The Hague says claims of war crimes by UK troops have 'reasonable basis'

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<https://www.theguardian.com/law/2017/dec/04/icc-to-continue-investigation-into-claims-of-war-crimes-by-british-troops>

The chief prosecutor at the international criminal court in The Hague, Fatou Bensouda, has declared there is a “reasonable basis” to believe that UK soldiers committed war crimes against detainees during the [Iraq](https://www.theguardian.com/world/iraq) conflict.

The announcement on Monday means the ICC will press ahead with its investigation into claims that British troops abused and unlawfully killed prisoners after the US-led invasion.

It came in [a 74-page report](https://www.icc-cpi.int/) delivered in New York to the annual assembly of states parties that participate in the jurisdiction of the court.

In her conclusion on the long-running inquiry into the role of British troops in Iraq between 2003 and 2008, Bensouda said: “The [prosecutor’s] office has reached the conclusion that there is a reasonable basis to believe that members of the UK armed forces committed war crimes within the jurisdiction of the court against persons in their custody.”

Bensouda does, however, dismiss allegations that British troops committed any war crimes on the battlefield.

The report says: “In the absence of information indicating intent to kill or target civilians or civilian objects, or cause clearly excessive civilian injuries, there is no reasonable basis to believe that war crimes within the jurisdiction of the court were committed by British armed forces in the course of their military operations not related to the context of arrests and detentions.”

Both conclusions reaffirm interim conclusions made by the court when it ended a previous, [preliminary investigation into similar allegations in 2006](https://www.theguardian.com/law/2014/may/13/icc-to-investigate-alleged-british-war-crimes-iraq). At that point, the ICC said it had seen evidence suggesting British troops did commit war crimes in Iraq, “namely wilful killing and inhuman treatment”.

However, the court concluded that it should take no action at that stage since there were fewer than 20 allegations. The ICC’s investigation was subsequently reopened by Bensouda in 2014 after receiving fresh information from, among others, the Birmingham law firm, Public Interest Lawyers (PIL).

PIL, which has since closed down, represented the family of Baha Mousa, the Iraqi hotel receptionist tortured to death by British troops in 2003. The firm’s Phil Shiner was subsequently prosecuted by the Solicitors Regulation Authority [and disbarred from being a solicitor](https://www.theguardian.com/law/2017/feb/02/iraq-human-rights-lawyer-phil-shiner-disqualified-for-professional-misconduct)over allegations linked to other claims he pursued in relation to Iraqi claimants.

Bensouda’s report examines the controversy over the claims and refers to the Iraq Historic Allegations Team (IHAT). It says that “amid concerns of political interference, the defence secretary [Michael Fallon] announced the closing of IHAT ahead of the originally scheduled time frame by 30 June 2017, citing IHAT’s own forecasts that the unit’s caseload was expected to reduce to around 20 investigations by the summer 2017.”

Bensouda said her office had “exercised an abundance of care” because the more recent allegations against UK forces in Iraq were mostly brought to the office’s attention by only one source.

British defence officials have previously said they were confident that the ICC would not move to the next stage and announce a formal investigation, largely because the UK has the capacity to investigate the allegations itself.

A UK government spokesperson said: “We have a legal responsibility to investigate credible allegations of wrongdoing by UK forces, and that is what we are already doing as part of service police legacy investigations, which is reviewing the relatively small number of remaining cases after the closure of IHAT, and through Operation Northmoor.

“We are confident that our existing efforts to investigate allegations preclude the need for any investigation by the ICC.”