

Annex I
Public Redacted

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Introduction

1. The Article 18(2) victim representation process (“Article 18(2) process”) in the Situation in the Islamic Republic of Afghanistan (“Situation in Afghanistan” and “Afghanistan”, respectively) commenced on 8 November 2021, following the Chamber’s order to the Victims Participation and Reparations Section (“VPRS”) of the Registry to start collecting victims’ views and concerns in the context of the proceedings pursuant to article 18(2) of the Statute (“8 November 2021 Order”),¹ and ended on 8 April 2022.² During this phase, the VPRS communicated with individuals and organisations that are or used to be in contact with victims of the Situation and it received victims’ views and concerns on the resumption of the investigation by the Office of the Prosecutor (“OTP”) as outlined in the request for authorization to resume the investigation pursuant to article 18(2) of the Statute (“Prosecutor’s Request”).³
2. The VPRS received a total of 16 representations on behalf of victims and victim groups that it assessed as meeting the conditions set in Rule 85 of the Rules of Procedure and Evidence and transmitted to the Chamber.⁴ The representations unanimously⁵ support the OTP Request. They also bring forward the victims’ views and concerns regarding justice, the ICC, the scope of the investigation and the current security situation in Afghanistan.

¹ Pre-Trial Chamber II, “Decision on submissions received and order to the Registry regarding the filing of documents in the proceedings pursuant to articles 18(2) and 68(3) of the Statute”, 8 November 2021, ICC-02/17-171, para. 14 and operative paragraphs at p. 9.

² Pre-Trial Chamber II, “Order setting the schedule for the filing of submissions in the proceedings pursuant to article 18(2) of the Rome Statute and rule 55(2) of the Rules of Procedure and Evidence”, 24 February 2022, ICC-02/17-182, para. 20 and operative paragraph at p. 9.

³ Office of the Prosecutor, “Request to authorise resumption of investigation under article 18(2) of the Statute”, 27 September 2021, ICC-02/17-161.

⁴ The Registry did not transmit as a “representation” a filing submitted by persons that were not recognised to enjoy legal standing by the Chamber, pursuant to the 8 November 2021 Order, para. 11 and operative paragraph at p. 9.

⁵ However, in one collective representation it is mentioned that all but one of the victims represented support the investigation into the Afghanistan situation; the VPRS thus considered that the representation as a whole supports the OTP Request.

3. The present report is organised in three parts. The first part offers an overview of the Article 18(2) process with an emphasis on the challenges encountered. The second part provides further details of the representations received by the VPRS in terms of types, statistical data and content, whilst the third and final part displays the views and concerns expressed by victims, based on quotes extracted from the representations received.

I. Overview of the Article 18(2) victim representation process

4. This first part of the report details the security context in which the Article 18(2) process took place (A), the approach implemented (B) and the challenges and obstacles encountered (C).

A. Security context

5. At the outset of the process, the VPRS liaised with relevant sections of the Registry in order to evaluate the security situation in Afghanistan. A risk assessment was carried out in order to determine the risks that might arise for all of those involved in the process (namely victims and their representatives, intermediaries, ICC staff members, and any other persons or organisations directly or indirectly linked to the representation process), and to identify measures that could mitigate those risks.⁶
6. As previously reported,⁷ Afghanistan is an overall high risk security

⁶ On 14 December 2021, a threat and security assessment was received from the Registry's Victims and Witnesses Section, Division of External Operations.

