



Original: English

**No. ICC-01/19
Date: 20 January 2020**

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

Order on Information and Outreach for the Victims of the Situation

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Defence Support Section

Victims and Witnesses Section
Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**
Philipp Ambach

Other

PRE-TRIAL CHAMBER III of the International Criminal Court (‘Court’) issues this ‘Order on Information and Outreach for the Victims of the Situation’.

I. Procedural history

1. On 4 July 2019, the Office of the Prosecutor (the ‘Prosecutor’) requested the Chamber to authorise the commencement of an investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (the ‘Bangladesh/Myanmar Situation’).¹
2. Between August and November 2019, the Victims Participation and Reparations Section (the ‘VPRS’) of the Registry, transmitted to the Chamber reports² and representations on behalf of victims³ of the Bangladesh/Myanmar Situation.
3. On 14 November 2019, the Chamber authorised the commencement of an investigation in the Bangladesh/Myanmar Situation. It also ordered the VPRS to

¹ Request for authorisation of an investigation pursuant to article 15, ICC-01/19-7 and 10 annexes. *See also* Decision on the Prosecutor’s Request for an Extension of the Page Limit, 28 June 2019, ICC-01/19-5.

² First Registry Report, ICC-01/19-10-Conf (a public redacted version was filed on 3 September 2019); Second Registry Report, ICC-01/19-11-Conf (a public redacted version was filed on the same day); Third Registry Report, ICC-01/19-12-Conf (a public redacted version was filed on 30 September 2019); Fourth Registry Report, ICC-01/19-15-Conf with Conf and Conf-Exp Annexes I and II (a public redacted version was filed on 17 October 2019); Final Consolidated Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019, 31 October 2019, ICC-01/19-22 with confidential annex I, confidential *ex parte* annex II only available to the Registry and confidential annex III (notified on 1 November 2019).

³ First Registry Transmission of Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019, ICC-01/19-14, with 32 confidential *ex parte* annexes only available to the Registry; Second Registry Transmission of Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019, ICC-01/19-21, with 176 confidential *ex parte* annexes only available to the Registry; Third Registry Transmission of Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019, 7 November 2019, ICC-01/19-24 with 86 confidential *ex parte* annexes only available to the Registry; Fourth Registry Transmission of Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6 of 28 June 2019, 12 November 2019, ICC-01/19-25 with 24 confidential *ex parte* annexes only available to the Registry.

communicate its decision to the organisations and individuals who had submitted victims' representations.⁴

II. Analysis

4. The Chamber notes Articles 21(3), 54, 57(3)(c) and 68(3) of the Rome Statute (the 'Statute'), Rules 16 and 86 of the Rules of Procedure and Evidence (the 'Rules') and Regulations 5*bis*, 8 and 103 of the Regulations of the Registry.
5. The Chamber recalls that, in its decision authorising the investigation, it had considered that, while it had reached its decision on the basis of the material provided by the Prosecutor, the abundant information contained in the victims' representations before it would have also allowed it to reach the same conclusion.⁵ It also considered that the victims' representations provided valuable information relevant to the scope of the investigation,⁶ gravity and the interests of justice.⁷ In its assessment of the temporal scope of the jurisdiction, the Chamber found that 'any crimes committed after the issuance of this decision remain within the temporal scope of the authorised investigation, as long as such crimes are sufficiently linked to the situation identified'.⁸
6. Having authorised the investigation in the Bangladesh/Myanmar Situation, the Chamber considers it appropriate to provide guidance to the Registry on certain matters in respect of information and assistance to victims insofar as it concerns their potential participation in future judicial proceedings. This is because the crimes under investigation have a continuous nature and it would be appropriate for the victim communities to continue to be informed and, thereby, be able to effectively communicate with the Court and especially the Prosecutor. In addition to this, potential crimes committed following the issuance of the decision authorising investigation are also within the scope of the investigation and the victims thereof have not yet been in a position to present their accounts

⁴ Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, ('Decision authorising investigation').

⁵ Decision authorising investigation, para. 19.

⁶ Decision authorising investigation, paras 18-33.

⁷ Decision authorising investigation, paras 34-39.

⁸ Decision authorising investigation, para. 133.

and views on the authorisation. Noting that the victims in the present situation have expressed their willingness and eagerness to engage with the Court,⁹ it is possible that these victims may also elect to participate in future stages of the proceedings.

7. In this regard, the Chamber recalls that pursuant to Article 68(3) of the Statute, the Court has an obligation to permit victims' views and concerns to be presented and considered at stages of the proceedings determined to be appropriate. The Chamber considers that a meaningful exercise of this obligation is premised on the victims having access to complete and accurate information about their role at the Court during the various stages of the proceedings. Outreach facilitates and enables victims to enjoy and exercise their rights and the Court to fulfil its duties. In this regard, the Chamber notes that in a situation where a state referred the situation to the court, the Pre-Trial Chamber I has considered that it is advisable for the victims to be provided with sufficient and accurate information about the Court's role and activities.¹⁰ It added that victims also have the right to provide information to, receive information from and communicate with the Court, regardless and independently from judicial proceedings.¹¹ The Chamber considers that the need to be informed is equally applicable in the present situation, particularly in respect of victims of crimes that took place following the authorisation of the investigation. Likewise, outreach to victims should enable all the organs of the Court to better understand the concerns and expectations of victims, so that coordinated, effective and clear activities are organised in the context of the authorised investigation.
8. The Chamber further notes that pursuant to Article 54 of the Statute, during the investigation stage the Prosecutor has the primary obligation to ensure the effective investigation and prosecution of crimes. However, in order to respect the interests and personal circumstances of victims and potential witnesses, and in order to make more efficient use of the Court's limited resources, outreach

⁹ See also Decision authorising investigation, para. 38.

