



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 Guernica 37 International Justice Chambers (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

Toby Cadman

REGISTRY

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 Guernica 37 International Justice Chambers (pursuant to Rule 103 of the Rules)” (the “Request”).¹

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”).²

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

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”).⁴

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.⁵

¹ ICC-RoC46(3)-01/18-13.

² ICC-RoC46(3)-01/18-1.

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 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.

⁵ 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 8 June 2018, the Chamber received the Request in which the Guernica 37 International Justice Chambers (the “Applicant”) sought leave to submit *amicus curiae* observations on the Prosecutor’s Request pursuant to rule 103 of the Rules.⁶

6. 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.⁷

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”.⁸

9. The Chamber notes that the Applicant intends to submit observations on three main points: (i) the application of extra-territorial jurisdiction; (ii) issues specific to the border region between Bangladesh and Myanmar which may be relevant to the Chamber’s determination on jurisdiction; and (iii) the wider application of any ruling of the Chamber.⁹ The Chamber observes that the Applicant

⁶ ICC-RoC46(3)-01/18-13, para. 1.12.

⁷ 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.

⁸ 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.

⁹ ICC-RoC46(3)-01/18-13, paras 4.1-4.8.

intends to make observations that go beyond the scope of submissions expected from other *amici curiae*, by bringing to the attention of the Chamber issues specific to the border region which may inform the Chamber's decision on jurisdiction. The Chamber further notes that the Applicant has extensive experience in transnational litigation in the fields of human rights and international criminal law.¹⁰ The Chamber takes the view in light of the above that the Applicant's 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.

¹⁰ ICC-RoC46(3)-01/18-13, para. 3.4 *et seq.*

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



Judge Péter Kovács
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Reine Adélaïde Sophie
Alapini-Gansou

Dated this Thursday, 14 June 2018

At The Hague, The Netherlands