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.

Cour Pénale Internationale

International Criminal Court

Original: English

No. **ICC-02/17**
Date: **20 February 2024**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Under seal, *ex parte*, only available to the Prosecution

Decision on the 'Prosecution's request for an extension of page limit'

~~Pursuant to Pre-Trial Chamber II's Decision ICC-02/17-245-Red dated 05/10/2026, this document is reclassified as Public~~

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

The Office of the Prosecutor
Mr Karim A. A. Khan
Ms Nazhat Shameem Khan
Mr Anton Steynberg

Counsel for 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

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

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PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision on the 'Prosecution's request for an extension of page limit'.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 20 November 2017, the Prosecution submitted its 'Request for authorisation of an investigation pursuant to article 15'[1] in relation to the Islamic Republic of Afghanistan ('Afghanistan'), which was rejected by the Chamber on 12 April 2019 (the 'Afghanistan Article 15 Decision').[2]

2. On 5 March 2020, the Appeals Chamber amended the Afghanistan Article 15 Decision and authorised an investigation into 'alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties to the Rome Statute since 1 July 2002' (the '5 March 2020 Judgment').[3]

3. Following a request by the Government of Afghanistan seeking a deferral of the Prosecution's investigation,[4] on 27 September 2021, the Prosecution requested authorisation to resume the investigation in accordance with article 18(2) of the Rome Statute (the 'Statute'),[5] which the Chamber granted on 31 October 2022 (the '31 October 2022 Decision').[6]

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[1] ICC-02/17-7-Conf-Exp, confidential and *ex parte* (a public redacted version of the decision was filed on the same day ICC-02/17-7-Red).
[2] Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, ICC-02/17-33, public. On 31 May 2019, Judge Mindua issued the Concurring and Separate Opinion of Judge Kesia-Mbe Mindua, 31 May 2019, ICC-02/17-33-Anx-Corr, annexed to the Afghanistan Article 15 Decision, and a public annex.
[3] Appeals Chamber, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020, ICC-02/17-138, public, with Separate Opinion of Judge Luz del Carmen Ibáñez Carranza, ICC-02/17-138-Anx-Corr, and a public annex.
[4] Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan's letter concerning article 18(2) of the Statute', 15 April 2020, ICC-02/17-139, public, with a public annex containing the request for deferral from the Government of Afghanistan, ICC-02/17-139-Anx1.
[5] Request to authorise resumption of investigation under article 18(2) of the Statute, ICC-02/17-161, public, with a confidential annex.
[6] Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation, ICC-02/17-196, public.

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4. Following an appeal from the Prosecution,[7] on 4 April 2023, the Appeals Chamber amended the 31 October 2022 Decision to align with the scope of the Prosecution's investigation in the Afghanistan situation as determined in the 5 March 2020 Judgment.[8]

5. On 16 February 2024, the Prosecution submitted, pursuant to regulation 37(2) of the Regulations of the Court (the 'Regulations'), a request to extend the page limit from 60 to 75 pages for warrant of arrest applications it intends to file against two suspects under article 58 of the Statute (the 'Request').[9] The Prosecution submits that this extension is necessary to address factual allegations of unusual scope and complexity.

6. In this regard, the Prosecution asserts that the applications will allege the commission of the crime of persecution on the grounds of gender, religion, and/or politics (article 7(1)(h) of the Statute), on the territory of Afghanistan, spanning a period of over two and a half years. Regarding the crime of persecution on the ground of gender, the Prosecution asserts that it needs to provide greater degree of legal and factual context given that this crime has not yet been addressed in a final judgement of the Court. The Prosecution further avers that the applications will also allege that each suspect contributed to the alleged commission through multiple means and that the particular nature of the suspects' activities requires additional explanation. Finally, the Prosecution submits that the extension of page limit will also serve to present the Prosecution's case to the Chamber in a clear and concise manner that will facilitate its work.

II. ANALYSIS

7. The Chamber recalls that, pursuant to regulation 38(2)(g) of the Regulations, warrant of arrest applications shall not exceed 60 pages and that the page limit may be extended in exceptional circumstances at the request of a participant, pursuant to regulation 37(2) of the Regulations.

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[7] Prosecution appeal of "Decision pursuant to article 18 (2) of the Statute authorising the Prosecution to resume investigation", 22 November 2022, ICC-02/17-198, public.
[8] Appeals Chamber, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber II entitled "Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation", ICC-02/17-218.
[9] ICC-02/17-219-US-Exp, under seal and *ex parte*, only available to the Prosecution.

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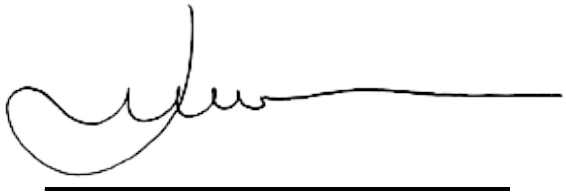
8. The Chamber finds, without prejudice to the merits of the applications that may be subsequently filed before it, that exceptional circumstances occur within the meaning of regulation 37(2) of the Regulations and considers that a limited 15-page increase for each of the applications is reasonable and appropriate.

9. The Chamber, therefore, grants the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

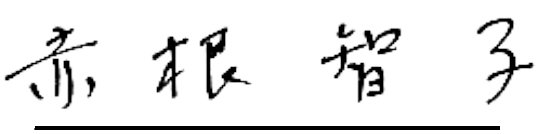
GRANTS the Request.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Rosario Salvatore Aitala

Presiding



Judge Tomoko Akane



Judge Sergio Gerardo Ugalde Godínez

Dated this Tuesday, 20 February 2024.

At The Hague, The Netherlands.

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