

Annex A

(Public)

Authorities Supporting Oral Submissions

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I. Pre-Trial Chamber II failed to effectively enable the right of Afghan victims to make representations

A. The Court's statutory framework permits victims to make representations prior to any article 53 decision

Category	Source	Relevant Excerpt or Summary
ICC Legal Texts	Rome Statute of the International Criminal Court	<p>Article 15(3): "Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence."</p> <p>Article 68(3): "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."</p>
	Rules of Procedure and Evidence	<p>Rule 16(1)(a): "In relation to victims, the Registrar shall be responsible for [...] [p]roviding notice or notification to victims or their legal representatives"</p> <p>Rule 50(3): "Following information given in accordance with sub-rule 1, victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations."</p> <p>Rule 50(4): "The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional</p>

Category	Source	Relevant Excerpt or Summary
		information from the Prosecutor and from any of the victims who have made representations [...]"
ICC Decisions	<i>Situation in the State of Palestine</i> , Decision on Information and Outreach for the Victims of the Situation, ICC-01/18-2 , 13 July 2018	Para. 8: "Pursuant to article 68(3) of the Statute, the Court <i>shall</i> permit the views and concerns of victims to be presented and considered at the stages of the proceedings determined to be appropriate by the Court. Victims have therefore the <i>right</i> to be heard and considered, at stages of the proceedings determined to be appropriate [...]" (Emphasis in original.)
	<i>Situation in the Republic of Kenya</i> , Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, ICC-01/09-4 , 10 December 2009	Para. 6: "[I]t is essential to organize the procedure of receiving, if any, victims' representations in accordance with article 15(3) of the Statute and rule 50(3) of the Rules."

B. The right to make representations has to be effectively enabled by the Court

Category	Source	Relevant Excerpt or Summary
ICC Decisions	<i>Situation in the State of Palestine</i> , Decision on Information and Outreach for the Victims of the Situation, ICC-01/18-2 , 13 July 2018	Para. 8: "Victims have therefore the <i>right</i> to be heard and considered, at stages of the proceedings determined to be appropriate, and the Court has the <i>duty</i> to effectively enable them to exercise this right." (Emphasis in original.)
	<i>Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar</i> , Decision on the 'Registry's Request	Para. 14: "The Chamber considers it crucial to be provided with the highest possible number of victims'

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	for Extension of Notice Period and Submissions on the Article 15(3) Process', ICC-01/19-6 , 28 June 2019	representations in order to have a meaningful and representative sample of the affected population, and to be able to fully assess the merits of the Prosecutor's Article 15 Request."
Statements by the Assembly of State Parties	Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/16/Res.6 , 14 December 2017	Para. 94: " <i>Stresses</i> the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and <i>emphasizes</i> the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims" (emphasis in original).
	Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/13/Res.5 , 17 December 2014	Para. 71: " <i>Stresses</i> the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and <i>emphasizes</i> the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims" (emphasis in original).
	Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8 , 27 November 2013	Para. 51: " <i>Stresses</i> the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and <i>emphasizes</i> the importance of informing and involving victims and affected communities in order to give effect to the

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		unique mandate of the Court towards victims” (emphasis in original).
	The impact of the Rome Statute system on victims and affected communities, RC/Res.2 , 8 June 2010	<p>Preamble: “<i>Emphasizing</i> the importance of outreach to victims and affected communities in order to give effect to the unique mandate of the International Criminal Court towards victims” (emphasis in original).</p> <p>Para. 3: “<i>Underlines</i> the need to continue to optimize and adapt outreach activities, in light of the different phases of the judicial cycle, and to encourage further efforts to ensure that victims and affected communities have access to accurate information about the Court, its mandate and activities, as well as about victims’ rights under the Rome Statute, including their right to participate in judicial proceedings and claim for reparations” (emphasis in original).</p>
UN Documents	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34 , 29 November 1985	<p>Para. 5 of Annex: “Victims should be informed of their rights in seeking redress through such mechanisms.”</p> <p>Para. 6 of Annex: “The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceeding[...]; (d) Taking measures to minimize inconvenience to victims [...]”</p>

