



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

Ref.: OTP2015/047257

Date: 8 December 2015

Dear Sir George Newman,

I write in response to your letter dated 14 October 2015, 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 an Iraqi national, Muhammad Abdul Ridha Salim and further requesting a similar assurance with respect to future cases referred to the Iraq Fatality Investigations (“IFI”) on condition that these are notified to my Office.

I recall that on 6 October 2014, you 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 Mr Nadheem Abdullah in May 2003, and of Mr Hassan Abbad Said in August 2003. Following a careful legal consideration of that request, I concluded that such an undertaking would not violate any of my obligations under the Rome Statute, as explained in my letter of 2 December 2014. In particular, 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 14 October 2015, 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 Muhammad Abdul Ridha Salim in November 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.

I am also willing to consider positively future requests with respect to similar cases of alleged participation of UK soldiers in the immediate circumstances leading to the death of Iraqi nationals

under investigation by IFI. However, such cases should first be notified to my Office so that I am in a position to consider whether to grant a similar assurance on a case by case basis.

Let me reiterate, however, that the 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

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 Salim and other possible Iraqi nationals, 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; 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.