¹⁰ Pre-Trial Chamber III, *Situation in the State of Palestine*, Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, ICC-01/18-2 ('*Palestine Decision*'), para. 10.

¹¹ *Palestine Decision*, ICC-01/18-2, para. 10.

and information activities should be conducted with the coordinated efforts of the different sections and organs of the Court vested with the responsibility to protect victims.¹² Most importantly, all organs of the Court, including all sections of the Registry (particularly VPRS, the Victims and Witnesses Unit and the Public Information and Outreach Section), should convey a consistent message to the affected communities and avoid contradictions that could impact the work of the court and the well-being of victims or other persons that could be affected by the activities of the Court.¹³

9. As noted above, prior to the decision of the Chamber authorising the investigation, the VPRS interacted with victims and later informed them of the Chamber's decision. This two-way communication must continue and the Registry shall establish, as soon as practical, and in consultation and collaboration with the Prosecutor, a system of public information and outreach activities with the affected communities and particularly with the victims of the Bangladesh/Myanmar Situation. Pursuant to Regulation 103 of the Regulations of the Registry, the Registry shall ascertain and take into account factors relating to the specific context of the present situation, including the languages spoken, local customs and traditions, literacy rates and access to media and technology.

10. The aforesaid outreach activities should clearly inform the affected community and victims, in a manner and language that is both appropriate and accessible, about: (a) the general parameters of the Court's jurisdiction in the Bangladesh/Myanmar Situation; (b) the Court's general mission, the role and duties of its organs, and (c) the different stages of the proceedings and victims' role, including their right to express their views and concerns. Outreach activities must also aim at responding to victims' concerns and expectations. Moreover, bearing in mind the role of the Prosecutor at this stage of the proceedings, victims should be reminded that in case they want to communicate information to the Court for the purpose of the investigation or prosecution,

¹² *Palestine* Decision, para. 13.

¹³ Pre-Trial Chamber I, *Prosecutor v. Al Hassan*, Decision Establishing the Principles Applicable to Victims' Applications for Participation, 24 May 2018, ICC-01/12-01/18-37-tENG ('*Al Hassan* Decision'), paras 12, 15.

such information should be addressed directly to the Prosecution. However, the Registry should make all reasonable efforts to facilitate communication between victims and the Prosecutor.

11. Furthermore, in performing their duties the Registry may communicate with intermediaries in the field, including community leaders and organisations.¹⁴ Should the Registry decide to communicate with such intermediaries, the Chamber instructs it to provide such persons with adequate information, training and support so that their collaboration with the Court is carried out pursuant to the statutory framework and under the oversight of the Court.¹⁵
12. The Registry shall periodically inform the Chamber about the progress of and challenges to its outreach and information activities in the Bangladesh/Myanmar Situation. The Chamber shall also be seized immediately if there is any development that requires judicial determination, particularly to provide for the protection and privacy of victims and potential witnesses pursuant to Article 57(3)(c) of the Statute. An initial report shall be filed by 6 July 2020. Periodic reports shall be filed at least every six months.

For these reasons, the Chamber hereby

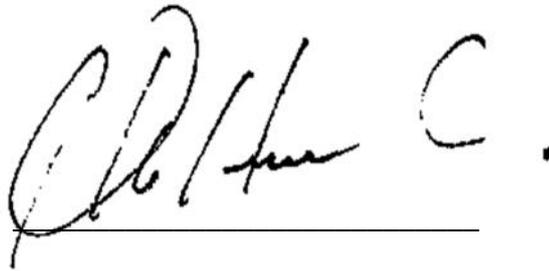
ORDERS the Registry to establish, as soon as practical, and in consultation and collaboration with the Prosecutor, a system of public information and outreach activities with the affected communities and particularly with the victims of the Bangladesh/Myanmar Situation following the issuance of the Decision authorising investigation; and

ORDERS the Registry to inform the Chamber pursuant to paragraph 12 above.

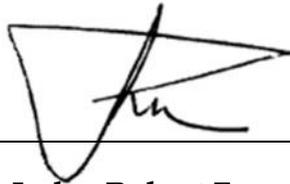
¹⁴ See Registry's Request for Extension of Notice Period and Submissions on the Article 15(3) Process, 26 June 2019, ICC-01/19-3, para. 16.

¹⁵ Pre-Trial Chamber II, Situation in Uganda, Decision on Victim's Participation in Proceedings Related to the Situation in Uganda, 9 March 2012, ICC-02/04-191, para. 24. See also *Al Hassan* Decision, ICC-01/12-01/18-37-tENG, paras 40-41.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to read 'C. Herrera Carbuccia', written over a horizontal line.

Judge Herrera Carbuccia, Presiding Judge

A handwritten signature in black ink, appearing to read 'R. Fremr', written over a horizontal line.

Judge Robert Fremr

A handwritten signature in black ink, appearing to read 'G. Henderson', written over a horizontal line.

Judge Geoffrey Henderson

Dated this 20 January 2020

At The Hague, The Netherlands