



Original: English

No. **ICC-01/19**
Date: **11 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**

Public

Decision on the Prosecutor's 'Request on the Victim Representation Form'

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 Prosecutor’s “Request on the Victim Representation Form”’ in the situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (‘situation in Bangladesh/Myanmar’).

1. On 26 June 2019, the Registry requested, *inter alia*, authorisation to use its submitted Victim Representation Form (‘Form’) for the purpose of collecting victim representations in the situation in Bangladesh/Myanmar.¹

2. On 28 June 2019, the Chamber authorised the use of the submitted Form.²

3. On 4 July 2019, the Prosecutor requested authorisation of an investigation in the situation in Bangladesh/Myanmar (‘Article 15 Request’).³

4. On 4 July 2019, the Prosecutor submitted the ‘Request on the Victim Representation Form’ (‘Request’), seeking four amendments to the authorised Form.⁴ In essence, the Prosecutor argues that the proposed changes are of ‘minor nature’, ‘aimed merely at simplifying the form’ and ‘avoiding language of a potentially leading nature’. Moreover, the Prosecutor submits that the proposed changes aim to avoid ‘inconsistencies with statements subsequently collected during an investigation’. According to the Prosecutor, the Victims Participation and Reparations Section (‘VPRS’) has no issues with the proposed changes.

5. Having considered the Prosecutor’s submissions and concerns, the Chamber rejects the Request for the reasons set out below.

6. First, the Chamber notes that victims’ representations under article 15 of the Rome Statute are distinct to victims’ application forms to participate in judicial proceedings. They must be distinguished from documents that could arise in the context of eventual pre-trial and trial proceedings. Consequently, the Chamber fails to

¹ Request for Extension of Notice Period and Submissions on the Article 15(3) Process, ICC-01/19-3-Conf, with a confidential annex containing the Form (public redacted version, excluding the annex, notified the same day, ICC-01/19-3-Red).

² Decision on the ‘Registry’s Request for Extension of Notice Period and Submissions on the Article 15(3) Process’, ICC-01/19-6.

³ Request for authorisation of an investigation pursuant to article 15, ICC-01/19-7.

⁴ ICC-01/19-8-Conf, with a confidential annex (notified on 5 July 2019).

see how inconsistencies could arise between the victims' representations and any other subsequent statements, rendering the issue moot. Moreover, the Chamber recalls that victims will in any case need to submit a new form, should they wish to *participate* in the proceedings, if any, pursuant to rule 89(1) of the Rules of Procedure and Evidence.

7. Second, the collection and organisation of victims' representations under article 15 of the Rome Statute is the prerogative of the VPRS. In accordance with regulation 86(9) of the Regulations of the Court, VPRS is the specialised section 'responsible for assisting victims and groups of victims', in order to facilitate their access to the Court.

8. Third, the Chamber cannot see how the approved Form is 'leading' or 'limiting' victims in their responses. It should be recalled that the *Rohingya* language does not have a standardised written script.⁵ Therefore, the Chamber is of the view that no different outcome would be achieved if the proposed changes were to be approved. Furthermore, the Chamber recalls that victims are under no obligation to use the provided Form.⁶ Although it would certainly be sensible to use the Form to the extent possible, the Chamber anticipates, noting the Registry's submissions with regard to language issues,⁷ that a considerable number of representations will be submitted by other means of communication.⁸

9. However, the Chamber is of the view that amending the approved Form, which is already available online,⁹ could cause confusion among those assisting the victims to make representations and thus potentially also cause delays in the process. Noting that the collection of victims' representations in the context of this situation is already a very complex process, the Chamber considers that amending the Form would not be in the interest of expeditious proceedings.

10. Accordingly, the Chamber sees no need to revisit its previous ruling authorising the use of the Form.

⁵ ICC-01/19-3-Red, para. 24.

⁶ ICC-01/19-6, para. 18.

⁷ ICC-01/19-3-Red, paras 24-25.

⁸ See also ICC-01/19-3-Red, para. 41.

⁹ <https://www.icc-cpi.int/itemsDocuments/vprs-Representation-form-Myanmar-ENG.pdf>.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

ORDERS the Prosecutor to indicate whether the Request may be made public without redactions or otherwise file a public redacted version of the Request; and

ORDERS the Registry to reclassify document ICC-01/19-3-Conf-Anx as public.

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

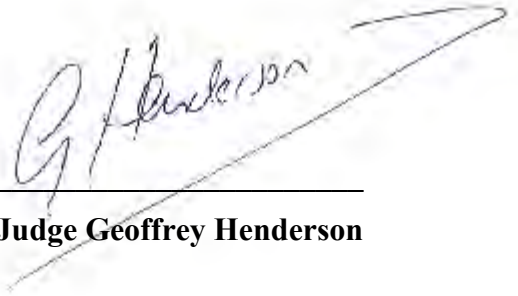


Judge Olga Herrera Carbuccion

Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Dated this Thursday, 11 July 2019

At The Hague, The Netherlands