

**Original: English****No. ICC-02/17 OA5
Date: 24 January 2023****THE APPEALS CHAMBER**

Before: Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**Public document****Order on the filing of observations on the Prosecutor's notice of discontinuance
of the appeal**

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Nazhat Shameem Khan
Ms Helen Brady

Legal Representatives of Victims

Ms Nada Kiswanson van Hooydonk
Ms Katherine Gallagher
Ms Margaret L. Satterthwaite
Ms Nikki Reisch
Mr Tim Moloney
Ms Megan Hirst
Ms Nancy Hollander
Mr Mikołaj Pietrzak
Mr Steven Powles
Mr Conor McCarthy
Ms Spojmie Ahmady Nasiri
Mr Nema Milaninia
Ms Haydee Dijkstal

The Office of Public Counsel for Victims

Ms Paolina Massidda
Ms Sarah Pellet

States Representatives

Islamic Republic of Afghanistan

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Pre-Trial Chamber II entitled “Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation” of 31 October 2022 (ICC-02/17-196),

In light of the “Notice of discontinuance of the appeal of the Prosecutor against the ‘Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation’ (OA5)” of 16 January 2023 (ICC-02/17-207),

Issues the following

ORDER

The legal representatives of the participating victims and the Islamic Republic of Afghanistan may file responses to the Prosecutor’s notice of discontinuance of the appeal, not exceeding 10 pages, by 16h00 on 3 February 2023.

REASONS

1. On 16 January 2023, the Prosecutor filed, pursuant to rule 157 of the Rules of Procedure and Evidence, a notice of discontinuance of the appeal against the Pre-Trial Chamber II’s decision of 31 October 2022 (hereinafter: “Notice of Discontinuance”).¹ The Prosecutor submits that he has decided to discontinue the appeal “in the interests of judicial economy, and mindful of the Court’s limited resources” while maintaining “its position that the investigation is not limited in the way described in paragraph 59 of the Decision – in light of the fact that the issue was definitely settled by the Appeals Chamber in its judgment of 5 March 2020”.² The Prosecutor further submits that the discontinuance of the appeal “is without prejudice to further litigation of this matter

¹ *Situation in the Islamic Republic of Afghanistan*, [Notice of discontinuance of the appeal of the Prosecutor against the “Decision pursuant to article 18\(2\) of the Statute authorising the Prosecution to resume investigation” \(OA5\)](#), 16 January 2023, ICC-02/17-207.

² [Notice of Discontinuance](#), para. 3, referring to *Situation in the Islamic Republic of Afghanistan*, [Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan](#), 5 March 2020, ICC-02/17-138.

[...] if the parameters of the situation and the scope of the Court’s jurisdiction were to be put in issue in the future”.³

2. The Appeals Chamber recalls that, following an order of the Appeals Chamber,⁴ the legal representatives of the participating victims, and the Islamic Republic of Afghanistan, filed their respective responses to the Prosecutor’s appeal brief on 14 and 15 December 2022.⁵ Given these circumstances and in the interests of justice, the Appeals Chamber finds it appropriate to allow the legal representatives of the participating victims, and the Islamic Republic of Afghanistan, to file observations on the Notice of Discontinuance. The observations, not exceeding 10 pages, shall be filed by 16h00 by 3 February 2023.

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



Judge Piotr Hofmański
Presiding

Dated this 24th day of January 2023

At The Hague, The Netherlands

³ [Notice of Discontinuance](#), para. 6.

⁴ [Order on the conduct of the appeal proceedings](#), 23 November 2022, ICC-02/17-200.

⁵ [Victims Response to “Prosecution appeal of “Decision pursuant to article 18\(2\) of the Statute authorizing the Prosecution to resume investigation” \(ICC-02/17-196\)” \(ICC-02/17-198\)”](#), 14 December 2022, ICC-02/17-201; [Submissions on behalf of victims pursuant to the “Order on the conduct of the appeal proceedings” \(No. ICC-02/17-200\)”](#), 15 December 2022, ICC-02/17-202; [Response to ‘Prosecution appeal of “Decision pursuant to article 18\(2\) of the Statute authorizing the Prosecution to resume investigation” \(ICC-02/17-196\)”](#), 15 December 2022, ICC-02/17-204.