

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/17
Date: **6 May 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

Request to file a consolidated response

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
Ms Spojmie Ahmady Nasiri
Ms Katherine Gallagher
Ms Megan Hirst
Ms Margaret L. Satterthwaite

1. The Prosecution has been notified of two submissions purporting to arise from its own notification to the Pre-Trial Chamber of 16 April 2021, providing an update concerning the current status of the deferral request made by the Islamic Republic of Afghanistan under article 18(2) of the Statute.¹ One submission is filed by counsel who represented victims for the purpose of article 15(3) in the previous interlocutory appeal proceedings in this situation (“Gallagher *et al.* Submissions”),² and one submission is filed by a former *amicus curiae* in those proceedings who now also submits that they represent victims in this situation at least in the sense of article 15(3) (“Nasiri Submissions”).³
2. The Prosecution understands that it is entitled to respond to the Nasiri Submissions, which were framed as a stand-alone motion, and will do so by the applicable deadline, which is Monday 17 May 2021 (due to the forthcoming Court holidays).⁴
3. By contrast, the Prosecution notes that the Gallagher *et al.* Submissions are styled as a “response” to the Prosecution Notice filed before the Pre-Trial Chamber. The Prosecution submits that, since these submissions in fact raise new concerns extending beyond the Prosecution’s notice—and seek specific relief with respect to those concerns—they should likewise be regarded as a motion to which the Prosecution is entitled to respond under regulation 24(1) of the Regulations of the Court. Such a response would again be due (coincidentally) on Monday 17 May 2021.⁵
4. In the alternative, however, if the Pre-Trial Chamber considers that the Gallagher *et al.* Submissions do constitute a response in the meaning of regulation

¹ [ICC-02/17-142](#) (“Prosecution Notice”).

² [ICC-02/17-146-Anx](#) (“Gallagher *et al.* Submissions”).

³ [ICC-02/17-143-Anx1](#) (“Nasiri Submissions”).

⁴ See [Regulations of the Court](#), regulation 34(b).

⁵ See [Regulations of the Court](#), regulation 34(b).

24(1), the Prosecution seeks leave to reply under regulation 24(5). Such an opportunity is merited in light of the content of the submissions, which extend significantly beyond the Prosecution Notice and raise issues which could not have been anticipated—indeed, no response was anticipated at all, consistent with the limited purpose of the Prosecution Notice as a factual update of the current situation.

5. The Prosecution emphasises that this request is without prejudice to the position it will take in its future submission, including on the nature of the current proceedings and the question of standing at this time.⁶

6. With the Pre-Trial Chamber’s approval, and in the interests of efficiency, the Prosecution therefore seeks permission to file a single consolidated submission addressing the Gallagher *et al.* Submissions and the Nasiri Submissions, not exceeding 20 pages of argument, by Monday 17 May 2021.



Fatou Bensouda, Prosecutor

Dated this 6th day of May 2021

At The Hague, The Netherlands

⁶ See e.g. [ICC-02/17-146](#) (“Registry Observations on Gallagher *et al.* Submissions”), paras. 5-6.