

Pursuant to Pre Trial Chamber I's Instruction dated 15 November 2023, this document is reclassified as Public.

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/19  
Date: 13 November 2023

**PRE-TRIAL CHAMBER I**

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

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

**Confidential**

**Corrigendum to the "Request to appear pursuant to regulation 81(4)(b) of the  
Regulations of the Court" (No. ICC-01/19-55-Conf, dated 10 November 2023)**

**Source:** Office of Public Counsel for Victims

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

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**REGISTRY**

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**Registrar**

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**Detention Section**

**Victims Participation and Reparations  
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Mr Philipp Ambach

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## I. INTRODUCTION

1. Pursuant to regulation 81(4)(b) of the Regulations of the Court (the "Regulations"), the Principal Counsel of the Office of Public Counsel for Victims (the "OPCV" or the "Office") requests to appear before Pre-Trial Chamber I (the "Chamber") to represent the general interest of the victims in relation to the "Request for the Adoption of a Protocol and for Access to the Confidential Record" (the "Request")<sup>1</sup> in the Situation in the People's Republic of Bangladesh / Republic of the Union of Myanmar (the "Situation in Bangladesh/Myanmar" or the "Situation").

2. The matter raised in the Request is inherently a cross-cutting issue in all situations and should be comprehensively addressed and discussed before the Chamber. Since the issues raised in the Request have a clear bearing on the interests of victims in this and in other situations, the appearance of Counsel of the Office would be instrumental to duly represent their general interest and provide the Chamber with a meaningful contribution from the victims' perspective. In this regard, the Principal Counsel notes that the lawyers filing the Request have also asked the Chamber to consider receiving submission by the OPCV, amongst others.<sup>2</sup>

## II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the Regulations, this document is filed as "Confidential", as it refers to a filing bearing the same classification. However, the Office indicates that the submission can be reclassified as public.

## III. PROCEDURAL HISTORY

3. On 14 November 2019, Pre-Trial Chamber III authorized the Prosecutor to proceed with an investigation for the alleged crimes within the ICC's jurisdiction in

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<sup>1</sup> See the "Registry's Transmission of a 'Request for the Adoption of a Protocol and for Access to the Confidential Record'", No. ICC-01/19-52-Conf-Anx1, 2 November 2023 (the "Request").

<sup>2</sup> *Idem*, para. 55.

the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar.<sup>3</sup>

4. On 2 November 2023, the Registry transmitted the Request for the Adoption of a Protocol and for Access to the Confidential Record, received by two lawyers representing victims.<sup>4</sup>

5. On 8 November 2023, the Prosecution filed the "Prosecution's Request pursuant to regulation 35 for an extension of the time limit to respond to the Submission for the Adoption of a Protocol and for Access to the Confidential Record", seeking an extension of one week.<sup>5</sup>

#### IV. SUBMISSIONS

##### 1. The OPCV's duty to appear in respect of specific issues

6. Pursuant to regulation 81(4)(b) of the Regulations, "[t]he tasks of the Office of Public Counsel for victims shall include: [...] [a]ppearing, on the instruction or with the leave of the Chamber, in respect of specific issues".<sup>6</sup> This provision was amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be initiated either upon instructions of the Chamber or upon request of the Office itself. Trial Chamber I confirmed that the OPCV can appear in respect of specific issues, *inter alia*, by filing "an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims

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<sup>3</sup> See the "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" (Pre-Trial Chamber III), [No. ICC-01/19-27](#), 14 November 2019.

<sup>4</sup> See the "Registry's Transmission of a 'Request for the Adoption of a Protocol and for Access to the Confidential Record'", *supra* note 1.

<sup>5</sup> See the "Prosecution's Request pursuant to regulation 35 for an extension of the time limit to respond to the Submission for the Adoption of a Protocol and for Access to the Confidential Record", No. ICC-01/19-53-Conf, 9 November 2023.

<sup>6</sup> See regulation 81(4)(b) of the Regulations of the Court, [Doc. ICC-BD/01-05-16](#).

or any individual victims (this will usually relate to issues of general importance and applicability)".<sup>7</sup>

7. In the past, the Office requested and was granted leave to appear on specific issues pertaining to the general interest of the victims.<sup>8</sup> In other instances, the Office appeared at the request of Chambers.<sup>9</sup> Said practice reflects the obligation binding on the OPCV to provide, where appropriate, assistance to victims, in accordance with its role and mandate before the Court. In this regard, the Principal Counsel recalls that the OPCV was established as an independent permanent body within the Court "*able to provide expert advice and assistance*" on victims' issues.<sup>10</sup> Since the Office's inception, the practice of the Court and the responsibilities entrusted with the OPCV by both the Chambers and the victims have greatly contributed to the development of such expertise.

