

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/13**

Date: **13 February 2019**

PRE-TRIAL CHAMBER I

Before: Judge Peter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Alapini-Gansou

**SITUATION ON REGISTERED VESSELS OF THE UNION OF THE
COMOROS, THE HELLENIC REPUBLIC OF GREECE AND THE KINGDOM
OF CAMBODIA**

Public Document

Response on behalf of the Government of the Comoros to the “Application pursuant to Article 119(1) of the Rome Statute” and to the “Request for leave to reply to Prosecution filing: ICC-01/13-83”

Source: Rodney Dixon QC, and Stoke White Ltd (London) on behalf of the Government of the Union of the Comoros

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

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor
Mr. James Stewart

Counsel for the Defence

Legal Representatives of Victims

Mr. Rodney Dixon QC

Legal Representatives of the Applicant

Ms. Nitzana Darshan-Leitner
Mr. Nicholas Kaufman

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms. Paolina Massidda

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

States Representatives

Mr. Rodney Dixon QC

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Government of the Union of the Comoros files this Response to the “Application pursuant to Article 119(1) of the Rome Statute”¹ and the “Request for leave to reply to Prosecution filing: ICC-01/13-83”² both submitted to the Court by Shurat Ha-Din – Israel Law Center (the “Applicant”).
2. This Response is filed pursuant to Regulations 24(5), 33 and 34(b) and (c) of the Regulations of the Court.
3. The Government of the Comoros submits that the Article 119(1) Application of Shurat Ha-Din should be dismissed *in limine* as it cannot be submitted and considered by the Court under this provision or any other provision, and thus the Applicant has no standing. The Applicant as made a series of baseless and highly provocative statements under the guise of an “application” to the Chamber, which clearly has no legal foundation. It should be summarily rejected. In addition, the Applicant’s request for leave to reply to the OTP’s response to this Application should be dismissed, as should the new alternative argument (now raised in this application for leave to reply) to treat the observations as though made by an *amicus curiae*.

Response to Shurat Ha-Din – Israel Law Center’s Application under Article 119(1)

4. The Government of the Comoros respectfully submits that the present Application should be dismissed *in limine*. The Comoros supports the Prosecution’s conclusion that “no standing is conferred upon the Applicant by article 119(1)” and that consequently, the application “must be dismissed *in limine*.”³

¹ Application pursuant to Article 119(1) of the Rome Statute, ICC-01/13-82-AnxI, 31 January 2019 [*hereinafter* Article 119(1) Application]. While the date on the Application is 31 January 2019, for the purpose of Regulation 33 of the Regulations of the Court, it is noted that the Application was first notified to the parties by way of a Registry transmission which was circulated to the parties on 1 February 2019. See, Transmission of Three Documents received from the Shurat Ha-Din – Israel Law Center, ICC-01/13-82, 1 February 2019.

² Request for leave to reply to Prosecution filing: ICC-01/13-83, ICC-01/13-84-AnxI, 8 February 2019 [*hereinafter* Leave to Reply].

³ Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din*, ICC-01/13-83, 5 February 2019, para. 2.

5. The Applicant has advanced no proper legal basis at all for being able to proceed under Article 119(1) and to have any standing in the proceedings. The case law cited by the Applicant in no way supports its submission. It is a distinctly contorted and misconceived argument. The Applicant's claim that the jurisprudence in the Bangladesh / Myanmar situation created a "recently recognized right to intervene in a Situation by virtue of Article 119(1)" is plainly wrong.⁴ The Applicant has clearly misapplied and misrepresented⁵ both the Pre-Trial Chamber's Decision concerning jurisdiction in the Bangladesh / Myanmar situation⁶ and the Partially Dissenting Opinion of Judge Marc Perrin de Brichambaut⁷. Nowhere is it held or stated that Article 119(1) provides a free standing right for any applicant to intervene in on-going proceedings in the way the Applicant asserts.
6. The Applicant mistakenly claims that because the Pre-Trial Chamber "entertained lengthy submissions from the 'Shanti Mohila' victims represented by 'Global Rights Compliance'",⁸ this could be construed as giving third parties the right to intervene in proceedings by way of Article 119(1). The Chamber made no such ruling, nor can any be implied. In fact, the Prosecution's request concerning jurisdiction in the Bangladesh / Myanmar situation was grounded on Article 19(3). It did not argue that Article 119(1) could provide the basis for the Chamber's decision.⁹ Instead, it was the Chamber that decided on its own initiative when issuing its decision on 6 September 2018 – after all submissions from the victims and other parties were already made – to rely on Article 119(1).¹⁰ Neither the victims represented by Global Rights Compliance¹¹ nor the victims from Tula Toli¹² sought to make their submissions under, let alone even mentioned, Article 119(1). Instead, the Chamber specifically addressed the issue of victims' standing in the proceedings, and granted¹³ victims the ability to submit observations, under Article 68(3). This provision

⁴ Article 119(1) Application, para. 17.