Category	Source	Relevant Excerpt or Summary
	Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 , 21 March 2006	Para. 12: “A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. [...] To that end, States should: (a) Disseminate, through public and private mechanisms, information about all available remedies [...] (b) Take measures to minimize the inconvenience to victims and their representatives [...] (c) Provide proper assistance to victims seeking access to justice [...]”
	United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 , 28 March 2013	Para. 18: “States should endeavour to enhance the knowledge of their communities about their justice system and its functions, the ways to file complaints before the courts and alternative dispute resolution mechanisms.”
	UNODC, Handbook on Justice for Victims: On the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1999)	P. 45: “As an essential and fundamental right of all crime victims, information on the availability of benefits, on the application process and on programme requirements should be widely publicized.”
Regional Treaties and Declarations	Council of the European Union, Directive 2012/29/EU Establishing minimum standards on the rights, support and protection of victims of crime , 25 October 2012	Articles 3 and 4: Describing the right to understand and to be understood and the right to receive information from the first contact with a competent authority.
	European Commission, DJ Justice Guidance Document on Directive 2012/29/EU , December 2013	Pp. 12-15: Noting “[i]t is therefore important to emphasise that the Directive seeks to ensure that victims — based on their personal characteristics (e.g.

Category	Source	Relevant Excerpt or Summary
		gender, disability, age, maturity, relationship to or dependence on the offender) – understand and can make themselves understood during criminal proceedings (linguistically or otherwise) and that authorities pro-actively assist victims to do so throughout criminal proceedings.” (Emphasis in original.)
	European Parliamentary Research Services, The Victims' Rights Directive 2012/29/EU: European Implementation Assessment , December 2017	Pp. 52-53: Noting “[a]rticle 4 requires criminal justice authorities to provide 'without unnecessary delay' extensive information to assist the victim proactively, rather than the victim having to seek out this information themselves. This right is applied from the first contact with competent authorities, such as officials based in police stations, helplines or online helpline contacts. The main requirement of this Article is to ensure victims effectively understand the information they are provided with.”
National Laws and Decisions	Criminal Procedure Code , Islamic Republic of Afghanistan (2014)	Article 6(1): “During the legal prosecution of the case, the victim and plaintiff have the following rights: [...] [a]ccess to information concerning the proceedings and prosecution results of the case in different stages of the legal prosecution.” Article 6(2): “The police, prosecutor’s office and court each shall, within their area of jurisdiction, take and enforce required measures to ensure that the victim has

Category	Source	Relevant Excerpt or Summary
		access to his or her rights set forth in paragraph (1) of this article.”
	Crime Victims' Rights Act, 18 U.S.C. § 3771 (2004)	Sec. 3771(a)(2): “A crime victim has the following rights: [...] [t]he right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.”
	<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972)	At P. 80 (citations omitted): “‘For more than a century the central meaning of procedural due process has been clear: ‘Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.’ It is equally fundamental that the right to notice and an opportunity to be heard ‘must be granted at a meaningful time and in a meaningful manner.’ ”
	<i>United States v. Turner</i> , 367 F. Supp. 2d 319 (E.D.N.Y. 2005)	At 332: “‘ <i>The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.</i> ’ 18 U.S.C. § 3771(a)(2). As discussed above, this right raises particularly challenging interpretive questions at the beginning of a criminal case, when the court has the least information about any victims and when the defendant's arrest triggers an obligation to commence proceedings promptly. Each of the three adjectives — ‘reasonable, accurate, and timely’ — is important:

Category	Source	Relevant Excerpt or Summary
		‘reasonable’ provides vital flexibility; ‘accurate’ may well impose an affirmative obligation to advise victims of schedule changes (most states have similar statutory requirements); and ‘timely’ is designed to be a flexible concept that ensures a victim can reasonably arrange her affairs to attend the proceeding for which notice is given.”
	Loi n° 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes, Version consolidée au 27 novembre 2019	Article préliminaire: “L'autorité judiciaire veille à l'information et à la garantie des droits des victimes au cours de toute procédure pénale.”
	The Victim Protection Act, Kenya Gazette Supplement No. 143 (Acts No. 17) (2014)	Sec. 19: “(1) A victim has the right to information under Article 35 of the Constitution, this Act or any other written law. (2) The information referred to in subsection (1) shall be such information as is necessary for the realization by the victim of their rights under this Act.”

