

## Situation in the Islamic Republic of Afghanistan

5 March 2020

### Afghanistan: ICC Appeals Chamber authorises the opening of an investigation

#### WHAT IS THE INTERNATIONAL CRIMINAL COURT?

The International Criminal Court (“the ICC” or “the Court”) is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

The ICC does not replace national criminal justice systems; rather, it complements them. It can investigate and, where warranted, prosecute and try individuals only if the State concerned does not, cannot or is unwilling genuinely to do so. This might occur where proceedings are unduly delayed or are intended to shield individuals from their criminal responsibility. This is known as the principle of complementarity, under which priority is given to national systems. States retain primary responsibility for trying the perpetrators of the most serious of crimes.

#### WHAT DID THE APPEALS CHAMBER JUDGES DECIDE IN RELATION TO AFGHANISTAN?

On 5 March 2020, the Appeals Chamber of the International Criminal Court decided unanimously to authorise the Prosecutor to commence an investigation into alleged crimes under the jurisdiction of the Court in relation to the situation in the Islamic Republic of Afghanistan.

The Appeals Chamber found that the Prosecutor is authorised to investigate, within the parameters identified in the Prosecutor’s [request](#) of 20 November 2017, the crimes alleged to have been 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 and are sufficiently linked to the situation in Afghanistan and were committed on the territory of other States Parties to the Rome Statute since 1 July 2002.

#### WHO ARE THE JUDGES SITTING IN THE APPEALS CHAMBER?

The Appeals Chamber in this appeal is composed of Judge Piotr Hofmański, Presiding judge, Judge Howard Morrison, Judge Luz del Carmen Ibáñez Carranza, Judge Solomy Balungi Bossa and Judge Kimberly Prost. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court’s judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.

#### WHY DID THE APPEALS CHAMBER DECIDE TO AUTHORISE THE OPENING OF THE INVESTIGATION?

Having considered the Prosecutor’s grounds of appeal against the Pre-Trial Chamber’s decision, as well as the observations and submissions of the Islamic Republic of Afghanistan, representatives of victims and other participants, the Appeals Chamber found that the Pre-Trial Chamber erred in considering the ‘interests of justice factor’ when examining the Prosecutor’s request for authorisation to open an investigation. In the Appeals Chamber’s view, the Pre-Trial Chamber should have addressed *only* whether there was a reasonable factual basis for the Prosecutor to proceed with an investigation, in the sense of whether crimes have been committed, and whether the potential case(s) arising from such investigation would appear to fall within the Court’s jurisdiction. Noting that the Pre-Trial Chamber’s decision contained all the necessary factual findings and had confirmed that there is a reasonable basis to consider that crimes within the ICC jurisdiction have been committed in Afghanistan, the Appeals Chamber decided to authorise the opening of an investigation itself, rather than to send the matter back to the Pre-Trial Chamber for a new decision.

#### HOW WILL THE INVESTIGATION BE CONDUCTED?

The Office of the Prosecutor collects the necessary evidence from a variety of reliable sources, independently, impartially, and objectively. The investigation can take as long as needed to gather the required evidence. If sufficient evidence would be collected to establish that specific individuals bear criminal responsibility, the Prosecutor would then request Judges of a Pre-Trial Chamber to issue either summonses to appear or warrants of arrest. The responsibility to enforce warrants of arrest issued by an ICC Chamber remains with States. States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. Other States may be invited to cooperate with the ICC and may decide to do so on a voluntary basis.