

British Forces in Iraq:

The Emerging Picture of Human Rights
Violations and the Role of Judicial Review

Public Interest Lawyers

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1 Introduction

On 31 December 2008, the UN Mandate for the presence of British Forces in Iraq ended with the expiry of UN Security Council Resolution (“UNSCR”) 1790.¹ British forces began their formal withdrawal from Southern Iraq on 31 March 2009. However, it is only now, as the dust settles, that the picture of British human rights abuses in Iraq is starting to emerge. At the same time, allegations continue to materialise of officially sanctioned abuse in other jurisdictions², and the calls for state accountability are growing. On 15 June 2009, the Prime Minister announced the long-awaited inquiry into British involvement in Iraq. There has been very little comment since then of the need to address officially-sanctioned mistreatment and torture of detainees. This issue should not escape attention. It is essential to evaluate what is now known of British military and intelligence practices in Iraq and elsewhere, so that they can be altered and further breaches forestalled.

This report presents specific case studies of human rights abuses by British troops in Iraq, all of which have been, or are now, the subject of judicial review proceedings brought against the British Government in the UK by Iraqi nationals represented by Public Interest Lawyers (PIL). These proceedings seek to enforce the Government’s obligations under the European Convention on Human Rights (ECHR), the UN Convention Against Torture (UNCAT), the UN Convention on the Rights of the Child, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation and non-derogable, principles of international law that apply worldwide, in any court, in any jurisdiction. These international instruments are underpinned by the concept of responsibility of states, now enshrined in the International Law Commission’s Articles of State Responsibility, adopted by the UN General Assembly. These concepts of international law are growing in their capacity to protect the vulnerable against state abuses of power, particularly in the context of domestic judicial review claims against the British government for extra-territorial breaches of fundamental human rights. These instruments and principles of international law impose onerous duties on states, enforceable in domestic courts, to investigate human rights abuses. The content of this investigative duty was summarised by Lord Bingham in the House of Lords case of *Amin*:

¹ UNSCR 1790 brought to an end the period of international authorisation for the British presence in the country, granted on 8 June 2004 in UNSCR 1546 in anticipation of the handover of political power to the provisional Iraqi Government on 28 June 2004. Thereafter, this authorisation had been renewed on an annual basis in successive UN Resolutions. Prior to the period of UN authorisation, the UK had, from 22 May 2003 to 28 June 2004, been militarily occupying Iraq – jointly with the United States – after the initial phase of hostilities during the invasion from 20 March 2003 to 22 May 2003.

² See e.g. Cobain, Ian “MI5 faces fresh torture allegations,” *The Guardian* 26 May 2009; Leppard, David, “MI5 ‘colluded in scalpel torture’” *The Times* 8 March 2009

“to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”³

At the heart of the cases detailed in this report are calls for an effective investigation, not financial compensation. The case of Baha Mousa, killed in Basra in September 2003, has already laid bare the deficiencies in the military investigative apparatus and justice system. Soldiers investigating other soldiers’ crimes only to be prosecuted by other soldiers before a panel of yet more soldiers is an insufficient way to satisfy modern calls for accountability. Criminal investigations, which seek to impute guilt to the perpetrators and therefore to demonstrate that they acted wilfully and without authorisation, will always fail to answer the questions of institutional sanction that are central to an effective investigation. Individual misdemeanour is emphasised at the expense of state responsibility. Conversely, judicial review cases have as their aim institutional accountability.

Each case study detailed in this report is supported by sworn witness evidence and in some cases, by photographic and video evidence, which may already be familiar to many people from high-profile press scandals that emerged during the Iraq conflict. These case studies give a voice to the victims long after the 24-hour news cycle has moved on. This report also details the Government’s response to these calls for accountability, a response that is in many ways just as troubling as the allegations themselves. When confronted by the often horrifying evidence put before it, the Government has not:

- sought independent investigation;
- unequivocally altered its policies;
- sought to adequately redress victims’ grievances; or
- offered compensation or even an apology.

Instead, apparently mindful of a raft of similar complaints, the Government has employed legal argument in an attempt to evade otherwise clearly defined responsibilities. This response, of obfuscation and denial, aggravates the seriousness of the original violations themselves and militates against the learning of lessons for the future. The Government has all too readily adopted the paradigm of adversarial litigation, of a reflexive defensiveness, and of military and intelligence secrecy. Ultimately, the Courts

³ *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653

will decide the legal questions, but the Government has yet to meet the moral challenge presented by these cases.

2 Interrogation Techniques – Historical Background

Long before the invasion of Iraq, it appears that British forces developed and used now discredited coercive interrogation techniques in counter-insurgency operations and as an aid to interrogation. These techniques, which led to the death of Baha Mousa, were developed and used primarily by British and American forces in the years following the Second World War. In 1972 the Irish Government made a complaint to the European Court of Human Rights (“ECtHR”) – the first such inter-state complaint – regarding British use of coercive interrogation techniques during internment in Northern Ireland. The facts of the case were stark, with British forces employing the same techniques that are now familiar from images burned into the public consciousness of blindfolded and ear-muffled Guantanamo detainees, bowed into stress positions and blasted by white noise. After a lengthy investigation by the then European Commission of Human Rights, the ECtHR gave its historic ruling in 1978⁴, holding that use of these techniques constituted cruel and degrading treatment in breach of article 3 of the ECHR, which absolutely prohibits state torture and cruel and degrading treatment. The Court stated at the time:

*“The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation.”*⁵

Many commentators have since reflected that if the conditioning techniques reviewed in *Ireland v UK* were to be examined by the ECtHR today the likely result would be a finding of torture, this being also the unanimous conclusion of the European Commission of Human Rights in 1976 prior to the referral of the case to the ECtHR.⁶ Before the ECtHR’s 1978 judgment, Prime Minister Edward Heath unequivocally banned the use of these “five techniques”, stating to Parliament in 1972:

“[The Government], having reviewed the whole matter with great care and with reference to any future operations, have decided that the techniques ... will not be used in future as an aid to interrogation ... The statement that I have made covers all future circumstances. If a Government did decide... that additional techniques

⁴ *Ireland v UK* (1978) 2 EHRR 25; “Report of the Commission” [1976] 19 Y.B. 512

⁵ *ibid*, para 167. Amnesty International stated in response to the earlier Compton Report: “Any interrogation procedure which has the purpose or effect of causing a malfunction or breakdown of a man’s mental processes constitutes as grave an assault on the inherent dignity of the human person as more traditional techniques of physical torture.”

⁶ Lord Hope, *Torture*, 53 ICLQ 826: “It seems likely that the mixture of physical and psychological pressures that were used in the case of the IRA suspects would now be regarded as torture within the meaning of article 3 of the Convention.” The article was cited by Lord Bingham in *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* (No. 2) [2005] UKHL 71

*were required for interrogation, then I think that ... they would probably have to come to the House and ask for the powers to do it.*⁷

This ban was later reaffirmed by an unqualified undertaking by the then Attorney General to the ECtHR on 8 February 1977.⁸ It is anticipated that the Baha Mousa Public Inquiry will closely examine Government documents from the time to uncover whether or not the techniques were in fact eradicated as promised, or whether they were instead covertly hidden.⁹

Prior to the 1972 ban, the Government commissioned its own investigations into the use of coercive interrogation techniques, producing two reports¹⁰ which preferred the Government's explanations of the mistreatment that had occurred.¹¹ Nevertheless, the second of these reports, the Parker Commission Report, does at least establish that British use of coercive interrogation techniques in 1971 was but one instance of sustained development and use of the techniques over previous decades. Lord Parker stated that they "*have been developed since the War to deal with a number of situations involving internal security. Some or all have played an important part in counter insurgency operations in Palestine, Malaya, Kenya and Cyprus and more recently in the British Cameroons (1960-61), Brunei (1963), British Guiana (1964), Aden (1964-67), Borneo/Malaysia (1965-66), the Persian Gulf (1970-71) and in Northern Ireland (1971).*"¹² Lord Gardiner elaborated further in his attached Minority Report, citing the now well-documented Allied forces research into sensory deprivation and the psychological debilitation of detainees which preceded and accompanied the adoption of conditioning techniques in the post-war era.¹³ It is important to note when considering coercive interrogation techniques that "*the absence of physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.*"¹⁴ More recent reports, such as

⁷ Hansard, HC Deb 2 March 1972 vol 832 cc742-9

⁸ Ireland v UK (1978) 2 EHRR 25, para 153: "*The Government of the United Kingdom have considered the question of the use of the 'five techniques' with very great care and with particular regard to Article 3 (art. 3) of the Convention. They now give this unqualified undertaking, that the 'five techniques' will not in any circumstances be reintroduced as an aid to interrogation.*"

⁹ Already, some internal Joint Intelligence Committee memoranda, available from the National Archives, suggest that there could have been a divergence between official prohibition and privately briefed continuing military and intelligence practice.

¹⁰ Report of the inquiry into allegations against the Security Forces of physical brutality in Northern Ireland arising out of events on the 9th August, 1971, November 1971 ("Compton Report"); Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism, 31 January 1972 ("Parker Report").

¹¹ One notable passage in the Compton Report deals with the allegation of induced soiling as follows: "In Mr McClean's case however we were told by the supervisors that it was not true that opportunity to relieve bowels or urinate was denied him or that it was several days before he was allowed to the toilet for the first time. The lavatory facilities were there. It was Mr McClean's own fault that he did not use them", *supra*, at paragraph 84.

¹² *ibid*, para 10

¹³ *ibid*, Minority Report, paras 12-14

¹⁴ United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol") U.N. Doc HR/P/PT/8/Rev.1 (Aug. 9, 1999), page 48

those of Physicians for Human Rights,¹⁵ provide a more detailed explanation of modern use of these techniques and their effects upon victims.

