



Original: English

No.: ICC-01/19

Date: 26 June 2019

PRE-TRIAL CHAMBER III

Before: Judge Robert Fremr
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

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

**Public
With Confidential Annex**

**Public redacted version of "Registry's Request for Extension of Notice Period
and Submissions on the Article 15(3) Process", 26 June 2019, ICC-01/19-3**

Source: Registry

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

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Legal Representatives of Victims

Victims' Representatives

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**Victims Participation and Reparations
Section**

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Other

I. Introduction

1. Pursuant to Regulations 24*bis* and 35(1) of the Regulations of the Court (“RoC”), the Registry hereby requests an extension of time for victims to make representations under article 15(3) of the Rome Statute (“Article 15(3)” and “Statute”) and rule 50(3) of the Rules of Procedure and Evidence (“Rules”).
2. The Registry further submits, for Pre-Trial Chamber III’s (“Chamber”) approval, a draft victim representation form as an annex to this filing.¹

II. Procedural History

3. On 12 June 2019, the Prosecutor informed the President of her intention to request judicial authorisation to commence an investigation into “crimes within the jurisdiction of the International Criminal Court in which at least one element occurred on the territory of the People’s Republic of Bangladesh – a State Party to the Rome Statute – and within the context of two waves of violence in Rakhine State on the territory of the Republic of the Union of Myanmar, as well as any other crimes which are sufficiently linked to these events” pursuant to Article 15(3) of the Statute.²
4. On 25 June 2019, the Presidency rendered its decision assigning the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (“Situation”) to the Chamber.³

¹ Confidential Annex.

² The Office of the Prosecutor, “Notice pursuant to regulation 45 of the Regulations of the Court” of 12 June 2019, filed as ICC-01/19-1-Anx on 26 June 2019 (see fn. 3).

³ The 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”, dated 25 June 2019 and registered on 26 June 2019, ICC-01/19-1.

III. Classification

5. Pursuant to regulation 23*bis*(1) of the RoC, this document is classified as “confidential”, since it contains sensitive information on [Redacted].
6. The Registry will file shortly a public redacted version of the present request.

IV. Applicable Law

7. The Registry submits the present request in accordance with Articles 15(3) and 68(1) of the Statute, rules 16(1), 50(1) and (3) and 85 of the Rules and regulations 23*bis*(1), 24*bis*, 35(1) and 50(1) of the RoC.

V. Submissions

A. Security situation

8. The Victims Participation and Reparations Section (“VPRS”) liaised with relevant sections of the Registry in order to evaluate the current security situation in the People’s Republic of Bangladesh (“Bangladesh”), with a focus on the 34 refugee camps⁴ located in the Cox’s Bazar district.
[Redacted]
9. [Redacted]
10. [Redacted]
11. [Redacted]

⁴ See para. 15 below.

B. [Redacted]

12. [Redacted]

C. [Redacted]

13. [Redacted]

14. Based on [Redacted] open source research conducted by the Registry, the following four main factors have emerged as potential major challenges for the Registry, the victims and their representatives and all other actors involved to be taken in due consideration when designing and implementing the Article 15(3) process in the current Situation : (i) the large scale of the situation; (ii) the access to the refugee camps during the monsoon season; (iii) the Rohingya language which is an oral language without a standardized written script; and (iv) the extent to which it will be possible to properly engage with Rohingya communities and particularly to interact directly with affected women and children.

i. Scale of the situation

15. According to a population factsheet published by the United Nations Refugee Agency (“UNHCR” and “UNHCR Factsheet”) on 31 May 2019, the total refugee population consists of 910,908 individuals,⁵ living in 34 congested camps located in Ukhia and Teknaf sub-districts of Bangladesh’s Cox’s Bazar district, as well as outside formal camp boundaries.⁶ Of the

⁵ Some refugees living in host communities and in certain locations beyond the camp boundaries might not have been counted.

