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United Kingdom: Justice must follow as Baha Mousa Inquiry makes damning findings against UK armed forces

On 8 September 2011 the Baha Mousa Inquiry published its report into the death of Baha Mousa, a 26-year-old Iraqi national and father of two, who died on 15 September 2003 in UK custody in Basra, Iraq after being tortured over a period of 36 hours. A post-mortem examination revealed 93 separate injuries on his body. The Inquiry found the cause of Baha Mousa's death to be the combination of two parts; the first was Baha Mousa's vulnerability resulting from lack of food and water, heat, rhabdomyolysis, renal failure, exertion, exhaustion and multiple injuries, and the second, the violent assault and dangerous restraint technique to which he was subjected by UK armed forces personnel. The Inquiry also examined the treatment of nine other Iraqi nationals who were detained alongside Baha Mousa who were subjected to human rights violations that constituted war crimes, and concluded that all the detainees had been assaulted but that it was not possible to determine the identities of all of those soldiers responsible for the assaults.

The Inquiry report lays out in detail the shocking treatment suffered by Baha Mousa and the other detained men at the hands of UK soldiers, finding that Baha Mousa died in army custody after an "appalling episode of serious gratuitous violence", and that it was "beyond doubt that most, if not all, of the [d]etainees were the victims of serious abuse and mistreatment". The report found that the men had been beaten kicked and punched, were hooded for long periods of time, held in stress positions, subject to verbal abuse, deprived of food and water and held in unsanitary conditions of extreme heat.

The report names 19 individuals that the Inquiry has found were responsible for the abuses perpetrated against the men. The Chairman of the Inquiry, Sir William Gage, also condemned members of the battalion for their "lack of moral courage to report abuse" finding that there was a wider group of individuals who must have been aware of the violence but failed to report the abuse and chose instead to turn a blind eye.

In his statement introducing the Inquiry's report, Sir William Gage reached an unequivocal conclusion. He stated that it was his judgment that the events of 14 to 16 September 2003 "constituted an appalling episode of serious, gratuitous violence on civilians which resulted in the death of one man and injuries to others," and that they "represented a very serious breach of discipline" by soldiers of the regiment in question.

The Inquiry report also heavily criticized senior officers and pointed to a catalogue of failures through the chain of command, which contributed to the death of Baha Mousa and allowed the ill-treatment of the men to continue.

In light of the Inquiry's findings, Amnesty International calls on the UK authorities to ensure that those responsible, including those in position of authority who failed in their obligation to prevent or suppress these acts, are held fully accountable for their actions and brought swiftly to justice including in criminal proceedings.

The report further emphasised the "corporate" and "systemic failure" of the Ministry of Defence to provide clear and consistent guidelines about the proper treatment of detainees, which led to interrogation techniques banned by the UK government in 1972 being used by soldiers in Iraq. The Chairman of the Inquiry also warned that training soldiers to maintain or

prolong the “shock of capture” and employ “conditioning” techniques could be dangerous as it could lead to the use of interrogation techniques which are unlawful.

In view of these failings the report outlines 73 recommendations which if followed would go some considerable way towards ensuring that such serious human rights violations are never repeated. Some of the recommendations made by the Inquiry included; ensuring that more detailed guidance for interrogation and tactical questioning is provided to military personnel, that a system of independent inspection of places of detention should be developed, that a detention review officer for each unit should be appointed, that the Ministry of Defence should retain its current absolute prohibition on hooding, and that there should be regular review of relevant training materials.

Amnesty International urges the UK authorities to implement these recommendations and learn the lessons of the case of Baha Mousa by taking effective steps to ensure that these types of violations can never happen again.