⁷ Registry, "Registry Submission Pursuant to Decision ICC-02/17-171 in Relation to Article 18(2) Proceedings", 15 November 2021, ICC-02/17-172-Conf, paras. 18-19. A public redacted version was notified on 16 November 2021. Registry, "First Registry Report on Article 18 (2) Victims' Representations Pursuant to the Pre-Trial Chamber's Orders ICC-02/17-171 and ICC-02/17-173", 17

environment. [Redacted]^{8 9}

B. Approach implemented

7. In light of the security context detailed above, the Registry considered that [Redacted]. Guided above all by the desire not to put anyone at an even greater security risk than they are already exposed to, the VPRS applied (i) an open - yet prudent- approach in its information gathering (e.g. in providing an online form on the ICC webpage alongside options to download material and reach out to the VPRS directly¹⁰), and (ii) a targeted strategy in reaching out to select interlocutors. The following factors had an additional limiting effect on the interactions: (i) limitations due to the security situation in Afghanistan; (ii) constraints resulting from the ongoing Covid-19 pandemic; (iii) the lack of a country office in Afghanistan and of access to the country; (iv) the fact that the VPRS's capacity to reach out to victims relied on intermediaries [Redacted]; and (v) the overarching objective of avoiding any increased risk for anyone when reaching out to victims linked to the Situation.
8. The victim representation form ("Form") and the guidelines on how to fill in the form were made available on the ICC website in English, Dari, Pashto and Arabic starting from 26 November 2021. The Form was available *i*) in a PDF format for download and print; *ii*) in an electronically fillable PDF format; and *iii*) in an online format that could be filled in directly on the Court's webpage without the need to be downloaded.
9. Throughout the Article 18(2) process, the VPRS was in contact [Redacted] with interlocutors who had previously been interacting with the Court in the context

December 2021, ICC-02/17-175-Conf, paras. 12-15. A public redacted version was notified on 20 December 2021.

⁸ [Redacted].

⁹ [Redacted].

¹⁰ See at para. 8 *infra*.

of the article 15 representation process. [Redacted].¹¹

C. Challenges and obstacles

10. From the outset of the Article 18(2) process, the VPRS and its interlocutors identified, and reported to the Chamber,¹² a number of challenges and obstacles they experienced in the attempt to reach out to victims and to consult them on the Prosecutor's Request. These obstacles and challenges subsisted during the entire Article 18(2) process. They explain the low number of victim representations received, despite victims' previous strong support for an investigation in the Situation in Afghanistan, as expressed in the context of the Article 15 consultation process, as well as in the proceedings before the Appeals Chamber.¹³
11. *The security and humanitarian situation on the ground:* The dire humanitarian situation in Afghanistan has translated into a general lack of access to victims inside the country. [Redacted]
12. Human rights defenders and activists, [Redacted], are also in a vulnerable situation as they are exposed to a high level of security risks themselves. Many of [Redacted] reportedly have gone into hiding, or had to relocate themselves and/or their family members to safer countries.
13. Victims [Redacted], who would be potentially interested in submitting their views on the Prosecutor's Request, ultimately might not have done so in light of the multiple obstacles or dangers they faced. Not only are the communication infrastructures reportedly unreliable, which makes the use of internet unpractical; [Redacted].
14. *Low interest in the process:* From the start of the Article 18(2) process, VPRS'

¹¹ [Redacted].

¹² See Registry, "Registry Submission Pursuant to Decision ICC-02/17-171 in Relation to Article 18(2) Proceedings", 15 November 2021, ICC-02/17-172-Conf, paras. 18-26. A public redacted version was notified on 16 November 2021.

¹³ Appeals Chamber, "Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan", 5 March 2020, ICC-02/17-138.

interlocutors alerted the VPRS that a low level of interest in the present consultation process was to be expected from both victims and the persons assisting them, in light of their current struggle for their basic and immediate humanitarian needs to be met, which are not addressed by the Court's mandate.

15. Moreover, it was expressed that seeking the victims' views on the Prosecutor's Request at this juncture appeared frustrating and redundant a mere three years after many Afghan victims overwhelmingly conveyed their support for an ICC investigation in the Afghanistan Situation during the Article 15 process. In some of the interlocutors' views, consulting victims on (broadly) the same issue as during the Article 15 process did not justify their exposure to high levels of danger considering the current circumstances in Afghanistan.

