



## Investigating Crimes against Humanity in Afghanistan Based on International Law and Instruments between 2001 and 2022

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### ABSTRACT

*A war crime is a violation of the rules of war and international humanitarian law. This crime has been committed in different countries and at various times, and many people have been victims of it. Afghanistan has not been safe from the damages of this crime because the previous wars in this country show that people have been negatively impacted. Afghanistan Fair Trial has investigated alleged crimes to provide justice in society. The present research is applied by purpose and has used a descriptive-analytical method. Data were gathered using the library method. The findings showed that the Government of Afghanistan has legal legitimacy after finding public legitimacy by holding two Loya Jirgas and two direct elections. However, it has not been able to provide justice, safety and rights due to the double standard(s) policy. The criminals of the main and dangerous crimes, which have negatively affected the international community as a whole, jeopardize peace, security and comfort. Thus, they should not be allowed to escape justice by misusing the power and safety they enjoy. To ensure this case does not occur, some measures have been taken to define war crimes and to determine punishments for violators, for example, The Hague Agreement, Treaty of Versailles, The United Nations War Crimes Commission (UNWCC), Nuremberg Trials, The Tokyo Trial, Rastatt international court of justice, The Universal Declaration of Human Rights (UDHR) and The International Covenant on Civil and Political Rights (ICCPR).*

**Keywords:** crimes against humanity, a war crime, Afghanistan Fair Trial, International instruments

### INTRODUCTION

Human Rights Watch has considered deliberately targeting civilians a war crime. The new concept of war crime was established in Nuremberg Tribunals based on the London Charter, the International Military Tribunal on 8 August 1945. Some other concepts, such as crimes against humanity and crimes against peace, were defined alongside war crimes because they are committed during war simultaneously. War crimes are those crimes that, if being committed, violation of international humanitarian law on armed conflict occurs.

War crimes can be divided into two types: First, international war crimes as significant violations of the four Geneva Conventions dated 1949<sup>1</sup>. Second, war crimes occur inside a country. These crimes are in violation of Article 3, Commonly Applied to All Four Protocols of the General Conventions applicable to non-international armed conflicts<sup>2</sup>. It should be noted that although criminals at both domestic and international levels have individual criminal liability, there is disagreement about the universal jurisdiction of domestic war crimes. Commitment to

Javani, Jamshid, A Study of War Crimes in the Statute of the International Criminal Court, Tehran, Azad University<sup>1</sup> Press, 2009, p. 122

Ghorbannia, Nasser, Human Rights and Humanitarian Law, Tehran, Islamic Culture and Thought Research Institute<sup>2</sup> Publishing Organization, Vol. 1, 2008, p. 428

punish war criminals who have violated humanitarian law during international conflicts is the responsibility of States Parties to the Geneva Conventions, regardless of the nationality of the victim or criminal or even the location of the occurrence of the war crimes. (The universal competence)<sup>3</sup>. Considering what we told above, this study aims at investigating crimes against humanity in Afghanistan based on international law and instruments between 2001 and 2022.

### **Crime against humanity in Afghan law**

#### **1. Human Rights and War Crimes in Afghanistan**

The Afghan Independent Human Rights Commission (AIHRC), under the chair of Sima Samar, conducted a general referendum in January of that year in 32 Afghan provinces and among Afghan refugees in Iran and Pakistan. Roughly 4,500 people were questioned about war crimes<sup>4</sup>. This commission announced the results of a referendum on 25 January 2005, according to which 69% of Afghans were victims of war crimes and human rights abuses in this country.

Nevertheless, the Independent Human Rights Commission and other legal and civil foundations, as well as experts in the country, have not yet provided any definition of war crime and war criminal due to the inability to develop a justice strategy or a truth-seeking mechanism to define what the war crime is and who the war criminal is. At present, this term is a mere slogan and has been used as a political tool in the hands of those who lag behind their rivals in political struggles. Thus, those people who have been sacrificed by the war crimes have no access to the media, and their voice has not been heard. They even have no ability to defend their rights. Instead of being used as legal or criminal concepts, such terms have been changed into a weapon used by political activists in order not to be defeated by their opponents on the battlefield.

The Afghan Independent Human Rights Commission (AIHRC) reported that after the fall of Kunduz, the Taliban plundered all government offices and departments in three phases<sup>5</sup>. In addition, six government offices, including the provincial council office, the municipality, the counter-narcotics department, the first police station, the Urban Development and Lands, and the United Nations (UNAMA) office, were set on fire and all equipment was plundered. Private bank branches have also been plundered, and more than 19 shops in different parts of the city have been set on fire in the war.

Immediately after entering Kunduz, the Taliban opened the doors of the province's central prisons to all prisoners and paved the way for 659 prisoners to escape, including 111 detainees, 491 prisoners and 75 children and adolescents in the Reformatory.

