Cour Pénale Internationale

International Criminal Court

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No.: **ICC-02/17**
Date: **16 February 2024**

PRE-TRIAL CHAMBER II

Before: **Judge Rosario Salvatore Aitala, Presiding Judge**
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godinez

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Under Seal, *EX PARTE*
only available to the Prosecution

Prosecution's request for an extension of page limit

Source: **Office of the Prosecutor**

Pursuant to Pre-Trial Chamber II's order, ICC-02/17-249, this document is transferred from the situation record ICC-02/17 into the situation record ICC-02/26.

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

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Detention Section

Victims Participation and Reparations Section

Other

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Introduction

1. The Office of the Prosecutor intends to file arrest warrant applications pursuant to article 58 of the Statute against two senior Taliban officials for the crime of persecution committed in Afghanistan, by 29 February 2024. The Prosecution respectfully requests the Pre-Trial Chamber to extend the page limit from 60 to 75 pages for each of these upcoming arrest warrant applications under regulation 37(2) of the Regulations of the Court, due to exceptional circumstances. While this request applies to each of the upcoming applications, it is submitted as a single filing for reasons of judicial economy.

Confidentiality

2. Pursuant to regulation *23bis*(1) of the Regulations of the Court and regulation 14(c) of the Regulations of the Registry, this application is filed under seal, *ex parte*, only available to the Prosecution to maintain the integrity of the ongoing investigation by keeping under seal the Prosecution's intention to file its upcoming arrest warrant applications. In seeking classification for the arrest warrant applications themselves, a different classification may be sought.

Submissions

3. As previously observed by this Pre-Trial Chamber, the Prosecution acknowledges that the drafters of the Court's legal texts must have been aware of the nature of the crimes within the Court's jurisdiction that would be the subject of article 58 applications, and considered this in setting the applicable 60 page limit. However, they also clearly anticipated that circumstances might exist such as the complexity of the factual allegations to be presented, the temporal and/or geographic scope of those allegations, and the novelty of the legal qualification of those allegations that would warrant an extension of this limit. This Chamber has previously recognised such a need to permit such extension.

Complexity of the factual allegations to be presented and the temporal and/or geographic scope

4. The upcoming applications will allege the commission of widespread and systematic persecution under article 7(1)(h) of the Rome Statute over the course of several years on the territory of Afghanistan, on the grounds of gender, religion and/or politics. The groups targeted are women and girls, and/or LGBTQI+ persons, and/or any other person (perceived as) supporting the aforementioned groups.

5. The Prosecution will therefore show: the severe deprivation of no fewer than eight fundamental rights contrary to international law, spanning a period of over two and a half years;

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the targeting of three distinct groups; multiple intersecting discriminatory grounds; and connection with multiple offences under article 7(1) of the Statute – including articles 7(1)(e), (f), (g), (i) and (k).

6. Further, the Prosecution will allege that each suspect – both senior members of the Taliban leadership – contributed to the alleged commission through multiple means. The particular nature of the activities of each suspect requires additional explanation not only of each individual's acts but also the factual context in which those acts took place.

Novelty of the legal qualification of those allegations

7. The crime of persecution on the ground of gender has not yet been the subject of a final decision by this Court. Consequently, there is a need to provide a greater degree of legal and factual context for certain assertions than might otherwise be the case.[1]

Reasonable nature of the extension, in light of the purpose of the intended arrest warrant applications

8. The considerations detailed above demonstrate exceptional circumstances justifying a reasonable extension of the page limit for typical applications under article 58. The requested extension will enable the Prosecution to address factual allegations of unusual scope and complexity, which are yet to be addressed in a final judgment of the Court and where consequently an additional measure of explanation is necessary.

9. An extension of the page limit will better serve the overall purpose of the upcoming arrest warrant applications - to present the Prosecution's case to the Chamber in a clear and concise manner that will facilitate its work. Specifically, if the requested extension is granted, the Prosecution will be able to: retain a table of contents in the main text rather than in an annex; present complex allegations clearly and comprehensively, with the necessary context and without compromising the essential details; and provide detailed footnoted citations to the relevant evidence (including both original versions and translations). [2]

[1] While the pending article 74 judgment in the *Al Hassan* case may offer further clarity in relevant respects, it is presently impossible to determine whether this will be a final judgment, or whether it will be subject to appeal.
[2] The Prosecution is mindful that in other situations, this Chamber has granted a requested extension of 20 pages, but declined to grant a requested extension of 40 pages per suspect.

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Conclusion

10. For these reasons, the Prosecution respectfully submits that there are exceptional circumstances justifying an extension of the applicable page limit. The Prosecution therefore requests the Chamber to grant an extension of the page limit from 60 to 75 pages under regulation 37(2) of the Regulations of the Court for each of the upcoming article 58 applications.



Karim A.A. Khan KC, Prosecutor

Dated this 16th day of February 2024
At The Hague, The Netherlands

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