

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/17 OA OA2 OA3 OA4

Date: 15 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

**Request for Leave to Submit Observations on behalf of the
European Centre for Law and Justice**

Source: *Amicus Curiae* European Centre for Law and Justice

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

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Fatou Bensouda
Ms Helen Brady

Counsel for the Defence

Legal Representatives of the Victims
Fergal Gaynor *et al.*
Katherine Gallagher *et al.*
Tim Moloney QC *et al.*
Nancy Hollander *et al.*
Steven Powles QC *et al.*

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims
Paolina Massida
Sarah Pellet
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States' Representatives

Applicants to participate as Amicus Curiae

Spojmie Nasiri
Dimitris Christopoulos
Jay Alan Sekulow, *et al.*

REGISTRY

Registrar
Peter Lewis

Victims Participation and Reparations Section

Philipp Ambach

I. INTRODUCTION

1. This Request to submit Observations on the legal issues identified in the Appeals Chamber's Scheduling Order dated 27 September 2019 is filed pursuant to paragraph 5 of that Scheduling Order and Rule 103.¹
2. The European Centre for Law and Justice (ECLJ) is an international, Non-Governmental Organization dedicated to the promotion and protection of human rights in Europe and worldwide. The ECLJ has held special Consultative Status before the United Nations/ECOSOC since 2007. The ECLJ engages legal, legislative, and cultural issues by implementing an effective strategy of advocacy, education, and litigation. The ECLJ advocates in particular for the protection of religious freedoms and the dignity of the person with the European Court of Human Rights and other mechanisms afforded by the United Nations, the Council of Europe, the European Parliament, the Organization for Security and Cooperation in Europe (OSCE), and others. The ECLJ bases its action on "the spiritual and moral values which are the common heritage of European peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy" (Preamble of the Statute of the Council of Europe).
3. The ECLJ has filed numerous submissions with the Office of the Prosecutor (OTP) setting forth various principles and matters for consideration in resolving issues of concern before the OTP. Should the Appeals Chamber desire to review such submissions, the ECLJ would be pleased to provide them, as requested.
4. The ECLJ possesses specific legal expertise in human rights which may assist the Appeals Chamber in resolving this appeal.

¹ ICC-02/17 72-Corr 27-09-2019 1/9 RH PT OA OA2 OA3.
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5. Because the Prosecutor acknowledges that the Decision she is challenging is “not only of significance for this situation but *all* situations,”² which would include, for example, the *Situation in Palestine* as well as the *Situation on the Registered Vessels of Comoros, Greece and Cambodia*, the decision by the Appeals Chamber in this matter will have far-reaching implications. The ECLJ stands ready to assist the Appeals Chamber in whatever ways it can.

II. SUMMARY OF OBSERVATIONS


6. The Scheduling Order identifies three issues on which the Appeals Chamber has requested assistance. In light of growing calls for the ICC to exercise increasingly expansive jurisdiction, the ECLJ will provide a more cautionary perspective on extending the Court’s jurisdiction in light of increasing pushback from non-consenting, non-party States to the Rome Statute as well as the fact that non-cooperation by States concerned in a situation may result in the ICC’s expending limited resources that could be better used elsewhere. Absent such restraint, the Court risks further alienating non-party States, which may result in additional actions by such States to hamper the Court’s ability to investigate and try cases that otherwise clearly fall within the Court’s jurisdiction. Additionally, conducting extensive investigations in situations where States refuse to cooperate wastes resources and may utterly fail to achieve any meaningful result.
7. Because we live in an imperfect world and because the ICC is a court of limited jurisdiction, real world realities must always be taken into account by both the OTP and the various chambers of judges to maximize the attainment of justice for the greatest number of people. It seems to us that the decision being appealed reflected that very reality.

a. Issue 1: Whether Pre-Trial Chamber II’s decision is one that may be considered a decision with respect to jurisdiction or admissibility under Article 82(1)(a)

² OTP Brief, para. 4 (emphasis in original).
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8. The ECLJ would, if granted leave of the Chamber, submit observations on broader considerations concerning the question of jurisdiction/admissibility, which would include *inter alia* evaluation of Articles 5, 12, 13 and 53.
- b. *Issue 2: The standing of victims to bring an appeal under Article 82(1)(a)*
9. The ECLJ takes no position on this issue.
- c. *Issue 3: The merits of the appeals filed by the Prosecutor and the victims*
10. The ECLJ, like some other *amici curiae*, disagrees with the Prosecutor's claim that "for the purpose of this appeal, it is not necessary to resolve the broader debate about the full range of factors which might or might not become pertinent in assessing the interests of justice in any given situation."³ The ECLJ would submit observations that Article 53(1)(c) is a substantive legal principle affecting, *inter alia*, the ICC and its relationship with domestic legal systems. Further, one must take into account other principles of international law, like comity and legal immunities, which are critical in safeguarding international peace and security.
11. Wherefore, the ECLJ respectfully requests leave of the Appeals Chamber to file appropriate observations for the Chamber's consideration.

Respectfully submitted,



Jay Alan Sekulow
Chief Counsel



Robert W. Ash
Senior Counsel

Dated this 15th day of October 2019

At Strasbourg, France

³ OTP Appeal Brief, para. 62.
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