

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/17
Date: **15 April 2020**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

**Public
With Public Annex 1**

**Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan's
letter concerning article 18(2) of the Statute**

Source: Office of the Prosecutor

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

Notification

1. The Prosecution hereby informs the Pre-Trial Chamber (“PTC”) that the Islamic Republic of Afghanistan (“Afghanistan”) has responded to the Prosecutor’s article 18(1) of the Rome Statute (“Statute”) notification with a request that the Prosecutor defer to its investigation of persons whom it is investigating or has investigated. The scope of the request extends to its own domestic investigations of “its nationals or others within its jurisdiction with respect to criminal acts allegedly committed within the authorised parameters of the Situation in Afghanistan, which may constitute crimes referred to in Article 5 of the Statute, and which relate to the information provided in your notification to States dated 12 March 2020”.¹
2. The Prosecution acknowledges that Afghanistan has provided information as to the broad parameters of cases purportedly under investigation. However, due to the extraordinary circumstances concerning the COVID-19 virus pandemic and its spread throughout Afghanistan and its unprecedented effects on the Government of Afghanistan the authorities have been unable at this stage to specify with supporting information which investigations it has or is conducting, as required by article 18(2) Statute and rule 53 of the Rules of Procedure and Evidence (“Rules”). Accordingly, it has sought additional time to provide all the necessary information and supporting materials for its deferral request, which it undertakes to provide by 12 June 2020.
3. According to the Government of Afghanistan’s letter, the information and supporting materials it intends to provide will “cover both the past and current national investigations concerning allegations of war crimes and crimes against humanity that are being conducted in respect of Afghan nationals and others within the period and parameters of the authorised

¹ Public Annex 1.

Situation in Afghanistan, and all other relevant proceedings, procedures and measures.”²

4. Given the extraordinary circumstances presented by the pandemic, and the importance the Prosecutor places on her proper assessment of complementarity, the Prosecutor has agreed to provide the Government of Afghanistan until 12 June 2020 to enable it to comply fully with article 18(2) and rule 53. The Prosecution has promptly filed this notification to keep the Chamber fully apprised of relevant developments in the application of article 18(2) of the Statute.
5. As a result, the Prosecution will only be able to consider whether the information the Government of Afghanistan provides has an impact on its own intended investigation once it has received the supporting information, in compliance with article 18(2) and rule 53. In any event, the Prosecution is not taking active investigative measures in relation to the scope of the letter and annex submitted by Afghanistan at this time due to the COVID-19 outbreak.
6. For completeness, the Prosecution annexes the letter from the Government of Afghanistan with an accompanying annex which broadly provides a provisional indication of the type of cases it intends to provide information and supporting materials on (public Annex 1).



Fatou Bensouda, Prosecutor

Dated this 15th day of April 2020

At The Hague, The Netherlands

² Public Annex 1.