



Original: English

No. **ICC-01/19**
Date: **28 June 2019**

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

Decision on the 'Registry's Request for Extension of Notice Period and Submissions
on the Article 15(3) Process'

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, Registrar

Defence Support Section

Victims and Witnesses Unit

Nigel Verrill, Chief

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach, Chief

Other

PRE-TRIAL CHAMBER III of the International Criminal Court issues this ‘Decision on the “Registry’s Request for Extension of Notice Period and Submissions on the Article 15(3) Process”’ in the situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (‘situation in Bangladesh/Myanmar’).

I. Procedural history

1. On 12 June 2019, the Prosecutor informed the Presidency, pursuant to regulation 45 of the Regulations of the Court (‘Regulations’), of her decision to request judicial authorisation to commence an investigation into the situation in Bangladesh/Myanmar, pursuant to article 15 of the Rome Statute (‘Statute’ and ‘Article 15 Request’, respectively).¹
2. On 25 June 2019, the Presidency constituted Pre-Trial Chamber III and assigned to it the situation in Bangladesh/Myanmar with immediate effect.²
3. On 26 June 2019, the Registry filed its ‘Request for Extension of Notice Period and Submissions on the Article 15(3) Process’ (‘Request’).³
4. On 27 June 2019, the judges of the Chamber decided that Judge Olga Herrera Carbuccion will act as the Presiding Judge of the Chamber, with immediate effect.⁴
5. On 28 June 2019, the Chamber granted the Prosecutor’s request⁵ for an extension of the page limit for her Article 15 Request.⁶

II. The Request

6. The Registry requests an extension of time for victims to make representations under article 15(3) of the Statute and rule 50(3) of the Rules of Procedure and

¹ ICC-01/19-1-Anx.

² Presidency, Decision on the constitution of Pre-Trial Chamber III and on the assignment of the situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 25 June 2019, ICC-01/19-1 (notified on 26 June 2019).

³ ICC-01/19-3-Conf, with a confidential annex (public redacted version notified the same day).

⁴ Decision on the Election of the Presiding Judge, ICC-01/19-4.

⁵ Request for extension of page limit for a request for authorisation of an investigation pursuant to article 15 of the Rome Statute, 26 June 2019, ICC-01/19-2.

⁶ Decision on the Prosecutor’s Request for Extension of the Page Limit, ICC-01/19-5.

Evidence ('Rules') until 11 October 2019,⁷ as well as approval to use its draft victim representation form ('Victim Representation Form') and to work with experienced partners in the field to optimise its details.⁸ The Registry further proposes subsequent steps for the transmission of victims' representations ('Subsequent steps').⁹

7. **Extension of time.** The Registry submits, *inter alia*, that an extension of time is warranted in light of the security situation in Bangladesh (particularly in the concerned camps),¹⁰ as well as the following major challenges:

(i) *The scale of the situation:* According to the Registry the total refugee population consists of 910,908 individuals, who are potentially interested in submitting applications.¹¹

(ii) *The monsoon season in Bangladesh:* The Registry submits that monsoon rains, which last from approximately late May until at least October/November, trigger landslides and severe floods, and could potentially affect refugee camps in Cox's Bazar.¹² According to the Registry, crisis preparations and mitigation activities are currently 'an ongoing key priority'.¹³ Moreover, the Registry submits that the monsoon may affect road accessibility and telecommunications, which will 'likely impact activities related to the Article 15(3) process and [...] slow down progress'.¹⁴

(iii) *The language:* The Registry reports that 'Rohingya', the only language understood by the 'Rohingya people', is an oral language without a standardised and universally recognised written script.¹⁵ The Registry alerts the Chamber to several difficulties in this regard, including the potential illiteracy rate of the affected individuals, and the necessity for caution in using intermediaries speaking

⁷ ICC-01/19-3-Red, paras 1, 33-37.

⁸ ICC-01/19-3-Red, paras 38-39; ICC-01/19-3-Conf-Anx.

⁹ ICC-01/19-3-Red, paras 42-43.

¹⁰ ICC-01/19-3-Red, paras 8-11.

