

## Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar

ICC-01/19

### Article 15(3) Process

#### WHY THE INTERNATIONAL CRIMINAL COURT (ICC)?

The ICC is a permanent Court mandated to bring to justice individuals responsible for the worst crimes known to humankind, and, by doing so, help prevent this kind of crimes from being committed in the future.

Victims of crimes under the ICC jurisdiction have the right to present their views and concerns to the ICC Judges during stages of proceedings considered appropriate, where their personal interests are affected. This is called victim participation and this participation varies at each stage of proceedings.

#### WHAT CAN VICTIMS DO FROM NOW UNTIL 28 OCTOBER 2019?

On 4 July 2019 the Prosecutor of the ICC has requested authorisation from the Judges to investigate alleged crimes against humanity, such as deportation, other inhumane acts and persecution, committed against the civilian Rohingya population in Myanmar in the period since 9 October 2016 (see the Prosecutor's Request of 4 July 2019).

It is important to note that in relation to the Bangladesh/Myanmar situation the Court can exercise jurisdiction over crimes against humanity, such as those mentioned in the Prosecutor's Request, committed since 1 June 2010, when the Rome Statute entered into force with respect to Bangladesh. This means that victims who were deported from Myanmar and/or who suffered harm as a result of related crimes committed after 1 June 2010 can make representations.

You, as a victim, can now tell the Judges whether or not you want an investigation, and submit other views and concerns you might have on this matter. This is called "victims' representations". This will help the Judges understand any possible concerns the victims may have. Most important, this will help the Judges decide whether or not to authorise the investigation requested by the Prosecutor. You do not need to prove that crimes were committed. You only have to describe the events and the harm you have suffered.

The deadline for submitting victim representations to the ICC is 28 October 2019.

**It is strongly suggested that anyone wanting to make a representation first asks for help from someone who has already received some training or explanations from the Court in relation to the process. This might be a civil society organization, a lawyer, or other person.**

#### WHAT DO VICTIMS NEED TO KNOW BEFORE DECIDING WHETHER OR NOT TO SUBMIT A REPRESENTATION?

It is important to note, from the outset, that the ICC process:

- can take a long time and may not result in someone being found guilty;
- is not related to and does not ensure that your rights will be restored or that you will be safely repatriated to Myanmar;
- will not impact on your access to aid and assistance in Bangladesh.

**It is also very important to know that the current victim representation process is not an application process for participation in court proceedings or for obtaining reparations before the ICC.** By submitting a representation form you are not automatically able to participate in potential future judicial proceedings or to request reparations. If the Judges authorize the Prosecutor to start an investigation, you will need to apply separately for such participation in proceedings and/or reparations, at a later stage.

#### WHO IS CONSIDERED A "VICTIM" BEFORE THE ICC?

You are considered a victim at the ICC if you, or a close family member, have suffered harm as a result of any crime within the ICC's jurisdiction.

Victims may also include organizations and institutions when their property mainly used for certain purposes (religion, education, art or science or charitable and humanitarian purposes, or historic monuments and hospitals) is harmed as a result of a crime in the ICC's jurisdiction.

All persons affected by the crime of deportation from Myanmar to Bangladesh and other related crimes are welcome to fill in the form, regardless of their gender, age, race, religion, ethnicity, disability or other. This means that women, children, elderly, persons with disabilities, victims of sexual violence, etc. are welcome to submit representations.

## WHAT ARE THE DIFFERENCES BETWEEN MAKING A VICTIM REPRESENTATION AND TESTIFYING AS A WITNESS BEFORE THE ICC?

Victim representations are voluntary and involve communicating to the Judges victims own views and concerns related to the Prosecutor's request for authorization of an investigation.

A representation is NOT a victim statement and it is NOT considered evidence in criminal proceedings. Submitting a victim representation is entirely different from a victim's possible role as a witness called to testify before the Court for the Prosecution, the defence or the victims' legal representative in potential future proceedings.

Witnesses are called, at specific time in proceedings, by the Prosecution, the defence, the victims' legal representative or the Chamber to give evidence by testifying and answering related questions, usually in person in the courtroom. Some victims could be called as witnesses in the proceedings, but the victim representation process is not connected to this possibility.

## WHAT TYPE OF HARM WILL THE ICC JUDGES CONSIDER?

The ICC recognises different types of harm that a victim suffered as a result of crimes that the Court deals with. These crimes can cause physical suffering to a person's body. They can also cause emotional suffering or psychological or mental harm, by which a person's mind is affected because of what she or he has experienced or witnessed. There could also be material harm, such as where property is damaged or lost as the result of the crime, including a victim's home or other property. Violations of fundamental rights, such as loss of educational opportunities, loss of social status, etc. are also recognised.

It is not necessary to provide any type of proof of harm in support of your representation.

## WHAT ARE CRIMES AGAINST HUMANITY?

"Crimes against humanity" include any of the following acts committed as part of widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.

