



Rt Hon Harriet Harman QC MP
Chair of the Joint Committee on Human Rights
Committee Office
House of Commons
London SW1A 0AA

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Date: 5 March 2021

Dear Ms Harman,

I write further to your letter of 23 February 2021, concerning the current consideration by the Joint Committee on Human Rights of the human rights implications of the Overseas Operations (Service Personnel and Veterans) Bill currently before Parliament. Your letter invites my Office to provide any observations it may have on the possible relationship between the Bill and the jurisdiction of the International Criminal Court (“ICC” or the “Court”).

As you are aware, my Office concluded its preliminary examination into the situation in Iraq/UK in December 2020. In the report that set out the Office’s conclusions, although the Office could not substantiate allegations that the UK investigative and prosecutorial bodies had engaged in shielding, which would have been necessary to proceed, the Office nonetheless identified a number of concerns with respect to how specific decisions on certain matters were arrived at. Among these, the report touched on several issues that may bear relevance to your question. This includes the issue of the perceived problem of vexatious or baseless claims, which appears to have dominated much of the public discourse, and which in turn appears to have informed much of the debate over and justifications for the Bill. Our own preliminary examination analysed in great detail the purported issue of vexatious allegations and concluded that it had been considerably exaggerated as part of the discourse justifying the proposed legislation.

We also made some overarching observations on the scope and potential impact of the Bill as currently worded, both in relation to the conduct encompassed by the exemptions clause, and its potential impact in rendering cases admissible before the ICC as a result of State inactivity or

unwillingness/inability to genuinely investigate and/or prosecute such conduct due to the operation of the proposed statutory presumption.

I append to this letter relevant portions from our report which address these two matters.

I should also note that since the issuance of our report, the Secretary of State for Defence of the United Kingdom wrote a letter in response to the report, dated January 2021, in order to provide several clarifications on both the UK Government's intent in introducing the Bill and what the measures in the Bill will actually do. Having previously obtained confirmation from the UK authorities that I may make this letter public, I attach it herewith for your information. I also attach my Office's response to the letter of the Secretary of State for Defence, since it touches on similar themes as those set out above.

I hope that our response may be useful to your ongoing consultations. As you are aware, we cited, among other views, to the Joint Committee on Human Rights' previous review of the Bill when drafting our report and I am happy to have been of any assistance to the Committee in its further consideration of the weighty matters encompassed by the Bill.

Yours sincerely,



Fatou Bensouda
Prosecutor

Enc. 1: Extracts from the Office's Final Report on the Situation in Iraq/UK

Enc. 2: Letter from the Secretary of State for Defence of the United Kingdom, of 21 January 2021, and response of the Prosecutor, 3 March 2021