



Original: **English**

No.: **ICC-02/17**

Date: **25 November 2021**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

With Confidential *ex parte* Annex A, available only to the Registry

Decision on the ‘Registry Submission Pursuant to Decision ICC-02/17-171 in
Relation to Article 18(2) Proceedings’

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
Mr Manoj Sachdeva

Counsel for 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

The Islamic Republic of Afghanistan

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Mr Philipp Ambach

PRE-TRIAL CHAMBER II (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this ‘Decision on the “Registry Submission Pursuant to Decision ICC-02/17-171 in Relation to Article 18(2) Proceedings”’.

I. Procedural history

1. On 12 April 2019, the Chamber rendered the ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan’ (the ‘Article 15 Decision’);¹ on 31 May 2019, Judge Antoine Kesia-Mbe Mindua issued his concurring and separate opinion.²
2. On 5 March 2020, the Appeals Chamber amended the 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’.³
3. On 15 April 2020, the Chamber received the Prosecutor’s ‘Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan’s letter concerning article 18(2) of the Statute’,⁴ notifying the Chamber of the Government of the Islamic Republic of Afghanistan’s (the ‘Afghanistan’) request of 26 March 2020 seeking a deferral of the Prosecutor’s investigation into the situation in Afghanistan pursuant to article 18(2) of the Statute (the ‘Deferral Request’).⁵
4. On 16 April 2021, the Chamber received the Prosecutor’s ‘Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request’, in which it

¹ Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019, [ICC-02/17-33](#).

² Concurring and Separate Opinion of Judge Kesia-Mbe Mindua, 31 May 2019, [ICC-02/17-33-Anx-Corr](#), annexed to Article 15 Decision, and a [public annex](#) (explanatory note).

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](#), with Separate Opinion of Judge Luz del Carmen Ibáñez Carranza, [ICC-02/17-138-Anx-Corr](#) and a public annex [ICC-02/17-138-Anx-Corr](#) (explanatory note).

⁴ [ICC-02/17-139](#).

⁵ [ICC-02/17-139-Anx1](#).

informed the Chamber of its latest communications with Afghanistan in the context of the Deferral Request.⁶

5. On 27 September 2021, the Chamber received the Prosecutor’s ‘Request to authorise resumption of investigation under article 18(2) of the Statute’ (the ‘Prosecutor’s Request’).⁷

6. On 8 October 2021, the Chamber rendered the ‘Decision setting the procedure pursuant to rule 55(1) of the Rules of Procedure and Evidence following the Prosecutor’s “Request to authorise resumption of investigation under article 18(2) of the Statute”’.⁸

7. On 9 November 2021, the Chamber issued the ‘Decision on the requests for reconsideration or leave to appeal the “Decision regarding applications related to the Prosecutor’s ‘Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request”’.⁹

8. On the same day, the Chamber issued the ‘Decision on submissions received and order to the Registry regarding the filing of documents in the proceedings pursuant to articles 18(2) and 68(3) of the Statute’ (the ‘8 November 2021 Decision’).¹⁰ The Chamber ordered the Victims Participation and Reparations Section (the ‘VPRS’): to submit an amended ‘Victim Representation Form’ and other relevant documents, to the Chamber for approval by Monday 15 November 2021 at the latest; and to collect victims’ views and concerns in the context of the proceedings pursuant to article 18(2) of the Rome Statute (the ‘Statute’).

9. On 15 November 2021, the Registry submitted observations on the 8 November 2021 Decision¹¹ and an amended ‘Victim Representation Form’ for the Chamber’s approval (the ‘Registry’s Observations’).¹²

⁶ [ICC-02/17-142](#).

⁷ [ICC-02/17-161](#), with a confidential annex.

⁸ [ICC-02/17-165](#).

⁹ [ICC-02/17-170](#).

¹⁰ [ICC-02/17-171](#).

¹¹ [Registry Submission Pursuant to Decision ICC-02/17-171 in Relation to Article 18\(2\) Proceedings](#), 15 November 2021 (public redacted version filed on 16 November 2021), ICC-02/17-172-Red.

¹² Annex A to the Registry Submission Pursuant to Decision ICC-02/17-171 in Relation to Article 18(2) Proceedings, 15 November 2021, ICC-02/17-172-Conf-Exp-AnxA.

II. Determination by the Chamber

10. **Victim Representation Form.** As instructed by the Chamber, the Registry submitted for the Chamber's approval a draft 'Victim Representation Form' previously adopted in the situation in Afghanistan, as well as guidelines on how to fill in such a form, which it modified for the purpose of the present proceedings pursuant to article 18(2) of the Statute.

11. Upon review of the documents, the Chamber hereby approves the form and related guidelines by means of which victims may communicate with the Court, subject to the amendments included in the annex to the present decision. The Chamber reiterates that the adoption of the standard form is meant to facilitate the collection of the victims' views and concerns and not a requirement for these views and concerns to be collected by the VPRS and submitted to the Chamber.

12. **First Deadline for the collection of the victim's views and concerns.** In light of the security context and the various challenges it may face during the process to collect the victims' views and concerns related to the Prosecutor's Request, the Registry 'suggests'¹³ that the Chamber sets a deadline for the Registry to submit a first report on the representations received by Friday 17 December 2021.¹⁴ The Registry further proposes to continue the collection process beyond that date and to submit a second report towards the end of January 2022.¹⁵

13. The Chamber recalls that it instructed the VPRS to start collecting the victims' views and concerns and to prepare a report including a brief assessment of whether criteria under rule 85 of the Rules of Procedure and Evidence are met and of the victims' views and concerns related to the Prosecutor's Request.¹⁶ The Chamber further reiterates that, prior to entering into deliberations on the Prosecutor's Request, it will set a deadline for all views and concerns to be submitted to the VPRS, and another deadline for the VPRS to transmit them to the Chamber, together with a final report.¹⁷

14. Upon review of the Registry's Observations, the Chamber finds it appropriate, in order to facilitate the Registry's planning and organisation of the collection process as

¹³ [Registry's Observations](#), paras 17-25.

¹⁴ [Registry's Observations](#), paras 27, 29.

¹⁵ [Registry's Observations](#), paras 27, 29.

¹⁶ [8 November 2021 Decision](#), para. 14.

¹⁷ [8 November 2021 Decision](#), para. 14.

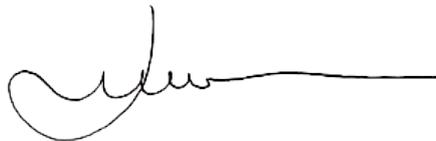
well as the preparation and delivery of the related reports to the Chamber to instruct the Registry to submit a first report by Friday 17 December 2021. The Chamber will set further deadlines in due course.

FOR THESE REASONS, THE CHAMBER

APPROVES the form and related guidelines attached to the Registry's Observations, subject to the additional amendments included in the annex to the present decision; and

INSTRUCTS the VPRS to submit a first report on the victims' views and concerns related to the Prosecutor's Request by Friday 17 December 2021.

Done in both English and French, the English version being authoritative.



Judge Rosario Salvatore Aitala
Presiding Judge



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Thursday, 25 November 2021

At The Hague, The Netherlands