

Ehsan Qaane: Thirteen Years after Afghanistan's Accession to the International Criminal Court: What Stage at the Court has Afghanistan reached?

The ICC, as the only permanent international criminal court, was established in July

2002. Its aim is to stop the impunity for serious crimes at the international level. Since 1 May 2003 Afghanistan is a signatory of the Rome Statute, the establishment document of the ICC. Pursuant to the provisions of the Rome Statute, any of the four crimes, named under Article 5 of the Statute, such as crime of genocide, war crimes, crimes against humanity and aggression (committing of aggression after 2017), has been committed in a territory or by a nation of a state party, cannot be left without prosecution. Either the party state or the ICC has to prosecute the alleged crimes. It is the primary jurisdiction of the national authorities to deal with these crimes however if the state party does not have willingness or ability then the ICC has to interact for prosecution. The Office of the Prosecutor, OTP, of the ICC has started its preliminary examination of crimes committed in Afghanistan since 2007. So far, the OTP released five preliminary examination reports on Afghanistan situation. According to the OTP findings, war crimes and crimes against humanity, mentioned in Article 5, 7 and 8 of the Statute, which are under jurisdiction of the ICC, has been committed in Afghanistan by perpetrators with Afghan nationality and foreigners since the date of Afghanistan membership with the ICC. The OTP is still looking to prove either Afghanistan has the willingness or ability for prosecution of these alleged crimes or not. If the answer would be negative then the ICC has to investigate these crimes although Afghanistan does not refer any case to the Court.