

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/17  
Date: 7 May 2021

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Tomoko Akane  
Judge Antoine Kesia-Mbe Mindua

**SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**Public**

**Request for leave to submit *Amicus Curiae* observations pursuant to Rule 103 of  
the Rules of Procedure and Evidence**

**Source: Armanshahr | OPEN ASIA and International Federation for Human Rights  
(FIDH)**

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

**The Office of the Prosecutor**  
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  
Section**

**Other**  
Ms Spojmie Ahmady Nasiri, Lead  
Counsel for Petitioners

## I. INTRODUCTION

1. Armanshahr|OPEN ASIA and the International Federation for Human Rights (“FIDH”) (collectively, the “Organisations”), respectfully request Pre-Trial Chamber II (the “Chamber”) for leave to submit *amicus curiae* observations pursuant to Rule 103 of the Rules of Procedure and Evidence (“RPE”) in the Situation in the Islamic Republic of Afghanistan (“Afghanistan”) (hereafter referred to as “Request”).
2. Armanshahr|OPEN ASIA is an independent organisation founded in 1996 active in Afghanistan since 2005, committed to a holistic approach and women’s agency as key components in supporting transitional justice processes, as characterized by the extreme fragility of the post-Taliban context.
3. FIDH has been working closely for decades with its member and partner organisations based in Afghanistan, including Armanshahr|OPEN ASIA. FIDH is an international NGO founded in 1922 made up of a federation of 192 national human rights organisations from 117 countries, with the mandate of defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. One of its priorities is to fight against impunity for the most serious crimes and support the realisation of victims’ rights to truth, justice and reparations.
4. FIDH has maintained a permanent representation in The Hague since 2004, and along with its member organisations has submitted communications pursuant to article 15 of the Rome Statute (“Statute”) to the Office of the Prosecutor (“OTP”) on specific situations. FIDH has also advocated for a victim-centered approach in Court-wide policies, progressive provisions on victims’ rights and

their effective implementation, and the meaningful participation of victims before the International Criminal Court (“ICC”).<sup>1</sup>

5. Furthermore, FIDH has advocated for victims’ rights to information, participation, legal representation, protection and reparations in various fora and justice processes, including at the national, regional and international levels. FIDH has also engaged in strategic litigation, through its Litigation Action Group (“LAG”), a global network of lawyers, magistrates and legal experts, working *pro bono* and acting as the legal representatives of victims of international crimes.
6. FIDH previously submitted its written *amicus curiae* observations both before this Chamber and the Appeals Chamber in the Situation in Afghanistan on issues relating to, amongst others, victims’ rights before the Court. In particular, the Organisations submitted their observations regarding the legal interpretation of “the interests of justice” and the standing of victims to appeal decisions that affect their personal interests in exceptional circumstances.<sup>2</sup>
7. This Request follows from the “Motion Seeking Remedies for Information and Effective Outreach” (“Annex 1”)<sup>3</sup> filed by Ms Spojmie Ahmady Nasiri (“Ms Nasiri”), in which she represents victims, individuals and Afghan civil society members who are victims of crimes under investigation by the OTP.

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<sup>1</sup> See for example, ‘Victims Rights before the International Criminal Court: A Guide for Victims, their Legal Representatives and NGOs’, (2007), available at: <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/Victims-Rights-Before-the>; ‘FIDH Report: Enhancing Victims’ Rights Before the ICC- A View from Situation Countries on Victims’ Rights at the International Criminal Court,’ (2013), available at: <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/14259-fidh-report-enhancing-victims-rights-before-the-icc-a-view-from-situation>; ‘5 Myths about Victim Participation in ICC Proceedings’ (2014), available at : <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/16592-five-myths-about-victim-participation-in-icc-proceedings>; ‘Position paper: Judges seeking to join ICC’s bench must have proven expertise on victims’ rights,’ (2020), available at: <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/position-paper-judges-seeking-to-join-icc-s-bench-must-have-proven>.

<sup>2</sup> ICC-02/17-58.

<sup>3</sup> ICC-02/17-143-Anx1.

8. The Organisations would like to request the Chamber for leave to submit *amicus curiae* observations regarding the issues raised by Ms Nasiri in Annex 1, namely those relating to victims' rights under the Rome Statute, including their right to information and effective outreach. The Organisations would also seek to obtain information pertaining to the OTP's interpretation of article 18(2) of the Statute vis-à-vis victims' rights.