A full explanation of the development of psychological torture techniques, and the UK's role in this process, is beyond the scope of this report. It is more fully dealt with elsewhere.¹⁶ The Baha Mousa Public Inquiry, which is expected to commence oral hearings in July 2009, will take as its starting point an examination of the systemic sanctioning of the use of torture techniques. The case studies in this report adduce further evidence, that will not be considered directly by that Inquiry, that violence which may have been countenanced in the context of interrogation techniques became widespread in dealing with Iraqi civilians in other contexts, particularly during arrest and detention, where training to 'maintain the shock of capture' may have contributed to the abuse which is detailed here.

¹⁵ Physicians for Human Rights, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007), page 5: "an extensive body of medical and psychological literature and experience with victims of torture and abuse show that although "enhanced" interrogation techniques may not result in visible scars, they often cause severe and long-lasting physical and mental harm. This is directly related to the purpose of these techniques: to "break" detainees, mentally and physically."

¹⁶ See McCoy, Alfred "A Question of Torture" (2006); Klein, Naomi "The Shock Doctrine" (2007) ; Meek, James, *Nobody is Talking*, The Guardian, 18 February 2005

3 Case Studies – 2003 to the present day

3.1 22 April 2003 – Tarek Hassan (R (Khadim Hassan) v Secretary of State for Defence)

Tarek Hassan, aged 22, was last seen alive by his family and neighbours on 22 April 2003 when he was detained by British forces during a raid on his family home. House raids of this kind were a common feature of British and US tactics. Neighbours testify to British soldiers dragging Tarek out of the house with a hood placed over his head, then kicking and beating him before bundling him into a waiting military vehicle. .

Four months later, on 1 September 2003, Tarek's body was found dumped in the desert north of Baghdad. He had been shot eight times and his wrists were tied with plastic handcuffs used commonly by UK and US forces. Bullets from a Kalashnikov rifle were recovered from his body. He was found with his identification tag from his period of detention.

It appears that Tarek's family home was raided because the British were searching for Khadim Hassan, a lawyer and a high-ranking Ba'ath party official. Tarek's neighbour and sisters have all given evidence to confirm that the British soldiers announced their intention to detain Tarek until Khadim Hassan turned himself in. The taking of hostages is, of course, not only contrary to the Geneva Conventions: it represents a grave breach of other international instruments including the International Convention Against the Taking of Hostages and the International Convention for the Protection of All Persons Against Enforced Disappearance.

Khadim Hassan brought judicial review proceedings against the Government, seeking an independent inquiry into the death of his brother. It is now known that Tarek was taken to Camp Bucca, the Theatre Internment Facility manned by both US and UK forces, where he was held for a number of weeks, possibly months. However, we do not know all of the circumstances of his detention. The British Government declined to investigate the circumstances of Tarek Hassan's death, notwithstanding the allegations that he had been detained as a hostage, the failure to justify his internment and the suspicious circumstances of his death. No statements were sought from those who may have guarded or released Tarek. It was only as a result of the Government's disclosure obligations prior to the trial hearing that the Government finally adduced computerised

records showing that Tarek Hassan had been arrested and held in detention by them and that, according to the records, he had been released from custody in May 2003.¹⁷

The Government claims that Tarek would have been taken on a coach back to the area of his home. But no evidence has been provided to support this claim. The evidence of others released from Camp Bucca, particularly in the early phase of the Iraq war, does not reflect this. Serious questions are raised about the UK Government's compliance with its Geneva Convention obligations to return internees to the region of their arrest.¹⁸ What is certain, however, is that the evidence put forward by the Government is sparse and lacks the full investigation which the Government still refuses to provide. The claim also highlights the lack of information that was given to the families of those arrested and interned in Iraq.

The Government's refusal to investigate Tarek's death raises a troubling question: if this had occurred in Britain, and a British citizen had been arbitrarily detained, and was later found dead many miles away from his last known place of detention, would not serious questions have been asked of, and by, the Government, and would not an investigation have followed?

Tarek Hassan's case also raises a number of broader issues surrounding (a) the effectiveness and legitimacy of the UK/US policy of house-raids, (b) the impunity which troops apparently perceived would protect them from hostage-taking, and (c) the UK's role in the running of the Theatre Internment Facility, a large prison camp near Basra which houses persons detained by British and other coalition forces. These persons were held without trial for years at a time. In August 2008, there were approximately 18,000 internees being held at Camp Bucca¹⁹. Tarek therefore shared the fate of thousands of others, whose liberty was deprived arbitrarily and who remain without any means of securing their release. The application of the ECHR would guarantee protection against arbitrary detention, and is therefore crucial to the plight of those detained by UK forces.

On 19 and 20 January 2009, the High Court heard the case brought by Khadim Hassan against the Secretary of State for Defence, seeking the judicial review of the detention and subsequent treatment of his brother, Tarek Hassan, during the first weeks of the invasion of Iraq. On 25 February 2009, the High Court judgment was handed down, deciding that the ECHR did not extend to protect Tarek Hassan, on the basis of the previous House of Lords decision in *Al-Skeini*. Given the domestic courts' apparent

¹⁷ An identity tag with the name "Tarek Resaan Hashmyh Ali" with a reference number indicating he had been detained by UK forces was found with the body. This name was also present on the UK's database of internees showing he was detained from 23 April 2003 and released 2nd May 2003.

¹⁸ Geneva Convention IV, Article 135

¹⁹ Enders, David, *The Nation* (8 October 2008)

unwillingness to follow clear Strasbourg jurisprudence that state agents exercising authority over captured persons outside the borders of their own country will be taken to extend ECHR jurisdiction, Khadim Hassan's case has been directly appealed to Strasbourg. This was the most cost-effective and expeditious manner of dealing with his case. It is hoped that his case will be heard together with *Al-Skeini* in Strasbourg in early 2010.

3.2 15 May 2003 – Camp Breadbasket

(R (Ali and others) v Secretary of State for Defence)

Camp Breadbasket was a UN humanitarian distribution centre on the outskirts of Basra which was secured and guarded by British forces. It was used as a base from which to push further into the Basra area. Troops were permanently stationed there, and it appears from soldiers' accounts that the base was also used for storage of impounded vehicles and other military uses. In the chaos of the first few months of the invasion, when supplies of humanitarian aid were in short supply, and when the British forces refused to distribute any of the supplies within the camp, it became a target for looting. The response of the British forces was to initiate "Operation Ali Baba", an attempt to gather up and punish looters. Whether this was intended wholly as a deterrent or also as a venting of frustration is unclear. What is apparent from the evidence is that grave assaults were carried out in the course of this operation. Allegations of serious sexual assaults on Iraqis as young as 14 years old have been made. In 2005, a number of photographs associated with the incident were published, which prompted a Royal Military Police (RMP) investigation.²⁰

Ra'aid Ali worked at the camp as a food agent and had identification documents to prove this, but he was swept up with the looters by the British forces. Possibly because he had identity papers, he was separated and secured to a concrete post, but when he complained he was kicked and punched, resulting in a broken nose. He describes what he saw happening to the other Iraqis:

"I witnessed other Iraqi civilians being stripped of their clothes and beaten by the aerial of a military vehicle. There were ten British soldiers at least who were beating Iraqis. They made Iraqis run with milk cartons on their heads. I witnessed one British soldier trying to force an Iraqi to take up a knife to cut another Iraqi. I understand that [the man] refused to take the knife. I could not hear what took place. I saw [him] tied to the forks of a forklift truck where he was taken up and down. The two soldiers in the watchtower found this to be very funny and were laughing very loudly."

²⁰ Gillan, Audrey "Shocking images revealed at Britain's 'Abu Ghraib trial'", The Guardian 19 January 2005

Muthana Mohamed also worked at the camp but was similarly rounded up with the looters. He described what happened next as follows:

“The beatings started with a soldier beating me with a military car aerial. We were divided into groups of fours with a group of soldiers beating us continuously using their fists, boots, sticks and aerials. They did not care where they hit us, if it was on the head, back, arms, legs or genitals. They appeared to be enjoying themselves beating us and although we could not understand their language, they were obviously having great pleasure in our suffering.”

He was then forced to run with cartons and concrete blocks. When he fell under the weight of soldiers’ blows, he was dragged along the ground and thrown into a pool of stagnant water. When he was let out of the camp later that day, he was taken to the hospital, where he remained due to the injuries that he suffered.

Another victim is known as “Hassan” for the purposes of the ongoing litigation. He was 14 years old at the time of the incident. He had gone with some friends to steal powdered milk, when he was rounded up by British troops who stripped him to his underwear and forced him to carry boxes around the camp. He also was beaten and witnessed the abuse and humiliation of other Iraqis. He was later taken to a disused hangar together with three others, where the beating intensified. What then followed is shocking and disturbing, consisting of horrific sexual abuse, which Hassan describes to the Court in his statement:

“The soldiers put us into pairs. I was put with the older Iraqi man. We were forced into simulated sexual positions. It is very difficult for me to talk about this, even with my solicitor. They pushed the front of the other man’s naked body against the back of mine and I could feel his genitals pressing against my backside...

...One of the soldiers then forced me to the ground and indicated that I should kneel. Another soldier then indicated for the other Iraqi man to kneel on the ground behind me and again forced him to press the front of his body onto the rear of mine. Again I could feel his genitals against me ... Then the soldiers forced us to do something even more shaming. I had to kneel in front of the other Iraqi man while he stood up. One of the soldiers grabbed the hair on the back of my head and forced my head forward into the other Iraqi man’s crotch. He was then made to put his penis inside my mouth. We had to stay in this position for several minutes. I have never felt so ashamed and degraded in all of my life. I was just a child and could not believe what was happening to me... If we tried to move out of the positions we were put in they would beat us again and again.”²¹

Photographs have emerged showing similar abuse inflicted on other Iraqis, which justifies the epithet “the British Abu Ghraib”²².

