



Baroness Heather Hallett
Inspector
The Iraq Fatality Investigations
HQ London District
Horse Guards
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Date: 11 January 2021

Dear Lady Hallett,

I would like to offer my belated congratulations on your appointment as Inspector, while also extending my condolences on the passing of Sir George Newman.

I write in response to your letter dated 6 January 2021, 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 deaths of Radhi Nama and Mousa Ali in May 2003.

I recall that in the past, the Iraq Fatality Investigations (“IFI”) has requested similar assurances in relation to evidence given by soldiers alleged to have participated in the immediate circumstances leading to the deaths of Iraqi nationals. Following a careful legal consideration of Sir George Newman’s 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. I determined that in the particular circumstances of the 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 6 January 2021, 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 Nama and Mr Ali in May 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.

As you may know, the incidents which form the subject of your investigations were determined to fall within the scope of my Office's preliminary examination. Although I closed the preliminary examination on 9 December 2020 with a determination not to proceed at this time, my decision can be reconsidered under article 15(6) of the Rome Statute in light of new facts or evidence. In the light of that eventuality arising, therefore, I am 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

As with previous cases, I hope that this letter will facilitate your efforts to investigate and establish the circumstances that led to the deaths of Mr Nama and Mr Ali, 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, pp. 13-14; [OTP Strategic Plan 2016-2018](#), 16 November 2015, pp.15-16 and [OTP Strategic Plan 2019-2021](#), 17 July 2019, pp. 19-20.