



# The Iraq Fatality Investigations

## Ruling on Initial Disclosure

At the Directions Hearing on 27 April 2022, I indicated that witnesses who have agreed to assist with my Investigations would be initially provided with disclosure limited to their own previous accounts and statements and other documents deemed appropriate by the IFI team.

A request was made at the hearing for additional initial disclosure of material (for example IHAT material) on the basis it was required to enable witnesses properly to consider and take advice on their risk of prosecution in relation to the events we are investigating. The potential threat is said to come from the International Criminal Court's interest in this case.

The requests were advanced on behalf three witnesses, each of whom have previously been referred to the Service Prosecuting Authority. My decision, while it arises specifically out of these three requests, will have a bearing on all witnesses who have already and may in the future engage with these Investigations, and I therefore give my reasons generally as well as specifically for reaching my decision.

Although the requests were properly made, I do not think it appropriate to provide the additional substantive disclosure requested at this stage. I understand the concerns raised about the perceived risk of prosecution. However, in my view, the risk of any prosecution as a result of evidence given to these Investigations is vanishingly small. I have already secured non-prosecution undertakings from both the Attorney-General and from the previous Chief Prosecutor of the ICC to this effect. The Director of Services Prosecution has already taken the decision not to prosecute. I also note that there have been no domestic or international prosecutions that have followed from any previously concluded Iraq Fatality Investigations, and it would be unprecedented for the ICC to pursue such a prosecution after a thorough investigation has been completed by the UK. The relative comfort that prosecutions will not follow from these Investigations plays an important part in enabling full and effective witness participation.



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Further, I have specifically granted anonymity to those witnesses who have already applied for it and have expressed my willingness to entertain any further applications that may be forthcoming. There are therefore measures in place to protect the identity of individual witnesses giving evidence to these Investigations.

I do not accept the argument that the reports, conclusions and recommendations of previous Investigations (including IHAT) have a real bearing on any risk of prosecution that witnesses may face through engaging with these Investigations. Witnesses will be provided with the accounts and statements they themselves gave to those investigations, which did not result in any prosecutions being brought. The recommendations and conclusions of previous investigators or prosecuting authorities are not directly relevant to my own.

I have asked each witness to provide, in the first instance, a freestanding narrative witness statement of their recollection of events and to answer a series of questions. Prior to receiving these statements, initial disclosure is limited to documents that will in my view assist witnesses to give their best evidence regarding events that took place a long time ago. I would like to ensure that the accounts I receive are not coloured by consideration of additional material at this time.

The Investigation envisages providing further disclosure, including disclosure of relevant core documents, after written evidence has been received. The Inspector will of course continue to consider and exercise the discretion, where appropriate, to provide further disclosure to witnesses on an individual basis.

I do not therefore consider that additional disclosure at this stage is either necessary or appropriate. The witnesses' legal advisers should have all that they need to advise their clients appropriately at this stage.

29 April 2022