

Annex F

(Public)

Observations of Organizations on Proposed Issues Divided by General Themes

General Theme	Proposed Issues by Prosecution (ICC-02/17-34)	Proposed Issues by LRV1 (ICC-02/17-37)	Proposed Issues by Joint LRVs (ICC-02/17-45)	Observation by Organizations
(1) Pre-Trial Chamber II's assessment of jurisdiction <i>ratione loci</i>	None	Whether, for the Court to exercise jurisdiction over the war crimes of torture, cruel treatment and inhuman treatment, it is necessary that the infliction of severe physical or mental pain took place at least in part on the territory of a State Party, and whether the victim must have been captured within the borders of the State in which the armed conflict is taking place (Sixth Proposed Issue).	None	Take no position.
(2) Pre-Trial Chamber II's power in relation to deciding whether an investigation is within the	Whether articles 15(4) and 53(1)(c) require or even permit a Pre-Trial Chamber to make a positive determination to the effect that investigations would be in the interests of justice (First Proposed Issue).	Whether the Pre-Trial Chamber has jurisdiction to review the Prosecutor's assessment of 'the interests of justice', after the Prosecutor has determined that there is a reasonable basis to proceed with an investigation.	None	The issue should be certified. The issue goes to a matter of concern to Afghan victims and Afghan society as it directly impacts the current and future relations of victims and community groups with

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“interests of justice”		pursuant to article 15(3) (First Proposed Issue).		the Court, including the Chamber. Favor the formulation provided by the Prosecution, but with a minor variation: “Whether the Court’s legal texts require or even permit a Pre-Trial Chamber to make a positive determination to the effect that investigations would be in the interests of justice”
(3) The standard of review for article 53(1)(c) determinations	None	None	In the event that a Pre-Trial Chamber does have the power to review the Prosecutor’s determination in respect of article 53(1)(c), what is the standard of review to be applied by the Pre-Trial	Take no position.

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			Chamber in that process (First Proposed Issue).	
(4) The process by which the parties and participants were heard on issues relevant to article 53(1)(c)	None	None	Whether the Chamber's decision is flawed by procedural error because it turned on issues on which the Prosecution and participating victims had not been given a chance to be heard (Second Proposed Issue).	The issue should be certified. The issue goes to an issue of core importance to Afghan victims and Afghan society: the proceedings' fairness as it pertains to their participation.
(5) What factors may be considered for determinations under article 53(1)(c)	Whether the Pre-Trial Chamber properly exercised its discretion in the factors it took into account in assessing the interests of justice, and whether it properly appreciated those factors (Second Proposed Issue).	Whether the Pre-Trial Chamber may consider the extent of cooperation that the Prosecution has received from a State Party during a preliminary examination, before the duty to cooperate under Part 9 of the Statute has been fully triggered, in deciding whether to authorize	None	The issue should be certified. The issue goes to the central issue in the Decision, namely what "justice" means and whether the Chamber correctly understood that concept from viewpoint of

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		an investigation (Second Proposed Issue). Whether the Pre-Trial Chamber may deny a request for authorisation to investigate on the basis that it believes that the investigation is unfeasible (Third Proposed Issue). Whether the Pre-Trial Chamber may deny a request for authorisation on the basis that it believes that the Prosecutor should allocate its resources to other preliminary examinations, investigations or cases which the Pre-Trial Chamber considers might have 'more realistic prospects to lead to trials' (Fifth Proposed Issue).		Afghan victims and in the context of Afghanistan. Favor the Prosecution's formulation and consider that the issues proposed by LRV1 are subsumed in the Prosecution's broader formulation.
(6) Pre-Trial Chamber II's	Whether article 15, or any other material provision of the	Whether the Pre-Trial Chamber may restrict the scope of the	None.	The issue should be certified. The issue is of

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authority to determine the scope of an investigation	Statute, limits the scope of any investigation that the Pre-Trial Chamber may authorise to the particular incidents identified by the Prosecutor in her application under article 15(3), and incidents closely linked to those incidents (Third Proposed Issue).	investigation to incidents specifically mentioned in the Prosecution's request, as well as those 'comprised within the authorisation's geographical, temporal, and contextual scope, or closely linked to it, as opposed to authorizing an investigation into all crimes within the Court's jurisdiction arising in the situation, including those committed after authorisation of investigation (Fourth Proposed Issue).		direct concern to Afghan victims since the scope of any investigation dictates which victims are entitled to the Statute's rights and benefits. Resolution of this issue is thus necessary to define the role victims and civil society can play in informing decisions regarding the scope of any investigation. Do not express a preference for either formulation as both are substantially similar.