C. Special measures must be undertaken to effectively enable representations by vulnerable groups, including women, children, and minorities

Category	Source	Relevant Excerpt or Summary
UN documents relating to victim participation by vulnerable groups	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34 , 29 November 1985	Para. 3 Annex: “The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.”
	UNGA Resolution 67, UN Doc. A/RES/67/1 , 30 November 2012	Para. 14: “We emphasize the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard we commit to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.”
	Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13 , 26 May 2004	Para. 15: “Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children”

Category	Source	Relevant Excerpt or Summary
	UNDP, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice (2003)	<p>P. 141: "Even when legal information is available, it may be inaccessible in physical or economic terms. It also may be incomprehensible to poor and disadvantaged people. Geographic distance, poverty and illiteracy pose serious obstacles for disadvantaged groups"</p> <p>P. 157: "The formal justice system may be too far removed from the realities of many disadvantaged groups who may not even be aware of their rights or how to seek justice when their rights have been violated. It is part of the duty of the formal justice system to reach out to disadvantaged groups and provide them with access to information through legal awareness and literacy programmes so that they know what services are available and how to seek remedies for their grievances."</p>
UN documents relating to victim participation by women and girls	Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc. A/RES/34/180 , 18 December 1979	Article 3: "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."
	CEDAW General Recommendation No. 33, UN Doc. CEDAW/C/GC/33 , 23 July 2015	Para. 17(c): "On accessibility of justice systems, the Committee recommends that State parties: [...] (c)

Category	Source	Relevant Excerpt or Summary
		Develop targeted outreach activities and distribute information about available justice mechanisms, procedures and remedies in various formats, and also in community languages such as through specific units or desks for women. Such activities and information should be appropriate for all ethnic and minority groups in the population and designed in close cooperation with women from these groups and, especially, women's and other relevant organizations"
	Strengthening crime prevention and criminal justice responses to violence against women, Annex: Updated Model Strategies and Practical Measures, UN Doc. A/RES/65/228 , 31 March 2011	Para. 18(a) Annex: "Member States are urged, as appropriate and taking into account all relevant international legal instruments, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [...] To make available to women who have been subjected to violence relevant information on rights, remedies and victim support services and on how to obtain them, in addition to information about their role and opportunities for participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings, as well as any orders against the offender"
UN documents relating to	UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20 , 22 July 2005	Para. 19(f): "Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed,

Category	Source	Relevant Excerpt or Summary
victim participation by children		to the extent feasible and appropriate, of, inter alia: [...] (f) The existing mechanisms for review of decisions affecting child victims and witnesses”
	Report of the United Nations High Commissioner for Human Rights, Access to justice for children, UN Doc. A/HRC/25/35 , 16 December 2013	Para. 18: “Children’s access to information about their rights and ways of promoting their safeguard and implementation, as well as ensuring their informed consent to decisions in line with their evolving capacities, is a crucial dimension of access to justice.” Para. 19: “In this context, it is important to recall that children should be provided with information and advice that is adapted to their age, maturity and circumstances. It should be conveyed in language children are able to understand and which is gender- and culture sensitive, and supported by child-sensitive materials and information services.”
	Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, UN Doc. A/HRC/16/56 , 7 March 2011	Para. 11: “Information and advice provided to children should be conveyed in a manner adapted to their age, maturity and circumstances, in language children can understand and which is gender- and culture-sensitive, and supported by child-friendly materials and information services.”

