

*Embassy of Chile*

Nr. 114.24.4.C

Mr. Karim A. A. Khan KC  
Prosecutor  
International Criminal Court  
Oude Waalsdorperweg 10  
2597 AK The Hague  
The Netherlands

The Hague, 28 November 2024

To the Prosecutor of the International Criminal Court,

Acting under article 13(a) and 14(1) of the Rome Statute of the International Criminal Court, I have the honour, on behalf of 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, to hereby forward to you the attached referral of the Situation in the Islamic Republic of Afghanistan.

Yours sincerely,

  
Jorge Carvajal San Martín  
Ambassador of Chile



Copies to:

Embassy of the Republic of Costa Rica;  
Embassy of the Kingdom of Spain;  
Embassy of the French Republic;  
Embassy of the Grand Duchy of Luxembourg; and  
Embassy of the United Mexican States.

28 November 2024

**Mr. Karim A.A. Khan KC**

**Prosecutor**

**International Criminal Court**

To the Honourable Prosecutor of the International Criminal Court,

We have the honour to address you on behalf of the Governments of 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 regarding the Situation in the Islamic Republic of Afghanistan, to refer for your investigation under the provisions of Articles 13(a) and 14(1) of the Rome Statute of the International Criminal Court (hereinafter, the Statute), adopted on July 17, 1998, and in force as of July 1, 2002, to which the signatories of this referral are also States Parties.

## **I. THE SITUATION**

The Situation in the Islamic Republic of Afghanistan has been under investigation by the Prosecutor since 5 March 2020, after the Appeals Chamber of the International Criminal Court authorised the Prosecutor to commence an investigation into alleged crimes committed on the territory of Afghanistan since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan, are sufficiently linked to the aforementioned situation and were committed on the territory of other States Parties to the Rome Statute since 1 July 2002.

From the opening of the investigation, and even after a determination by the Pre-Trial Chamber II that Afghanistan “is not presently carrying out genuine investigations” for crimes under the jurisdiction of the Court,<sup>1</sup> there has been no public information on the progress of the investigation.

The signatories are aware that the Office of the Prosecutor has been working on the investigation of the Situation of Afghanistan and express their concern about the deterioration of the situation, especially for women and girls. With due respect for the Prosecutor's independence, we want to draw further attention of the Office of the Prosecutor to the situation in Afghanistan, based on the subsequent worsening of the conditions in Afghanistan.

---

<sup>1</sup> Pre-Trial Chamber II, *Situation in the Islamic Republic of Afghanistan*, “Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation”, ICC-02/17-196, 31 October 2022, para. 58.

The States Parties signatories of this referral encourage all States and, in particular, States Parties to the Rome Statute to provide the cooperation and resources necessary for the investigation with a view to ensuring accountability for the crimes committed in Afghanistan.

## **II. THE WORSENING OF THE CONDITIONS IN AFGHANISTAN AFTER THE OPENING OF THE INVESTIGATION**

Following the opening of the investigation into the Situation in the Islamic Republic of Afghanistan, and especially after the Taliban takeover in 2021, the situation has significantly evolved. United Nations experts have reported a severe worsening of the situation in the country, with a particular impact on the rights of women and girls. Already in September 2022, the Special Rapporteur on the situation of human rights in Afghanistan noted: “In no other country have women and girls so rapidly disappeared from all spheres of public life, nor are they as disadvantaged in every aspect of their lives”.<sup>2</sup>

After 2022, the situation has only deteriorated. If, in its September 2022 Report, the Special Rapporteur was concerned about the suspension of girls’ secondary education and mandatory hijab-wearing, at the time women were still allowed to attend tertiary education and to work in specific fields (although some areas were already banned, such as the possibility of women to work in the justice system). However, in February 2023, the Special Rapporteur noted that women and girls had been banned from accessing parks, gyms, and public baths, and their access to university education was suspended. Women were also reported to be barred from working for domestic and international NGOs.<sup>3</sup>

A joint report from June 2023 of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls highlights that women had been banned from working in the United Nations,<sup>4</sup> and mentions the existence of credible reports of Taliban officers brutally beating, arbitrarily arresting, and detaining women who had protested these restrictions on their fundamental rights.<sup>5</sup> A subsequent report of September 2023 by the Special Rapporteur includes new harrowing developments: women’s right to work was again restricted, with a ban on women’s beauty salons and the closing of teacher training centres, and women were prohibited from participating in radio and television broadcasts when the presenters are men.<sup>6</sup>

In February 2024, the Special Rapporteur continued to describe the worsening of the situation for women and girls, including harsh enforcement of the Taliban dress code, including by

---

<sup>2</sup> Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, 9 September 2022, UN Doc. A/HRC/51/6, para. 21.

<sup>3</sup> Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, 9 February 2023, UN Doc. A/HRC/52/84.

<sup>4</sup> Situation of women and girls in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls, 15 June 2023, UN Doc. A/HRC/53/21, para. 17.

