Joint civil society statement On the Separation of the Afghanistan Investigation by the ICC

29/10/2026

We welcome the International Criminal Court's (ICC) unsealing on 5 October 2026 of four arrest warrants, issued in 2025 against senior Taliban Officials for alleged responsibility for the crime against humanity of persecution on gender and political grounds. These proceedings are an important step towards accountability for victims and survivors targeted by the Taliban's systematic and systemic gender policies and practices. We call for the issuance of further arrest warrants in the near future.

However, we have serious concerns about how the ICC's decision to require a separate Afghanistan investigation will impact victim's rights and ability to access justice. The implications of the decision are not clear and we ask that questions arising from the decision concerning victim's rights are urgently clarified.

On 15 July 2026, Pre-Trial Chamber II directed the Office of the Prosecutor (OTP) to open a separate investigation based on the six-state referral of November 2024, provided the requirements of Article 53(1) remained satisfied. The OTP sought clarification and reconsideration. The Chamber rejected those requests and reaffirmed its direction on 3 September. On 20 October, a majority of the Presidency assigned the second situation, Afghanistan II, to the same Chamber.

However, important questions and uncertainty remain for civil society and impacted victims about the implication of the decision before a Court which should provide transparent and predictable processes. The legal and practical consequences of this separation require fuller explanation.

In particular, we question why a separate investigation is necessary when the OTP has already investigated the alleged conduct and the Chamber has issued arrest warrants within the existing Afghanistan situation. It is important to note that the 2024 referral by Chile, Costa Rica, Spain, France, Luxembourg and Mexico urged the prosecutor to consider crimes against women and girls within the existing Afghanistan investigation. We believe the separation creates complication and uncertainty for victims. The Court must explain how separation will serve victims' interests and avoid delays, duplication or disruption to ongoing work.

Our other concern is that alleged crimes already receiving insufficient attention will be further marginalised. This includes serious crimes allegedly committed before August 2021, by the Taliban, international forces and the former Republic's security forces, some which have been already deproritised by the OTP, as announced in September 2021.

The Pre-Trial Chamber's decision of 15 July 2026 raises further concerns about the potential closure of the original investigation. Whether the original investigation will be impacted, or even closed, as a result of the opening of 'Situation in the Islamic Republic of Afghanistan II' is entirely unclear and unanswered. There is no clarity about the future of the wider investigation or an explanation about how victims' access to the Court will be protected through the separation.

There is also no indication that victims participating before the Court have been provided any notification of the decision and its implications, or any opportunity to participate to have their views and concerns heard. Victims and civil society organisations have taken considerable risks to engage with the ICC. Representations were submitted on behalf of hundreds of thousands of victims. The Pre-Trial Chamber's decision carries potentially significant consequences to whether victims' harm from serious crimes beyond gender persecution will still fall within the scope of the Court's open investigations, or whether their access to potential justice and accountability will be reduced and striped by this decision. In our view, this is exactly the impact on the victims' interests requiring attention to their views and concerns. Their engagement must be respected through timely information and meaningful opportunities to express their views on decisions affecting their interests.

We welcome the OTP's explanation, in its filing made public on 6 October, that it did not anticipate seeking closure of the original situation in the near term. The filing identifies ongoing inquiries into gender persecution, other Taliban crimes since August 2021, and ISKP crimes since 2016. This provides important reassurance, but leaves unanswered how the OTP will address allegations against actors deprioritised in 2021. Keeping the original situation open must be accompanied by a credible plan to address those allegations.

Finally, we strongly object to attacks on the Court. We condemn US sanctions against the ICC and efforts to intimidate and punish its judges, prosecutors and those cooperating with it. We stand with the Court in defending its independence. Transparent reasoning and impartial investigations are essential to sustaining victims' trust under this pressure.

We therefore call for the following action:

1. Pre-Trial Chamber II should clearly explain the consequences of separating the Investigations and the status and treatment of existing cases and open investigations and inquiries.

2. The OTP should promptly confirm whether an Afghanistan II investigation has begun and explain how continuing inquiries and resources will be maintained across both situations. Separation must not itself justify abandoning investigative lines within the Court's mandate.

3. The OTP should end the continued deprioritisation of allegations against international forces and the former Republic's security forces, take concrete investigative steps, and report publicly on progress where possible.

4. The Court should consult meaningfully and securely with victims, survivors and their legal representatives across affected communities, including those affected by deprioritisation. PTC II should enable victims' views to be heard when their interests are impacted.

5. States Parties should provide adequate resources and cooperation for impartial work, act on requests for evidence and arrest warrants in accordance with their obligations, and take legal and diplomatic steps to sustain the Court's operations and protect those cooperating with it from the effects of sanctions.

The Court's procedural arrangements must preserve a meaningful path to justice for victims, particularly Afghan women and girls, across the full scope of the Afghanistan situation. Afghan victims' demands for truth, justice and reparation must guide this work.

Signatories

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2. Afghanistan Human Rights and Democracy Organization (AHRDO)
3. European Network of Afghan War Victims
4. HAMRAH Network
5. Afghans For A Better Tomorrow
6. Sultan Kawija e Noor Youth Social Organization
7. Women's Voices Now
8. جنبش زنان ترکتبار افغانستان
9. Empowerment For Her
10. Femena
11. Women's Right First
12. One Law for All
13. Taneen TV
14. Global Women's Justice Network
15. Afghanistan LGBTIQ+ Organisation (ALO)
16. Global Women's Justice Network
17. Afghanistan Organisation for Development of Human Rights
18. Coalition for the Prevention of Hazara Genocide (CPHG)
19. Global Women s Justice Network
20. Afghanistan Civil Society Forum Organization
21. MADRE
22. Afghanistan Law and Political Science Association
23. Displaced International (DI)
24. Ariana Legal Association (ALA)
25. Afghan Women Coordination Umbrella (AWCU)
26. Accountability Watch Afghanistan (AWA)
27. Afghanistan Law and Political Science Association (ALPA)
28. Women's Voices Now