مرکز حقوق کیفری بین المللی ایران
Iranian Center for International Criminal Law

Iranian Center for International Criminal Law requests the Prosecutor of the International Criminal Court, Mr. Ahmad Karim Khan QC, to issue a preventive statement concerning the Situation in Afghanistan

17 August 2021

Mr. Karim Khan QC

Prosecutor

International Criminal Court

Your Excellency,

1. These days, the world is shocked because the Taliban armed group is re-establishing its control over Afghanistan. The Afghan government collapsed after the Taliban entered Kabul on 15 August. The current situation in Afghanistan may adversely affect the human rights of the civilian population in the country. The Taliban is notorious for violating human rights and perpetrating war crimes and crimes against humanity.

2. Afghanistan is a State Party to the Rome Statute, and the International Criminal Court (ICC) has jurisdiction over any core crimes committed within the territory of Afghanistan. The situation in Afghanistan is currently under full investigation due to the authorization issued by the Appeals Chamber in 2021. The recent conflict in the country is sufficiently linked with the original situation under investigation, and consequently, falls within the jurisdiction of the Court.

3. The foregoing situation has sparked reactions. The United Nations Secretary-General, Antonio Guterres, has called on Taliban militants to immediately halt their offensive against Government forces and return to the negotiating table in good faith, in the interest of Afghanistan and its people.[1]

4. In the Policy Paper on Gender-Based and Sexual Crimes, issued in 2014, the Office of the Prosecutor insists that where it has jurisdiction, "it may also issue preventive statements to deter the escalation of violence and the further commission of crimes, to put perpetrator on notice and to promote national proceedings". This initiative is consistent with one of the main purposes of the Court as referred to in the Preamble of the Rome Statute, namely the prevention of crimes. For a long time, the Prosecution has followed this precedent. By way of illustration, the then ICC Deputy Prosecutor in 2010, following the deaths of seven civilians in Guinea, stated, "We are keeping an eye on events in Guinea".[2] On another occasion, in 2014, the former Prosecutor issued a statement expressing her deep concern regarding the escalation of violence in the situation in Libya.[3] A similar preventive statement was issued by her regarding the worsening situation in Gaza in April 2018.[4]

5. Given the points mentioned above, ICICL hereby requests Mr. Prosecutor, in discharging the inherent mandates of his office, and in consistency with the well-established practice of the Prosecution, to promptly issue a preventive statement in relation to the ongoing developments in the situation in Afghanistan.

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[1] https://news.un.org/en/story/2021/08/1097792.

[2] https://www.legal-tools.org/doc/532ce6/pdf// Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the occasion of the 28 September 2013 elections in Guinea (27 September 2013).

[3] ICC PROSECUTOR, FATOU BENSOUDA, STATEMENT IN RELATION TO THE ESCALATING VIOLENCE IN LIBYA'S SITUATION , 25 July 2014, Accessible at: https://unsmil.unmissions.org/icc-prosecutor-fatou-bensoudastatement-relation-escalating-violence-libyas-situation.

[4] https://www.icc-cpi.int/pages/item.aspx?name=180408-otp-stat.

6. Issuing a preventive statement in a situation under investigation, in addition to its contribution to the prevention of crimes, enhances the impartiality and legitimacy of the Court by proving that the ICC is not indifferent. It is evident that such a statement is without any prejudice to any further determination by the Office in this regard.

7. ICICL expects to have an official response to the current request.

Yours sincerely,

Iranian Center for International Criminal Law[5]

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[5] ICICL was founded as a "Stichting" under Law of the Netherlands in 2014. The organization aims at promoting international criminal justice and, specifically, the ICC in Iran. ICICL is a member of the CICC.