

# **ANNEX 1**

## **PUBLIC**



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No: ICC-02/17  
Date: 21 September 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*

*Cross-Border Victims' Request for Reconsideration of PTC II's "Decision regarding applications related to the Prosecution's Notification on status of the Islamic Republic of Afghanistan's Article 18(2) deferral request"*

*and Confidential Annex*

**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, Deputy Prosecutor  
 Ms Helen Brady

**Counsel for the Defence**

**Legal Representatives of the Victims**

Mr. Fergal Gaynor and Ms. Nada Kiswanson  
 van Hooydonk

Ms. Catherine Gallagher, Ms. Megan Hirst,  
 Ms. Margaret L. Sathertwaite and Ms. Nikki  
 Reisch

Ms. Nancy Hollander, Mr. Mikolaj Pietrzak  
 and Mr. Ahmad Assed

Mr. Steven Powles QC and Mr. Conor  
 McCarthy

**Unrepresented Victims**

**Unrepresented Applicants  
 (Participation/Reparation)**

**The Office of Public Counsel for Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr. Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section Other**

## Introduction

1. These brief submissions are made on behalf of a group of victims ("**the Cross-Border Victims**") in response to Pre-Trial Chamber II's "*Decision regarding applications related to the Prosecution's Notification on status of the Islamic Republic of Afghanistan's Article 18(2) deferral request*" ("**the Decision**")
2. The Cross-Border Victims comprise victims, located in Pakistan, who have been injured or had family members killed in cross-border air strikes launched from the territory of Afghanistan, into Pakistan. In many instances, these cross-border military operations have killed and injured scores of civilians and destroyed civilian objects including schools and medical facilities. A list of the victims on behalf of whom these submissions are made is set out in the Confidential Annex to these submissions.<sup>1</sup>

## Procedural History and Standing

3. The procedural history to the present application is carefully summarized by the Pre-Trial Chamber in the Decision §§ 1 – 18. For reasons of brevity, that background is not repeated here.

## Submissions

4. The Cross-Border Victims have read, in draft, and agree with the representations of other victims contained in submissions entitled "*Request for Reconsideration of the 'Decision regarding applications related to the Prosecution's 'Notification on status of the Islamic Republic of Afghanistan's article 18(2) deferral request'*" ("**the First Application for Reconsideration**").
5. The Cross-Border Victims also consider that the Decision was wrong to find (a) that the PTC lacked power to provide the relief the victims (including the Cross

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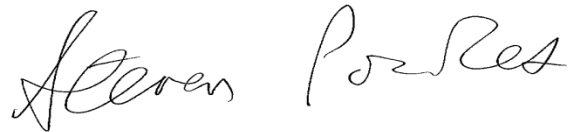
<sup>1</sup> It is important to note that, at this stage, these victims are representative of many hundreds of other civilians based in Pakistan who have been killed or injured (or who are close family members of persons killed or injured) in cross-border air strikes launched into Pakistan from Afghan territory in connection with the Afghan conflict.

Border Victims) sought; and (b) that the victims lack standing at this stage in proceedings (see Decision § 25).

6. The Cross Border Victims agree with, and respectfully adopt, the submissions set out in the First Application for Reconsideration §§ 11 – 52.

### **Relief Sought**

7. Adopting these submissions, the Cross-Border Victims also request:
  - (a) Reconsideration of the Decision insofar as it concerns the Cross Border Victims application to Pre-Trial Chamber II (“**the Third Application**”);  
and
  - (b) Granting of the relief sought in the Third Application.

A handwritten signature in black ink, appearing to read 'Steven Powles', written in a cursive style.

**Steven Powles QC**

**Conor McCarthy**

**21 September 2021**

London, United Kingdom