



Original: English

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

Date: 14 June 2018

**PRE-TRIAL CHAMBER I**

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

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

**Public**

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

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

*Amicus Curiae*

Manzoor Hasan

Perween Hasan

**REGISTRY**

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**Registrar**

Peter Lewis

**Defence 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 (the “Court”) issues this decision on the “Request for Leave to Submit Amicus Curiae Observations by the Bangladeshi Non-Governmental Representatives (pursuant to Rule 103 of the Rules)” (the “Request”).<sup>1</sup>

1. On 9 April 2018, the Prosecutor filed the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute” (the “Prosecutor’s Request”), pursuant to regulation 46(3) of the Regulations of the Court and article 19(3) of the Rome Statute (the “Statute”).<sup>2</sup>

2. On 11 April 2018, the President of the Pre-Trial Division assigned the Prosecutor’s Request to the Chamber.<sup>3</sup>

3. On 29 May 2018, the Chamber granted leave to the International Commission of Jurists and members of the Canadian Partnership for International Justice to submit observations in writing on the Prosecutor’s Request, pursuant to rule 103(1) of the Rules of Procedure and Evidence (the “Rules”).<sup>4</sup>

4. On 7 June 2018, the Chamber rejected the request of Mr. Mohammad Hadi Zakerhossein for leave to submit *amicus curiae* observations on the Prosecutor’s Request.<sup>5</sup>

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<sup>1</sup> ICC-RoC46(3)-01/18-16.

<sup>2</sup> ICC-RoC46(3)-01/18-1.

<sup>3</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>4</sup> Pre-Trial Chamber I, “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; and “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> Pre-Trial Chamber I, “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)-01/18-12.

5. On 11 June 2018, the Chamber granted leave to the Women's Initiatives for Gender Justice, Naripokkho, Ms. Sara Hossain and the European Center for Constitutional and Human Rights to jointly submit observations in writing on the Prosecutor's Request, pursuant to rule 103(1) of the Rules.<sup>6</sup>

6. On 13 June 2018, the Chamber received the Request in which the Bangladeshi Non-Governmental Representatives – an informal group of Bangladeshi civil society organisations, humanitarian agencies, jurists, human rights advocates and scholars (the "Applicants") – sought leave to submit *amicus curiae* observations on the Prosecutor's Request pursuant to rule 103 of the Rules.<sup>7</sup>

7. The Chamber notes article 21(1)(a) of the Statute and rule 103 of the Rules. The Chamber recalls in particular rule 103(1) of the Rules, according to which the Chamber may, at any stage of the proceedings, "if it considers it desirable for the proper determination of the case, [...] grant leave to a State, organization or person to submit [...] any observation on any issue that the Chamber deems appropriate".

8. The Chamber recalls that the Appeals Chamber has underlined that, when acting within the parameters of rule 103 of the Rules, the respective Chamber should take into consideration whether the proposed submission of observations may assist it "in the proper determination of the case".<sup>8</sup>

9. The Chamber notes that the Applicants intend to submit observations, *inter alia*, on the circumstances surrounding the presence of members of the Rohingya people from Myanmar on the territory of Bangladesh and alleged crimes in addition to deportation that commenced on the territory of Myanmar and were completed in

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<sup>6</sup> Pre-Trial Chamber I, "Decision on the 'Joint Request for Leave to Submit Amicus Curiae Observations pursuant to Rule 103 of the Rules'", 11 June 2018, ICC-RoC46(3)-01/18-15.

<sup>7</sup> ICC-RoC46(3)-01/18-16, paras 1 and 17.

<sup>8</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.

Bangladesh over which the Court may have jurisdiction.<sup>9</sup> The Chamber expects that the Applicants' observations will go beyond the scope of submissions to be received from other *amici curiae*. While the Applicants' submissions may partly overlap with the joint submission of the Women's Initiatives for Gender Justice, Naripokkho, Ms. Sara Hossain and the European Center for Constitutional and Human Rights, it is expected that the latter will focus on a gendered perspective.<sup>10</sup> The Chamber notes in addition that the Applicants have extensive knowledge of the circumstances that led to the alleged deportation of the Rohingya people from Myanmar into Bangladesh.<sup>11</sup> The Chamber takes the view in light of the above that the Applicants' proposed submissions are desirable for the proper determination of the Prosecutor's Request, within the meaning of rule 103 of the Rules.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request to submit written observations in accordance with paragraph 9 of the present decision, no later than Monday, 18 June 2018, at 16.00hrs.

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<sup>9</sup> ICC-RoC46(3)-01/18-16, para. 15.

<sup>10</sup> See ICC-RoC46(3)-01/18-11.

<sup>11</sup> ICC-RoC46(3)-01/18-16, para. 13.

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



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



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**Judge Marc Perrin de Brichambaut**



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**Judge Reine Adélaïde Sophie**  
**Alapini-Gansou**

Dated this Thursday, 14 June 2018

At The Hague, The Netherlands