

Public

Annex 1



سفارت جمهوری اسلامی افغانستان
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EMBASSY of THE ISLAMIC REPUBLIC
of AFGHANISTAN
The Hague - Netherlands

د افغانستان اسلامي جمهوریت سفارت
لاہه - هالند

Madam Prosecutor, Fatou Bensouda
The Office of the Prosecutor
International Criminal Court
Oude Waalsdorperweg 10
2597 AK
The Hague
The Netherlands

26 March 2020

**Reference: The Situation in the Islamic Republic of Afghanistan
Deferral Request made by the Government of the Islamic Republic of
Afghanistan pursuant to Article 18(2) of the Rome Statute**

Dear Madam Prosecutor,

I write on behalf of the Government of the Islamic Republic of Afghanistan (“Government of Afghanistan”) in reply to your letter of 12 March 2020 that was sent to the Government in accordance with Article 18(1) of the Rome Statute (“Statute”).

The Government of Afghanistan hereby informs the Court that the Government is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts allegedly committed within the authorised parameters of the Situation in Afghanistan, which may constitute crimes referred to in Article 5 of the Statute, and which relate to the information provided in your notification to States dated 12 March 2020.



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Accordingly, on this basis, pursuant to Article 18(2) of the Statute, the Government of Afghanistan hereby formally requests within the 30-day time limit that the Prosecutor defer to Afghanistan's national investigations and proceedings in accordance with the provisions of Article 18.

In light of the unprecedented effects of the accelerating global pandemic of the corona-virus known as COVID-19 on both the Government of Afghanistan and its instructed legal team, the Government seeks the Prosecutor's consent in these exceptional circumstances to provide all necessary information and supporting materials for Afghanistan's present deferral request under Article 18(2) to the Office of the Prosecutor ("OTP") by Friday 12 June 2020.

This information and these supporting materials cover both the past and current national investigations concerning allegations of war crimes and crimes against humanity that are being conducted in respect of Afghan nationals and others within the period and parameters of the authorised Situation in Afghanistan, and all other relevant proceedings, procedures and measures. The Government hereby seeks the deferral under Article 18(2) on the basis that it has or is investigating the same crimes that come within the jurisdiction of the ICC which the OTP has indicated that it wishes to investigate. In this regard, the investigations and proceedings in Afghanistan cover allegations of crimes committed by Afghan forces, the Taliban and related groups, other terrorist groups and international forces. The alleged crimes that have been or are being investigated by the authorities of Afghanistan cover both war crimes and crimes against humanity including aerial bombardments of civilians, attacks on civilians and civilian properties, the killing and injuring of civilians, detentions and torture, and the destruction of civilian properties.

These materials can realistically however only be assembled and provided with all necessary submissions about the details and explanations by 12 June 2020 given that the Government and its



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officials are presently overwhelmed in fighting the COVID-19 pandemic, including because of the significant movement of people into Afghanistan from Iran (in the region of 15,000 persons per day), where significant numbers of infections have been reported. The challenges currently posed to the authorities in Afghanistan and to society more generally are thus extremely grave and considerable. In particular, the pandemic has caused significant practical difficulties. Travel restrictions mean that instructed Counsel and officials from Afghanistan are unable to travel and meet to consult and to assemble and share relevant information and materials. We are unable to arrange for members of our national war crimes unit or wider government to travel or meet in order to confer and prepare the Government's submissions and materials, and Counsel are themselves labouring under restrictive measures including isolation imposed by their own national governments.

Due to these current unprecedented circumstances, only a summary outline of national investigations and proceedings underway is annexed hereto. It is submitted now without prejudice in any way to the full and complete information and materials being provided to the OTP by 12 June 2020.

The opening of an investigation in the Afghanistan Situation is clearly a matter of vital national interest and importance to the country that requires a full and comprehensive response from the Government to the OTP. It is essential in these exceptional circumstances that the Government is allowed sufficient time to provide all necessary information and supporting materials.

The Government of Afghanistan remains fully committed to fulfilling all of its obligations under the Statute and its national laws, and cooperating with the OTP and the Court.



