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No.: ICC-02/17

Date: 2 February 2018

PRE-TRIAL CHAMBER III

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Chang-ho Chung
Judge Raul C. Pangalangan

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

With three Confidential *EX PARTE* Annexes, only available to the Registry

Public redacted version of "Fifth Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 2 February 2017, ICC-02/17-22-Conf

Source: Registry

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

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**Victims Participation and Reparations
Section**

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I. Introduction

1. Pursuant to Pre-Trial Chamber III's "Order to the Victims Participation and Reparation Section Concerning Victims' Representations" of 9 November 2017 ("Chamber" and "Order of 9 November 2017"),¹ the Registry submits the present report on victims' representations, together with its assessment of these representations ("Annex I"), a list with some factual details on the major incidents reported in the representations ("Annex II") and an additional explanation of the assessment criteria applied ("Annex III").

II. Procedural History

2. In its Order of 9 November 2017, the Chamber ordered the Victims Participation and Reparations Section ("VPRS") to: "(i) identify, to the extent possible, the community leaders of the affected groups to act on behalf of those victims who may wish to make representations; (ii) receive and collect victims' representations, be it collective or individual; (iii) conduct a preliminary assessment on whether the conditions set out in rule 85 of the Rules of Procedure and Evidence ["Rules"] have been met; and (iv) transmit incoming representations on a rolling basis, possibly every two weeks, together with a brief preliminary assessment".²
3. On 7 December 2017, the Registry transmitted to the Chamber the first batch of victims' representation forms received and its first report thereon ("First Report on Representations").³

¹ Pre-Trial Chamber III, "Order to the Victims Participation and Reparation Section Concerning Victims' Representations", 9 November 2017, ICC-02/17-6, para. 16.

² Order of 9 November 2017, para. 16 and page 8.

³ Registry, "First Transmission to the Pre-Trial Chamber of Victims' Representations Received Pursuant to Article 15(3) of the Rome Statute", 7 December 2017, ICC-02/17-10, and "First Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 7 December 2017, ICC-02/17-11-Conf and ICC-02/17-11-Red.

4. On 21 December 2017 and 11 and 25 January 2018, the Registry transmitted to the Chamber the second, third and fourth batches of representations received and its second and third reports on victims' representations.⁴
5. On 25 January 2018, the Registry transmitted to the Chamber the fifth batch of representations received.⁵

III. Classification

6. Pursuant to regulation 23bis(1) of the Regulations of the Court ("RoC"), this document is classified as "confidential", since it contains sensitive information linked to security issues pertaining to the Situation in Afghanistan. Moreover, the annexes to the present document are classified as "confidential *ex parte*, only available to the Registry", because they contain confidential information that may lead to the identification of potential victims.

IV. Applicable Law

7. The Registry submits the present report in accordance with articles 15(3) and 68(1) of the Rome Statute, rules 16(1) and 85 of the Rules, regulation 23bis(1) of the RoC and regulation 102 of the Regulations of the Registry.

⁴ Registry, "Second Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 21 December 2017, ICC-02/17-15 and "Second Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 21 December 2017, ICC-02/17-16-Conf and ICC-02/17-16-Red; "Third Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 11 January 2018, ICC-02/17-17 and "Third Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 11 January 2018, ICC-02/17-18; "Fourth Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 25 January 2018, ICC-02/17-19 and "Fourth Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 25 January 2018, ICC-02/17-20-Conf and ICC-02/17-20-Red.

⁵ Registry, "Fifth Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 2 February 2018, ICC-02/17-21.

V. Submissions

A. Activities carried out by the Registry to reach out to potential victims concerned by the situation in Afghanistan

8. [Redacted]

9. [Redacted]

B. Victim representation forms received

10. The present report is based on 138 victim representation forms submitted on behalf of approximately 501,300⁶ victims and 94 families.⁷ 64 out of the 138 victim representation forms have been submitted online and 74 were collected and sent via email, the majority of them by interlocutors that the VPRS had previously met during its information and training sessions. 80 of the 138 representation forms are collective. 34 forms were submitted in English, 45 in Dari, 2 in Pashto and 57 in Dari together with English translations.

11. In one collective representation submitted on behalf of a family of six it is indicated that the victims do not want the ICC Prosecutor to investigate the violence associated with the conflict in Afghanistan. All other victims are in

⁶ A collective representation form submitted by an organisation representing victims referred to “more than five hundred thousand” potential victims of Rome Statute crimes. The Registry notes that the information provided is insufficient to assess the exact number of victims; yet, the Registry considers that the information provided allows for a *preliminary* assessment that the conditions set out in rule 85 of the Rules have been met in keeping with the Chamber’s guidance in its Order of 9 November 2017, paras. 14, 15; *see* for further information on the representation form Annex I.

⁷ The information provided in the representation forms on behalf of the 94 families is insufficient to assess with certainty the number of family members. According to UN data, “the average household size in Afghanistan is 7.5 persons [...]. Some 37% of households have ten people or more [...]” See <https://unhabitat.org/books/afghanistan-housing-profile/>, page 15, endnote 31. According to data released by the Central Statistics Organization, Islamic Republic of Afghanistan, the average household size, between 2013-2014 was 7.4. See <http://www.cso.gov.af/Content/files/01.pdf>.

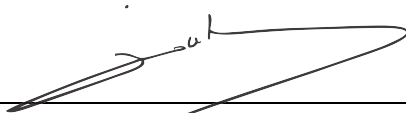
favour of the Prosecution's Request. This information is outlined in more detail in Annex I.

C. Rule 85 Preliminary Legal Assessment by the Registry

12. In accordance with the Order of 9 November 2017, the VPRS conducted a preliminary legal assessment of each representation form in order to assess whether the individual or group making the representation falls within the definition of victim under rule 85 of the Rules. A detailed explanation of the assessment criteria applied by the Registry has been submitted together with the First Report on Representations and a supplemental explanation is included in Annex III to the present report.⁸

⁸ Registry, Confidential *ex parte* Annex II to "First Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017", 7 December 2017, ICC-02/17-11-Conf-Exp-AnxII.

13. In Annex II to the present report, the VPRS prepared a list of those incidents described in the victim representation forms that have also been reported by the UNAMA in their public reports and/or by other NGOs and main media outlets. The VPRS compiled a short paragraph regarding factual details of major incidents that are referred to in the representation forms and for which research in the sources mentioned above yielded relevant information. In order to further facilitate the Chamber's consideration of the representations submitted, the VPRS listed in Annex II all representations that refer to any of the incidents at the beginning of the description of each such incident. The individual legal assessment in Annex I contains references (in red) to relevant paragraphs in Annex II for ease of (cross-)reference.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Herman von Hebel, Registrar

Dated this 2 February 2018

At The Hague, The Netherlands