

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-RoC85-01/19**

Date: **10 May 2023**

**THE PRESIDENCY**

**Before:** Judge Piotr Hofmański, President  
Judge Luz del Carmen Ibáñez Carranza, First Vice-President  
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

**SITUATION IN THE PEOPLE'S REPUBLIC OF BANGLADESH / REPUBLIC OF  
THE UNION OF MYANMAR**

**Public Redacted Version of**

**Motion for Review of the Registrar's Decision on Legal Aid  
With Confidential Annexes 1 to 3**

**Source:** Legal Representative of Victims

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

The Office of the Prosecutor

Legal Representatives of the Victims

The Office of Public Counsel for  
Victims

The Office of Public Counsel for the  
Defence

States Representatives

*Amicus Curiae* Representatives

## REGISTRY

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Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations  
Section

Other

## 1 INTRODUCTION

1. This motion is filed pursuant to Regulation 85(3) of the Regulations of the Court by the Legal Representative (“LRV”) of victims who have been actively participating in the *Bangladesh/Myanmar Situation*. The LRV seeks the Presidency’s review of a decision refusing legal aid (“Registrar’s Decision”) which was issued on 25 April 2023 by the Registry’s Council Support Section (“CSS”) on behalf of the Registrar.
2. The Registrar’s Decision takes the position that legal aid can *never* be available to victims participating in a situation outside of an active case. The LRV requests the Presidency to rule that this wholesale rejection of *all* legal aid for victims at the investigation stage is wrong in law, and to order the Registrar to issue a new decision on the merits of the LRV’s application.

## 2 CLASSIFICATION

3. This filing is marked as “confidential” pursuant to Regulation 23 *bis* of the Regulations of the Court because it makes reference to [REDACTED]. Annexes 1 to 3 also contain contact details, travel plans and personal information. A public redacted version of the motion is filed simultaneously.

## 3 PROCEDURAL HISTORY

4. On 12 April 2023, the LRV submitted a request for legal aid (“Legal Aid Request”, Annex 1) to CSS. The Legal Aid Request explained that [REDACTED]. The victim lives in one of the refugee camps in Cox’s Bazar District of Bangladesh. The Legal Aid Request sought limited funds for the sole purpose of enabling the LRV and a team member to be present in Bangladesh [REDACTED].
5. On 25 April 2023, the LRV received the Registrar’s Decision, by email from CSS (Annex 2, comprising correspondence with CSS, at page 2). It rejected the Legal Aid Request outright based on the stage of proceedings. The LRV notes that no

question was raised about the indigence of the victims, which appears to be agreed.

6. On 1 May 2023, CSS confirmed that:

“the decision of 25 April 2023 is to be considered as the Registrar’s decision for the purposes of Regulation 85(1) of the Regulations of the Court.”<sup>1</sup>

7. Later on 1 May 2023, the LRV sent a letter to the Registrar, seeking reconsideration or review of the decision sent by CSS (“Request for Reconsideration or Review”, Annex 3 to this filing). In light of the email of 1 May 2023 from CSS, the LRV noted that the deadline for seeking review by the Presidency would be 10 May 2023 unless a fresh decision was issued by the Registrar. She requested the Registrar to inform her by 5 May 2023 whether he would issue a fresh decision.

8. At the time of filing, the LRV has received no response to the Request for Reconsideration or Review from the Registrar or CSS .

9. On 2 May 2023, CSS confirmed to the LRV that, regarding her clients’ applications for participation: “the application forms you submitted have not (yet) been transmitted to the Chamber.” And also that “the VPRS has informed the Chamber about them in a filing and transmitted its preliminary legal analysis by filing of 14 June 2018 – of which you have been notified.”<sup>2</sup>

#### 4 RELEVANT BACKGROUND

10. The LRV has represented victims from the village of Tula Toli in Myanmar since 2018. A more detailed account of this representation is contained in the Legal Aid Request (Annex 1), paragraphs 1-10. However, most relevant to the present motion are the following points:

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<sup>1</sup> Email from CSS to the LRV, 1 May 2023 at 16:52.

