



Sir George Newman
Inspector
The Iraq Fatalities Investigation
HQ London District
Horse Guards
London SW1A 2AX
United Kingdom

via the British Embassy in The Hague

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Date: 2 December 2014

Dear Sir George,

I write in response to Ms Sarah Ramsey's letter dated 6 October 2014, requesting a non-use undertaking in relation to evidence given to your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the deaths of two Iraqi nationals.

Following a careful legal assessment of your request, I have concluded that such an undertaking would not violate any of my obligations under the Rome Statute. In particular, I note that Rule 74 of the Rules of Procedure and Evidence ("RPE") of the International Criminal Court ("ICC") provides for the possibility of a similar undertaking to be provided in the context of proceedings before the ICC. Because Rule 74 of the RPE contains a specific mechanism allowing the ICC to provide a witness with an assurance of non-use of self-incriminating evidence in any subsequent prosecution before the ICC, I have determined that in the particular circumstances of the Iraq Fatality Investigations ("IFI"), an assurance of non-use of self-incriminating evidence would be in accordance with the object and purpose of this rule. At the same time, such an assurance could also make it more likely that information regarding the facts and circumstances of these two deaths which may be relevant to my Office's preliminary examination, and to any possible subsequent investigation and prosecution by my Office, could be brought to light.

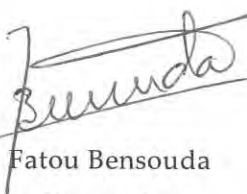
Please therefore construe this letter as an assurance by my Office, that any self-incriminating evidence provided to the IFI by any of the soldiers alleged to have participated in the immediate

circumstances leading to the deaths of Mr Nadheem Abdullah in May 2003, and of Mr Hassan Abbad Said in August 2003, will not be used by my Office either directly or indirectly as incriminating evidence in any possible subsequent prosecution before the ICC of any soldier that provided that evidence. "Evidence" includes oral evidence, any written statement made by that person preparatory to giving evidence to the IFI or during the course of his or her testimony to the IFI, and any document or information produced to the IFI solely by that person.

Let me, however, clarify that the two incidents which form the subject of your investigations fall within the scope of my Office's preliminary examination. I am therefore unable to provide an assurance of non-prosecution in relation to those incidents. An assurance not to prosecute particular individuals would not be consistent with my statutory obligations, particularly at the preliminary examination stage, where there are as yet no individual suspects and the contours of my potential cases are only defined in very general terms. Nonetheless, I should recall that my prosecutorial policy, as a general rule, is to investigate and prosecute individuals who bear the greatest responsibility for the most serious crimes, the determination of which is based on the evidence that emerges in the course of an investigation. Thus, as a matter of prosecutorial discretion, I would normally select for prosecution those situated at the highest rather than the lowest echelons of responsibility.¹

I hope that this letter will facilitate your efforts to investigate and establish the circumstances that led to these deaths, and that this assurance will help to provide the soldiers you wish to interview with additional clarity and assuage their concerns regarding prospects of being prosecuted before the ICC on the basis of any evidence they give before the IFI.

Yours sincerely,



Fatou Bensouda
Prosecutor

¹ See ICC Office of the Prosecutor, "Strategic plan June 2012-2015," 11 October 2013, at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Documents/OTP%20Strategic%20Plan.pdf, pp. 13-14.