



Original: English

**No. ICC-02/17
Date: 5 December 2017**

PRE-TRIAL CHAMBER III

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Chang-ho Chung
Judge Raul C. Pangalangan**

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

**PUBLIC
URGENT**

Order to the Prosecutor to Provide Additional Information

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER III (the “Chamber”) of the International Criminal Court (the “Court”) issues this Order to the Prosecutor to provide additional information pursuant to rule 50(4) of the Rules of Procedure and Evidence (the “Rules”).

1. On 30 October 2017, the Prosecutor informed the Presidency of her decision to request judicial authorisation to commence an investigation into the situation in the Islamic Republic of Afghanistan (“Afghanistan”) pursuant to regulation 45 of the Regulations of the Court.¹

2. On 3 November 2017, the Presidency assigned the situation in Afghanistan to the Chamber.²

3. On 20 November 2017, the Prosecutor submitted her “Request for authorisation of an investigation pursuant to article 15” (the “Request”).³

4. The Chamber notes rule 50(4) of the Rules, which stipulates in the relevant part that “[t]he Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor [...]”. The Chamber considers that, for the following reasons, additional information from the Prosecutor is warranted in the circumstances at hand.

5. The Chamber observes that the Prosecutor indicates in her Request that she “received media reports and article 15 communications concerning allegations attributed to special forces of a number of international forces operating in Afghanistan”.⁴ The information referred to by the Prosecutor has however not been provided to the Chamber. The Chamber is of the view that

¹ ICC-02/17-1-AnxI.

² ICC-02/17-1.

³ Request, ICC-02/17-7-Conf-Exp, and public redacted version ICC-02/17-7-Red.

⁴ Request, ICC-02/17-7-Red, para. 260.

this information will assist it in its determination under article 15(4) of the Rome Statute (the “Statute”). Accordingly, it orders the Prosecutor to submit any such information to the Chamber.

6. The Chamber has also taken note of the determination of the Prosecutor that, although certain operations conducted by international military forces “resulted in incidental loss of civilian life and harm to civilians, in *most incidents* that information does not provide a reasonable basis to believe that the military forces intended the civilian population as such, or individual civilians not taking direct part in hostilities, to be the object of the attack”.⁵ In the view of the Chamber, the reference to “most incidents” suggests that the Prosecutor has determined that, at least in respect of certain other incidents, there is a reasonable basis to believe that crimes falling within the jurisdiction of the Court were committed during military operations conducted by international military forces.

7. The Chamber considers that further information on those other incidents and further clarification on the determination reached by the Prosecutor must be provided to the Chamber for the purpose of its determination pursuant to article 15(4) of the Statute. Therefore, it orders the Prosecutor to provide the Chamber with further clarification regarding this determination and the information on the basis of which this determination was reached.

⁵ Request, ICC-02/17-7-Red, para. 257 (emphasis added).

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Prosecutor to provide the additional information and clarification specified in paragraphs 5 to 7 of the present Order on 12 December 2017 at the latest.

Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Chang-ho Chung



Judge Raul C. Pangalangan

Dated this Tuesday, 5 December 2017

At The Hague, The Netherlands