

ANNEX A
PUBLIC

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/17

Date: 07 October 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

Response to the Prosecution's "Request to authorise resumption of investigation under article 18(2) of the Statute"

Source: Legal Representatives of Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. Legal Representatives of Victims Abd Al Rahim Hussayn Muhammad Al-Nashiri (r/60009/17), Sharqawi Al Hajj (r/00751/18), Guled Hassan Duran (r/00750/18), Mohammed Abdullah Saleh Al-Asad (r/00749/18) and Ahmed Rabbani (r/00638/18) (“LRVs”), submit this response to the Prosecutor’s “Request to authorise resumption of investigation under article 18(2) of the Statute”¹ (“the Prosecutor’s Request”) pursuant to Article 68(3) of the Statute, Regulation 24(2) and 34 of the Regulations of the Court.
2. While fully supporting the Prosecutor’s Request, the LRVs are deeply concerned about the declaration of the Prosecutor that he will focus his Office’s investigation in the Situation in Afghanistan only on crimes allegedly committed by the Taliban and the Islamic State – Khorasan Province and deprioritise other aspects of the investigation.²
3. Previously, following the Prosecutor’s determination that there existed a reasonable basis to initiate an investigation into crimes that fell within the temporal, territorial and subject matter jurisdiction of the Court under article 15 of the Statute, and that there existed no grounds for determining that the interests of justice would not be served by such an investigation, the Appeals Chamber authorised an investigation in the Afghanistan Situation that was comprised of the three components identified by the Prosecutor: (i) crimes committed by the Taliban and affiliated groups; (ii) Afghan National Security Forces and (iii) the armed forces of the United States and its Central Intelligence Agency.³

¹ Request to authorise resumption of investigation under article 18(2) of the Statute, ICC-02/17-161, 27 September 2021.

² Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan, 27 September 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=2021-09-27-otp-statement-afghanistan> (accessed 5.10.2021).

³ Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, 5 March 2020.

The Prosecutor's Request provides no factual or legal argument to contradict its prior position – or the Appeals Chamber's judgment – that investigation of all three components falls within the Court's jurisdiction and should be authorised pursuant to article 15(4) of the Statute.

4. The LRVs, who represent victims of the third component of the authorized investigation, therefore request that the Prosecutor also actively investigates other crimes falling in the scope of this investigation, specifically, the alleged crimes committed as part of the CIA and DOD detention interrogation, rendition and torture program ("CIA detention program")

II. Procedural history

5. On 20 November 2017, the Prosecutor requested authorisation from the Pre-Trial Chamber to proceed with an investigation of the situation in the Islamic Republic of Afghanistan in the period since 1 July 2002, pursuant to article 15(3) of the Rome Statute ("the Authorisation Request").⁴
6. The Pre-Trial Chamber II in its decision of 12 April 2019 rejected the Authorisation Request and found that the commencement of an investigation would not be in the interests of justice.⁵

⁴ Request for authorisation of an investigation pursuant to article 15, ICC-02/17-7-Red, 17 November 2017.

⁵ Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, ICC-02/17-33, 12 April 2019.

7. A request for leave to appeal was filed by the Prosecutor on 7 June 2019⁶ and granted on 17 September 2019.⁷ Appeals were also filed by Legal Representatives of Victims.⁸
8. On 5 March 2020, the Appeals Chamber authorised the Prosecutor to commence an investigation *“in relation to 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 in the period since 1 July 2002.”*⁹ Notably, such authorisation included a determination that *all* alleged crimes advanced by the Prosecutor in the Authorisation Request were of sufficient gravity to warrant investigation.
9. On 26 March 2020, the Government of the Islamic Republic of Afghanistan, pursuant to Article 18(2) of the Statute, submitted the Deferral Request regarding *“national investigations and proceedings in accordance with the provisions of Article 18”*.¹⁰ The Prosecutor informed the Pre-Trial Chamber II about the Deferral Request on 16 April 2020.¹¹

⁶ Request for Leave to Appeal 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”, ICC-02/17-34, 7 June 2019.

