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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

**Public redacted version of "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**

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.

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
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

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.

Rules of Procedure and Evidence (“Rules”) and submitted, for the Chamber’s approval, a draft victim representation form (“Request for Extension of Time”).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 Statute (“Prosecution’s Request”) ⁷ and notified victims and their representatives of this request (“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 4 July 2019, the Prosecution also submitted a request seeking amendments of the victim representation form as authorized by the Chamber (“Request on the Representation Form”).⁹
8. On 11 July 2019, the Chamber rejected the Request on the Representation Form.¹⁰

III. Classification

9. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this document is classified as “confidential”, since it contains sensitive information [Redacted]. The Registry will file shortly a public redacted version of the present document.

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.

V. Submissions

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

11. The Registry implemented both an open approach and a targeted strategy to ensure that it would reach out to as many victims linked to the Situation

⁹ Office of the Prosecutor, “Request on the Victim Representation Form”, dated 4 July 2019 and notified on 5 July 2019, ICC-01/19-8 (this document was initially notified as confidential and reclassified as public on 12 July 2019).

¹⁰ Pre-Trial Chamber III, “Decision on the Prosecutor’s ‘Request on the Victim Representation Form’”, dated 11 July 2019 and notified on 12 July 2019, ICC-01/19-9.

as possible, within the timeframe of the Decision of 28 June 2019 and taking into account the challenges reported in its Request for Extension of Time,¹¹ [Redacted].

12. The open approach consisted of making the victim representation form as approved by the Chamber immediately available on 4 July 2019 and simultaneously with the Prosecution's Notice to Victims, on the website of the International Criminal Court ("Court" and "ICC").¹² On 22 July 2019, the victim representation form was also made available in an online format¹³ on the Court's website, to further facilitate the collection of victims' views and concerns in relation to the Prosecution's Request. In July and August 2019 translations of the said form in Burmese, Bangla and Rohingya (the latter translation in audio format) were posted on the website, as well as guidelines on how to fill in the form and a questions and answers document ("Q&A") in English, Burmese, Bangla and Rohingya (again, the latter translation in an audio format). On 16 August 2019, a press release related to the article 15(3) process in the Situation was posted on the website¹⁴ and the information was also disseminated on social media.¹⁵ [Redacted].¹⁶

¹¹ Request for Extension of Time, paras. 14 – 32 (referring to: (i) the large scale of the situation; (ii) the access to the refugee camps during the monsoon season; (iii) the Rohingya language which is an oral language without a standardized written script; and (iv) the extent to which it will be possible to properly engage with Rohingya communities and particularly to interact directly with affected women and children).

¹² <https://www.icc-cpi.int/bangladesh-myanmar> (accessed on 30 August 2019). The form was made available as a downloadable PDF document.

¹³ The online form enables the user to fill in and send the form online through the Court's website without having to print out or fill in any information by hand.

¹⁴ <https://www.icc-cpi.int/Pages/item.aspx?name=190816-bangladesh-myanmar-vprs> (accessed on 30 August 2019).

¹⁵ https://twitter.com/IntlCrimCourt?ref_src=twsrc%5Etfw%7Ctwcamp%5Eembeddedtimeline%7Ctwttr%5Eprofile%3AIntlCrimCourt&ref_url=https%3A%2F%2Fwww.icc-cpi.int%2Fmain;
<https://www.facebook.com/InternationalCriminalCourt/>.

¹⁶ [Redacted].

13. Aware of the language issues¹⁷, the low literacy levels, the extreme poverty of the Rohingya communities, and the logistical challenges (e.g. lack of access to telephones and other technological equipment, poor internet connection etc.) in the refugee camps where these communities are confined,¹⁸ the Registry also implemented a targeted strategy in reaching out to victims and victim groups [Redacted].

14. [Redacted].

B. Key findings [Redacted]

15. [Redacted] confirmed that there is massive interest amongst the Rohingya people to “see a justice process” and to participate in ICC proceedings; however the concept of justice is highly diverse¹⁹ and the level of knowledge of the Court, its mandate and processes is extremely low.²⁰ Moreover, there is confusion between the article 15(3) process and the previous proceedings under regulation 46(3) of the RoC²¹ and other initiatives aimed at preserving evidence and victims’ testimonies (e.g. the UN Human Rights Council-mandated Independent International Fact-Finding Mission on Myanmar and the UN Independent Investigative Mechanism for Myanmar, the Independent Commission of Enquiry, [Redacted], etc.).

¹⁷ The language challenges were detailed in the Request for Extension of Time, paras. 24-28.

¹⁸ See, *inter alia*, Internews, “Information Needs Assessment”, January-April 2019, https://internews.org/sites/default/files/2019-08/Rohingya_Info_Needs_Assessment_2019.pdf (accessed on 30 August 2019).

¹⁹ For instance, the concept of justice may be perceived by many as being able to repatriate back to the previous locations in Myanmar into a safe environment; the concept of a potential criminal process against perpetrators of ICC crimes is but one of the justice concepts [Redacted].

²⁰ See also, Request for Extension of Time, para. 17.

²¹ Office of the Prosecutor, “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, 9 April 2018, ICC-RoC46(3)-01/18-1.

