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No. **ICC-01/18**
Date: **11 March 2020**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public

Decision on the ‘Appeal to the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”’

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart

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**

Paolina Massidda

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

States Representatives

The competent authorities of the State of
Palestine

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Philipp Ambach

Other

Ralph Wilde and Ata Hindi

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court issues this Decision on the ‘Appeal to the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”’.

I. PROCEDURAL HISTORY

1. On 1 January 2015, the State of Palestine (‘Palestine’) lodged a declaration under article 12(3) of the Rome Statute (the ‘Statute’), thereby accepting the jurisdiction of the Court over alleged crimes ‘committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014’.¹
2. On 2 January 2015, Palestine deposited its instrument of accession to the Statute with the United Nations Secretary-General in accordance with article 125(2) of the Statute.²
3. On 22 May 2018, Palestine referred the situation in the State of Palestine to the Prosecutor pursuant to articles 13(a) and 14 of the Statute, thereby *inter alia*: (i) requesting the Prosecutor ‘to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine’;³ and (ii) specifying that ‘[t]he State of Palestine comprises the Palestinian Territory occupied in 1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip’.⁴
4. On 24 May 2018, pursuant to regulation 46(2) of the Regulations of the Court (the ‘Regulations’), the Presidency assigned the Situation in the State of Palestine to the Chamber.⁵
5. On 13 July 2018, the Chamber issued its ‘Decision on Information and Outreach for the Victims of the Situation’.⁶ Following this decision, the Registrar filed

¹ Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I (‘Assignment Decision’), Annex I, 24 May 2018, [ICC-01/18-1-AnxI](#), p. 2.

² Secretary-General of the United Nations, ‘[Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession](#)’, 6 January 2015, Reference: C.N.13.2015.TreatiesXVIII.10 (Depositary Notification).

³ Assignment Decision, [Annex I](#), ICC-01/18-1-AnxI, p. 8, para. 9.

⁴ Assignment Decision, [Annex I](#), ICC-01/18-1-AnxI, footnote 4.

⁵ [Assignment Decision](#), ICC-01/18-1, p. 3.

⁶ [ICC-01/18-2](#).

six reports on ‘Information and Outreach Activities Concerning Victims and Affected Communities in the Situation’.⁷

6. On 20 December 2019, the Chamber received the Prosecutor’s ‘Application for extension of pages for request under article 19(3) of the Statute’ (the ‘Request for an Extension of the Page Limit’).⁸ On the same day, the Chamber also received the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’ (the ‘Prosecutor’s 20 December 2019 Request’).⁹

7. On 23 December 2019, the Chamber received the ‘Supplementary information to the Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, together with two annexes containing two legal memoranda issued by the State of Israel (the ‘Supplementary Information’),¹⁰ thereby requesting that those documents be ‘placed on the record of the situation for completeness’.

8. On 21 January 2020, the Chamber issued the ‘Decision on the Prosecutor’s Application for an extension of the page limit’, thereby: (i) granting the Request for an Extension of the Page Limit; (ii) rejecting *in limine* the Prosecutor’s 20 December 2019 Request; (iii) inviting the Prosecutor to file a new request of no more than 110 pages, including any references to the Supplementary Information; and (iv) instructing the Registrar to strike from the record of the Situation and withdraw

⁷ [Public redacted version of ‘Registry’s Initial Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation’](#), filed 12 November 2018 (ICC-01/183-Conf), 19 November 2018, ICC-01/18-3-Red; [Public redacted version of ‘Registry’s Second Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation’](#), filed 12 February 2019 (ICC-01/18-4-Conf), 13 February 2019, ICC-01/18-4-Red; [Public redacted version of ‘Registry’s Third Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation’](#), filed 13 May 2019 (ICC-01/18-5-Conf), ICC01/18-5-Red; [Public redacted version of ‘Registry’s Fourth Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation’](#), filed 9 August 2019 (ICC01/18-6-Conf), ICC-01/18-6-Red; [Registry’s Fifth Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation](#), 15 November 2019, ICC-01/18-7; [Public redacted version of ‘Registry’s Sixth Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation’](#), 12 February 2020, ICC-01/18-20-Conf, 12 February 2020, ICC-01/18-20-Red.