<sup>2</sup> Email from CSS to the LRV, 2 May 2023 at 16:13 (See Annex 2, p.1).

11. On 12 June 2018, the LRV submitted written applications for participation from ten individual victims to the Registry, along with powers of attorney. The victims were assigned the numbers a/60011/18 to a/60020/18.
12. At that time, proceedings concerning the Court's jurisdiction were occurring under Regulation 46(3). The *Situation in Bangladesh/Myanmar* had not yet been opened. On 14 June 2018, the Registry reported to Pre-Trial Chamber I (responsible for the jurisdiction proceedings) that it had received the victim application forms, and that they had been assessed as complete and linked to the relevant crimes.<sup>3</sup> The Registry annexed its assessments of the individual applications in relation to the definition of "victim" under Rule 85,<sup>4</sup> but did not transmit the application forms to the Pre-Trial Chamber.
13. Since June 2018 the LRV has on several occasions litigated on the victims' behalf before the Court, both during the jurisdiction proceedings under Regulation 46(3) and later within the *Situation in Bangladesh/Myanmar*.<sup>5</sup> The LRV's filings have been accepted and considered by Pre-Trial Chamber I in the Regulation 46(3) proceedings,<sup>6</sup> and by Pre-Trial Chamber III in the *Situation in Bangladesh/Myanmar*.<sup>7</sup>

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<sup>3</sup> *Request Under Regulation 46(3) of the Regulations of the Court*, [Information on Victims' Applications Received in relation to the "Prosecution's Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute" notified on 9 April 2018 \(ICC-RoC46\(3\)-01/18-1\)](#), ICC-RoC46(3)-01/18-19, 14 June 2018 (reclassified as public on 19 June 2018), paras 6, 12-14, 17.

<sup>4</sup> *Ibid.*, para. 1.

<sup>5</sup> *Request Under Regulation 46(3) of the Regulations of the Court*, [Observations on behalf of victims from Tula Toli](#), ICC-RoC46(3)-01/18-26, 18 June 2018; *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [Representations of victims from Tula Toli](#), ICC-01/19-19, 23 October 2019; *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [Victims' joint request concerning hearings outside the host state](#), ICC-01/19-34, 4 August 2020.

<sup>6</sup> *Request Under Regulation 46(3) of the Regulations of the Court*, [Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute"](#), ICC-RoC46(3)-01/18-37, 6 September 2018, especially at para. 21.

<sup>7</sup> *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [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, 14 November 2019, especially at paras 8, 125, 126, and 133; *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [Corrected version of "Decision on Victims' joint request concerning hearings](#)

14. The LRV has also continued to undertake other aspects of her mandate. She has met with officials from the OTP and Registry to advance her clients' interests. She has provided advice and information to her clients in person, in Bangladesh, and remotely, through intermediaries and video calls.
15. Between 2018 and early 2020, the LRV received external funding from a philanthropic organization. That funding ended in January 2020. Since then, the LRV and her team have worked *pro bono* and covered costs (interpretation, travel *etc*) from their personal funds.
16. Since this external funding ended, the LRV has largely been able to determine the timing of her activities, and in this way to somewhat manage costs. However, the need has now arisen to undertake travel to Bangladesh at a time and for a duration outside the LRV's control, [REDACTED]. Considering that her professional obligations require her presence in Bangladesh [REDACTED], a limited and specific legal aid request was made.

## 5 THE SUBSTANCE AND EFFECT OF THE REGISTRAR'S DECISION

17. In order to identify why the Registrar's Decision is in error, it is necessary to first clarify what, in substance, it says.

### 5.1 *Blanket denial of legal aid at the situation level*

18. The first key feature of the Registrar's Decision is that it imposes a blanket denial of any legal aid for victims participating before the Court at the "situation" level.
19. The Registrar's Decision first states directly that legal aid is not permitted at this stage. It is said that the Registry's Single policy document on the Court's legal aid system<sup>8</sup> (referred to as the "LAP") "does not foresee the provision of legal assistance paid by the Court to (potential) victims at the investigations/interview stage", and that "legal aid funds may be provided to a team representing victims

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[outside the host State" \(26 October 2020, ICC-01/19-38\)](#), ICC-01/19-38-Corr, 27 October 2020, paras 16-19.

