The ICC refuses to prosecute UK war crimes in Iraq despite “reasonable” evidence

Jean Shaoul
17 December 2020

The International Criminal Court (ICC) has abandoned its inquiry into war crimes committed by British troops in Iraq between 2003 and 2008.

The decision is a green light to the major powers to ignore international criminal and humanitarian law when pursuing their imperialist interests throughout the world.

ICC prosecutor Fatou Bensouda announced the decisions even as she admitted there was a “reasonable basis to believe” that British armed forces may have carried out atrocities, including the willful killing of detainees held in custody in Iraq between 2003 and 2008.

She admitted that this was not simply a case of a few “bad apples,” but stemmed from institutional failings, saying, “[My office] further found that several levels of institutional civilian supervisory and military command failures contributed to the commission of crimes against detainees by UK soldiers in Iraq.”

The ICC’s shameless decision hinges on citing its remit stipulating that it can only proceed to a formal investigation and prosecution if it deems that the domestic courts and investigative bodies have failed to fulfil their proper legal functions.

Bensouda stated that Britain had set up the Iraq Historic Allegations Team (IHAT) in 2010 in response to the “admitted failures of the British army at the time to conduct effective investigations.” IHAT investigated 3,405 war crimes allegedly committed by British troops during the occupation of Iraq between 2003 and 2009. But despite evidence of widespread abuse and mistreatment, including the killing of unarmed civilians and children, she noted that no charges had been brought against any soldiers—“a result that has deprived the victims of justice.”

Rejecting the notion that these claims were vexatious, as the government has sought to imply, Bensouda claimed that the failure to prosecute meant that the investigations had failed to find sufficient evidence to warrant action being taken or to provide a realistic prospect of conviction in a criminal trial. Her remarks clearly implied that the authorities did not find the evidence because they did not want to. Nevertheless, she concluded there was no proof that the British authorities had blocked any investigations or were unwilling to pursue them.

With that sleight of hand, Britain was off the hook. So long as there had been a domestic investigation, the ICC would not prosecute, whatever the evidence.

Bensouda’s statement nevertheless confirms that IHAT was a fraudulent effort on the government’s part to claim that war crimes evidence was being investigated to combat the growth of widespread anti-war sentiment, while successfully forestalling any ICC prosecution.

The New York-based Human Rights Watch (HRW) was clear on the significance of the decision. Clive Baldwin, HRW’s senior legal adviser, said, “The UK government has repeatedly shown precious little interest in investigating and prosecuting atrocities committed abroad by British troops. 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.”

The UK’s civil courts and public inquiries have found extensive evidence of torture by British forces in Iraq—with most of the allegations focusing on the conduct of British military interrogators—forcing the government to pay out millions of pounds in out-of-court settlements to avoid criminal prosecutions.

On the government’s own admission, it has received so many complaints from Iraqis unlawfully detained and mistreated by British troops that the Ministry of Defence (MoD) says it is unable to say how many millions of pounds have been paid to settle the claims. The MoD claims it can give approximate figures for the thousands of Iraqis who have lodged complaints against British forces involved in the 2003 US-led invasion and

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subsequent occupation of Iraq, but it has refused to answer a Freedom of Information request by the *Middle East Eye* (MEE) website about the amount spent settling these claims, citing the cost to collate the information.

In 2017, replying to a similar request, the MoD disclosed that it had paid £19.8 million in 326 cases brought before the UK courts and that £2.1 million had been paid out in a further 1,145 cases by British military officials in Iraq between 2003 and 2009. This payment included £2.8 million paid to the family of Baha Mousa, a Basra hotel receptionist, who was tortured to death in September 2003.

The MEE believes that the number of payouts has ballooned since 2017, given the MoD's "approximate figures" showing around 1,200 cases in the UK and another 3,200 cases in Iraq.

A parliamentary report into the IHAT investigation, which called for it to be closed down, acknowledged that Iraqi prisoners had been abused, saying that this was apparently, in part at least, due to the "inaccurate" training British military interrogators had received, which put them at risk of breaking the Geneva Conventions. Not only did the report suggest the abuses had a systemic character, it also stated that the MoD's admission that training material for interrogations "contained information which could have placed service personnel outside of domestic or international law represents a failing of the highest order."

This would place responsibility for the abuse of Iraqi detainees not just on the individual military interrogators but the higher echelons within the military and Ministry of Defence, which the government was not prepared to countenance. It demonstrates how much is at stake for the ruling establishment as the commitment to militarism and defence spending grows, along with preparations to use the military at home in the context of Brexit and the pandemic.

Days later, the then Minister of Defence Sir Michael Fallon announced the closure of the IHAT investigation, ostensibly because one of the human rights lawyers, Phil Shiner, from the now-defunct law firm Public Interest Lawyers, in charge of many of the abuse allegation cases, was struck off for misconduct.

It contrasts starkly with Britain's treatment of WikiLeaks journalist and publisher Julian Assange. Assange's only "crime" was to expose war crimes—including killings, torture, abuse—regime-change operations, and global spying committed by the US and its allies, including Britain. In the eyes of the ruling class, whistle-blowers, not the perpetrators, are the real criminals. Assange sits in London's maximum-security Belmarsh Prison, dubbed the UK's Guantánamo Bay—amid the spread of COVID-19 throughout the facility—as the US seeks his extradition to face jail for life, if not execution, on US Espionage Act charges.

It was precisely because the evidence in some cases was so damning that in 2014 ICC prosecutor Fatou Bensouda had accepted a complaint alleging UK military personnel had committed war crimes against Iraqis in their custody between 2003 and 2008 and ordered a preliminary investigation.

This was the first time the ICC had opened an enquiry into a Western state. Previously, the ICC had focused almost exclusively on African heads of state or officials, while allowing the US—not a signatory to the Rome Statute that established the ICC in 2002—and the other major powers get off scot-free.

The imperialist powers that orchestrated these criminal wars are determined that they should never be brought to account for their war crimes. In June, the Trump administration sought to discredit the ICC, announcing sanctions on the ICC's senior officials, including Bensouda, blocking their assets in the US and banning them from entering the country. This was in response to the ICC's investigations of US abuses in Afghanistan and Israeli war crimes against Palestinians. The ICC has duly bowed to the pressure.

The British government has introduced legislation proposing a five-year limit on prosecutions for soldiers serving outside the UK. The Overseas Operations (Service Personnel and Veterans) Bill creates a "presumption against prosecution" that gives the green light to future war crimes, including torture and the mass murder of civilians.

The legislation will further serve to protect the MoD, which has repeatedly covered up war crimes committed by British forces in Iraq and Afghanistan, thereby putting the military above the law and sanctioning war crimes by British forces. It signifies that the UK, like the US, has abandoned any commitment to the post-World War II international order.

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