

Gender Persecution at the International Criminal Court: The ICC Issues Arrest Warrants against Taliban Leaders for Crimes against Humanity

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On 8 July 2025, Pre-Trial Chamber II of the International Criminal Court [issued](#) arrest warrants against two senior Taliban leaders in the [Situation in Afghanistan](#). The Office of the Prosecutor (OTP) [hailed](#) the warrants as an ‘important vindication and acknowledgement of the rights of Afghan women and girls’, with their issuance receiving [extensive media attention](#) and supportive commentary [from civil society](#). The Taliban, for its part, [condemned](#) the issuance and stated that it does not recognize the authority of the ICC.

As to specifics, the criminality alleged is persecution as a crime against humanity under Article 7(1)(h) of the [Rome Statute](#) (RS). In particular, at the core of the case is the crime of *gender* persecution. The suspects are Haibatullah Akhundzada, Supreme Leader of the Taliban, and Abdul Hakim Haqqani, Chief Justice of the Taliban. The warrants remain under seal. Drawing on the Court’s public statements, this post provides an overview of certain aspects of the warrants.

Procedural Background

The procedural background is complex. In brief, Afghanistan acceded to the Rome Statute on 10 February 2003. After a long preliminary examination, the OTP [requested](#) authorisation of an investigation pursuant to Article 15 RS on 20 November 2017. This request was [rejected](#) by Pre-Trial Chamber II on 12 April 2019, a decision [overturned unanimously](#) by the Appeals Chamber on 5 March 2020. The Appeals Chamber amended the PTC’s decision with the effect that the:

Prosecutor is authorised to commence an investigation ‘in relation to alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties in the period since 1 July 2002.

Thereafter, on 26 March 2020 Afghanistan filed a [request for deferral](#) of the investigation under Article 18(2) of the [Statute](#), pursuant to which ‘the Prosecutor shall defer to the State’s investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.’ On 27

September 2021, the Prosecution [requested](#) authorisation to resume its investigation, with the Prosecutor announcing [publicly](#) a revised focus of the investigation and the de-prioritisation of other crimes (and potential perpetrators):

In preparing to resume my investigation, if authorisation is granted, I am cognizant of the limited resources available to my Office relative to the scale and nature of crimes within the jurisdiction of the Court that are being or have been committed in various parts of the world. I have therefore decided to focus my Office's investigations in Afghanistan on crimes allegedly committed by the Taliban and the Islamic State – Khorasan Province ("IS-K") and to deprioritise other aspects of this investigation.

The Prosecution's request for resumption was [granted](#) by the PTC on 31 October 2022, though not without comment on the de-prioritisation decision (para 58):

The Chamber emphasises that, notwithstanding the Prosecutor's 27 September 2021 statement to the media in which a modified focus was referred to, the present authorisation relates to all alleged crimes and actors that were subject to the Prosecution's 'Request for authorisation of an investigation pursuant to article 15', for which the Appeals Chamber has granted authorisation.

After [clarification](#) of the PTC's decision by the Appeals Chamber on 4 April 2023, the OTP also received a [referral](#) from six State parties—Chile, Costa Rica, Spain, France, Luxembourg, and Mexico—under Articles 13 and 14 of the Statute. The referral explicitly drew attention to crimes against women and girls committed since the Taliban took power. The Prosecutor announced the filing of two [applications](#) for arrest warrants on 23 January 2025. These are the warrants issued by the Chamber earlier this week.

Crimes within the Jurisdiction of the Court and Modes of Liability

As noted above, the warrants are under seal, but the Court's public statement provides a short summary:

The Chamber has found that there are reasonable grounds to believe that Mr Haibatullah Akhundzada and Mr Abdul Hakim Haqqani have committed by ordering, inducing or soliciting the crime against humanity of persecution, under article 7(1)(h) of the Rome Statute, on gender grounds against girls, women and other persons non-conforming with the Taliban's policy on gender, gender identity or expression; and on political grounds against persons perceived as "allies of girls and women". These crimes are believed to have been committed on the territory of Afghanistan since the Taliban seized power on 15 August 2021, and have continued until at least 20 January 2025.

