Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No. **ICC-02/17**
Date: **12 November 2026**

PRE-TRIAL CHAMBER II

Before: **Judge Rosario Salvatore Aitala, Presiding**
Judge Sergio Gerardo Ugalde Godínez
Judge Haykel Ben Mahfoudh

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

Public redacted version of 'Decision closing the situation in the Islamic Republic of Afghanistan', 12 November 2026

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

☒ The Office of the Prosecutor	**☐ Counsel for the Defence**
☒ Legal Representatives of the Victims	**☐ Legal Representatives of the Applicants**
☐ Unrepresented Victims	**☐ Unrepresented Applicants (Participation/Reparation)**
☐ The Office of Public Counsel for Victims	**☐ The Office of Public Counsel for the Defence**
☐ States' Representatives	**☐ Amicus Curiae**

REGISTRY

Registrar Mr Osvaldo Zavala Giler	**☐ Counsel Support Section**
☐ Victims and Witnesses Unit	**☐ Detention Section**
☐ Victims Participation and Reparations Section	**☐ Other**

PRE-TRIAL CHAMBER II (the 'Chamber') of the International Criminal Court (the 'Court') issues this Decision closing the situation in the Islamic Republic of Afghanistan (the 'Situation in Afghanistan').

I. PROCEDURAL HISTORY

1. On 20 November 2017, the Prosecution submitted to Pre-Trial Chamber III a 'Request for authorisation of an investigation pursuant to article 15 of the Statute in the Situation in Islamic Republic of Afghanistan' (the 'Article 15 Request').[1]

2. On 12 April 2019, Pre-Trial Chamber II, in a different composition, issued a decision rejecting the Article 15 Request (the 'Article 15 Decision').[2]

3. On 5 March 2020, the Appeals Chamber amended the Article 15 Decision and authorised an investigation into the Situation in Afghanistan (the 'Amended Article 15 Decision').[3]

4. On 28 November 2024, six States Parties[4] submitted a referral, pursuant to articles 13 and 14 of the Rome Statute (the 'Statute'), requesting the Prosecution to consider allegations of 'crimes committed against women and girls after the Taliban takeover in 2021 within its investigation into the Situation in Afghanistan' (the 'Referral').[5]

5. On 23 January 2025 and 6 March 2026, the Prosecution filed the first and only set of applications under article 58 of the Statute in the Situation in Afghanistan,[6] all

---

[1] ICC-02/17-7-Conf-Exp, confidential and *ex parte* (a public redacted version of the decision was filed on the same day ICC-02/17-7-Red).
[2] 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. On 31 May 2019, Judge Mindua issued the Concurring and Separate Opinion of Judge Kesia-Mbe Mindua, 31 May 2019, ICC-02/17-33-Anx-Corr, annexed to the Afghanistan Article 15 Decision, and a public annex.
[3] 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 ('Art. 15 Appeal Judgment').
[4] The Republic of Chile, the Republic of Costa Rica, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, and the United Mexican States.
[5] Annex 2 to the 'Decision assigning the situation in the Islamic Republic of Afghanistan II to Pre-Trial Chamber II', 20 October 2026, ICC-02/26-1-Anx2.
[6] *See* Prosecution's application under article 58 for a warrant of arrest against Haibatullah AKHUNDZADA, ICC-02/17-224-Conf-Exp (a public redacted version was file on the same day, ICC-02/17-224-Red); Prosecution's application under article 58 for a warrant of arrest against Abdul Hakim HAQQANI, ICC-02/17-225-Conf-Exp (a public redacted version was filed on the same day, ICC-02/17-225-Red); Prosecution's application under article 58 for a warrant of arrest against Habibullah AGHA, ICC-02/17-230-US-Exp (a public redacted version was filed on 12 October 2026, ICC-02/17-230-Red);

related to the crime against humanity of persecution on gender and political grounds allegedly committed after the Taliban takeover in 2021 within its investigation into the Situation in Afghanistan.

6. On 8 July 2025 and 9 September 2025, the Chamber issued warrants of arrest for Mr Haibatullah Akhundzada, Mr Abdul Hakim Haqqani, Mr Habibullah Agha, and Mr Neda Mohammad Nadim for their alleged responsibility for the crime against humanity of persecution on gender and political grounds, committed by the Taliban as the *de facto* governmental authority in Afghanistan, from at least 15 August 2021 until at least 20 January 2025 (the 'Arrest Warrants').[7]

7. On 15 July 2026, the Chamber issued a decision, directing the Prosecution to comply with regulation 45 of the Regulations of the Court (the 'Regulations') without delay and to open a new investigation on the basis of the Referral, should it continue to consider that the requirements of article 53(1) of the Statute are met (the 'Decision').[8]

8. On 6 August 2026, the Prosecution submitted the 'Request for clarification and/or reconsideration of the "Decision in relation to the investigation in the Situation in the Islamic Republic of Afghanistan"' seeking that 'the Chamber clarifies the critical reasoning in the Decision (the 'Clarifications Request')' and 'reconsiders the relief ordered by the Chamber in the Decision' (the 'Reconsideration Request' and, collectively with the Clarifications Request, the 'Requests').[9]

---

and, Prosecution's application under article 58 for a warrant of arrest against Neda Mohammad NADIM, ICC-02/17-231-US-Exp (a public redacted version was filed on 12 October 2026, ICC-02/17-231-Red).