<sup>5</sup> *Ibid.*, para. 30.

<sup>6</sup> Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, 1 September 2023, UN Doc. A/78/38, paras. 13-14.

arbitrary deprivation of liberty of women for allegedly violating it.<sup>7</sup> The Special Rapporteur also noted the high prevalence of gender-based violence against women and girls, and the fact that the Taliban's response failed to meet minimum standards of protection, fairness, and equal access to justice, services, and reparations for survivors.<sup>8</sup> Other new restrictions for women and girls contained in the Report included visiting local markets, traveling long-distance, or accessing health facilities without a male escort.<sup>9</sup>

In its most recent report of May 2024, the Special Rapporteur mentioned new restrictions, including the obligation for women on television to wear a black hijab and to cover their faces, leaving only their eyes visible.<sup>10</sup> After revising the different restrictions imposed throughout the years, the Special Rapporteur concluded that “the Taliban's institutionalized system of discrimination, segregation, disrespect for dignity and exclusion of women and girls constituted in and of itself a widespread and systematic attack on the entire civilian population of Afghanistan”, noting that “the attack is both widespread, being countrywide and affecting large numbers of civilians, and systematic, being organized at the highest levels of de facto governance and following a regular pattern. It is committed pursuant to or in furtherance of an organizational policy, which Taliban officials have not attempted to hide”.<sup>11</sup>

The Report also refers to strong indications that crimes against humanity, including gender persecution, murder, enforced disappearance, torture, rape, and other acts of sexual violence, enslavement, and other inhumane acts, including beatings and other acts of violence; serious bodily and mental injury; forcible transfer; cruel, inhumane or degrading treatment; forced prostitution; and forced marriage had been committed.<sup>12</sup>

The recent measures taken by the Taliban, including the enactment of the “Law on the Promotion of Virtue and Prevention of Vice”, which reinforces and expands existing discriminatory policies, such as mandatory dress codes under which women must completely cover their body, the segregation of men and women in public spaces, the prohibition of women from singing or speaking outside their homes, among others,<sup>13</sup> show that the complete

---

<sup>7</sup> Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, 22 February 2024, UN Doc. A/HRC/55/80, para. 16.

<sup>8</sup> *Ibid.*, paras. 23-24.

<sup>9</sup> *Ibid.*, para. 29.

<sup>10</sup> Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, 13 May 2024, UN Doc. A/HRC/56/25, para. 15.

<sup>11</sup> *Ibid.*, para. 69.

<sup>12</sup> *Ibid.*, paras. 70-87.

<sup>13</sup> Statement from the Spokesperson for the UN High Commissioner for Human Rights Ravina Shamdasani, “Afghanistan: Repressive law must be immediately repealed”, 27 August 2024. Available at: <https://www.ohchr.org/en/press-briefing-notes/2024/08/afghanistan-repressive-law-must-be-immediately-repealed>. See also Statement by the Special Rapporteur on the situation of human rights in Afghanistan; Working group on discrimination against women and girls; Chair of the Committee on the Elimination of Discrimination against Women; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on freedom of religion or belief; Special Rapporteur on violence against women and girls, its causes and consequences, Special Rapporteur on the right to education; Special Rapporteur in the field of cultural rights, and Special Rapporteur on the right to freedom of opinion and expression, “New morality law affirms Taliban's regressive agenda, experts call for concerted action” 30 August 2024. Available at: <https://www.ohchr.org/en/press-releases/2024/08/new-morality-law-affirms-talibans-regressive-agenda-experts-call-concerted>.

disregard for women's dignity continues and that the *de facto* authorities will continue infringing upon women and girls' fundamental rights in an attempt to erase them from existence.

### **III. ACTIONS REQUIRED**

As already noted, the investigation into the Situation in Afghanistan was opened in 2020, and after a temporary deferral requested by Afghanistan's authorities, the Prosecutor was allowed to resume its investigations in 2022. The States Parties signatories express their concern about the deterioration of the humans rights in Afghanistan, especially for women and girls, and note that no information on the progress of the investigation was made public.

Although the signatories understand that the investigation of international crimes takes time, and that the Prosecutor is currently undertaking several parallel investigations, the signatories consider it necessary to draw the attention of the Office of the Prosecutor to the Situation in the Islamic Republic of Afghanistan, particularly considering the current worsening of the conditions and gravity of the situation for all Afghan women and girls.

Accordingly, considering that it appears that one or more crimes within the jurisdiction of the Court have been committed, the aforementioned State Parties, under articles 13 and 14 of the Statute, hereby request the Prosecutor to consider the crimes committed against women and girls after the Taliban takeover in 2021 within its investigation into the Situation in the Islamic Republic of Afghanistan for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes that would have taken place in Afghanistan, beginning on 1 May 2003, pursuant to the powers granted in article 54 of the Rome Statute and in general to continue implementing its Part 5, Investigation and Prosecution.

All communications regarding this matter should be sent to the Embassies of the Governments of 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 in the Kingdom of the Netherlands.