

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/17
Date: **19 December 2022**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Marc Perrin de Brichambaut
Judge Gocha Lordkipanidze

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

**Prosecution request for leave to reply to “Response to ‘Prosecution appeal of
‘Decision pursuant to article 18(2) of the Statute authorising the Prosecution to
resume investigation’” (ICC-02/17-204)**

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

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Counsel for the Defence

Legal Representatives of Victims

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Ms Megan Hirst
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

State of Afghanistan

Amicus Curiae

REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

1. The Prosecution welcomes the observations filed in response to its appeal,¹ including those on behalf of Afghanistan² and the three observations filed on behalf of victims participating in these proceedings by the Office of Public Counsel for Victims,³ by Ms Nasiri,⁴ and by Mr Moloney et al.⁵
2. Pursuant to regulation 24(5) of the Regulations of the Court, the Prosecution seeks leave to file a brief reply addressing aspects of the observations made by Mr Moloney et al. On the face of these observations, certain aspects appear to be inadmissible because they address matters beyond the scope of the present appeal proceedings,⁶ which relate only to paragraph 59 of the Pre-Trial Chamber's decision.⁷ If these observations are inadmissible, they should be summarily dismissed for the purposes of this appeal. In any event, the Prosecution could not reasonably have anticipated these arguments in its Appeal Brief.
3. If it would assist the Appeals Chamber, the Prosecution proposes to file a reply of no more than three pages (not including cover pages) by 16 January 2022 where it would demonstrate that these aspects of the observations of Mr Maloney et al.⁸ are inadmissible and misunderstand the Court's legal framework.
4. The Prosecution notes that the focused nature of this request, and its proposed reply, does not necessarily imply its agreement with the relevance or content of all

¹ See ICC-02/17-197 OA5 ("Notice of Appeal"); ICC-02/17-198 OA5 ("Appeal Brief").

² See ICC-02/17-203 OA5 ("Afghanistan Submissions").

³ See ICC-02/17-202 OA5 ("OPCV Submissions").

⁴ See ICC-02/17-201 OA5 ("LRV Submissions by Ms Nasiri").

⁵ See ICC-02/17-204 OA5 ("LRV Submissions by Mr Moloney et al."). As an administrative matter, the Prosecution notes that there appear to be minor discrepancies between the counsel listed on the notification page of this submission, the counsel signing this submission, and the counsel named in footnote 1 of this submission. In order to avoid excluding any relevant counsel, the Prosecution has included the broadest list in the notification page of this request. These submissions are described by primary reference to Mr Moloney simply because his name is listed first in that respect.

⁶ See *e.g.* LRV Submissions by Mr Moloney et al., paras. 8, 12-43.

⁷ See *e.g.* Notice of Appeal, paras. 1-2 (giving "notice of its appeal of paragraph 59 of Pre-Trial Chamber II's decision of 31 October 2022" and emphasising that the Prosecution "does *not* appeal any other part of the Pre-Trial Chamber's reasoning essential to its decision rejecting Afghanistan's request for deferral under article 18 of the Statute and granting the Prosecution's request to resume its investigation within the terms previously authorised by the Appeals Chamber", emphasis supplied), 22; Appeal Brief, paras. 1, 5, 7, 11, 37.

⁸ See *e.g.* LRV Submissions by Mr Moloney et al., paras. 8, 12-43.

other submissions which have been advanced by the participants in these proceedings.



Karim A.A. Khan KC, Prosecutor

Dated this 19th day of December 2022

At The Hague, The Netherlands