



**Original: English**

**No. ICC-02/17**

**Date: 9 November 2017**

**PRE-TRIAL CHAMBER III**

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Chang-ho Chung  
Judge Raul C. Pangalangan**

**SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**PUBLIC**

**Order to the Victims Participation and Reparation Section Concerning  
Victims' Representations**

Order 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**

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**Registrar**

Herman von Hebel, 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** (“Chamber”) of the International Criminal Court (“Court”) issues this order concerning the issue of victims’ representations pursuant to article 15(3) of the Rome Statute (“Statute”) in the context of the situation in the Islamic Republic of Afghanistan (“Afghanistan”).

1. On 30 October 2017, the Prosecutor informed the Presidency of her decision to request judicial authorisation to commence an investigation into the situation in Afghanistan pursuant to regulation 45 of the Regulations of the Court (“Regulations”).<sup>1</sup>
2. On 3 November 2017, the Presidency assigned the situation to the Chamber.<sup>2</sup>
3. On 7 November 2017, the Registry submitted the “Registry’s Request for Extension of Notice Period and Submissions on Aspects Related to the Article 15(3) Process” (“Request”).<sup>3</sup>
4. On 9 November 2017, the Judges of the Chamber issued a decision indicating that Judge Antoine Kesia-Mbe Mindua will act as the Presiding Judge of the Chamber in the situation in Afghanistan.<sup>4</sup>
5. On 9 November 2017, the Judges of the Chamber granted the Prosecutor’s request for an extension of the page limit concerning her request for authorisation of an investigation in the situation in Afghanistan.<sup>5</sup>

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<sup>1</sup> ICC-02/17-1-AnxI.

<sup>2</sup> Presidency, Decision assigning the situation in the Islamic Republic of Afghanistan, ICC-02/17-1.

<sup>3</sup> ICC-02/17-3-Conf with two confidential annexes. A public redacted version of the request is also available.

<sup>4</sup> ICC-02/17-4.

<sup>5</sup> Pre-Trial Chamber III, Decision on the Election of the Presiding Judge and the Prosecutor’s Request for Extension of the Page Limit, ICC-02/17-5.

6. The Chamber notes article 15(3) and (4) of the Statute, rules 16, 50, 85 and 102 of the Rules of Procedure and Evidence (“Rules”) and regulations 35, 50(1) and 86(1) and (9) of the Regulations.

7. According to article 15(3) of the Statute, “[v]ictims may make representations to the Pre-Trial Chamber”. Rule 50(1) of the Rules mandates the Prosecutor to inform victims known to her, *inter alia*, via public notice by general means. Following this provision of information by the Prosecutor, the victims may make representations in writing to the Chamber within 30 days, as foreseen in regulation 50(1) of the Regulations. Lastly, pursuant to rule 50(4) of the Rules, the Chamber may decide “on the procedure to be followed”, including the matter of victims’ representations.<sup>6</sup>

8. With a view to properly organising the process of victims’ representations, and in light of the issues raised in the Request, the Chamber deems it pertinent to issue this order.

9. **Victims’ Representation Form.** The Registry submitted a draft representation form and draft guidelines on how to fill in such form requesting that their use be approved by the Chamber.<sup>7</sup> The form will be available in English, Dari and Pashto.<sup>8</sup>

10. Upon review of the documents, the Chamber hereby approves the form and related guidelines by means of which victims may communicate with the Court. The Chamber, however, notes that, with regard to the participation of victims in proceedings before this Court, victims are generally not under an obligation to use the standard form developed by the Court. In this regard,

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<sup>6</sup> *Similarly*, Pre-Trial Chamber II, [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.

<sup>7</sup> Request, ICC-02/17-3-Red, para. 10.

<sup>8</sup> Request, ICC-02/17-3-Red, para. 12.

regulation 86(1) of the Regulations simply states that standard forms shall, *to the extent possible*, be used by victims. Furthermore, rule 102 of the Rules provides that where “a person is unable, due to a disability or illiteracy, to make a written request, application, observation or other communication to the Court, the person may make such request, application, observation or communication in audio, video or other electronic form”. Therefore, the Chamber underlines that, if victims submit their representations in a manner other than by standard form, this should also be accepted.

