

ICC Drops Probe into Alleged UK War Crimes in Iraq Despite 'Reasonable' Evidence

Court prosecutor says there is 'reasonable basis' UK forces committed abuses, including willful killing and rape, in Iraq

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Global Research, December 11, 2020

[Middle East Eye](#) 9 December 2020

Region: [Europe](#), [Middle East & North Africa](#)

Theme: [Intelligence](#), [US NATO War Agenda](#)

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Despite finding “reasonable basis” for allegations of war crimes against British soldiers in Iraq, an International Criminal Court (ICC) prosecutor dropped a preliminary investigation, citing the UK’s own efforts to investigate the conduct of its troops in the war.

In a statement released on Wednesday, prosecutor Fatou Bensouda acknowledged the fact that the probe did not lead to the prosecution of any suspects, but stressed that the outcome of the investigation does not mean war crimes did not occur.

“There is a reasonable basis to believe that members of the British armed forces committed the war crimes of willful killing, torture, inhuman/cruel treatment, outrages upon personal dignity, and rape and/or other forms of sexual violence,” Bensouda said.

“The Office [of the Prosecutor] has identified a confined number of incidents to reach this determination which, while not exhaustive, appear to correspond to the most serious allegations of violence against persons in UK custody.”

The ICC statement also refuted claims that legal proceedings made on behalf of Iraqi victims of alleged war crimes were all “vexatious” or spurious, as stated by former British Prime Minister Theresa May and her successor Boris Johnson.

“The Office has found untenable the proposition that these various processes all arose from vexatious claims,” the ICC prosecutor said in her statement, adding that the lack of prosecutions “has deprived the victims of justice”.

The UK’s Service Prosecution Authority threw out hundreds of claims brought on behalf of Iraqis against the UK Ministry of Defence for alleged abuses.

Rupert Skilbeck, director of legal firm Redress, which brings legal cases on behalf of victims of torture, said:

“Survivors of torture and ill-treatment will be profoundly disappointed that the ICC Prosecutor will not now be pursuing her investigation against the UK.

“The prosecutor is clear that there was strong evidence of war crimes – including the use of the ‘five techniques’ [of physical and psychological abuse]

- and identifies numerous concerns with the UK investigations, not least that there were no prosecutions despite such a large number of accepted claims.”

‘Shoot to kill’

Middle East Eye has previously reported damning evidence of alleged abuses by British forces in Iraq including:

- How the British Army [relaxed the rules of engagement](#) while soldiers were stationed in Basra in 2007 to sometimes allow them to ‘shoot to kill’ unarmed civilians
- How the British Army [deployed interrogators](#) to the US-run Abu Ghraib prison despite being aware of reports that detainees were being tortured
- How British and US forces ran [secret desert prisons](#) in Iraq after the 2003 invasion, concealing detainees from Red Cross inspectors

In August, MEE [reported](#) in a story cited in the ICC report that the Ministry of Defence could not say how many millions of pounds it had paid to thousands of Iraqis who had lodged complaints of mistreatment by British forces because it would take weeks for civil servants to collate the figure.

In Wednesday’s ICC report, the prosecutor detailed alleged incidents committed by UK armed forces against “civilians or hors de combat” at detention facilities in Iraq between 2003 and 2009.

The report speculated that the Iraq Historic Allegations Team (IHAT) and later the Service Police Legacy Investigations (SPLI) – which led internal UK probes – did not press charges against soldiers because of a lack of evidence or because they were not confident in securing convictions.

The report justifies the ICC’s decision to drop its inquiry by emphasising that the court can only act when the country of origin of the suspects is demonstrably unable or unwilling to investigate alleged atrocities.

“As the court has emphasised, the ICC is not a human rights body called upon to decide whether in domestic proceedings the requirements of human rights law or domestic law have been violated,” it read.

“Rather it is tasked with determining whether it should exercise its own competence in a criminal case, in place of the primary duty which belongs to a state.

“To do so, the court must be satisfied that no relevant proceedings have been undertaken, or if they have, that those proceedings were not genuine, either because the state is unable to undertake genuine proceedings, or because the state is unwilling to do so in the sense that it has taken steps to shield perpetrators from criminal justice.”

The report’s release comes with the UK government currently pushing legislation through parliament to shield soldiers from prosecution for any acts of murder or torture committed after the invasion of Iraq in 2003.

The [Overseas Operations Bill](#) has been criticised by parliament's human rights committee, human rights groups and former soldiers who argue that the proposed new protections are dangerous and demeaning.

'Ugly double standard'

Bensouda's office had [previously probed](#) whether the UK's own investigation was genuine.

"The office will seek to ascertain whether the allegations of a lack of genuineness can be substantiated in order to enable it to come to a final determination with respect to the preliminary examination as early as practically possible," a report said in August.

The UK was the chief partner of the US in the invasion of Iraq that toppled Saddam Hussein in 2003.

Both American and British forces have faced accusations of abuse during the conflict, which killed hundreds of thousands of Iraqis.

Earlier this year, Washington [imposed sanctions](#) on top ICC officials, including Bensouda, over investigations of US abuses in Afghanistan and Israeli war crimes against Palestinians.

On Wednesday, Human Rights Watch voiced disappointment in the ICC's decision to terminate the case.

"The UK government has repeatedly shown precious little interest in investigating and prosecuting atrocities committed abroad by British troops," said Clive Baldwin, senior legal adviser at HRW.

"The prosecutor's decision to close her UK inquiry will doubtless fuel perceptions of an ugly double standard in justice: one approach to powerful states and quite another for those with less clout."

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