## II. PROCEDURAL HISTORY

9. On 15 April 2020, the OTP filed its "Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan's letter concerning article 18(2) of the Statute".<sup>4</sup> In this filing, the OTP informed the Chamber that the Islamic Republic of Afghanistan had responded to the Prosecutor's article 18(1) of the Statute notification, and requested the Prosecutor defer to national courts its investigation of persons whom it is investigating or has investigated. The scope of the request extended to its own domestic investigations of 'its nationals or others within its jurisdiction with respect to criminal acts allegedly committed within the authorised parameters of the Situation in Afghanistan.'
10. On 16 April 2021, the OTP filed its "Notification on status of the Islamic Republic of Afghanistan's article 18 (2) deferral request", ("OTP Notification") in which it informed the Chamber that it continues to assess the material provided by the Afghan government and will be meeting with the Afghan authorities on the way forward in relation to this matter.<sup>5</sup>
11. On 21 April 2021, the Registry, in accordance with rule 13(1) of the RPE transmitted one document and its seven annexes, entitled "Motion Seeking Remedies for Information and Effective Outreach", which it received on 20 April 2021 from Ms Nasiri, Lead Counsel for Petitioners. Pursuant to the Chamber II's

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<sup>4</sup> ICC-02/17-139.

<sup>5</sup> ICC-02/17-142.

Instruction, dated 28 April 2021, this document—initially registered as a confidential *ex parte* transmission filing—was reclassified as "Public."<sup>6</sup>

12. Annex 1 to the Transmission of a "Motion Seeking Remedies for Information and Effective Outreach," ("Annex 1") reclassified as "Public" requests that the Chamber order the Registry and the OTP to: (1) issue quarterly reports on their outreach efforts and the OTP's investigative activities; (2) provide more information concerning the Afghan Government's article 18(2) deferral request, including the OTP's legal understanding of article 18(2); and (3) order a deadline for the OTP's review of the Afghan Government's request.<sup>7</sup>
13. On 26 April 2021, the Registry received the Second Motion from Ms Nasiri, in which she requested (1) clarification of the Chamber's reclassification of the Motion and its annexes to "Confidential, ex parte"; (2) that the Chamber reclassify the Motion and annexes D to G as "public"; and (3) that the Chamber maintain the "public" classification of this filing."<sup>8</sup>
14. On 29 April 2021, the Registry, pursuant to rule 13 (1) of the RPE, transmitted to the Chamber one document, entitled "Motion for Clarification and reclassification of "Motion Seeking Remedies for Information and Effective Outreach", as Annex I, which it received on 26 April 2021 from Ms Nasiri and one clarification e-mail, as Annex II.<sup>9</sup>

### III. APPLICABLE LAW

15. Rule 103(1) of the RPE provides that "[A]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organisation or person to submit, in writing or

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<sup>6</sup> ICC-02/17-143.

<sup>7</sup> ICC-02/17-143-Anx1.

<sup>8</sup> ICC-02/17-144.

<sup>9</sup> ICC-02/17-144.

orally, any observation on any issue the Chamber deems appropriate.’

16. The RPE foresee that unsolicited applications can be submitted by States, organisations, or individuals interested in addressing issues of consequence to the proceedings.
17. Pre-Trial Chambers, in deciding on a submission, have applied ‘the proper determination test’ to various cases, including by the Appeals Chamber granting a leave for *amicus curiae* submissions in the case against Thomas Lubanga.<sup>10</sup> Pre-Trial Chamber II has espoused an ‘exceptional basis test’ where the Chamber will resort, at its discretion, to *amicus curiae* observations only on an exceptional basis, when it is of the view that such observations provide specific expertise on specific topics.<sup>11</sup> The Appeals Chamber has allowed *amicus curiae* submissions as long as they were ‘desirable for the proper determination of the case’ and in cases where the novelty of the issues raised could benefit from *amicus curiae* submissions.<sup>12</sup>
18. In the Afghanistan situation, Pre-Trial Chamber II admitted the views of *amicus curiae* groups ‘in light of the nature and complexity of the issues at stake’.<sup>13</sup> The Appeals Chamber held that the caliber and professional standing of the individuals and organisations who applied to participate as *amici curiae* and the

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<sup>10</sup> Appeals Chamber, “Decision on ‘Motion for Leave to File Proposed *Amicus Curiae* Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence”, Case No. ICC-01/04-01/06 OA 11, 22 April 2008, para. 7-8.