11. **Extension of Time.** The Registry requests that the 30-day time limit be extended “by a margin the Chamber deems appropriate”.<sup>9</sup> In this regard, the Registry requests that the Chamber issue a decision on the request *before* the Prosecutor gives her public notice to victims so that she “would be in a position to refer to a potentially extended time period for victims to make representations”.<sup>10</sup>

12. The Chamber, noting the reasons advanced by the Registry to justify the extension of time and, on the basis of regulation 35(1) of the Regulations, hereby extends the time limit for the submission of representations to **Wednesday, 31 January 2018**. Accordingly, the Prosecutor is ordered to indicate in her public notice the time limit as established by the Chamber.

13. **Preliminary Assessment of Representations and Transmission of Representations.** The Registry informs the Chamber that it will assess the rule 85 criteria and that it will report on the victims’ views on the Prosecutor’s impending request for an authorisation of the commencement of an investigation.<sup>11</sup> It also informs the Chamber that it intends to transmit the

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<sup>9</sup> Request, ICC-02/17-3-Red, para. 14.

<sup>10</sup> Request, ICC-02/17-3-Red, para. 15.

<sup>11</sup> Request, ICC-02/17-3-Red, para. 11.

representations received “on a rolling basis, possibly every two weeks, 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 crimes”.<sup>12</sup> Finally, the Registry states that it will submit a comprehensive report after the expiry of the deadline for the submissions of victims’ representations.<sup>13</sup>

14. The Chamber endorses the Registry approach to conduct a preliminary assessment of the victims’ representations with regard to rule 85 of the Rules.<sup>14</sup> In this context, the Chamber recalls that, for the purposes of representations at this stage, and given 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).<sup>15</sup>

15. Furthermore, the Victims Participation and Reparations Section (“VPRS”), as the specialised unit within the Registry responsible for assisting victims and groups of victims in accordance with regulation 86(9) of the Regulations, is encouraged to identify community leaders of the affected groups willing to act on behalf of victims who may wish to make representations (collective representations). Considering the present circumstances, the Chamber is of the view that this may assist in streamlining

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<sup>12</sup> Request, ICC-02/17-3-Red, para. 16.

<sup>13</sup> Request, ICC-02/17-3-Red, para. 17.

<sup>14</sup> It is recalled that “the location of rule 85 in the Rules is indicative of a general provision relating to victims, applicable to various stages of the proceedings (...) [and that] the object and purpose [of this rule] is to define who are victims”, see Appeals Chamber, [Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008](#), 11 July 2008, ICC-01/04-01/06-1432, paras 57-58.

<sup>15</sup> Pre-Trial Chamber II, [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.

the receipt of victims' representations and, at the same time, minimise any possible risk to victims. This should not, however, prevent victims from submitting individual representations.

16. As a result, the VPRS is ordered to (i) identify, to the extent possible, the community leaders of the affected groups to act on behalf of those victims who may wish to make representations; (ii) receive and collect victims' representations, be it collective or individual; (iii) conduct a preliminary assessment, as set out in this order, whether the conditions set out in rule 85 have been met; and (iv) transmit incoming representations on a rolling basis, possibly every two weeks, together with a brief preliminary assessment, as set out in paragraphs 13-14 of the present order. Lastly, the Chamber agrees that the VPRS submit a final comprehensive report after closure of the deadline to receive victims' representations.

**FOR THESE REASONS, THE CHAMBER HEREBY**

- a) **APPROVES** the draft representation form and guidelines as attached to the Request;
- b) **EXTENDS** the time limit for victims to submit their representations to **Wednesday, 31 January 2018**;
- c) **ORDERS** the VPRS to implement the procedure as outlined in paragraphs 14-16 of the present order.

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



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**Judge Antoine Kesia-Mbe Mindua,  
Presiding Judge**



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**Judge Chang-ho Chung**



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**Judge Raul C. Pangalangan**

Dated this Thursday, 9 November 2017

At The Hague, The Netherlands