Category	Source	Relevant Excerpt or Summary
UN documents relating to victim participation by minorities	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. A/RES/47/135 , 3 February 1993	Article 4(1) Annex: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."
	Minorities in the Criminal Justice System, Contribution of the United Nations Network on Racial Discrimination and Protection of Minorities to the Eighth session of the Forum on Minority Issues , 24-25 November 2015	P. 7: "For minority groups whose language and culture differ from those of the dominant community, such as foreign nationals, recent immigrants or racial, linguistic or cultural minorities, the lack of or dearth of linguistically or culturally competent legal information and aid augment the difficulties faced by all those accused or victims of crimes."

D. Pre-Trial Chamber II failed to effectively enable Afghan victims to make representations prior to the article 53 decision

Category	Source	Relevant Excerpt or Summary
ICC Filings	Order to the Victims Participation and Reparation Section Concerning Victims' Representations, ICC-02/17-6 , 9 November 2017	Paras. 12-16: Order relating to the VPRS' outreach efforts regarding victim representations
	Report by the Victims Participation and Reparation Section Concerning Victims' Representations, ICC-02/17-29-AnxI-Red , 20 February 2018	Paras. 5-14: Describing the process through which victim representations were solicited.

Category	Source	Relevant Excerpt or Summary
Declarations by Witnesses	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxC, 11 July 2019	Paras. 11-24: Expert opinion by Afghan civil society leader involved in the victim representation process, concerning that he sent a list of concerns to VPRS about ICC outreach to Afghan victims including the absence of an ICC awareness campaign, that the representation submission deadline should be extended, that online submission is not workable in Afghanistan where many do not have internet access, that representation office/s should be opened to be able to actually reach Afghan victims, that ICC outreach representatives should visit Afghanistan, and more.
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxD, 11 July 2019	<p>Paras. 6-11: Expert opinion by Afghan civil society leader involved in the victim representation process, explaining that despite having previously met with the ICC, prominent women's organizations were not part of the outreach by VPRS and that women's groups scrambled to contribute in the week before the submission period was closed.</p> <p>Paras. 12-19: Communicating with VPRS about how Afghan women are not being accounted for in ICC outreach, providing suggestions for how to engage Afghan women, and having those suggestions rejected.</p> <p>Sub-Annex 2: Request to extend deadline for representation submissions sent to ICC Prosecutor and</p>

Category	Source	Relevant Excerpt or Summary
		<p>VPRS for the purpose of ensuring representation by Afghan women and girls.</p> <p>Sub-Annex 3: Email from VPRS rejecting request to extend deadline.</p>
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxE, 11 July 2019	<p>Paras. 25-39: Expert opinion by Afghan civil society leader involved in the victim representation process, explaining that ICC did not do outreach directly and instead relied heavily on thinly resourced Afghan civil society organizations that placed themselves in harm's way to reach as many victims as possible, that the representation period (December 2017, and January 2018) was too short of a time period and that those months in particular are two of the worst months because of weather to try to engage with Afghan war victims, that media outreach was also conducted by civil society and failure to have ICC directly engaged resulted in media not taking the situation as seriously, that the online submission process was a mismatch for Afghanistan where few Afghans have internet access, that partner organizations in provinces were not properly engaged, and that sufficient outreach was not done to reach the large Afghan diaspora war victims.</p>
	Confidential Witness Declaration (attached at Confidential Annex H)	<p>Paras. 5-11: Identifying steps the Court can undertake to effectively enable representations by Afghan victims.</p>

II. Pre-Trial Chamber II erred in concluding that victims would not support an investigation without the prospects of a successful investigation and prosecution

A. Pre-Trial Chamber II never asked victims whether they would support an investigation in such circumstances

Category	Source	Relevant Excerpt or Summary
ICC Documents	Victim Representation Form, Doc No. AFG r/00302/18 VPRS-HQ 27/01/2018 (attached at Public Annex B)	Form used by Pre-Trial Chamber II to solicit the viewpoint of victims in the Afghanistan Situation. The form omits any questions concerning whether victims would want an investigation to proceed where the chances of an arrest or prosecution is low.

