

Annex I

Public redacted

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I. Overview of the Article 15 victim representation process

1. The victim representation process pursuant to article 15(3) of the Rome Statute (“Article 15 process”) was carried out by the Victims Participation and Reparations Section (“VPRS”) of the Registry. The process commenced with the Prosecutor’s notice to victims and their legal representatives of 20 November 2017¹ and ended on 31 January 2018.² During this phase, the Registry reached out to a multitude of different actors in order to assert victims’ views on a potential investigation by the Prosecutor in Afghanistan as outlined in her notice. The Registry engaged with organisations that have extensive knowledge of the context of Situation in the Islamic Republic of Afghanistan (“Situation in Afghanistan” and “Afghanistan”, respectively) and pre-established relationships with victims and community leaders of affected groups.

A. Security situation

2. At the outset of the process, the VPRS liaised with relevant sections of the Registry in order to evaluate the security situation in Afghanistan. [Redacted]³
3. [Redacted]
4. [Redacted]

¹ https://www.icc-cpi.int/itemsDocuments/Afghanistan/171120-afgh-art_15-notice_ENG.PDF. In her notice, the Prosecutor informed victims of crimes allegedly committed in the context of an armed conflict in Afghanistan that victims have until 31 January 2018 to make representations to the Court on the opening of an investigation.

² Pre-Trial Chamber III, “Order to the Victims Participation and Reparation Section Concerning Victims’ Representations”, 9 November 2017, ICC-02/17-6, para. 12 and page 8.

³ [Redacted]

B. Approach implemented by the Registry to reach out to victims concerned by the Situation in Afghanistan

Open approach

5. In designing its approach to the representation process, the Registry considered in particular: (a) limitations due to the security situation; (b) the absence of a field presence of the Court, and (c) the overarching objective of reaching out to as many victims linked to the Situation in Afghanistan as possible within the timeframe of the Order of 9 November 2017 without endangering anybody related to the process. Mindful of the security impediments to following a targeted approach through more direct interaction with victims within the affected communities on the ground, the Registry followed an open approach in terms of online dissemination of relevant information and representation forms as follows: the Registry developed a victim representation form, designed to be used by individuals or groups of victims, and related guidelines on how to fill in this form. These had been previously approved by the Chamber in the Order of 9 November 2017.⁴ In order to mitigate some of the security risks that victims and their representatives could encounter when submitting their representations, the Registry developed, by way of a pilot project in the Court, an online process which allowed potential victims to fill in the form online without downloading any document, and with the benefit of being able to send it to the Registry without any trace at the users' end.
6. On 20 November 2017, just after the Prosecutor's public notice to victims was issued, the online form, a downloadable PDF version of the form, as well as the guidelines on how to fill in the form and other guidance materials developed by the Registry, were made available on the website of the Court.

⁴ *Id.*, para. 10 and page 8.

All the documents were available in English, Dari, Pashto and Arabic,⁵ until 2 February 2018.⁶

Targeted approach

7. In order to complement its open approach, the Registry implemented a targeted approach to the extent possible within prevalent security constraints. It contacted and relied on the support of organisations with experience in the context of Afghanistan in order to reach out to victims with limited access to technology and to the public debate.
8. [Redacted] Registry staff met [redacted], in order to provide information regarding the Court, the rights of victims and the scope of the Article 15 process and its possible outcomes. [Redacted]
9. [Redacted] for diaspora members from various European countries. During the same period, conference calls were organised with members of the Afghan diaspora [redacted]. Video conferences were also held with civil society representatives and lawyers, [redacted], working closely with victims of indefinite detention without trial and victims of torture. The Registry stayed in contact with these individuals, groups and organisations throughout the entire Article 15 process and it provided information and guidance on legal and practical issues, as well as assistance with various technical aspects.
10. [Redacted]⁷
11. [Redacted]

⁵ The documents were translated into Arabic upon request by organisations particularly working with victims of illegal detention and torture, some of whom are not Afghan nationals. The Arabic translations were made available on the Court's website on 6 December 2017.

⁶ After receiving information from the Information Management Services Section ("IMSS") that on 31 January 2018, following a global problem of the internet service providers in the Netherlands that slowed down internet access in the country, there was a complete outage in the Court's internet services between 13.00h and 18.30h, the Registry consulted with the Chamber and maintained the victim representation form and related documents on the Court's website for one additional day. Consequently, all documents were removed from the website in the morning of 2 February 2018.

