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25 January 2013

Dear Sirs

Re: Iraqi Civilian Litigation in the English Courts

I am a partner at Leigh Day & Co solicitors, a UK based law firm specialising in International Human Rights Litigation and Group Actions.

Since 2004 my firm has been instructed by over 300 Iraqi nationals to bring proceedings against the British Ministry of Defence ("MoD") arising out of the Iraq conflict. I set out below a brief overview of these proceedings in the English High Court to date.

Baha Mousa (deceased) and 9 Others (Claim No: HQ07X02540)

Probably the most infamous case in which we have acted is that of Baha Mousa (deceased) and 9 others detained with him by British forces in Basra in September 2003.

Whilst in detention Mr Mousa and the 9 other detainees were subjected to a catalogue of abuse and unlawful treatment by British soldiers including: hooding, stress positions, sleep deprivation and severe assaults. After approximately 36 hours in detention, Mr Mousa was dead. A post mortem examination found 93 separate injuries to his body.

A Court Martial, which was held in the UK from 2006-2007 found a British Corporal guilty of the war crime of inflicting inhuman and degrading treatment on the victims. He was sentenced to one year in prison and dishonourably discharged from the Army.

We issued civil proceedings for damages on behalf of Mr Mousa's family and the 9 other detainees in the High Court in London on 24 July 2007, asserting that the Claimants' rights under the Human Rights Act 1998 ('HRA', which incorporates most of the ECHR into English law) had been breached as well as common law breaches.

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On 27 March 2008 a Ministerial Statement was published in the House of Commons by the Secretary of State for Defence admitting a substantive breach of Article 3 ECHR in respect of all the claims and a breach of Article 2 in relation to Baha Mousa (deceased). The Armed Forces Minister also publicly apologised to the Claimants in Parliament.

The MoD served Defences to the claims at the end of March 2008, admitting the ECHR/HRA breaches stated above. By this time, the parties had agreed to attempt to resolve the claims by way of mediation. The Court set detailed directions in furtherance of the mediation, including crucial directions for the provision of disclosure to the Claimants.

The claims were successfully mediated in July 2008. Almost all the Claimants attended in person and the mediator was Lord Woolf, the former Lord Chief Justice of England and Wales. The claims settled for a total value of £2.83 million in damages plus costs.

A public inquiry into the circumstances surrounding the death of Mr Mousa was commenced in 2008 and concluded in September 2011. The Chair, Sir William Gage found that there had been a significant failure on the part of the British military to plan for the conflict and its implications for prisoner handling. In his report Sir Gage also referred to systemic failures in training and policy shortcomings which may have contributed to the process of unlawful 'conditioning' techniques being used on detainees. He also found that "The MoD did not have a grasp on or adequate understanding of its own interrogation policy". Sir Gage made 73 recommendations in his report.

Nouri Alwan (Claim No. HQ08X04206)

We also acted on behalf of Mr Alwan, an Australian citizen, who was apprehended on or about 20 November 2003, in an operation involving British and Danish troops.

Mr Alwan alleged that he was badly assaulted during his capture, before being transported to a British military facility where he was further assaulted and deprived of sleep. He was released 3 days later and sought medical treatment for his injuries, which included a fractured rib.

Pre-action disclosure from the Ministry of Defence revealed a military medical record noting tenderness on Mr Alwan's chest wall at the site of the subsequently identified rib fracture.

Proceedings were issued against the MoD in October 2008. Medical evidence was served on Mr Alwan's behalf supporting the injury to his rib and psychiatric damage. A defence was received in April 2009 in which the MoD denied liability.

The claim resolved in August 2009 on a confidential basis

### 300 Further Claims

Between September 2007 and December 2010 we were instructed by approximately 300 further Iraqi Claimants to investigate their claims against the British Ministry of Defence.

The claims involve a range of allegations, including: unlawful detention, unlawful assaults -- including sexual assault, inhuman and degrading treatment and torture. The allegations cover instances of alleged abuse by British Forces from 2003 to 2009 at a variety of detention facilities.

8 of the claims involve allegations of a massacre in Majar Al Kabir in May 2004. 7 of the Claimants were detained by British Forces and were subsequently transferred to Iraqi custody in September 2004. The incident is now the subject of the Al Sweady Public Inquiry set up to investigate allegations of unlawful killing and the ill treatment of detainees. The damages claims have been stayed until the outcome of the Inquiry, for which oral hearings are due to commence in March 2013.

113 of the claims were issued in the High Court prior to 10 May 2010 and came to be termed 'Tranche 1'. 214 claims issued between 11 May 2010 and 22 December 2010 were termed 'Tranche 2'.

