



Original: **English**

No.: **ICC-02/26**
Date: **20 October 2026**

THE PRESIDENCY

Before: Judge Tomoko Akane, President
Judge Reine Alapini-Gansou, Acting First Vice-President
Judge Luz del Carmen Ibáñez Carranza, Acting Second Vice-President

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN II

Public redacted
With Under Seal, EX PARTE, only available to the Prosecution Annexes 1, 3 and 4 and
Public Annex 2

Decision assigning the situation in the Islamic Republic of Afghanistan II to
Pre-Trial Chamber II

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**

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☒ **Other**
Pre-Trial Chamber II

1. The *ad hoc* Presidency of the International Criminal Court (the ‘Court’) has before it a memorandum of 15 September 2024 from the Acting Prosecutor addressed to the Presidency (the ‘Regulation 45 Notification’), in accordance with regulation 45 of the Regulations of the Court (the ‘Regulations’),¹ formally notifying the Presidency that on 28 November 2024, the Office of the Prosecutor received, from the Governments of Chile, Costa Rica, Spain, France, Luxembourg and Mexico, a referral pursuant to articles 13(a) and 14(1) of the Rome Statute (‘2024 Referral’).² The subject-matter of the 2024 Referral concerns crimes committed in the Islamic Republic of Afghanistan against women and girls after the Taliban takeover in 2021.³
2. The Regulation 45 Notification purports ‘to seek the recusal of Judge Aitala, or his disqualification, from the Presidency (...) pursuant to article 41(2)(a) and (b) of the Statute’.⁴ The *ad hoc* Presidency notes that on 22 September 2026, Judge Aitala transmitted to the remaining members of the Presidency a request to be excused from the Presidency’s consideration of the Regulation 45 Notification and from any subsequent assignment decision.⁵ Although Judge Aitala indicated that he remained convinced that no grounds required him to be excused from the Presidency, he nonetheless requested excusal in the best interests of the Court and to ensure judicial expediency (the ‘Request for Excusal’).⁶
3. The *ad hoc* Presidency notes article 41(1) of the Statute whereby ‘[t]he Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute’.
4. On 19 October 2026, the *ad hoc* Presidency granted the Request for Excusal.⁷
5. The Regulation 45 Notification also requests the Presidency ‘to defer assigning a Pre-Trial Chamber to a new situation arising from the 2024 Referral, [REDACTED]’.⁸

¹ Annex 1.

² Annex 2.

³ Annex 2, p. 4.

⁴ Annex 1, para. 2.

⁵ Annex 3, para. 6.

⁶ Annex 3, para. 6.

⁷ Annex 4.

⁸ Annex 1, para. 2.

6. The *ad hoc* Presidency notes that regulation 46(2) of the Regulations, provides that ‘[t]he Presidency *shall* assign a situation to a Pre-Trial Chamber *as soon as* the Prosecutor has informed the Presidency in accordance with regulation 45, paragraph 1’ (emphasis added). A majority of the *ad hoc* Presidency, consisting of Judges Akane and Alapini-Gansou, considers that this language clearly creates a mandatory obligation for it to make the assignment to a Pre-Trial Chamber as soon as possible. Nothing in regulation 45 or 46 of the Regulations gives the Presidency a discretion to look beyond the fact that a referral under regulation 45 has been made. The clarity of the mandatory language in regulation 46(2) of the Regulations also means that the majority of the *ad hoc* Presidency cannot accept the Prosecution’s submission that the requirement of the Prosecutor to ‘provide the Presidency with any other information that may facilitate the timely assignment of a situation to a Pre-Trial Chamber’ under regulation 45(1) of the Regulations creates a legal basis for the Presidency to consider that such timeliness does not arise until a later stage.⁹ This aspect of regulation 45(1) is clearly a procedural requirement incumbent on the Prosecution and does not impact the clear mandatory obligation to assign upon the receipt of a regulation 45 notification set out in regulation 46(2) of the Regulations. A majority of the *ad hoc* Presidency therefore considers that there is no legal basis to allow it to defer the assignment of the situation concerning crimes committed in the Islamic Republic of Afghanistan against women and girls after the Taliban takeover in 2021. [REDACTED].

7. In the present circumstances, the majority of the *ad hoc* Presidency considers it appropriate that the *Situation in the Islamic Republic of Afghanistan* and the *Situation in the Islamic Republic of Afghanistan II* be assigned to the same Pre-Trial Chamber given that the subject-matter of the *Situation in the Islamic Republic of Afghanistan II* has already been addressed by that Chamber since its initial referral to the Court by six States Parties in November 2024. Accordingly, the majority of the *ad hoc* Presidency decides to assign the *Situation in the Islamic Republic of Afghanistan II* to Pre-Trial Chamber II with immediate effect.

8. Judge Luz del Carmen Ibáñez Carranza dissents from the majority view above [REDACTED].

⁹ Annex 1, para. 14.

9. The *ad hoc* Presidency will issue a public redacted version of the present decision [REDACTED].

Done in both English and French, the English version being authoritative.

赤根智子

Judge Tomoko Akane
President

Dated this 20 October 2026
At The Hague, The Netherlands