⁷ [Redacted]

C. Obstacles and challenges reported

12. In the assessment of [redacted] and that of other organisations the Registry was in touch with over the past two and a half months, the main obstacles encountered throughout the process were the following:

- i. [Redacted]⁸
- ii. The lack of outreach by the Court. It was indicated that without a visible Court presence in Afghanistan and in the Afghan media, there was no clear voice on behalf of the Court to fill the vacuum in national and local media. [Redacted]. It is reported that most of the main Afghan media outlets gave some coverage to the Article 15 process, [redacted]. However, this coverage did not provide the kind of context, explanation of the process, or clarifications on how to engage with the Court that could have triggered public engagement.
- iii. [Redacted]
- iv. [Redacted]
- v. Low understanding of criminal justice processes and little awareness of international justice processes. It was highlighted that a sustained process of engagement and awareness-raising was crucial. Failing that, a much longer period of time would have been necessary to reach populations most affected [redacted].⁹
- vi. Low levels of trust in judicial institutions. It was reported that a low level of trust in judicial institutions presented a further obstacle to public willingness to engage. [Redacted]¹⁰
- vii. Low literacy levels, particularly among women. It was mentioned that

⁸ [Redacted]

⁹ As previously reported in its periodic reports, the Registry received and processed a series of communications from individuals and organisations both inside and outside Afghanistan, requesting an extension of time for victims to submit representations. The most recent such request was received on 10 February 2018.

¹⁰ [Redacted]

this was another factor potentially leading to low numbers of victim representations.¹¹

viii. Infrastructural challenges. It was highlighted that limited internet access, geographical distances and difficulties in accessing remote areas, especially considering the season in which the Article 15 process took place, had a negative impact on the number of victims reached.

13. It was reported that the above mentioned challenges represent a significant reason for low levels of victim representations in comparison to the vast number of victims in the country.

14. All [redacted] that the Registry engaged with emphasized their longing for justice, which also characterizes many sectors of society, and their belief that peace in Afghanistan can only be achieved through justice. They reported that this belief was their driving force, [redacted].

II. Details and statistics on the victim representations received

A. Number of victim representations

15. The total number of victim representations received by the Registry in the context of the Afghanistan situation is 794.¹²

16. Altogether, 699 victim representations were transmitted to the Chamber between 7 December 2017 and 9 February 2018, together with the Registry preliminary legal assessment of each representation pursuant to rule 85 of the Rules of Procedure and Evidence (“Transmitted Representations” and “Rule

¹¹ The literacy rate in Afghanistan is estimated at about 31% of the adult population (over 15 years of age) according to the UNESCO Office in Kabul, Enhancement of Literacy in Afghanistan (ELA) program, <http://www.unesco.org/new/en/kabul/education/enhancement-of-literacy-in-afghanistan-ela-program/>.

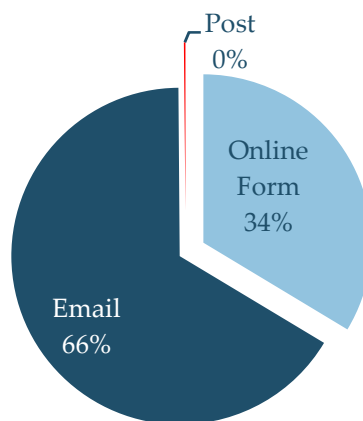
¹² Twelve victim representation forms received after the 31 January 2018 deadline are included in this total number.

85”), in keeping with the Chamber’s guidance on the matter¹³. All details and statistics provided in this report are based on the information contained in the Transmitted Representations.

17. Altogether 41 representations have been assessed by the Registry as duplicates and 54 representations have been assessed as not meeting the conditions set out in Rule 85.¹⁴ These victim representations were not transmitted to the Chamber.

B. Means of receipt

18. The Registry notes that out of the 699 Transmitted Representations, 235 were received online, 463 *via* email¹⁵ and one by post.



19. The Registry notes that no technical problems or incidents were reported with

¹³ See Order of 9 November 2017, para. 14.

¹⁴ This includes representations which fall outside the temporal, territorial or material scope of the Afghanistan situation but also representations introduced by individuals on behalf of, for example, “the people of Afghanistan” or “30 million people- the entire population of Afghanistan”, as well as representations introduced by journalists, human rights defenders, etc. From the information provided in these forms, it does not transpire with sufficient clarity that the person(s) submitting the representations or their families/close friends have suffered harm as a result of a crime under the Court’s jurisdiction or that they are submitting the said form for victims they have a pre-established relationship with, or at the request/with the consent of victims.

