



Original: English

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

Date: 21 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 Inviting the Competent Authorities of the Republic of the Union of Myanmar 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"

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

Competent Authorities of the Republic of
the Union of Myanmar

Amicus Curiae

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 inviting the competent authorities of the Republic of the Union of Myanmar (“Myanmar”) to submit observations pursuant to rule 103(1) of the Rules of Procedure and Evidence (the “Rules”) on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute” (the “Request” or the “Prosecutor’s Request”).

1. On 9 April 2018, the Prosecutor filed her Request pursuant to regulation 46(3) of the Regulations of the Court and article 19(3) of the Rome Statute (the “Statute”), seeking a ruling from the Pre-Trial Chamber on whether the Court may exercise jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar into Bangladesh.¹

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

3. On 7 May 2018, the Chamber invited the competent authorities of Bangladesh to submit observations pursuant to rule 103(1) of the Rules on the Prosecutor’s Request.³

4. 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”.

¹ ICC-RoC46(3)-01/18-1.

² 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.

³ Pre-Trial Chamber I, “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-RoC(3)-01/18-3.

5. In her Request, the Prosecutor alleges that since August 2017 more than 670,000 members of the Rohingya people, lawfully present in Myanmar, have been intentionally deported into Bangladesh.⁴ Considering that the crime of deportation is alleged to have commenced on the territory of Myanmar, the Chamber deems it appropriate to seek observations from the competent authorities of Myanmar on the Prosecutor's Request. Such observations would, in these particular circumstances, assist the Chamber in its determination of the Request *sub judice*.

6. The Chamber invites the competent authorities of Myanmar to submit written observations, either publicly or confidentially, on the following matters: (i) the possibility of the Court's exercise of territorial jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar into Bangladesh; (ii) the circumstances surrounding the crossing of the border by members of the Rohingya people from Myanmar into Bangladesh; and (iii) any other matter in connection with the Prosecutor's Request that, in the opinion of the competent authorities of Myanmar, would assist the Chamber in its determination of this Request.

7. Lastly, the Chamber notes that pursuant to rule 103(2) of the Rules, the Prosecutor shall have the opportunity to respond to the observations submitted by Myanmar, if any. Accordingly, the Chamber gives the Prosecutor 10 days to reply to said observations, if she so wishes.

⁴ ICC-RoC46(3)-01/18-1, para. 2.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **INVITES** the competent authorities of Myanmar to submit written observations, either publicly or confidentially, on the Prosecutor's Request, as specified in paragraphs 5 and 6 of the present decision, no later than Friday, 27 July 2018, at 16.00hrs;
- b) **ORDERS** the Registrar to notify this decision to the competent authorities of Myanmar together with a copy of the Prosecutor's Request; and
- c) **ORDERS** the Prosecutor to submit her reply to the observations filed by Myanmar, if any, within 10 days of the day of notification of Myanmar's observations, as specified in paragraph 7 of the present decision.

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, 21 June 2018

At The Hague, The Netherlands