II. Details of the victim representations received

A. Number, format, means of receipt and language of representations received

16. The VPRS received a total number of 16 Article 18(2) victim representations in the context of the Situation.¹⁴

17. The representations were submitted on the standard representation form or in a different written format.¹⁵

18. Two representations were received through the online form and 14 by email.

19. All representations were submitted in English.

B. VPRS preliminary legal assessment

20. The VPRS conducted a legal assessment of whether each individual or group making the representation falls within the definition of victim under Rule 85 of the Rules of Procedure and Evidence ("Rules") on the basis of the intrinsic

¹⁴ All Article 18(2) victim representations were received by the 8 April 2022 deadline.

¹⁵ The VPRS also considered as valid representations those included in word documents or emails.

coherence of the information provided in the documentation received. A detailed explanation of the assessment criteria applied by the VPRS is contained in Annex III.

21. Following its assessment, the VPRS transmitted to the Chamber all victim representations received.¹⁶

C. Types of representations

22. Out of the 16 representations, one was assessed by the VPRS as individual¹⁷ and 15 representations were assessed as collective.

23. The VPRS assessed as collective those representations which include either *i*) a number or a list of victims in the answer provided to question 3 of the representation form;¹⁸ or *ii*) information, contained anywhere in the form, that other individuals connected to the person who submitted the representation have also suffered harm as a result of crimes within the jurisdiction of the Court.¹⁹ When the information provided was insufficient to assess with certainty the number of family members who suffered harm, the VPRS assessed the representations as introduced by one family.

¹⁶ Registry, "First Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Orders ICC-02/17-171 and ICC-02/17-173", 17 December 2021, ICC-02/17-174; Registry, "Second Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Orders ICC-02/17-171 and ICC-02/17-173", 28 January 2022, ICC-02/17-178; Registry, "Third Registry Transmission of Victims' Representations Pursuant to the Pre-Trial Chamber's Orders ICC-02/17-171 and ICC-02/17-173", 23 February 2022, ICC-02/17-180; and Registry, "Fourth Registry Transmission of Victims' Representations", 25 April 2022, ICC-02/17-189.

¹⁷ The representation assessed as individual was submitted by a representative on behalf of only one victim.

¹⁸ Question 3 reads as follows: "In case you are presenting this form also on behalf of others, on behalf of how many victims is this form submitted?"

¹⁹ A number of representations mentioned as victims only those individuals who were killed, abducted, detained or tortured. This reflection was also confirmed by the interlocutors - the concept of who is a victim is in most cases understood to only cover direct victims of violent crimes.

D. Number of victims represented

24. The 16 representations were introduced on behalf of approximately 11,150 individual victims and 130 families.²⁰

III. Victims' views and concerns

25. This section of the present report is not intended to replace the original representations, which were transmitted for the Chamber's consideration. Rather, the objective of this section is to provide an overview which draws out the major themes mentioned by the victims in their representations, with a view to providing the Chamber with an overview of some patterns and general themes in the views presented by victims.

A. Views on the Prosecutor's Request

26. All representations indicated that the victims want the OTP to resume its investigation into the Afghanistan Situation.²¹ The main motivating factors invoked are: genuine and timely investigation by an impartial international court; ending impunity; preventing future crimes; allowing victims' voices to be heard. A sample of relevant quotes is provided below:

- "Victims overwhelmingly support an ICC investigation into crimes committed in Afghanistan. [...] All [...] are victims of crimes allegedly committed in Afghanistan, including by the Taliban, Islamic State-

²⁰ Some representations do not provide information as to whether they were introduced with the consent of all victims represented, whilst others mention that not all victims represented could be reached out to in order to give their express consent to the representation being submitted on their behalf.

²¹ The collective representation which states that all but one of the victims represented want an investigation is also included in this number.