<sup>8</sup> [Registry's single policy document on the Court's legal aid system](#), ICC-ASP/12/3, 4 June 2013.

at the *pre-trial stage of a case*, and not investigation in a Situation". [emphasis original]

20. The Registrar's Decision then asserts that legal aid can only be granted to victims

"once a (Pre-) Trial Chamber renders a decision on the participation of victims in the relevant proceedings. Per the LAP, this formal decision triggers potential financial assistance within the context of the LAP."

No authority is provided for this proposition, and it is unclear what kind of (Pre-) Trial Chamber decision the Registrar's Decision considers is lacking. Indeed, Pre-Trial Chamber III *has* twice issued decisions permitting victims to participate in this situation.<sup>9</sup> The Registrar's Decision may therefore intend to refer to (1) a decision on individual victim applications; or (2) a generic decision on how victim participation operates in a particular situation. (Regardless, the link between such a decision and the granting of legal aid is not explained, nor is any authority or justification provided for such an approach.)

21. The Registrar's Decision goes even further and states that "there are no Legal Representatives of Victims as such in the Situation in question, in the absence of any decision otherwise". It is again unclear what nature of "decision" is referred to. If the sentence is intended to mean that victims can only have legal representatives pursuant to a judicial decision on their representation, this would be contrary to Rule 90(1), and also surprising in light of the Registry's own practice of advising lawyers to submit powers of attorney during the

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<sup>9</sup> *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [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, 14 November 2019, especially at paras 8, 125, 126, and 133; *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [Corrected version of "Decision on Victims' joint request concerning hearings outside the host State" \(26 October 2020, ICC-01/19-38\)](#), ICC-01/19-38-Corr, 27 October 2020, paras 16-19.

investigation stage.<sup>10</sup> The LRV infers that the Registrar's Decision here again means either a decision on individual victim applications or a generic decision on how victim participation operates in this situation

22. The reasons described in the preceding two paragraphs operate as a further blanket prohibition on legal aid at the situation level, by their necessary consequence. This is because individual application forms for participation are not transmitted by the Registry to the Pre-Trial Chamber for determination in the context of a situation; nor is it the practice of Pre-Trial Chambers to issue general decisions about victim participation at this stage of proceedings.
23. During the early years of the Court's work, individual application forms *were* routinely transmitted and judicially determined at the level of a situation, outside a case.<sup>11</sup> Legal aid was also made available to victims who were recognised through this process.<sup>12</sup> However, when victim application numbers increased it became apparent that the number of applicants in some situations may reach the millions. Individually determining all victim applications within a situation was

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<sup>10</sup> *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [Public redacted version of "Registry's Second Report on Information and Outreach Activities"](#), 18 December 2020, ICC-01/19-39, ICC-01/19-39-Red, 18 December 2020, para. 17.

<sup>11</sup> See, as a small example: *Situation in Uganda*, [Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081 to a/0104/06 and a/0111/06 to a/0127/06](#), ICC-02/04-101, 10 August 2007; *Situation in Darfur, Sudan*, [Decision on Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07](#), ICC-02/05-111, 6 December 2007; *Situation in the Democratic Republic of the Congo*, [Corrigendum to the "Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06"](#), ICC-01/04-423-Corr-tENG, 31 January 2008; *Situation in Uganda*, [Decision on victims' applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07](#), ICC-02/04-172, 21 November 2008.

<sup>12</sup> See for example: *Situation in the Democratic Republic of the Congo*, [Reasons for the Decision on the "Request for Review of the Registrar's Decision of 28 March 2008 on the Application for Legal Assistance Paid by the Court Filed by Mr Keta on behalf of Victims a/0016/06, a/0018/06, a/0021/06, a/0025/06, a/0028/06, a/0031/06, a/0032/06, a/0034/06, a/0042/06, a/0044/06, a/0045/06, a/0142/06, a/0148/06, a/0150/06, a/0188/06, a/0199/06, a/0228/06 under Regulation 85\(3\) of the Regulations of the Court"](#), ICC-01/04-559, 18 February 2009.



therefore deemed an inefficient means by which to manage victim participation at this stage.

