



Original: English

No.: ICC-01/21

Date: 15 June 2021

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Reine Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

Public

Public redacted version of “Registry Request for Extension of Notice Period and Submissions on the Article 15(3) Process”, 15 July 2021, ICC-01/21-8-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. Pursuant to regulations 24*bis* and 35(1) of the Regulations of the Court (“RoC”), the Registry hereby requests an extension of time for victims to make representations under article 15(3) of the Rome Statute (“Article 15(3) process” and “Statute”) and rule 50(3) of the Rules of Procedure and Evidence (“Rules”) to extend to altogether three months.

II. Procedural History

2. On 14 June 2021, the Office of the Prosecutor (“OTP”) filed a public redacted version of its request pursuant to article 15(3) of the Statute for Pre-Trial Chamber I’s (“Chamber”) authorisation to open an investigation into the Situation in the Republic of the Philippines (“Situation” and “Philippines”) between 1 November 2011 and 16 March 2019 (“OTP Request”).¹

III. Classification

3. Pursuant to regulation 23*bis*(1) of the RoC, this document is classified as “confidential” [Redacted].
4. The Registry will file shortly a public redacted version of the present request.

IV. Applicable Law

5. The Registry submits the present request in accordance with articles 15(3) and 68(1) of the Statute, rules 16(1), 50(1) and (3) and 85 of the Rules and regulations 23*bis*(1), 24*bis*, 35(1) and 50(1) of the RoC.

¹ Office of the Prosecutor, “Public redacted version of ‘Request for authorisation of an investigation pursuant to article 15(3)’, 24 May 2021, ICC-01/21-7-SECRET-Exp”, 14 June 2021, ICC-01/21-7-Red.

V. Submissions

A. Security situation and cooperation

6. On 14 June 2021, the Victims Participation and Reparations Section (“VPRS”) liaised with relevant sections of the Registry and requested assessments of the current security situation in the Philippines. Initial risk assessments are currently carried out [Redacted] .
7. [Redacted].^{2 3}

B. Challenges

8. Given the “secret” classification of the OTP Request prior to its public issuance on 14 June 2021, the VPRS has not been in a position to conduct any preparations for the Article 15(3) process [Redacted]. As a result, the VPRS is not in a position in the present filing to lay out in detail, as previously done in the situations in Afghanistan⁴ and Bangladesh/Myanmar,⁵ the challenges it expects to face in designing and conducting the Article 15(3) process in the present situation. [Redacted]^{6 7}
9. [Redacted].

C. Request for extension of time

² [Redacted].

³ [Redacted].

⁴ Registry, “Public redacted version of ‘Registry’s Request for Extension of Notice Period and Submissions on Aspects Related to the Article 15(3) Process’, 7 November 2017, ICC-01/17-3-Conf”, 7 November 2017, ICC-02/17-3-Red.

⁵ Registry, “Public redacted version of ‘Registry’s Request for Extension of Notice Period and Submissions on the Article 15(3) Process’, 26 June 2019, ICC-01/19-3”, 26 June 2019, ICC-01/19-3-Red.

⁶ [Redacted].

⁷ [Redacted].

10. Pursuant to regulation 50(1) of the RoC, the time limit for victims to make representations under article 15(3) of the Statute is 30 days following the Prosecutor's public notice to victims.
11. Considering the factors and circumstances set out above, the Registry submits that the default 30-day time limit will be insufficient to produce a meaningful sample of victims' representations.
12. [Redacted].⁸
13. Consequently, the Registry submits that good cause is shown for extending the time limit for victims to submit representations to altogether three months following the Prosecutor's notice to victims pursuant to rule 50(1) of the Rules.
14. The Registry takes due note of the provision in the latest updated version of the Chambers Practice Manual ("CPM") according to which "the written decision of the Pre-Trial Chamber under Article 15, paragraph 4 shall be delivered within 120 days from the date the Prosecutor's request for authorisation of an investigation is filed with the Court" and "any extension must be limited to exceptional circumstances and explained in detail in a public decision."⁹ This provision acknowledges the need for judicial expediency while at the same time providing for time to carry out relevant victim consultations. The Registry is mindful in this regard that a timely decision on the OTP request is also in the interest of victims. Yet, based on previous experience, the Registry underlines the importance of proper consultation with victims and the positive impact that a carefully designed and implemented article 15 victim consultation process can have on victims'

⁸ [Redacted].