[7] *See* Warrant of arrest for Haibatullah Akhundzada, ICC-02/18-232-US-Exp (a public redacted version was issued on 5 October 2026, ICC-02/17-232-Red); Warrant of arrest for Abdul Hakim Haqqani, ICC-02/18-233-US-Exp (a public redacted version was issued on 5 October 2026, ICC-02/17-233-Red); Warrant of arrest for Habibullah Agha, ICC-02/18-234-US-Exp (a public redacted version was issued on 5 October 2026, ICC-02/17-234-Red); and, Warrant of arrest for Neda Mohammad Nadim, ICC-02/18-235-US-Exp (a public redacted version was issued on 5 October 2026, ICC-02/17-235-Red.

[8] Decision in relation to the investigation in the situation in the Islamic Republic of Afghanistan, ICC-02/17-238.

[9] Request for clarification and/or reconsideration of the "Decision in relation to the investigation in the Situation in the Islamic Republic of Afghanistan", ICC-02/17-239-US-Exp (a public redacted version was filed on 6 October 2026, ICC-02/17-239-Red) ('Request for Clarification and/or Reconsideration').

9. On 3 September 2026, the Chamber issued an order dismissing the Requests and instructing the Prosecution to comply with the Decision by no later than 15 September 2026 (the 'Order').[10]

10. On 15 September 2026, the Prosecution formally notified the Presidency of the Referral in accordance with regulation 45 of the Regulations (the 'Regulation 45 Notification').[11]

11. On 5 October 2026, the Chamber unsealed the Arrest Warrants and issued public redacted versions thereof.[12]

12. On 20 October 2026, the *ad hoc* Presidency, by majority, opened the situation in the Islamic Republic of Afghanistan II (the 'Situation in Afghanistan II') and decided to assign it to the Chamber.[13]

13. On 5 November 2026, the Chamber ordered the transfer of certain court records from the situation record 02/17 (Situation in Afghanistan) to the situation record 02/26 (Situation in Afghanistan II), including the Arrest Warrants.[14]

II. DETERMINATION

14. The Chamber notes the Presidency's decision assigning it the Situation in Afghanistan II and the Chamber's recent decision ordering the transfer of a number of court records from the Situation in Afghanistan to the Situation in Afghanistan II. As previously recalled, the Chamber has inherent judicial powers that flow from those expressly conferred upon it by the Court's constitutive instruments, insofar they are essential to the performance of its judicial functions, specifically to safeguard the fairness and the legality of the proceedings.[15]

---

[10] Order to comply with the 'Decision in relation to the investigation in the situation in the Islamic Republic of Afghanistan', ICC-02/17-241 ('Order').
[11] ICC-02/26-1-US-Exp-Anx1.
[12] Decision unsealing four warrants of arrest, ICC-02/17-245-US-Exp (a public redacted version was issued on the same day, ICC-02/17-245-Red). *See also* ICC-02/17-232-Red, ICC-02/17-233-Red, ICC-02/17-234-Red, ICC-02/17-235-Red.
[13] Decision assigning the situation in the Islamic Republic of Afghanistan II to Pre-Trial Chamber II, ICC-02/26-1-US-Exp (a public redacted version was issued on the same day, ICC-02/26-1-Red).
[14] Order to transfer court records to the Situation in Afghanistan II, ICC-02/17-249.
[15] *See*, *e.g.* Order, para. 14 and references therein.

15. The Chamber further notes that in accordance with the above principle, regulation 46(2) of the Regulations provides that '[t]he Pre-Trial Chamber shall be responsible for any matter, request or information arising out of the situation assigned to it'. Accordingly, following the assignment of the Situation in Afghanistan II and the transfer of the relevant court records to that situation record, the Chamber considers it necessary to examine whether, in the current circumstances, it is warranted to close the record of the Situation in Afghanistan.

16. In this regard, the Chamber recalls that regulation 66*ter* of the Regulations specifically addresses the closure and reopening of case and situation records. Sub-regulation (2) of this provision reads as follows

> a) When the Prosecutor, having provided information in accordance with regulation 45, sub-regulation 1, decides not to initiate an investigation, or determines that he or she does not anticipate any further investigatory or prosecutorial activities in a situation in relation to which an investigation has been initiated, he or she shall inform in writing the Pre-Trial Chamber to which the situation has been assigned.
>
> (b) Having been so informed, the Pre-Trial Chamber may, upon application or *proprio motu*, order the Registrar, when appropriate, to close the record of the situation. The Pre-Trial Chamber shall be responsible for judicial matters of a residual nature in this situation, unless otherwise provided in the Statute, the Rules or these Regulations or such matters are assigned to another Chamber by the Presidency.
>
> (c) The closure of the record of a situation shall be without prejudice to a future reopening should the Prosecutor decide to initiate or resume the investigation in accordance with the Statute, the Rules and these Regulations.

