

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/17
Date: 18 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 scheduling order under rules 91(2) and 103(2), and regulation 24’
(ICC-02/17-48)

**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

Ms Katherine Gallagher *et al*
Mr Fergal Gaynor *et al*
Ms Nancy Hollander *et al*
Mr Steven Powles *et al*

Legal Representatives of the 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

Amicus Curiae

Mr Dimitris Christopoulos
Ms Spojmie Nasiri

REGISTRY

Registrar

Mr Peter Lewis, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court hereby issues this decision on the Prosecutor’s ‘Request for scheduling order under rules 91(2) and 103(2), and regulation 24’ (the ‘Request’).¹

1. On 12 April 2019, the Chamber rendered a decision rejecting the Prosecutor’s request to authorise an investigation in Afghanistan (‘Article 15 Decision’);² on 31 May 2019, Judge Antoine Kesia-Mbe Mindua issued his concurring and separate opinion.³
2. 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 Application’).⁴
3. On 12 June 2019, the Chamber granted leave to file *amicus curiae* written submissions to a first group of non-governmental organisations.⁵
4. On 13 June 2019, some participating victims filed their responses to the Prosecutor’s Application (‘Legal Representatives’ Responses’).⁶
5. On 17 June 2019, the Chamber granted leave to file *amicus curiae* written submissions to a second group of non-governmental organisations.⁷
6. On 18 June 2019, the Prosecutor filed the Request and (i) proposed the Chamber to file a response to the forthcoming *amicus curiae* submissions; (ii) requested to be granted leave to reply to the Legal Representatives’ Responses. The Prosecutor suggested to be directed to do so in a filing not exceeding 15 pages and no later than 19 July 2019.⁸

¹ Prosecutor, Request for scheduling order under rules 91(2) and 103(2), and regulation 24, 18 June 2019, ICC-02/17-48.

² 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.

³ 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.

⁴ 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.

⁵ Pre-Trial Chamber II, 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), 12 June 2019, ICC-02/17-43.

⁶ Reprieve/Foundation for Fundamental Rights Pakistan, RESPONSE TO OFFICE OF THE PROSECUTOR’S: ‘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’, 13 June 2019, ICC-02/17-44; Legal Representatives of Victims, Victims’ response to the Requests for Leave to Appeal filed by the Prosecution and by other victims, 13 June 2019, ICC-02/17-45.

⁷ Pre-Trial Chamber II, Decision on the ‘Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence’ (ICC-02/17-46), 17 June 2019, ICC-02/17-47.

⁸ Request, para. 3.

7. First, the Chamber notes that, pursuant to rule 103(2) of the Rules of Procedure and Evidence, the Prosecutor is entitled to respond to the forthcoming *amicus curiae* submissions. Second, the Chamber, noting rule 91(2) of the Rules of Procedure and Evidence and regulation 24 of the Regulations of the Court, finds it appropriate to grant the Prosecutor leave to reply to the Legal Representatives' Responses. The reply shall be limited to the new issues identified in the Prosecutor's Request. Finally, the Chamber considers the page and time limits suggested by the Prosecutor to be appropriate.


FOR THESE REASONS, THE CHAMBER

GRANTS the Prosecutor's Request and **ORDERS** the Prosecutor to file the response to the *amicus curiae* submissions and the reply to the Legal Representatives' Responses in a single document, not exceeding 15 pages, and no later than 19 July 2019.

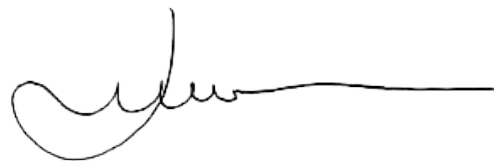
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Tuesday, 18 June 2019

At The Hague, The Netherlands