

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/17  
Date: **16 April 2021**

**PRE-TRIAL CHAMBER II**

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

**SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**Public**

**Notification on status of the Islamic Republic of Afghanistan's article 18(2) deferral request**

**Source:** The 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

Mr James Stewart

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**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**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Notification

1. On 16 April 2020, the Prosecution informed the Pre-Trial Chamber (“the Chamber”) that the Government of the Islamic Republic of Afghanistan (“Afghanistan”) had requested the Prosecutor to defer her investigation in the situation of Afghanistan (“Deferral Request”). Given the extraordinary circumstances concerning the COVID-19 pandemic, it also sought additional time, until 12 June 2020, to provide all necessary information and supporting materials. The Prosecutor agreed.<sup>1</sup>

2. In order to keep the Chamber informed, and to be transparent with its analysis of the Deferral Request, the Prosecution hereby files this notification on the relevant communications that it has had with Afghanistan in the context of the Deferral Request to date. Given the conditions of confidentiality that Afghanistan has attached to the material submitted—which the Prosecution has requested Afghanistan to lift to the extent possible—the Prosecution refrains from providing information on the content of such material for the purposes of this public notification.

) On 8 May 2020 and upon Afghanistan’s request, the Prosecution provided Afghanistan with information of examples of potential cases involving alleged perpetration of crimes by different parties to the conflict.

) On 12 June 2020, Afghanistan provided material regarding cases it submits to have investigated or is in the process of investigating. The material was voluminous, potentially concerning a large number of cases. The Prosecution conducted an initial assessment of the material, and determined that it needed more information to determine whether Afghanistan had presented tangible evidence of probative value and sufficient degree of specificity demonstrating that concrete and progressive investigative steps are being (or have been) undertaken to ascertain the criminal responsibility of the persons under

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<sup>1</sup> ICC-02/17-139, para. 1-4.

investigation. The Prosecution considered that this was necessary to decide on the Deferral Request, and in particular, to assess whether certain aspects of its intended investigation could be deferred, or whether it should file a request to the Pre-Trial Chamber under article 18(2). Accordingly, on 29 September 2020, pursuant to rule 53, the Prosecution requested further information from Afghanistan. Recognising the on-going difficulties Afghanistan faced due to the COVID-19 pandemic, on-going conflict and other logistical matters, the Prosecution asked for as much of the material as possible to be provided within a 60 day time-limit, leaving the door open for further extension if necessary.

- ) On 12 October 2020, Afghanistan requested an extension of that time-limit until 15 January 2021, simultaneously indicating that a second tranche of material would be provided later.
- ) On 26 October 2020, the Prosecutor, in full consideration of the difficulties outlined by Afghanistan in their request, agreed with the 15 January 2021 timeline, but asked for as much of the information as possible to be provided by that date.
- ) On 15 January 2021, Afghanistan submitted a large amount of material – over 3500 pages, and almost all in the Dari language – said to fall within the jurisdictional parameters of the Situation in Afghanistan.
- ) On 19 March 2021, the Prosecution requested additional clarification with respect to the material received on 15 January 2021.

3. The Prosecution continues to assess the material provided. The Prosecution is appreciative of Afghanistan's continued commitment to addressing accountability for atrocity crimes and securing justice for victims in Afghanistan and remains committed to engage with, and hear from the Afghanistan authorities. In that regard the Prosecutor has sought to accede to the Government of Afghanistan's request for an in-person meeting to discuss a number of pending issues, which it is aiming to convene soonest.

4. The Prosecutor remains hopeful that the meeting with the Afghan authorities will be productive, and the information they provide useful, in deciding on the way forward, in a way that should be of mutual benefit and responsive to the interests of victims. The Prosecutor will keep the Chamber informed.



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**Fatou Bensouda, Prosecutor**

Dated this 16<sup>th</sup> day of April 2021  
At The Hague, the Netherlands