

Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar

Update: November 2019

Opening of an ICC investigation into the situation in Bangladesh/Myanmar, 14 November 2019

WHY DID THE ICC JUDGES DECIDE TO AUTHORIZE THE INVESTIGATION INTO THE SITUATION IN BANGLADESH/MYANMAR?

On 14 November 2019, the judges of Pre-Trial Chamber III of the International Criminal Court granted the Prosecutor's request to proceed with an investigation in the Situation in Bangladesh/Myanmar for the alleged crimes within the ICC jurisdiction.

The Chamber accepted that there exists a reasonable basis to believe crimes against humanity of deportation, across the Myanmar-Bangladesh border, and of persecution, on grounds of ethnicity and/or religion, against the Rohingya population may have been committed.

These alleged crimes, noting their scale - an estimated 600,000 to one million Rohingya were forcibly displaced from Myanmar to neighbouring Bangladesh – are of sufficient gravity for the ICC to investigate them.

The ICC has jurisdiction over crimes where at least part of the criminal conduct takes place on the territory of a State Party. In this situation, while Myanmar is not a State Party, Bangladesh ratified the ICC Rome statute in 2010. Accordingly, if part of the alleged criminal conduct takes place on the territory of Bangladesh, this is sufficient to give the Court territorial jurisdiction.

The Prosecutor may investigate *any crime*, including crimes other than deportation and persecution, if they are within the ICC jurisdiction and are sufficiently linked to the situation described in the Prosecutor's request. The ICC's jurisdiction covers past and future crimes committed since Bangladesh became a State Party in 2010.

DID THE JUDGES CONSIDER THE VICTIMS' VIEWS IN THEIR DECISION?

Yes, the Chamber received the views by or on behalf of hundreds of thousands of alleged victims. According to the ICC Registry, victims unanimously insist that they want an investigation by the Court and many of the consulted alleged victims 'believe that only justice and accountability can ensure that the perceived circle of violence and abuse comes to an end'.

WHAT ARE THE NEXT STEPS?

The Office of the Prosecutor will start collecting the necessary evidence independently, impartially, and objectively. The investigation can take as long as needed to gather the required evidence.

If sufficient evidence has been collected, the Prosecutor will request Judges to either issue summons to appear requesting the suspects to appear voluntarily before the Court, or arrest warrants. A summons or warrant may be issued publicly or under seal. The responsibility to enforce warrants of arrest remains with States as the ICC has no police force.

At a later stage, when an arrest warrant or a summons to appear is delivered publicly, a case is opened against one or more suspects. Victims of crimes described in such case would then have the right to participate in the proceedings, should they want to. They would be then represented by a lawyer.

DOES MYANMAR HAVE AN OBLIGATION TO COOPERATE WITH THE ICC?

States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC.

Other non-party States, such as Myanmar, may be invited to cooperate with the ICC and may decide to do so on a voluntary basis.

WILL ALL PERPETRATORS OF THE SITUATION IN BANGLADESH/MYANMAR BE PROSECUTED BY THE ICC?

The ICC prosecutes individuals, not groups or States. There is no immunity for suspects of crimes within ICC jurisdiction.

However, the primary responsibility to investigate such crimes remains with the States. The ICC work in complementarity with the national tribunals.