Cour Pénale Internationale

International Criminal Court

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No.: **ICC-02/17**
Date: **13 January 2025**

PRE-TRIAL CHAMBER II

Before: **Judge Rosario Salvatore Aitala, Presiding Judge**
Judge Sergio Gerardo Ugalde Godínez
Judge Haykel Ben-Mahfoudh

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Confidential
***EX PARTE*, only available to the Prosecution**

Prosecution's notice of intention to file applications under article 58 and 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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Other

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Introduction

1. On 16 February 2024, the Office of the Prosecutor filed a request for page extensions for two arrest warrant applications it intended to file by 29 February 2024.[1] On 20 February 2024, Pre-Trial Chamber II granted the request.[2] Following further investigation and review, the Prosecution now notifies the Chamber of its intention to file the two applications by the end of January 2025.

2. Additionally, the Prosecution intends to file further arrest warrant applications pursuant to article 58 of the Statute against two other senior Taliban officials for the crime of persecution committed in Afghanistan, by the end of February 2025. These applications relate to the same alleged persecution which forms the basis of the first two applications, for which the Chamber has already granted an extension of pages.

3. Accordingly, and for similar reasons, the Prosecution respectfully requests the Pre-Trial Chamber to extend the page limit for the two additional arrest warrant applications under regulation 37(2) of the Regulations of the Court, from 60 to 75 pages, given the exceptional circumstances of these cases.[3]

Confidentiality

4. Pursuant to regulation *23bis*(1) of the Regulations of the Court and regulation 14(b) of the Regulations of the Registry, this application is filed under seal, *ex parte*, only available to the Prosecution, since it refers to a previous filing with similar classification.

Submissions

5. As previously observed by this Pre-Trial Chamber, and on the same basis as its previous request,[4] 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 warranting an extension of that limit, and conferred the necessary discretion upon the Chamber to do so. As the Chamber has previously recognised, the complexity of the factual allegations to be presented, the temporal

[1] ICC-02/17-219-US-Exp ("First Page Extension Request").
[2] ICC-02/17-220-US-Exp ("First Page Extension Decision").
[3] *See* First Page Extension Decision, paras. 8-9.
[4] *See* First Page Extension Request, para. 3.

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and/or geographic scope of those allegations, and the novelty of the legal qualification of those allegations are relevant factors in demonstrating such circumstances.[5]

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

6. As with the applications for which a 5-page extension has already been granted, the two additional applications will allege the commission of widespread and systematic persecution under article 7(1)(h) over the course of several years on the territory of Afghanistan, on the grounds of gender.

7. The Prosecution notes that some details of its case theory and argument have been adjusted since it made its previous request, in order to provide the most compelling case to the Chamber. Accordingly, while the present request may describe some relevant allegations in somewhat different terms than before, this does not indicate any lesser degree of complexity of the underlying evidence but only the Prosecution's continuing efforts to present its arguments in the fashion which is most straightforward and useful for the Chamber.

8. Thus, the two additional applications will likewise address the alleged persecution by the Taliban of girls, women, persons whom the Taliban perceives as not conforming with its ideological expectations of gender identity or expression, and persons whom the Taliban perceives as allies of girls and women. To this end, the Prosecution will show: the severe deprivation of numerous fundamental rights contrary to international law, spanning a period now of over more than three years; the various different facets of the victimisation of the targeted persons, which sometimes affected them in particular ways; the basis of the alleged persecution in the Taliban's ideology, and the significance of gender discrimination within that context; and the connection between the alleged persecution and more than 200 article 7(1) acts – including those contrary to articles 7(1)(a), (e), (f), (g), (i) and (k) of the Statute.

9. Further, the Prosecution will allege that each additional suspect – like the other suspects for whom extensions have been granted, 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.

[5] *See* First Page Extension Decision, paras. 5-6, 8.

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Novelty of the legal qualification of those allegations

10. The Prosecution recalls that, in its previous request, it noted that persecution on the ground of gender would soon be the subject of an article 74 judgment in the *Al Hassan* case, but that it was impossible at that time to anticipate whether such a judgment would itself be "a final decision".[6] Such a judgment has now been rendered,[7] and the parties have since provided notice of the discontinuation of their appeals against that judgment.[8] In its applications, the Prosecution has accordingly been guided by relevant aspects of the approach of the *Al Hassan* Trial Chamber in pleading the crime of gender persecution. Nevertheless, the legal qualification of the present applications remains novel insofar as it relies *entirely* on persecution by means of severe deprivations of fundamental rights, not themselves amounting to article 7(1) acts or crimes under the Statute. As such, there remains a need to provide a greater degree of legal and factual context for certain assertions than might otherwise be the case.

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

11. As the Chamber has previously recognised, the considerations detailed above demonstrate exceptional circumstances justifying a reasonable extension of the page limit for typical applications under article 58.[9] The requested extension will enable the Prosecution to address factual allegations of unusual scope and complexity. 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).

12. Furthermore, granting the requested extension would be consistent with the Chamber's previous authorisation of the same extension for applications which are very closely related in subject matter.

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[6] *See* First Page Extension Request, para. 7.
[7] ICC-01/12-01/18-2594.
[8] *See* ICC-01/12-01/18-2667; ICC-01/12-01/18-2668.
[9] First Page Extension Decision, paras. 5-6, 8.

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Conclusion

13. 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 the two additional article 58 applications, so that all four proposed applications relating to the same subject matter have the same page limit.



Karim A.A. Khan KC, Prosecutor

Dated this 13th day of January 2025
At The Hague, The Netherlands

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