⁹ ICC, Chambers Practice Manual, 29 November 2019, para. 2 (page 1), https://www.icc-cpi.int/about/judicial-divisions/Pages/chambers_practice_manual.aspx.

lives and their involvement in the ICC process. The Registry recalls the notable added value of victims' representations in article 15(3) proceedings, which was also highlighted most recently by Pre-Trial Chamber III in the Bangladesh/Myanmar situation.¹⁰ Still, said consultation process requires time, and recent article 15(3) processes before the ICC have demonstrated that the default 30-day timeline was manifestly inadequate.¹¹ The CPM would seem to take stock of this in providing for possible notice period extensions within the 120-day period, notably if one considers that Pre-Trial Chamber III issued its decision authorising an investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar two weeks after the last Registry report on victims' representations and just over four months after the Prosecutor's notice to victims.¹²

15. However, the above is premised on the reading of rule 50(1) of the Rules that generally, the Prosecutor's request for authorisation of an investigation and her notice thereof to victims would be filed concomitantly. Yet, in the present case the Registry notes that the OTP Request was filed as 'secret' on 24 May 2021 and that the public redacted version was filed on 14 June 2021 - three weeks later. If the 120-day time limit prescribed in the CPM were indeed to be calculated from the date of the OTP Request, this would go to the immediate detriment of victims as it would result in three weeks less of

¹⁰ Pre-trial Chamber III, "Order on Information and Outreach for the Victims of the Situation", 20 January 2020, ICC-01/19-28, para. 5.

¹¹ Most recently, regarding the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, *see* 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, providing for a notice period for victims of almost four months. *See* previously in the Afghanistan Situation Pre-Trial Chamber III, "Order to the Victims Participation and Reparation Section Concerning Victims' Representations", 9 November 2017, ICC-02/17-6, extending the notice period to a time frame of almost three months.

¹² Pre-Trial Chamber III, "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", 14 November 2019, ICC-01/19-27, para. 6. The Prosecutor had provided notice to victims on 4 July 2019.

a possible time frame during which victims can reach out to the Court with their views and concerns regarding a potential investigation. The Registry therefore respectfully requests that the Chamber consider its 120-day time limit to commence at the date of *public* issuance of the OTP Request; this way the requested three-month notice period could be accommodated by the Chamber within the overall 120-day timeframe; the time lapse between the confidential issuance of the OTP Request and its publication would not count to the victims' detriment. Alternatively, the Registry submits that good cause is shown for the Chamber to extend its own 120-day time line to issue a decision subsequent to the requested extended notice period, due to the exceptional circumstances of the present Situation.

D. Victim representation form

16. The Registry respectfully proposes to use in this Situation the victim representation form¹³ and the guidelines for victims/representatives on how to fill in the form used¹⁴ as they were used in the Bangladesh/Myanmar situation,¹⁵ with the necessary minor adjustments to the current Situation.¹⁶ The information included in the representation form will enable the Registry to assess whether the criteria set out in rule 85 of the Rules are met,¹⁷ and to report to the Chamber on the victims' views on the OTP Request.

¹³ <https://www.icc-cpi.int/itemsDocuments/bangladesh-myanmar/vprs-form-eng.pdf>.

¹⁴ <https://www.icc-cpi.int/itemsDocuments/bangladesh-myanmar/vprs-guide-form-eng.pdf>.

¹⁵ This form was developed based on the Registry's previous experience in the article 15(3) representation collection processes in Kenya, Georgia and Afghanistan.

¹⁶ In addition to the obvious changes in the wording of the introductory part and of question 11, the VPRS will also make some minor technical changes to address issues identified during the Article 15(3) process in the Bangladesh/Myanmar situation.

¹⁷ In assessing whether the criteria are met, the Registry will use the same standard of proof previously used by Pre-Trial Chambers in relation to the representations submitted in the context of the Kenya, Côte d'Ivoire, Georgia and Afghanistan situations.

17. The Registry respectfully requests the Chamber's approval to use the representation form and to apply minor amendments, if necessary, considering particularly also any language-related challenge.
18. The representation form will be made available in English and Tagalog, for download and print-out on the ICC web page.¹⁸ Moreover, an online process will allow the form to be filled in on the ICC webpage without being downloaded. [Redacted].¹⁹ The guidelines on how to fill in the victim representation form in the abovementioned languages will also be made available on the ICC website.
19. The Registry also stands ready to receive and process representations made in any manner other than by standard form, e.g. audio, video or other electronic format.

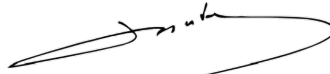
E. Subsequent steps

20. The Registry suggests transmitting to the Chamber the received representations on a rolling basis, together with a brief preliminary assessment including, *inter alia*, some statistical information on the type of representations received, the languages in which the representations were made, victims' gender, age, ethnicity, locations, and the scope of the alleged crime(s). Where audio and/or video files are received in any other language than English, a transcription of the file in English will be submitted to the Chamber.

¹⁸ Translations into other Filipino languages may follow as necessary.

¹⁹ [Redacted].

21. The Registry proposes to submit its final consolidated report on all victims' representations received at the latest two weeks after the deadline for victims to submit representations.²⁰



Marc Dubuisson, Director, Division of Judicial Services

On behalf of

Peter Lewis, Registrar

Dated this 15 June 2021

At The Hague, The Netherlands

²⁰ This will mostly depend on the total number of representations received, their format and the languages in which they are submitted.