



HOUSE OF COMMONS

LONDON SW1A 0AA

Ms Fatou Bensouda
Chief Prosecutor
International Criminal Court
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The Netherlands

22 April 2021

Dear Ms Bensouda

I write to you again regarding the UK Government's Overseas Operations (Service Personnel and Veterans) Bill currently before the UK Parliament.

Following your previous correspondence with me, I write to ask what impact recent amendments to the Bill, made by the UK Government, may have on whether the UK is still able and willing to deal with these crimes in British courts, and whether this would still leave the cases of UK troops admissible before the International Criminal Court.

I share the goal of protecting UK troops and ending the insecurity that poorly-run investigations have caused within the UK. But, as I wrote to you in March, I am deeply concerned that the Bill risks blocking domestic prosecutions for the most serious international crimes and therefore leaving UK forces open to prosecution before the ICC.

I was very concerned to learn, from your response in March, that the Bill as originally drafted could leave the cases of UK soldiers "admissible before the ICC".

Following your letter, some of the country's most senior former military leaders have expressed deep concern about the prospect of the Bill leaving UK soldiers at risk of ICC prosecution, with the former Chief of the Defence Staff, Lord Stirrup, describing this as "disastrous". He, alongside all five other former Chiefs of the Defence Staff in the House of Lords, voted to pass an amendment tabled by the former Secretary General of NATO and former UK Defence Secretary, Lord Robertson, which excluded from the scope of the Bill all crimes prosecutable by the ICC – torture, genocide, crimes against humanity, and war crimes.



Since then, the Government announced it would amend the Bill itself to exclude from its provisions the crimes of torture and genocide and all crimes against humanity. While this is a significant concession, I have serious concerns that the continued inclusion of all war crimes other than torture within the terms of the Bill still leaves a real risk that UK soldiers could face ICC investigation. At present, the amended Bill would ensure that prosecutions of the crime of torture will not be potentially blocked by any 'presumption against prosecution'. But I understand that a great many other serious crimes will still fall within its scope.

For example, I understand the Bill would still block prosecutions of grave offences such as inhuman treatment. This is the offence for which a conviction was secured in the case of Baha Mousa, the Iraqi hotel worker who suffered appalling mistreatment leading to his death.

Further, I am concerned that the Bill may still block prosecution of several different war crimes not covered by the Government's concession, including those relating to rendition. This is a very serious crime for which I have sought proper investigation for many years, with Government admissions that UK forces were involved in this appalling practice in Iraq.

In your March letter, you made clear that the passage of the Overseas Operations Bill, without amendment, could lead to UK forces being investigated and prosecuted by the ICC. I therefore respectfully ask:

- If the Bill passes with the Government's amendment, excluding torture, crimes against humanity, and genocide, but not all other war crimes, would this still impact your judgment as to the UK's willingness and ability to prosecute crimes under the Rome Statute?
- Even with the Government's amendment, could the Bill lead to the reopening of your preliminary examination into the situation in Iraq?
- And were the Bill further amended to ensure that all war crimes are excluded from its scope, would this demonstrate that the UK is willing and able to prosecute these crimes domestically?

I look forward to your response.

Yours sincerely,

Rt. Hon. David Davis MP

cc. Sam Shoamanesh, Senior Special Assistant to the Prosecutor & Rod Rastan, Head of the Preliminary Examination Section