

From [Democracy Now](#) | Original Article

The International Criminal Court has announced it will not investigate possible war crimes and crimes against humanity committed by the United States and other actors in Afghanistan. The court suggested the U.S.'s lack of cooperation with the investigation was behind the decision. Earlier this month, the U.S. revoked the visa of the ICC's chief prosecutor, Fatou Bensouda. A 2016 report by the ICC accused the U.S. military of torturing at least 61 prisoners in Afghanistan during the ongoing war. The report also accused the CIA of subjecting at least 27 prisoners to torture, including rape, at CIA prison sites in Afghanistan, Poland, Romania and Lithuania. We speak to Katherine Gallagher, senior staff attorney at the Center for Constitutional Rights.

AMY GOODMAN: This is *Democracy Now!* I'm Amy Goodman, with Juan González.

JUAN GONZÁLEZ: Well, the International Criminal Court has announced it will not investigate possible war crimes and crimes against humanity committed by the United States and other actors in Afghanistan. The court suggested the U.S.'s lack of cooperation with the investigation was behind the decision. Earlier this month, the U.S. government revoked the visa of the ICC's chief prosecutor, Fatou Bensouda. This came after the Trump administration announced it would bar entry to any ICC investigators probing alleged war crimes by the U.S. military in Afghanistan.

AMY GOODMAN: A 2016 report by the International Criminal Court accused the U.S. military of torturing at least 61 prisoners in Afghanistan during the ongoing war. The report also accused the CIA of subjecting at least 27 prisoners to torture, including rape, at CIA prison sites in Afghanistan, Poland, Romania and Lithuania.

For more, we're joined by Katherine Gallagher, a senior staff attorney at the Center for Constitutional Rights. She filed victims' representations with the Pre-Trial Chamber in support of

the investigation.

Welcome to *Democracy Now!* What’s happened here?

KATHERINE GALLAGHER: Well, what we saw on Friday was a very dangerous decision from the Pre-Trial Chamber of the ICC. It was profoundly misguided. If what the Pre-Trial Chamber claims it wanted to do was bolster the credibility of the International Criminal Court and operate in the interests of justice, including the interests of victims, it went in the opposite direction. The only people who could be applauding this decision, frankly, are Donald Trump and John Bolton.

You had victims’ groups from Afghanistan, victims’ representations of individuals who were detained as part of the U.S. torture program, file victims’ representations on behalf of tens of thousands of people. Back in the winter of 2017, 2018, Afghan civil society groups literally risked their lives to collect victims’ representations, to say, “Make this investigation go forward. End impunity.” The same happened in my case of getting victims’ representations from two men who continue to be detained in Guantánamo. We all said that this investigation is in the interests of justice. And the Pre-Trial Chamber, bizarrely, frankly, said it is not. One can only conclude that this is the result of some serious political pressure by the United States, including not only on the court, but member states of the court.

JUAN GONZÁLEZ: Well, I wanted to ask you about the implications. It’s not just the Trump administration, but, clearly, some former Bush officials, like Dick Cheney and Donald Rumsfeld, are also glad these days of this decision. But what’s the implication of the ability of the U.S. government to effectively intimidate an international body like this?

KATHERINE GALLAGHER: And that’s precisely why it’s such a dangerous decision. It sends the message that bullying works. So, whether for Russia, who right now is looking to be investigated for Georgia and Ukraine, whether for Israel—of course, Palestine joined the ICC—this says, “Obstruct, and you will be rewarded with impunity.” So, I think, for the member states, of whom there are 122, who believe in international justice, they need to send the clear message, “We back the court, and this investigation should proceed.”

AMY GOODMAN: President Trump applauded the decision, saying in a statement, “Since the

creation of the ICC, the United States has consistently declined to join the court because of its broad, unaccountable prosecutorial powers; the threat it poses to American sovereignty; and other deficiencies that render it illegitimate. Any attempt to target American, Israeli, or allied personnel for prosecution will be met with a swift and vigorous response.” And explain the response. For example, what happened with one of the ICC judges?

KATHERINE GALLAGHER: Sure. So, a couple of things to unpack there. First of all, it’s true the United States is not a member state of the ICC. The reason why individuals can come within the jurisdiction of the court is because the U.S. chose to operate on the territory of member states. It chose to set up black sites, detention centers, commit acts of torture. So, it has brought itself, through its actions of a global rendition and torture program, into the purview of the ICC

In terms of responses from the court, we did see statements made, but I frankly don’t think we saw a strong enough response for member states. That includes those states in Eastern Europe—Lithuania, Poland and Romania—and the other European states, or Jordan or Djibouti, states that are implicated in ways of furthering the torture program. What did they say to the IC C prosecutor? Did they pledge their support? That, I think, is something that we want to see happen, if this appeal, which we understand the prosecutor will be filing, will go forward.

And in terms of U.S. officials, you mentioned Dick Cheney and George Bush. There’s George Tenet. These are all individuals who could be within the scope of the investigation. There’s also Gina Haspel. She’s a person who ran a black site, not in Afghanistan, as far as we know, but she is now the head of the CIA, for a president who we’ve seen, time and time again, does not believe in the rule of law, and believes that he is above the law. So, when he has Gina Haspel running the CIA right now, we have to ask: What is happening in other countries around the world? What is it that they don’t want investigated? These are not crimes only of the past.

And if you ask Afghan civil society, they will say this also gives a green light to the Taliban. The purported reason for why the U.S. went to endless war in Afghanistan was to protect Afghan civilians. And with this decision, it’s done the absolute opposite. It’s empowered impunity and empowered warlords.

AMY GOODMAN: Katie Gallagher, I wanted to switch topics. Trump issued the second veto of his presidency Tuesday, blocking a congressional effort to end U.S. support for the Saudi-led war in Yemen, which has killed thousands of civilians, leading to the greatest humanitarian catastrophe in the world. Your response?

KATHERINE GALLAGHER: Well, we saw, finally, a very, very late response from Congress, saying, “Let’s get out of the business of assisting war crimes and crimes against humanity”—what has been happening against Yemeni civilians for years now. And in the face of finally saying, “Let’s stop backing Saudi Arabia,” this is what Donald Trump did. It is, again, another example of lawlessness, of impunity, of a lack of care about civilians, of individuals. It’s more cruelty. So...

JUAN GONZÁLEZ: And in the little time we have left, Attorney General Barr’s decision—directive to immigration judges to deny bond to those who are seeking—who are detained and are seeking asylum in the United States?

KATHERINE GALLAGHER: Well, the first reaction would be to remind everyone that asylum—seeking asylum is not a crime. And, in fact, under international conventions, like the Refugee Convention or the Convention Against Torture, which prohibits sending a person back to a place where they’ll be tortured, it is actually a right. It is a human right to seek asylum. And what the Trump administration, through Barr’s proposal, is setting forth is something that, again, is unbound by law, both international law and contrary to U.S. law, which says that asylum seekers and people—people—deserve due process. So, it’s, again, another truly lawless and cruel move.

AMY GOODMAN: Well, we want to thank you so much for being with us, Katherine Gallagher, senior staff attorney at the Center for Constitutional Rights.