

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **4 July 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**

**Confidential  
with Confidential Annex 1**

**Request on the Victim Representation Form**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants**

**(Participation/Reparation)**

**The Office of Public Counsel for**

**Victims**

**The Office of Public Counsel for the**

**Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other**

**Section**

Mr Philipp Ambach

## I. INTRODUCTION

1. The Prosecution has today filed its request for authorisation of an investigation into the situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar ("Situation in Bangladesh/Myanmar").<sup>1</sup> By these short submissions the Prosecution respectfully requests that the Victim Representation Form as approved by the Pre-Trial Chamber ("Chamber") on 28 June 2019<sup>2</sup> is further reviewed by the Chamber, and amended in the respects elaborated below. The Prosecution has consulted on these proposed amendments with the Victims Participation and Reparations Section ("VPRS"), and is informed that the VPRS is in agreement with the changes requested.
2. The Victim Representation Form was submitted by the Registry on 26 June 2019, as a confidential Annex<sup>3</sup> to the Registry request for an extension of time for victims to make representations to the Chamber under article 15(3) of the Rome Statute ("Statute") and rule 50(3) of the Rules of Procedure and Evidence ("Rules") and its related submissions on the article 15(3) process.<sup>4</sup>

## II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(1) of the Regulations, this Request and the accompanying Annex are classified as confidential since the Victim Representation Form was filed as a confidential Annex to the Registry's Request.

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<sup>1</sup> *Situation in Bangladesh/Myanmar*, Request for authorisation of an investigation pursuant to article 15, 4 July 2019, ICC-01/19-7.

<sup>2</sup> *Situation in Bangladesh/Myanmar*, Decision on the 'Registry's Request for Extension of Notice Period and Submission on the Article 15(3) Process', 28 June 2019, ICC-01/19-6.

<sup>3</sup> *Situation in Bangladesh/Myanmar*, Confidential Annex to Registry's Request for Extension of Notice Period and Submissions on the Article 15(3) Process, 26 June 2019, ICC-01/19-3-Conf-Anx.

<sup>4</sup> *Situation in Bangladesh/Myanmar*, Registry's Request for Extension of Notice Period and Submissions on the Article 15(3) Process, 26 June 2019, ICC-01/19-3-Conf ("Registry's Request").

### III. SUBMISSIONS

4. The Prosecution submits the following proposed amendments related to four aspects of the Victim Representation Form. The proposed amendments are of a minor nature, aimed merely at simplifying the form, given the complexity of the jurisdictional issues in this situation, and avoiding language of a potentially leading nature. In addition, past experience in cases before this Court has shown that overly detailed forms (for example, application forms for victim participation), if collected by persons other than experienced investigators, have the potential to increase the risk of inconsistencies with statements subsequently collected during an investigation.
5. For these reasons the Prosecution proposes the following amendments. These amendments are also identified *via* tracked changes, in the Victim Representation Form attached as confidential Annex 1 hereto.
  - i. **Preamble**, the language *“such as deportation, other inhumane acts and persecution”* should be removed, as this detail – given the complexity of the jurisdictional issues in this situation – is potentially confusing, and unnecessarily limiting.
  - ii. **Paragraph 7**, the language *“What forces / groups does the victim believe to be responsible for the harm done”* should be removed. The Prosecution submits that removing this language limits the prospect of inconsistencies between this, and any subsequent account taken from any victim, as a potential witness in any future investigation. The question as to who was involved in the events is otherwise addressed with some alternative suggested language, below.
  - iii. **Paragraph 7**, the language *“Please describe how the events took place, in as much detail as possible, e.g. how the deportation was effected, what (other) crimes were*


*committed*" should be replaced with the following: "Please describe how the events took place, and who was involved e.g. please describe what led the victim[s] to come to Bangladesh". The Prosecution submits that the proposed language avoids use of language of a potentially leading nature, prevents the collection of unnecessary information, and ultimately limits the prospect of inconsistencies between this and any future account taken from any victim as a potential witness, in any future investigation.

iv. **Paragraph 11**, the language "*the crimes against humanity of deportation, other inhumane acts and persecution allegedly committed against the civilian Rohingya population in Myanmar*" should be replaced with "crimes allegedly committed against Rohingya persons from Myanmar" as the further detail – given the complexity of the jurisdictional issues in this situation – is potentially confusing, and unnecessarily limiting.

6. The Prosecution has consulted on these proposed amendments with the VPRS, and is informed that the VPRS is in agreement with the changes requested.

#### IV. RELIEF REQUESTED

7. In all the circumstances, the Prosecution requests that the Victim Representation Form is further reviewed by the Chamber, and amended as detailed above.



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**Fatou Bensouda, Prosecutor**

Dated this 4<sup>th</sup> day of July 2019

At The Hague, The Netherlands