



Original: English

**No. ICC-02/17 OA OA2 OA3 OA4
Date: 2 December 2019**

THE APPEALS CHAMBER

Before:
Judge Piotr Hofmański, Presiding
Judge Howard Morrison
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Kimberly Prost

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

**Urgent
Public document**

**Decision on ‘Urgent Request Regarding Conduct of Proceedings’ and revised
schedule for the hearing on 4 December 2019**

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 Satterthwaite
Ms Nikki Reisch
Mr Tim Moloney
Ms Megan Hirst
Ms Nancy Hollander
Mr Mikołaj Pietrzak

Mr Steven Powles
Mr Conor McCarthy

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

Amici Curiae

Ms Spojmie Nasiri
Mr Luke Moffett
Mr David J. Scheffer
Ms Jennifer Trahan
Ms Hannah R. Garry
Mr Göran Sluiter
Mr Kai Ambos
Mr Dimitris Christopoulos
Ms Lucy Claridge
Mr Gabor Rona
Mr Steven Kay
Mr Paweł Wiliński
Ms Nina H. B. Jørgensen
Mr Wayne Jordash
Mr Jay Alan Sekulow

States Representatives

Competent authorities of the Islamic Republic of Afghanistan

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeals of individual victims and two organisations submitting representations on behalf of victims filed pursuant to article 82(1)(a) of the Statute, and of the Prosecutor filed pursuant to article 82(1)(d) of the Statute, 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 ‘Urgent Request Regarding Conduct of Proceedings’ of 2 December 2019 (ICC-02/17-127),

Renders the following

DECISION

The request for additional time to make submissions is granted and the schedule for the hearing on Wednesday, 4 December 2019, is amended as set out below.

REASONS

I. PROCEDURAL HISTORY

1. On 25 June 2019, a number of Afghan human rights organisations (‘Afghanistan Human Rights Organisations’) requested leave to participate as *amicus curiae* in the appeals by presenting submissions on the following issues:

(i) the flawed process by which Afghan victims and Afghan society were heard on issues relevant to Pre-Trial Chamber II’s article 53(1)(c) determination;

(ii) the Decision’s flawed assessment of what Afghan victims and Afghan society consider the “interests of justice” entails within the context of the conflict in Afghanistan; and

(iii) steps the Court can undertake to prevent the repetition of these issues in the event the Chamber remands the Decision to Pre-Trial Chamber II or permits the investigation to proceed (‘Request for Leave to Participate’).¹

2. On 24 October 2019, the Appeals Chamber invited fifteen *amicus curiae* applicants, including the Afghanistan Human Rights Organisations, to either file written submissions not exceeding 10 pages by 15 November 2019, or to indicate by 29 October 2019 that they will attend the oral hearing to be held between 4 and 6 December 2019.²

3. On 29 October 2019, the Afghanistan Human Rights Organisations indicated that they would be represented at the hearing.³

4. On 22 November 2019, the Appeals Chamber issued the ‘Decision on the conduct of the hearing before the Appeals Chamber’, in which it allocated the Afghanistan Human Rights Organisations 15 minutes during the hearing to make their submissions on the merits of the appeals.⁴

5. On 1 December 2019, the Afghanistan Human Rights Organisations requested an additional 10 minutes on the first day of the hearing to make oral submissions in relation to the standing of victims to bring an appeal under article 82(1)(a) of the Statute (‘Request’).⁵

II. MERITS

6. In the Request for Leave to Participate, the Afghanistan Human Rights Organisations indicated that their submissions would relate, *inter alia*, to the process through which victims’ representations were gathered in the Afghan situation and the ‘flawed assessment of what Afghan victims and Afghan society consider the “interests of justice”’ in this context.⁶ While the Afghanistan Human Rights Organisations indicated that their proposed submissions would assist the Appeals

¹ [‘Request Seeking Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan’](#), ICC-02/17-55, para. 2.

² [‘Decision on the participation of amici curiae, the Office of Public Counsel for the Defence and the cross-border victims’](#), ICC-02/17-97, pp 3-4.

³ [‘Notice of Intent to Make Oral Submissions Between 4 and 6 December 2019’](#), ICC-02/17-100.

⁴ [ICC-02/17-118](#). See also, ‘Revised decision on the conduct of the hearing before the Appeals Chamber’, 2 December 2019, ICC-02/17-128.

⁵ ‘Urgent Request Regarding Conduct of Proceedings’, dated 1 December 2019 and registered on 2 December 2019, ICC-02/17-127.

⁶ [Request for Leave to Participate](#), para, 2.

Chamber in the evaluation of the merits of the appeals, the Appeals Chamber understands that these issues may also be of relevance to the question of whether victims have a right to appeal the impugned decision under article 82(1)(a) of the Statute.⁷

7. The Appeals Chamber considers that, at this stage, it is possible to adjust the schedule and allocate further time to hear the additional submissions proposed by the Afghanistan Human Rights Organisations and that these submissions may be desirable for the proper determination of the question of victims' standing to appeal. Accordingly, the Request is granted and the schedule for Wednesday, 4 December 2019, is amended as set out below:

Wednesday, 4 December 2019:

- a. The Prosecutor (30 minutes)
- b. LRV 1 (30 minutes)
- c. LRV 2 (30 minutes)
- d. LRV 3 (30 minutes)
- e. The Cross-border Victims (15 minutes)
- f. The OPCV (15 minutes)
- g. *Amici curiae*:
 - Mr Pawel Wilinski (10 minutes)
 - Jerusalem Institute of Justice, the International Legal Forum, My Truth, the Simon Wiesenthal Centre, the Lawfare Project, and UK Lawyers for Israel (10 minutes).
 - European Centre for Law and Justice (10 minutes)
 - Global Rights Compliance (10 minutes)
 - Afghanistan Human Rights Organisations (10 minutes)
- h. Response from the Prosecutor (5 minutes)
- i. Response from LRV 1 (5 minutes)

⁷ [Request for Leave to Participate](#), paras 6-12.

- j. Response from LRV 2 (5 minutes)
- k. Response from LRV 3 (5 minutes)
- l. Additional questions may be put to the Participants from the bench in relation to issues arising in this session. (30 minutes)

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



Judge Piotr Hofmański
Presiding

Dated this 2nd day of December 2019

At The Hague, The Netherlands