PRESS STATEMENT

The ICC Must Reverse the Closure of the Original Afghanistan Situation

15 November 2026

On 12 November 2026, the Pre-Trial Chamber II of the International Criminal Court (ICC) closed the original Afghanistan situation (ICC-02/17). Investigations into alleged Taliban crimes since August 2021 continue under the separate Afghanistan II situation. The closure removes the existing ICC investigative framework for a much broader body of alleged genocide, war crimes and crimes against humanity, including crimes committed between 2003 and August 2021 attributable to the Taliban, the Islamic State Khorasan Province (ISKP), former Afghan government forces and international forces. It also affects inquiries into alleged ISKP crimes committed since 2016, including those after 2021.

We, the Afghan civil society organizations and war victims' groups, condemn this legally questionable and procedurally premature decision. Afghan organizations and survivors documented abuses and shared evidence with the Court, often at considerable personal risk, because meaningful access to justice at home was out of reach. Their cooperation must not be met with procedural closure while avenues of investigation remain. The public version of the decision gives no indication that victims were invited to make submissions on the proposed closure.

In our view, the decision is legally flawed. For an investigation already underway, regulation 66 ter(2) provides for closure following written notification from the Prosecutor that no further investigative or prosecutorial activity is anticipated. Yet the Prosecution expressly stated that inquiries were continuing and that it did not anticipate giving such notification in the near term even if the Taliban cases were transferred to a separate situation. The Chamber nevertheless treated the notification requirement as satisfied, relying instead on its own assessment that the Prosecution had not demonstrated an ability to proceed effectively. A procedure premised on the Prosecutor's determination should not be used to override the Prosecutor's expressly stated position.

The closure also rests in part on a separation ordered by the Chamber itself. Its decisions of 15 July and 3 September 2026 directed the Prosecution to pursue a separate investigation. Afghan and international civil society organizations raised concerns about this decision and its implications for victims. The Prosecution has appealed those decisions, contesting the legal basis for the Chamber's intervention. On 11 November, the Appeals Chamber permitted victims' representatives to submit observations by 3 December. The original situation was closed the following day, before the appeal was resolved and before that deadline had elapsed. The Office of the Prosecutor has also told Reuters that it has appealed the closure decision.

The four arrest warrants against senior Taliban officials remain valid. The Prosecution has warned that transferring cases between situations creates uncertainty about the jurisdictional basis of the proceedings and may expose them to further legal challenges. We support the continued pursuit of these cases. Accountability for Taliban crimes since 2021 must not come at the expense of justice for victims of other alleged perpetrators of earlier crimes.

Regulation 66 ter preserves the possibility of future reopening. That possibility is not a substitute for maintaining a lawful investigation where investigative work remains. Afghan victims have already faced a major judicial setback. In April 2019, the same Chamber refused to authorize the investigation. The Appeals Chamber then authorized it in March 2020.

The present decision comes amid sustained external pressure on the Court. The United States has sanctioned nine of its eighteen judges and both Deputy Prosecutors and imposed sanctions on the Court itself on 9 October 2026. The Afghanistan investigation was among Washington's stated concerns. We do not question any individual judge's motives or claim that sanctions determined the outcome. Still, in this context, the closure risks being understood as a retreat under the US pressure. Defending the Court's independence and challenging decisions that undermine victims' access to justice are complementary responsibilities.

We call on:

1. Pre-Trial Chamber II to reconsider and rescind its closure decision and restore the original Afghanistan situation to the Court's active docket.
2. The Appeals Chamber to safeguard victims' meaningful participation and resolve the pending appeals expeditiously.
3. The Office of the Prosecutor to publish a credible strategy for addressing the full range of alleged crimes within the original situation, including allegations against international forces and former Afghan government forces deprioritized in 2021, while protecting confidential information and those at risk.
4. The Court to ensure timely, meaningful and secure consultation with victims and their legal representatives before further decisions affecting their interests, with accessible information in Dari and Pashto.
5. The States Parties to the Rome Statute to stand firmly with the victims of the gravest crimes in Afghanistan. In particular, we urge them to give the Court the political support and resources it needs to fulfil its mandate, and to make sure that victims' voices remain at the heart of the pursuit of justice and accountability.

For decades, Afghans looked to the Court as their last hope for justice for atrocities committed between 2003 and 2021. Closing this investigation is a devastating betrayal that shuts the only credible path to accountability for some of the gravest crimes of this period. Survivors who buried loved ones and risked their lives to testify have watched their hopes collapse in a single ruling—emboldening perpetrators and entrenching impunity.

We stand with Afghanistan's victims and survivors, and we will pursue every lawful avenue to reverse this decision and secure meaningful accountability.

End.

For the list, please visit the Rawadari Website.