²¹ Witness statement of “Hassan”, 15 January 2009, para 13

²² *supra* n.20

The serious allegations and the high public profile of the case prompted an investigation by the RMP, which led to Court Martial proceedings being instituted against four men. The Court Martial took place from 18 January to 25 February 2005 at Osnabruck, Germany. Notably, however, the victims had no role in these proceedings, and their evidence, and that of other potentially crucial witnesses, was not taken into account by the Army Prosecuting Authority when it was submitted by PIL during the Court Martial proceedings. Perhaps as a consequence of this, the charges were essentially disciplinary in their content and did not encompass the severity of the abuse alleged by the victims. Minor sentences followed, all of which were later reduced on appeal.²³

After more than three years of correspondence between PIL and the Attorney General's office, RMP and Army Prosecuting Authority, during which time PIL's calls for an adequate investigation were repeatedly resisted, PIL issued judicial review proceedings on 17 October 2008. A full hearing before a Divisional Court is scheduled to take place in 2009/10.

The case raises serious questions about the degree to which interrogation techniques and army tactics which made explicit reference to the vulnerabilities of male Muslims leached into unauthorised abuse by troops on the ground. Due to the wider access of information and disclosure in the US, we do know that sexual humiliation was authorised as an aid to interrogation at the highest levels of the US administration.²⁴ Given the history of the UK's involvement in the development of these techniques alongside the US, it is deeply concerning that there appears to be strong similarities between instances of the use of sexual humiliation.

3.3 July 2003 – Major Police Station Raid

R (Lazim) v Secretary of State for Defence

The allegations in this case concern the raid of an Iraqi police station in Majar Al-Kabir, Maysan, Iraq by British forces in July 2003. The police station had been the scene, less than a month earlier, of the deaths of six British Royal Military Policemen when the station was surrounded by local militia in one of the worst losses of life for British forces throughout the Iraq conflict. A large number of Iraqis had also apparently died on the same day. Weeks later, the British soldiers arrived in what appears to have been a large number of vehicles with air support. They started to ask the Iraqi policemen working at the station for the identities of the persons responsible for the deaths of the British

²³ *Iraq abuse troops' jail terms cut*, BBC Online, 1 June 2005 (<http://news.bbc.co.uk/1/hi/uk/4598221.stm>)

²⁴ Log of Prisoner 063 (Mohammed Al-Qahtani), Centre for Constitutional Rights (http://ccrjustice.org/files/Publication_AIQahtaniLog.pdf)

servicemen. The questioning soon became aggressive and the soldiers detained all of the policemen, forcing them to the ground and dragging them to a corridor, where they were forced into standing stress positions against a wall. They were then assaulted with kicks, punches and rifle butts as they struggled to hold the positions. One man's head was banged against the wall. They were then forced into squatting stress positions and then made to lie on the floor as the soldiers walked back and forth over their backs. Ali Hamid-Lazim was one of the policemen. He describes the ordeal as follows:

“A soldier in front of us showed us how to squat with our hands resting on our heads...I squatted down with my hands on my head. But I had very tired legs and they were hurting so I kept slipping. It was hot, I was sweating and I couldn't balance well. I accidentally fell back and put my hand on the floor and a soldier came and hit me hard just behind the ear..... I tried to look around from the wall and a soldier kicked me on the lower back, I couldn't control myself and I wet myself. Water was also running from my nose and mouth. I was so scared. I thought I was never going to see my family and children again.”

Some of the policemen were interrogated. Those policemen who could not answer the questions were verbally abused and then beaten. One man was punched hard under his left eye and was beaten with rifle butts during an interrogation ordeal that lasted around an hour. Some of the others, who could hear his screams, report being beaten with a metal aerial and batons. One man talks of being grabbed by the neck and threatened and then dragged from the room by his ankles. The policemen later escaped when a disturbance occurred at the front of the police station caused by the local chief of police. They were seriously physically injured as a result of their ordeal and all underwent hospital treatment.

On 17 February 2009, a Letter Before Action was served on the Secretary of State for Defence seeking an independent investigation into the allegations. If such investigation is not forthcoming, judicial review proceedings are likely to be commenced. Rather than excuse the British forces' conduct during the incident, the tragic killing of the six RMP officers at the same police station the previous month (during an incident which led to serious loss of life on both sides) should have led to increased scrutiny and oversight of this operation, given the obvious potential for mistreatment. This does not appear to have occurred, even though the presence of a tactical questioner and Arabic speakers (both translators and soldiers) is strongly suggestive of a well-planned operation, possibly using special forces. Indeed all appearances are to the contrary: that the soldiers present were permitted to mistreat the policemen with impunity.

3.4 14-16 September 2003 – Baha Mousa Incident

R (Al-Skeini and others) v Secretary of State for Defence/The Baha Mousa Public Inquiry

The incident which led to the establishment of the Baha Mousa Public Inquiry occurred on 14 September 2003 when ten men were detained by British forces in Basra. Seven of them were detained at the Haitham Hotel where they worked, two others at their home and one man at the scene of a road-accident. They were held in what was known as the “Temporary Detention Facility” at the Headquarters of First Queen’s Lancashire Regiment, a disused toilet area/changing block adjacent to a swimming pool overlooked by the soldiers’ residential blocks. It is by now well-known that within thirty six hours Baha Mousa would be killed by British soldiers having suffered 93 separate injuries.²⁵ The other nine would, like him, be subjected to horrific physical mistreatment throughout this period, hooded and cuffed, deprived of food and water and sleep, sexually humiliated, their bodies contorted into officially sanctioned stress positions in the 40 to 50 degree heat. They were interrogated during this time.

The Baha Mousa Public Inquiry will examine exactly how the interrogation techniques banned in 1972 returned to become standard operating procedure in Iraq during the early years of the British presence in Iraq. The Inquiry is currently in the preliminary stages of procedural direction hearings and disclosure. Oral hearings are expected to commence in July 2009.

The Inquiry’s List of Issues²⁶ shows that the Inquiry will examine, amongst other issues:

“the Government, MoD and Army reaction to the use of the five techniques following the introduction of internment (including the Compton reports, and Parker report, the Government’s statements that followed, and the approach to the decision in Ireland v UK)...”;

“..Within the wider and higher Army chain of command and MoD, who knew that ‘conditioning techniques’ were being used by 1 QLR?...” ; and

“...was the response of those involved in the medical care of the detainees at the BG Main appropriate?”

The case of Baha Mousa is exceptional, in that the Government has conceded the establishment of an independent inquiry after many years of litigation. Whilst the Inquiry will examine systemic issues in 2003, it is of small comfort to the other victims of abuses detailed in this report. Their own demands for investigation and reparation are very real.

²⁵ Redress Report “UK Army In Iraq – Time to come clean on civilian torture” (October 2007) (http://www.redress.org/publications/UK_ARMY_IN_IRAQ_-_TIME_TO_COME_CLEAN_ON_CIVILIAN_TORTURE_Oct%2007.pdf); Fisk, Robert “Who killed Baha Mousa?” The Independent (15 December 2004); Barrett, David “Baha Mousa: Government Apologises” The Independent (27 March 2008)

²⁶ http://www.bahamousainquiry.org/linkedfiles/baha_mousa/key_documents/issues_list.pdf

PIL continues to push for further independent investigations on their behalf unless and until a sufficiently broadly commissioned inquiry is established to thoroughly investigate these and other incidents of abuse by British troops in Iraq.

3.5 5 April 2004 – Amara Protests

R (Abdul-Razzaq and others) v Secretary of State for Defence

On 5 April 2004, protests against the Governor of Maysan province took place in Al-Amara, the provincial capital. Maysan was one of the four provinces that made up the South-East division of the Multi-National Force, which was commanded by British Forces. The British forces in Al-Amara, whose base was adjacent to the Governor's palace, policed the protest and later broke it up. Stones were thrown in response. It appears that the British forces fired rubber bullets into the crowd and charged protestors, clearing the area around the palace. Four youths were then dragged into the grounds of the Governor's palace by British soldiers, restrained and violently beaten with fists, kicks and batons, as another soldier recorded the incident with a video camera and other soldiers walked by.

On 12 February 2006, a video materialised showing the beating the four children suffered after it had been passed to the News of the World. The video records only a one-minute snapshot of the ordeal of the youths, which they state continued for several hours, but it is sufficient to give an indication of the ferocity of the physical abuse to which they were subjected. The soldier filming provides a commentary, which is disturbing not only due to its content (repeated cries of "yes" after the most severe blows, and "you little fuckers, you little fuckers, die!"), but also in the evident awareness of what was going to happen to the boys, suggestive of pre-planning and/or common practice. As the boys are led into the compound, the soldier providing the commentary says "oh yes, oh yes, you are gonna get it". Later, groups of soldiers walk by, barely giving the beating a second glance. Towards the end of the video, and despite the distance of the cameraman, the children can be clearly heard to be crying and pleading "no please, no please, no please." It makes for distressing viewing.

Bariq Abdul-Razzaq was one of the youths on the video. He was a little over 12 years old at the time. He had become caught up in the protest after leaving school early. He was put in a headlock, head butted and stamped upon (in itself a grave humiliation for Iraqi males). He was cuffed and forced to kneel. During the ordeal, he cried out repeatedly, begging for mercy. He recalls similar cries from the boys receiving similar treatment around him. Bariq Abdul-Razzaq states:

“The soldiers hit and kicked me until I was pushed up against the inner wall of the compound. They continued to kick me so I fell against the wall. Further, if any soldiers entered or left the Provincial Hall they would kick or hit me as they did so. At some point I lost consciousness. The next thing I recall is having ice-cold water thrown over my head. I woke up.”