#### **2. Report on war crimes in Afghanistan**

According to a new report released by Human Rights Watch on 7 July 2005, considerable numbers of the high-ranking officials and current advisers of the government of Afghanistan have been accused of serious violations of human rights and war crimes. “blooded-stained hands: past atrocities in Kabul and Afghanistan's Legacy of Impunity” is the title of this 133-page report. It was written during extensive two-year research and interviews with more than 150 eyewitnesses, survivors, government officials and fighters. It describes war crimes and human rights abuses, especially in one of the bloodiest years of the civil war in Afghanistan in 1992

Kaminga, Menti, Exercising Universal Jurisdiction in Relation to Serious Human Rights Crimes, *Legal Journal*, <sup>3</sup>

*Journal of the Office of International Legal Services of Iran*, 2003, No. 28, p.74

Allameh, Gholam Haidar, *War Crimes Against Humanity in International Criminal Law*, p.154<sup>4</sup>

Formali, Hamidullah, *Signs of Violation of Women's Rights in Afghanistan*, previous, first and second volumes<sup>5</sup>



(March 1992 to March 1993), immediately after the fall of Najibullah's government supported by the Soviet Union<sup>6</sup>. Human Rights Watch added that some criminals are not alive and some others are hidden, but several of the leaders who have been accused of past crimes are, at present, high-ranking officials in the Ministry of Defense and the Ministry of Interior of the Government of this country. Some others have been preparing themselves for nominating for parliamentary or provincial council seats scheduled for September 2005. Brad Adams, the executive director of the Asian division of Human Rights Watch, has said that this report is not a mere history lesson. These are the most heinous atrocities in Afghanistan's history, yet many criminals are in power in the government today.

### **Crimes against humanity in international instruments**

#### **1. The process of war crimes, genocide, and crimes against human**

Crimes investigated by the International Criminal Court may occur during an international war, that is, a war between two or more countries, such as the Iran-Iraq war or during a civil war, such as the conflict in Rwanda. According to the Statute, the International Criminal Court investigates those criminal acts which have been committed after the entry into force of the Statute and the establishment of the Court. Thus, those crimes committed before 2002 cannot be investigated. However, you should not assumed that the domestic courts of member states have not been authorized to investigate international crimes. In the statute, as the founding instrument of the Court, the jurisdiction of the domestic courts is preserved. That is, the domestic courts have priority in investigating war criminals or other criminals described above, and it is not the duty of the International Criminal Court. However, as it can be seen from the conditions, the domestic court may not be able or may be reluctant to investigate war criminals. In this situation, the International Criminal Court can exercise its jurisdiction. The foundation of this court is a turning point in international law. It helps boost peace and cohesion among nations and brings order and peace to the international community.

The transformation of international criminal law has taken place slowly and steadily. Until the end of the nineteenth century, only crimes such as piracy or war crimes or the slave trade were included as punishments as international crimes, but at the end of World War II, crimes against humanity and peace and in 1948, the crime of genocide was added to this list.

#### **2. Prohibition on torture from the perspective of international instruments**

The prohibition on torture and degrading treatment has been stipulated in many non-binding international instruments. These instruments are more than other ones by number. First, come to the instruments related to the prohibition of torture or degrading. For example, some of these instruments are as below:

1. Universal Declaration on Human Rights 1948 ‘Article 5<sup>7</sup>
2. Declaration on the Protection of all Person from being subjected to Torture and other Cruel 1875‘ Articles 2 and 3<sup>8</sup>
3. Standard Minimum Rules for the Treatment of prisoners 1977‘ Rules 31‘ 32 ‘ 33 ‘ 34<sup>9</sup>

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Mohseni, Ali, interview with Afghan TV, Monday 8:30<sup>6</sup>  
 10 December 1048·UN.Doc.A/810·Article 5· Universal Declaration on Human Rights 1948<sup>7</sup>  
 Articles 2 and 3 · Declaration on the Protection of all Person from being subjected to Torture and other Cruel 1875<sup>8</sup>  
 UN.Doc.A/3452·  
 UN. Doc.E/5988(1977)· 34· 33 ‘ 32 ‘ Rules 31· Standard Minimum Rules for the Treatment of prisoners 1977<sup>9</sup>



4. code of conduct for law enforcement officials (1979)article 5<sup>10</sup>
5. principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment 1982,pinciples2,4 and 5<sup>11</sup>
6. body of principles for the protection of all persons under any form of detention or imprisonment 1988<sup>12</sup>

The prohibition on torture and degrading treatment is stipulated in non-binding regional instruments, including Articles 25 and 26 of the American Declaration of Human Rights and Duties (1948) and Article 20 of the 1990<sup>13</sup> Islamic Declaration of Human Rights. These instruments are also limited to a specific region with specific countries and do not belong to a global territory.

### **Conclusion**

The findings obtained from the present study show that war crime means a violation of international humanitarian law. War crime, as a criminal phenomenon, is categorized as an international crime. A war crime is a new concept, which was used vaguely in the 1977 Hague Convention on the rules of war for the first time. War crimes are committed during armed conflict. However, it should be noted that not all crimes in this regard are war crimes.

Investigating war crimes in international instruments showed that the farther states are in terms of the degree of political, legal, social and economic development, the more difficult it will be for them to have similar views and come to an agreement. In general, 24 international crimes have been listed in the existing international treaties, which are twice the number of crimes predicted in the Draft International Penal Code, including Rape, war crimes, illegal use of weapons (as a war crime), mass murder, crimes against humanity, racial and apartheid, slavery and related crimes, torture, (as a war crime), illegal trials Against humans (as a war crime), piracy, hijacking, crimes against the security of international maritime transport, threats and use of force against internationally protected persons, hostage-taking of civilians, drug-related crimes International narcotics, international trade in pornographic publications, destruction or looting of national resources (in time of war and sometimes in peace). On the other hand, some acts defined as a crime in the context of the draft are not predicted as an international crimes in existing international treaties, such as interference (Article 17), colonial domination (Article 18), and so on. In this way, new crimes have been listed in Draft International Penal Code, which are not considered international crimes according to the existing international conventions, and thus the Draft, if finally approved, complements the international conventions on international crimes.

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Body of principles for the protection of all persons under any form of detention or imprisonment 1988,principles <sup>12</sup>  
 1 and 6,un.doc.a/143/49(1988)

The cairo declaration on human rights in islam 1990,article 20<sup>13</sup>



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**Resources**

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