

International Criminal Court Authorizes Investigation into U.S. Torture Program, Other International Crimes

Appeals Chamber Reverses Decision Blocking Investigation into Crimes Related to Conflict in Afghanistan

March 5, 2020, *The Hague* – Today, the Appeals Chamber of the International Criminal Court (ICC) reversed a decision by the Court’s Pre-Trial Chamber denying the ICC Prosecutor’s request to open a formal investigation into crimes committed in connection with the conflict in Afghanistan. The investigation will now proceed into alleged crimes against humanity and war crimes by U.S. armed forces and members of the CIA, the Taliban and affiliated armed groups, and Afghan government forces—including those committed as part of the U.S. torture program—in Afghanistan and on the territory of other States Parties to the Rome Statute implicated in the U.S. torture program. The investigation marks the first time senior U.S. officials may face criminal liability for their involvement in the torture program.

“Today, the International Criminal Court breathed new life into the mantra that ‘no one is above the law’ and restored some hope that justice can be available—and applied—to all,” said **Katherine Gallagher**, Senior Staff Attorney at the Center for Constitutional Rights and ICC Victims Legal Representative. “For more than 15 years, like too many other victims of the U.S. torture program, Sharqawi Al-Hajj and Guled Duran have suffered physically and mentally in unlawful U.S. detention, while former senior U.S. officials have enjoyed impunity. In authorizing this critical and much-delayed investigation into crimes in and related to Afghanistan, the Court made clear that political interference in judicial proceedings will not be tolerated.”

At a hearing before the Appellate Chamber in December, attorneys representing victims of the U.S. torture program, including Sharqawi Al-Hajj, Guled Duran, and Mohammed al-Asad, argued that the ICC investigation into the Afghanistan situation represents their last opportunity to obtain some measure of justice for the grave crimes they suffered. To this day, Al-Hajj and Duran remain detained at Guantánamo. Al-Asad died without seeing justice done; his wife continues his quest. The United States has been unwilling to investigate and prosecute civilian and military leadership responsible for torture and other grave violations of international law. The ICC is the court of last resort for those who have been denied justice elsewhere.

“On behalf of our client, Mohammed al-Asad and his surviving family, we applaud the Appeals Chamber for rejecting the repugnant logic of the U.S. torture program, which sought to place detainees in a legal black hole and deny them access to justice for the abuses they suffered,” said **Nikki Reisch**, Counsel for the Global Justice Clinic at NYU School of Law. “At a time when authoritarian tendencies are on the rise, the decision sends an important signal to all states that might does not make right, and that no one is above the law.”



The Pre-Trial Chamber’s refusal to authorize the investigation marked the first time the ICC had denied a Prosecutor’s request to open an investigation—and came on the heels of overt hostility toward the Court by the Trump administration. U.S. officials threatened to impose sanctions on and criminally prosecute ICC officials, and revoked the ICC Prosecutor’s visa to the United States. Although the Pre-Trial Chamber concluded that the legal criteria for opening an investigation were satisfied—there was evidence of grave crimes within the jurisdiction of the Court, which were not being prosecuted elsewhere—it nonetheless rejected the request. It stated that an investigation “would not serve the interests of justice,” speculated that the states concerned would not cooperate, and explained that the “political climate” and “political landscape” would make a meaningful investigation difficult.

The Center for Constitutional Rights represents two men who were tortured in CIA black sites, proxy-detention, and DOD facilities, then held indefinitely in Guantánamo—where they remain today. Sharqawi Al-Hajj and Guled Duran are among victims who submitted representations in support of the Prosecutor’s request, detailing their experiences. Al Hajj recently attempted suicide, cutting his wrists.

NYU’s Global Justice Clinic represents Mohammed al-Asad who was secretly detained and tortured in Djibouti and Afghanistan—both Member States of the ICC—as part of the U.S. torture program.

Other legal teams representing victims before the ICC include Reprieve and the attorneys for Abd al-Rahim al-Nashiri.

Reprieve's Deputy Head of UK litigation, **Preetha Gopalan**, said, “This decision is welcome news to everyone who believes that the perpetrators of war crimes should not enjoy impunity, no matter how powerful they are. This is the first time the U.S. will be held to account for its actions, even though it tried to bully the ICC into shutting this investigation down. That the ICC did not bow to that pressure, and instead upheld victims’ right to accountability, gives us hope that no one is beyond the reach of justice.”

Former diplomats, chief prosecutors, and United Nations Special Rapporteurs, as well as other international human rights and criminal law experts and non-governmental organizations, submitted amicus briefs in support of the investigation.

Although the United States is not a party to the ICC Statute, the Court has jurisdiction over crimes committed by U.S. actors on the territory of a State Party to the ICC.

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