Muslim Sami Abdul Hassan has also come forward. He was 14 years old at the time. He was also severely beaten, pushed to the ground and repeatedly hit and kicked by British soldiers using their fists and batons. He suffered gashes on his back and chin. One soldier, who was wearing heavy military boots, kicked Muslim extremely hard in the genitals whilst he was lying prostrate on the floor, causing him to urinate on himself and to almost lose consciousness. This kick can be clearly seen on the video and his cries of “no please” clearly heard. He does not move after the kick.

The beatings continued after both boys had been restrained, for what they estimate was a period of around 2 hours. At one stage, a soldier, laughing, produced a swiss army knife and motioned as if to cut Bariq’s throat. The same soldier later lit a cigarette and intimated that he was going to stub it out on Bariq’s face and body.

At one point, an Iraqi policeman of 13 years service, Haitham Falih-Issa, saw what was happening and sought to intervene in the beating. He appealed to the soldiers that the victims were only children, pointing to the boys and saying “baby, baby”. Rather than stopping, however, a soldier hit the policeman’s arm with his baton. A group of soldiers then began to beat him on his body and head with batons. One of the soldiers kicked him in the genitals. He was then handcuffed. When he came to, he recalls hearing the soldiers laughing at him. He was then forced to kneel while his wrists were cuffed behind his back. His head was smashed against the wall, causing it to bleed.

The boys and the policeman were later dragged across the road to the British base adjacent to the palace (“CIMIC House”), where they were photographed, forced to adopt stress positions and further beaten and humiliated. Muslim Sami Abdul-Hassan describes this as follows:

“I was made to kneel on the floor with my face to the wall. I was to remain in this position for a number of hours and it was painful to hold...Following this the soldiers would intermittently come into the room and slap me around the head and face with their open hands.”

The policeman was transferred to an Iraqi jail from where he was later released on the orders of an Iraqi judge. The boys remained at the British base for several hours. When they asked for water, it was poured in front of them and the empty bottles thrown at them. Dogs were used to frighten them and they were repeatedly punched and kicked, whether they were maintaining the stress positions or not. After around six hours, the

boys were released and pushed from the base, having 'learned their lesson'. All of them were seriously injured as a result of their ordeal.

For Haitham, the policeman, the humiliation of being beaten in his uniform affected him terribly. Moreover, he was dismissed from the police force on the written orders of a British officer. He was reinstated over a year later. The two younger victims continue to suffer from various symptoms of post-traumatic shock such as sleep-walking, nightmares and emotional problems. Like all victims, their lives have been irreparably damaged by the experience.

The RMP commenced an investigation following publication of the video, but it was announced by the Army Prosecuting Authority on 15 December 2006 that, despite the existence of the video, there was insufficient evidence to afford a realistic prospect of conviction against any British servicemen. It stated that the case had been referred back to the Army to consider whether internal disciplinary or administrative action was appropriate. It is not known whether such action was taken. The Government did not confirm or deny this or any other facts in relation to the incident over several months of pre-action correspondence, during which the Government failed to offer any substantive response at all. Judicial review proceedings were therefore issued in January 2009 on behalf of Bariq, Muslim and Haitham. They are currently stayed pending judgment in *Al-Sweady* (below).

3.6 14 May 2004 – The Danny Boy Incident

R (Al-Sweady and others) v Secretary of State for Defence

On 14 May 2004, a British Army convoy came under attack near Majar Al-Kabir in Maysan province, Iraq. A fierce fire-fight ensued, later described as "one of the most intense since the Falklands"²⁷. A number of Iraqis were killed in the battle. Some estimates by British forces at the time were as high as 50. A number of local residents claimed at the time that relatives tending the fields in the region of the battle had been caught up in the fighting. British forces also detained a number of men, and were seen transporting them from the battlefield. The British forces maintain that there were nine prisoners taken alive, since nine were transported to the British detainee holding facility at Shaibah the next day. They also claim to have collected 20 bodies from the battlefield and to have returned them the next day. If given, such an order to collect enemy bodies is without precedent. Iraqi witnesses, including the detained prisoners, have given evidence suggesting that others were taken alive but were returned dead from the British base, Camp Abu Naji, the next day. Some military evidence supports this. The nine

²⁷ <http://news.bbc.co.uk/1/hi/uk/8016685.stm>

prisoners also allege that they were beaten and abused both during and after their arrests. They state that they were treated aggressively from the outset and that upon arrest they were hit in the face with rifle butts and were tripped over whilst cuffed to the rear, causing them to fall painfully. Ahmad Jabbar Ahmood also recalls being kicked in the back of the head, his face being pressed into the ground and being hit on the head with rifle butts. A number of the nine detainees allege that they were beaten overnight, whilst they were interrogated. One man had suffered gunshot and shrapnel wounds to his leg, but received no proper medical attention until he was transferred from Camp Abu Naji two days later, after which he underwent surgery and spent over two weeks in hospital. Crucially, the prisoners also allege that men amongst the dead had been transported from the battlefield alive and that, whilst their vision was obscured by blacked out goggles, they overheard the unmistakable sounds of torture during the night. Hussein Jabbari Ali describes what happened as follows:

“Suddenly without any warning I heard a very loud scream from about 2 metres behind my right shoulder. The scream came without warning and, once it started, the same person was screaming and screaming for a long period of time, maybe as long as 15 minutes. It was a series of screams of a person who appeared to be in excruciating pain. This first person I recall was shouting for their family, their mother and father...It is not something I will ever forget...I do not know the detail of what was happening to cause such intense screaming but I was in no doubt that something terrible was being done to these men which ended in their deaths.”

Other witnesses describe the sounds of screams and the smell of blood. After around five months at Shaibah the nine men were transferred to the Iraqi authorities to face criminal charges, notwithstanding fears over the conditions of Iraqi custody and the possibility of torture by the Iraqi authorities.

The large number of bodies which were handed over from Camp Abu Naji the next day were examined upon their return to a local hospital, and a number of the post-mortem examinations noted evidence of torture, including close-range bullet wounds, the removal of eyes, severed genitalia and stab wounds. Allegations immediately began to circulate in the local community that men who had been seen taken from the battlefield alive were amongst the bodies. This was noted in reports in the British press at the time. Clearly, the seriousness of these allegations were grounds for the most thorough of investigations. However, on the contrary, it appears from the judicial review proceedings that the RMP were not called in to investigate despite the then current policy presumption that an RMP investigation would be commenced into any incident involving enemy contact. It appears that an RMP investigation continued to be blocked until the International Committee of the Red Cross raised issues of prisoner mistreatment concerning the nine prisoners on a routine Red Cross visit some six days later. A further

month's delay followed as commencement of the investigation appears to have been blocked by the chain of command. In any event, it appears that the mistreatment of the nine detainees was only investigated in 2008 after PIL served witness statements on behalf of a number of them. Nevertheless, key questions for both investigations, such as the identification and interviewing of the men guarding the Iraqi prisoners (some of whom, it is clear, were armed), remained unanswered even after both investigations concluded in 2008/09 with another decision not to bring prosecutions against any soldiers.

Judicial review proceedings were issued in December 2007 on behalf of the uncle of one of the men whose bodies were returned from Camp Abu Naji the next day, together with five of the nine men who had been detained. They allege serious breaches of articles 2 (the right to life), 3 (prohibition of torture) and 5 (liberty) of the ECHR, and claim that the Government has failed to adequately investigate the violations. Clearly, if the factual allegations are borne out, which may in itself require a public inquiry, then the investigation which has thus far taken place does not comply with the requirements of the ECHR. In these circumstances, those requirements could only be met by an independent civilian investigation, which could include additional matters such as adherence with the Army's own Rules of Engagement (in light of the high number of dead, the types of injuries and the youth of most of the victims) in what were ostensibly, 'peace time' operations.

To date, there has been little involvement of victims and significant delays and obstructions. Many issues which have emerged during disclosure appear to have been ignored by investigators. The Divisional Court hearing, unusually heard by three judges, commenced on 22 April 2009 and continued for over four weeks. It is now adjourned until 6 July 2009. Key questions have emerged as to the veracity of the evidence adduced by the Government and the candour of its disclosure (in respect of which, see 4.4 below).

3.7 18 September 2004 to 21 December 2007 – Fartoosi Detention

R (Al-Fartoosi) v Secretary of State for Defence

Mr Ahmed Al-Fartoosi was arrested at his home by British forces in Iraq on 18 September 2004 and detained until 21 December 2007. Mr Fartoosi was a leader of the Mahdi army and interned, like many others, pre-emptively, on the basis that he presented a danger to internal security. He was beaten with rifle butts upon his arrest and during transport in a British armoured vehicle. He describes soldiers laughing as they hit him repeatedly with rifle butts. He was then forced to adopt stress positions at

the British Base at Basra Airport before being transported to Shaibah prison where he was interned. He spent over three years in custody. He contends that such a prolonged detention was unjustified and that, whilst in detention, he was subjected to sustained periods of solitary confinement lasting between two and a half months and three months at a time. He describes his solitary confinement cell as follows:

“I could only sleep along one side of the room, as the other side was too small. I am around 1.8m tall and when I lay down to sleep, both my head and feet touched the walls. In the room, there was a small opening the size of a human face. There was no ventilation in the cell. It was very hot in the cell. At that time it was around 50 degrees Celsius outside, and so I think it was around 38/39 degrees Celsius in the cell. I was kept in solitary confinement for 72 days.”

