



## **Statement – Afghanistan Transitional Justice Coordination Group on Cooperation of States Parties to the Rome Statute of the International Criminal Court**

December 5, 2019

Your excellencies, ladies and gentlemen, my name is Maina Abbasi and I am representing the largest coalition of victims and advocates for justice in Afghanistan, the Transitional Justice Coordination Group.

We believe that the success of the ICC in fulfilling its mandate is possible only if member states live up to their obligations and strengthen the court.

It was very disappointing to international justice to see the soft responses only by a handful of states and absolute silence by many member states when the court was bullied and the Rome Statute was under threat.

Cooperation in the Afghanistan situation is flawed and needs to be addressed. States involved in the Afghanistan situation, particularly Afghanistan and the USA have so far had different stands. Until recently, the Afghan Government stated several times that it would cooperate with the ICC based on its Rome Statute obligations.

The Afghan Government has made some improvements by including the Rome Statute provisions into domestic law, and has also established a special unit to investigate domestically the crimes in the Rome Statute, yet to function.

That, is however, not enough and Afghanistan has to genuinely cooperate with the ICC.

The Afghan government is now before the Appeals Chamber asking the Court not to open the investigation. In its filing, the Afghan government says that it cannot guarantee the safety of ICC staff. Though Afghanistan is a country at war and insecure for all including its own judges and prosecutor, we believe these arguments are an excuse to avoid its obligations. At the same time, these cannot be reasons for ICC judges not to open an investigation and for the state parties not to support ICC to intervene in Afghanistan.

The USA, a non-state party, threatens the ICC and has placed both Afghanistan and the ICC under intense pressure to abandon Afghan victims completely by not opening an investigation into the situation.

I understand how complicated the Afghanistan situation is but we did not establish the court to intervene in easy situations.

**We offer the following suggestions:**

First, the Prosecutor and President, as well as the State Parties should encourage the Afghan Government to work closely with the Office of the Prosecutor in any upcoming investigation.

While Afghanistan may not be able to guarantee the safety of ICC staff, it should encourage it to do as much as possible, including helping to ensure that any outreach process in Afghanistan is done effectively.

States parties should also encourage Afghanistan to do as much as it possibly can to assist, including by providing the ICC with as much security and outreach support as possible on the ground.

Second, the Prosecutor, President, and States should continue to speak against the USA's attempts to bully the Court. It was refreshing to hear the Prosecutor and President speak about the situation in such clear terms at the opening of the ASP and we hope they continue to do so, echoed by States.

Further, under the current circumstances we believe it is time for the States Parties to use diplomatic channels to address these limitations on state cooperation.

State parties should stand arm-in-arm and inform the USA that it cannot threaten a Court that has been formed by over 120 countries and where the Court is seeking to exercise its jurisdiction in a country that has signed and ratified the Rome Statute.

Lastly, I, on behalf of my organization and Afghan war victims, hope for an investigation and count on states support to the independence of this Court.