Cour
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Court

Original: **English**

No.**: ICC-02/26**
Date: **13 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 II

Public

Prosecution's urgent request for interim stay of the "Decision closing the situation in the Islamic Republic of Afghanistan" (ICC-02/17-253-Red)

Source: **Office of the Prosecutor**

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INTRODUCTION

1. On 12 November 2026, Pre-Trial Chamber II issued its "Decision closing the situation in the Islamic Republic of Afghanistan" ("Closure Decision").[1] At the same time as filing the present application, the Prosecution has also filed its notice to appeal the Closure Decision under article 82(1)(a) of the Statute, and requested the Appeals Chamber to suspend its effect pending the outcome of the appeal under article 82(3) of the Statute.

2. In order to preserve the purpose of the suspensive effect request which is now pending before the Appeals Chamber, the Prosecution respectfully requests the Pre-Trial Chamber to grant an interim stay of the Closure Decision until such time as the Appeals Chamber is in a position either to grant or deny the Prosecution's request.

SUBMISSIONS

3. The power of a chamber of the Court to grant an interim stay of a decision which it has issued is integral to its power to issue that decision in the first place. The purpose of an interim stay is not to detract from any binding force of the decision, or the reason for which it was issued, but to preserve the lawful exercise of the rights of the parties to the proceedings on a temporary basis and for a defined purpose. This usually arises where a party has the right to request a remedy from another judicial body, such as the Appeals Chamber.[2] In this way, granting an interim stay does not imply a Chamber's agreement or acceptance of any defect in the merits of its decision. Rather, it is merely an exercise of judicial comity in recognition of other pending judicial proceedings.

4. In the present case, the Prosecution is vested with a right to appeal the Closure Decision under article 82(1)(a) of the Statute, and to request the Appeals Chamber to suspend the effect of the impugned decision under article 82(3) of the Statute pending the Appeals Chamber's

[1] ICC-02/17-253-Red ("Closure Decision").

[2] Chambers of the Court have varied in their approach to such requests. In *Lubanga*, the Trial Chamber granted interim stay of several decisions which would lead to the release of the accused person, pending the filing of any appeal including a request for suspensive effect, and in such circumstances "until the Appeals Chamber has resolved whether or not the effect of the order […] is to be suspended": ICC-01/04-01/06-1418 ("*Lubanga* Release Decision"), para. 35. *See also* ICC-01/04-01/06-T-314 ("*Lubanga* Oral Decision"), pp. 21:24-22:5. Other chambers have, however, declined to order an interim stay based on their view that "the Appeals Chamber will […] take in due course all measures which it will deem warranted and necessary": ICC-01/05-01/13-711 ("*CAR Article 70* Interim Stay Decision"), para. 5. *See also* ICC-01/04-01/10-469 ("*Mbarushimana* Interim Stay Decision"), p. 3 (construing the request as seeking "suspensive effect" of a decision under article 82(3) of the Statute, which is reserved to the Appeals Chamber). While acknowledging the existence of the *CAR Article 70* and *Mbarushimana* decisions out of its obligation of candour, the Prosecution respectfully submits that they were wrongly decided. The power to grant an interim stay is not the same as the power to grant suspensive effect (which is indeed reserved to the Appeals Chamber), but rather is necessary precisely to ensure that the Appeals Chamber's power is not rendered nugatory.

judgment. The Prosecution has acted with more than the ordinary degree of due diligence, by filing its notice of appeal and request for suspensive effect on the day immediately following the issuance of the Closure Decision (and hence well before the applicable deadline).

5. Notwithstanding the timeliness of the Prosecution request, it is unlikely that the Appeals Chamber would be able to determine the question of suspensive effect immediately. In particular, time may be required to compose a bench of the Appeals Chamber to hear the appeal, and to decide upon the request itself.

6. Accordingly, the Prosecution respectfully submits that the Chamber should grant an interim stay of the Closure Decision until such time as the Appeals Chamber has ruled upon the pending request for suspensive effect. This is necessary to ensure that the Appeals Chamber's power to suspend the effect of the Closure Decision remains effective. In particular, since immediate enforcement of the Closure Decision pending the Appeals Chamber's ruling has a significant impact on ongoing proceedings (including the ongoing conduct of the investigation), the Chamber should take reasonable steps to allow the Appeals Chamber to determine whether to grant suspensive effect or not.

CONCLUSION

7. For all the reasons above, the Prosecution respectfully requests that the Chamber grants an interim stay of the Closure Decision until such time as the Appeals Chamber has ruled upon the pending request for suspensive effect.



Mame Mandiaye Niang
Acting Prosecutor

Dated this 13th day of November 2026
At The Hague, the Netherlands