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Prosecutor Seeks to Move Forward With Investigation Against Only Taliban, Islamic State-Khorasan Province

September 27, 2021—Prosecutor Karim A.A. Khan of the International Criminal Court (ICC) this morning released a [statement](#) indicating that the court will end its investigation into torture and other crimes committed by U.S. personnel arising out of the armed conflict in Afghanistan, or with a nexus thereto, and at so-called "black sites" in other ICC member countries. In announcing that he was seeking to resume his Afghanistan investigation, Khan said he will focus on the alleged crimes of the Taliban and the Islamic State-Khorasan Province and "deprioritize other aspects," obliquely referring to U.S. crimes and those by Afghan national forces.

The United States has refused to hold accountable the civilian and military leaders responsible for torture of thousands of primarily Muslim men and boys committed as part of the so-called "war on terror." If such a decision is allowed to stand, the ICC—the court of last resort for those denied justice elsewhere—will have virtually ensured that victims of torture and other crimes committed by U.S. officials will be denied redress.

This announcement comes after the ICC appeals chamber [authorized](#) an investigation into U.S. torture and other crimes as requested by the former prosecutor, Fatou Bensouda last year. It also follows a campaign of attacks on ICC staff and anti-ICC measures by President Trump and other U.S. officials, including placing the former prosecutor and one of her senior staff on the U.S. sanctions list. The Biden administration only [repealed those measures](#) in April 2021.

"If the Prosecutor is indeed shuttering, or 'deprioritizing,' the court's investigation of U.S. torture at black sites and detention centers, he's telling war criminals around the world that the U.S. playbook of delay and intimidation works," said [Katherine Gallagher](#), a senior staff attorney at the Center for Constitutional Rights and ICC Victims Legal Representative. "It also validates one of the core criticisms of the ICC: that it only takes action against politically weaker individuals or nations while giving Western powers a pass."

The Center for Constitutional Rights represents [Shargawi Al-Haji](#) and [Guled Duran](#) , who were tortured in CIA black sites, proxy-detention, and Department of Defense facilities, and sent to the prison at Guantánamo, where they remain indefinitely. For years, these men have sought to have their day in court and participated in ICC proceedings, including a filing just last week, yet the ICC did not notify them of the Prosecutor's decision. Along with the rest of the public, they learned the news via press release.

The Prosecutor's purview covers not only crimes committed in Afghanistan but also those with a nexus to the war there. As such, the investigation could have held accountable U.S. officials responsible for crimes committed in black sites around the world, including in Poland, Lithuania, and Romania, as well as other crimes by the U.S. and international forces, such as those arising out of drone strikes. Although the United States is not a party to the ICC, the court has jurisdiction over crimes committed by U.S. personnel in the territory of member states.

While human rights defenders say it is a positive step that *some* investigation of crimes against Afghan civilians is moving forward, this move represents a troubling start for Mr. Khan, who recently began a nine-year term as ICC Prosecutor. To explain his decision, he cited the withdrawal of U.S. forces and a lack of resources.

"The ICC, especially the Prosecutor's office, is under-resourced, and that means crimes that should have already been investigated—whether by the Taliban or U.S. forces—have been left unaddressed. This is a real problem both because it undermines investigations and because it's a backdoor way for member states to control the court through the budget," said Gallagher. "But this does not—and cannot—justify letting the United States get away with its worldwide torture regime. Today's announcement marks a concerning day for the ICC—and international justice."

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