¹⁵ [Redacted]

respect to the online form. It was however brought to the Registry's attention that the lack of stable internet connections (bandwidth and infrastructure at external access points) and frequent power cuts in most parts of Afghanistan often posed a challenge to online forms being filled in and submitted.¹⁶

20. Moreover, the Registry analysed, within the confines of its available means, the representations received online and no obvious patterns of attempted fraud have been identified.

C. Language of representations

21. Altogether, 175 representations were submitted to the Registry in English, 323 in Dari or Pashto, one in Arabic, two in German, 193 in Dari together with English translations, and five in Dari or Pashto together with German translations. [Redacted]

D. Registry preliminary legal assessment criteria

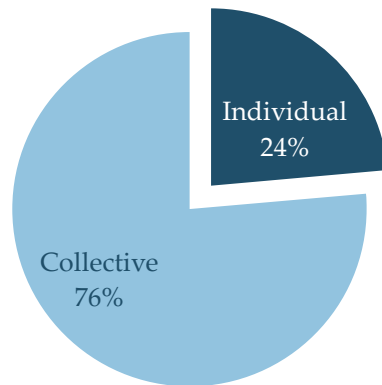
22. In accordance with the Order of 9 November 2017, the Registry conducted a preliminary legal assessment of whether each individual or group making the representation falls within the definition of victim under rule 85 on the basis of the intrinsic coherence of the information provided in the documentation received.¹⁷ A detailed explanation of the assessment criteria applied is contained in Annex II.

¹⁶ [Redacted]

¹⁷ See Order of 9 November 2017, para. 14.

E. Types of representations

23. Out of the 699 Transmitted Representations, 165 were assessed by the Registry as individual¹⁸ and 534 representations were assessed as collective.



24. A high number of representations mention as victims only those individuals who were killed as a result of violent acts. [Redacted] According to the observations of organisations met by the Registry, the concept of victim in Afghanistan is in most cases understood to only cover victims of murder.

25. Consequently, the Registry assessed as collective those representations introduced by family members that, in question 3 of the form,¹⁹ only list the victim of murder, but where it is clear from the rest of the information provided that the representatives have also suffered harm. [Redacted]

26. [Redacted]

27. When representations were submitted on behalf of families and the information provided was insufficient to assess with certainty the number of family members, the Registry retained only the number of families

¹⁸ The representations assessed as individual were either submitted by direct victims who exclusively referred to the harm they suffered as a result of crimes within the Court's jurisdiction, or by representatives on behalf of only one victim.

¹⁹ 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?"

represented by the forms.²⁰

F. Number of victims represented

28. The Registry notes that 686 of the Transmitted Representations could be clearly assessed within the parameters of its preliminary Rule 85 assessment; these representations were introduced on behalf of approximately 6,220 individual victims. Amongst these representations, there were 17 forms also submitted on behalf of 1,690 families.²¹[Redacted]

29. A further 12 representations were introduced by individuals and by organisations on behalf of approximately 1,163,950 victims and 26 villages. Finally, another representation was submitted by an organisation reportedly on behalf of approximately 7 to 9 million people.²² The information provided in these forms was often insufficient to assess the *exact* number of victims. The Registry notes that particularly in the case of these representations, considering the security situation and the limited time frame for the Article 15 process, there is a possibility that not all members of those communities were properly informed about the process and about the fact that representations would be submitted on their behalf.

30. The Registry notes that, as done in the present report, in its previous seven

²⁰ According to UN data, “the average household size in Afghanistan is 7.5 persons [...]. Some 37% of households have ten people or more [...].” See <https://unhabitat.org/books/afghanistan-housing-profile/>, page 15, endnote 31. According to data released by the Central Statistics Organization, Islamic Republic of Afghanistan, the average household size between 2013 and 2014 was 7.4 individuals. See <http://www.cso.gov.af/Content/files/01.pdf>.

²¹ See footnote 21.

²² The information provided in these representations allowed for a preliminary assessment that the conditions set out in Rule 85 have been met (in keeping with the Chamber’s guidance in its Order of 9 November 2017, paras. 14, 15). However, the Registry believes that there is some measure of duplication in the number of victims represented in these representations, as some groups of victims appear to be represented in multiple collective forms. From the information at its disposal, the Registry is not in a position to further investigate and report on the exact amount of duplication of victims in the different forms referred to in the present paragraph.

reports to the Chamber it indicated the objective number of victims represented in each form as stated therein.²³ It did not give any different weight to representations introduced on behalf of larger numbers of victims.

