



Original: English

No. ICC-02/17 OA OA2 OA3 OA4

Date: 24 October 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

Public document

Decision on the legal representatives of victims' request for leave to reply

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

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 ‘Victims’ Joint Response and Request for Reply’ of 22 October 2019 (ICC-02/17-94),

Renders, pursuant to regulation 24(5) of the Regulations of the Court, the following

DECISION

The victims’ request for leave to reply to the ‘Consolidated Prosecution Response to the Appeals Briefs of the Victims’ (ICC-02/17-92) and the ‘OPCV Consolidated Submissions pursuant to the “Order Scheduling a Hearing before the Appeals Chamber and Other Related Matters” (No. ICC-02/17-72-Corr)’ (ICC-02/17-93) is rejected.

REASONS

I. PROCEDURAL HISTORY

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 (hereinafter: ‘Afghanistan’), deciding that ‘an investigation into the Situation in Afghanistan at this stage would not serve the interests of justice’ (the ‘Impugned Decision’).¹

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, (the ‘Impugned Decision’) p. 32.

2. On 10 June 2019, the legal representatives of 82 victims and two organizations in the situation in Afghanistan ('LRV 1'), the legal representative of six victims in the situation in Afghanistan ('LRV 2') and the legal representatives of an individual victim ('LRV 3') filed notices of appeal against the Impugned Decision under article 82(1)(a) of the Statute.²
3. On 17 September 2019, the Pre-Trial Chamber granted, in part, the Prosecutor's request for leave to appeal the Impugned Decision under article 82(1)(d) of the Statute.³
4. On 30 September 2019, LRV 1 filed an updated appeal brief.⁴
5. On 30 September 2019, the Prosecutor filed her appeal brief.⁵
6. On 30 September 2019, LRV 2 and LRV 3 filed a joint appeal brief.⁶
7. On 22 October 2019, the Prosecutor filed a response to the appeals briefs of the victims ('Prosecutor's Response').⁷
8. On 22 October 2019, the Office of Public Counsel for victims ('OPCV') filed submissions on the appeals ('OPCV Submissions').⁸
9. On 22 October 2019, LRV 2 and LRV 3 filed a joint response to the Prosecutor's Appeal Brief.⁹ LRV 2 and LRV 3 also requested leave to file a reply to

² ['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"](#), 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 \[sic\]"](#), 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" \(ICC-02/17-33\)'](#), ICC-02/17-40; a corrected version was registered on 12 June 2019 (ICC-02/17-40-Corr).

³ ['Decision on the Prosecutor's 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, p. 16. See also ['Partially Dissenting Opinion of Judge Antoine Kesia-Mbe Mindua'](#), ICC-02/17-62-Anx.

⁴ ['Updated Victims' Appeal Brief'](#), original version filed on 30 September 2019 and corrigendum registered on 2 October 2019, ICC-02/17-73-Corr.

⁵ ['Prosecution Appeal Brief'](#), 30 September 2019, ICC-02/17-74.

⁶ ['Victims' Joint Appeal Brief 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"'](#), original version filed on 30 September 2019 and corrigendum registered on 1 October 2019, ICC-02/17-75-Corr.

⁷ ['Consolidated Prosecution Response to the Appeals Briefs of the Victims'](#), ICC-02/17-92.

⁸ ['OPCV Consolidated Submissions pursuant to the "Order Scheduling a Hearing before the Appeals Chamber and Other Related Matters" \(No. ICC-02/17-72-Corr\)'](#), ICC-02/17-93.

anticipated submissions on the ‘jurisdictional nature of the Impugned Decision and victims’ standing to appeal it’ in the Prosecutor’s Response and to ‘matters requiring a response in the anticipated submissions from the [OPCV]’ (‘Request for Leave to Reply’).¹⁰

II. MERITS

10. Regulation 24(5) of the Regulations of the Court provides:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

11. The Appeals Chamber may grant a request for leave to reply if the above-mentioned conditions are met, or if it considers that a reply would otherwise be necessary for the adjudication of the appeal.¹¹

12. The Appeals Chamber notes that the victims’ appeal briefs presented their arguments in relation to the questions of whether the Impugned Decision is a decision with respect to jurisdiction within the meaning of article 82(1)(a) of the Statute and whether the victims have standing to appeal. The Prosecutor’s Response countered those arguments. The appellants and the Prosecutor have had full opportunity to present their arguments on these issues.

13. The Request for Leave to Reply was filed in anticipation of the Prosecutor’s Response and the OPCV Submissions, apparently without knowledge of, or reference to, their contents. No new issues that could not reasonably have been anticipated are identified and the Appeals Chamber is not persuaded that a reply is otherwise necessary for the adjudication of the appeals. Accordingly, the victims’ request for leave to reply is rejected.


14. Nevertheless, the Appeals Chamber underlines that the victims will be given a further opportunity to present any additional arguments at the oral hearing in December.

⁹ ‘Victims’ Joint Response and Request for Reply’, ICC-02/17-94.

¹⁰ ‘Victims’ Joint Response and Request for Reply’, ICC-02/17-94, para. 5.

¹¹ *Prosecutor v. Bosco Ntaganda*, [‘Decision on Mr Ntaganda’s request for leave to reply’](#), 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8; *see also Prosecutor v. Bosco Ntaganda*, [‘Decision on Mr Ntaganda’s request for leave to reply’](#), 17 July 2017, ICC-01/04-02/06-1994 (OA6), para. 14.

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



Judge Piotr Hofmański
Presiding

Dated this 24th day of October 2019

At The Hague, The Netherlands