangladeshi Non-Governmental Representatives

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Prosecutor  
Mr James Stewart

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keita

**States' Representatives**

Competent Authorities  
of the People's Republic  
of Bangladesh

**REGISTRY**

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**Registrar**

M. Peter Lewis

## I. Introduction

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the “Rules”), the Bangladeshi Non-Governmental Representatives (“BNGR”) request Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) leave to submit *amicus curiae* observations in the form of a written brief on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute” (the “Request”).<sup>1</sup>
2. The BNGR are an informal group of leading Bangladeshi civil society organisations, humanitarian agencies, eminent jurists, human rights advocates and respected scholars who have worked extensively with the Rohingya people allegedly deported from Myanmar into Bangladesh and issues related to their deportation. A full list of all BNGR members is attached as Annex A.

## II. Procedural Background

3. On 9 April 2018, the Prosecutor submitted its Request pursuant to regulation 46(3) of the Regulations of the Court and Article 19(3) of the Rome Statute (the “Statute”). The Prosecutor seeks a ruling from the Chamber on whether the Court may exercise jurisdiction in respect of the alleged deportation of more than 670,000 Rohingya people from Myanmar into Bangladesh.
4. On 11 April 2018, the President of the Pre-Trial Division assigned the Prosecutor’s Request to the Chamber.<sup>2</sup> The specific legal matter arising from the Request is whether the Court may exercise jurisdiction over alleged acts of deportation of persons from the territory of Myanmar (a State not party to the Statute) into the territory of Bangladesh (a State party to the Statute) on the basis of articles 7(1)(d) and 12(2)(a) of the Statute.<sup>3</sup>

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<sup>1</sup> ICC-RoC46(3)-01/18-1.

<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”, ICC-RoC46(3)-01/18-2, 11 April 2018.

<sup>3</sup> Decision Inviting the Competent Authorities of the People’s Republic of Bangladesh to Submit Observations

5. On 7 May 2018, pursuant to Rule 103(1) of the Rules, the Chamber invited the competent authorities of the People's Republic of Bangladesh to submit observations on the Request by no later than 11 June 2018. Based on media reports, the Government of People's Republic of Bangladesh filed a confidential submission on or around 7 June 2018.
6. On 29 May 2018, the Chamber granted leave to both the International Commission of Jurists and the Canadian Partnership for International Justice to submit written observations on the Request by 18 June 2018.<sup>4</sup>
7. On 7 June 2018, the Chamber rejected Mr. Mohammad Hadi Zakerhossein's application for leave to file an *amicus curiae* submission.<sup>5</sup>
8. On 11 June 2018, the Chamber granted leave to Women's Initiatives for Gender Justice, Naripokkho, Ms. Sara Hossain and the European Center for Constitutional and Human Rights to submit joint written observations by 18 June 2018.<sup>6</sup>
9. The Chamber scheduled a status conference for 20 June 2018, to be held in closed session, only in the presence of the Prosecutor, to address issues raised in the Request.<sup>7</sup>

### III. Applicable Law

10. Rule 103(1) of the Rules provides that, "[a]t 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

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pursuant to Rule 103(1) of the Rules of Procedure and Evidence on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 7 May 2018, ICC-RoC46(3)-01/18-3, paras 3, 6-7.

<sup>4</sup> Decision on the "Request for Leave to Submit *Amicus Curiae* Observations by the International Commission of Jurists (pursuant to Rule 103 of the Rules), 29 May 2018, ICC-RoC46(3)-01/18-7; Decision on the "Request for Leave to Submit an *Amicus Curiae* brief pursuant to Rule 103(1) of the Rules of Procedure and Evidence on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 29 May 2018, ICC-RoC46(3)-01/18-8.

<sup>5</sup> Decision on the Request of Mr. Mohammad Hadi Zakerhossein for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, 7 June 2018, ICC-RoC46(3)-01/18.

<sup>6</sup> Decision on "Joint Request for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103 of the Rules", 11 June, ICC-RoC46(3)-01/18.

<sup>7</sup> Order Convening a Status Conference, ICC-RoC46(3)-01/18-4, 11 May 2018.

orally, any observation on any issue that the Chamber deems appropriate”.

11. *Amicus curiae* interventions are also foreseen before other international criminal courts and tribunals, particularly the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”), the Special Court for Sierra Leone (“SCSL”) and the Extraordinary Chambers in the Courts of Cambodia (“ECCC”).<sup>8</sup>
12. The decision to invite or to receive an amicus intervention is a matter within the discretion of the Chamber.<sup>9</sup> The Appeals Chamber of the ICC has underlined that, when acting within the parameters of Rule 103(1) of the Rules, the respective Chamber should take into consideration whether the proposed submission may assist it in the proper determination of the case.<sup>10</sup>

#### IV. Request to Submit Written Observations as an *Amicus Curiae*

13. The BNGR are qualified and uniquely placed to offer assistance to the Chamber. The BNGR represent a group of prominent Bangladesh civil society groups and humanitarian organisations who have engaged directly with Rohingya people who have fled/been deported from Myanmar to Bangladesh, including by providing protection, shelter and life-saving assistance to Rohingya refugees in the border areas and the camps in Cox’s Bazar and Teknaf districts. BNGR members have worked in the border areas with Rohingya refugees and thus