31. The Registry encouraged all actors it met throughout the process to reach out to as many potential victims as possible, security allowing, in order to inform them of the representations submitted, and to ensure that the Article 15 process is as meaningful as possible for all victims on behalf of whom representations have been submitted.

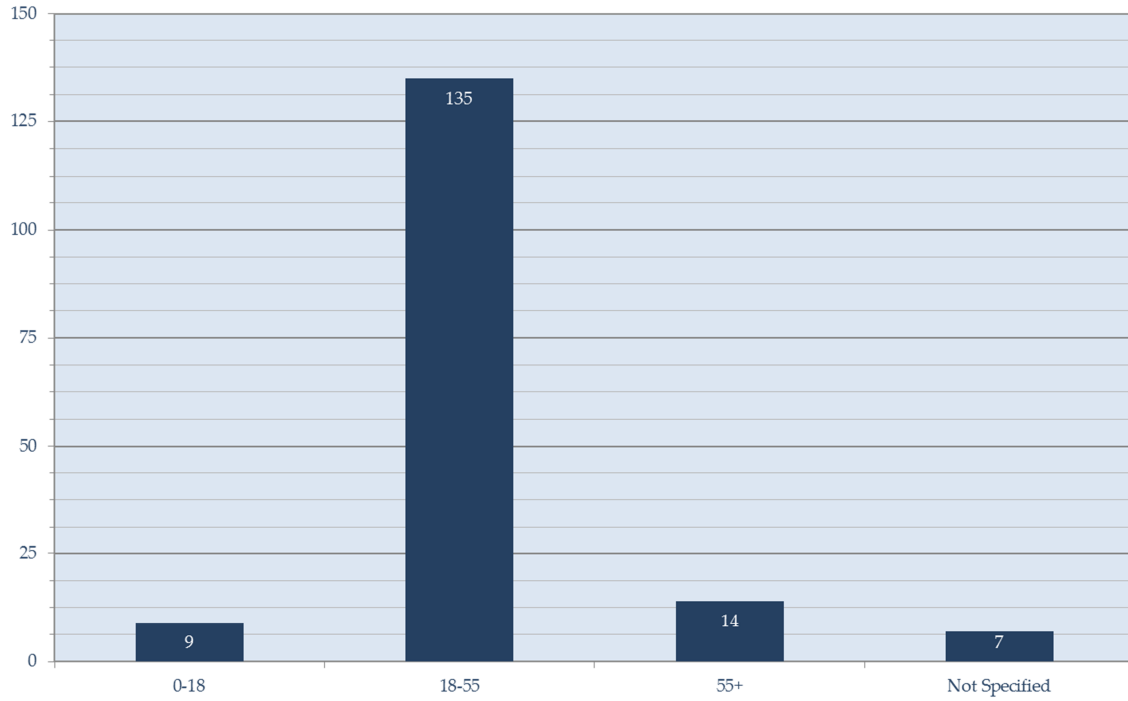
G. Statistical data

32. The Registry notes that for the majority of the collective forms, information requested in Question 4 of the victim representation form²⁴ has remained insufficient in order to match *all individual* victims represented in the forms regarding the criteria of nationality/ethnic group, gender, date of birth, language(s) spoken, place of origin and current location of residence. Moreover, in many cases it is not clear if the information provided in Question 4 refers to the representatives providing the form or the victims represented.
33. It is for this reason that for 534 representations assessed as collective, the Registry was not in a position to extract accurate statistics on the aforementioned personal data categories.
34. However, the Registry was in a position to extract relevant data regarding the gender and age of the remaining 165 individual representations:

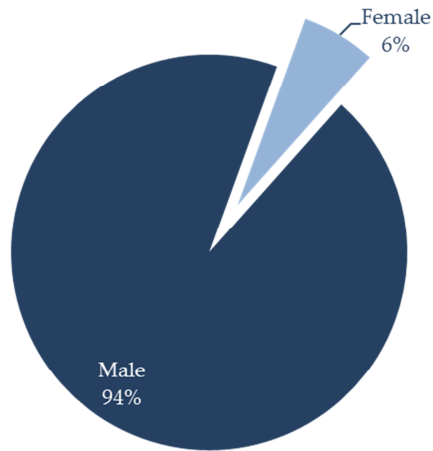
²³ In keeping with the Registry legal assessment criteria in Annex II.

