



Original: English

**No. ICC-02/17 OA5
Date: 23 November 2022**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding
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 conduct of the appeal proceedings

Decision 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 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),

Pursuant to rule 93 of the Rules of Procedure and Evidence and regulation 64(4) of the Regulations of the Court,

Issues the following

ORDER

- 1) The Registrar is directed to notify filings ICC-02/17-196, ICC-02/17-197, ICC-02/17-198, and unless otherwise provided, any further filing in this situation, to the legal representatives of victims identified in page 2 of this order, and to register their filings on the record.
- 2) The participating victims, and other victims who participate pursuant to rule 93 of the Rules of Procedure and Evidence, may file responses to the appeal brief by 16h00 on 15 December 2022. The responses shall not exceed 20 pages.
- 3) The Islamic Republic of Afghanistan may file responses to the appeal brief not exceeding 20 pages by 16h00 on 15 December 2022.

REASONS

1. The Appeals Chamber notes that the impugned decision, the notice of appeal and the appeal brief have not been notified to the legal representatives of victims.¹ It recalls, nonetheless, its practice allowing victims to participate in appeals, as it has “interpret[ed] the term ‘participant’ in regulations 64 (4) and 65 (5) of the Regulations of the Court to include victims”, which “obviates the need for a ‘specific determination’ by the Appeals Chamber, pursuant to article 68 (3) of the Statute, on the appropriateness

¹ See *Situation in the Islamic Republic of Afghanistan*, [Decision pursuant to article 18\(2\) of the Statute authorising the Prosecution to resume investigation](#), 31 October 2022, ICC-02/17-196, p. 2; [Notice of Appeal of “Decision pursuant to article 18\(2\) of the Statute authorising the Prosecution to resume investigation” \(ICC-02/17-196\)](#), 7 November 2022, ICC-02/17-197, p. 2; [Prosecution appeal of “Decision pursuant to article 18\(2\) of the Statute authorising the Prosecution to resume investigation” \(ICC-02/17-196\)](#), 22 November 2022, ICC-02/17-198, p. 2.

or otherwise of victim participation in a particular interlocutory appeal”.² It further recalls that “if participants in appellate proceedings are unable to respond to certain arguments of the appellant, those arguments are precluded from the scrutiny of the participants which in turn may affect the Appeals Chamber’s determination of the issues on appeal”.³

2. Furthermore, the Appeals Chamber notes that in its previous appeals in the *Situation in the Islamic Republic of Afghanistan*, victims participated pursuant to rules 50(3) and 93 of the Rules and Procedure and Evidence.⁴ In these circumstances, the Appeals Chamber finds it appropriate to direct the Registrar to notify the documents in this appeal to the legal representatives of the participating victims and to register their filings, in order for them to be able to file a response to the appeal brief, pursuant to regulation 64(4) of the Regulations of the Court. They may file responses to the appeal brief not exceeding 20 pages by 16h00 on 15 December 2022.

3. Lastly, the Appeals Chamber notes that the Islamic Republic of Afghanistan is a concerned state under article 18 of the Statute. It may thus file its response to the appeal brief, not exceeding 20 pages, by 16h00 on 15 December 2022.

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



Judge Piotr Hofmański
Presiding

Dated this 23rd day of November 2022

At The Hague, The Netherlands

² *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Reasons for the ‘Decision on the “Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo’s detention \(ICC-02/11-01/15-134-Red3\)”](#), 31 July 2015, ICC-02/11-01/15-172, para. 16, referring to *Prosecutor v. Thomas Lubanga Dyilo*, [Dissenting Opinion of Judge Sang-Hyun Song Regarding the Participation of Victims](#), ICC-01/04-01/06-824 (OA 7), pp. 55-57. See also *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60\(3\) of the Statute’](#), 8 September 2015, ICC-02/11-01/15-208 (hereinafter: “*Gbagbo OA7 Judgment*”), para. 27.

³ See [Gbagbo OA7 Judgment](#), para. 87.

⁴ *Situation in the Islamic Republic of Afghanistan*, [Decision on the participation of amici curiae, the Office of Public Counsel for the Defence and the cross-border victims](#), 24 October 2019, ICC-02/17-97, paras 39-41. See also [Transcript of hearing](#), 5 December 2019, ICC-02/17-T-002-ENG, p. 3, line 25 to p. 5, line 11.