Khorasan, and the former Afghan security forces. All of them request that the Office of the Prosecutor undertake its investigation into these crimes, immediately and without further delay. [...] One victim explained that ‘an investigation by the International Criminal Court is our only chance at justice.’²²

- “[The direct victim’s] wife urges the Office of the Prosecutor to resume its investigation in the Situation in Afghanistan. She views these proceedings as crucial in her quest for justice. [...] She respectfully requests that the investigation be approved.”²³
- “We [...] ask [the] ICC to start and continue its investigation in the situation in Afghanistan [...]. The process should not be influenced by political considerations. Any request for cancellation, suspension or postponement by the Government of Afghanistan shall not be accepted by [the] ICC and enough investigators shall be hired for the investigation [...]”²⁴
- “The Court should resume its investigation as soon as possible - there should be no delay in investigating these horrific crimes. Justice delayed is justice denied”.²⁵
- “The victims must be accorded equal protection of the law and equal access to justice – regardless of their status or the status and power of their alleged perpetrators. A grant of authorisation to resume the investigation under article 18(2) and the active investigation of all dimensions of the Afghanistan Situation will be a significant step towards vindicating those rights.”²⁶
- “The Prosecutor himself confirmed that there is no credible means to

²² r/80001/21.

²³ r/80003/21.

²⁴ r/90007/22.

²⁵ r/90004/22.

²⁶ r/80004/21.

access justice in Afghanistan. For this reason, particularly for Afghan victims, the ICC is the only court of justice and investigations should begin promptly. [...] For many victims of gross crimes against humanity, attaining justice is the only way to relieve a small percent of the pain and trauma we fell."²⁷

B. Views on the scope of the investigation

27. 11 out of the 16 representations requested that all crimes against humanity and war crimes committed in the context of the Afghanistan situation are investigated. Some indicated that the investigation should cover the crimes reported in the respective representations. Others requested that crimes committed against specific ethnic groups be looked into. A sample of relevant quotes regarding the scope of the investigation is provided below:

- “We feel strongly that the investigation should go forward as authorized by the Appeals Chamber and that allegations against all groups should be investigated.”²⁸
- “The ICC should investigate all crimes against humanity/war crimes to give all victims an opportunity for recourse and justice”.²⁹
- “[T]he investigation should include the full spectrum of crimes within the Court’s jurisdiction that were perpetrated.”³⁰
- “The ICC should investigate all crimes in Afghanistan. Of particular interest for me and my family is for ICC to investigate crimes against [Redacted] in Afghanistan.”³¹
- “The Taliban specifically employed torture against [Redacted] all over

²⁷ r/90005/22.

²⁸ r/90002/22.

²⁹ r/90004/22.

³⁰ r/80003/21.

³¹ r/90005/22.

Afghanistan in a bid to chill [Redacted].”³²

- “If such systematic crimes [Redacted] do not stop, we might face another cycle of organized crimes, including genocide, forced displacement and racial discrimination.”³³
- “Victims of war crimes have been people from all ethnic groups in Afghanistan. However, [Redacted] the victims of crimes such as genocide in the country, and thus we urge you to commence your investigation of such crimes in the future and increase international awareness about the situation.”³⁴
- “I believe [that] my brother and my family have been victims of genocide [Redacted]. I request the Court and the OTP to bear this in mind when investigating this incident and other relevant attacks against [Redacted].”³⁵

28. Some representations expressed concerns about the Prosecutor’s statement issued on 27 September 2021 in relation to the Prosecutor’s Request,³⁶ according to which the focus of the investigation, once resumed, will be on the crimes allegedly committed by the Taliban and the Islamic State – Khorasan Province (“IS-K”), whilst all other aspects of the investigation will be de-prioritised. A sample of relevant quotes are provided below:

- “We are therefore deeply concerned by the Prosecutor’s recent announcement. The Prosecutor’s decision to deprioritise the investigation in relation to crimes committed as part of the RDI Program deprives [the victim’s] family of any prospect for a genuine and effective

³² r/90009/22.

³³ r/80000/21.

³⁴ r/80028/21.

³⁵ r/90000/22.

