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## Victims of U.S. Torture, Indefinite Detention Appeal ICC Ruling That Blocked Investigation *Gitmo Prisoner Who Attempted Suicide is Among Appellants*

*October 1, 2019, The Hague/New York* – Yesterday, victims of U.S. torture appealed a ruling by the Pre-Trial Chamber of the International Criminal Court (ICC) refusing to allow the ICC Prosecutor to open an investigation into alleged crimes committed in Afghanistan and on the territory of other States Parties implicated in the U.S. torture program. The ruling was the first time the ICC had [rejected a Prosecutor’s request to open an investigation](#). Human rights attorneys say that ruling followed a [hostile campaign led by the Trump administration against the ICC](#). Yesterday, they [appealed the decision](#).

“The Pre-Trial Chamber’s unprecedented decision effectively blocks any investigation into torture and other serious crimes committed during the Bush administration,” said [Katherine Gallagher](#), Senior Staff Attorney at the Center for Constitutional Rights. “The ICC is supposed to be the Court of last resort to ensure accountability. The Chamber’s refusal to allow an investigation is instead a stamp of approval for impunity and a green light to perpetrators to continue to commit serious human rights violations without fear of consequence. The Appeals Chamber must make clear that the ICC won’t be bullied.”

The ruling appealed yesterday concluded that the alleged crimes committed in connection with the war in Afghanistan are within the Court’s jurisdiction and met all other criteria for launching an investigation—but nonetheless rejected the ICC Prosecutor’s request to open the investigation on the grounds that “an investigation would not serve the interests of justice,” explaining that both the “political landscape” and the “political climate” would make a meaningful investigation too difficult. Attorneys say these are clear references to the Trump administration’s attacks on the Court, including threats by then-National Security Advisor John Bolton to impose sanctions and criminally prosecute ICC officials and the revocation the ICC chief prosecutor’s visa. The Pre-Trial Chamber’s ruling came just one week after the visa was revoked.

“Victims of the U.S. torture program have been demanding accountability for years. They have a right to a remedy for the horrific abuses they suffered, including a thorough investigation and

prosecution of those responsible,” said Nikki Reisch, Counsel for the Global Justice Clinic at NYU School of Law\*, whose client, Mohammed al-Asad was held incommunicado and tortured in Djibouti and Afghanistan as part of the U.S.-run program. “Shutting the door to an investigation shuts victims out of a court that was designed to serve their interests. This appeal seeks to preserve their access to justice.”

The ICC Prosecutor submitted the request to open an investigation into the situation in Afghanistan in November 2017, seeking information about crimes against humanity and war crimes, committed variously by U.S. armed forces and members of the CIA, the Taliban and affiliated armed groups, and Afghan government forces. Tens of thousands of victims supported the request, submitting victim’s representations detailing their experiences. The Center for Constitutional Rights submitted [filings on behalf of two individuals](#) who were tortured in CIA black sites, proxy-detention, and DOD facilities, then held indefinitely in Guantánamo—where they remain today. One of those men, Center for Constitutional Rights client Sharqawi Al Hajj, recently [attempted suicide, cutting his wrists](#) with a piece of glass while on the phone with his lawyer.

Reprieve Deputy Director Katie Taylor said, “The ICC had never previously refused a request from the Prosecutor to open an investigation, and the decision to do so in this instance looks awfully like the court bowing to pressure from the U.S. Government. This appeal is an important step. Only a thorough, independent investigation can deliver the justice that survivors of 'war on terror' abuses in Afghanistan have waited so long for.”

Though the United States is not a party to the ICC Statute, the Court has jurisdiction over crimes committed by U.S. actors because they are alleged to have occurred within territories that are States Parties to the ICC.

“Our client, Abd Rahim Al-Nashiri, suffers every day from the torture and inhuman treatment he received in the black sites, under the direct control of the U.S. and with the approval and assistance of States Parties. This is precisely the type of case for which this Court was created,” said Mikolaj Pietrzak. Mr. Al-Nashiri is also represented by Nancy Hollander and Ahmad Assed.

The ICC Appeals Chamber has set a [three-day hearing on the appeal](#) filed by the U.S. torture victims beginning on December 4, 2019 in The Hague. Appeals filed on behalf of victims from Afghanistan and the Office of the Prosecutor will also be argued at the hearing.

For more information, [visit the Center for Constitutional Rights’ case page](#).

\*Communications from clinics at NYU School of Law do not purport to represent the school’s institutional views, if any.

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