## WHAT IS THE CRIME OF DEPORTATION OR FORCIBLE TRANSFER OF POPULATION?

The crime against humanity of deportation or forcible transfer of population is the enforced displacement, without grounds permitted under international law, of one or more person by expulsion or other coercive acts, across an international border. Such persons were lawfully present in the area from which they were deported or transferred. This conduct is committed as part of a widespread or systematic attack directed against a civilian population.

## WHAT IS THE CRIME OF PERSECUTION?

The crime against humanity of persecution is the severe deprivation of one or more persons, by reasons of their identity or inclusion in a group or collectivity, of their fundamental rights. The crime of persecution must have been committed in connection to any crime within the jurisdiction of the ICC and for political, racial, national, ethnic, cultural, religious, gender or other grounds that are not permitted under international law. This conduct is committed as part of a widespread or systematic attack directed against a civilian population.

## WHAT IS THE CRIME OF OTHER INHUMANE ACTS?

The crime against humanity of other inhumane acts is the infliction of great suffering, or serious injury to body or to mental or physical health. Based on the case law, the following acts could for example be considered to fall under this category: mutilations and other forms of severe bodily harm, beatings and other acts of violence, serious bodily and mental injury, inhumane and degrading treatment, forced prostitution and forced disappearance, confinement under inhumane conditions, beatings, humiliation, harassment, psychological abuses, forced labour assignments when the conditions under which the labour is rendered are such as to create danger for the life or health of the victims, or may arouse in them feelings of fear and humiliation, sexual violence, forced undressing of women and public marching naked.

## HOW CAN VICTIMS PROVIDE THEIR VIEWS AND CONCERNS INDIVIDUALLY OR AS A GROUP?

The process of submitting your representation is voluntary and free of charge.

You can submit a representation for yourself only or for a group of victims or someone else (e.g. an individual or an organization) can represent your views.

If you have suffered harm as a result of the alleged crimes against humanity, such as deportation, other inhumane acts and persecution, committed against the civilian Rohingya population in Myanmar since at least 9 October 2016, please fill in the form to submit your views, or have a representative do it for you. Choose either:

1. **Online form:** Fill in the form online, tick the signature box (no physical signature required) and submit directly through the ICC website. The notification of successful submission is automatic.
2. **PDF form:** download the PDF version of the form, print, sign and return it via postal mail or email (see contact information below). To get a confirmation of receipt, please request it in your letter/email. When sending via email, please remember the maximum size of your attached file cannot exceed 5MB.
3. **Audio, video or other electronic format:** it is important that these types of representation contain, to the extent possible, all information requested in the online/PDF form. Please be concise when recording a representation and to the extent possible ensure that the duration of the audio/video recording is less than 10 minutes. To the extent possible, the person making the representation should speak English or consecutive translation/subtitles into English should be included in the video. You can send your representation via postal mail or email (see contact information below). When sending via email, please remember the maximum size of your attached file cannot exceed 5MB.

No additional documents are required in order for the representation to be considered complete.

Attention:

- Read carefully the guidelines on how to fill in the form available for download on the ICC website before you fill in the representation form. This is essential to ensure that the form is complete and can be processed. The guidelines on how to fill in the form are intended to help victims or those assisting them when filing in the representation form.
- To the extent possible, try to fill in the form in English. If you cannot fill in the form in English, please contact VPRS as we might be able to refer you to an individual/organization that is able to assist you.
- Answer all questions as best as you can, stating “not applicable” or “unknown” if needed.
- Be as concise and precise as possible, in light of the space limitations of the form.
- If you are a child, have a representative fill in the form for you.
- For each victim/group of victims, please select one single form version, either online or PDF, depending on your internet connection/computer capacity and security concerns, to make your representation.

**Representations on behalf of groups of victims:** If you are a representative filling in the representation form for a group of victims, please include the number of victims, their nationalities and ethnic groups, gender, ages, languages spoken, place of residence in Myanmar and current residence.

It is important that that all victims represented have given their consent that you fill in the form on their behalf. For collective representations there is no need to list names or signatures of the victims represented. It is sufficient for you to include your name and signature.

For any questions related to information provided in this document, please contact the Victims Participation and Reparations Section (VPRS) at the ICC via email at: [VPRS.Information@icc-cpi.int](mailto:VPRS.Information@icc-cpi.int)

Via Postal Mail Address at:

Victims Participation and Reparations Sections (VPRS)

International Criminal Court – ICC

P.O. Box 19519, 2500 CM, The Hague, The Netherlands

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## WHAT HAPPEN TO THE VIEWS AND CONCERNS OF THE VICTIMS?

The documents that are received from victims will be sent to the ICC Judges only. They are also stored in a secure database accessed only by authorised ICC staff. The Judges can decide whether or not to share this information with the ICC Prosecutor. The ICC will prepare a report on the views and concerns of victims; the original, complete report will be sent to the Judges, and only a redacted version will be made available to the public, so that no identifying information is disclosed to the public.

