

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/17
Date: 12 June 2019

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

Decision on the ‘Request for Leave to File *Amicus Curiae* Submissions on Behalf of Human Rights Organizations in Afghanistan’ (ICC-02/17-35) and on the ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (ICC-02/17-39)

**Decision 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

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims
Ms Paolina Massidda
Ms Sarah Pellet
Ms Ludovica Vetrucchio

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

States Representatives

Amicus Curiae
Ms Spojmie Nasiri, Lead Counsel for the
Amicus curiae organisations

REGISTRY

Registrar
Mr Peter Lewis, Registrar

Defence Support Section

Victims and Witnesses Unit
Mr Nigel Verrill, Chief

Detention Section

**Victims Participation and Reparations
Section**
Mr Philipp Ambach, Chief

Other

PRE-TRIAL CHAMBER II of the International Criminal Court hereby issues this decision on the ‘Request for Leave to File *Amicus Curiae* Submissions on Behalf of Human Rights Organizations in Afghanistan’ (the ‘*Amicus curiae* Organisations’ and ‘*Amicus curiae*’s Request’)¹ and on the Office of Public Counsel for Victims’ (‘OPCV’) ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (the ‘OPCV’s Request’).²

1. On 20 November 2017, the Prosecutor requested Pre-Trial Chamber III to authorise the commencement of an investigation into the Situation in the Islamic Republic of Afghanistan (‘Afghanistan’).³
2. On 12 April 2019, the Chamber rendered a decision rejecting the Prosecutor’s request to authorise an investigation in Afghanistan (‘Article 15 Decision’);⁴ on 31 May 2019, Judge Antoine Kesia-Mbe Mindua issued his concurring and separate opinion.⁵
3. On 7 June 2019, the Prosecutor requested the Chamber to grant leave to appeal the Article 15 Decision and to certify three issues for appeal (‘Prosecutor’s Request’).⁶
4. On 10 June 2019, the *Amicus curiae* Organisations submitted the *Amicus curiae*’s Request for ‘leave to make submissions [...] regarding the Prosecution’s application seeking leave to appeal the Chamber’s article 15 decision rejecting the opening of an investigation into crimes committed in Afghanistan’.⁷
5. On the same day, the OPCV requested leave ‘to appear before the Pre-Trial Chamber in order to represent the general interest of the victims which is affected by the decision of the Chamber not to authorise the opening of an investigation, as well as by the issues

¹ *Amicus curiae* Organisations, Request for Leave to File *Amicus Curiae* Submissions on Behalf of Human Rights Organizations in Afghanistan, 10 June 2019, ICC-02/17-35, with public Annex A.

² OPCV, Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court, 10 June 2019, ICC-02/17-39.

³ Prosecutor, Request for authorisation of an investigation pursuant to article 15, 20 November 2017, ICC-02/17-7-Conf-Exp (public redacted version filed same day; ICC-02/17-7-Red).

⁴ Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019, ICC-02/17-33.

⁵ Concurring and Separate Opinion of Judge Kesia-Mbe Mindua, 31 May 2019, ICC-02/17-33-Anx-Corr, annexed to Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan.

⁶ Prosecutor, 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”, 7 June 2019, ICC-02/17-34.

⁷ *Amicus curiae*’s Request, para. 1.

identified by the Prosecution in its request for leave to appeal’,⁸ by way of written submissions to be filed within a deadline established by the Chamber.

6. The Chamber notes that the *Amicus curiae*’s Request and the OPCV’s Request are submitted on a different legal basis, respectively rule 103 of the Rules of Procedure and Evidence and regulation 81(4)(b) of the Regulations of the Court. Nevertheless, both requests share a common object and purpose: they aim at enabling the applicants to assist the Chamber in its determination of the Prosecutor’s Request by way of written submissions limited to the issues contained in the latter. Hence, and with a view to ensuring the efficiency of the proceedings, the Chamber deems it appropriate to address the requests jointly.
7. At this stage, the Chamber does not take a position either on the views expressed in either the *Amicus curiae*’s Request or the OPCV’s Request, or on the merits of the arguments elaborated by the applicants therein. However, in light of the nature and complexity of the issues at stake, it considers that receiving additional submissions may assist the Chamber in determining the Prosecutor’s Request.

⁸ OPCV’s Request, para. 1.

FOR THESE REASONS, THE CHAMBER

ORDERS the *Amicus curiae* Organisations and the OPCV to file their written submissions, if they so wish, no later than 12 July 2019.

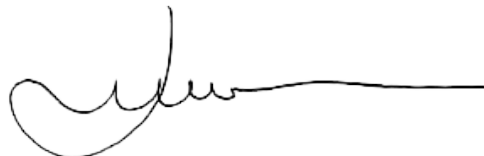
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Wednesday, 12 June 2019

At The Hague, The Netherlands