



Iranian Center for International Criminal Law Statement on the Situation in Islamic Republic of Afghanistan

Upon 10 years of a preliminary examination, the Prosecutor of the International Criminal Court (Court/ICC) arrived at the conclusion that there is a reasonable basis to believe that war crimes and crimes against humanity within the Court's jurisdiction have been committed in the territory of Afghanistan and the territories of three other European States Parties in the context of and associated with a non-international armed conflict between the pro-government forces and anti-government forces in Afghanistan that is still ongoing. Based on this determination, the Prosecutor has requested the Pre-Trial Chamber III (PTC III) for an authorization to initiate a full investigation into the situation in Afghanistan under Article 15 of the Rome Statute, and in the absence of any referral made by States Parties or the UNSC.

The Prosecutor's determination and her request put an end to a long time examination into a situation that is notorious for the tragic and heavy death toll. Afghans have suffered from war and insecurity for decades. Crimes are committed on near to daily basis in Afghanistan, and their banality and continuation are supported by a culture of impunity protecting the perpetrators of the most serious international crimes in the country. There is a lack of willingness and capability to bring those who bear the greatest responsibility on their shoulders to justice? Against this backdrop, the Court's intervention might raise and offer hope for victims whose voice have not been heard for a long time. The very Court's intervention in Afghanistan recognizes, at least, the victimhood that took place in this country, and bars the perpetrators to deny, hide and bury their atrocities.

Since the Prosecutor's initiative to open a preliminary examination, unimaginable atrocities have been internationalized by the Prosecutor. In light of the Court's presence, any effort to establish peace, although undoubtedly welcomed, could not ignore justice. In the ICC-era, justice is an unavoidable component of any peace deal in Afghanistan. Now, it is the responsibility of PTC III to make a proper decision on the Prosecutor's request. In this regard, and in accordance with the Rome Statute, the Court has called for the victims' views and concerns. It is the first time that victims in Afghanistan have an opportunity to be heard.

Having said that:

1. ICICL welcomes the Prosecutor's recent determination ending 10 years of waiting. A preliminary examination is a platform for positive complementarity activities that understandably takes time. However, it seems that in the context of the situation in Afghanistan, these 10 years spent without any considerable activity and engagement with local actors. It was more a period of silence and inactivity rather than a time for proactivity like what has been the case in the situation in Colombia.
2. ICICL urges the PTC III to make a rapid decision in order to facilitate the Prosecutor's investigation into the situation in Afghanistan. Upon 10 years of examining the situation in Afghanistan, it is now time to prosecute and delve into cases arising from the situation



concerned. In this stage, the Judges should take into account and give considerations to views and concerns of victims. Justice is delivered for victims and the ICC should not be blind to the needs and circumstances surrounding them. Giving voice to voiceless victims is in itself an initial reparation for those people who have not been seen for the past decade.

3. ICICL draws the attention of the Court to the fact that the knowledge of the ICC from Afghanistan is low, and the majority of victims and local people have no idea of the functioning of the ICC, its mandates and their rights before the Court. Outreach activities and communication with the local communities are essential in Afghanistan. Language is a key factor here that make a gaps between the Court and the local people in Afghanistan. ‘Intermediary organizations’ can fill this gap. ICICL urges the ICC to welcome the contributions provided by those NGOs that have the required knowledge of both ICC and the language. ICICL takes this opportunity to express its extreme willingness and desire to put its capabilities in practice to cooperate with the Court and other organizations in this regard.
4. ICICL requests the Court to translate officially the core legal texts of the ICC in Farsi/Pashto by itself or by supporting those NGOs or individuals who are willing and able to conduct this important task.
5. ICICL encourages ICC to train Farsi/Pashto-Speaking lawyers and legal professionals in the field of International Criminal Law, by supporting ICC tours for Afghans and by inviting young people from Afghanistan to do internships at the ICC and within its different organs.
6. ICICL urges the ASP to give special attention to the needs of the ICC for an effective presence in Afghanistan by assigning special budget for the purpose of above-mentioned activities.
7. ICICL requests all States to support the Court’s recent step by facilitating and funding victim-friendly activities in the context of the situation in Afghanistan. Outreach activities and supporting victims to participate in the Court’s proceedings need financial investment. It seems that some States investing in Afghanistan are reluctant to extend their mandates to support ICC-related activities. There should be a shift in this approach. Justice is an essential need and like other issues needs money.