It is important to note that the security of victims comes first. Please take preventive measures and be cautious when mentioning your involvement with the ICC. Please also avoid anything that would expose you unnecessarily and put you or other people at risk.

## WILL THE COURT CONTACT VICTIMS WHO SUBMIT THESE FORMS?

The Registry will keep the victims informed as to whether or not the Judges authorise the investigation, through the media and by contacting those individuals and organizations who assisted victims in submitting their forms.

## WHAT HAPPENS NEXT?

The ICC Judges will consider the victims' views and concerns and they will make their decision on whether or not to authorise an investigation based on what victims submitted to them, alongside the Prosecutor's request.

If the Judges authorise the investigation, you will be able to apply:

- 1) to participate in judicial proceedings against one or more individuals by giving your views and concerns through a legal representative and;
- 2) for reparations, if the judicial proceedings lead to the conviction of the accused person(s).

If the Judges do not authorise the investigation, you might be able to appeal such decision through a lawyer.

If you have any question please contact us via [VPRS.Information@icc-cpi.int](mailto:VPRS.Information@icc-cpi.int)

## WHEN CAN THE ICC INVESTIGATE AND PROSECUTE?

The ICC can generally investigate and prosecute war crimes, crimes against humanity and genocide when committed:

- After the 1st of July 2002 and
- By a national of a State Party, or in the territory of a State Party, or
- When the United Nations Security Council has referred a situation to the Court, or
- When a non-State Party accepts the jurisdiction of the Court on an ad hoc basis.

The ICC also has jurisdiction over the crime of aggression which entered into force on 17 July 2018 and has its own special jurisdictional requirements (as listed above).

The ICC is intended to be a court of last resort and not to replace national criminal justice systems, which retain the primary duty to investigate and prosecute these crimes. Therefore, the Court will only step in if a State is unwilling or unable to do so. This is explicitly stipulated in article 17 of the Rome Statute.

## WHO CAN BE PROSECUTED BY THE ICC?

The ICC tries individuals, not States, organizations or governments. The ICC does not prosecute persons who were under the age of 18 at the time a crime was allegedly committed.

The ICC will not try everybody that commits crimes listed above. It is the policy of the ICC Prosecutor to focus on those individuals who are the most responsible for these crimes, committed in any situation where it is investigating.

Nobody has immunity before the ICC because of his or her status; so Presidents, Members of Parliament, government officials and leaders of rebel movements can all be tried before the ICC. Under certain circumstances, a person in authority may be held responsible for the crimes committed by those who work under his or her command or supervision. Similarly, persons that were committing Rome Statute crimes in following orders from their superiors are not immune to prosecution before the ICC.

## WHAT ARE THE STAGES OF ICC PROCEEDINGS?

The purpose of criminal proceedings before the ICC is to ensure that allegations of serious crimes are investigated, prosecuted, and, if the accused is proved guilty, punished in accordance with the Rome Statute. ICC proceedings include several stages:


**Preliminary Examination Stage:** This stage is focused on deciding whether the ICC Prosecutor will investigate a particular situation in which crimes within the jurisdiction of the Court may have been committed.

**Investigation Stage:** This stage is initiated when the Prosecutor decides to formally open an investigation into a situation following the preliminary examination, in order to collect evidence and find out what crimes have been committed and who is responsible.

**Pre-Trial Stage:** This stage is the period in which the Court decides whether or not to issue a warrant of arrest or an order to appear before the Pre-Trial Chamber against one or several individuals, and, once a person has been arrested and brought before the judges of the Chamber, whether or not to confirm the charges put forward by the Prosecutor.

**Trial Stage:** This stage comprises the trial of individuals accused of having committed crimes within the jurisdiction of the ICC, at the end of which the accused is either found guilty and sentenced, or acquitted of the crime(s), if based on the evidence brought forward the judges are not convinced beyond reasonable doubt of the guilt of the accused.

**Appeal Stage:** If the parties challenge the outcome of the trial, this is the stage in which the final judgment is given. It is possible that a conviction or acquittal issued by the Trial Chamber could be reversed by the Appeals Chamber, if for instance the Appeals Chamber judges determine that the Trial Chamber judges misapplied the law or made substantial factual errors.



**Reparations Stage:** In the event of a conviction, the Trial Chamber may issue an **order for reparations** to victims against the convicted person. If the convicted person does not have any means to afford reparations (“indigent”), the **Trust Fund for Victims** may be requested to compliment the order for reparations so that the victims may receive some form of redress.

During this stage, depending on the type of reparations ordered (individual or collective) the victims may be called to provide some proof to the Chamber that they are legitimate beneficiaries of reparations. Even if indigent at the time of conviction, the convicted person may be asked to reimburse the Trust Fund for Victims should that person become non-indigent at any later stage in life.

It is important to consider that criminal proceedings take time before reaching the final stage.