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United Kingdom Court Martial acquittals: many questions remain unanswered and further action required to ensure justice

Amnesty International considers that the recently concluded court martial proceedings against seven UK soldiers in connection with the treatment of detainees in Iraq have left many questions unanswered and underscore the need for the UK to take further action to ensure justice is done and to revise the manner in which allegations of serious human rights violations by members of its armed forces are investigated.

The court martial proceedings, which began in the UK in September 2006, concerned allegations that seven UK servicemen stationed in Basra, Iraq -- at a time when the UK was an Occupying Power -- violated the rights of a number of Iraqis who had been arrested following a planned operation in September 2003. The allegations disclosed evidence that the UK servicemen may have committed war crimes. The court martial proceedings focussed, in particular, on one case, that of Baha Mousa, a 26-year-old Iraqi civilian father of two children, who sustained multiple injuries as a result of being ill-treated by UK soldiers both at the time of his arrest on 14 September at a hotel and during his detention at a British military base in Basra where he died, approximately some 36 hours later, on 15 September.

When the trial opened in September 2006, one of the seven defendants, Corporal Payne, pleaded guilty to a charge of inhumane treatment of Baha Mousa. He pleaded not guilty to two further charges, namely, manslaughter of Baha Mousa and perverting the course of justice.

In February 2007, following submissions made on behalf of Corporal Payne, Lance Corporal Crowcroft, Kingsman Fallon, Major Peebles, Warrant Officer Davies and Colonel Mendonca -- six of the seven defendants -- that there was no case to answer, the presiding judge directed the acquittals of four of them, including Corporal Payne in connection with the outstanding charges of manslaughter of Baha Mousa and perverting the course of justice that he was facing.

The Board had already found the seventh defendant, Sergeant Stacey, not guilty of one of the two charges against him. However, although no submission of no case to answer had been made on his behalf in connection with the remaining charge against him, the judge directed that he too should be acquitted. This he did because the remaining charge against Sergeant Stacey depended entirely on evidence which the judge had deemed simply incapable of belief, and, for that reason, to be disregarded.

The judge also decided not to accept the submissions of no case to answer that had been made on behalf of Major Peebles and Warrant Officer Davies. The proceedings against them therefore continued. On 13 March 2007 they were both acquitted.

Amnesty International remains concerned about a number of issues and outstanding questions. Among them are the following:

- o the court martial proceedings arose because Baha Mousa died at the hands of UK servicemen while in the custody of the UK. While Corporal Payne pleaded guilty to ill-treating Baha Mousa while he was detained at a British military base in Basra, there were additional allegations of ill-treatment of Baha Mousa at the time of his arrest. Notably, Private Payne was not among those who arrested Baha Mousa. To date, no-one has been found responsible for the ill-treatment that Baha Mousa suffered allegedly at the hands of numerous others who have remained unidentified. Nor has anyone been found responsible for his death;
- o the court martial proceedings have confirmed that numerous individuals, some identified but the majority not, were responsible for the infliction of unlawful violence on Baha Mousa over a 36-hour period. They were not on trial and have not been brought to justice, although, plainly, they should have been;
- o as pointed out by the judge, other soldiers who were responsible for the beatings and other ill-treatment of the

detainees 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”;

- o the fact that the armed forces “closed ranks” has led to a legitimate apprehension that a cover-up has ensued in respect of this case;
- o interrogation techniques, which, particularly when applied simultaneously or cumulatively, amount to torture or other ill-treatment were used routinely on detainees held by the UK authorities, including on Baha Mousa and other Iraqis detained at the same time. They include: hooding detainees; keeping them in stress positions; and depriving them of sleep. The UK had purportedly banned these techniques in the 1970's when their use was widespread in Northern Ireland. The European Court of Human Rights subsequently found that they amounted to a breach of Article 3 of the European Convention on Human Rights (ECHR), prohibiting torture or other ill-treatment;
- o the failure, at the highest level, on the part of the UK authorities to ensure that such techniques would never be reintroduced, including by devising and delivering appropriate training and legal advice; and
- o to date, the UK authorities have failed to conduct a prompt, independent, impartial and effective investigation into the case, thereby contravening the UK's obligations under domestic and international human rights law and standards, including Articles 2 (enshrining the right to life) and 3 of the ECHR.

The court martial proceedings in this case have underscored the serious failures of the investigation that was conducted into the death of Baha Mousa, thus in turn emphasizing more than ever the need for reform of the system currently in place to investigate credible allegations of serious human rights violations at the hands of UK armed forces personnel.

In addition to its concerns about the lack of independence and impartiality of investigations carried out by the Royal Military Police into allegations of serious human rights violations at the hands of the UK military, Amnesty International remains deeply concerned about the capacity and ability of the Royal Military Police to carry out investigations into serious crimes, effectively and professionally.

Amnesty International continues to urge the UK authorities to establish a civilian-led mechanism to investigate all suspected human rights violations by UK armed forces personnel. Such a mechanism should be capable of applying international human rights law and standards relevant to the investigations of allegations of serious human rights violations by the military.

Amnesty International also considers that the lack of independence and effectiveness of the investigations carried out by the Royal Military Police also bear on the quality of prosecutorial decisions based on these investigations.

In addition, the organization continues to call for

- o an independent, impartial and effective investigation into the death and ill-treatment of Baha Mousa;
- o other people, if credible evidence indicating that they are responsible for his death and/or ill-treatment emerges, to be brought to justice in fair proceedings;
- o his family to receive adequate redress, including reparation; and
- o an inquiry fully compliant with relevant domestic and international human rights law and standards into the routine resort by UK armed forces personnel to a) hooding of detainees; b) making them stand with their back against a wall with their knees bent so that their thighs are parallel to the ground and with their arms outstretched in front of them; c) depriving people of sleep and possibly other forms of deprivation of physiological needs, such as food and drink; d) wall-standing; e) subjection to noise; and f) into how, when, where, why and by whom these practices were authorized.