The effects of solitary confinement upon his health caused him to lose 22lb of his body weight in a little over a month. Mr Al-Fartoosi was also denied access to a lawyer and medical attention, deprived of food and drink, deprived of sleep, blindfolded, subjected to extreme temperatures, physically abused and observed every time he used the toilet and shower (a calculatedly humiliating act in Iraqi Muslim culture). In a similarly humiliating fashion, he was also exposed to the sounds of hard-core pornography as a form of extreme sexual, religious and cultural humiliation. The pornography was played throughout the night, every night, for a month during which time Mr Al-Fartoosi was repeatedly interrogated. He describes it thus:

“After a short period of conversation in English it became clear to me that the DVD was showing porn. It was playing at the loudest possible volume. I could hear obvious sounds of people having sex and constant use of the word “fuck”. I could hear various other sexual noises as well. From time to time I would see a soldier come to the laptop and change the DVD. There appeared to be a selection of different ones. It was impossible to sleep during this first night of porn movies being played all night”

The playing of the pornography took place throughout the month of Ramadan. He goes on to describe the effect that this humiliating treatment, compounded by the intense heat in solitary confinement, the complete lack of privacy (even on the toilet), the sleep deprivation and occasional physical abuse had on him:

“It is impossible for me to describe in words the effect of the porn movies on my health. It was impossible to sleep. I found it absolutely disgusting and sickening and it in fact made me sick. Evidently I was supposed to become sexually aroused and I presume that the soldiers expected me to masturbate in front of them....It was very humiliating for me to be treated in this way by the British Army. If they expected me to give in to my basic instincts they did not realise that I am not that kind of man...I come from a religious background and would not indulge in a sexual relationship outside of marriage. I was determined not to be sexually aroused by this but it made me physically sick.”

Many of the practices experienced by Mr Al-Fartoosi are analogous to allegations regarding US practices at Guantanamo bay. Again, the question of US-UK collusion must be answered by the Government.

The Secretary of State has stated in correspondence that there was an RMP investigation into the abuse of Mr Al-Fartoosi and another man. However, at no time was he questioned in the course of this investigation. The report of the investigation has still not been disclosed. It appears that any initial investigation was limited to abuse during the arrest rather than at the detention facility. The Secretary of State seeks to stay the proceedings, which were issued on 28 November 2008 pending a further RMP investigation. There is likely to be a full hearing of this case within 12 months.

3.8 9 October 2004 – 30 December 2007 Al-Jedda Detention

R (Al-Jedda) v Secretary of State for Defence

Hilal Al-Jedda is a British National, detained by American Forces in Iraq on 9 October 2004 and thereafter transferred to British custody in southern Iraq, where he remained until his release on 30 December 2007. In proceedings brought in 2005, he challenged the legality of his internment, resulting in the House of Lords decision in *Al-Jedda*²⁸ which decided that his rights under article 5(1) ECHR (liberty of the person) were qualified by the power to intern under article 78 Geneva Convention IV and subsequent UN Resolutions, albeit only insofar as was inherently necessary. During the period of his internment, Hilal Al-Jedda was interrogated on a number of occasions by MI5, and was mistreated in a manner reminiscent of the treatment of Ahmed Al-Fartoosi (see above). Prior to his arrest, he had been detained and beaten by the Syrian authorities in an underground prison for almost a year. When he was interrogated by British forces in October 2004, he was held in solitary confinement for 14 days, repeatedly shouted at and physically spun around in his cell prior to being taken for interrogation. In total, he was held in solitary confinement for a month, in a small, extremely hot cell with no bed. At night, he was deprived of sleep by soldiers shouting and repeatedly banging the door and opening and closing the observation hatch. He too was forced to listen at night to the sound of pornography playing on a laptop at the loudest possible volume by the soldiers guarding his cell. His requests for contact with his family were refused. He was unable to change his clothes. He was observed whenever he went to the toilet and prior to each interrogation he was blindfolded and had to undergo full body searches.

²⁸ R (Al-Jedda) v Secretary of State for Defence [2007] UKHL 58

Since he was interrogated by members of the security services, the extent to which his mistreatment was ordered as an aid to interrogation will be crucial. The parallels to other cases of alleged MI5 collusion with torture, in Pakistan and elsewhere, should be examined by the Government.

3.9 2005 Internment Cases

R (Khazaal and others) v Secretary of State for Defence

A number of Letters Before Action have recently been served upon the Government on behalf of four Iraqi men detained in separate house raids in 2005. The men were mistreated upon arrest and during detention and were interned by the Government for periods in excess of 2 years. Their cases provide yet further evidence of systematic mistreatment of detainees and of prolonged and unjustifiable internment of civilians. One of the four claimants' cases in particular highlights the inadequate medical treatment that was given to internees, and alleges significant delays for specialist operations required partly as a consequence of mistreatment by British forces.

Ra'ad Mawwat Khazaal, the First Claimant, was arrested during a raid by British forces on his home in Maysan province in Iraq, at around midnight on 12 June 2005. He was hooded, ear-muffled, dragged from his house and beaten with cabling lying nearby. He was transported in a vehicle, where his protests were ignored and when he tried to adjust the goggles he was punched and kicked. He was then made to run to a waiting helicopter. When he fell, exhausted, two soldiers dragged him by his ankles along the floor causing injury to his back. He was later detained at a nearby military facility for interrogation, likely to have been Camp Abu Naji in Maysan. When he asked for water he was kicked and insults were shouted at him. In torn clothes, he urinated upon himself because he was too scared to ask to visit the toilet. It appears that he was then transported by helicopter to another location where, still hooded and with ear protectors, he was forced to run and then to sit on the ground which, due to the heat of the day, was unbearably hot. When he adjusted himself on the ground, he was hit with a baton. He was then struck in the face with a rifle butt. He describes this as follows:

"The impact stunned me and knocked me over. The force was so hard that I felt some of my teeth break and I felt incredible pain along my upper jaw. I could feel that blood was quickly filling into my mouth."

Ra'ad Khazaal felt a number of his teeth fall out. In great pain, he was moved to the shade and later transported to the UK internment facility at Shaibah Logistics Base, where he had to wait for two weeks before his broken jaw was treated. He was only intermittently provided with pain killers.

Ali Mghamis Hmood, Mohammad Abdul-Zahra Ali and Farhan Khalaf were also detained by British forces in 2005. Two of them were captured in midnight raids on their homes whereas Farhan was detained at the Shaibah internment facility when he was visiting a relative. The men also complain of mistreatment during their arrest and interrogation and two of them also refer to being hooded and having their hearing restricted, as well as being handcuffed. They all complain of being deprived of food and water during this initial 24 hour period. Ali Hmood talks of being kicked so hard in the back on descending the stairs in his home that he fell and nearly lost consciousness. When he was transported, a soldier stood on his face to keep him in position throughout the journey. Farhan Ghait complains of a series of forced exercises and stress positions, interrupted by repeated interrogations. Upon arrival at Shaibah internment facility, all of the men were forced to remove their clothes and undergo medical examinations, which humiliated them.

Internment in all of the men's cases lasted for over two years, during which time they were neither interrogated regularly nor given an adequate opportunity to challenge their internment. Instead they would periodically receive photocopied letters informing them that their continuing internment was required for imperative reasons of security. Ra'ad Khazaal, who was interrogated just once in over two years of internment describes the letters as "*just photocopies, repeated over and over*". A number of them complain of inadequate medical treatment, in particular Ra'ad Khazaal, whose fractured jaw remained untreated and whose haemorrhoids condition deteriorated over a number of months, to the point where a specialist was required to fly from the UK to treat what had become a life-threatening condition. He states:

"I am certain a major cause of my health problems was the mistreatment at the hands of British soldiers, the conditions in which I was held, the lack of access to prompt healthcare and the stress of being a prisoner with no hope of release."

Naturally, the effects of the mistreatment suffered by the men combined with such a long period of internment has had a significantly detrimental effect upon them. Ali Hmood states simply that he was "*devastated to have been away from my family for such a long time, to miss two years of my children's lives that I can never get back.*" Both Mohammad Ali and Ra'ad Khazaal attempted suicide a number of times during their internment. Mohammad Ali had been married just two weeks when he was interned and continues to suffer from significant psychological problems as a result of the mistreatment that he received and his prolonged internment. The men have been financially, psychologically, socially and physically affected by the ordeal. All of the men complain of the futility and unreasonableness of their internment and maintain that there was no reason whatsoever for them to be deprived of their liberty and removed

from their families. In doing so, they reflect the frustrations and broken lives of the many thousands²⁹ of Iraqis interned by British and coalition forces for years at a time in Iraq, many of whom remain in prison to this day without any criminal accusations having been made against them.³⁰

3.10 1 April 2007 – Kammash House Raid

R (Kammash and others) v Secretary of State for Defence

On 1 April 2007, at around 1am, the home of the Kammash family in Al-Gzaizah, Basra, was raided by British troops. At the time, it was mostly occupied by women and children celebrating a recent birth. The house was searched and no weapons were found. Six men were arrested, including 70 year-old Jabbar Kammash and his two sons. All of the men were hooded and handcuffed. Jabbar Kammash was dragged from the house in his nightwear exposing his private parts to his family which he found deeply humiliating. His wife was hit with a rifle butt injuring her hand. The men were pushed inside waiting vehicles, where Jabbar Kammash was forced to kneel while two soldiers sat on his back. When he tried to lift himself up, he caused one of the soldiers to hit his head, resulting in further beatings with rifle butts. He later received six stitches on his head. His 24 year-old son was also stood upon, which he describes as follows:

“A soldier then stood on my back as the vehicle started off and stayed there for about five minutes which caused me a lot of pain and I could barely breathe. It was a grave insult for them to stand on me. It would have been better to have killed me at this point. I felt so humiliated.”

He and the other men were also beaten continuously with rifle butts and boots throughout the journey. Another son was beaten incessantly despite his pleas and he was hit on his ribs, stomach, thighs and shoulders by soldiers using their boots, fists, rifle butts and helmets. He says:

“I pleaded with them to stop but whenever I pleaded with them, saying “please stop” in English they would hit me even harder. I spoke all the English that I knew but they just carried on.”

²⁹ See, for example: Enders, David “Camp Bucca: Iraq’s Guantanamo” The Nation, 8 October 2008. This article estimates that 18,000 Iraqis were being held in August 2008.