The publication of the Inquiry report is both welcome and important. It is the direct result of the unwavering courage and determination of Baha Mousa’s family, the other victims, and their legal representatives to seek justice and accountability. It is also the culmination of two years of thorough and dedicated work by the Inquiry’s Chairman and staff. The Report of the Inquiry, however, should not be considered the end of this tragic story. There still remains a pressing need for genuine accountability for all human rights violations and crimes under international law perpetrated by UK armed forces in Iraq. Questions still need to be answered as to how widespread the abuse was, causes of alleged systemic human rights violations by UK armed forces still need to be examined carefully and further investigations into similar allegations must be conducted in a manner that complies with the UK’s international human rights obligations.

As early as 22 October 2003, just over a month after the incident, Amnesty International raised concerns about Baha Mousa’s death and the treatment of the other detainees in a letter to the Ministry of Defence. Amnesty International’s researchers visited the hotel in Basra where Baha Mousa and the other men were arrested in February 2004, and spoke with witnesses and family members of the detainees. In his report the Chairman of the Inquiry cites an Amnesty International report in 2003 which addressed allegations of human rights violations by UK soldiers in Iraq, as an example of one of the opportunities missed to recognise that widespread hooding was continuing despite being banned.

Amnesty International subsequently campaigned for several years for human rights compliant investigations of all suspected killings at the hands of, or in the custody of UK armed forces and into allegations of torture and other ill-treatment. The organization further called for the establishment of a public inquiry into the use of techniques such as hooding, stressing and sleep deprivation used by UK armed forces, focusing in particular on how, when, where, why and by whom these techniques were authorized. Though the Baha Mousa Inquiry has gone some way to look at these issues, a more thorough examination of the use of these techniques across southern Iraq by armed forces is still urgently required.

Background information

Baha Mousa, a 26-year-old Iraqi national and father of two, died on 15 September 2003, after being tortured over a period of 36 hours after being detained—along with a number of other Iraqis—by UK armed forces in Basra, Iraq the previous day. A post-mortem examination revealed 93 separate injuries on his body and that he had asphyxiated. A number of Iraqis detained alongside him were also subjected to torture and other ill-treatment.

In March 2007, a court martial of seven UK military personnel, in relation to the case of Baha Mousa, ended. One of the defendants pleaded guilty to a charge of inhumane treatment of detainees, a war crime, and was sentenced to 12 months’ imprisonment. He was acquitted of the other charges against him. The six other defendants were acquitted of all charges.

The court martial proceedings confirmed that Baha Mousa had sustained multiple injuries as a result of being ill-treated by UK soldiers both at the time of his arrest at a hotel and during his subsequent detention at the UK military base in Basra where he died following his torture in custody.

The Judge Advocate in the court martial stated that numerous individuals, "some identified but the majority not", had been responsible for inflicting unlawful violence on Baha Mousa and other detainees. However, as the Judge Advocate remarked, many of those responsible were "not charged with any offence simply because there is no evidence against them as a result of a more or less obvious closing of ranks".

Compensation was paid to Baha Mousa's family and the other men in 2008 following the acceptance of liability by the Ministry of Defence.

Following litigation in the UK courts, on 14 May 2008 the Secretary of State for Defence announced that the UK government had finally agreed to a public inquiry into the death of Baha Mousa. The Baha Mousa Inquiry began its work later that year and conducted substantive hearings between July 2009 and October 2010. The Inquiry was established under the Inquiries Act 2005 and chaired by the Right Honourable Sir William Gage, a retired Court of Appeal judge. The stated terms of reference of the Baha Mousa Inquiry were: *"To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any members of the 1st Battalion, The Queen's Lancashire Regiment in Iraq in 2003, and to make recommendations."*

The Baha Mousa Inquiry was structured into four distinct modules, the first module examined the history of the use of what has been labelled "conditioning techniques"; the second examined the circumstances of the arrest of Baha Mousa and the nine other individuals with the aim of establishing the facts as to what happened and which individuals were involved; the third module examined what training and guidance was given to the soldiers and what orders were issued to those involved in the detention, including the relevant chain of command; the final module was concerned with the future, to consider what has happened since 2003 in relation to conditioning techniques and to examine any appropriate recommendations for the future.

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