24. In a series of decision between 2010 and 2012, Pre-Trial Chambers I and II directed the Registry to refrain from the continuous transmission of applications received outside of a case, and instead to transmit only when required by a Chamber.<sup>13</sup> Since those decisions, it appears that no Pre-Trial Chamber has requested the transmission of victim applications, and accordingly, that no applications have been transmitted. Neither has any Pre-Trial Chamber since then issued a broad procedural decision on victim participation at the situation level.
25. These procedural changes were not intended to – and did not – end victim participation at the situation level (on which see further below at paragraphs 45-48). However, the change in procedure does mean that if victims can only (a) be legally represented; and (b) receive legal aid *after* an individual judicial determination of their applications, or after the issuance of a situation-wide decision on victim participation (as the Registrar’s Decision appears to claim), this has the effect that victims may not be legally represented or receive legal aid at the situation level.
26. The procedural requirements for victims’ legal aid at the situation level which are relied on in the Registrar’s Decision may well have been relevant before 2010. Today, however, these requirements refer to procedural steps which in practice never occur at the situation level.

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<sup>13</sup> *Situation in the Republic of Kenya*, [Decision on Victims’ Participation in Proceedings Related to the Situation in the Republic of Kenya](#), ICC-01/09-24, 3 November 2010; *Situation in the Central African Republic*, [Decision on Victims’ Participation in Proceedings Related to the Situation in the Central African Republic](#), ICC-01/05-31, 11 November 2010; *Situation in the Democratic Republic of the Congo*, [Decision on Victims’ Participation in Proceedings Related to the Situation in the Democratic Republic of the Congo](#), ICC-01/04-593, 11 April 2011; *Situation in Libya*, [Decision on Victim’s Participation in Proceedings Related to the Situation in Libya](#), ICC-01/11-18, 24 January 2012; *Situation in Uganda*, [Decision on Victims’ Participation in Proceedings Related to the Situation in Uganda](#), ICC-02/04-191, 9 March 2012.

27. The LRV therefore submits that the Registrar's Decision amounts to a blanket denial of legal aid for victims at the situation level.

## 5.2 *Claim of impermissibility*

28. The second key feature of the Registrar's Decision is that it does not purport to be an exercise of discretion. Rather, it explicitly states (in its first paragraph) that "we *cannot* grant [the request for legal aid]". [emphasis added]

29. The substance of the Registrar's Decision therefore is that the Registry is *not permitted* to grant legal aid to victims at the situation level.

## 6 ERRORS IN THE REGISTRAR'S DECISION

30. In claiming that victims' legal aid is prohibited at the situation level, the Registrar's Decision both misinterprets the LAP, and adopts a position which is contrary to the Court's system of victim participation.

### 6.1 *The Registrar's Decision is based on a misinterpretation of the LAP*

31. As set out above, the Registrar's Decision claims that the LAP prohibits legal aid for victims at the situation stage in two ways. It states that the LAP:

- (1) Prohibits the Registrar from granting legal aid for victims before the pre-trial stage of a case; and
- (2) Prohibits the Registrar from granting legal aid to a victim prior to a "decision" from the Pre-Trial Chamber.

32. In fact the LAP does neither of these things. The following submissions address in turn each of these two assertions from the Registrar's Decision.

#### 6.1.1 *The LAP and victims' legal aid at different stages of proceedings*

33. To support the claim that the LAP prohibits legal aid for victims before the pre-trial stage of a case, the Registrar's Decision refers only to paragraphs 55-58 of the LAP, and especially paragraph 55. Far from indicating that legal aid cannot be provided at the situation stage, these paragraphs say *nothing* about the

situation/investigation stage. Neither do they purport to comprehensively identify at which stages of proceedings legal aid is and is not available.

