

## Human rights groups call for the opening of an ICC investigation into the situation in Afghanistan

Thursday 13 April 2017

(Kabul, New York, The Hague) Ten years after the opening of a <u>preliminary examination on Afghanistan</u> by the International Criminal Court (ICC) Office of the Prosecutor into the international crimes committed since May 2003, our organisations call upon the ICC Prosecutor to request the opening of a full investigation into the situation in Afghanistan. This call follows an <u>FIDH</u> delegation of Afghan civil society and US human rights defender having travelled to The Hague from 3 to 7 April 2017 and met with representatives of the ICC to call for accountability for the ongoing international crimes committed by all parties on the territory of Afghanistan, including in the context of the ongoing conflict.

"We have witnessed the adoption of six peace agreements in the last 40 years, each accompanied by blanket amnesties for perpetrators of the most heinous crimes in the name of peace. Today we have neither peace nor justice for the thousands of victims still suffering from the waves of repression and violence in Afghanistan. It is time for accountability for these crimes."

TJCG member, Horia Mosadiq

In her latest report on the state of its ongoing preliminary examination, issued in November 2016, ICC Prosecutor, Fatou Bensouda, indicated her office would make a decision "imminently" on whether to seek authorisation from Pre-Trial Chamber to open an investigation into the crimes against humanity and war crimes allegedly committed by the Taliban and affiliated armed groups, the Afghan authorities and members of the US military forces and the Central Intelligence Agency (CIA), since May 2003 - the starting date of the ICC jurisdiction on Afghanistan.

"In the face of the lack of adequate applicable legislation, judicial redress, and political will of the Afghan authorities to genuinely investigate and prosecute those responsible for international crimes committed and the resulting blatant culture of impunity in the country, the ICC must step up and support the victims in their long-lasting quest for justice."

FIDH Vice-President and OPEN ASIA/Armanshahr Executive Director, Guissou Jahangiri

A law on the cooperation of Afghan authorities with the ICC was drafted in October 2016 by the Afghan Independent Human Rights Commission, and Rome Statute crimes (Article 6: genocide, 7: crime against humanity, and 8: war crimes) are incorporated into the draft law amending the Afghan Penal Code by the Ministry of Justice. Even if these laws were to be adopted, they will have no retroactive effect, and will be inapplicable to past crimes, all the more in light of the 2007 National Reconciliation, General Amnesty and Stability Law which grants (in Article 3) blanket amnesty and immunity to all parties for international crimes and without any temporal limit. This law deprives victims of any domestic judicial redress for

international crimes.

"No high-level US official from the military, the CIA, or private contractors has been prosecuted for war crimes and crimes against humanity committed within the US torture programme in Afghanistan or at other locations, including in Eastern Europe, where detainees were sent to be tortured. An investigation by the ICC into these crimes and others by US actors, including civilian deaths, would send a much-needed message to the current US administration and others around the world that no one is above the law."

Senior Staff Attorney at the Center for Constitutional Rights (CCR), Katherine Gallagher

Our organisations underline that an ICC investigation into the Afghanistan situation should look into international crimes committed since May 2003, including into allegations of ongoing crimes, such as systematic enforced disappearances, systematic enforced displacements, deliberate targeting of civilians including ethnic and religious minorities, civilian objects and sexual and gender-based crimes, victimising especially women and girls. The ICC should also need to allocate adequate resources for effective victims' participation and representation of their views and concerns in ICC proceedings, as well as for ICC outreach activities in Afghanistan.

## P.S.

**FIDH** 

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TJCG - Transitional Justice Coordination Group (Afghanistan)

CCR - Center for Constitutional Rights (USA)