⁷ Decision on the Prosecutor and Victims’ Requests for Leave to Appeal 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’, ICC-02/17-62, 17 September 2019.

⁸ Victims’ Notice of Appeal of 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’, ICC-02/17-36, 10 June 2019; Victims’ Notice of Appeal of 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”, ICC-02/17-38, 10 June 201; Corrected version of the Notice of appeal against 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” (ICC-02/17-33), ICC-02/17-40-Corr, 12 June 2019.

⁹ Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, 5 March 2020.

¹⁰ Annex 1 to the Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan’s letter concerning article 18(2) of the Statute, ICC-02/17-139-Anx1, 16 April 2020.

¹¹ Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request, ICC-02/17-142, 16 April 2021.

10. On 29 April 2021, Legal Representatives of Victims Sharqawi Al Hajj (r/00751/18), Guled Hassan Duran (r/00750/18), Mohammed Abdullah Saleh Al-Asad (r/00749/18) and Ahmed Rabbani (r/00638/18) (“LRVs”) responded to the Prosecutor’s notification, requesting the Chamber to, among others, order the Prosecutor to clarify the scope of the Deferral Request.¹² The Pre-Trial Chamber denied the request on 3 September 2021.¹³ On 17 September 2021, the LRVs requested the Pre-Trial Chamber to reconsider its decision of 3 September 2021.¹⁴ The request remains pending.
11. On 27 September 2021, the Prosecutor, acting pursuant to Article 18(2) of the Statute, requested the Pre-Trial Chamber II to authorise resumption of the investigation in the Situation in Afghanistan.¹⁵
12. On the same day the Office of the Prosecutor published a statement informing the public about the aforementioned application under article 18(2) of the Statute (“Statement”).¹⁶

¹² Victims’ response to the Prosecutor’s “Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request” and request for compliance with Part 5 of the Statute, ICC-02/17-146- Anx, dated 29 April 2021 and transmitted on 6 May 2021 (submitting *inter alia* that the CIA detention and torture program fell outside the scope of the deferral request). Other victims also made submissions regarding *inter alia* the status and scope of the Deferral Request. See Motion Seeking Remedies for Information and Effective Outreach, ICC-02/17-143-Anx1, 20 April 2021; Cross-Border victims’ response to the Prosecutor’s “Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request”, ICC-02/17-148-Anx, 29 April 2021.

¹³ Decision regarding applications related to the Prosecution’s ‘Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request’, ICC-02/17-156, 3 September 2021.

¹⁴ Request for Reconsideration of the ‘Decision regarding applications related to the Prosecution’s “Notification on the status of the Islamic Republic of Afghanistan’s article 18(2) deferral request”’, (ICC-02/17-159-AnxA), 17 September 2021.

¹⁵ *Vide supra*: 1.

¹⁶ *Vide supra*: 2.

III. Submissions

(a) *Victims' standing*

13. The LRVs submit that the Pre-Trial Chamber should allow victims' views and concerns to be presented in the Article 18(2) proceedings initiated by the Prosecutor's Request without a formal application process. In this regard the LRVs refer to and replicate the arguments raised in the "Victims' response to the Prosecutor's "Notification on status of the Islamic Republic of Afghanistan's article 18(2) deferral request" and request for compliance with Part 5 of the Statute."¹⁷

14. Moreover, the LRVs submit that their clients' personal interests are directly affected by the Prosecutor's decision to focus the investigation in the situation in Afghanistan solely on crimes allegedly committed by the Taliban and the Islamic State – Khorasan Province and to deprioritise other aspects of the investigation. The Prosecutor's decision to deprioritise and seemingly hold in abeyance the investigation in relation to, among others, crimes committed as part of the "CIA detention program" deprives the Victims of any prospect for a genuine and effective investigation, and eventually the right to truth and reparations for the extreme injustices they faced as part of this program.