³⁰ See, for example: Interview with John Pace, ex-Head of UN Assistance Mission to Iraq, Democracy Now, 28 February 2006: “Q: John Pace, would you say that the United States is violating the Geneva Conventions? A: In this respect, I would say so, yes. Certainly not observing the terms of internment, for imperative reasons of security. That’s quite clear.... You know, the vast majority of these people are innocent Q: What percentage of the people, the prisoners, the thousands of prisoners would you say are innocent when they are brought in? A: Oh, I would say the vast majority I would say between 80, 90. You know, this rounding up is quite blindly done, of course, because of the immediate circumstances surrounding the situation.” (http://www.democracynow.org/2006/2/28/exclusive_former_un_human_rights_chief)

Another man who was detained at the house, Hilal Abid Ali Thamir, describes the ordeal as follows:

“It was a short journey, about 30 minutes. The soldiers continued to kick and hit me with what felt like the butt of their weapons. They were mostly hitting me on my side and my head and stamped on my bare feet. They also hit me on my face, they punched me on my nose and slapped my face. This caused my nose to bleed and I could also taste blood coming out of my mouth. It was difficult to breathe, because of the blood coming out of my nose and mouth. I heard the voices of Jabbar Hmoud and Ramzi and they were screaming. When the car was about to stop, the soldiers removed the hood and put on again the goggles and the earmuffs.”

Upon arrival at the British base at Basra Airport, Jabir's son was dragged from the vehicle by his legs. A large man, his body was scraped on metal protrusions as he was pulled from the vehicle and the fall to the ground, a significant drop, broke the plastic handcuffs which were binding his hands. His father, Jabbar Kammash, had to be stretchered to the clinic after the journey because he could not walk. Two other men were also taken for medical treatment. A number of them complained to medical staff about their treatment but it appears nothing was done. All of the men were then forced into seated stress positions and were beaten if they failed to hold the positions and lifted their heads or bent their backs. This treatment lasted throughout the night until the morning, during which time they were interrogated.

Jabbar Kammash was released the next day together with his youngest son. His other son was released four days later. During his interrogation soldiers had threatened to bring his wife and sister to the base and abuse them. The remaining men were detained by the British forces for a number of months at the British base at Shaibah. They faced varying periods in solitary confinement during which time they were deprived of sleep, sexually humiliated by forced nudity and observed toilet use, interrogated and severely beaten. Hilal describes the beatings as follows:

“Sometimes during the interrogations, when I refused to give any answers at all, or they did not like the answers that I gave, they would cuff me and, instead of returning me to my cell, would take me to another room nearby and beat me. I don't remember how many times this happened exactly, but it was several. I could not see my assailants because of the goggles. Because of this the blows shocked me even more. They would hit me with hard things, which were possibly weapons or batons, and later on with boots or punches. These were mainly to the body, but my jaw was injured on one occasion. The translator would tell me after the beating had stopped that I had to change my answers, to tell the truth, to stop the beatings.”

The men were eventually released a number of months later without being given any satisfactory explanation for the reason of such a prolonged detention. Judicial review proceedings were commenced in late 2008 on behalf of three of the men. A ten-day

hearing is likely to be listed towards the end of 2009. The full details of the Government's response are currently awaited.

3.11 Al-Saadoon Detention and Transfer

30 April 2003 - 31 December 2008 – R (Al-Saadoon and Mufdhi) v Secretary of State for Defence

Faisal al-Saadoon and Khalaf Mufdhi were detained in Basra on 30 April and 21 November 2003 respectively. Like so many others, they were originally interned by British forces on the grounds that they represented an internal security risk. They were known Ba'ath party members. Faisal Al-Saadoon was initially held in solitary confinement for 35 consecutive days in wholly inadequate facilities that included a metal shipping container, without proper sanitation or ventilation in unbearable temperatures that often exceeded 38 degrees Celsius. He was 51 years of age at the time and suffered from diabetes, but was denied essential medication for this. Whilst detained, he was subjected to deliberate sleep deprivation, arbitrary body searches and physical abuse. Khalaf Mufdhi faced similar treatment. He was held overnight in a two by three metre cell in which he was forced to stand throughout. He was not permitted to sit, talk or sleep: doing so would cause the guards to shout and bang on the iron bars to the cell. He was then interrogated and detained for 16 consecutive days in 'Silence Camp', a makeshift tent at the Theatre Internment Facility known as Camp Bucca. Detainees in 'Silence Camp' were required to remain sitting and were not permitted to speak to each other. They were regularly punished with physical labour or verbal abuse, often for no reason, or simply for speaking or requesting to go to the toilet. Requests to use the toilet were often refused, leading detainees to soil themselves. Intentional humiliation and debasement of the detainees appears to have been a constant feature of 'Silence Camp' at Camp Bucca.

Thereafter, the men were held for over five years, with limited access to their families, and with continued uncertainty as to their fate. In mid-2006 their classification was changed, when it was alleged by the British forces that they had been involved in the unlawful killing of two British Army personnel in the early days of the Iraq invasion. In 2008, it became clear that the British authorities intended to transfer the men to the Iraqi Higher Tribunal ("IHT"), having investigated the possibility that the men may have been implicated in the servicemen's deaths and thereafter made a complaint to the Iraqi authorities. The IHT had previously tried, convicted and executed Saddam Hussein in circumstances which gave rise to serious concerns as to the fairness of its

proceedings.³¹ PIL opposed the proposed transfer on the men's behalf given the risk of an unfair trial and the very real possibility that the men could be sentenced to death – a clear breach of the UK's obligations under the ECHR and international law not to transfer persons to jurisdictions where they will face a flagrantly unfair trial and/or the death penalty and/or torture. Hearings took place in the Divisional Court from 18 to 20 November 2008 and, due to the time pressures involved, shortly thereafter in the Court of Appeal on 29 and 30 December 2008. However, both courts, perhaps mindful of the political context of the end of the UN mandate for the British presence in Iraq on 31 December 2008, failed to block the transfer.

The ECtHR issued an injunction against the British Government within one hour of the Court of Appeal's judgment in order to prevent the transfer of the men to Iraqi custody due to the seriousness of the issues involved. Nevertheless, the day after receiving the ECtHR's order, the British Government went ahead and transferred the men to Iraqi custody notwithstanding the terms of the ECtHR's order (in respect of which, see 4.6 below). On 16 February 2009, the House of Lords declined to hear the appeal, the Government arguing that the question had become "academic" as a result of its transfer of the men in breach of the ECtHR order. The men therefore currently face what the Divisional Court and the Court of Appeal recognised as a "real risk" of being sentenced to death by hanging. The case proceeds before the ECtHR in Strasbourg on an expedited basis where the return of the prisoners to UK custody is sought, along with a whole host of diplomatic endeavours by the UK Government to attempt to repair some of the damage caused by its unprecedented actions in handing the men over to face the death penalty. The case also argues that hanging in itself constitutes inhuman and degrading treatment, placing the Government of the UK in the position of being seen to defend a practice now stricken from the statute books in this country. Newly issued judicial review proceedings in the UK also seek to review the transfer itself, with particular attention paid to the chain of events on 31 December 2008 which led to the transfer of the men despite the imposition of the ECtHR's injunction and a domestic High Court order obtained later that day by PIL in order to "shore up" the Strasbourg injunction.

3.12 Future Cases

The above case studies are not isolated incidents and may not represent the worst abuses perpetrated by the British army in Iraq. In May of this year, lawyers from PIL

³¹ See, for example: Human Rights Watch, *The Poisoned Chalice*, 22 June 2007 (<http://www.hrw.org/en/reports/2007/06/22/poisoned-chalice>)

travelled to Beirut to take witness statements from a number of other Iraqis who allege to have been ill-treated, arbitrarily detained and in some cases religiously humiliated and sexually abused by the British military. The cases documented span from the start of hostilities in March 2003 through to 2007 and it is understood that there are many more cases which are yet to be documented.

The details of the abuse and the use of coercive interrogation techniques (hooding, stressing, food and water deprivation) are all too familiar from the above case studies. With the ever-mounting evidence of repeated systemic abuse, the protests that these atrocities have been caused by a few rotten apples ring ever more hollow. Below, is a sample of new cases, which, unless the Government cedes to PIL's demands to hold full public independent investigations into the allegations, are likely to become the subject of judicial review proceedings in the coming months:-

- On 22 August 2003, a group of 8 Iraqi male friends were sitting in a living room, watching satellite television when the British military forced entry into the building. The soldiers entered the room, violently beat the friends, handcuffed, blindfolded them and placed them in a military vehicle. The friends were taken to Camp Abu Naji, Maysan, Iraq, in a military vehicle while being beaten with such force that at least one of the Iraqis lost consciousness. They were then taken by helicopter to Camp Bucca where they were interrogated and threatened with dogs. They were detained overnight with no food or water. The next morning, a British soldier apologised to the Iraqis for their treatment and informed them that they would be released. When returned to Camp Abu Naji, they received a hand written apology from an Army Major.
- In April 2004, a group of brothers who were sleeping in their adjoining houses were detained by the British military on a raid at their home. Their father was shot and lost his arm as a result of his injuries and one of the brothers was seriously wounded by a bullet lodging in his neck and has since died of his injuries. The remaining eight brothers were taken to a room in the house and beaten so ferociously by the soldiers that at least one brother lost consciousness. They were handcuffed, blindfolded and hooded and taken to Camp Akka (while the beating continued) where they were forced to adopt various stress positions for 19 hours. No food or water was given to them and they were not allowed to go to the toilet. The brothers were then taken to Shaibah internment facility and detained

for three weeks where they all complain of serious ill-treatment. One brother complains of being held in a 1.5 by 1.5 metres cell for four days. At first his body was so tender and swollen from the beatings he could not lie down on the tiled floor. With no access to a toilet, he was provided only with a plastic bag and bottle with which to relieve himself. Soldiers kicked the iron door to his cell continuously if he looked like he may be falling to sleep. After a medical examination, he was taken to a separate room where he was forced to strip naked and bend forward and backwards whilst British soldiers took photos of him on their mobile phones and laughed at him. The brothers were eventually taken in front of an Iraqi judge who immediately released them. No reason has been given for their detention.

