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No.: ICC-02/17

Date: 7 December 2017

PRE-TRIAL CHAMBER III

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Chang-ho Chung
Judge Raul C. Pangalangan

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

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

Public redacted version of "First Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 7 December 2017, ICC-02/17-10-Conf

Source: Registry

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, Deputy Prosecutor
Mr Benjamin Gumpert

Counsel for the Defence

Legal Representatives of Victims

Victims' Representatives

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. Introduction

1. Pursuant to Pre-Trial Chamber III's "Order to the Victims Participation and Reparation Section Concerning Victims' Representations" issued on 9 November 2017 ("Chamber" and "Order of 9 November 2017"),¹ the Registry submits the present report 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 30 October 2017, the Prosecutor informed the President of the Court of her decision to request judicial authorisation to commence an investigation into the Situation in the Islamic Republic of Afghanistan ("Situation in Afghanistan" and "Afghanistan", respectively) pursuant to regulation 45 of the Regulations of the Court ("RoC").²
3. On 3 November 2017, the Presidency assigned the Situation in Afghanistan to the Chamber.³
4. On 7 November 2017, the Registry requested an extension of time for victims to make representations under article 15(3) of the Rome 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 and draft guidelines on how to fill in the form ("Request for extension of time").⁴

¹ Pre-Trial Chamber III, "Order to the Victims Participation and Reparation Section Concerning Victims' Representations", 9 November 2017, ICC-02/17-6, para. 16.

² Office of the Prosecutor, "Notice pursuant to regulation 45 of the Regulations of the Court", 9 November 2017, ICC-02/17-1-AnxI.

³ Presidency, "Decision assigning the situation in the Islamic republic of Afghanistan", 9 November 2017, ICC-02/17-1.

⁴ Registry, "Registry's Request for Extension of Notice Period and Submissions on Aspects Related to the Article 15(3) Process", 9 November 2017, ICC-02/17-3-Red.

5. In its Order of 9 November 2017, the Chamber extended the time limit for victims to submit their representations to 31 January 2018, approved the draft representation form and guidelines previously submitted by the Registry and ordered the Victims Participation and Reparations Section (“VPRS”) to: “(i) identify, to the extent possible, the community leaders of the affected groups to act on behalf of those victims who may wish to make representations; (ii) receive and collect victims’ representations, be it collective or individual; (iii) conduct a preliminary assessment on whether the conditions set out in rule 85 have been met; and (iv) transmit incoming representations on a rolling basis, possibly every two weeks, together with a brief preliminary assessment”.⁵
6. On 20 November 2017, the Office of the Prosecutor (“Prosecution”) submitted its request for authorization of an investigation pursuant to article 15⁶ and notified victims and their legal representatives of this request (“Prosecution Request”).⁷
7. On 7 December 2017, the Registry transmitted to the Chamber the first batch of victim representation forms received.⁸

III. Classification

8. Pursuant to regulation 23bis(1) of the RoC, this document is classified as “confidential”, since it contains sensitive information linked to security issues pertaining to the Situation in Afghanistan. Moreover, the annexes to the present document are classified as “confidential *ex parte*, only available to the Registry”, because they contain confidential information that may lead to the identification of victims.

⁵ Order of 9 November 2017, para. 16 and page 8.

⁶ Office of the Prosecutor, “Public redacted version of ‘Request for authorisation of an investigation pursuant to article 15’, 20 November 2017, ICC-02/17-7-Conf-Exp”, 20 November 2017, ICC-02/17-7-Red.

⁷ https://www.icc-cpi.int/itemsDocuments/Afghanistan/171120-afgh-art_15-notice_ENG.PDF

⁸ Registry, “First Transmission to the Pre-Trial Chamber of Victims’ Representations Received Pursuant to Article 15(3) of the Rome Statute”, 7 December 2017, ICC-02/17-10.

IV. Applicable Law

9. The Registry submits the present report 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.

V. Submissions

A. Approach implemented by the Registry to reach out to victims concerned by the Situation in Afghanistan

10. The Registry implemented an open approach and a targeted strategy to ensure that it would reach out to as many victims linked to the Situation in Afghanistan as possible, within the timeframe of the Order of 9 November 2017 and taking into account security concerns and the absence of a field office.
11. The open approach consisted of making the victim representation form immediately available, on 20 November 2017, on the website of the International Criminal Court (“Court”). The Registry will use this form as the principal means of collecting victims’ representations pursuant to article 15(3) of the Statute. The form, which can be used by both individuals and groups of victims, and the guidelines on how to fill it in, are accessible on the Court’s website, in PDF format, in English, Dari, Pashto and Arabic.⁹
12. To further facilitate the collection of victims’ views and concerns in relation to the Prosecution’s Request, the representation form was also made available to

⁹ <https://www.icc-cpi.int/afghanistan>. The victim representation form, guidelines and other guidance materials developed by the Registry were translated into Arabic upon request by organizations particularly working with victims of illegal detention and torture, some of whom are not Afghan nationals. The Arabic translations were made available on the Court’s website on 6 December 2017.

victims on the Court's website in an online format, together with relevant information and questions and answers ("Q&A") that were published on the Court's website in English on 27 November 2017. Dari, Pashto and Arabic translations of the Q&A were posted on the Court's website on 6 December 2017.¹⁰

13. In addition to the open approach described above, the Registry also implemented a targeted strategy in reaching out to victims and victim groups. In order to enhance its capacity to interact with victims and collect as many victims' representations as possible in a secure and efficient manner, the VPRS continues to contact and train a number of organizations with experience in the context of Afghanistan. These activities allow the VPRS to establish a network of reliable intermediaries which may assist in effectively identifying, contacting and helping victims to fill in representation forms. [Redacted].¹¹

14. [Redacted]

15. [Redacted],¹² [Redacted]

16. [Redacted]

17. [Redacted]¹³ [Redacted]¹⁴ [Redacted]

18. [Redacted]

B. Victim representation forms received

19. Between 20 November 2017 (the date that the article 15(3) process was triggered by the Prosecution's Request) and 1 December 2017, the VPRS received five victim representation forms submitted online on behalf of a total of 514 victims. Four of the five representation forms are collective. Two forms were submitted in English, one in Dari and two in Pashto.

¹⁰ <https://www.icc-cpi.int/afghanistan>.

¹¹ [Redacted]

¹² [Redacted]

¹³ [Redacted]

¹⁴ [Redacted]

20. All victims are in favour of the Prosecution's Request and no concerns related to the investigation were expressed. This information is outlined in more detail in Annex I.

C. Assessment criteria applied by the Registry

21. In accordance with the Order of 9 November 2017, the VPRS conducted a preliminary assessment of each representation form in order to assess whether the individual or group making the representation falls within the definition of victims under rule 85 of the Rules.

22. As the Chamber recalled, considering the purposes of the article 15(3) exercise and given the limited 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

23. A detailed explanation of the assessment criteria applied by the Registry is provided in Annex II.



Marc Dubuisson, Director, Division of Judicial Services

per delegation of

Herman von Hebel, Registrar

Dated this 7 December 2017

At The Hague, The Netherlands

¹⁵ Order of 9 November 2017, para. 14.