16. In this sense, the Court faces a fundamental challenge in explaining in simple words what the ICC stands for, what is entailed by a criminal trial and what the current stage of proceedings is. [Redacted]. The difference between the present process and a potential future investigation in the event of an authorisation by the Chamber is being diligently clarified [Redacted],²² including the fact that the Registry does not seek to obtain from victims any form of evidence regarding potential ICC crimes. The challenge of potential confusion of the ICC's role where different actors and help organisations operate is further compounded by the low level of information and education prevailing amongst the Rohingya population in the camps.²³

17. [Redacted] victims' expectations are very high and that there is a danger of misconceptions, in particular that the Court can solve the multiple issues the Rohingya community is facing, including a re-installment of their rights in Myanmar including citizenship, and a safe repatriation to their previous homes and settlements. [Redacted] caution not to generate unrealistic expectations and to convey [Redacted], from the outset, that the ICC process: (i) can take a long time and may not result in someone being found guilty for any crimes that they may have been affected by; (ii) is not related to and does not ensure that the Rohingya people's rights will be restored, or that they will be safely repatriated to Myanmar; and (iii) will not impact on their access to aid and assistance in Bangladesh.

18. [Redacted] information about the article 15(3) process needs to be provided and circulated as widely as possible in order to ensure that there are no misconceptions, that the circulation of rumours, as well as attempts to

²² [Redacted]. Relevant short key message documents are also handed out.

²³ See supra, para. 13.

obstruct the process based on any such misconceptions are kept at a minimum. [Redacted].

19. [Redacted].

20. [Redacted].

21. [Redacted].

22. [Redacted] the high interest in submitting video and audio representations in light of the language challenges reported in the Request for Extension of Time.²⁴ [Redacted]. Guidance for the audio/video representations has been included in the guidelines on how to fill in the victim representation form²⁵ and the Q&A.²⁶ The VPRS will continue providing information [Redacted] in order to avoid a situation in which these types of representations do not contain the required information, or in which long videos/audio recordings in Rohingya are received and cannot be translated on time for the relevant Registry filings. [Redacted].

23. [Redacted].

C. Recent developments

24. [Redacted] the voluntary repatriation to Myanmar of 3,450 individuals assessed as eligible to return was due to start on 22 August 2019, should the said individuals wish to return.²⁷ [Redacted] a worsening crisis in

²⁴ Request for Extension of Time, paras. 24-28.

²⁵ <https://www.icc-cpi.int/itemsDocuments/bangladesh-myanmar/vprs-guide-form-eng.pdf> (accessed on 30 August 2019).

²⁶ https://www.icc-cpi.int/itemsDocuments/bangladesh-myanmar/2019_Form-OA_ENG.pdf (accessed on 30 August 2019).

²⁷ See <https://www.dropbox.com/s/ylz9ywf7g16px5y/Voluntary%20returns%20audio%2016-8-19%20-%20English%20transcript.pdf?dl=0> (accessed on 30 August 2019).

Myanmar and that the current conditions for repatriation do not guarantee the safety and rights of the Rohingya people. They further stated that the current levels of engagement of the Rohingya living inside the camps in Bangladesh “do not afford them their right to make informed decisions about their future, including voluntary return.”²⁸ [Redacted] repatriation efforts were unsuccessful.²⁹

25. [Redacted]. On 25 August a “Genocide Remembrance Day” rally was attended by high numbers of Rohingya asking for their rights to be restored, justice and protection, amongst other demands.³⁰

26. [Redacted].

D. Victim representation forms

27. To date, the VPRS has received one victim representation form in Burmese on behalf of 25 individuals, which will be submitted to the Chamber once translated into English.

28. [Redacted], the low number of victim representations received thus far is not the result of a lack of interest or eagerness to engage with the Court,

²⁸ “Two Years On: Rohingya Deserve Justice, A Place at the Table 61 NGOs warn of worsening crisis in Myanmar; call for refugees’ engagement on safe, voluntary returns”, 21 August 2019, https://reliefweb.int/sites/reliefweb.int/files/resources/NGO%20Joint%20Statement%20for%2020%20Year%20Mark_Final%2020.8.19-reliefweb_original.pdf (accessed on 30 August 2019). See also BBC Media Action and Translators without Borders, “What Matters? Humanitarian Feedback Bulletin on Rohingya Response - Repatriation”, 21 August 2019, <https://app.box.com/s/yh9xn529vkrxfn9lf90nuqjx078aaufw> (accessed on 30 August 2019).


²⁹ See also <https://www.theguardian.com/world/2019/aug/22/rohingya-refugees-turn-down-second-myanmar-repatriation-effort>.

³⁰ [Redacted]. See <https://www.aljazeera.com/news/2019/08/day-thousands-rohingya-rally-bangladesh-camps-190825055618484.html> (accessed on 30 August 2019) and <https://www.france24.com/en/20190825-bangladesh-rohingya-protest-myanmar-genocide-refugees> (accessed on 30 August 2019).

but the consequence of the complexity of the process, as well as the challenges already mentioned above³¹ [Redacted].

29. [Redacted]. The VPRS has received clear indications that [Redacted] will submit victims' representations in September 2019.

30. The Registry will keep the Chamber informed of all developments in its upcoming reports on victims' representations.



Marc Dubuisson, Director, Division of Judicial Services

On behalf of

Peter Lewis, Registrar

Dated this 3 September 2019

At The Hague, The Netherlands

³¹ See supra, para. 11.