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To this end, and in light of the current extraordinary circumstances, the Government of Afghanistan therefore seeks the consent of the Prosecutor to provide the OTP by Friday 12 June 2020 with the information and materials supporting the Government's present request for a deferral pursuant to Article 18(2) of the Statute.

Yours sincerely,

Dr. M. Homayoon Azizi

Ambassador of the Islamic Republic of Afghanistan in The Netherlands

The Hague



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Summary Outline of National Investigations and Proceedings

Due to the unprecedented corona-virus the Government of Afghanistan is unable to provide the necessary information and supporting materials for its present Deferral Request until 12 June 2020. This summary outline is provided without prejudice in any way to the information and materials that will be submitted to the OTP by 12 June 2020, and is only provided in order to give a summary outline of national investigations and proceedings currently being undertaken including by the recently established Directorate on International Crimes and the Anti-Torture Commission. Due to the present extraordinary circumstances, it is not comprehensive and does not include all national investigations, measures and proceedings. The full and complete information and materials will be provided by 12 June 2020.

Alleged perpetrators	Numbers of current cases and investigations, include:	Type of crimes, include:	Actions taken on the cases, include:	
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The Taliban and related groups	<ul style="list-style-type: none"> • 33 war crimes • 3 crimes against humanity 	<ul style="list-style-type: none"> • Murder, torture and burning of civilians • Hostage-taking • Suicide attacks including in Kabul • Forced marriage of women • Child rape 	<ul style="list-style-type: none"> • Victims and witnesses' statements have been recorded and evidence gathered • Official letters have been issued to Afghan National Police (ANP), National Directorate of Security (NDS); and other involved bodies • Investigation requests and/or arrest warrants have been directed to ANP and NDS 	
Afghan Security Forces and international forces	<ul style="list-style-type: none"> • 26 war crimes 	<ul style="list-style-type: none"> • Airstrikes on civilian houses and objects including in Kapisa, Nengarhar, and Baghis province by Afghan air forces supported by Resolute Support Mission (RS) forces • Murder and injury, including civilian killings by National Security Directorate (NDS) special forces • Destruction of civilian 	<ul style="list-style-type: none"> • Victims and witnesses' statements have been recorded and evidence gathered • Official letters have been issued to Afghan National Police (ANP), National Directorate of Security (NDS); and other involved bodies • Investigation requests and/or arrest warrants have been directed to ANP and NDS 	

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		objects		
ISIS (Daesh)	<ul style="list-style-type: none"> • 4 war crimes • 3 crimes against humanity 	<ul style="list-style-type: none"> • Murder of civilians • Suicide attacks including in Kabul • Shutting down schools by force 	<ul style="list-style-type: none"> • Victims and witnesses' statements have been recorded and evidence gathered • Official letters have been issued to Afghan National Police (ANP), National Directorate of Security (NDS); and other involved bodies • Investigation requests and/or arrest warrants have been directed to ANP and NDS 	
Unknown at this stage	<ul style="list-style-type: none"> • 30 war crimes • 5 crimes against humanity 	<ul style="list-style-type: none"> • Murder of civilians and public servants • Other attacks on civilians and civilian objects 	<ul style="list-style-type: none"> • Victims and witnesses' statements have been recorded and evidence gathered • Official letters have been issued to Afghan National Police (ANP), National Directorate of Security (NDS); and other involved bodies • Investigation requests and/or arrest warrants have been directed to ANP and NDS 	

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<p>Torture cases</p>	<ul style="list-style-type: none"> • Various acts of torture both in and outside of detention in at least 47 cases 	<ul style="list-style-type: none"> • Torture, mistreatment, outrages on personal dignity and sexual violence, including in Pole Charkhi prison, Bagrami detention centre, Kabul detention centre, and in National Security Directorate (NDS) detention centres in Kabul and in other provinces 	<ul style="list-style-type: none"> • Imprisonment sentences have been handed down in at least 28 cases • Several other cases are under investigation 	
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