To recall, the Statute defines persecution in Article 7(2)(h) as ‘the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity’, which must be committed in connection with another act under Article 7(1)(a) or another crime within the Court’s jurisdiction. At issue, in particular, is gender persecution. The Court’s statement notes that the PTC considered that ‘the Taliban severely deprived, through decrees and edicts, girls and women of the rights to education, privacy and family life and the freedoms of movement, expression, thought, conscience and religion’, and targeted others because of their expressions of sexuality and/or gender identity. It also refers to the persecution, on political grounds, of ‘allies of girls or women.’

As to modes of liability, the relevant provision is Article 25(3)(b) RS, which provides for the individual criminal responsibility of a person who ‘orders, solicits or induces the commission’ of a crime within the jurisdiction of the Court.

Some Aspects of the Warrants

The issuance of these warrants follows from the OTP’s de-prioritisation decision mentioned above and re-focusing of the investigation on criminality by the Taliban regime. In this respect, the Fall of Kabul in August 2021 appears to be a fundamental break in the investigation in the Situation in Afghanistan. To recall, this de-prioritisation decision received criticism from civil [society](#) and in [scholarship](#), and, as noted above, provoked passing [comment](#) by the Pre-Trial Chamber. Nonetheless, these warrants stand to simply confirm the significance and scope of prosecutorial choice under the Statute.

As to the crimes themselves, the significance is at least three-fold. *First*, the warrants indicate continued attention at the ICC to the crime of gender persecution, which has been subject to [extensive scholarly attention](#) in the aftermath of the *Hassan* case. At the core of the Prosecution’s [application](#) is the Taliban’s imposition of a coercive and discriminatory system of control on women and girls in Afghanistan.

Second, the PTC also found, encompassed within the crime of gender persecution, the targeting of individuals for ‘expressions of sexuality and/or gender identity ... regarded as inconsistent with the Taliban’s policy on gender.’ In this respect, Professor Lisa Davis, the OTP’s Special Advisor on Gender and other Discriminatory Crimes, [tweeted](#): ‘This is the first time in history an international tribunal has confirmed LGBTQI+ victims of crimes against humanity, namely gender persecution.’

Third, and more technically, the warrants are important in their recognition that international criminal law does capture what the Court’s [statement](#) describes as ‘systemic and institutionalised forms of harm.’ To recall, the rights violations were imposed, in particular, through *decrees and edicts*, and concern systematic violations

of rights to education, privacy, family life, movement, expression, thought, conscience and religion. That is, the warrants focus on acts that do not relate, in a narrow sense to the protection of life and bodily integrity. It is true that there remains a statutory requirement of a connected act or crime, but their issuance entails further acceptance, of potential importance in other situations under investigation, of the criminalization of systemic forms of discrimination that destroy freedom.

Finally, two additional points arise—one relating to modes of liability and one relating to the identity of one of the defendants. As to modes of liability, the arrest warrants are based on Article 25(3)(b) – responsibility for ordering, soliciting, or inducing. As a number of [scholars](#) have noted, the first alternative under 25(3)(b) – ordering – is curiously placed in the Statute given that Article 25(3)(a) explicitly refers to commission ‘through another person’, and that ordering seems qualitatively different from the other two alternatives. In any event, it is striking to see the issuance of warrants for senior State officials – the Supreme Leader and Chief Justice – for core regime policies using a mode of liability other than Article 25(3)(a). In this respect, it is difficult to provide further comment, given that the relevant sections on individual criminal responsibility in the [Prosecution’s Applications](#) are redacted and the warrants remain under seal.

As to the defendants, one of the two suspects—Abdul Hakim Haqqani—is named by the Court as the Chief Justice of Afghanistan. This is striking in itself, as it is difficult to find instances in the historical record of the prosecution of judges for international crimes. The [Justice Trial](#) (1947) in proceedings before the Nuremburg Military Tribunal is the obvious example, but more recent tribunals do not appear to have pursued judicial defendants. It is true, on one hand, that certain complex questions of liability may arise in such cases, which [scholarship](#) has only started to grapple with. On the other hand, for certain kinds of international crimes in certain kinds of political system, judicial participation is essential to the execution of the overall criminal scheme. (For a wider reflection in relation to the legal order in apartheid South Africa, see David Dyzenhaus’ [Judging the Judges, Judging Ourselves](#)).

Conclusion

Of course, the issuance of warrants is one thing; arrest and surrender is another. Moreover, it is not straightforward to assess potential political and diplomatic effects on the Taliban and wider situation. Nonetheless, their issuance does stand as a significant act of condemnation of the regime’s ‘systematic attempt to erase all women from [public life](#).’