

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **19 December 2024**

THE APPEALS CHAMBER

Before: Judge Tomoko Akane, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public

Prosecution request to respond to the “Request by the European Centre for Law & Justice for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103(1) of the Rules of Procedure and Evidence”

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
Mr Karim A. A. Khan KC
Mr Andrew Cayley KC

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives
Office of the Attorney General of Israel

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. SUBMISSIONS

1. The Prosecution requests leave to respond to the European Centre for Law and Justice’s request to make observations as an *amicus curiae* in the Article 19(2) Appeal (the “Request”).¹ If leave is granted, the Prosecution will request dismissal *in limine* of the Request.² The Prosecution will further argue that, in any event, the Request will not assist the Appeals Chamber in its determination of the Appeal, which relates to a narrow question of treaty interpretation for which the Appeals Chamber is well-equipped to decide without further assistance.³

2. To the extent that other interveners may seek leave to provide observations under rule 103 in the Article 19(2) and Article 18 Appeals, the Prosecution requests leave to file a consolidated response to the Request, and other requests, by not earlier than 13 January 2025.

3. In the alternative and should the Appeals Chamber decide to grant the Request, and/or other requests without entertaining a response by the Prosecution, the Prosecution respectfully requests that these observations be permitted to be no longer than five pages each and that the Prosecution be entitled to file a consolidated response by a date set by the Appeals Chamber.

4. Finally, the Prosecution recalls that Pre-Trial Chamber I, in different compositions, has already authorised observations from *amici curiae* under rule 103 of the Rules of Procedure and Evidence on two prior occasions in this Situation, the most recent in the summer recess of 2024. In total, the Prosecution has responded to over 130 observations in these two rule 103 proceedings addressing a variety of topics including the interpretation of articles 18 and 19 of the Statute in the context of this Situation. This is unprecedented and finds no equivalent in any other Situation. The Prosecution respectfully submits that authorisation of a third round of rule

¹ See [ICC-01/18-404-AnxI OA OA2](#) (“Request”), especially para. 1. While this filing has been marked by the Registry as pertaining to both the Article 18 and Article 19 Appeals, the Prosecution notes that the terms of the request appear to relate to the Article 19 Appeal only. See also [ICC-02/05-01/09-51 OA](#), para. 8; [ICC-01/05-01/08-602 OA2](#), para. 7. The Appeals Chamber must grant leave to respond to an application under rule 103.

² Consistently with the Prosecution’s position that Israel’s Article 18 and Article 19(2) Appeals are inadmissible and should be dismissed *in limine*—and the related appeal proceedings be terminated—it follows that requests to provide observations to the merits of these Appeals should likewise be summarily dismissed. See Prosecution’s requests to dismiss *in limine* Israel’s Appeals: [ICC-01/18-391 OA](#) and [ICC-01/18-392 OA2](#).

³ Chambers have required proposed observations under rule 103 to be desirable in assisting them in resolving questions requiring their determination: see e.g. [ICC-02/04-01/15-1955 A A2](#), para. 12; [ICC-02/18-78 OA](#), para. 8; [ICC-01/04-02/06-2569 A2](#), para. 9 and [ICC-01/04-02/06-2554 A2](#), para. 11; [ICC-02/04-01/15-1914 A A2](#), para. 15 and [ICC-02/04-01/15-1884 A](#), para. 19; [ICC-02/17-97 OA OA1 OA2 OA3 OA4](#), para. 31; [ICC-01/11-01/11-675 OA8](#), para. 9; [ICC-02/05-01/09-330](#), para. 1. Chambers have also required that proposed observations under rule 103 are not repetitive: [ICC-01/05-01/08-602 OA2](#), para. 11; [ICC-01/09-01/11-988 OA5](#), para. 12. Chambers have sometimes required that the *amici* possess sufficient qualifications or expertise: [ICC-02/04-01/15-1884 A](#), para. 19; [ICC-01/04-02/06-2554 A2](#), para. 11.

103 observations on the issues under appeal will not only be unnecessary, but it will unduly delay the pursuit of justice for victims in this Situation.

II. RELIEF REQUESTED

5. For these reasons, the Prosecution requests leave to respond to the Request. To the extent that other interveners seek leave to provide observations, the Prosecution requests leave to file a consolidated response to all the requests by not earlier than 13 January 2025. In the alternative and should the Appeals Chamber decide to grant the Request, and other requests, without receiving a response by the Prosecution, the Prosecution requests that interveners' observations be permitted to be no longer than five pages each and that the Prosecution be entitled to file a consolidated response by a date set by the Appeals Chamber.



Karim A.A. Khan KC, Prosecutor

Dated this 19th day of December 2024

At The Hague, The Netherlands