³⁶ Office of the Prosecutor, “Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan”, 27 September 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=2021-09-27-otp-statement-afghanistan>.

investigation, along with the right to truth and reparations for the severe injustices [...].”³⁷

- "The ‘de-prioritisation’ decision threatens to leave un-investigated crimes that fall within the jurisdiction of the Court consisting of acts and omissions of actors from more than 30 States Parties, [whose] territory or resources facilitated the U.S. torture program and crimes by U.S. actors. Such a wide scale criminal enterprise and the long-running impunity for those who bear the greatest responsibility for it *should* remain of great concern – indeed, a priority – of the Prosecutor.”³⁸
- “There is a worry with [the victims] that a decision to prioritise some crimes before an investigation is carried out would result in premature decisions on whether to move forward with alleged crimes.”³⁹
- “[There are] persistent concerns about the Prosecutor’s public declaration that he intends to focus his Office’s investigation in the Situation in Afghanistan only on crimes allegedly committed by the Taliban and the Islamic State – Khorasan Province and deprioritise other aspects of the investigation. [...] the gravity of the crimes which took place within the secret CIA detention facilities in Afghanistan, Poland, Lithuania, Romania and other countries, including by nationals of States Parties, as well as the manifestly ineffective national proceedings, necessitate investigation of these grave and wide scale crimes by the Prosecutor of the International Criminal Court.”⁴⁰

C. Other issues raised by victims in their representations

29. The VPRS notes that a series of other issues and concerns were raised in the

³⁷ r/80003/21.

³⁸ r/80004/21.

³⁹ r/90005/22.

⁴⁰ r/80027/21.

victim representations. A list of these views and concerns is provided below and relevant quotes are provided.

a. Views and concerns on the Article 18(2) process

- "The victims are already enduring enormous pain and unbearable trauma from the atrocities they've experienced that they shouldn't have to now face hurdles in the pursuit of justice. The ICC should keep the victims' interests and needs at the heart of this procedure."⁴¹

b. Security situation in Afghanistan/ fear of retaliation and the need for victims and their families to be protected:

- "Last year, international forces withdrew from Afghanistan and the Taliban took control over the country. Many of the victims [...] are victims of crimes alleged to have been committed by the Taliban and they have found themselves in an acutely vulnerable situation. They fear for their own safety and the safety of their loved ones. In desperation, some try to leave the country through dangerous routes. Others are in hiding. Some of my clients do not have their basic needs met. They are poor and hungry. Over the past months, human rights defenders and international actors that supported the victims locally have left Afghanistan. The ICC is not assisting the victims."⁴²
- "[The] situation in Afghanistan for ethnic and religious minority groups [Redacted] has worsened during the Taliban takeover. [Redacted]."⁴³
- "[The victim] and his family also experienced pressure against pressing for a transparent and genuine investigation, which led to fears of further threats and reprisal, and which has caused the family to flee Afghanistan."⁴⁴

⁴² r/90001/22.

⁴³ r/90006/22.

⁴⁴ r/90005/22.

- “The Taliban *Lahya*, which is apparently the military code under which operations are carried out, has stated that civilians must be attacked, particularly those ‘people who are not armed but are working and co-operating with foreigners’.”⁴⁵

c. Concerns about the effectiveness of the Afghan judicial system and the ability and willingness to investigate crimes:

- “[P]ost the transition to power, the Taliban have orchestrated a complete collapse of the criminal justice system of Afghanistan. The Taliban have targeted the persons, property and families of lawyers, judges and prosecutors, including serious revenge attacks against the judges and prosecutors who legally incarcerated members of the Taliban under the previous regime. [...] Without judges and lawyers, there can be no prosecution – especially in a State where any opposition to the Taliban is bound to, and has resulted in revenge attacks.”⁴⁶

Conclusion

30. The victims who communicated with the Registry in the present proceedings unanimously support the Prosecutor’s Request to resume the full investigation in the Afghanistan Situation.

⁴⁵ r/90009/22.

⁴⁶ r/90009/22.