⁶ UNHCR, Bangladesh Refugee Emergency, Population Factsheet (as of 31 May 2019), <https://data2.unhcr.org/en/documents/details/69851>.

above overall number, 836,466 individuals arrived in Bangladesh after 9 October 2017.⁷

16. [Redacted] the Registry enquired about the feasibility of groups of victims also submitting collective representations through representatives. [Redacted]

17. [Redacted]

18. Considering the extremely high number of victims potentially interested in submitting representations and the Court's limited resources, the Registry considers it crucial to [Redacted] conduct the victim representation process in a way which will ensure that a meaningful sample of representations is collected and that the highest amount possible of victims is given the opportunity to present their views to the Court at this stage of proceedings within the timelines given by the Chamber.

ii. Monsoon season

19. The monsoon arrives in Bangladesh between late May and early June and it starts gradually withdrawing between October and November. Bangladesh is also particularly vulnerable to tropical cyclones, which come from the Bay of Bengal, usually from mid-April to early December. During the monsoon season, rainfall may reach up to 900 mm per month in Cox's Bazar, and up to 1,000 mm in the more southern city of Teknaf.⁸ As a

⁷ *Id.*

⁸ See <https://www.climatestotravel.com/climate/bangladesh>.

consequence of the low elevation of the shores, Cox's Bazar is extremely vulnerable to natural calamities.⁹

20. Monsoon rains could trigger devastating landslides and floods in the overcrowded camps. In 2018, UNHCR assessed that over 23,000 people are at serious risk of landslides, whilst flooding could affect nearly 80,000 people.¹⁰
21. [Redacted], the Registry was informed that preparations for the upcoming cyclone and monsoon season are an ongoing key priority. All throughout the monsoon season the main focus on the ground is on crisis preparedness and mitigation activities, as well as on information campaigns for the Rohingya and host communities.¹¹ [Redacted]
22. From a logistical perspective, outside the monsoon season, the travel time from Cox's Bazar to the most northern camps (e.g. Kutupalong – approx. 34km away) is of around one hour and thirty minutes in the absence of traffic. The trip to the southern camps (e.g. camp 27 – approx. 80km away) takes around three hours. During the monsoon season, traveling to the camps can take considerably longer. [Redacted]
23. Finally, during this period, even in the absence of extreme weather or of a natural disaster, traffic conditions can be severely affected, roads may become impassable and telecommunications (mobile phones, internet, radio, etc.) is often disrupted or inaccessible, which will likely impact the

⁹ World Food Programme, "Cyclone and Monsoon Preparedness", April 2019, page 1, https://reliefweb.int/sites/reliefweb.int/files/resources/WFP%20Cyclone%20and%20Monsoon%20Preparedness_Cox%27s%20Bazar.pdf.

¹⁰ UNHCR, "Rohingya Refugee Emergency at a Glance. The influx to Bangladesh is one of the largest and fastest-growing refugee crises in decades", 21 March 2018, <https://unhcr.maps.arcgis.com/apps/Cascade/index.html?appid=5fdca0f47f1a46498002f39894fcd26f>.

¹¹ *Id.* See also Médecins Sans Frontières, "Rohingya Refugee Crisis - Crisis update", May 2019, <https://www.msf.org/bangladesh-rohingya-crisis-update-may-2019>.

activities related to the Article 15(3) process and, in particular, slow down progress.

iii. Languages

24. Rohingya, the only spoken language that all Rohingya people understand and prefer, is an oral language without a standardized and universally recognized written script.¹²

25. According to a survey report by the organisation “Translators without Borders” (“TWB” and “TWB report”):

-) verbal communication in Rohingya (e.g. face to face, over loudspeaker, phone calls, radio, videos) is critical since 66% of the survey respondents¹³ reported that they cannot read or write in any language;¹⁴
-) caution with intermediaries speaking Chittagonian, the primary dialect spoken by the host population in the Cox’s Bazar District, is advised, as whilst the two languages have similarities, “their differences can be stark”,¹⁵
-) Burmese is the second preferred language for written communication; in order to reach out to the largest possible audience effectively, written information should be circulated in Burmese, Bangla and English.¹⁶

¹² TWB Report, page 5.

¹³ 407 Rohingya individuals living in the Kutupalong-Balukhali expansion site participated in the TWB study. 58% of the respondents are women, 42% men and three in four respondents are 18 to 44 years old. For more information see TWB Report, page 8.