B. Victims overwhelmingly support an ICC investigation even where the prospects of successful prosecutions are low

Category	Source	Relevant Excerpt or Summary
Declarations by Witnesses	Confidential Witness Declaration (attached at Confidential Annex C)	Paras. 30-32: Expert opinion by Afghan civil society leader and former Afghan government official noting that “victims understand that an investigation is very difficult and that it is unlikely for many of them to see immediate justice. But to them, the start of the investigative process would at least bring peace to their minds and families that there is someone looking into their crimes [...] If they see that the ICC is clearly and

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		seriously engaged, even without any arrest, they might be happy that justice is being done.”
	Confidential Witness Declaration (attached at Confidential Annex D)	Paras. 15-18: Expert opinion by former Afghan government official noting that justice for Afghans means more than just arrests and prosecutions for victims of war in Afghanistan, and that “I believe Afghan victims of war would support an ICC investigation even in the absence of arrest and prosecution of specific individuals. Justice is broader for Afghan victims of war than this narrow set of consequences. Afghans fundamentally need an independent non-governmental assessment of what has happened in our country. From an investigation of this nature, our people will have justice, and hopefully peace.”
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxE, 11 July 2019	Paras. 13-24: Expert opinion by Afghan civil society leader as to the importance of an ICC investigation to transitional justice efforts in Afghanistan.
	Confidential Witness Declaration (attached at Confidential Annex E)	Paras. 9-10: Describing interviews of 30 victims of war crimes and crimes against humanity in Afghanistan from Bamyan concerning whether they would want an investigation for the sake of justice, even if the prospects of arrests are low. Noting “[a]ll victims’ survivors/family members supported an investigation into crimes

Category	Source	Relevant Excerpt or Summary
		committed in Afghanistan post-2003 by the ICC even if they knew that the prospects of arrests were low.”
	Confidential Witness Declaration (attached at Confidential Annex F)	Paras. 18-20: Describing interviews of 53 victims of war crimes and crimes against humanity from Kabul, Ghazni, Parwan, Bamyān, Maidan Wardak, Daikundi, and Logar provinces. Noting that “52 of the 53 participants present at the Event supported an investigation into crimes committed in Afghanistan post-2003 by the ICC even if they knew that the prospects of arrests were low.”
	Confidential Witness Declaration (attached at Confidential Annex G)	Paras. 12-40: Describing interviews of 10 female victims of war crimes and crimes against humanity in Afghanistan concerning whether they want an ICC investigation even if the prospects of arrest are low. Noting that all victims supported an investigation. Paras. 51-55: Expert opinion by Afghan civil society leader on women’s rights on why Afghans would want an ICC investigation even if the chances of arrests are low.
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxB, 11 July 2019	Paras. 23-25: Describing interviews of 35 victims of war crimes and crimes against humanity in Afghanistan from Kabul concerning whether they would want an investigation for the sake of justice, even if the prospects

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		of arrests are low. Noting that the interviewees “framed justice as being broader than just arrests. They spoke about the preservation of an accurate historic record, the raising of victim voices, changes to future policies and procedures, and even shaming of perpetrators.”

III. Pre-Trial Chamber II erred in its understanding of justice under article 53(1)(c)

A. *The notion of justice under article 53 is broader than “effective investigation and subsequent prosecution of cases within a reasonable time frame”*

Category	Source	Relevant Excerpt or Summary
ICC Legal Texts	Rome Statute of the International Criminal Court	<p>Preamble: “Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nation [...]</p> <p>Resolved to guarantee lasting respect for and the enforcement of international justice”</p>