<sup>11</sup> Pre-Trial Chamber II, "Decision on the Application by the Redress Trust to Submit *Amicus Curiae* Observations", 18 February 2014, ICC-01/04-02/06-259, Pre-Trial Chamber II, "Decision on the 'Request by Ms. Moraa Gesicho to Appear as *Amicus Curiae*'", 12 April 2011, ICC-01/09-01/11-49, para. 14; Pre-Trial Chamber II, "Decision on the 'Request by Ms. Moraa Gesicho to Appear as *Amicus Curiae*'", 12 April 2011, ICC-01/09-02/11-54, para. 15; Pre-Trial Chamber II, "Decision on the 'Request for leave to submit *Amicus Curiae* Observations on behalf of the Kenya Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence'", 11 May 2011, ICC-01/09-01/11-84, para. 8; Pre-Trial Chamber II, "Decision on the 'Request for leave to submit *Amicus Curiae* Observations on behalf of the Kenya Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence'", 11 May 2011, ICC-01/09-02/11-87, para. 8.

<sup>12</sup> *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11, Decision on the “Requests for Leave to Submit Observations under Rule 103 of the Rules of Procedure and Evidence” 13 September 2013, para.10.

<sup>13</sup> Pre-Trial Chamber II, Decision on the ‘Request for Leave to File *Amicus Curiae* Submissions on Behalf of Human Rights Organizations in Afghanistan’ (ICC-02/17-35) and on the ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (ICC-02/17-39), ICC-02/17-43, para.7.

diversity of the issues at stake meant that they could potentially contribute to the proper determination of the matters under appeal.<sup>14</sup>

19. The International Criminal Tribunal for the former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”), the Special Court for Sierra Leone (“SCSL”), and the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) have provisions equivalent to rule 103(1) and have permitted third party interventions using a rationale similar to the ICC.<sup>15</sup> In their determinations, these tribunals considered whether *amicus curiae* submissions would assist the court in achieving ‘the end of justice’.<sup>16</sup>
20. The International Court of Justice (“ICJ”) permits the appearance of *amicus curiae* in both contentious and advisory proceedings.<sup>17</sup> The European Court of Human Rights (“ECtHR”) accepts *amicus curiae* submissions ‘in the interest of the proper administration of justice’ to any person concerned other than the applicant.<sup>18</sup> At the SCSL, the Appeals Chamber has observed that the intervening party may have an interest in the issue where the decision ‘will be likely to create a precedent affecting [it] in the future’, or where a ‘State or NGO or campaigning

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<sup>14</sup> *Situation in the Islamic Republic of Afghanistan*, Appeals Chamber, ‘Decision on the participation of *amici curiae*, the Office of Public Counsel for the Defence and the cross-border victims,’ ICC-02/17-97, para. 33.

<sup>15</sup> ICTY Rules of Procedure and Evidence, Rule 74; ICTR Rules of Procedure and Evidence, Rule 74; SCSL Rules of Procedure and Evidence, Rule 74; ECCC Internal Rules, Rule 33.

<sup>16</sup> See for example *Prosecutor v. Prlić et al.*, IT-04-74-T, Order Appointing an Amicus Curiae, 3 July 2009; *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, “Order Granting Leave for Amicus Curiae to Appear”, 12 February 1998.

<sup>17</sup> In contentious proceedings, Article 34(2) of the Statute of the ICJ provides that the Court “subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organisations on their own initiative’. The Rules of the Court define an international organisation as ‘an international organisation of states’, so public interest organisations do not have standing in contentious proceedings: Rule 69(4). In relation to advisory opinions, standing is less restrictive: any state or “international organization” considered likely to be able to furnish information on the question will be notified by the Registrar “that the Court will be prepared to receive . . . written statements, or to hear, at a public sitting to be held for the purpose, oral statement relating to the question”: Art 66(4) Statute of the ICJ.

