**Cour
Pénale
Internationale**

**International
Criminal
Court**

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

Confidential *EX PARTE*
With One Confidential *EX PARTE* Annex, only available to the Registry

Information on Victims' Applications Received in relation to the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" notified on 9 April 2018 (ICC-RoC46(3)-01/18-1)

Source: Registry

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

The Office of the Prosecutor	**Defence**
Legal Representatives of the Victims Mr Wayne Jordash Ms Megan Hirst	**Legal Representatives of the Applicants**
Unrepresented Victims	**Unrepresented Applicants (Participation/Reparation)**
The Office of Public Counsel for Victims	**The Office of Public Counsel for the Defence**
States' Representatives	**Amicus Curiae**

Registrar Mr Peter Lewis	**Counsel Support Section**
Victims and Witnesses Unit	**Detention Section**
Victims Participation and Reparations Section Mr Philipp Ambach	**Other**

I.   Introduction

1.   Pursuant to Regulation 24*bis* of the Regulations of the Court, the Victims Participation and Reparations Section ("VPRS") hereby submits information related to twenty one victim application forms for participation in potential future proceedings and/or reparations ("Applications"), received in relation to the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ("Prosecution's Request").[1] The annex to the present filing contains the preliminary legal assessment of the Applications under rule 85 of the Rules of Procedure and Evidence ("Rules").

II.   Procedural History

2.   On 9 April 2018, the Office of the Prosecutor ("Prosecution") filed its Request seeking a ruling on "whether the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh."[2]

3.   On 11 April 2018, the President of the Pre-Trial Division assigned the Prosecution's Request to Pre-Trial Chamber I ("Chamber").[3]

4.   On 29 May 2018, a representative of the organization *Global Rights Compliance* sent eleven application forms for participation in the proceedings ("Eleven Applications") to the VPRS email address (at VPRS.Applications@icc-cpi.int).

5.   On 31 May 2019, *Global Rights Compliance* filed its "Submissions on Behalf of the Victims Pursuant to Article 19(3) of the Statute."[4] The Eleven Applications are mentioned in paragraph 123 of the said document.

---

[1] Prosecution, "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", 9 April 2018, ICC-RoC46(3)-01/18-1.

[2] *Id*., paras. 1 and 63.

[3] 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.

[4] Global Rights Compliance, "Submissions on Behalf of the Victims Pursuant to Article 19(3) of the Statute", dated 30 May 2018 and notified on 31 May 2018, ICC-RoC46(3)-01/18-9.

6. On 12 June 2019, the VPRS received on the abovementioned email address another ten application forms for participation in the proceedings ("Ten Applications"). The forms were submitted by a lawyer, Ms Megan Hirst, who informed the VPRS that a submission on behalf of these victims would be filed with the Chamber in the coming days.[5]

III. Classification

7. Pursuant to regulation 23 *bis*(1) of the Regulations of the Court ("RoC"), the present document and its annex are classified as "confidential *ex parte*, only available to the Registry", because they contain confidential communications and information, particularly in the annex, that may lead to the identification of potential victims, intermediaries and third parties.

IV. Applicable law

8. The present submissions are made on the basis of articles 19(3) and 68(3) of the Rome Statute, rules 16(1) and 85 of the Rules, regulations 23 *bis*(1) and 24*bis*(1), (2) of the RoC, and regulation 98 of the Regulations of the Registry.

V. Submissions

1. Submissions related to the Eleven Applications

9. All Eleven Applications have been submitted on the (outdated) 7-page joint form (2009 version), by natural persons, all of whom are women of Rohingya ethnicity.

10. The Eleven Applications have been assessed by the VPRS as complete and linked to alleged deportations from Myanmar to Bangladesh in August 2017,

---

[5] Email from Ms Megan Hirst to VPRS on 12 June 2018 at 08:44.

as well as other crimes against humanity falling generally within the jurisdiction of the Court.

11. All applicants have appointed a lawyer, Mr Wayne Jordash, by way of a power of attorney.

2. Submissions related to the Ten Applications

12. All Ten Applications were submitted on the 2-page participation form (which was used in the *Ongwen* case), by natural persons, both men and women, all of Rohingya ethnicity.

13. The Ten Applications have been assessed by the VPRS as complete and linked to alleged deportations from Myanmar to Bangladesh in August 2017, and other crimes against humanity falling generally within the jurisdiction of the Court.

14. All applicants have appointed a lawyer, Ms Megan Hirst, by way of a power of attorney.

3. Standard of proof for the VPRS preliminary legal assessment under rule 85

15. The Annex to this document contains the preliminary legal assessment of the Applications under rule 85 of the Rules.

16. The VPRS notes that, given the timing of the Prosecution's Request - before the opening of a case, and even of a situation, it can be argued that the standard of proof for the preliminary legal assessment with regard to rule 85 of the Rules could be similar to the one used in the context of article 15(3) of the Statute. In the context of the article 15(3) process recently conducted in the Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber III recalled that "given the limited scope of article 15 proceedings, the conditions
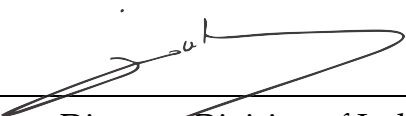
set out in rule 85 of the Rules should be assessed on the basis of the intrinsic coherence of the information given by the victim(s)."[6]

17. The VPRS however notes that the Applications were all submitted on forms for participation and/or reparations and were supported by identity documents proving the identity of the applicants and, in some cases, the kinship between the applicants and the persons acting on their behalf. Therefore, the VPRS assessed the Applications as complete even applying a higher standard of proof, ie the *prima facie* standard used to assess applications for participation in the proceedings during the pre-trial and trial phases of the proceedings.

18. The VPRS respectfully submits that should it receive further victim applications or should the Chamber be inclined to order the VPRS to identify further victims and consult them for the purpose of the current proceedings, the standard of proof applicable when assessing the applications should be the one of "intrinsic coherence of information given by the victim(s)" applicable in article 15(3) proceedings.

---

[6] Pre-Trial Chamber III, "Order to the Victims Participation and Reparation Section Concerning Victims' Representations", 9 November 2017, ICC-02/17-6, para. 14 (referring to an earlier ruling of Pre-Trial Chamber II, "Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute", 10 December 2009, ICC-01/09-4, para. 8).

4. Periodic reports

19. The VPRS stands ready to submit periodic reports on future applications related to the current proceedings and to assist the Chamber in any other way it sees fit.

Marc Dubuisson, Director, Division of Judicial Services
On behalf of Peter Lewis, Registrar

Dated this 14 June 2018

At The Hague, The Netherlands