

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/17**
Date: **21 April 2022**

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

Public Redacted Version of "Prosecution response to the [REDACTED] by the Registry pursuant to Pre-Trial Chamber II's Decision ICC-02/17-182 of 24 February 2022" (ICC-02/17-186-Conf, filed on 6 April 2022)

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Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. On 27 September 2021, the Prosecution requested authorisation under article 18(2) of the Rome Statute to resume its investigation, in light of the significant change of material circumstances in Afghanistan manifested in August 2021.¹
2. On 8 October 2021, Pre-Trial Chamber II (“Chamber”) set a schedule requesting observations from the Secretary-General of the United Nations and the Bureau of the Assembly of States Parties (“ASP”) of the International Criminal Court “on the identification of the authorities currently representing the Islamic Republic of Afghanistan”.²
3. On 5 November 2021, the Registry transmitted to the Chamber communications received from the UN Secretary-General and the Bureau of the ASP.³
4. On 24 February 2022, in a public decision, the Chamber set a schedule inviting the Islamic Republic of Afghanistan to provide observations on the Prosecution’s Application by no later than Friday 25 March 2022.⁴
5. On 25 March 2022, the Registry (in a confidential filing⁵ with two confidential annexes) [REDACTED] pursuant to the Chamber’s Order.⁶ The Registry reported to the Chamber that it had transmitted the Chamber’s Order to the Embassy “for onward communication to the competent Afghan authorities”⁷ since, “[i]n accordance with article 87(1) of the Statute, all requests to the Afghan authorities shall be transmitted

¹ [ICC-02/17-161](#) (“Prosecution’s Application”).

² [ICC-02/17-165](#) (“Chamber’s Request”).

³ [ICC-02/17-169](#) (“UNSG and ASP Submissions”).

⁴ [ICC-02/17-182](#) (“Chamber’s Order”).

⁵ Reclassified as public on 4 April 2022.

Reclassified as public on 4 April 2022.

Drawer/record/2859197" [ICC-02/17-185-Conf](#) (“Registry’s Transmission”).

⁷ Registry’s Transmission, para. 5.

through the diplomatic channel”, and that “[t]he authorities did not designate any other appropriate channel”.⁸ The Embassy confirmed receipt on 1 March 2022.⁹

6. [REDCATED].

[REDACTED].¹⁰

7. [REDACTED].¹¹

Confidentiality

8. This is filed confidentially in accordance with the present status of the Registry’s filing [REDACTED] . If that filing is re-classified by the Pre-Trial Chamber, this response may be re-classified accordingly, or the Prosecution will submit a corresponding public redacted version.

Submissions

9. The Chamber has taken the requisite steps to alert the competent Afghan authorities to the Prosecution’s Application, and has provided them with sufficient time to provide their observations. Not only was the Chamber’s invitation publicly notified, but the Registry has complied with the Court’s legal framework in communicating the Chamber’s Order to the Afghan authorities through the designated official channel.¹²

10. Six months have now passed since the Prosecution’s Application. Meanwhile allegations of article 5 crimes in Afghanistan continue to be reported.¹³ The

⁸ Registry’s Transmission, para. 4.

⁹ Registry’s Transmission, para. 6.

¹⁰ Registry’s Transmission, para. 7.

¹¹ See paragraphs 17 and 19 of the Chamber’s Order (referring to “*de facto* authorities” in Afghanistan, and authorities “currently representing Afghanistan”).

¹² See *e.g.* Statute, article 87(1); Rules, rules 13(1) and 176(2).

¹³ Examples of such crimes include:

- The arrest and detention of women’s rights activists protesting restrictive measures against women: The Guardian, [Taliban have detained 29 women and their families in Kabul, says US envoy](#), 12 February 2022; Etilaatroz, [Detention of two protesting women in Kabul: United Nations: Taliban to provide information immediately](#), 3 February 2022; Amnesty International, [Afghanistan: Taliban Must](#)

Prosecution respectfully submits that the current circumstances remain consistent with the those described in the Prosecution's Application.

Conclusion

11. For the reasons above, the Prosecution respectfully requests the Chamber to rule expeditiously on the Prosecution's Application and authorise the resumption of the investigation.



Karim A. A. Khan QC, Prosecutor

Dated this 21st day of April 2022

At The Hague, The Netherlands

[Immediately Stop Arbitrary Arrests of Journalists, Civil Society Activists, Former Government Officials and Those Who Dissent](#), 21 March 2022.

- Arrest, enforced disappearances and killings for former government officials and their family members: Independent Persian, [The Taliban shot dead five relatives of a former Afghan parliamentarian](#), 14 February 2022; Hasht-e-Sub Daily, [Mysterious Murders in Uruzgan Province: Six People Killed in 8 Days](#), 20 March 2022; Human Rights Watch, [“No Forgiveness for People Like You” - Executions and Enforced Disappearances in Afghanistan under the Taliban](#), 30 November 2021.
- Attacks, including using explosive devices, against protected objects such a military hospital in Kabul (Guardian, [Explosions and gun attack on central Kabul hospital kill 25 people](#), 2 November 2021) and mosques in Kandahar (Reuters, [Blast at Shi'ite mosque in Afghan city of Kandahar kills dozens](#), 15 October 2021), Nangarhar (Alarabiya News, [At least three killed in blast at Afghanistan mosque](#), 12 November 2021) and Kunduz (Washington Post, [Islamic State claims mosque blast in Kunduz, Afghanistan, that killed nearly 50, injured dozens](#), 8 October 2021; France24, [Dozens killed in Shiite mosque explosion in Afghanistan's Kunduz](#), 8 October 2021).