

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/17
Date: 17 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 Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence' (ICC-02/17-46)

**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

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

States Representatives

Amicus Curiae
Mr Dimitris Christopoulos, acting on behalf
of the *Amicus curiae* Organisations

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 ‘Request for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence’ (the ‘*Amicus curiae*’s Request’)¹ submitted by the International Federation for Human Rights, Armanshahr/OPEN ASIA and Transitional Justice Coordination Group-Afghanistan (the ‘*Amicus curiae* Organisations’).

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’).²
2. On 12 April 2019, the Chamber rendered a decision rejecting the Prosecutor’s request to authorise an investigation in Afghanistan (‘Article 15 Decision’);³ on 31 May 2019, Judge Antoine Kesia-Mbe Mindua issued his concurring and separate opinion.⁴
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’).⁵
4. On 10 June 2019, the Legal Representatives for 82 victims and two organisations filed both a request for leave to appeal the Article 15 Decision before Pre-Trial Chamber II⁶ and a notice of appeal of the same decision before the Appeals Chamber.⁷ The respective Legal Representatives for 6 other victims⁸ and for one victim⁹ also filed notices of appeal of the Article 15 Decision before the Appeals Chamber.

¹ *Amicus curiae* Organisations, Request for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 14 June 2019, ICC-02/17-46-Corr (corrected version notified on 17 June 2019).

² Prosecutor, Request for authorisation of an investigation pursuant to article 15, 20 November 2017, ICC-02/17-7-Conf-Exp (public redacted version notified same day; ICC-02/17-7-Red).

³ 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.

⁴ 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.

⁵ 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.

⁶ Legal Representatives of Victims, 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, with confidential Annex I.

⁷ Legal Representatives of Victims, 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, with confidential Annex I.

⁸ Legal Representatives of Victims, 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-02/17-38, with public Annexes.

5. On 12 June 2019, the Prosecutor filed observations to address the diverging judicial proceedings arising from the Article 15 Decision before Pre-Trial Chamber II and the Appeals Chamber ('Prosecutor's Observations').¹⁰
6. On 14 June 2019, the *Amicus curiae* Organisations requested the Chamber, pursuant to rule 103 of the Rules of Procedure and Evidence, to be authorised to submit *amicus curiae* observations regarding both the Prosecutor's Request and the Prosecutor's Observations.¹¹
7. At this stage, the Chamber does not take a position either on the views expressed in the *Amicus curiae*'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 and in evaluating the Prosecutor's Observations.

⁹ Legal Representatives of Victims, 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), 12 June 2019, ICC-02/17-40-Corr (corrected version notified on 12 June 2019).

¹⁰ Prosecutor, 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), 12 June 2019, ICC-02/17-42.

¹¹ *Amicus curiae*'s Request, paras 5-7, 68.

FOR THESE REASONS, THE CHAMBER

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

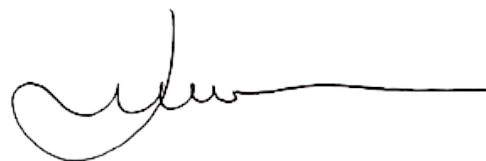
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Monday, 17 June 2019

At The Hague, The Netherlands