(b) *Prosecutor's intent to prioritize only certain aspects of investigation*

15. The Prosecutor's Request is founded on the significant change of material circumstances which became manifest in Afghanistan in August 2021. According to the Prosecutor's assessment, there is no prospect for genuine and effective domestic investigations into Article 5 crimes within Afghanistan¹⁸. Moreover, no entity either outside Afghanistan or exercising *de facto* control in Afghanistan is

¹⁷ Victims' response to the Prosecutor's "Notification on status of the Islamic Republic of Afghanistan's article 18(2) deferral request" and request for compliance with Part 5 of the Statute, ICC-02/17-146-Anx, dated 29 April 2021 and transmitted on 6 May 2021, paras 25-31.

¹⁸ Request to authorise resumption of investigation under article 18(2) of the Statute, ICC-02/17-161, 27 September 2021, paras. 26-27.

presently able to meet the requirements of articles 17 and 18 of the Statute in order to maintain the Deferral Request filed by the Government of Afghanistan on 26 March 2020.¹⁹

16. On the same day that the Prosecutor's Request was filed, the Prosecutor informed the public that he has decided to prioritise certain aspects of the investigation in the Situation in Afghanistan. According to the Statement, due to the limited resources available to the Office of the Prosecutor, the investigation – if the authorisation to resume is granted – will concentrate on crimes allegedly committed by the Taliban and the Islamic State – Khorasan Province and other aspects of this investigation will be deprioritised.²⁰
17. While fully supporting the Prosecutor's Request, the LRVs and the individual victims they represent are deeply concerned about the Prosecutor's expressed intention to deprioritise other aspects of the investigation, and particularly, the alleged crimes committed as part of the "CIA detention program". These crimes have previously been determined by both the Prosecutor and the Appeals Chamber to be of sufficient gravity and scale to warrant investigation by the International Criminal Court. Indeed, as victims have previously advised the Office of the Prosecutor, the Pre-Trial Chamber and the Appeals Chamber, the crimes arising out of the CIA detention program implicate not only the conduct of citizens of the United States (a non-State Party) but the acts and omissions of actors from more than 30 States Parties, whose territory or resources facilitated and furthered this program.²¹ Such a widescale criminal enterprise, and the long-

¹⁹ *id.*, and especially paras. 22-26.

²⁰ Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan, 27 September 2021, para. 6, <https://www.icc-cpi.int/Pages/item.aspx?name=2021-09-27-otp-statement-afghanistan> (accessed 05.10.2021).

²¹ *See, e.g.*, Victims' Notice of Appeal-1, ICC-02/17-38, 10 June 2019, [Annexes I](#) and II, Victims' Representation, submitted on behalf of Sharqawi Al Hajj and Guled Hassan Duran, and particularly paras. 23, 39-43, 48; Corrigendum of Victims' Joint Appeal Brief against 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" of 30 September 2019, ICC-02/17-75, ICC-02/17-Corr, 1 October 2019, n. 13.

running impunity for those who bear the greatest responsibility, *should* remain of great concern to the Office of the Prosecutor. Based on their experience in investigating the CIA detention program and seeking justice and accountability in multiple fora (including in domestic criminal proceedings), the LRVs stand ready to assist the Prosecutor in furthering this component of the investigation.

18. It can be inferred from the Statement that the actions of the Office of the Prosecutor in relation to the deprioritised aspects of the investigation are to be limited to the preservation of evidence, should the necessity arise, and promotion of *"accountability efforts within the framework of the principle of complementarity."*²²

(c) The lack of prospect for genuine and effective domestic investigations of crimes committed as part of the "CIA detention program" justifies equal prioritisation

19. The Appeals Chamber's judgment of 5 March 2020 determined that the investigation in the Situation in Afghanistan would include crimes committed in connection with CIA detention facilities located on the territory of Afghanistan and other States Parties.²³ The reasons for including these crimes in the investigation continue to exist. Indeed, lack of any prospects for effective investigation of and accountability for these horrific crimes at the national level is even more apparent today than before.