8. By way of examples, the Office was invited to file its observations before the Appeals Chamber in the appeal brought by the Prosecutor in the Situation in the Islamic Republic of Afghanistan against the Pre-Trial Chamber II's decision related to

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<sup>7</sup> See the "Decision on the role of the Office of Public Counsel for Victims and its request for access to documents" (Trial Chamber I), [No. ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

<sup>8</sup> See, *inter alia*, the "Decision on the 'Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan' (ICC-02/17-35) and on the 'Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court' (ICC-02/17-39)" (Pre-Trial Chamber II), [No. ICC-02/17-43](#), 12 June 2019; the "Decision on the OPCV's request to participate in the reparations proceedings" (Trial Chamber I), [No. ICC-01/04-01/06-2858](#), 5 April 2012; the "Decision on the OPCV's 'Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims' application process'" (Pre-Trial Chamber III), [No. ICC-02/11-01/11-57](#), 13 March 2012; the "Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)" (Trial Chamber II), [No. ICC-01/04-01/07-1205](#), 12 June 2009, which *inter alia* granted the OPCV's Request to appear filed on 20 May 2009 ("*Demande du BCPV afin d'être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007*", [No. ICC-01/04-01/07-1160](#), 20 May 2009); and the "Order on the Office of Public Counsel for Victims' request filed on 21 November 2007 (Trial Chamber I), [No. ICC-01/04-01/06-1046](#), 27 November 2007, para. 2.

<sup>9</sup> See, *inter alia*, the transcripts of the hearing held on 30 October 2007, [No. ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 20 to 24; and the Transcripts of the hearing held on 4 December 2007, [No. ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 52 to 54.

<sup>10</sup> See FULFORD (A.), "The role of the Office of Public Counsel for Victims in trial proceedings", in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

the resumption of the investigation pursuant to article 18(2) of the Statute.<sup>11</sup> In analogous proceedings in the Situation in The Philippines, the OPCV has been granted leave by the Appeals Chamber to file observations in relation to the general interests of victims pursuant to regulation 81(4)(e) of the Regulations, along with the victims' views and concerns collected by the VPRS.<sup>12</sup> More recently, the OPCV was invited to file its observations in the appeals proceedings in the Situation in the Bolivarian Republic of Venezuela.<sup>13</sup>

## 2. Appropriateness of the OPCV's appearance before the Chamber

9. In accordance with the Office's duty to provide assistance to victims and their legal representatives, the Principal Counsel finds it appropriate to request to appear before the Chamber under regulation 81(4)(b) of the Regulations to represent the general interest of the victims in relation to the Request. This would be also in line with the recent ruling by the Appeals Chamber in the Situation in The Philippines, recognising the specific mandate of the Office and finding that it was in the interest of justice to authorise it to file written submissions under regulation 81(4)(e) of the Regulations.<sup>14</sup>

10. The Chamber would benefit from receiving the OPCV's observations on the Request since the matter is inherently a cross-cutting issue in all situations and should be comprehensively addressed, integrated, and possibly mainstreamed throughout all situations before the Court, involving diverse actors and often thousands of victims. The handling of confidential information, contact with potential witnesses, and interactions with represented victims at early stages of the proceedings - like during

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<sup>11</sup> See the "Submissions on behalf of victims pursuant to the "Order on filing of observations on the Prosecutor's notice of discontinuance of the appeal" (No. ICC-02/17-208), [No. ICC-02/17-210 OA5](#), 1 February 2023, para. 11.

<sup>12</sup> See the "Decision on requests for victims' involvement and access to filings" (Appeals Chamber), [No. ICC-01/21-66 OA](#), 21 March 2023, para. 24.

<sup>13</sup> See the "Decision on the OPCV's 'Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court'" (Appeals Chamber), No. [ICC-02/18-54 OA](#), 21 July 2023, para. 7.

<sup>14</sup> See the "Decision on requests for victims' involvement and access to filings, *supra* note 12, para. 12.

an investigation - are critical components that impact the fairness, efficiency, and integrity of proceedings at the Court. These aspects are not isolated to individual cases but have a ripple effect on the broader situations under consideration.

11. Given the diverse backgrounds, needs, and vulnerabilities of victims, a comprehensive protocol may contribute to ensure that the rights and well-being of victims are consistently protected. In this regard, the OPCV's unique expertise, extensive representation across various situations, and commitment to a victim-centric approach make its inclusion in the relevant discussions appropriate. The OPCV involvement may also prevent oversights, facilitate coordination, and possibly contribute to the development of protocols that align with the Court's commitment to justice and victims' rights.

12. Finally, the Principal Counsel notes that the lawyers who filed the Request – recognising that the issue is general in nature – also asked the Chamber to consider receiving submissions by the OPCV, amongst others, for a comprehensive discussion of the matter.

## V. CONCLUSION

13. For the foregoing reasons, the Principal Counsel respectfully requests the Chamber to be authorised to appear in these proceedings pursuant to regulation 81(4)(b) of the Regulations by providing written submissions in the matter within a deadline set by the Chamber.



Paolina Massidda  
Principal Counsel

Dated this 13<sup>th</sup> day of November 2023

At The Hague, The Netherlands