<sup>18</sup> Rule 37(2), Rules of Procedure (amended to include an explicit ability to allow receipt of *amicus* briefs).



group may wish to have the law clarified or declared or developed in a particular way'.<sup>19</sup>

#### IV. SUBMISSIONS

1. *The Organisations' proposed submissions will assist the Chamber's determination of the Motion*
21. The purpose of the Organisations proposed submissions are twofold: (i) to enable the Pre-Trial Chamber to make an informed decision on the requests made by Ms Nasiri in her Annex 1 submission; and (ii) to assist the Chamber with their assessment of what would be required in order to carry out sufficient outreach and communication to victims, particularly in light of a potential article 18(2) deferral.
22. The participation of victims in legal proceedings is a cornerstone of the Rome Statute system and allows victims to present their 'views and concerns' where their personal interests are affected. In addition, the participation of victims in the proceedings also enables them to take 'ownership' of the process and engage with the issues before the Court in a holistic manner. In order to do this, they need to receive timely and adequate information about the status of the investigation.
23. The Organisations, if granted leave by the Chamber to submit *amicus curiae* observations, will address three points that are implicated by the Motion Seeking Remedies for Information and Effective Outreach: (1) the rights of victims at the investigation stage of proceedings; (2) the importance of establishing a clear plan and channel of communication with victims at this stage of the proceedings, regardless of whether victims have formally been accepted to participate in the

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<sup>19</sup> *Prosecutor v Kallon* 'Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File *Amicus Curiae* brief and to Present Oral Arguments' SCSL-2003- 07, 1 November 2003 (SCSL) at para. 4.

proceedings; and (3) the impact of the Afghan government's deferral request and the OTP's interpretation of article 18(2) on the rights of victims. These observations will be informed by the first-hand knowledge and expertise that the Organisations have acquired over years of working with Afghan survivors of crimes that are under investigation by the OTP, as discussed in detail below.

24. In their proposed submissions, the Organisations will explain the importance of information and effective outreach as a precondition to the fulfilment of victims' rights under the Statute as emphasized in the Palestine and Bangladesh/Myanmar situations respectively, where both pre-trial chambers highlighted the duty of the Court to provide adequate information regarding the proceedings to victims, as well as to conduct sufficient and effective outreach to victim communities.<sup>20</sup>
25. Specifically, outreach activities should be tailored to the informational needs and constraints that the different affected communities may have. Victims are not a monolithic group, much less in Afghanistan—as illustrated by the varied work carried out by Armanshahr|OPEN ASIA and FIDH with different communities across Afghanistan, including women, youth and children. The Organisations are also cognizant of the extremely volatile security situation in Afghanistan and note that the obstacles to communicating and conducting outreach with victims is further complicated by the ongoing Covid-19 pandemic, which affects both international travel as well as in-country visits.
26. The Organisations submit that they are well placed to inform the Pre-Trial Chamber about the victims' needs, and the specific communication and outreach initiatives the OTP and Registry can undertake to facilitate the effective fulfilment of the rights of the victims. Should the Request for leave be granted,

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<sup>20</sup> Palestine Situation, Decision on Information and Outreach for Victims of the Situation, ICC-01/18-2, 13 July 2018, para. 8; Bangladesh/Myanmar Situation, Order on Information and Outreach for the Victims of the Situation, 20 January 2020 Decision, para. 7.

they will submit their observations on the manner in which effective outreach and communication may be undertaken in Afghanistan, taking into account the current circumstances and constraints under which the Court is operating.

27. The Organisations will also argue why the need for transparency and outreach to affected communities, which can be done without jeopardising the confidentiality, integrity and objectivity of the investigation, is particularly important in this situation given that the Afghan government could have potentially requested the OTP to defer the entire investigation related to the situation in Afghanistan.
28. Indeed, on 26 March 2020, the Afghan government submitted a request to the OTP to defer the ICC's investigations in Afghanistan, pursuant to Article 18(2) of the Rome Statute. In the request, the Afghan government states that domestic investigations are taking place into alleged war crimes and crimes against humanity that occurred on Afghan soil since May 2003.<sup>21</sup>
29. In the OTP's Notification, the Prosecution provided an update to the Chamber in relation to its assessment of the material provided by the government of Afghanistan in relation to the article 18 (2) deferral request. The Organisations submit that victims remain unaware regarding the status of an investigation that impacts them directly. This is problematic as it could result in an information vacuum which can be easily filled up with misinformation put forward by actors with malicious interests. Victims are also provided with limited opportunities to make their voices heard given that they cannot form an informed opinion on the status of national investigations.
30. The Organisations will explain why how the OTP chooses to interpret this deferral request could directly implicate victims' rights to truth, justice and

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<sup>21</sup> Deferral Request made by the Government of the Islamic Republic of Afghanistan pursuant to Article 18(2) of the Rome Statute, [https://www.icc-cpi.int/RelatedRecords/CR2020\\_01538.PDF](https://www.icc-cpi.int/RelatedRecords/CR2020_01538.PDF).

reparations under the Statute. For example, the deferral request could possibly challenge the admissibility of specific cases which could be detrimental to the interests of the victims. Therefore, it is crucial to ensure that victims are informed and consulted on all matters that affect their interests, and allowed to engage in dialogue with the OTP and other relevant organs of the Court both in relation to the deferral request, as well as on matters of general outreach and communication with affected communities.