¹¹ ICC-01/19-3-Red, paras 15-18.

¹² ICC-01/19-3-Red, paras 19-20.

¹³ ICC-01/19-3-Red, para. 21.

¹⁴ ICC-01/19-3-Red, para. 23.

¹⁵ ICC-01/19-3-Red, para. 24.

‘Chittagonian’ to approach victims, since this language, although similar to Rohingya, comprises stark differences.¹⁶

(iv) *Engagement with Rohingya communities, particularly with women and children:* The Registry stressed the importance of establishing appropriate and effective channels to engage with the Rohingya people, in particular specific groups which are often excluded, such as women, children, elderly and people with disabilities.¹⁷

8. **Victim Representation Form.** The Registry submits a draft Victim Representation Form for the Chamber’s approval.¹⁸ Following consultations with interlocutors, the Registry recommends that this form be made available in Burmese, Bangla and English, together with an audio recording in Rohingya.¹⁹

9. **Subsequent steps.** The Registry proposes to transmit received representations on a rolling basis to the Chamber (on 30 August, 13 and 27 September, 11 and 31 October 2019²⁰), ‘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)’, and to provide the Chamber with an English transcription of audio and/or video files received in any other language than English.²¹ The Registry further proposes to file a final consolidated report on all victims’ representations (‘Final Consolidated Report’) by 31 October 2019.²²

III. Analysis

10. Pursuant to article 15(3) of the Statute, ‘[v]ictims may make representations to the Pre-Trial Chamber’, where the Prosecutor submits a request for authorisation of an investigation.

11. The Prosecutor shall inform the victims known to her, the Victims and Witness Unit, or the LRV about her intention to seek authorisation from the Pre-Trial Chamber

¹⁶ ICC-01/19-3-Red, para. 25.

¹⁷ ICC-01/19-3-Red, paras 29-32.

¹⁸ ICC-01/19-3-Conf-Anx.

¹⁹ ICC-01/19-3-Red, paras 26, 40.

²⁰ ICC-01/19-3-Red, para. 43.

²¹ ICC-01/19-3-Red, para. 42.

²² ICC-01/19-3-Red, para. 43.

to initiate an investigation under article 15(3) of the Statute, and may also give notice by general means in order to reach groups of victims, pursuant to rule 50(1) of the Rules. Thereupon, victims may make representations in writing to the Chamber within 30 days, in accordance with rule 50(3) of the Rules and regulation 50(1) of the Regulations.

12. Pursuant to rule 50(4) of the Rules, the Chamber may decide ‘on the procedure to be followed’, including the matter of victims’ representations.²³

13. **Extension of time.** Upon consideration of the Registry’s submissions, the Chamber is of the view that good cause has been shown to extend the time limit for the submission of victims’ representations, in accordance with regulation 35 of the Regulations.

14. The Chamber considers it crucial to be provided with the highest possible number of victims’ representations in order to have a meaningful and representative sample of the affected population, and to be able to fully assess the merits of the Prosecutor’s Article 15 Request. Noting the various issues identified by the Registry, including security concerns, the complexity and scale of the situation, language barriers, weather conditions, and difficulties in ensuring appropriate access to all groups of victims, the Chamber is of the view that the collection of such sample within the 30-day timeframe envisaged in regulation 50(1) of the Regulations appears not to be feasible. The Chamber therefore agrees with the Registry that an extension is warranted.

15. The Chamber recalls that the Registry requests an extension of time for victims to make representations until 11 October 2019 and an extension of time for the Registry’s Final Consolidated Report until 31 October 2019. In the interests of the victims, the Chamber considers that the extension requested with respect to the Registry’s Final Consolidated Report should, to the extent possible, also be applied to the transmission of victims’ representations in order to enable as many victims as

²³ See also Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, Order to the Victims Participation and Reparation Section Concerning Victims’ Representations, 9 November 2017, ICC-02/17-6, para. 7; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Order to the Victims Participation and Reparations Section Concerning Victims’ Representations Pursuant to Article 15(3) of the Statute, 10 December 2009, ICC-01/09-4, para. 6.

possible to access judicial proceedings at the Court. The Chamber therefore instructs the Registry to accept victims' representations up until 28 October 2019, and to transmit these representations jointly with its Final Consolidated Report to the Chamber by 31 October 2019. The received victims' representations should be integrated into the Final Consolidated Report to the extent possible in light of the deadlines established in this decision. Those representations which cannot be integrated in the Final Consolidated Report due to time constraints should simply be transmitted to the Chamber with a brief preliminary assessment.