²⁴ Question 4 reads as follows: "In order to provide the ICC Judges with sufficient information about the identity of the victims submitting representations, please provide the following information: Nationality(ies)/Ethnic group(s); Gender; Date of birth/age (range); Language(s); Place of origin; Current location of residence."

Age Range



Gender



H. Representations introduced by or on behalf of women

35. The Registry notes that out of the 165 individual representations, only 10 were

introduced by or on behalf of women.²⁵

36. According to one organisation with extensive experience in Afghanistan, there are many reasons why women's contributions are sparse. [Redacted]²⁶ In addition, for those and other crimes, the low level of participation [redacted] particularly in conflict areas, significantly impeded their participation in the process. [Redacted]
37. The said organisation further reported that most "traditional justice resolution" practices ("*jirgas*") are male-only affairs, with crimes against women almost entirely unrepresented in these fora, unless as a matter of family "honour". [Redacted]²⁷ The organisation concluded that the obstacles to women using a "formal" justice system are enormous. [Redacted]
38. The 2017 Report of the UN Secretary-General on Conflict-Related Sexual Violence lists the factors that contribute to the underreporting of sexual and gender based crimes in Afghanistan.²⁸ The report also refers to the *bachah bazi*, boys typically between 10 and 18 years old, who are victims of sexual abuse and enslavement by men in positions of power.²⁹

²⁵ The Registry observes that women, despite clearly having suffered harm as per the information submitted in the representations, in some cases were not listed as victims on behalf of whom the representations were submitted. [Redacted]

²⁶ See also Afghanistan Independent Human Rights Commission, *Violence Against Women in Afghanistan*, Biannual Report 1391 [2012-2013], http://www.aihrc.org.af/media/files/VAW_Final%20Draft-20.12.pdf and Afghan Women's Network, *Annual 2nd report on Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) in Afghanistan*, June 2016, [http://www.aidsdatahub.org/sites/default/files/publication/Afghanistan Annul 2nd report on Conv ention of the Elimination of All Forms of Discrimination Against Women 2016.pdf](http://www.aidsdatahub.org/sites/default/files/publication/Afghanistan%20Annual%202nd%20report%20on%20Convention%20of%20the%20Elimination%20of%20All%20Forms%20of%20Discrimination%20Against%20Women%202016.pdf).

²⁷ See also Human Rights Watch, *Afghanistan: End 'Moral Crimes' Charges, 'Virginity' Tests*, 25 May 2016, <https://www.hrw.org/news/2016/05/25/afghanistan-end-moral-crimes-charges-virginity-tests>.

²⁸ UN, *Report of the Secretary-general on Conflict-Related Sexual Violence*, 15 April 2017, <http://www.un.org/en/events/elimination-of-sexual-violence-in-conflict/pdf/1494280398.pdf>, page 11.

²⁹ Special Inspector General for Afghanistan Reconstruction, *Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces*, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>. See also L'Agence France-Presse (AFP), AFP Correspondent Blog, <https://correspondent.afp.com/behind-shame-and-silence>. [Redacted]

I. Views on the Prosecutor's request

39. The Registry notes that in 680 victim representations, it is indicated that the victims want the Prosecutor to investigate the violence associated with the conflict in Afghanistan. The main motivating factors invoked are: investigation by an impartial and respected international court; bringing the perceived perpetrators of crimes to justice; ending impunity; preventing future crimes; knowing the truth about what happened to victims of enforced disappearance; allowing for victims' voices to be heard; and protecting the freedom of speech and freedom of the press in Afghanistan.
40. Altogether 15 representations stated that the victims represented did not want the Prosecutor to be authorized to open an investigation. Security concerns and doubts as to the likelihood that the Prosecutor's investigation would result in the perpetrators being brought to justice were the reasons cited for this refusal.
41. Finally, in three collective representations, Questions 9 to 11³⁰ were not answered and from the information included in one other collective form it is unclear whether the victims want or do not want an investigation to be authorized.