34. Paragraphs 55-58 are contained in a section of the LAP which is headed "Legal aid resources: team composition and investigation budget". It provides non-exhaustive explanations of the extent of legal aid resources provided during the main stages of proceedings in a case. These paragraphs do not appear to be relevant to decisions under Regulation 85(1) on the *availability* of legal aid. They very clearly concern questions of the *scope* of legal aid (relevant to decisions under Regulation 83).
35. Moreover, on their face, paragraphs 55-58 are not intended to be read as exhaustive, and neither have they previously been interpreted as such by the Registry. For example, paragraphs 55-58 make no mention of victims' legal aid during the appeal stage of proceedings in a case. Yet legal aid is routinely made available for LRVs during such proceedings.
36. Nothing in paragraphs 55-58 addresses the question of whether legal aid is available at the situation stage, much less *prohibits* legal aid at this stage.
37. Indeed, the LAP makes no express mention of how legal aid is to be handled in respect of victims at the situation level. However, other parts of the LAP apply to legal aid *generally*, without reference to stages of proceedings. The LRV submits that it is to these parts of the LAP that regard must be had, in the absence of express guidance. Most relevantly:
38. Paragraph 9 of the LAP sets out the principles according to which legal aid decisions are to be made. One such principle is "flexibility", referring to mechanisms "that are flexible enough to adapt to situations as they arise".
39. Further in this vein, Section V of the LAP on "Additional means" (paragraphs 66 to 76) provides that a person who is receiving legal assistance may make any other requests for legal aid, which fall outside the standard scope of legal aid

regularly provided. In other words, paragraphs 55-58 are not exhaustive as to the scope of legal aid which can be provided. Additional requests may always be considered. This section of the LAP does not refer to any limitations regarding stages of proceedings.

40. Finally, before the question of the extent or scope of legal aid arises, there is a question precedent of whether it should be granted at all. On that matter, the LAP appears to assume that when victims are indigent they will receive legal aid: its primary focus prior to considering scope is the question of indigence. And in paragraph 20 the LAP states that:

“experience before the Court has demonstrated that in order to ensure the effective exercise of the rights afforded to victims under the Court’s legal framework, the Court must ensure that legal aid resources are made available to indigent victims.”

41. The LRV therefore submits that there is a strong presumption that where participating victims are indigent, they will be provided with at least some legal aid. The current legal aid policy does not exhaustively detail the scope of that legal aid and says nothing about how it is to be determined at the situation stage. However, Section V leaves open the possibility for the Registrar to make *ad hoc* allocations of legal aid as required for the effective representation of victims at any stage of proceedings.

#### 6.1.2 *The LAP and victim participation decisions*

42. The Registrar’s Decision claims that it is the issuance of “a decision on the participation of victims” by the a Chamber which “triggers potential financial assistance within the context of the LAP.” No reference is given. That is presumably because the LAP nowhere refers to Pre-Trial Chamber decisions on victim participation and their relevance to legal aid. More specifically, nowhere does the LAP *require* a decision (of any kind) from the Pre-Trial Chamber before legal aid can be provided.

### 6.1.3 *Conclusions regarding the LAP*

43. For these reasons the LRV submits that the Registrar's Decision is based on a misinterpretation of the LAP. While the LAP does not specifically address how legal aid for victims at the situation stage is to be managed, it does not prohibit the grant of such legal aid. Rather it emphasizes flexibility and provides mechanisms for legal aid to be granted as and when required.

### 6.2 *A blanket prohibition on legal aid at this stage would defeat victims' rights as provided for in the ICC's legal framework*

44. As set out in paragraphs 20 to 25 above, the Registrar's Decision amounts to a total rejection of legal aid for victims at the situation level. However, victim participation is permitted at the situation level (and without requiring a gateway decision of the Pre-Trial Chamber). The approach set out in the Registrar's Decision denies legal aid for *all* of this situation-level participation, with the real potential to undermine victim participation in a manner incompatible with the Court's statutory framework.