31. Victims must be updated regularly of any information in relation to the deferral request. For instance, as reflected in the OTP Notification, the Prosecution will be meeting with the Afghan government. Similarly, the Prosecutor could potentially meet with the victims and their legal representatives. It is imperative that victims be generally provided with non-confidential information in relation to the ongoing OTP investigations in Afghanistan. Indeed, the creation of an information vacuum can lead to the proliferation of rumours within victim communities and can negatively implicate the work of the Court.
  32. The Organisations contend that their submissions are desirable for the proper determination of the case, given the novelty of the issues raised by article 18(2) vis-à-vis the need for transparency, outreach and communication with victims.
2. *The Organisations have unique expertise to opine on the proposed submissions*
33. The expertise of the Organisations and the fact that they work directly with Afghan victims, in and outside Afghanistan, necessarily means they are uniquely placed to provide observations on the matters that form the basis of this Request. Armanshahr|OPEN ASIA has pioneered the introduction of transitional justice, the ICC and victim-oriented peace initiatives in Afghanistan. This has been a holistic component of the organisation's engagement, which has included both a strategic roadmap on transitional justice processes, and the publication and dissemination of more than 60 pertinent (and not available until then)

publications in local languages in Afghanistan—notably a practical guide for victims at the ICC that takes into account the existing international and national frameworks.<sup>22</sup>

34. To date, Armanshahr|OPEN ASIA has engaged with at least 30,000 stakeholders in Kabul, Herat, Mazar Sharif, Parwan and Faizabad, and led 190 public seminars with 550 experts, civil society and government representatives in order to create safe learning and expression forums for victims, including youth and women.<sup>23</sup> Armanshahr|OPEN ASIA has indeed paid particular attention to the recognition of violence against women and children, advancing the understanding of sexual and gender-based violence in communities in Afghanistan. Armanshahr|OPEN ASIA has also led a series of provincial consultations to collect the voices of the victims of war, and spearheaded campaigns related to children’s rights.<sup>24</sup>
35. The dire security situation in Afghanistan continues to impact Armanshahr|OPEN ASIA activities. The organisation has faced an array of security incidents. Staff, members of the organisation’s various platforms, and attendees mobilised in the context of public events, have received credible threats. The organisation has been forced to move offices several times and change venues of events at short notice (and sometimes, even cancel) in order to protect the people involved in its activities. Armanshahr|OPEN ASIA has lost several colleagues and partners, one of the most recent ones being the assassination of Yousuf Rasheed in December 2020, killed the day after he

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<sup>22</sup> In addition, Armanshahr|OPEN ASIA has published 1,000 issues of e-bulletins monitoring Human rights violations in Afghanistan and reaching 50,000 readers each time.

<sup>23</sup> These series of dialogues have included at least three national conferences and eight editions of the Human Rights Week, a multi activity and multi stakeholder forum. More than 1,000 audio visual documents, based on these exchanges, have been made available to the public via social networks.

<sup>24</sup> Armanshahr|OPEN ASIA has led several national campaigns including “Unveiling Afghanistan; the Unheard Voices of Progress Campaign”. The Simorgh Peace Prize, awarded by the organisation, have mobilised tens of thousands of people from around the country, including through a participatory call for life-stories of victims of crimes.

attended a meeting in the organisation's office in Kabul. Numerous colleagues have fled Afghanistan following intimidation, and many continue to live under the fear of constant security threats.