⁵ Article 119(1) Application, paras. 14-16.

⁶ Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', ICC-RoC46(3)-01/18-37, 6 September 2018.

⁷ Partially Dissenting Opinion of Judge Marc Perrin de Brichambaut, ICC-RoC46(3)-01/18-37-Anx, 6 September 2018.

⁸ Article 119(1) Application, para. 16.

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

¹⁰ Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', ICC-RoC46(3)-01/18-37, 6 September 2018, para. 28.

¹¹ Submissions on Behalf of the Victims Pursuant to Article 19(3) of the Statute, ICC-RoC46(3)-01/18-9, 30 May 2018, para. 3.

¹² Observations on behalf of victims from Tula Toli, ICC-RoC46(3)-01/18-26, 18 June 2018, paras. 68, 86.

¹³ Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', ICC-RoC46(3)-01/18-37, 6 September 2018, paras. 20, 21.

allows the Chamber to permit the “views and concerns of the victims to be presented ... where the personal interests of the victims are affected”.¹⁴ The Chamber also relied on Rule 93 that gives the Chamber “discretion to accept observations presented by victims on any issue and at any stage of the proceedings.”¹⁵

7. In short, Article 119(1) was not relied on to permit victim observations in these proceedings. The argument advanced by the Applicant is completely without foundation, and should be rejected.

Response to Shurat Ha-Din – Israel Law Center’s new alternative argument

8. On 8 February 2019, the Applicant sought leave to reply to the Prosecution’s response to its Article 119(1) Application.¹⁶ This application should also be dismissed as the Applicant has no standing to make such a request in the first instance, and in any event has failed to meet the test for granting leave to reply having not identified any issues within the Prosecution’s response that are “new and distinct issues of law and fact” which the Applicant has “not had an opportunity to address”¹⁷. The Prosecution has simply responded to the Applicant’s arguments on standing; no new, unexpected issues have been raised.¹⁸
9. The Comoros also submits that the Applicant’s new alternative argument should be dismissed. The Applicant asserts that if leave is denied, it “will” ask the Court to treat its observations “as if they were made in the context of a Rule 103 *amicus curiae* request”.¹⁹ The Applicant even goes further in this request for leave to reply to provide certain “*amicus*” observations. Clearly, a request of this nature for leave to reply (in which the Applicant has no standing in the first instance) is not the proper filing or procedure in which to ask to make submissions as an *amicus curiae* (let alone actually make such submissions).

¹⁴ Rome Statute, Article 68(3).

¹⁵ Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’, ICC-RoC46(3)-01/18-37, 6 September 2018, para. 21.

¹⁶ Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din*, ICC-01/13-83, 5 February 2019.

¹⁷ Prosecutor v. Mbarushimana, Decision on the Prosecution’s request for leave to reply to the ‘Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material’, ICC-01/04-01/10-61, 24 February 2011, p. 3-4.

¹⁸ Request to Dismiss *In Limine* an Application under Article 119(1) by *Shurat Ha-Din*, ICC-01/13-83, 5 February 2019, paras. 2-4.

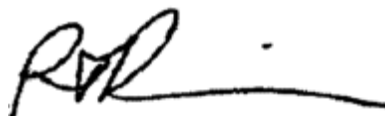
¹⁹ Article 119(1) Application, para. 4.

This new “request” should thus be rejected as well. The Applicant has in any event not satisfied the key requirement for being permitted to make *amicus* observations, namely “whether the relevant application relates to an issue that is actually before the competent Chamber.”²⁰ Nothing in the application for leave to reply identifies any issue which “is actually before the” Pre-Trial Chamber and for which the Applicant could provide “both desirable and appropriate” assistance.²¹

Conclusion

10. For the reasons set out above, the Government of the Comoros submits that:

- (a) The Applicant’s Application under Article 119(1) should be dismissed *in limine*;
- (b) The Applicant’s Request for Leave to Reply should be similarly rejected; and
- (c) The Applicant’s new alternative argument about being treated as an “*amicus*” should be dismissed *in limine*.



Rodney Dixon QC

Counsel on behalf of the Government of the Union of the Comoros

Dated 13 February 2018

London

²⁰ Situation in Darfur, Sudan, Decision on Application under Rule 103, ICC-02/05-185, 4 February 2009, para. 8.

²¹ Prosecutor v. Gaddafi et al., Decision on the Applications of Mishana Hosseinioun and Aisha Gaddafi to submit Amicus Curiae observations to the Chamber, 2 February 2012, ICC-01/11-01/11-49 at p. 4.