

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **17 August 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

Notice of the Public Statement Issued by the Government of Myanmar

Source: Office of the Prosecutor

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

Court to:

The Office of the Prosecutor

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Legal Representatives of the Victims

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REGISTRY

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Mr Peter Lewis

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

1. In preparing to decide the Prosecution's request for a ruling on jurisdiction,¹ the Pre-Trial Chamber has received written submissions from the Government of Bangladesh, various *amici curiae* who were granted leave, and on behalf of certain victims seeking participation.² The Pre-Trial Chamber also publicly invited the Government of Myanmar to file submissions,³ but its diplomatic and consular representatives declined service of that invitation.⁴ The 27 July 2018 deadline elapsed without communication with the Myanmar authorities. However, on 9 August 2018, the Myanmar authorities published a five-page statement concerning the proceedings at the Court.⁵ Notwithstanding its content, this statement expressly acknowledged that "Myanmar has declined to engage with the ICC by way of a formal reply".⁶

2. In the interest of candour and transparency, and consistent with its practice in these proceedings,⁷ the Prosecution draws these matters to the attention of the Pre-Trial Chamber while submitting that the Public Statement should be disregarded in its entirety. This is consistent with the informed choice by the Myanmar authorities not to participate in these proceedings. As the Prosecution has previously observed, "[t]he [G]overnment of Myanmar would have to file something" with the Court for its views to be heard in these proceedings.⁸ It has deliberately decided not to do so.

3. The principle that only submissions 'on the record' may be considered and addressed in judicial decision-making is important because Chambers of the Court must be in a position to control their own proceedings. They cannot countenance efforts (by any person or entity) to intervene in such matters without submitting

¹ See [ICC-RoC46\(3\)-01/18-1](#) ("Request").

² See [ICC-RoC46\(3\)-01/18-33](#) ("Prosecution Response to *Amici*"), para. 2.

³ See [ICC-RoC46\(3\)-01/18-28](#).

⁴ See [ICC-RoC46\(3\)-01/18-31](#).

⁵ Republic of Myanmar, [Ministry of the Office of the State Counsellor, Press Release, 9 August 2018](#) ("Public Statement").

⁶ See [Public Statement](#), Preface.

⁷ See e.g. [ICC-RoC46\(3\)-01/18-T-1-Red](#), p. 30:13-15 (referring to a previous public statement by the Government of Myanmar, to which the Prosecution drew the attention of the Pre-Trial Chamber).

⁸ [ICC-RoC46\(3\)-01/18-T-1-Red](#), p. 30:23.

themselves to the Court's procedural supervision by 'appearing' before it, if only in writing. This principle underpins article 71 of the Statute,⁹ and is expressly set out in rule 103—which requires “observation[s]” by a “State” to be “filed with the Registrar”¹⁰ and demonstrates the Court's authority by requiring such a State to have the “leave” of a Chamber.¹¹ A formal 'filing' process of this kind is also necessary to ensure that other Parties and participants receive adequate notice of the arguments placed before the Chamber, so they can meaningfully exercise their own rights of participation.¹² Filing submissions before the Court, by the proper procedure, does not mean accepting the substantive jurisdiction of the Court over any particular matter, but is merely a procedural condition which must be satisfied in order for a State or person to be 'heard'.

4. The Prosecution further stresses its view that Myanmar's Public Statement is inaccurate in its understanding of these proceedings, and in the legal conclusions it purports to draw. Accordingly, should the Pre-Trial Chamber nonetheless be minded to take the Public Statement into consideration, the Prosecution seeks leave to file brief observations in response.



Fatou Bensouda, Prosecutor

Dated this 17th day of August 2018

At The Hague, The Netherlands

⁹ See [Statute](#), art. 71(1) (referring to the Court's power to “sanction persons *present before it* who commit misconduct”, emphasis added).

¹⁰ See [Rules of Procedure and Evidence](#), rule 103(3).

¹¹ See [Rules of Procedure and Evidence](#), rule 103(1).

¹² See e.g. [Rules of Procedure and Evidence](#), rule 103(2).