36. Likewise, FIDH's work on justice and accountability in countries under preliminary examination such as Ukraine, Palestine, Colombia, Venezuela, the Philippines, Myanmar/Bangladesh and Guinea, amongst others, will also inform any submissions made on this matter. FIDH has been working with civil society in Afghanistan since 1998, but more intensively since 2010. As part of its activities, FIDH has contributed to the documentation of human rights violations by all parties to the conflict, conducted advocacy and outreach missions jointly with national NGOs, and supported capacity-building and empowerment projects for Afghan civil society organisations.
37. FIDH has published numerous reports and briefing notes detailing human rights violations in Afghanistan—covering also the failures of the Afghan government to ensure accountability—and collaborated with national organisations in the context of the annual Human Rights Week in Kabul. To date, FIDH continues to conduct advocacy with the European Union and other international stakeholders around justice and accountability for the crimes committed against the Afghan population, including issues relevant to this Court and the matter at stake.
38. Furthermore, FIDH has facilitated exchanges between Afghan and United States of America ("US") civil society groups and the Court on a number of topics, such as the human rights situation in Afghanistan, the state of domestic justice and accountability efforts in both Afghanistan and the US vis-à-vis core international crimes, access to effective remedies by the victims or the lack thereof, and victims' understanding and expectations as to ICC proceedings. These exchanges were held during the preliminary examination phase, with meetings

in The Hague prior to the Prosecutor's November 2017 request for authorisation to open an investigation, as well as during the victims' Article 15 representation phase.

39. FIDH continues to undertake analysis of the implementation of victims' rights in ICC proceedings,<sup>25</sup> including in the framework of previous reforms of the Registry,<sup>26</sup> and the Independent Expert Review process. FIDH has submitted recommendations to the Independent Experts Group on how to improve and strengthen the Court's (positive) impact on victims, including suggestions in regards to outreach to victims and affected communities (as early as preliminary examination and investigation phases).<sup>27</sup>

3. *Eliciting the views of civil society organisations at this point in the proceedings is appropriate*

40. The jurisprudence of the Court supports early engagement with affected communities. The Pre-Trial Chamber in the Situation in the Democratic Republic of the Congo held that the personal interests of victims are affected in general at the investigation stage, since the participation of victims during this phase can serve to clarify the facts, to punish the perpetrators of crimes and to request reparations for the harm suffered.<sup>28</sup> The Single Judge in the Situation in Uganda stated that specifying the nature and scope of the proceedings in which victims may participate in the context of a situation, prior to, and/or irrespective of, a

<sup>25</sup> See in particular "Victims at the Center of Justice: Reflections on the Promises and the Reality of Victim Participation at the ICC (1998-2018)", December 2018, available at:

<https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/victims-at-the-center-of-justice-reflections-on-the-promises-and-the>

<sup>26</sup> See in particular "5 Myths about Victim Participation in ICC Proceedings", 2014, available at:

<https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/16592-five-myths-about-victim-participation-in-icc-proceedings>

<sup>27</sup> See in particular "The victims' mandate of the ICC: disappointments, concerns and options for the way forward – Observations and recommendations for the Independent Expert Review", June 2020, available at:

<https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/independent-expert-review-a-chance-to-strengthen-icc-s-impact-on>

<sup>28</sup> ICC-01/04-101-tEN-Corr, Pre-Trial Chamber I, 17 January 2006, para. 63. See also ICC-01/04- 01/07-357, Pre-Trial Chamber I (Single Judge), 2 April 2008, p.7.

case, is critical to ensuring the predictability of proceedings and ultimately the certainty and effectiveness of victims' participation.<sup>29</sup>

41. Therefore, as illustrated by the Court's jurisprudence, the participation of victims at the investigation stage does not *per se* jeopardise the appearance of integrity and objectivity of the investigation, nor is it inconsistent with basic considerations of efficiency and security.<sup>30</sup> Crucial to participation of victims at the investigation stage of the proceedings is ensuring that they are provided with information that affect their personal interests in a timely manner, and are provided with avenues of communication with the Court in order to enable them to exercise their right to participation in the investigation phase.

### III.RELIEF SOUGHT

42. The Organisations respectfully request the Pre-Trial Chamber for leave to submit *amicus curie* observations on the rights of victims at the investigation stage, in particular the importance of establishing a clear channel of communication with victim communities at this stage of the proceedings, and how such outreach may be carried out in this context.

Respectfully submitted,



**Alice Mogwe**

**On behalf of FIDH**



**Guissou Jahangiri**

**On behalf of Armanshahr/OPEN ASIA**

<sup>29</sup> ICC-02/04-101, Pre-Trial Chamber II (Single Judge), 10 August 2007, para. 88.

<sup>30</sup> ICC-01/04-101-tEN-Corr, Pre-Trial Chamber I, 17 January 2006, para. 57.



Dated this 7<sup>th</sup> day of May 2021

At Paris, France.