



Original: English

No. ICC-02/17 OA OA2 OA3

Date: 24 June 2019

THE APPEALS CHAMBER

Before:

Judge Piotr Hofma ski, Presiding Judge

Judge Chile Eboe-Osuji

Judge Howard Morrison

Judge Luz del Carmen Ibáñez Carranza

Judge Solomy Balungi Bossa

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

URGENT

**Order suspending the time limit for the filing of an appeal brief
and on related matters**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Legal Representatives of Victims

Mr Fergal Gaynor
Ms Nada Kiswanson van Hooydonk

Ms Katherine Gallagher
Ms Margaret L. Satterthwaite
Mr Tim Moloney

Ms Nancy Hollander
Mr Mikołaj Pietrzak

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeals, filed pursuant to article 82(1)(a) of the Statute, of groups of victims and individual victims in the Situation in the Islamic Republic of Afghanistan against the decision of Pre-Trial Chamber II entitled ‘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 12 April 2019 (ICC-02/17-33),

Having before it the ‘Observations concerning diverging judicial proceedings arising from the Pre-Trial Chamber’s decision under article 15 (filed simultaneously before Pre-Trial Chamber II and the Appeals Chamber)’ of 12 June 2019 (ICC-02/17-42), and

the ‘Victims’ request for extension of time and of page limit’ of 24 June 2019 (ICC-02/17-52), in which requests for extension of the page and time limits for the filing of an appeal brief are made,

Issues the following

ORDER

- 1) The time limit for the filing of the joint appeal brief of victims r/00751/18, r/00750/18, r/00749/18, r/00635/18, r/00636/18, r/00638/18 and r/60009/17 is extended until ten days after the notification of Pre-Trial Chamber II’s decision on the requests pursuant to article 82(1)(d) of the Statute 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’.
- 2) The page limit for the joint appeal brief of victims r/00751/18, r/00750/18, r/00749/18, r/00635/18, r/00636/18, r/00638/18 and r/60009/17 is extended to 35 pages.
- 3) The 82 victims represented in these proceedings by Mr Fergal Gaynor and Ms Nada Kiswanson van Hooydonk may file an updated version of the ‘Victims’ Appeal Brief’ (ICC-02/17-53) within ten days of notification of

the decision on the requests for leave to appeal mentioned above in paragraph 1).

- 4) The Prosecutor shall file a consolidated response to the appeal briefs mentioned above in paragraphs 1 and 3 within 21 days of notification of the last of these appeal briefs. The length of the response shall not exceed 45 pages.

REASONS

1. On 12 April 2019, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) rejected the Prosecutor’s request under article 15(3) of the Statute for authorisation of an investigation into the situation in the Islamic Republic of Afghanistan (‘Afghanistan’), deciding that ‘an investigation into the Situation in Afghanistan at this stage would not serve the interests of justice’ (the ‘Impugned Decision’).¹ On 31 May 2019, Judge Mindua issued a concurring separate opinion in relation to the Impugned Decision.²

2. On 10 June 2019, the legal representatives of 82 victims in the situation in Afghanistan (the ‘LRV 1’), the legal representative of six victims in the situation in Afghanistan (the ‘LRV 2’) and the legal representatives of an individual victim (the ‘LRV 3’) filed notices of appeal against the Impugned Decision under article 82(1)(a) of the Statute³ (the ‘Notices of Appeal’).

3. On 12 June 2019, the Prosecutor filed ‘Observations concerning diverging judicial proceedings arising from the Pre-Trial Chamber’s decision under article 15 (filed simultaneously before Pre-Trial Chamber II and the Appeals Chamber)’ (the

¹ [‘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, p. 32.

² [‘Concurring and Separate Opinion of Judge Antoine Kesia-Mbe Mindua’](#), 31 May 2019, ICC-02/17-33-Anx-Corr; a corrected version was registered on 7 June 2019.

³ [‘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”](#)’, 10 June 2019, ICC-02/17-36; [‘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 \[sic\]”](#)’, 10 June 2019, ICC-02/17-38; ‘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)’’, 10 June 2019, ICC-02/17-40; a corrected version was registered on 12 June 2019 ([ICC-02/17-40-Corr](#)).