17. The Chamber further observes that regulation 66*ter* of the Regulations distinguishes between the Prosecutor's determination concerning the continuation of investigative or prosecutorial activities and the procedural consequences that may be decided by the Pre-Trial Chamber following the communication of that determination. In particular, regulation 66*ter*(2)(a) of the Regulations requires the Office of the Prosecutor to inform in writing the Pre-Trial Chamber to which the situation has been assigned when it decides not to initiate an investigation or determines that no further investigative or prosecutorial activities are anticipated in a situation in which an investigation has been initiated.

18. The requirement to inform the Chamber under regulation 66*ter*(2)(a) of the Regulations is a procedural obligation serving, *inter alia*, the objectives of legal

certainty and transparency, as any procedural provision of the Court's statutory framework. In this regard, the Chamber recalls that regulation 66*ter* of the Regulations was intended to provide greater clarity and transparency regarding the closure of situation records. The amendment also sought to improve the Court's ability to manage its pending caseload and communicate the status of its proceedings.[16] Based on the above, the Chamber considers that this regulation prevents situation records from remaining open indefinitely where the Prosecution is unable to pursue an investigation effectively or no longer has a prosecutorial interest in continuing it. Against this background, the notification requirement under regulation 66*ter*(2)(a) of the Regulations ensures procedural clarity and transparency rather than establishing an additional substantive condition for the closure of a situation record. Accordingly, its fulfilment must be assessed in light of these objectives. What matters is that the Prosecution communicates the information contemplated by the regulation in writing and with sufficient clarity to enable the competent Chamber to make its own determination.

19. Turning to the Situation in Afghanistan, an investigation into this situation was authorised in relation to

> alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties in the period since 1 July 2002.[17]

20. The Chamber recalls that the investigation initiated pursuant to the Amended Article 15 Decision started more than six years ago after more than 10 years of preliminary examination; and that since the opening of the investigation, the Prosecution has only submitted a limited number of applications under article 58 of the Statute following the Referral. All applications pertain to the Situation in Afghanistan II. The Chamber also observes the significant limitations to the Prosecution's ability to conduct its investigations and secure evidence in relation to the Situation in

[16] ICC press release, ICC Judges amend the Regulations of the Court to regulate the closure of case and situation records, 25 June 2026.
[17] Art. 15 Appeal Judgment, para. 79.

Afghanistan; limitations further compounded by the time elapsed since the alleged commission of the crimes encompassed in the Situation in Afghanistan.[18]

21. When requested by the Chamber to clarify the status of its investigation of the Situation in Afghanistan, the Prosecution indicated that it was pursuing three principal lines of inquiry, namely (i) crimes allegedly committed by members of the Taliban since August 2021 against women and girls; (ii) crimes allegedly committed by the Taliban since August 2021 against other persons, not limited to women and girls, such as persecution on political, ethnic, and/or religious grounds; and (iii) crimes allegedly committed by the Islamic State of Khorasan Province since 2016.[19]

22. The Chamber notes that the first two lines of inquiry belong to the Situation in Afghanistan II. Furthermore, the Chamber notes that the Prosecution has so far not sought the prosecution of any suspects in relation to the third line of enquiry, [REDACTED].[20] [REDACTED].

23. Having considered the information provided by the Prosecution concerning its intended investigative and prosecutorial activities, the Chamber is satisfied that the procedural obligation to inform the Chamber under regulation 66*ter*(2)(a) of the Regulations has been fulfilled, and considers that the Prosecution has not shown to be able to effectively carry out any further investigative or prosecutorial activities in the Situation in Afghanistan. Accordingly, having regard to the objectives of legal certainty, transparency and the proper administration of judicial proceedings, the Chamber considers that the exercise of its *proprio motu* authority under regulation 66*ter*(2)(b) of the Regulations is warranted and orders the Registrar to close the records of the Situation in Afghanistan.

24. Should the Prosecution subsequently be in a position to effectively pursue an investigation into the third line of inquiry, concerning crimes allegedly committed by the Islamic State of Khorasan Province since 2016, it may submit a new application to

[18] [REDACTED]
[19] Request for Clarification and/or Reconsideration, para. 41.
[20] [REDACTED]

the Chamber for authorisation to investigate pursuant to article 15 of the Statute, subject to the applicable statutory requirements.

25. The above determination does not preclude the Prosecution's ongoing investigation in the Situation in Afghanistan II.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to close the record of the Situation of the Islamic Republic of Afghanistan (02/17); and

ORDERS the Registry to take the necessary steps to implement the present decision.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Rosario Salvatore Aitala

Presiding



Judge Sergio Gerardo Ugalde Godínez



Judge Haykel Ben Mahfoudh

Dated this Thursday, 12 November 2026.

At The Hague, The Netherlands.