



Original: English

No.: **ICC-00/26**
Date: **3 September 2026**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE REPUBLIC OF COLOMBIA

Secret Decision closing the situation record

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**
- Republic of Colombia

REGISTRY

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

PRE-TRIAL CHAMBER II (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues the present Decision closing the situation record.

I. PROCEDURAL HISTORY

1. On 7 August 2026, the Prosecution received an official communication from the government of the Republic of Colombia (the ‘Communication’ and ‘Colombia’, respectively).
2. On 21 August 2026, the Prosecution submitted a memorandum to the Presidency, informing that ‘on 7 August 2026, [it] received from the Government of the Republic of Colombia a State Party referral pursuant to articles 13(1) and 14(1) of the Rome Statute’ (the ‘Statute’).¹
3. On 24 August 2026, the Presidency decided to assign the Situation in the Republic of Colombia (the ‘Situation in Colombia’) to the Chamber with immediate effect.²
4. On 26 August 2026, the Prosecution submitted a request to the Presidency for the reconsideration of its ‘decision to classify as ‘secret’ all “information as to the existence of the situation”, thus encompassing all ensuing proceedings such as the preliminary examination’ (the ‘Request for Reconsideration’).³

II. DETERMINATION

5. The Chamber notes that, following the transmission of the Communication pursuant to regulation 46(2) of the Regulations of the Court (the ‘Regulations’), the Presidency assigned the Situation in Colombia to the Chamber. In this regard, the Chamber also notes that the Prosecution refers to the Communication as ‘a State Party referral’. Having been seised of the Situation in Colombia and noting the content of the Communication, the Chamber, in the exercise of judicial scrutiny, finds it necessary to assess whether said document constitutes a referral within the meaning of article 14 of the Statute.

¹ ICC-00/26-1-SECRET-Exp-AnxI.

² ICC-00/26-1-SECRET-Exp.

³ ICC-00/26-2-SECRET-Exp, para. 3.

6. Article 14(1) of the Statute provides that:

A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

7. Therefore, it is clear from the wording of this provision that in order for a communication by a State Party to qualify as a referral pursuant to article 14 of the Statute, such State Party must identify a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed. The reference to crimes that ‘appear to have been committed’ indicates that the alleged criminal conduct must have already occurred and/or be ongoing, rather than being merely prospective or hypothetical. The foregoing is reinforced by the wording of article 14(2) of the Statute, which provides that the State Party submitting a referral shall, ‘[a]s far as possible’, specify the relevant circumstances and attach such supporting documentation as is available. It follows that a communication concerning only possible future conduct, without identifying a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed, would not meet the statutory requirements set out in article 14 of the Statute

8. Turning to the circumstances of these proceedings, the Chamber finds that the Communication does not fulfil the requirements set forth in article 14 of the Statute.⁴ Notably, a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed and other ‘relevant circumstances’ are not identified. Instead, the Communication primarily consists of several references to concerns, speculative risks and hypothetical scenarios that may or may not materialise in the future. By way of example, the Chamber notes paragraph 8 of the Communication where Colombia mentions a ‘serious and imminent risk’ and lists its principal concerns which consist of different ‘announced intentions’ of the new administration, and

⁴ See *contra e.g.* [Annex to the Decision Assigning the Situation in the Republic of Mali to Pre-Trial Chamber II](#), 19 July 2012, ICC-01/12-1-Anx; [Annex 1: Decision Assigning the Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia to Pre-Trial Chamber I](#), 14 May 2013, ICC-01/13-1-Anx1; [Annex 1: Decision Assigning the Situation in the Central African Republic II to Pre-Trial Chamber II](#), 18 June 2014, ICC-01/14-1-Anx1; [Annex I to the Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I](#), 28 September 2018, ICC-02/18-1-AnxI; [Annex I to the Decision assigning the situation in the Plurinational State of Bolivia to Pre-Trial Chamber III](#), 15 September 2020, ICC-02/20-1-AnxI; [Annex D to the Notification on receipt of referrals and on initiation of investigation](#), 07 March 2022, ICC-01/22-2-AnxD.

paragraph 9 where Colombia expresses a ‘concern’ about the ‘public rhetoric and announced policy orientations’.⁵

9. In light of the above, the Chamber finds that the Communication does not constitute a referral within the meaning of article 14 of the Statute. This conclusion renders the application of regulation 45(1) of the Regulations – which requires that the ‘the Prosecutor shall inform the Presidency in writing as soon as a situation has been referred to the Prosecutor by a State Party under article 14’ – inapposite.

10. Accordingly, the Chamber hereby decides to close the situation record 00/26 and instructs the Registry to promptly notify the present decision to the competent authorities of Colombia.⁶

11. This is without prejudice to the Prosecution further considering the matter in the exercise of its functions under the statutory framework. The Chamber notes in this regard the Prosecution’s reference to its ongoing complementarity assessment under article 53(1)(b) of the Statute.⁷

12. Finally, the Chamber turns to the Request for Reconsideration. It instructs the Prosecution and Colombia to indicate whether, considering that the situation record will be closed, they still wish to publicise the court filings contained in the situation record. The Prosecution shall do so no later than 17 September 2026, and Colombia shall do so no later than 1 October 2026.

13. In light of the Chamber’s above determinations, only submissions filed by the Prosecution and Colombia in relation to the possible reclassification of filings will be entertained by the Chamber. The Chamber will instruct the Registry to implement the formal closure of the situation record once the matter of possible reclassification is adjudicated.

⁵ See also e.g. ICC-00/26-1-SECRET-Exp-AnxI, p. 5, para. 5; p. 7, para.10; p. 8, para. 13; p. 9, para. 14.

⁶ The Chamber notes that, in the absence of a referral pursuant to article 14 of the Statute, regulation 66 *ter* of the Regulations does not apply.

⁷ ICC-00/26-1-SECRET-Exp-AnxI, para. 6 of the OTP transmission to Presidency.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to close the situation record of the Situation in the Republic of Colombia;

INSTRUCTS the Prosecution and Colombia to indicate whether they want to reclassify as public documents ICC-00/26-1-SECRET-Exp-AnxI and ICC-00/26-2-SECRET-Exp within the deadlines set forth in paragraph 12; and

INSTRUCTS the Registry to promptly notify the present decision to the competent authorities of the Republic of Colombia.

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



**Judge Rosario Salvatore Aitala,
Presiding Judge**



**Judge Sergio Gerardo Ugalde
Godínez**



Judge Haykel Ben Mahfoudh

Dated this Thursday, 3 September 2026.

At The Hague, The Netherlands.