20. Lack of progress in national proceedings regarding operation of CIA detention facilities in Poland, Romania and Lithuania – countries named in the Prosecutor's Authorisation Request²⁴ – demonstrates that these countries are either unwilling and/or unable to genuinely carry out the investigation.²⁵

²² Prosecutor's Statement, para. 8.

²³ Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, 5 March 2020, paras. 65-78.

²⁴ Request for authorisation of an investigation pursuant to article 15, ICC-02/17-7-Red, 17 November 2017, paras. 49, 189, 202-203, 329-334.

²⁵ See: Request for authorisation of an investigation pursuant to article 15, ICC-02/17-7-Red, 17 November 2017, para. 334 where the Prosecutor declared that as far as alleged crimes committed on

21. The European Court of Human Rights (“ECtHR”) in the *Al Nashiri v. Poland* (application no. 28761/11),²⁶ *Al Nashiri v. Romania* (application no. 33234/12)²⁷ and *Abu Zubaydah v. Lithuania* (application no. 46454/11)²⁸ judgments found, among others, that these states violated Article 3 of the European Convention of Human Rights in its procedural aspect. The respondent States failed to carry out an effective investigation into the applicants’ allegations of serious violations of the Convention, including, torture, inhuman treatment and undisclosed detention.
22. In spite of the positive obligation of these States stemming from those judgments, none of them conducted effective, prompt and thorough investigations.
23. In Poland, on 30 November 2020, after over 12 years, the criminal investigation conducted by the Regional Public Prosecutor in Cracow (RP II Ds. 16.2016), was discontinued with regard to Polish authorities allegedly engaged in the operation of the CIA detention facilities in Poland. On 26 February 2021, the remaining part of the investigation was suspended. On 7 September 2021, the Regional Court in Warsaw, Poland, upheld the decision regarding discontinuation of the proceedings. The Court’s reasoning is completely classified, despite the fact that some parts of the Public Prosecutor’s decision and the appeal were not classified and concerned non-classified parts of the case file.
24. It is clear that national authorities are unwilling to properly investigate and prosecute all those responsible for the operation of CIA detention facilities located

the territory of Poland, Romania and Lithuania are concerned, in case the investigation is authorised, “the Prosecution will continue to assess the progress of any relevant national proceedings in order to determine whether they encompass the same persons and substantially the same conduct as identified in the course of any investigations by the Prosecution, and if so, whether they are genuine”.

²⁶ Judgment of the ECtHR of 24 July 2014 in case *Al Nashiri v. Poland* (application no. 28761/11), <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-146044%22%5D%7D> (accessed 5.10.2021).

²⁷ Judgment of the ECtHR of 31 May 2018 in case *Al Nashiri v. Romania* (application no. 33234/12), <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-183685%22%5D%7D> (accessed 5.10.2021).

²⁸ Judgment of the ECtHR of 31 May 2018 in case *Abu Zubaydah v. Lithuania* (application no. 46454/11), <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-183687%22%5D%7D> (accessed 5.10.2021).

on Polish territory. Moreover, the fact that no effective legal assistance could have been obtained from the U.S.²⁹ demonstrates the inability of Polish authorities – and the unwillingness of U.S. authorities – to conduct any effective investigation.