⁸ [ICC-01/18-8](#).

⁹ ICC-01/18-9, together with Public Annex A.

¹⁰ ICC-01/18-10, together with Public Annexes A and B.

from the Court’s website the Prosecutor’s 20 December 2019 Request, its annex and the Supplementary Information.¹¹

9. On 22 January 2020, the Chamber received the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’.¹²

10. On 28 January 2020, the Chamber issued the ‘Order setting the procedure and the schedule for the submission of observations’ (the ‘28 January 2020 Order’).¹³

11. On 20 February 2020, the Chamber issued the ‘Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence’ (the ‘20 February 2020 Decision’),¹⁴ thereby *inter alia* rejecting the ‘Request for Leave to File a Submission Pursuant to Rule 103 of the Rules of Procedure and Evidence’ on behalf of Ralph Wilde and Ata Hindi (the ‘Request’) because it had been submitted after the time limit set by the Chamber.¹⁵

12. On 24 February 2020, the Chamber received the ‘Appeal to the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”’ on behalf of Ralph Wilde and Ata Hindi (the ‘Applicants’).¹⁶

II. THE APPLICANTS’ SUBMISSIONS

13. The Applicants assert that their Request ‘was submitted on 14 February at 11:30pm from Atlanta, GA, [United States of America]’.¹⁷ In this regard, the Applicants argue that the 28 January 2020 Order did not indicate a specific time and time zone, but that it ‘refers to when to “submit” the applications for leave, thereby focusing on the date, time, and time zone of the submitter, rather than when the applications should be ‘received’, which would focus on the date, time, and time zone of the Court’s physical location’.¹⁸

¹¹ [ICC-01/18-11](#).

¹² [ICC-01/18-12](#), together with Public Annex A.

¹³ [ICC-01/18-14](#). Regulation 33(2) of the Regulations stipulates that ‘[d]ocuments shall be filed with the Registry between 9am and 4pm The Hague time or the time of such other place as designated by the Presidency, a Chamber or the Registrar’.

¹⁴ ICC-01/18-63.

¹⁵ ICC-01/18-63, para. 51.

¹⁶ ICC-01/18-64.

¹⁷ ICC-01/18-64, para. 2.

¹⁸ ICC-01/18-64, para. 3.

14. The Applicants add that regulation 33(2) of the Regulations does not ‘require[] the Court only to accept as “submitted” documents that are “filed with the Registry” within the 9am—4pm time period in The Hague’ and that ‘nothing in the Regulation requires the Court necessarily to observe exclusively the time zone of The Hague when a date is fixed as the deadline for “submissions”’.¹⁹ In the view of the Applicants, ‘the Court has a consistent practice of accepting, as valid “submissions”, documents sent in after the 9am-4pm time period in The Hague on the due date for submissions’ and the Chamber did the same in the present proceedings.²⁰

15. The Applicants further argue that, ‘more fundamentally, the Court has a global jurisdiction, so the default approach on the question of what time zone to apply should be one favorable to the submitter, at least in the absence of a specified time and time zone and the absence of a consistent practice when it comes to the transposition of the provisions of Regulation 33 to the question of valid submissions’.²¹

16. The Applicants also aver that ‘the Court has previously been willing to depart entirely from applying deadlines in applications for leave’.²² In this regard, the Applicants indicate that the Appeals Chamber accepted submissions on behalf of the Islamic Republic of Afghanistan and an application for leave to file submissions on behalf of the European Centre for Law and Justice even though they were filed after the expiry of the relevant time limit in the appeal proceedings in the Situation in the Islamic Republic of Afghanistan.²³ The Applicants consider that, ‘[g]iven the circumstances of these earlier accepted submissions, the rejection of [their] submission constitutes a clear breach of fairness and equal treatment’.²⁴

17. In addition, the Applicants take the view that, ‘when it comes to the acceptance of the late submission by the [European Centre for Law and Justice] in particular, given the political character of this entity as a far-right pro-Israel organization, on the one hand, and the identity of one of the present applicants, Ata Hindi, as a Palestinian, on the other hand, the Court risks opening itself to accusations of applying double standards rooted in political bias, a situation that has already presented itself with

¹⁹ ICC-01/18-64, para. 5.

