



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

Ref.: OTP2017/022634

Date: 4 August 2017

Dear Sir George Newman,

I write in response to your letter dated 21 July 2017, requesting a non-use undertaking in relation to evidence given in your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the death of Tariq Sabri Mahmud ("Mr Mahmud", referred to elsewhere as Taniq Sabri Mahmud and Tarik Sabri Mahmud) on 11-12 April 2003.

I recall that in the past you have requested a similar assurance in relation to evidence given to your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the deaths of Iraqi nationals.<sup>1</sup> Following a careful legal consideration of your initial request, I concluded that such an undertaking would not violate any of my obligations under the Rome Statute, as explained in my previous correspondence, in particular my replies of 2 December 2014 and 8 December 2015. I determined that in the particular circumstances of the Iraq Fatality Investigations ("IFI"), such an assurance of non-use of self-incriminating evidence would be in accordance with the object and purpose of the Rules of Procedure and Evidence of the International Criminal Court ("ICC"), in particular Rule 74.

Likewise, with reference to your request of 21 July 2017, I can provide a similar assurance 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 death of Mr Mahmud on 11-12 April 2003 will not be

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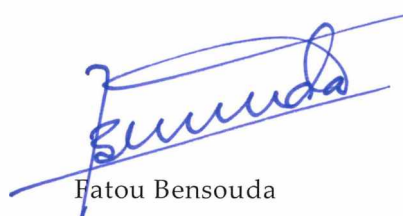
<sup>1</sup> Your letters dated 6 October 2014, 14 October 2015, 7 January 2016, and 7 September 2016.

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.

Let me reiterate, however, that the incident 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 that incident. 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.<sup>2</sup>

As with previous cases, I hope that this letter will facilitate your efforts to investigate and establish the circumstances that led to the death of Mr Mahmud, 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

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<sup>2</sup> See ICC Office of the Prosecutor, "Strategic Plan June 2012-2015," 11 October 2013, at <https://www.icc-cpi.int/iccdocs/otp/OTP-Strategic-Plan-2013.pdf>, pp. 13-14; and "OTP Strategic Plan 2016-2018", 16 November 2015, pp.15-16 at [https://www.icc-cpi.int/iccdocs/otp/070715-OTP\\_Strategic\\_Plan\\_2016-2018.pdf](https://www.icc-cpi.int/iccdocs/otp/070715-OTP_Strategic_Plan_2016-2018.pdf).