25. According to the “*Rule 9 Submission to the Committee of Ministers of the Council of Europe. Case of Al Nashiri v. Romania (application no. 33234/12)*”³⁰ submitted by the Open Society Justice Initiative in connection with the implementation proceedings of the ECtHR judgment of 31 May 2018 in the case *Al Nashiri v. Romania* (application no. 33234/12), Romanian authorities have also failed to conduct an effective investigation regarding CIA detention facilities. As of the date of the report, no substantive developments had been achieved in the Romanian investigation. The report concludes that the status of the investigation “*indicates a lack of political will to identify those responsible for the human rights violations associated with Romania’s hosting of the CIA prison*”.³¹

26. Publicly available information regarding Lithuanian implementation of the ECtHR judgment of 31 May 2018 in the case *Abu Zubaydah v. Lithuania* (application no. 46454/11) also indicates that no effective proceedings are being carried out regarding crimes carried out as part of Lithuania’s involvement in the operation of CIA detention facilities in this country. The “*Submission to the Human Rights Council’s Universal Periodic Review Working Group regarding the Review of the Republic*

²⁹ See: 1411th meeting (September 2021) (DH) - Rule 8.2a Communication from the authorities (20/07/2021) concerning the AL NASHIRI group of cases v. Poland (Application No. 28761/11) [*anglais uniquement*] [DH-DD(2021)733], p. 3, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)733E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)733E) (accessed 6.10.2021); 1369th meeting (March 2020) (DH) - Updated action plan (03/02/2020) - Communication from Poland concerning the AL NASHIRI group of cases v. Poland (Application No. 28761/11) [*anglais uniquement*] [DH-DD(2020)100], p. 8, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)100E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)100E) (accessed 6.10.2021); 1243 meeting (8-10 December 2015) (DH) - Updated action plan (17/11/2015) - Communication from Poland concerning the cases of Al Nashiri and Abu Zubaydah against Poland (Applications No. 28761/11, 7511/13) [*anglais uniquement*] [DH-DD(2015)1250], pp. 9-10, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)1250E](http://hudoc.exec.coe.int/eng?i=DH-DD(2015)1250E) (accessed 6.10.2021).

³⁰ Open Society Justice Initiative, “*Rule 9 Submission to the Committee of Ministers of the Council of Europe. Case of Al Nashiri v. Romania (application no. 33234/12)*”, October 2020, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a026b5> (accessed 5.10.2021).

³¹ *Ibidem*, p. 7.

*of Lithuania” prepared by the Redress Trust (REDRESS) concludes that the “status of the investigation is unclear, and the few investigative efforts carried out to date are insufficient. As of the date of this submission, the Lithuanian authorities have failed to clarify the extent of the State’s involvement in the program, to hold any individuals involved accountable and to provide redress to victims”.*³²

27. In addition, several of the LRVs’ clients have been stymied in their efforts to seek accountability for crimes committed in connection with the “CIA detention program” in States Parties other than those named in the Prosecutor’s Authorisation Request.³³ For example, LRVs for Mohammed Abdullah Saleh al-Asad have sought accountability for crimes carried out in Djibouti as part of the “CIA detention program”, filing a complaint before the African Commission on Human and Peoples’ Rights against Djibouti in December of 2009.³⁴ After more than ten years of litigation, the case is still pending with no sign that Djibouti has undertaken a genuine and effective investigation into the crimes that occurred on its territory, including torture, inhuman treatment and undisclosed detention.³⁵

28. Finally, it is undisputed that the United States has never opened a full, credible independent criminal investigations into or initiated any prosecutions against those who appear most responsible for the crimes allegedly committed by members of the US armed forces or CIA.³⁶ Victims of these crimes have made multiple attempts to seek accountability also in US courts, where the Department

³² Redress Trust (REDRESS), *Submission to the Human Rights Council’s Universal Periodic Review Working Group regarding the Review of the Republic of Lithuania*, 12 July 2021, para. 10, <https://redress.org/wp-content/uploads/2017/11/2021-07-12-UPR-Lithuania-FINAL.pdf> (accessed 5.10.2021).

³³ Request for authorisation of an investigation pursuant to article 15, ICC-02/17-7-Red, 17 November 2017, paras. 49, 189, 202-203, 329-334.

³⁴ Communication 383/10, *Al-Asad v. Djibouti* (2009).