²⁰ ICC-01/18-64, para. 6.

²¹ ICC-01/18-64, para. 10.

²² ICC-01/18-64, para. 11.

²³ ICC-01/18-64, paras 12-13.

²⁴ ICC-01/18-64, para. 14.

commentary that has been made on social media following the decision by the Court to reject our application’.²⁵

18. Furthermore, according to the Applicants, ‘[t]he Registry of the Court did not make the document template necessary for submissions for leave easily accessible to potential applicants’ and ‘[i]t was only found by the authors through third-party sources well into the evening of 14 February’.²⁶

19. Lastly, the Applicants request, if necessary, ‘that the Court grant an extension under Regulation 35 in order [...] to make [their submission] again or for the Court to re-consider the submission already made’.²⁷

III. DETERMINATION BY THE CHAMBER

20. The Applicants appear first to directly ‘appeal’ the 20 February 2020 Decision before this Chamber. However, an appeal must, of necessity, be considered by an instance vested with adequate appellate review powers.²⁸ The Statute clearly confers such powers exclusively onto the Appeals Chamber.²⁹ Thus, the Chamber, as the judicial instance that issued the 20 February 2020 Decision, is not mandated to act as the appellate instance in an appeal from that decision in accordance with the Statute.

21. At this stage of the proceedings, the Chamber may only grant leave to appeal the 20 February 2020 Decision under article 82(1)(d) of the Statute. Nevertheless, the Applicants do not explain how the relevant criteria for seeking leave to appeal arising from the Court’s jurisprudence would have been satisfied. In any event, the Applicants’ procedural rights, as persons applying to become *amici curiae* under rule 103 of the Rules of Procedure and Evidence, are limited to submitting written or oral observations. Such a right cannot be seen as conferring on the Applicants all procedural rights accorded to the parties to the proceedings, including the right to seek leave to appeal under article 82(1)(d) of the Statute. Therefore, the Applicants do not have standing to seek leave to appeal the 20 February 2020 Decision.

²⁵ ICC-01/18-64, para. 14.

²⁶ ICC-01/18-64, para. 15.

²⁷ ICC-01/18-64, para. 16.

²⁸ The Chamber notes that the Applicants’ document appears to be addressed to Trial Chamber I. However, this seems to be an oversight as the names of the Judges of Pre-Trial Chamber I are indicated on the cover page of Applicants’ document. In any event, Trial Chamber I would not be competent to entertain the appeal as it is not a judicial instance vested with appellate review power under the Statute.

²⁹ See articles 34(b), 39, 81 and 82 of the Statute.

22. Accordingly, the Chamber rejects the ‘Appeal to the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”’ in so far as the Applicants seek to directly appeal the 20 February 2020 Decision before the Chamber or obtain leave to appeal the 20 February 2020 Decision under article 82(1)(d) of the Statute.

23. The Applicants appear also to request an extension of the time limit pursuant to regulation 35(2) of the Regulations.³⁰ The Applicants fail however to demonstrate that they were ‘unable to file the application within the time limit for reasons outside [their] control’ within the meaning of regulation 35(2) of the Regulations.

24. Consequently, the Chamber also rejects the ‘Appeal to the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”’ in so far as the Applicants seek an extension of time after the lapse of the time limit set forth in the 28 January 2020 Order.

³⁰ ICC-01/18-64, para. 16.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the ‘Appeal to the “Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”’.

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 Wednesday, 11 March 2020

At The Hague, The Netherlands