#### 6.2.1 *Victims are permitted to participate at the situation stage*

45. Victims participate in ICC proceedings pursuant to article 68(3) of the Statute. This article applies at any stage of proceedings before the Court. And while Rule 89 establishes a process for the judicial determination of individual victim applications, Rule 93 allows a Chamber to hear from "other victims" as appropriate. Pre-Trial Chambers I and III both considered that these provisions permitted the LRV to be heard on behalf of her victim clients, even though victim applications had neither been transmitted nor determined in the situation, and no general situation-wide decisions on victim participation procedures had been issued.<sup>14</sup>

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<sup>14</sup> See: *Request Under Regulation 46(3) of the Regulations of the Court*, [Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute"](#), ICC-RoC46(3)-01/18-37, 6 September 2018, especially at para. 21; *Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar*, [Corrected version of "Decision on Victims' joint request concerning hearings](#)

46. Beyond the present situation, consistent Appeals Chamber jurisprudence in the *Afghanistan Situation* has recognized the possibility of victims participating in the situation, again in the absence of application decisions or an overarching decision on victim participation.<sup>15</sup> Also in the *Afghanistan Situation*, the Presidency, while urging that clear guidelines should be established on victims' participation, explained that regarding situation-level victim participation:

“...even if the status of the individuals who are represented by counsel will not be determined immediately, chambers have the responsibility to take into account the submissions with which they are seized, and allow the counsel to make submissions before the status of their clients is determined.”<sup>16</sup>

47. This approach is logical: some of the victims' most important interests are not divisible by reference to the stage of proceedings and can be threatened before victim application forms are transmitted to any chamber. To take an example: if a victim is at risk on account of the activities of the Court, that victims' lawyer may act to advise and take instructions from the victim, engage with the Victims' and Witnesses Section, and then – if necessary – seize the relevant Chamber. There is no reason why this should be possible at the pre-trial or trial stages, but not possible at an earlier stage of proceedings. It would be illogical to deny victims standing based only on the stage of proceedings. It would be equally illogical to deny victims the legal representation which is required to effect such standing.

48. The Registry itself has, at other times, not only recognised the existence of legal representatives of victims in this situation,<sup>17</sup> but also highlighted the importance

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[outside the host State” \(26 October 2020, ICC-01/19-38\)](#), ICC-01/19-38-Corr, 27 October 2020, paras 16-19.

<sup>15</sup> See *Situation in the Islamic Republic of Afghanistan*, [Order on the conduct of the appeal proceedings](#), ICC-02/17-200, 23 November 2022, especially at para. 2.

<sup>16</sup> *Situation in the Islamic Republic of Afghanistan*, [Decision on ‘Motion Seeking Remedies for Repeated Administrative Violations’, dated 28 January 2022, \(ICC-02/17-183-Conf-Anx1\) annexed to ‘Registry Transmission of a Document submitted before the Presidency’, dated 4 March 2022 \(ICC-02/17-183\)](#), ICC-02/17-193, 7 July 2022, para. 27.

<sup>17</sup> See for example the following filings in the *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*: [Public redacted version of “Registry’s First Report on Information and](#)

of their role. For example, in the Registry's Observations on the Victims' Joint Request Concerning Hearings outside the host State, the Registry identified various scenarios in which LRVs would be expected to be actively involved at the situation stage.<sup>18</sup>

### 6.2.2 *The blanket denial of legal aid would defeat victims' rights*

49. As highlighted above (at paragraph 40) the LAP recognizes (in its paragraph 20) that victims' participation is effectively impossible without legal aid.

50. There is no question that victims cannot fund their own legal representation. And litigation funders and private donors are typically reluctant to provide funding for legal work which does not have the potential to result in a payment of costs or financial compensation. The consequence is that most counsel trying to assist victims at the situation level do so without funding. This raises serious challenges about the sustainability of the work, often in the very situations where victims will require support and reassurance over the many years which they may have to wait before pre-trial proceedings occur. It also means that the vast majority of victims are left unrepresented, being unable to find counsel who are willing to make a significant a long-term time commitment *pro bono*, and to spend their own funds on costs such as travel and interpretation.

