

Center for Constitutional Rights

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Public Facing Advocacy Writing

Contact: press@ccrjustice.org

December 6, 2019, The Hague/New York During a three-day hearing this week, attorneys representing victims of the U.S. torture program argued before the Appeals Chamber of the International Criminal Court (ICC) to reverse a decision that blocked the ICC Prosecutor from investigating the grave crimes committed under the program. Specifically, the prosecutor sought to investigate alleged crimes against humanity and war crimes committed in Afghanistan and on the territory of other States Parties implicated in the program, committed variously by U.S. armed forces and members of the CIA, the Taliban and affiliated armed groups, and Afghan government forces. This case is the first and only time the highest criminal court in the world has considered whether the United States will be investigated and called to account for its torture program.

At a time when Donald Trump is using his power to pardon those who have committed war crimes, it is imperative that the ICC put an end to U.S. impunity for torture, said the Center for Constitutional Rights [Katherine Gallagher](#), the lead attorney for the victims. More than 15 years without accountability for serious international crimes by the Bush administration has only reinforced Trump's belief that he can absolve and commit serious human rights violations without consequence. We ask the Appeals Chamber at this historic hearing to authorize the investigation into the U.S. torture program and finally bring an end to this era of impunity for torture.

Victims lawyers argued that the crimes committed through the U.S. torture program belong before the ICC because of their widespread and systematic nature, the gravity of the harm done, and the unwillingness of the United States to investigate and prosecute the civilian and military leadership responsible for these serious violations. As [Gallagher argued to the Court](#), if the U.S. does not want the ICC prosecuting Americans, it has two choices: not to allow its military, intelligence, or other government officials to commit international law violations on the territory of the 122 Member States or if they do, to hold these senior U.S. officials accountable.

The ICC Prosecutor submitted a request to open an investigation into the situation in Afghanistan in November 2017. In April 2019, the Pre-Trial Chamber [rejected the request](#) the first time the ICC had ever denied a Prosecutors request to open an investigation. The Pre-Trial Chamber concluded both that crimes had been committed and that no other court had provided accountability for those crimes the key criteria for launching an investigation. Nonetheless, it rejected the Prosecutors request on the grounds that an investigation would not serve the interests of justice.

The U.S. Torture Program was a systematic, calculated effort to create a legal black hole and place individuals outside the protection of the law and the jurisdiction of the courts, said **Margaret Satterthwaite**, Director of the Global Justice Clinic at NYU School of Law. Our client, who was victimized by this program, was kidnapped, secretly detained, and tortured in U.S.-run secret prisons for over a year. Telling his story before the International Criminal Court this week highlighted the gravity of these abhorrent crimes and brought us one step closer to achieving long-denied accountability.

The Trump administration has been overtly hostile toward the ICC, threatening to impose sanctions and criminally prosecute ICC officials. In its decision which came less than two weeks after the U.S. revoked the chief ICC Prosecutors visit the Pre-Trial Chamber explained that the political climate and the political landscape would make a meaningful investigation difficult. After speculating that the countries concerned would not cooperate in any investigation and noting that too much time had passed since the crimes were committed, the Chamber concluded that the ICC's resources could instead be spent on investigating and prosecuting other crimes. Attorneys say this perverts the very purpose of the ICC as the court of last resort for those who have been denied justice elsewhere. In the hearing this week, attorneys with the Center for Constitutional Rights and the Global Justice Clinic at NYU School of Law asked the Appeals Chamber to vacate the Pre-Trial Chambers decision and authorize the investigation.

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 Prosecutors 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.

Former diplomats, former chief prosecutors, former United Nations Special Rapporteurs, international human rights and criminal law

experts, and non-governmental organizations have submitted amicus briefs in support of the investigation.

Last week, the Appeals Chamber granted a request from Afghanistan to participate in the hearing. It argued that the ICC should not authorize the investigation because it should leave accountability for crimes against Afghans to the domestic justice system.

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 of States Parties to the ICC.

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

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The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, the Center for Constitutional Rights has taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. Learn more at ccrjustice.org.

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666 Broadway
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