Cour Pénale Internationale

International Criminal Court

Original: **English**

No.**: ICC-02/17**
Date: **12 November 2026**

THE APPEALS CHAMBER

Before: **Judge Luz del Carmen Ibáñez Carranza**
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin
Judge Iulia Antoanella Motoc

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public

Public redacted version of "Corrected Version of 'Request for expedited directions on publicity of proceedings'", ICC-02/17-247-US-Exp-Corr, 12 November 2026

Source: **Office of the Prosecutor**

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1. On 9 September 2026, the Prosecution filed its notice of appeal against the interlocking decisions of Pre-Trial Chamber II (together, the "Impugned Decisions") entitled "Decision in relation to the investigation in the situation in the Islamic Republic of Afghanistan" (filing number ICC-02/17-238, dated 15 July 2026) and "Order to comply with the 'Decision in relation to the investigation in the situation in the Islamic Republic of Afghanistan'" (filing number ICC-02/17-241, dated 3 September 2026).[1]

2. The Notice of Appeal was provisionally filed under seal and *ex parte*, Prosecution only, consistent with the *original* classification of the Impugned Decisions, pursuant to regulation 23*bis*(2). However, the Prosecution observed that, "with the exception of certain information concerning the warrants of arrest already issued in this situation, the [Impugned Decisions] otherwise refer to publicly available information. Accordingly, subject to relevant redactions concerning the existence and/or content of the warrants, there appears to be no reason justifying the classification of the [Impugned Decisions]."[2]

3. Since then, several developments underline the interest in publicity of the present appeal proceedings, and further demonstrate that there is no basis for their confidentiality.

- First, on 25 September 2026, the Prosecution duly filed its Appeal Brief.[3] While the Appeal Brief was again provisionally filed under seal and *ex parte*, Prosecution only, pursuant to regulation 23*bis*(2), this was again expressly subject to the ultimate disposition of this question by the Appeals Chamber.[4]

- Second, on 5 October 2026, Pre-Trial Chamber II ordered the unsealing of the four warrants of arrest issued in the situation, with redactions.[5] These warrants are the warrants discussed in the Impugned Decisions. In the same order, the Chamber also reclassified the Impugned Decisions as public in their entirety.[6] At the Chamber's instruction,[7] the Prosecution promptly filed a public redacted version of its request for

[1] *See* ICC-02/17-242-US-Exp ("Notice of Appeal").
[2] Notice of Appeal, para. 6. *See also* para. 7 (deferring, in these circumstances, "to the Appeals Chamber as to whether this appeal should be heard and decided under seal or publicly", and noting that the Impugned Decisions "raise issues of fundamental importance regarding the Court's exercise of jurisdiction and the respective competences of the Prosecution and the Pre-Trial Chamber, which are relevant beyond this situation").
[3] *See* ICC-02/17-244-US-Exp ("Appeal Brief").
[4] Appeal Brief, para. 7 (fn. 11: citing the Notice of Appeal, and again stating that the Prosecution deferred to the Appeals Chamber as to the publicity of the proceedings in the prevailing circumstances).
[5] *See* ICC-02/17-245-Red ("Unsealing Decision").
[6] Unsealing Decision, para. 10. *See* ICC-02/17-238; ICC-02/17-241 (the Impugned Decisions).
[7] Unsealing Decision, para. 11.

clarification and/or reconsideration of the first of the Impugned Decisions, which in turn triggered the second of the Impugned Decisions.[8]

- Third, on 20 October 2026, the Presidency issued a significantly redacted public decision designating the subject-matter of the State Party referral made in 2024 concerning "crimes committed in the Islamic Republic of Afghanistan against women and girls after the Taliban takeover in 2021" as the *Situation in the Islamic Republic of Afghanistan II* and assigning this to Pre-Trial Chamber II.[9] Through this decision of the Presidency, the object of the Impugned Decisions has now been publicly issued.

4. In light of these developments, the Prosecution considers it necessary to request expedited directions from the Appeals Chamber concerning the publicity of these appeal proceedings.

5. In particular, the Prosecution respectfully submits that due publicity of the appeal proceedings is necessary for it to respond appropriately to the numerous inquiries it is now receiving from third parties concerning the significance of the opening of an *'Afghanistan II*' situation. As things stand, while the Prosecution can refer to the Impugned Decisions and the Request for Clarification and/or Reconsideration, it cannot provide any public explanation of its own procedural posture. This is not only detrimental to the legitimate interests of victims and affected communities in understanding the status of the investigation, but also introduces ambiguity on a question where the Prosecution's stance should be clear.

Relief requested

6. For all the reasons above, the Prosecution respectfully requests the Appeals Chamber, on an expedited basis, to issue directions concerning the publicity of these appeal proceedings and, in light of the circumstances, to:

a. Order the immediate reclassification of the Notice of Appeal and Appeal Brief as public, and;

b. Take such further steps as may be required to provide appropriate publicity (with redactions or lesser redactions if necessary) concerning other ancillary filings in these appeal proceedings. These include not only procedural matters such as the present

[8] *See* ICC-02/17-239-Red ("Request for Clarification and/or Reconsideration").
[9] ICC-02/26-1-Red ("*Afghanistan II* Assignment Decision").

request[10] and a request for an extension of pages,[11] but also [REDACTED][12] and the *Afghanistan II* Assignment Decision.[13]



Mame Mandiaye Niang
Acting Prosecutor

Dated this 12th day of November 2026

At The Hague, the Netherlands

[10] Pursuant to regulation 23*bis*(2), this request is presently filed under seal and *ex parte*, Prosecution only, consistent with the classification of the filings to which it relates. If these are made public in some form, then there is no further basis for this request not to be made public likewise.
[11] *See e.g.* ICC-02/17-243-US-Exp (request for extension of pages).
[12] *See* [REDACTED].
[13] *See e.g. Afghanistan II* Assignment Decision. The Prosecution notes that some passages presently redacted from this decision appear to be redacted in light of the classification of the present appeal proceedings.