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[Outreach Activities", 6 July 2020, ICC-01/19-33](#), ICC-01/19-33-Red, 6 July 2020, para. 24; [Public redacted version of "Registry's Second Report on Information and Outreach Activities", 18 December 2020, ICC-01/19-39](#), ICC-01/19-39-Red, 18 December 2020, paras 4, 5, 17; [Public redacted version of "Third Registry Report on Information and Outreach Activities", 18 June 2021, ICC-01/19-45-Conf](#), ICC-01/19-45-Red, 18 June 2021, paras 15, 16; [Public redacted version of "Fifth Registry Report on Information and Outreach Activities", 17 June 2022, ICC-01/19-47-Conf](#), ICC-01/19-47-Red, 17 June 2022, para. 12; [Public redacted version of the "Sixth Registry Report on Information and Outreach Activities", 16 December 2022, ICC-01/19-48-Conf](#), ICC-01/19-48-Red, 16 December 2022, para. 12. The Registry has also provided the LRV (and her team members) with letters attesting to privileges and immunities as "Legal Representative appointed by victims in proceedings before the International Criminal Court", and reported to Pre-Trial Chamber III that it advises counsel teams on how to establish their relationship of representation with victims through the submission of powers of attorney: [Public redacted version of "Registry's Second Report on Information and Outreach Activities", 18 December 2020, ICC-01/19-39](#), ICC-01/19-39-Red, 18 December 2020, para. 17.

<sup>18</sup> *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, [Registry's Observations on the Victims' Joint Request Concerning Hearings outside the host State \(ICC-01/19-34\)](#), ICC-01/19-37, 21 September 2020, paras 22, 32, 39, 58.

51. The LRV sincerely appreciates the difficult policy decisions faced by the Registry in deciding how to provide sufficient legal aid to victims at this stage of proceedings without overwhelming the Court's limited budget. However, the difficulty of crafting a perfect policy for legal aid at the situation level is not a reason to simply provide *no* legal aid at this stage of proceedings.
52. The LRV is concerned by the possibility that the Registrar's Decision intends to refuse legal aid where judicial decisions on victim applications have not been made, even without knowing or checking whether those applications had ever been put before the Chamber for a determination.<sup>19</sup> In 2018, the Registry informed Pre-Trial Chamber I that the LRV's clients' applications had been assessed as complete and linked to the relevant crimes.<sup>20</sup> This is a statement from the Registry that the victims meet the definition in Rule 85 and should be granted status if the Rule 89 procedure is ever undertaken. The Registrar's Decision now ignores this substantive position, and instead insists on a procedure which the Chambers have explicitly held to be unnecessary, and over which the victims have no control. Such an approach is inconsistent with the very purpose of legal aid, being to make victims' rights achievable in practice.
53. In light of this approach, the LRV considers it necessary to seek a direction from the Presidency that victims may receive legal aid in respect of participation in a situation, and that this is not contingent on the existence of a prior decision by a Pre-Trial Chamber. Such a direction would not automatically necessitate significant payments from the already overstretched legal aid budget. It would, however, enable at least some legal aid to be provided in cases, like the present

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<sup>19</sup> The correspondence in Annex 2 makes clear that at the time of issuing the Registrar's Decision, CSS was not aware of the status of these applications. It took a week for CSS to obtain this information from the Victims Participation and Reparations Section and provide it to the LRV.

<sup>20</sup> The Registry reported that the applications were complete "even applying ... the *prima facie* standard used to assess applications for participation in the proceedings during the pre-trial and trial phases of proceedings." See *Request Under Regulation 46(3) of the Regulations of the Court, [Information on Victims' Applications Received in relation to the "Prosecution's Request for a Ruling on Jurisdiction under Article 19\(3\) of the Statute" notified on 9 April 2018 \(ICC-RoC46\(3\)-01/18-1\)](#)*, ICC-RoC46(3)-01/18-19, 14 June 2018 (reclassified as public on 19 June 2018), paras 12-14, 17.



one, in which legal representatives have discrete funding needs in order to fulfil their professional obligations to their victim clients.

## 7 RELIEF SOUGHT

54. For the above reasons, the LRV respectfully requests the Presidency to:

Quash the Registrar's Decision and direct the Registrar to issue a new decision based on the position that legal aid may be granted to victims participating at the situation level.

Respectfully submitted,



Megan Hirst

Dated this 10<sup>th</sup> day of May 2023  
At The Hague, The Netherlands