Category	Source	Relevant Excerpt or Summary
ICC Documents	<u>OTP Policy Paper on the Interests of Justice</u> , September 2007	<p>P. 8: “The ICC was created on the premise that justice is an essential component of a stable peace. The Preamble to the Statute recognizes that the crimes under the Court’s jurisdiction threaten the peace, security and well-being of the world. The Secretary General of the United Nations has stated that ‘Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives.’ The concept of the interests of justice established in the Statute, while necessarily broader than criminal justice in a narrow sense, [footnote 13] must be interpreted in accordance with the objects and purposes of the Statute. Hence, it should not be conceived of so broadly as to embrace all issues related to peace and security” (footnote 12 omitted, footnote 13 produced below)</p> <p>Fn. 13: “Since Article 53(1)(c) foresees a possibility of the pursuit of criminal justice not being ‘in the interests of justice’, it follows that the concept must be broader than criminal justice.”</p>
Scholarly opinions	<p>Talita de Souza Dias, <i>‘Interests of justice’: Defining the scope of Prosecutorial discretion in Article 53(1)(c) and (2)(c) of the Rome Statute of the International Criminal Court</i>, 30 Leiden Journal of International Law 731 (2017)</p> <p>K.A. Rodman, <i>Is Peace in the Interests of Justice? The Case for Broad Prosecutorial Discretion at the International</i></p>	Demonstrating how the phrase “interests of justice” has a broad meaning and encompasses considerations other than those strictly related to successful prosecutions and arrests.

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	<i>Criminal Court</i> , 22 <i>Leiden Journal of International Law</i> 99 (2009)	
	M.R. Brubacher, <i>Prosecutorial Discretion within the International Criminal Court</i> , 2 <i>Journal of International Criminal Justice</i> 71 (2004)	
	Darryl Robinson, <i>Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court</i> , 14 <i>EJIL</i> 481 (2003)	
	Philippa Webb, <i>The ICC Prosecutor's Discretion Not to Proceed in the "Interests of Justice"</i> , 50 <i>Criminal Law Quarterly</i> 305 (2005).	
	Michael P. Scharf, <i>The Amnesty Exception to the Jurisdiction of the International Criminal Court</i> , 32 <i>Cornell International Law Journal</i> 23 (1999)	
	Talita de Souza Dias & Dapo Akande, When Should the ICC Prosecutor Defer Investigations or Prosecutions in Situations of Active Armed Conflict in Favor of Peace Negotiations? , Policy Brief (2019)	

B. Afghans victims believe that justice includes other dimensions, including truth, public accountability, and reversing a culture of impunity

Category	Source	Relevant Excerpt or Summary
Declarations by Witnesses	Confidential Witness Declaration (attached at Confidential Annex D)	Paras. 11-20: Former Afghan government official who interacted with thousands of Afghan war victims explaining that (1) “a fish is always fresh whenever caught from water” and that an ICC investigation needs to happen soon in order to avoid further loss of evidence of the many war crimes and crimes against humanity in Afghanistan, (2) 100% of the many Afghan victims the declarant has interacted with would “support and welcome a war crimes investigation by the [ICC]”, (3) Afghan victims would support “an ICC investigation even in the absence of arrest and prosecution of specific individuals” because “[j]ustice is broader for Afghan victims of war than this narrow set of consequences” and that “Afghans fundamentally need an independent non-governmental assessment of what has happened in our country[,]” and (4) ultimately justice for Afghans is addressing the dust-storm that exists in the country such that Afghans can have a basic understanding of “what happened, when, by whom”, and that from this Afghans “will have justice and be able to move forward as a society.”
	Confidential Witness Declaration (attached at Confidential Annex F)	Paras. 3-15: Describing interviews of 53 victims of war crimes and crimes against humanity from Kabul, Ghazni, Parwan, Bamyān, Maidan Wardak, Daikundi,

