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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

**Seventh 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
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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
4. On 21 December 2017, 11 and 25 January, and 2 and 5 February 2018, the Registry transmitted to the Chamber the second to sixth batches of

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.

representations received and its second to sixth reports on victims' representations.⁴

5. On 9 February 2018, the Registry transmitted to the Chamber the seventh and last batch of representations received.⁵

III. Classification

6. 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.

IV. Applicable Law

7. 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 23bis(1) of

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; "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, in the following: "Fifth Report on Representations"; "Sixth Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", dated 5 February 2018 and registered on 6 February 2018 ICC-02/17-24 and "Sixth Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", dated 5 February 2018 and registered on 6 February 2018, ICC-02/17-25.

⁵ Registry, "Seventh Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 9 February 2018, ICC-02/17-28.

the RoC and regulation 102 of the Regulations of the Registry.

V. Submissions

A. Victim representation forms received

8. The present report is based on 309 victim representation forms submitted on behalf of approximately 2,250 individual victims, an organisation representing a large group of victims⁶ and 809 families⁷. 98 out of the 309 victim representation forms were submitted online, 210 were sent *via* email, some of them by interlocutors that the VPRS had previously met during its information and training sessions, and one form was sent by post. 237 of the 309 representation forms are collective.
9. Three collective representations, submitted on behalf of 13 individuals, indicate that the victims represented therein do not want the ICC Prosecutor to investigate the violence associated with the conflict in Afghanistan. In three collective representations, submitted on behalf of 24 individuals, questions 9 to 11 were not answered. Moreover, from the information included in one collective representation introduced on behalf of 150 individuals, it is unclear

⁶ Two collective representation forms that were submitted by an organisation representing victims referred to approximately 422,250 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. The Registry considers, however, 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. The Registry further notes that one other representation introduced by an organisation on behalf of "approximately 7 to 9 million" victims falls within the same category.

⁷ The information provided in the representation forms on behalf of the 809 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>.

whether the victims want or do not want an investigation to commence. All other victims are in favour of the Prosecutor's request for authorisation of an investigation⁸. This information is outlined in more detail in Annex I.

10. The Registry notes that the total number of victim representation forms received in the context of the Afghanistan situation is 794, out of which 41 forms have been assessed by the VPRS as duplicates.
11. The Registry further submits that 54 representations out of the 794 representations received have been assessed by the VPRS as not meeting the conditions set out in rule 85 of the Rules.⁹ These representations are not included in this report. The VPRS stands ready to report in detail on the said forms including their legal analysis upon the Chamber's request.

B. Rule 85 Preliminary Legal Assessment by the Registry


12. 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.¹⁰

⁸ 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.

⁹ This includes representations which fall outside the temporal, territorial or material scope of the situation but also representations introduced by individuals on behalf of, for example, "the people of Afghanistan" or "30 million people- the entire population of Afghanistan", as well as representations introduced by journalists, human rights defenders, etc. From the information provided in these forms, it does not transpire with sufficient clarity that the person(s) submitting the representations or their families/close friends have suffered harm as a result of a crime under the ICC jurisdiction or that they are submitting the said form for victims they have a pre-established relationship with, or at the request/with the consent of victims.

¹⁰ 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-

13. Out of the total number of 794 representations received, 575 forms were received between 25 and 31 January 2018 and 12 forms were received after the deadline. 409 out of these 587 forms required translation from Dari and Pashto.¹¹
14. 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 9 February 2018

At The Hague, The Netherlands

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.

¹¹ The Registry therefore had very limited time at its disposal to meet the Chamber's deadline of 9 February 2018, communicated under separate cover, for transmission of all forms received. A simplified assessment and review process has been adopted to meet the deadline.