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No.: ICC-02/17

Date: 5 February 2018

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 two Confidential *EX PARTE* Annexes, only available to the Registry

**Sixth Registry Report on Victims' Representations Pursuant to the Pre-Trial
Chamber's Order ICC-02/17-6 of 9 November 2017**

Source: Registry

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

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**Victims Participation and Reparations
Section**

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I. Introduction

1. Pursuant to Pre-Trial Chamber III's "Order to the Victims Participation and Reparation Section Concerning Victims' Representations" of 9 November 2017 ("Chamber" and "Order of 9 November 2017"),¹ the Registry submits the present report on victims' representations, together with its assessment of these representations ("Annex I") and a list with some factual details on the major incidents reported in the representations ("Annex II").

II. Procedural History

2. In its Order of 9 November 2017, the Chamber 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 of the Rules of Procedure and Evidence ["Rules"] have been met; and (iv) transmit incoming representations on a rolling basis, possibly every two weeks, together with a brief preliminary assessment".²
3. On 7 December 2017, the Registry transmitted to the Chamber the first batch of victims' representation forms received and its first report thereon ("First Report on Representations").³

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

³ 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, and "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-02/17-11-Conf and ICC-02/17-11-Red.

4. On 21 December 2017 and 11 and 25 January 2018, the Registry transmitted to the Chamber the second, third and fourth batches of representations received and its second, third and fourth reports on victims' representations.⁴
5. On 2 February 2018, the Registry transmitted to the Chamber the fifth batch of victims' representation forms received and its fifth report thereon ("Fifth Report on Representations").⁵
6. On 5 February 2018, the Registry transmitted to the Chamber the sixth batch of representations received.⁶

III. Classification

7. Pursuant to regulation 23bis(1) of the Regulations of the Court ("RoC"), 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 potential victims.

⁴ Registry, "Second Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 21 December 2017, ICC-02/17-15 and "Second Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 21 December 2017, ICC-02/17-16-Conf and ICC-02/17-16-Red; "Third Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 11 January 2018, ICC-02/17-17 and "Third Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 11 January 2018, ICC-02/17-18; "Fourth Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 25 January 2018, ICC-02/17-19 and "Fourth Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 25 January 2018, ICC-02/17-20-Conf and ICC-02/17-20-Red.

⁵ Registry, "Fifth Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 2 February 2018, ICC-02/17-21 and "Fifth Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 2 February 2018, ICC-02/17-22-Conf and ICC-02/17-22-Red.

⁶ Registry, "Sixth Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 5 February 2018, ICC-02/17-24.

IV. Applicable Law

8. The Registry submits the present report in accordance with articles 15(3) and 68(1) of the Rome 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. Victim representation forms received

9. The present report is based on 165 victim representation forms submitted on behalf of approximately 211,925⁷ victims, 787 families⁸ and 26 villages⁹. 51 out of the 165 victim representation forms have been submitted online and 114 were collected and sent via email, the majority of them by interlocutors that the VPRS had previously met during its information and training sessions. 136 of the 165 representation forms are collective.

⁷ Five collective representation forms that were submitted by an organisation representing victims referred to “approximately two hundred thousand”, “nearly five thousand”, “approximately two thousand two hundred”, “about two thousand” and “nearly one thousand” potential victims of Rome Statute crimes, respectively. The Registry notes that the information provided is insufficient to assess the exact number of victims represented by these forms; yet, it considers that the information provided allows for a *preliminary* assessment that the conditions set out in rule 85 of the Rules have been met in keeping with the Chamber’s guidance in its Order of 9 November 2017, paras. 14, 15; *see* for further information on the representation form Annex I. It has therefore counted the overall number of victims represented by said five representation forms as 210,200 individuals.

⁸ The information provided in the representation forms on behalf of the 787 families is insufficient to assess with certainty the number of family members. The Registry therefore retained only the number of families represented by the forms. According to UN data, “the average household size in Afghanistan is 7.5 persons [...]. Some 37% of households have ten people or more [...].” See <https://unhabitat.org/books/afghanistan-housing-profile/>, page 15, endnote 31. According to data released by the Central Statistics Organization, Islamic Republic of Afghanistan, the average household size between 2013-2014 was 7.4 individuals. See <http://www.cso.gov.af/Content/files/01.pdf>.

⁹ The information provided in the representation forms on behalf of the 26 villages is insufficient to assess with certainty the number of individuals represented in the absence of reliable statistical data or any further details as to the number of represented victims per village.

10. One individual representation and nine collective representations, submitted on behalf of a total of 29 individuals, indicate that the victims represented therein do not want the ICC Prosecutor to investigate the violence associated with the conflict in Afghanistan. All other victims are in favour of the Prosecutor's request for authorisation of an investigation¹⁰. This information is outlined in more detail in Annex I.

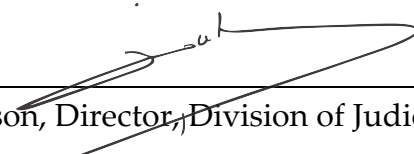
B. Rule 85 Preliminary Legal Assessment by the Registry

11. In accordance with the Order of 9 November 2017, the VPRS conducted a preliminary legal assessment of each representation form in order to assess whether the individual or group making the representation falls within the definition of victim under rule 85 of the Rules. A detailed explanation of the assessment criteria applied by the Registry has been submitted together with the First Report on Representations; a supplemental explanation was submitted together with the Fifth Report on Representations.¹¹

¹⁰ 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.

¹¹ Registry, Confidential *ex parte* Annex II to "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-02/17-11-Conf-Exp-AnxII, and Confidential *ex parte* Annex III to "Fifth Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 2 February 2018, ICC-02/17-22-Conf-Exp-AnxIII.

12. In Annex II to the present report, the VPRS prepared a list of those incidents described in the victim representation forms that have also been reported by the UNAMA in their public reports and/or by other NGOs and main media outlets. The VPRS compiled a short paragraph regarding factual details of major incidents that are referred to in the representation forms and for which research in the sources mentioned above yielded relevant information. In order to further facilitate the Chamber's consideration of the representations submitted, the VPRS listed in Annex II all representations that refer to any of the incidents at the beginning of the description of each such incident. The individual legal assessment in Annex I contains references (in red) to relevant paragraphs in Annex II for ease of (cross-)reference.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Herman von Hebel, Registrar

Dated this 5 February 2018

At The Hague, The Netherlands