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<sup>8</sup> See Rule 74, Rules of Procedure and Evidence of the ICTY; Rule 74, Rules of Procedure and Evidence of the ICTR; Rule 74, Rules of Procedure and Evidence of the SCSL; Rule 33, Internal Rules of the ECCC. See also, for example, ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-AR98bis.I, Decision on Application for Leave to Submit an *Amicus Curiae* Brief, 21 September 2012; ICTR, *Prosecutor v. Bagosora*, ICTR-96-7-T, Decision on the *Amicus Curiae* Application by the Government of the Kingdom of Belgium, 6 June 1998; ECCC, *Prosecutor v. Nuon Chea and Khieu Samphan*, 002/19-09-2007-ECCC/TC, Decision on Request for Leave to Submit *Amicus Curiae* Brief on Forced Marriage, 13 September 2016 (“ECCC *Amicus Curiae* Decision”). See also Articles 34(2) and 66(4) of the Statute of the International Court of Justice.

<sup>9</sup> *Prosecutor v. Gbagbo*, Decision on the ‘Request for Leave to Submit *Amicus Curiae* Observations pursuant to Rule 103 of the Rules of Procedure and Evidence’, Appeals Chamber, ICC-02/11-01/11-517, 1 October 2013, para. 9; *Prosecutor v. Bemba Gombo*, Decision on the Application of 14 September 2009 for Participation as an *Amicus Curiae*, Appeals Chamber, ICC-01/05-01/08-602, 9 November 2009, para. 10.

<sup>10</sup> 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, para. 8.

have extensive knowledge of the circumstances leading to their forced deportation to Bangladesh, including acts of sexual and gender-based violence and murder, as well as their current situation in Bangladesh. BNGR also includes prominent Bangladeshi advocates, jurists, and human rights experts who can assist the Court to understand the domestic law and jurisprudence relating to cross-border international crimes. If granted leave to file an *amicus curiae* submission, BNGR will be supported by international lawyers, including barristers from Red Lion Chambers in London (UK), some of whom have practised at international criminal tribunals including the ICTY, ICTR, SCSL.

14. The members of BNGR are mindful of the Court's request to the Government of Bangladesh for submissions related to the Request because Bangladesh has been "particularly affected by the events concerning the alleged deportation of the Rohingya people from Myanmar".<sup>11</sup> Although the Government of Bangladesh has responded confidentially to the Chamber's invitation, the expertise BNGR can provide would complement and not duplicate those observations. This is because BNGR is a leading group of Bangladeshi civil society actors, who work directly with the Rohingya people in Bangladesh.
15. If granted permission to intervene, BNGR's submission will provide the following:
  - (i) A detailed account of the circumstances surrounding the presence of members of the Rohingya people from Myanmar on the territory of Bangladesh.<sup>12</sup> The detailed account will be largely based on victims' testimonies collected by BNGR humanitarian organisations that have provided protection, shelter and life-saving assistance to Rohingya refugees in the border areas, and that, as a result, have expert knowledge of the circumstances of the cross-border

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<sup>11</sup> Decision Inviting the Competent Authorities of the People's Republic of Bangladesh to Submit Observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 7 May 2018, ICC-RoC46(3)- 01/18-3, para.6.

<sup>12</sup> See Decision Inviting the Competent Authorities of the People's Republic of Bangladesh to Submit Observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 7 May 2018, ICC-RoC46(3)- 01/18-3, para.7.

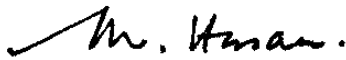
deportation and other crimes committed against the Rohingya population. This account will provide information concerning the arrival of Rohingya into Bangladesh, including the condition of individuals on arrival and ongoing injuries or other impacts suffered by them, and provide context for BNGR's legal observations on the crimes.

- (ii) Legal observations on the crimes, in addition to deportation, that commenced in Myanmar but were completed in Bangladesh over which that the Chamber may also exercise territorial jurisdiction. These will include genocide and crimes against humanity including murder and sexual and gender-based violence crimes. These observations include, for example, the Rohingya people who died in Bangladesh due to the violence perpetrated against them in Myanmar, and those who gave birth to babies in Bangladesh that were conceived by rape in Myanmar. These observations will be based on an analysis of the actual experience of the Rohingya victims who BNGR work with and the crimes that have been perpetrated upon them.
- (iii) An overview of Bangladeshi law on territorial jurisdiction over cross-border crimes, to assist the court in its interpretation of the scope of territorial jurisdiction under Article 12(2)(a) of the Statute as a "general principle of law" pursuant to Article 21(1)(c) of the Statute.

16. BNGR are mindful of the 18 June 2018 deadline for other *amicus curiae* submissions and of the timing of the status conference on 20 June 2018. If granted leave to submit observations, BNGR commit to submit their *amicus curiae* brief by 18 June 2018, or any other date the Chamber orders.

## V. Conclusion and Relief Requested

17. BNGR submits that the proposed *amicus curiae* observations will contribute to the determination of the Request pursuant to Rule 103(1) and requests the Chamber grant it leave to submit *amicus curiae* observations in the form of a written brief.



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Mr. Manzoor Hasan OBE  
Executive Director, Centre for Peace and Justice  
BRAC University



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Professor Perween Hasan  
Vice Chancellor  
Central Women's University, Dhaka

Dated: 12 June 2018

Place: Dhaka, Bangladesh

On behalf of the **Bangladeshi Non-Governmental Representatives**  
(Full membership listed in Annex A)