- In January 2006, a Security Officer within the Basra Governorate was detained during a raid at his house in the early hours of the morning. Tens of soldiers entered, searched his house and in front of his wife and children, he was handcuffed, sat on, hooded and taken away. He was dragged into a vehicle, transported to British Headquarters where he was made to kneel in a stress position before being taken by helicopter to Basra airport. He complains of beating and physical abuse throughout this time. At Basra Airport, still only wearing his night vest and shorts, he was put through a gruelling and deliberately disorientating routine of stress positions, physical exercise, beatings, and interrogation. He was then transported by helicopter to Shaibah detention centre. He gives a disturbing account of sexual abuse occurring in the helicopter. At Shaibah detention centre the gruelling routine continued. He was kept in solitary confinement for eight days in a small cell approximately 1 by 1.5 metres. He was deprived of sleep and at night he was repeatedly taken from his cell, blindfolded, hooded, handcuffed and disorientated before being taken for short interrogations. On one night he was interrogated 14 times. He further complained of pornographic movies being played at high volume during the night to keep him awake. He remained at Shaibah detention centre until April 2007 when he was transferred to Basra airport. He complains of further ill treatment including an incident when dogs were brought into his cell. For the majority of his time he was kept in solitary confinement. In September 2007, he was released on the basis

that he no longer posed a threat. He has never received a satisfactory explanation for his prolonged detention.

- In March 2006, a 21 year-old Iraqi night patrol man was captured while patrolling the streets of Amara. He was taken to several detention centres and was tortured continuously for a period of 48 hours. At the hands of the British soldiers he was severely beaten, a vehicle was driven into him and he was hung up by handcuffs from a hook in the ceiling for elongated periods of time while soldiers beat him. In chilling echoes of Abu Ghraib, he was sexually abused by a female soldier while other soldiers took photographs and laughed at him.
- In March 2006, another Iraqi male was sleeping in bed with his wife, when British soldiers entered his house by force, and dragged him outside. He was taken to Shaibah detention centre where he had to adopt stress positions and was beaten with such force that he lost consciousness. He sustained a serious injury to his eye, yet no medical treatment was given to him. Due to lack of medical care, he lost sight in his eye. He was detained for one year and three months, when he was released as there was 'insufficient evidence'.

4 Evasion of Responsibility – The British Government’s Response

The response of the British Government to each of the case studies detailed in this report has been one of denial and obfuscation. Victims and their legal representatives have had their legitimacy questioned, in court and, more subtly, through the press. There have been no acknowledgements of wrongdoing, other than the apology given to Baha Mousa’s family and the other survivors of that incident in 2008, which, of course, followed their damages actions, a failed Court Martial, the House of Lords proceedings in *Al-Skeini* and the establishment of the Baha Mousa Public Inquiry.

In particular, a number of legal devices have been deployed by the Government in an effort to avoid accountability, and these are detailed below:

4.1 Jurisdiction

The House of Lords decision in *Al-Skeini* confirmed the applicability of the Human Rights Act to persons detained by British troops anywhere in the world, effectively preventing a British Guantanamo. However, the British Government’s response to this judgment has been to seek to limit its scope as much as possible. In almost all of the case studies detailed above, the Government has denied the applicability of the Human Rights Act. More recently, the Government has opposed the applicability of the Human Rights Act in similar circumstances but this time in relation to British soldiers serving in Iraq. The Court of Appeal recently rejected the Government’s use of the argument in this context.³² The jurisdictional argument has been used in various forms in the *Abdul-Razzaq, Ali (Camp Breadbasket)*, *Kammash* and *Al-Sweady* cases. In other cases, where detention in a military detention facility is undeniable, the Government has sought to distinguish the facts from *Al-Skeini* on various bases. In *Khadim Hassan*, they have denied any records of having detained Tarek Hassan and, failing that, argue that Camp Bucca, where he was held, was a US-only facility. This is despite the evidence from the Camp Bulford (Baha Mousa) Court Martial that between 1 and 2 of the 8 compounds of the Camp were run by British forces, and that the Joint Forward Interrogation Team, the main Divisional interrogation centre, was also based there. The incoherent logic of extending human rights protections to Baha Mousa, held in a disused toilet block in a partially destroyed hotel requisitioned as a British Army base, but to deny them to men held by British forces and transported in British vehicles, handcuffed and hooded by British soldiers, will be examined closely at these hearings. On the Government’s case,

³² R (on the application of) Smith v Secretary of State for Defence, [2009] EWCA Civ 441 (18 May 2009)

it would seem detainees can be driven outside of the building where they are being held, tortured, and driven back and no Human Rights Act liability will arise to regulate the torturers' conduct or mandate an investigation. This evidently cannot be correct.

In the *Al-Saadoon* case, the Secretary of State argued that the *Al-Skeini* bases of jurisdiction were displaced by the fact that the men were held as criminal suspects, purportedly on behalf of the Iraqi Government, and were therefore not subject to the Human Rights Act and that, in any event, the absence of a UN mandate post-31 December 2008 also caused the Human Rights Act to cease to have application. Thus, the ECHR rights that extend to victims have been subjugated to the vagaries of other international instruments of a less-binding or peremptory nature, easily manipulated by the UK Government in any given circumstances.

These attempts to evade responsibility on jurisdictional grounds will be dealt with in the forthcoming hearings of *Al-Saadoon* and *Al-Skeini* at the ECtHR in Strasbourg.

4.2 Applicable Law

Another way in which the Government has sought to evade accountability for the actions of British troops in Iraq has been to claim that the protections contained in the ECHR did not apply - even to persons detained by British forces - if they came into conflict with applicable Geneva Convention or UNSCR powers³³. This argument was partially successful in the case of *Al-Jedda* in the House of Lords, in which it was decided by their Lordships that the power to intern persons did qualify the protections against unlawful detention contained in article 5 ECHR but only as absolutely necessary. Lord Bingham stated:

“the UK...must ensure that the detainee’s rights under article 5 are not infringed to any greater extent than is inherent in such detention”³⁴

However, the primacy of the ECHR is implicit in this statement, in contrast to the Government's erroneous legal advice at the start of the Iraq occupation that the ECHR had no applicability and that the lower standards of the Geneva Conventions would operate to “oust” it.³⁵ Nevertheless, the Government continues to oppose the claims of unlawful detention made against them in the above case studies by claiming that they

³³ Either during the occupation from c. 1 May 2003 to 28 June 2004 when all of the Geneva Conventions applied, or since June 2004 when certain powers, such as the power to detain persons for imperative reasons of security, were, the Government claims, prolonged by successive UN Security Council Resolutions.

³⁴ *Supra*, n 28, para 39

³⁵ Evidence which emerged as a result of the Court Martial proceedings surrounding the death of Baha Mousa and the mistreatment of the nine survivors contained e-mail correspondence referring to the Attorney General's advice that “*during phase III (b) Phase III, lex specialis operates to oust ECHR.*” It was stated that “*At PJHQ we only intend to concentrate on the impact of GCIII/GCIV Hague Reg.s when providing guidance to TELIC Phase IV operations.*” This advice will be analysed in more depth by the Baha Mousa Public Inquiry.

had a clear power to intern pursuant to UNSCR authorisation. It remains to be seen whether they will continue to make this argument in relation to the house-raid cases which have only recently been notified to them. If so, the Government will have to provide a fully reasoned explanation as to why it was absolutely necessary to arrest so many men (farmers and taxi-drivers) in their homes and detain them for over two years before releasing them back to their families to no apparent benefit, let alone for imperative reasons of security.

4.3 **Attributability/State Responsibility**

The argument that the acts of British forces are attributable only to the UN and not the UK Government (due to the UNSCR resolutions authorising the continuation of Iraq operations) was run by the Government in *Al-Jedda* in the House of Lords in 2007 where it was roundly rejected. However, the Government has since argued that the acts of British troops are not attributable to the UK or the UN, but to Iraq. The Court of Appeal's judgment in the *Al-Saadoon* case decided that since the men were being held as criminal detainees the ECHR had no application. Once the men had been re-classified as criminal detainees by the British, Iraqi law essentially ousted the applicable British human rights protections. As a consequence, the Government is now able to argue in respect of persons held by them in British detention facilities abroad, that if they are classified as criminal detainees being held for the local authorities then no British state responsibility attaches to their treatment. The Court of Appeal summarised:

*"In these circumstances the United Kingdom was not before 31 December 2008 exercising any power or jurisdiction in relation to the appellants other than as agent for the Iraqi court. It was not exercising, or purporting to exercise, any autonomous power of its own as a sovereign State."*³⁶

The logical conclusion of such reasoning is that whether someone could be tortured by British troops with impunity depended on what type of detainee they were. Even if, as in Mr Al-Saadoon's and Mr Mufdhi's cases, they were arrested, investigated and held by British forces in connection with a crime against British servicemen, no responsibility for British troops' treatment of them (including, in this case, their being handed over to face the death penalty in contravention of Britain's ECHR and international law obligations) attaches to the British Government under the ECHR, as they were deemed to be criminal detainees. The implications of such evasion of responsibility for other British military operations, in Afghanistan or on peace-keeping operations, is clear. In post-conflict states where the rule of law is weak, the prospects of prosecution of authorities is slim, and the prospects of prosecution of foreign forces is non-existent (perhaps due

³⁶ R (On the application of Al Saadoon and Mufdhi) v the Secretary of State for Defence [2009] EWCA Civ 7 at para 40.

to immunities negotiated in separate instruments) then the Court of Appeal's reasoning has opened up a void of responsibility where previously, post-*Al-Skeini*, there had been none.

