UK referred to International Criminal Court for war crimes in Iraq

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International Criminal Court (ICC) prosecutor, Fatou Bensouda, has accepted the complaint lodged in January alleging that UK military personnel committed war crimes against Iraqis in their custody between 2003 and 2008. She has ordered a preliminary investigation.

It is the first step into a possible criminal prosecution against Britain's political and military leaders, including politicians, senior civil servants, lawyers, Chief of Defence Staff and Chief of Defence Intelligence, who bear ultimate responsibility for systematic abuse of detainees in Iraq.

This is the first time the ICC in The Hague has opened an enquiry into a Western state. Almost all of the ICC's indictees have been African heads of state or officials. The United States—not a signatory to the Rome Statute that established the ICC in 2002—and the other major powers get off scot-free. The ICC has turned a blind eye to the most blatant human rights abuses in Iraq, Afghanistan, Libya, the West Bank and Gaza, where their perpetrators are protected by a US veto at the United Nations Security Council.

At the same time, the imperialist powers cynically use the court to target people hostile to their interests. As a result, the ICC has become widely discredited.

Bensouda's decision flows from an official complaint by the British Public Interest Lawyers (PIL) and the European Centre for Constitutional and Human Rights (ECCHR) last January. Their 250-page submission, the most detailed ever submitted to the ICC on war crimes committed by British forces in Iraq, took years to compile. It documented the new facts and additional evidence that had become available since the initial complaint in 2006.

In 2006, the ICC's then-prosecutor, Luis Moreno-Ocampo, said that he had received more than 240 complaints relating to alleged war crimes during the Iraq war and occupation, mostly by the US and Britain. He concluded that there was little doubt that wilful killing and inhumane treatment, crimes that fell within the ICC's jurisdiction, had been committed. But he refused to mount an investigation because of the small number of cases—fewer than 20.

PIL and ECCHR's compilation of evidence relating to hundreds of other victims and thousands of claims makes a mockery of his decision, which the ICC has been forced to concede. Bensouda said that she was reopening the case because the new complaint "alleges a higher number of cases of ill-treatment of detainees and provides further details on the factual circumstances and the geographical and temporal scope of the alleged crimes." *The Responsibility of UK officials for War Crimes Involving Systematic Detainee Abuse in Iraq from 2003-2008* documents claims by 412 Iraqis of severe physical and psychological abuse while in the custody of UK services personnel. The list of the most serious allegations is damning.

They include the use of sensory deprivation and isolation, food and water deprivation, the use of prolonged stress positions, the use of the "harshing" technique which involves sustained aggressive shouting in close proximity to the victim, a wide range of physical assault, including beating, burning, electrocution or electric shocks, both direct and implied threats to the health and safety of the detainees and/or friends and family, including mock executions and threats of rape, death, torture, indefinite detention and violence.

There are claims that British personnel used environmental manipulation such as exposure to extreme temperatures, forced exertion, cultural and religious humiliation. Other allegations referred to a wide range of sexual assaults and humiliation including forced nakedness, sexual taunts and attempted seduction, touching of genitalia, forced or simulated sexual acts, and forced exposure to pornography and sexual acts between

soldiers.

In all, the victims made thousands of allegations of mistreatment that amount to war crimes: torture, inhuman or degrading treatment as well as the deliberate infliction of grievous suffering and/or serious injury. They were not dissimilar from those of the infamous US torture at Abu Ghraib prison. The sheer scale of the crimes, committed repeatedly at numerous sites and over a long period, testify to the systematic use of illegal methods of detention and interrogation, sanctioned at the top of the military and political chain.

UK military commanders "knew or should have known" that forces under their control "were committing or about to commit war crimes," but failed to act. "Civilian superiors knew or consciously disregarded information at their disposal, which clearly indicated that UK services personnel were committing war crimes in Iraq."

PIL and ECCHR specifically called for Britain's most senior army personnel and politicians, including former Secretaries of State for Defence Geoffrey Hoon, John Reid, Des Browne and John Hutton and Ministers of State for the Armed Forces Personnel Adam Ingram and Bob Ainsworth as officials who should have to answer claims about the systematic use of torture and cruelty.

The British government has rejected the allegations. Foreign Secretary William Hague argued that there was no need for an ICC investigation because Britain had in 2010 set up IHAT, the Iraq historic allegations team, which was already examining allegations of mistreatment.

IHAT is little short of a farce. In the nearly four years since its establishment, IHAT has completed just a handful of the cases on its books, fining one soldier a measly £3,000 for badly beating an Iraqi, which was captured on video. Its case list includes 52 allegations of "unlawful death" involving 63 victims, and 93 allegations of mistreatment involving 179 victims, including all but one of the cases referred to the ICC.

Should IHAT determine that there is sufficient evidence to proceed with charges, it will be up to the director of service prosecutions, Andrew Cayley QC, responsible for bringing court martial cases, to determine whether charges are in the public interest. Furthermore, it will need the attorney general's consent before he can charge individuals with committing war crimes under English law.

In other words, top government and military figures will determine whether charges can be brought.

A year ago, two High Court judges called for "a new approach" to the probe into the allegations made by 180 Iraqis. While they stopped short of ordering a full public inquiry, they concluded that the IHAT investigation "does not fulfil" the UK's human rights obligations under international and domestic law, requiring there to be proper public scrutiny of these cases.

The ICC's enquiry hinges on its confidence in IHAT. While Bensouda agreed to a preliminary enquiry, she did not ask the court to order the formal investigation under article 15(3) that PIL and ECCHR had requested. The court will only try defendants when states are unwilling or unable to do so, i.e., if the British government is unable to demonstrate it is investigating the allegations and is prepared to bring charges against the alleged perpetrators of war crimes.

The ICC has form. The imperialist powers had sought the trial in 2011 of Libya's Muammar Gaddafi, Saif al-Islam Gaddafi and Abdullah al-Senussi during the illegal regime-change campaign waged by the American, British and French governments.

Following the gruesome murder of Gaddafi, and the capture of Saif al-Islam and al-Senussi by Libyan militias, Washington, London and Paris lost interest in an ICC trial which would expose embarrassing details about the intimate relations between the Gaddafi regime and the Western powers between 2004 and 2011.

Al-Senussi would undoubtedly spill the beans about Washington and London's global torture network, while Saif al-Islam might call the UK prime minister Tony Blair and others as witnesses. Instead, pre-trial judges at the ICC, at the behest of the majorpowers, agreed to al-Islam and al-Senussi being tried in Libya, a ruling that was overturned two weeks ago.