‘Observations’),⁴ in which she notes that she has filed before the Pre-Trial Chamber a request pursuant to article 82(1)(d) of the Statute for leave to appeal the Impugned Decision and that other such requests for leave have been filed before that Pre-Trial Chamber by victims who have also filed notices of appeal before the Appeals Chamber, and that there is also a request for leave to make submissions pending before the Pre-Trial Chamber.⁵ The Prosecutor argues that the ‘diverging approaches’ have created ‘an anomalous situation in the procedure of the Court’.⁶ She submits, *inter alia*, that those who have submitted the Notices of Appeal before the Appeals Chamber are not ‘parties’ in terms of article 82(1) of the Statute and are therefore not entitled to file an appeal and that the Impugned Decision is, in any event, not a decision in respect of jurisdiction or admissibility that can be appealed under article 82(1)(a) of the Statute.⁷ She submits that the Appeals Chamber should therefore ‘dismiss without prejudice the [Notices of Appeal]’.⁸

4. On 19 June 2019, the LRV 2 and the LRV 3 filed jointly the ‘Victims’ response to the Prosecutor’s “Observations concerning diverging judicial proceedings arising from the Pre-Trial Chamber’s decision under article 15” (the ‘Response to Observations’),⁹ in which they submit that the Observations should be dismissed *in limine* because there was no legal basis for their submission.¹⁰ They submit further that, in any event, the Appeals Chamber should reject the Prosecutor’s arguments as to the admissibility of the Notices of Appeal on their merits.¹¹

5. On 24 June 2019, the LRV 2 and the LRV 3 filed jointly the ‘Victims’ request for extension of time and of page limit’¹² (the ‘Request for Extension’), in which they indicate that, while two separate Notices of Appeal were filed, they intend to file a joint appeal brief.¹³ They submit that drafting a joint document is more time-consuming, noting that legal representatives of the victims are located in different

⁴ [ICC-02/17-42](#).

⁵ [Observations](#), paras 1-3.

⁶ [Observations](#), para. 4.

⁷ [Observations](#), paras 12-26

⁸ [Observations](#), para. 27.

⁹ Dated 19 June 2019 and registered on 20 June 2019, [ICC-02/17-50](#).

¹⁰ [Response to Observations](#), paras 10-12.

¹¹ [Response to Observations](#), paras 13-36.

¹² [ICC-02/17-52](#).

¹³ Request for Extension, para. 2.

time zones and that some are currently involved in international travel and, on that basis, request that the time limit for the submission of their appeal brief be extended to 26 June 2019.¹⁴ They also request an extension of the page limit for the joint appeal brief to 35 pages, noting that arguments that otherwise would have been presented in two submissions of up to 20 pages will now need to be merged into one document, as well as the complexity and importance of the issues under appeal.¹⁵

6. On the same day, the LRV 1 filed the ‘Victims’ Appeal Brief’¹⁶ (the ‘LRV 1 Appeal Brief’).

7. The Appeals Chamber notes that there are currently proceedings concerning requests for leave to appeal pending before the Pre-Trial Chamber, which, if leave were to be granted, would result in appeals against the same Impugned Decision that is the subject of the present proceedings. While the LRV 1 has already filed an appeal brief, the LRV 2 and the LRV 3 have sought an extension of the time limit for the submission of their appeal brief, which they intend to file jointly. In these circumstances, the Appeals Chamber considers that it is appropriate to suspend the time limits for the filing of the appeal brief in the present proceedings by the LRV 2 and the LRV 3 until the Pre-Trial Chamber has determined the requests for leave to appeal as well as the time limit for the response to the LRV 1 Appeal Brief. Once the Pre-Trial Chamber has issued its decision on the requests for leave to appeal, the LRV 2 and the LRV 3 shall have ten days for file their joint appeal brief, while the LRV 1 shall have ten days to file an updated version of the LRV 1 Appeal Brief, should they so wish.

8. As to the request for an extension of the page limit sought by the LRV 2 and the LRV 3 for their joint appeal brief, the Appeals Chamber considers that the arguments put forward in support of the request constitute ‘exceptional circumstances’ in terms of regulation 37(2) of the Regulations of the Court.

9. The Prosecutor is ordered to file a consolidated response to the (updated) LRV 1 Appeal Brief and the joint appeal brief that is to be filed by the LRV 2 and the LRV 3,

¹⁴ Request for Extension, paras 3, 5.

¹⁵ Request for Extension, paras 6-7.

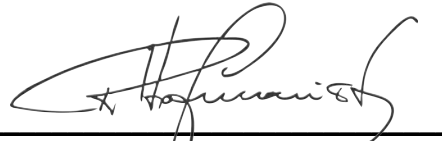
¹⁶ ICC-02/17-53.

within 21 days of notification of the last of these appeal briefs. The page limit for the consolidated response is extended two 45 pages.

10. The above is without prejudice to the Appeals Chamber's eventual determination of the admissibility of the present appeals.

11. The Appeals Chamber may review the suspension of the time limits as per the present order and will do so, should the Pre-Trial Chamber not have determined the requests for leave to appeal by 1 September 2019.

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



Judge Piotr Hofma ski
Presiding Judge

Dated this 24th day of June 2019

At The Hague, The Netherlands