J. Views on the scope of the investigation

42. The Registry notes that the Transmitted Representations report crimes committed between May 2003 and 27 January 2018 in Afghanistan, as well as

³⁰ Questions 9, 10 and 11 read as follows: "Do you or the victim(s) that you represent want the ICC Prosecutor to investigate the violence associated with the conflict in Afghanistan since May 2003? Yes No"; "If you answered "yes" to Question 9, what do you or the victim(s) you represent think the investigation should include (time period, location, crimes)? Do you have any additional views or concerns that you want to share with the Court?"; and "If you answered "no" to Question 9, what concerns with regard to this investigation do you or the victim(s) you represent have? Please explain your reasons against such an investigation."

crimes that have a *prima facie* nexus to the armed conflict in Afghanistan, are sufficiently linked to the Afghanistan situation and were committed on the territory of other States Parties since 1 July 2002.³¹

43. The crimes reported in the Transmitted Representations were allegedly committed either by the perpetrators named by the Prosecution in paragraph 4 of its Request for authorization of an investigation,³² or by [redacted].
44. The Registry further notes that both crimes against humanity and war crimes were reported. A non-exhaustive list of the crimes mentioned includes: murder; attempted murder; imprisonment or other severe deprivation of liberty; torture; rape; sexual violence; persecution; enforced disappearance of persons; other inhumane acts; attack against civilian population; attack against protected objects; destruction of property; pillage; forced displacement; outrages upon personal dignity; and denying a fair trial.
45. Most representations indicated that the investigation should cover the crimes reported in the respective representations. Others requested that all crimes against humanity and war crimes committed in Afghanistan since 1 May 2003 should be covered. A number of representations stated that the investigation should cover all crimes against humanity and war crimes committed in the context of [redacted]. One representation called on the Prosecutor to investigate all crimes perpetrated against women, and a different representation indicated that crimes committed against journalists and media organisations should also be covered by the investigation. A number of representations requested the persecution against certain specific groups to be investigated.

³¹ This may also include crimes committed by Afghan nationals committed on non-State Party territories since 1 May 2003, in keeping with article 12(2) of the Rome Statute.

³² Prosecution, "Public redacted version of 'Request for authorisation of an investigation pursuant to article 15', 20 November 2017, ICC-02/17-7-Conf-Exp", 20 November 2017, ICC-02/17-7-Red, para. 4.

K. Other issues raised by victims in their representations

46. The Registry notes that a series of other issues and concerns were raised in the victim representations. A list of these views and concerns is provided below and in some instances relevant quotes are provided.

a. Lack of opportunity for victims to submit representations:

Most people in Afghanistan and our bereaved families are not highly educated and do not have access to the internet and facilities and just because they have not been able to file or register this form, please do not disregard their feelings and do not forget them and listen to them so that the continuation of bloody and painful incidents like this is prevented.

Many [redacted] are located [redacted], do not have connections to nongovernmental organisations who can help them submit these forms, and were likely unaware of the 31 January 2018 deadline. In fact, many of the [redacted] we were able to get in contact with did not know about the deadline until we informed them.

b. Security concerns and the need for victims and their families to be protected, by, *inter alia*, keeping their personal details and other information confidential:

My concern is not to be victimized again. And my identity must be kept secret. At the moment also, I am under threat.

I ask the Court to consider our safety during the course of the investigation, and should coordinate with us during the investigation.

I am concerned about becoming a victim again. It is worrying.

c. Fear of retaliation:

Some other [redacted] we contacted expressed concern about filing a victim

representation form for fear of retaliation.

- d. Keeping victims informed about the procedural developments and consulting them during all stages of proceedings:

I hope the Court will keep us informed at every stage.

- e. Compensation for victims:

The concern is that we should receive help in the future. We lost everything we had, we want compensation. And the psychological effects on us should also be taken into consideration and should be compensated.

- f. Concerns about the effectiveness of the Afghan judicial system and the ability to investigate crimes against humanity and war crimes:

The victims think that this is a serious crime which needs to be investigated in an independent court. [Redacted]. In fact, so far there has not been any action from government to resolving this problem and bring the perpetrators to justice.

The current government of Afghanistan cannot overpower the warlords in Afghanistan and there are a lot of crimes happening, but no one can raise their voices because of fear.

Attempts in the country to ensure justice have not been successful, so it is better to give ensuring justice by the international mechanism.

We have not seen the central government of Afghanistan create a fair and independent court or prosecuting warlords or Mujahedeen for the international crimes they have committed against innocent victims.

III. Conclusion

47. In conclusion, the Registry found that victims overwhelmingly support an investigation into all crimes against humanity and war crimes committed in Afghanistan since 1 May 2003. Victims would also like the investigation to cover crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the Afghanistan situation, that were committed on the territory of other State Parties since 1 July 2002.