



Original: English

No. ICC-02/17  
Date: 5 February 2018

**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**

Second 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**

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**Registrar**  
Herman von Hebel, Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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

1. On 20 November 2017, the Prosecutor submitted a “Request for authorisation of an investigation pursuant to article 15” (“Request”), seeking the Chamber’s authorisation to commence an investigation into the situation in the Islamic Republic of Afghanistan (“Afghanistan”).<sup>1</sup>

2. The Chamber notes that, according to rule 50(4) of the Rules, when deciding on a request for authorisation pursuant to article 15 of the Rome Statute (“Statute”), the Pre-Trial Chamber “[...] may request additional information from the Prosecutor [...]”. The Chamber considers that, in the present circumstances, additional information from the Prosecutor is warranted.

3. The Chamber observes that the Prosecutor seeks authorisation to initiate an investigation for crimes committed on the territory of Afghanistan from 1 May 2003 onwards, as well as crimes committed within the context of the situation in other States Parties from 1 July 2002 onwards.<sup>2</sup> However, the supporting material provided, particularly in relation to the structure, organisation, and conduct of the Afghan Forces – collectively referred to by the Prosecutor as Afghan National Security Forces or Afghan National Defense and Security Forces (“ANSF”) – mostly falls within the time period 2011 to 2014. Further, little to no information has been provided regarding the structure and organisation of the Islamic State operating in Afghanistan, also

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<sup>1</sup> Request, ICC-02/17-7-Conf-Exp, and public redacted version ICC-02/17-7-Red

<sup>2</sup> Request, ICC-02/17-7-Red, para 1.

referred to as “Daesh” or “Islamic State Khorasan Province”<sup>3</sup>. Similarly, the information provided with respect to the structure of the United States of America (“US”) forces falls mainly within the period of 2001-2008, with regard to interrogation policies of the US forces within the period of 2001-2006 and with regard to the conduct of US forces within the period of 2003-2011.

4. The Chamber is of the view that further information is required for the Chamber’s determination under article 15(4) of the Statute. Accordingly, it orders the Prosecutor to submit to the Chamber the following:

- a. Any publicly available report from the United Nations Assistance Mission in Afghanistan (“UNAMA”) on the treatment of detainees, apart from the reports from 2011, 2013, 2015 and 2017 already submitted;
- b. Any publicly available report from the Afghanistan Independent Human Rights Commission (“AIHRC”) on torture, apart from the report from 2012 already submitted;
- c. The United Nations (“UN”) Secretary-General reports to the General Assembly on the topic: “The situation in Afghanistan and its implications for international peace and security”, from the years 2003, 2004, 2010, 2013, 2014, 2015, and 2017;
- d. Any publicly available report from the UN Secretary-General to the General Assembly on the topic “Children and armed conflict in Afghanistan”, apart from the report from 2008 already submitted;
- e. Further clarification and information, to the extent possible, about the structure and organisation of the Islamic State operating in Afghanistan; and

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<sup>3</sup> Request, ICC-02/17-7-Red, para 63

- f. Further clarification and information, to the extent possible, about the structure of the US forces for the time period after 2008; for the interrogation policies of the US forces for the time period after 2006; as well as for the conduct of the US forces for the time period after 2011.

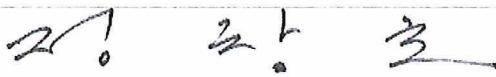
**FOR THESE REASONS, THE CHAMBER HEREBY**

**ORDERS** the Prosecutor to provide the additional information specified in paragraph 4(a) to (d) of the present Order on 9 February 2018 at the latest and the additional information and clarification specified in paragraph 4(e) and (f) of the present Order on 12 February 2018 at the latest.

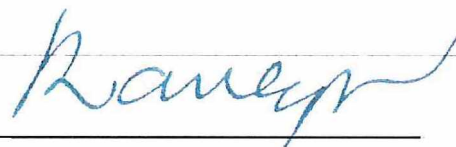
Done in both English and French, the English version being authoritative.



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



**Judge Chang-ho Chung**



**Judge Raul C. Pangalangan**

Dated this Monday, 5 February 2018

At The Hague, The Netherlands