¹⁴ TWB Report, pages 5, 10-11 and 29.

¹⁵ TWB Report, pages 5, 12-13 and 29.

¹⁶ TWB Report, pages 5, 18-21 and 30.

26. Confirming the last point above, all interlocutors [Redacted] recommended that the Registry's messages and materials circulated in written form be in Burmese, Bangla and English, together with audio recordings in Rohingya.

27. The Registry may work with various organizations which have proven relevant expertise in the field to optimise its messages and adapt them to the local realities, translate them in relevant languages and have various types of materials prepared, e.g. audio recordings, video materials, flash cards, etc. Should this materialise, the Registry anticipates this process to take some time and to be resource intensive.

28. [Redacted]

iv. Engagement with Rohingya communities, particularly with women and children

29. [Redacted] Therefore, special importance is laid on establishing most appropriate and effective channels to engage with the Rohingya people. Special consideration is given to specific groups who are often excluded, such as women, children, elderly¹⁷ and people with disabilities.

30. According to the UNHCR Factsheet, 52% of the total Rohingya population in Cox's Bazar is female. Due to cultural and religious convictions,¹⁸ Rohingya women and girls¹⁹ are often excluded from participation in

¹⁷ Amnesty International, "Fleeing my whole life. Older People's experience of conflict and displacement in Myanmar", 18 June 2019, <https://reliefweb.int/report/myanmar/myanmar-fleeing-my-whole-life-older-people-s-experience-conflict-and-displacement>.

¹⁸ *Purdah*, the practice in certain Muslim and Hindu societies of separating women from men and strangers, especially by means of a curtain, is common amongst the Rohingya women.

¹⁹ For an analysis of the specific ways in which girls are affected by the crisis, see Plan International, "Adolescent Girls in Crisis: Voices of the Rohingya", 20 June 2018, <https://plan-international.org/publications/adolescent-girls-crisis-rohingya>.

public life²⁰ and from receiving information and communicating their views and concerns directly. Male relatives are often acting as information gatekeepers.²¹ Studies also show that women have less access than men to phones²² and radios,²³ and that they are less exposed to and familiar with media formats such as TV and internet.²⁴

31. It is therefore crucial that specific communication strategies targeting women are developed and information is made available through channels and spaces accessible to women in order to ensure that they can make informed decisions and can meaningfully participate in the Article 15(3) process if they so wish.²⁵ The Registry was strongly recommended to use female staff and intermediaries in interactions with women and to redouble its efforts to reach out to women and girls, also by information campaigns for men explaining why women's views are sought.

32. With respect to Rohingya children, reports show that safety and child protection issues are of concern to both children and their parents which adopted "negative coping strategies [to] protect their children in the only way they know: by keeping their children, especially their daughters, in the tent [or house] as much as possible."²⁶ This reality, combined with poor

²⁰ Acaps, NPM, Analysis Hub, "Rohingya Crisis. Governance and community participation", Thematic Report, June 2018, pages 2-4, <https://reliefweb.int/report/bangladesh/thematic-report-june-2018-rohingya-crisis-governance-and-community-participation>.

²¹ TWB Report, page 26.

²² [Redacted] See also TWB Report, pages 17 and 28.

²³ TWB Report, page 17.

²⁴ TWB Report, pages 28 and 31. See also Internews, "Information Needs Assessment, Cox's Bazar, Bangladesh", November 2017, page <https://internews.org/resource/information-needs-assessment-coxs-bazar-bangladesh> - On average 11% of the women stated that they use the internet.

²⁵ TWB Report, page 28.

²⁶ World Vision, Save the Children and Plan International, "Childhood interrupted. Children's voices from the Rohingya Refugee Crisis", February 2018, page 12, <https://reliefweb.int/report/bangladesh/childhood-interrupted-children-s-voices-rohingya-refugee-crisis>.

access to learning opportunities and psycho-social programmes etc.,²⁷ trigger the need for specific measures to ensure that the communication and consultation methodology is adapted to this group.