³⁵ Communication 383/10 is currently pending before the African Commission on Human and Peoples’ Rights (“African Commission”). In 2014, the African Commission published a decision finding the communication inadmissible. Following a request for review, the African Commission overturned its 2014 decision and found the case admissible in 2016. The African Commission mentions this decision on page 7 of its 40th Activity Report, released in 2016. The African Commission has yet to issue a decision on the merits of the communication.

³⁶ *See, e.g.*, Article 15 Request, paras. 299, 312.

of Justice often invokes immunity doctrines or state secrets to avoid accountability and even basic transparency.³⁷ Indeed, to date, no victim has received even an apology. The United States has also taken active measures to block accountability efforts before other national courts, whether by pressuring foreign officials or refusing to comply with mutual legal assistance requests.³⁸ As is well known to the Pre-Trial Chamber and Prosecutor, efforts by the United States to intimidate, interfere in and obstruct judicial proceedings has not been limited to national proceedings.

29. Meanwhile, some victims of the “CIA detention program” (including four men represented by the LRVs) remain indefinitely detained in Guantánamo Bay without charge and with no prospect of accountability for the harms they suffered, and continue to suffer.³⁹
30. The status of national investigations regarding the operation of CIA detention facilities on States Parties’ territories leads to the conclusion that the Office of the Prosecutor of the International Criminal Court remains the only institution able to thoroughly conduct an effective investigation into these crimes. Deprioritising the “CIA detention programme” in the Prosecutor’s investigation into the situation in Afghanistan would deprive the LRVs’ clients of any hope for justice in relation to these crimes.
31. The victims of the “CIA detention program” and the international community have now been informed by the Prosecutor (albeit through a public statement only) that the investigation of these crimes will be deprioritised. However, they have received no explanation to how the decision to deprioritise extremely grave

³⁷ See Victims’ Notice of Appeal-1, ICC-02/17-38, 10 June 2019, [Annexes I](#) and II, Victims’ Representation, submitted on behalf of Sharqawi Al Hajj and Guled Hassan Duran, paras. 112-113

³⁸ *Id.* at para. 113(c). See also *United States of America v. Zayn Al-Abidin Muhammad Husayn, aka Abu Zubaydah*, (U.S. No. 20-827), [Brief for the United States](#), 2 July 2021.

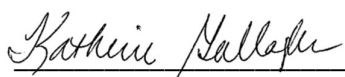
³⁹ Victims’ response to the Prosecutor’s “Notification on status of the Islamic Republic of Afghanistan’s article 18(2) deferral request” and request for compliance with Part 5 of the Statute, ICC-02/17-146-Anx, 06 May 2021, para. 22.

crimes, which have no realistic prospect of investigation or prosecution in any other jurisdiction, was taken.

(d) Conclusion

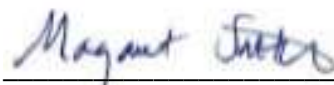
32. Given the above described failure of national authorities to investigate and hold to account those responsible for the operation of US detention and torture facilities located on the territory of various State Parties and operated with the involvement of nationals of States Parties, the Office of the Prosecutor should and must act. Therefore, while fully supporting the Prosecutor's Request, the LRVs request that this aspect of the investigation is given equal priority by the Office of the Prosecutor as crimes committed by the Taliban and the Islamic State – Khorasan Province. The gravity of the crimes which took place within the secret CIA detention facilities in Afghanistan, Poland, Lithuania, Romania and other countries, including by nationals of States Parties, as well as the manifestly ineffective nature of national proceedings, call into question the Prosecutor's deprioritisation of those crimes. These factors rather justify the Prosecutor's focus on and prioritisation of investigation of these grave and widescale crimes.

Respectfully submitted,



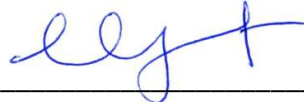
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Nancy Hollander

Ahmad Assed

Dated this 7 October 2021
At New York, USA; London, UK; Warsaw, Poland.