Category	Source	Relevant Excerpt or Summary
		<p>and Logar provinces specifically about ICC related matters and that all but one victim supported an ICC investigation, with the reasoning of the singular victim not supporting being that the victim did not think an investigation was politically feasible. The remaining 52 victims explained that they supported an investigation because (1) there had been no healing in Afghanistan, (2) victims encounter perpetrators who face no consequences every day, (3) many perpetrators are in positions of power, (4) the public has become desensitized to war, (5) continued impunity increases likelihood that violence will continue and further emboldens perpetrators, (6) perpetrators are trying to get more amnesty deals in Afghanistan, (7) Afghanistan is not domestically able to bring perpetrators to justice, and (8) foreign influences affect Afghanistan's ability to hold perpetrators accountable.</p> <p>Paras. 16-17: Explaining that "justice" for Afghans means a multitude of things from apologies, to reparations, to property rights, and arrests and prosecutions.</p>
	Confidential Witness Declaration (attached at Confidential Annex E)	Paras. 2-7: Explaining that declarant queried a group of 30 Afghans who suffered war crimes and crimes against humanity in Bamyan province specifically about ICC

Category	Source	Relevant Excerpt or Summary
		<p>related matters and that all 30 supported an ICC investigation.</p> <p>Para. 8: Explaining that “justice” for this group of victims means a multitude of things, including (1) not letting the sacrifices of victims be ignored, (2) ensuring equal treatment and access to justice, (3) an accurate and comprehensive investigation that identifies perpetrators including organizers and executioners, (4) the possibility of demanding justice, and (5) being included in the investigative process.</p> <p>Paras. 9-10: All victims supported an investigation even in the absence of arrest or prosecution with one victim explaining: “I will support the launch of the ICC investigation in any circumstance. How I can support it, I don’t know. I am poor and have no money. But if our witness and story matter, I will share it all with them.”</p>
	Confidential Witness Declaration (attached at Confidential Annex C)	<p>Paras. 8, 18-26: Afghan civil society leader and former Afghan government official who has interacted with hundreds of thousands of Afghan war crimes victims (including men, women and children, and from different minority groups) explaining that “[u]niformly, Afghan victims of war support an ICC investigation into war crimes committed in Afghanistan.”</p> <p>Paras. 27-29: explaining that “justice” for Afghans means (1) “knowing why they or their family members were</p>

Category	Source	Relevant Excerpt or Summary
		<p>harmed” which means “knowing the identity of those who organized, planned, and implemented those crimes and that those individuals are exposed and the truth is known”, (2) “means knowing what became of family members, as many Afghans have lost family members without ever finding them”, and (3) “means being protected by domestic and international law” because otherwise they continue to be susceptible to being exposed to further violence.</p> <p>Paras. 30-32: Explaining that Afghan victims of war want an ICC investigation even in the absence of successful prosecution because a seriously engaged ICC will convey that justice is being advanced.</p>
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxE, 11 July 2019	<p>Paras. 6, 19-22: Expert opinion by civil society leader who has worked directly with over 500 Afghan war crime victims describing that over “the course of my work with war victims, they have expressed, and I have come to understand, that justice goes beyond arrests. After years of conflict and neglect, the truth about what was done to victims of war would go a long way towards healing and justice for victims.” And explaining that victims needs to be heard and acknowledged, and that “don’t want what happened to them to happen to anyone else.” That “their main message” is: “‘This has to stop’ and the only way it can stop is if the truth of what happened and what is currently happening is laid bare.”</p>

Category	Source	Relevant Excerpt or Summary
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxB, 11 July 2019	Paras. 23-25: Describing interviews of 35 Afghan victims of war from Kabul and explaining that the participants “framed justice as being broader than just arrests. They spoke about the preservation of an accurate historic record, the raising of victim voices, changes to future policies and procedures, and even shaming of perpetrators.” One participant explained that: “Arrests aren’t the most important outcome, it is important for the world to know what was done, what has happened in Afghanistan and by whom. Which actors were involved? Which operations resulted in war crimes being committed? Which killings resulted? This is all important for changes to policies and procedures to prevent these acts from ever happening again.”
	Confidential Witness Declaration, ICC-02/17-57-Conf-AnxC, 11 July 2019	Paras. 9-10: Civil society leader who conducted outreach related to the ICC representation collection process explaining that he spoke with over 700 Afghan victims and that: “[e]very person I spoke with supported an ICC investigation. They supported an investigation even if the prospects of an arrest were low.”