



Original: English

No. ICC-02/17 OA OA2 OA3 OA4

Date: 20 September 2019

THE APPEALS CHAMBER

Before:
Judge Piotr Hofmański, Presiding
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Urgent

Public

Decision on the Prosecutor's request for an extension of page limit

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
Ms Helen Brady

Legal Representatives of Victims

Mr Fergal Gaynor
Ms Nada Kiswanson van Hooydonk

Ms Katherine Gallagher
Ms Margaret L. Satterthwaite

Ms Nancy Hollander
Mr Mikołaj Pietrzak

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal, to be filed pursuant to article 82(1)(d) of the Statute, of the Prosecutor in the Situation in 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 ‘Prosecution’s notice of joined proceedings, and request for extension of pages’ of 18 September 2019 (ICC-02/17-63),

Renders pursuant to regulation 37 (2) of the Regulations of the Court the following

DECISION

The page limit for the Prosecutor’s appeal brief in relation to the above-mentioned matter is extended to 75 pages.

REASONS

I. PROCEDURAL HISTORY

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 (the ‘Afghanistan Situation’) in relation to alleged crimes committed in Afghanistan since 1 May 2003, as well as other alleged crimes that are sufficiently linked to the Afghanistan Situation and were committed on the territory of other States Parties in the period since 1 July 2002 (the ‘Request for Authorisation’).¹
2. On 16 March 2018, the Presidency recomposed the Chambers of this Court and assigned the Afghanistan Situation to Pre-Trial Chamber II (the ‘Pre-Trial Chamber’).²

¹ [‘Request for authorisation of an investigation pursuant to article 15’](#), 20 November 2017, ICC-02/17-7-Red, para. 376.

² Presidency, [‘Decision assigning judges to divisions and recomposing Chambers’](#), 16 March 2018, ICC-02/17-30.

3. On 12 April 2019, the Pre-Trial Chamber rejected the Prosecutor's request under article 15(3) of the Statute for authorisation of an investigation into the Afghanistan Situation, deciding that 'an investigation into the Situation in Afghanistan at this stage would not serve the interests of justice' (the 'Impugned Decision').³
4. On 7 June 2019, the Prosecutor requested leave to appeal the Impugned Decision before the Pre-Trial Chamber.⁴
5. On 17 September 2019, the Pre-Trial Chamber granted the Prosecutor's request for leave to appeal.⁵
6. On 18 September 2019, the Prosecutor requested an extension of the page limit for her appeal brief to a maximum of 75 pages ('Request').⁶
7. On 19 September 2019, the legal representatives of victims responded to the Request and requested an equivalent extension for their appeal briefs.⁷

II. MERITS

8. Pursuant to regulation 37(2) of the Regulations of the Court, a Chamber may grant an extension of the page limit 'in exceptional circumstances'.
9. The Prosecutor argues that the Impugned Decision 'raises matters of constitutional importance for the Court' and has a particular bearing on her operations.⁸ She also indicates that, as the originator of the Request for Authorisation,

³ ['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.

⁴ ['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; ['Victims' 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"'](#), 10 June 2019, ICC-02/17-37.

⁵ ['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.

⁶ 'Prosecution's notice of joined proceedings, and request for extension of pages', ICC-02/17-63 (OA4).

⁷ 'Victims' response to "Prosecution's notice of joined proceedings, and request for extension of pages"', ICC-02/17-66 (OA OA2 OA3 OA4) ('LRV 1's Response'); 'Victims' response to Prosecution's notice of joined proceedings, and request for extension of pages', ICC-02/17-65 (OA4) ('LRV 2's Response').

⁸ Request, para. 13.

she is in a position to elaborate in detail on legal and factual matters which are disputed in relation to the Impugned Decision.⁹ Finally, she highlights the fact that the Impugned Decision assessed ‘multiple factors under article 53(1)(c), pertaining to three different potential major lines of inquiry’.¹⁰ The legal representatives of victims do not object to the Prosecutor’s Request.¹¹

10. The Appeals Chamber considers that, in the specific circumstances of these proceedings, particularly the complexity and novelty of the issues for which the Prosecutor has been granted leave to appeal and the issues she considers to be inextricably linked thereto,¹² there are “exceptional circumstances” in terms of regulation 37 (2) of the Regulations of the Court, which justify the extension of the page limit for the Prosecutor’s appeal brief. The Appeals Chamber considers that the length of the extension sought (55 pages) is reasonable. The Appeals Chamber therefore grants the Request.

11. The Appeals Chamber will issue a decision on the legal representatives of victims’ request in due course.

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



Judge Piotr Hofmański
Presiding

Dated this 20th day of September 2019

At The Hague, The Netherlands

⁹ Request, para. 14.

¹⁰ Request, para. 15.

¹¹ LRV 1’s Response, para. 12; LRV 2’s Response, para. 16.

¹² Request, para. 5.