D. Request for extension of time

33. Pursuant to regulation 50(1) of the RoC, the time limit for victims to make representations under article 15(3) of the Statute is 30 days following the Prosecution's public notice to victims.
34. Considering the factors and circumstances detailed above,²⁸ the Registry submits that the default 30-day time limit will be insufficient to produce a meaningful sample of victims' representations. As outlined above, access to victims, languages, security, weather conditions and other infrastructural challenges are the key factors warranting more time to collect victims' representations effectively.
35. Furthermore, the Registry recalls the heightened preparation requirements before it can effectively engage in the field. The Registry will need time to prepare [Redacted] in order to: a) provide accurate and complete information about the Article 15(3) process; b) consult with as many actors on the ground as possible, [Redacted], on further details regarding the most appropriate way to conduct the Article 15(3) process; and c) train potential intermediaries on filling in representation forms and/or submitting representations in other formats. [Redacted] Adequate time will also be required to prepare translations of relevant documents to be

²⁷ OCHA Services, « «2019 Joint Response Plan For Rohingya Humanitarian Crisis” January-December 2019. <https://www.humanitarianresponse.info/en/operations/bangladesh/document/2019-joint-response-plan-rohingya-humanitarian-crisis-january>.

²⁸ Paras. 14–32.

used with victims, their representatives and intermediaries during the Article 15(3) process.

36. Therefore, in the Registry's view good cause is shown for extending the time limit for victims to submit representations to 11 October 2019.

37. The Registry respectfully submits that the Chamber may find it suitable to issue a decision on the present request before the Prosecution gives its public notice to victims, so that the latter would be in a position to refer to a potentially extended time period for victims to make representations in its notice.

E. Victim representation form

38. The Registry has developed a draft victim representation form²⁹ and it is in the process of finalising guidelines for victims/representatives on how to fill in the form. The information included in the representation form will enable the Registry to assess whether the criteria set out in rule 85 of the Rules are met,³⁰ and to report to the Chamber on the victims' views on the Prosecution's request for authorisation to start an investigation in the Situation.

39. The Registry respectfully requests the Chamber's approval to use the present draft representation form and to work [Redacted] in order to

²⁹ Confidential Annex. The form was developed based on the Registry's previous experience in the article 15(3) representation collection process in Kenya, Georgia and Afghanistan.

³⁰ In assessing whether the criteria are met, the Registry will use the same standard of proof previously used by Pre-Trial Chambers in relation to the representations submitted in the context of the Kenya, Côte d'Ivoire, Georgia and Afghanistan situations.

optimise any detail, if necessary, considering particularly also the language challenges detailed above.³¹

40. The representation form, if and as approved, will be made available in English, Burmese and Bangla, for download and print-out on the ICC web page. A Rohingya audio recording will also be available. Moreover, an online process will allow the form to be filled in on the ICC webpage without being downloaded. The guidelines on how to fill in the victim representation form in the abovementioned languages will also be made available on the ICC website.

41. The Registry also stands ready to receive and process representations made in a manner other than by standard form, e.g. audio, video or other electronic format.³²

F. Subsequent steps

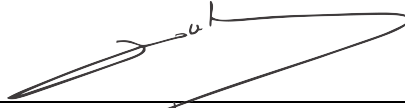
42. The Registry suggests transmitting to the Chamber the received representations on a rolling basis, together with a brief preliminary assessment including, *inter alia*, some statistical information on the type of representations received, the languages in which the representations were made, victims' gender, age, ethnicity, locations, and the scope of the alleged crime(s). Where audio and/or video files are received in any other language than English, a transcription of the file in English will be submitted to the Chamber.

43. The proposed transmission dates are 30 August, 13 and 27 September, 11 and 31 October 2019. The Registry also intends to submit its final

³¹ See paras.24-28 above.

³² Pre-Trial Chamber III, "Order to the Victims Participation and Reparation Section Concerning Victims' Representations", 9 November 2017, ICC-02/17-6, para. 10.

consolidated report on all victims' representations received on
31 October 2019.³³



Marc Dubuisson, Director, Division of Judicial Services

On behalf of
Peter Lewis, Registrar

Dated this 26 June 2019

At The Hague, The Netherlands

³³ This will mostly depend on the total number of representations received, their format and the languages in which they have been submitted.