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No.: ICC-01/19

Date: 17 October 2019

PRE-TRIAL CHAMBER III

Before: Judge Olga Herrera Carbuccion, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

**SITUATION IN THE PEOPLE'S REPUBLIC OF BANGLADESH/REPUBLIC
OF THE UNION OF MYANMAR**

Public

**With Confidential *EX PARTE* Annex I only available to the Registry
and Confidential Annex II**

**Public redacted version of "Fourth Registry Report on Victims'
Representations Pursuant to the Pre-Trial Chamber's Decision ICC-01/19-6 of
28 June 2019", 11 October 2019, ICC-01/19-15-Conf**

Source: Registry

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

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I. Introduction

1. The Registry submits the present report, pursuant to Pre-Trial Chamber III's "Decision on the 'Registry's Request for Extension of Notice Period and Submissions on the Article 15(3) Process'" issued on 28 June 2019 ("Chamber" and "Decision of 28 June 2019", respectively),¹ on victim representations, together with its assessment of these representations ("Annex I") and a detailed explanation of the assessment criteria applied ("Annex II").

II. Procedural History

2. On 12 June 2019, the Prosecutor informed the Presidency of her intention to request judicial authorisation to commence an investigation into "crimes within the jurisdiction of the International Criminal Court in which at least one element occurred on the territory of the People's Republic of Bangladesh – a State Party to the Rome Statute – and within the context of two waves of violence in Rakhine State on the territory of the Republic of the Union of Myanmar, as well as any other crimes which are sufficiently linked to these events" pursuant to article 15(3) of the Rome Statute ("Statute").²
3. On 25 June 2019, the Presidency rendered its decision assigning the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar ("Situation") to the Chamber.³

¹ Pre-Trial Chamber III, "Decision on the 'Registry's Request for Extension of Notice Period and Submissions on the Article 15(3) Process'", 28 June 2019, ICC-01/19-6.

² Office of the Prosecutor, "Notice pursuant to regulation 45 of the Regulations of the Court" of 12 June 2019, filed as ICC-01/19-1-Anx on 26 June 2019 (see fn. 3).

³ Presidency, "Decision on the constitution of Pre-Trial Chamber III and on the assignment of the situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar", dated 25 June 2019 and notified on 26 June 2019, ICC-01/19-1.

4. On 26 June 2019, the Registry requested an extension of time for victims to make representations under article 15(3) of the Statute and rule 50(3) of the Rules of Procedure and Evidence (“Rules”) and submitted, for the Chamber’s approval, a draft victim representation form.⁴
5. In its Decision of 28 June 2019, the Chamber extended the time limit for victims to submit their representations to 28 October 2019, authorized the use of the draft representation form previously submitted by the Registry subject to one amendment⁵ and ordered the Registry to submit: i) victims’ representations to the Chamber on a rolling basis on 30 August 2019, 13 and 27 September 2019 and 11 and 31 October 2019, together with a brief preliminary assessment; and ii) a final consolidated report by 31 October 2019.⁶
6. On 4 July 2019, the Office of the Prosecutor (“Prosecution”) submitted its request for authorization of an investigation pursuant to article 15 of the Statute⁷ and notified victims and their representatives of this request (“Prosecution’s Request” and “Prosecution’s Notice to Victims”).⁸

⁴ Registry, “Registry’s Request for Extension of Notice Period and Submissions on the Article 15(3) Process”, 26 June 2019, ICC-01/19-3-Conf. A public redacted version of the document was notified on the same date, ICC-01/19-3-Red.

⁵ Decision of 28 June 2019, para. 17.

⁶ Decision of 28 June 2019, paras. 15 and 19 and page 8.

⁷ Office of the Prosecutor, “Request for authorisation of an investigation pursuant to article 15”, 4 July 2019, ICC-01/19-7.

⁸ Office of the Prosecutor, “Public Notice of the ICC Prosecutor: Victims who have been allegedly forcibly displaced from Myanmar to Bangladesh since at least 9 October 2016 have until 28 October 2019 to send their views to the ICC in the Hague on the opening of an investigation”, 4 July 2019, <https://www.icc-cpi.int/itemsDocuments/2019-07-04-otp-public-notice-bangladesh-myanmar-eng.pdf> (accessed on 30 August 2019).

7. On 30 August, 13 and 27 September, the Registry submitted its first, second and third report (“Third Report”) on victims’ representations, respectively.⁹
8. On 11 October 2019, the Registry transmitted to the Chamber the first batch of victim representations received.¹⁰

III. Classification

9. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this document and its annex II are classified as “confidential”, since they contain sensitive information [Redacted]. The Registry will file shortly a public redacted version of the present document. Moreover, annex I to the present document is classified as “confidential *ex parte*, only available to the Registry”, because it contains confidential information that may lead to the identification of potential victims concerned by the Situation.