Again, an application has been made to the ECtHR in relation to all of the issues connected with the *Al-Saadoon* case, including this supplanting of state responsibility (and thereby ECHR jurisdiction) and judgment is currently awaited. *Al-Jedda*, also subject to an application to Strasbourg, will also consider the issue of attributability within around the next 12 months.

4.4 Disclosure

In the judicial review proceedings detailed in this report, the Government has a very clear public law duty of candour, to disclose all material relevant to the proceedings to ensure their fair disposal. The Courts have consistently recognised the unusual position of power that the executive has in defending judicial review proceedings in that it is often the only party privy to documentation which will either assist or damage its position in the proceedings. It is therefore imperative that there be no doubt that the Government is handing over all relevant documentation in connection with such serious allegations. Some limitations due to national security considerations are accepted. However, the recent *Binyam Mohamed* proceedings have raised serious questions regarding the Government's exercise of this prerogative, and both those proceedings and *Al-Sweady* have resulted in serious criticisms of the Government's approach to disclosure.

Michael Fordham QC summarises the ordinary disclosure duty on the Government in an article in the *Judicial Review* journal as follows:

*"A defendant to a judicial review claim owes a very high duty to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide.... Lack of co-operation and candour is strongly deprecated... It is right for the defendant to respond to the claim by making available information which would enable the claimant to raise further issues.... The defendant cannot be selective in the material which it provides.... Lawyers assisting a public authority in a decision-making context should take proactive steps to satisfy themselves that the appropriate public law standards are being, will be, and have been genuinely adhered to..."*³⁷

The *Al-Sweady* case, being so factually contentious, was clearly a case where the Government's compliance with its duty of candour would come under the spotlight. Yet it was only after months of correspondence, an application to the Court, and a subsequent Disclosure Hearing that the Government handed over the vast majority of

³⁷ Michael Fordham QC's "Disclosure Principles" article in *Judicial Review*, 2007 (page 195)

documentation (some 33 files including material which was clearly damaging) and agreed to provide a witness statement assuring the Court that the Government's lawyers had indeed reviewed all of the material. Further disclosure followed in March 2009 (44 files), just days before the commencement of the hearing, which commenced on 22 April 2009. The hearing continued for 5 weeks and was delayed on a number of occasions by further disclosure. The Treasury Solicitor and the head of the RMP were required by the Court to give evidence to explain the situation as regards disclosure.³⁸ Questions remain in these proceedings, which are ongoing, as further disclosure continues to emerge.

4.5 International Conventions

Although the majority of the cases detailed in this report principally allege breaches of the ECHR (in particular articles 3, 5 and 8), the allegations also amount to breaches of other international instruments binding upon the UK, in particular the UN Convention Against Torture and the UN Convention on the Rights of the Child. The Government seeks to avoid liability for these breaches by arguing that such conventions' territorial application extends only to UK territory and that, whilst ratified, they have not been incorporated into UK law. The UK is again seeking to limit the application of internationally recognised and accepted human rights' instruments. The first contention, of geographic applicability, is well met by the statements of the UN Committee Against Torture, which is charged with policing the Convention and has expressly made clear to the UK and the US that UNCAT has direct application in Iraq.³⁹ The second contention, of incorporation, does not adequately meet PIL's argument that these conventions can be relied upon by domestic litigants since they constitute customary international law. In any event, the ECHR should be interpreted consistently with the UK's obligations in treaties such as UNCAT, given that their ratification preceded the passage of the Human Rights Act 1998 (under the principle in *Garland* referenced by Lord Bingham in A (No.2)).

If UNCAT is not said to apply, then the *ex-officio* duty in article 12 which requires states to investigate possible cases of torture as soon as they are aware of relevant circumstances can have no application. If UNCAT's applicability had been accepted by the UK, and personnel trained to abide by it (for example, medics and senior officers who had contact with detainees), then the torture of persons such as Baha Mousa would have been identified by the medical and other personnel who treated them and

³⁸ BBC Online *Regret over Iraqi Deaths Case* 16 May 2009 (http://news.bbc.co.uk/2/hi/uk_news/8053094.stm)

³⁹ UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, available at: <http://www.unhcr.org/refworld/docid/47ac78ce2.html>

immediate steps taken to prevent their further mistreatment and (in the case of Baha Mousa) death.

4.6 Breach of European Court Measures

On 30 December 2008, at around 4pm, the ECtHR made an order (commonly termed 'interim measures') against the UK Government which prohibited it from handing over to Iraqi custody the two claimants in the *Al-Saadoon* proceedings pending determination of the UK's compliance with its responsibilities under the ECHR. Those responsibilities included respecting the intransgressible principle of *non-refoulement* (that persons will not be handed over to torture or, in the case of the EU, the death penalty). The order was communicated to the British Government within an hour of the Court of Appeal's decision (at the conclusion of an urgent two-day hearing) that Faisal Al-Saadoon and Khalaf Mufdhi could be transferred to the Iraqi authorities despite the Divisional Court's recognition that they faced a "real risk" of the death penalty and subsequent execution. The Court of Appeal's reasoning has been outlined earlier in this report. Following the Court of Appeal judgment on 30 December 2008, PIL wrote to Treasury Solicitors reiterating the binding nature of ECtHR interim measures, citing the case of *Mamatkulov*⁴⁰ that decided the point.

However, neither the ECtHR nor the British House of Lords were given an opportunity to effectively consider the lawfulness of the men's transfer in its proper context as on the day following the Court of Appeal's decision of 30 December 2008 the two men were transferred to Iraqi custody by the UK forces in Basra. This transfer took place in breach of the order of the ECtHR. Such a breach had never before taken place and ministerial statements had hitherto been very clear on the need to comply with Strasbourg interim measures. Throughout the course of this crucial day, even when the Government was, on its own evidence, actively considering whether or not to hand over the men, the Government did not notify PIL, nor respond to its repeated enquiries, incumbent as it was upon the Government to draw attention to the impending unprecedented breach of the European Court's order. Even when the decision was made, it was not communicated to PIL in a timely fashion. Nevertheless, when an indication of transfer was eventually provided, PIL immediately sought and obtained a domestic injunction to "shore up" the ECtHR injunction and thus prevent transfer.

Later that day, the UK Government sought and obtained an urgent rescission of the domestic order on the basis that the men had been transferred at the time at which it had been made. However, it has only recently emerged that at both the time of grant of

⁴⁰ *Mamatkulov and Askarov v Turkey*, Application no. 46827/99 (2005)

the domestic order and at the time of its rescission the men continued to be in the presence of British troops, in British vehicles, and had not been accepted into the Iraqi prison in Baghdad. It is easy to see how a radioed order could have ensured that the men remained within British custody and difficult questions are now raised about the veracity of the Government's representations to the High Court on New Year's Eve in order to procure the rescission of the domestic order. These circumstances will be explored in detail by the judicial review brought for this purpose and listed to be heard in July 2009.

5 Conclusion

The case studies detailed in this report together present further evidence of widespread abuse, of uncontrolled aggression and of religious and sexual humiliation. These matters cannot be divorced from the use of illegal interrogation techniques, the use of which is now the subject of the Baha Mousa Public Inquiry. However, these matters also stretch beyond interrogation techniques to raise troubling questions of a military and intelligence culture that appear to ignore the rule of law and fostered an in-bred culture of abuse. One explanation is that the lowering of standards caused by the authorised use of coercive interrogation techniques led to a leaching of abuse into widespread practice. It is a mistake to characterise the mistreatment in the cases simply as “abuse” since such a simplistic explanation precludes the discernment of recurrent practices and the search for systemic causes, of which the cases detailed herein, when viewed together, are clearly suggestive. These cases are only a sample of a much larger number of incidents involving British forces in Iraq, and that allegations will continue to emerge as victims realise the possibilities for accountability and reparation available to them.

The withdrawal of British troops from Iraq will not signal an end to the difficult questions asked of the Government. Questions remain unanswered in relation to the decision to go to war (in legal parlance the *jus ad bellum*)⁴¹ or the lawfulness of the actions of British troops in Iraq (the *jus in bello* and *jus post bellum*), the answers to which will resonate for a long time domestically and internationally, both legally and politically. The House of Lords decision in *Al-Skeini* confirmed that the Human Rights Act imposes duties on the Government to investigate incidents of mistreatment, offer reparation to victims and to modify policy to prevent repetition. The HRA is at the heart of the search for accountability in these cases, as is the legal procedure of judicial review.

The success of these cases should signal a sea change in the Government’s approach to military training and planning, military invasion and occupation, interrogation, and general treatment of civilians, internees and prisoners of war. However, reliance cannot be placed wholly on these legal actions. A national debate regarding the role of the British armed forces and their sanctioned practices needs to take place, at the heart of which should be a broadly mandated public inquiry into British troops’ actions in Iraq. The recently announced Iraq Inquiry, if public and given the appropriate scope, presents the possibility of a holistic evaluation of what went wrong with military practice in Iraq.

⁴¹ See comments of Lord Bingham: Norton-Taylor, Richard, *Top Judge: US and UK acted as ‘vigilantes’ in Iraq invasion*, 18 November 2008; Shiner and Williams, *The Iraq War and International Law*, Chapter 1.

The Baha Mousa Public Inquiry presents an opportunity to address the question of the approval and use of coercive interrogation techniques in the early months of the war. The additional questions raised in the case studies set out in this report also demand such in depth examination.

Public Interest Lawyers

Eight Hylton Street
Jewellery Quarter
Birmingham
B18 6HN

Tel: (+44) (0)121 515 5069

Fax: (+44) (0)121 515 5129

www.publicinterestlawyers.co.uk

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