

ICC judges reject opening of an investigation regarding Afghanistan situation

WHAT DID THE CHAMBER DECIDE?

On 12 April 2019, Pre-Trial Chamber II of the International Criminal Court (ICC) **rejected** unanimously the **request** of the Prosecutor to proceed with an investigation for alleged crimes against humanity and war crimes, on the territory of in the Islamic Republic of Afghanistan. The judges **decided** that an investigation into the situation in Afghanistan at this stage would not serve the interests of justice.

The Chamber is composed of Judge Antoine Kesia-Mbe Mindua, who will be appending a concurring separate opinion, Judge Tomoko Akane and Judge Rosario Salvatore Aitala.

WHY DID THE CHAMBER REJECT THE PROSECUTOR'S REQUEST?

On 20 November 2017, the Prosecutor had requested **authorisation** from Pre-Trial Judges to initiate an investigation into alleged war crimes and crimes against humanity in relation to the armed conflict in the Islamic Republic of Afghanistan since 1 May 2003, as well as regarding similar crimes related to the armed conflict in Afghanistan allegedly committed in the territory of other States Parties to the Rome Statute since 1 July 2002.

The Chamber thoroughly checked the information submitted by the Prosecutor and considered that the request establishes a reasonable basis to consider that crimes within the ICC jurisdiction have been committed in Afghanistan and that potential cases would be admissible before the Court. However, the Chamber noted the time elapsed since the opening of the preliminary examination in 2006 and the political changing scene in Afghanistan since then, the lack of cooperation that the Prosecutor has received and which is likely to go scarcer should an investigation be authorized hampering the chances of successful investigation and prosecution, as well as the need for the Court to use its resources prioritizing activities that would have better chances to succeed.

The Chamber believes that, notwithstanding the fact all the relevant requirements are met as regards both jurisdiction and admissibility, the current circumstances of the situation in Afghanistan are such as to make the prospects for a successful investigation and prosecution extremely limited. Accordingly, it is unlikely that pursuing an investigation would result in meeting the objectives listed by the victims favouring the investigation. Thus the Chamber concluded that an investigation into the situation in Afghanistan at this stage would not serve the interests of justice and rejected the Prosecutor's request for authorization to investigate.

DID THE CHAMBER CONSIDER THE VICTIMS' VIEWS?

The Chamber noted that out of 699 **victims' representations** collected, 680 welcomed the prospect of an investigation aimed at bringing those responsible to justice, preventing crimes and establishing the truth. According to the **decision**, "the Chamber believes that, notwithstanding the fact all the relevant requirements are met as regards both jurisdiction and admissibility, the current circumstances of the situation in Afghanistan are such as to make the prospects for a successful investigation and prosecution extremely limited. Accordingly, it is unlikely that pursuing an investigation would result in meeting the objectives listed by the victims favouring the investigation, or otherwise positively contributing to it. It is worth recalling that only victims of specific cases brought before the Court could ever have the opportunity of playing a meaningful role in as participants in the relevant proceedings; in the absence of any such cases, this meaningful role will never materialise in spite of the investigation having been authorised; victims' expectations will not go beyond little more than aspirations. This, far from honouring the victims' wishes and aspiration that justice be done, would result in creating frustration and possibly hostility vis-a-vis the Court and therefore negatively impact its very ability to pursue credibly the objectives it was created to serve."

CAN THIS DECISION BE APPEALED?

The Office of the Prosecutor has **announced** that it will further analyse the decision and its implications, and consider all available legal remedies.