IV. Applicable Law

10. The Registry submits the present document in accordance with articles 15(3) and 68(1) of the Statute, rules 16(1) and 85 of the Rules, regulation 23*bis*(1) of the RoC and regulation 102 of the Regulations of the Registry.

⁹ Registry, “First Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019”, 30 August 2019, ICC-01/19-10-Conf. A public redacted version of the document was notified on 3 September 2019, ICC-01/19-10-Red; Registry, “Second Registry Report on Victim Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019”, 13 September 2019, ICC-01/19-11-Conf (“Second Report”). A public redacted version of the document was notified on the same date, ICC-01/19-11-Red; Registry, “Third Registry Report on Victim Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019”, 27 September 2019, ICC-01/19-12-Conf. A public redacted version of the document was notified on 30 September 2019, ICC-01/19-12-Red.

¹⁰ Registry, “First Registry Transmission of Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019”, 11 October 2019, ICC-01/19-14.

V. Submissions

A. Registry activities to engage with potential victims concerned by the Situation

11. [Redacted]¹¹

12. [Redacted] individuals [Redacted] insisted on the fundamental submission that the Rohingya, who had been persecuted for decades on account of their ethnicity and religion,¹² want an investigation by the Court into all potential crimes committed against them. [Redacted] expressed willingness and eagerness to engage with the ICC and explained that bringing the perpetrators to justice is crucial in preventing future crimes from being committed and for the safe and dignified return of the Rohingya to their homeland Myanmar. They also emphasized that it is important that the investigation is timely and that the proceedings are conducted within a reasonable time considering the advanced age of some of the alleged perpetrators and the precarious situation of the Rohingya people.

13. [Redacted]

B. Victim representation forms received

14. To date, the Registry collected twenty-nine victim representation forms [Redacted].¹³ All representation forms are collective. Eighteen forms were

¹¹ See *infra*, para. 14.

¹² Many of the individuals [Redacted] emphasized how important it is for them to be recognized as and called “Rohingya” instead of other denominations, such as “Bengali” or “Khola” – a derogatory Burmese term – or even “Non-Myanmar national Bengali” and “illegal immigrants”.

¹³ The Registry notes that it does not have the capacity to verify the accuracy of the information contained in the representation forms, in particular the number of victims represented and the

submitted in English and eleven in Burmese. Three representations have video annexes.¹⁴

15. [Redacted] VPRS emphasized [Redacted] that the purpose of the Article 15(3) process is not to collect individual and detailed stories of what happened to each and every victim represented in the forms, but that a summary of all alleged crimes committed against the victims would suffice. Importance was placed on the victims' views on the investigation and on any other views and concerns that they would like to share with the ICC Judges at this stage.

16. All representation forms collected so far and transmitted to the Chamber in a separate filing highlight that victims are in favour of the Prosecution's Request. No concern related to the investigation was expressed. This information is outlined in more detail in Annex I.

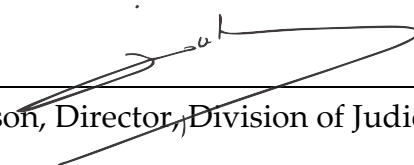
C. Assessment criteria applied by the Registry

17. In accordance with the Decision of 28 June 2019, the VPRS conducted a preliminary assessment of each representation form in order to determine whether the individual or group making the representation falls within the definition of victim under rule 85 of the Rules. Considering the purpose of the Article 15(3) process as set out by the Chamber and given the limited

capacity of the representatives mentioned in the form to represent them. The Registry is applying the same approach and methodology as in previous Article 15(3) processes in the Situations in Kenya, Georgia and Afghanistan based on the applicable standard of proof to these proceedings, namely the intrinsic coherence of the information given by the victims or their representatives. In the same vein, [Redacted], the Registry is not in a position to assess potential residual duplication of certain victims represented in different forms.

¹⁴ [Redacted]

scope of these proceedings, the conditions set out in rule 85 of the Rules were assessed on the basis of the intrinsic coherence of the information given by the victim(s).¹⁵



Marc Dubuisson, Director, Division of Judicial Services

On behalf of

Peter Lewis, Registrar

Dated this 17 October 2019

At The Hague, The Netherlands

¹⁵ Decision of 28 June 2019, para. 20 (referring to: Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, “Order to the Victims Participation and Reparation Section Concerning Victims’ Representations”, 9 November 2017, ICC-02/17-6, para. 14; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, “Order to the Victims Participation and Reparations Section Concerning Victims’ Representations Pursuant to Article 15(3) of the Statute”, 10 December 2009, ICC-01/09-4, para. 8).