16. The Prosecutor is accordingly instructed to inform victims that they may submit their representations until 28 October 2019, in accordance with the time limit established by the Chamber.

17. **Victim Representation Form.** Upon review of the submitted draft,²⁴ the Chamber hereby approves the Victim Representation Form. However, it considers that the timeframe indicated in the introductory paragraph should be amended to read 'since at least 9 October 2016', as it does not appear appropriate, especially at this very early stage of the proceedings, to impose a strict limitation on the timeframe of the alleged events.

18. Noting that victims are not obligated to use the standard from provided by the Court, according to regulation 86(1) of the Regulations and rule 102 of the Rules, the Chamber stresses that victims' representations submitted through different means should equally be accepted.²⁵ The Chamber appreciates the Registry's reassurances in this regard.²⁶

19. **Subsequent steps.** The Chamber considers that the Registry's suggested transmission on a 'rolling basis' adequately ensures efficient and expeditious proceedings and agrees with the proposed deadlines.

²⁴ ICC-01/19-3-Conf-Anx.

²⁵ See also Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, Order to the Victims Participation and Reparation Section Concerning Victims' Representations, 9 November 2017, ICC-02/17-6, para. 10.

²⁶ ICC-01/19-3-Red, para. 41.

20. With respect to the preliminary assessment of victims' representations, the Chamber emphasises that, in light of the purpose of victims' representations at this stage, and the limited scope of article 15 proceedings, the conditions set out in rule 85 of the Rules should be assessed on the basis of the intrinsic coherence of the information given by the victim(s).²⁷

21. **Cooperation.** Finally, the Chamber urges the Registry to secure, to the extent possible, the cooperation of the Government of Bangladesh, as well as the support of organisations with an established presence in Bangladesh, in order to engage with victims on the ground in the refugee camps and establish effective channels of communications, particularly with specific groups at risk of exclusion, such as women, children, the elderly or individuals with disabilities.

22. Lastly, the Chamber stresses that utmost care should be taken in ensuring the victims' safety, as well as their physical and psychological well-being, in the context of their dealings with the Court in order to submit their representations.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Registry an extension of time limits for the transmission of victims' representations, as well as its Final Consolidated Report, until 31 October 2019;

AUTHORISES the Registry to use the Victim Representation Form with the amendment set out in para. 17 above, in the languages listed in para. 8 above, and to consult experienced partners in the field, in line with this decision, as necessary;

ORDERS the Registry to submit victims' representations to the Chamber on 30 August, 13 and 27 September, 11 and 31 October 2019, together with a brief preliminary assessment as set out in this decision;

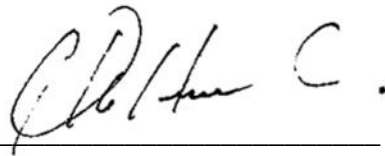
ORDERS the Prosecutor to inform victims pursuant to rule 50(1) of the Rules that they may submit their representations until 28 October 2019.

²⁷ See also Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, Order to the Victims Participation and Reparation Section Concerning Victims' Representations, 9 November 2017, ICC-02/17-6, para. 14; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, 10 December 2009, ICC-01/09-4, para. 8.

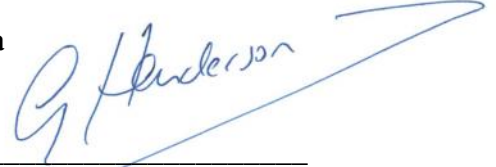
Done in both English and French, the English version being authoritative.



Judge Robert Fremr



Judge Olga Herrera Carbuccion
Presiding Judge



Judge Geoffrey Henderson

Dated this Friday, 28 June 2019
At The Hague, The Netherlands