The Court has played a vital role in the management of the claims, particularly regarding the timetable for disclosure of key documents by the Defendant. At a series of 'Case Management Conferences' held between May 2010 and February 2011 the Senior Master of the Queen's Bench Division ordered directions which sought to maintain a sensible timetable for disclosure, providing an element of structure in order to advance the claims.

As you will note from the copy orders enclosed, in May 2010 the Court ordered the MoD to provide the Claimants with disclosure of the following categories of documents:

- a. Intelligence reports leading to the arrest and detention of a Claimant;
- b. All photographs or videos taken of a Claimant;
- c. All tactical questioning and interrogation reports and recordings relating to a Claimant;
- d. All statements and transcripts of interviews given by a Claimant during detention, including any video or audio recordings;
- e. All documents signed by a Claimant during his detention;
- f. All documentation created as a result of medical examinations or tests of a Claimant whilst in detention;

Further the Court ordered the MoD to provide details of the existence and nature of any on-going investigations into each alleged incident of abuse and the nature of material obtained as a result.

By the time of the December 2010 hearing the Claimants had only received very limited disclosure. The Court revised the directions and ordered the Defendant to provide disclosure for those claims forming part of Tranche 1 (which were more advanced) on a rolling basis of approximately 1,000 documents per month. Further directions were set regarding the disclosure of photographs and DVD/video and audio recordings specifically.

A further court hearing, held in February 2011, resulted in the Claimants' legal team being allowed to view DVD/video and audio recording material of the Claimants' interrogations on MoD premises under strict conditions.

The receipt of disclosure proved pivotal to the claims and enabled both parties to assess the strengths and merits of the litigation. Following receipt of a significant amount of disclosure, the parties entered into discussions regarding the future management of the claims.

On 12 December 2011, having heard submissions from both parties, the Court ordered that proceedings be stayed to allow the parties time to seek to resolve the claims.

Since February 2012 the parties have entered into a series of confidential negotiations with a view to settlement of both the Tranche 1 and Tranche 2 claims. Although the Court plays no formal role in the negotiations themselves, it has

continued to supervise the management of the claims, requiring the parties to report back on progress on a regular basis.

To date approximately 200 of claims have been resolved during this process with the Claimants' legal costs also being settled. Many of the claims that have settled relate to incidents post-28 June 2004. The terms of the settlements are confidential between the parties.

A significant number of the Claimants are also bringing public law claims, through another UK law firm Public Interest Lawyers ("PIL"), seeking a public inquiry into the circumstances surrounding their treatment during arrest and detention. We understand that PIL have successfully secured public funding from the UK Legal Service Commission in this regard.

I trust this is of assistance. Please do not hesitate to contact me should you seek any further information.

Yours sincerely



Sapna Malik  
LEIGH DAY & CO

enc

BILAG	43
CHRISTIAN HARLANG	

KOPI

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

CLAIM NO HQ09X01235  
& OTHERS

Before the Senior Master, Master Whitaker

IN THE MATTER OF:

IRAQI CIVILIAN LITIGATION AGAINST THE MINISTRY OF DEFENCE

GENERIC ORDER

UPON HEARING Mr Richard Hermer QC and Mr Azeem Suterwalla for the Claimants, Mr Robert Jay QC and Mr James Eadie QC for the Defendant at a Case Management Conference on 10 May 2010.

IT IS ORDERED THAT:

1. This Order applies to all claims issued in, and pending before, the Queen's Bench Division seeking damages against the Ministry of Defence arising out of alleged unlawful acts and omissions of British Military Forces in Iraq between March 2003 and December 2009 listed in the Schedule attached hereto.
2. The Claimants' solicitor shall ensure that the said Schedule shall be updated within 14 days of the issue of any new claim, or discontinuance of any existing claim, and served on the Defendant and thereafter provided to the Court in advance of any hearing.

**Case Management**

3. All claims listed on the Schedule, and any future such claims, shall be managed by the Senior Master. Insofar as there are other claims which are pending in the Queen's Bench Division seeking damages against the Ministry of Defence arising out of alleged unlawful acts and omissions of

British Military Forces in Iraq, which are presently not being managed by the Senior Master, these are to be reassigned to the Senior Master.

***Jabir Kammash and others (HQ09X04833 - item 1 on the Schedule)***

4. In respect of this claim the Defendant is to provide the Claimants' solicitors in the present proceedings with a copy of all disclosure to be provided to the Claimants' solicitors in the related public law proceedings (CO/6345/2008), by 4pm on Friday 20<sup>th</sup> August 2010. Permission to apply.

**Directions in all other claims**

5. Save as provided for in any order pertaining to an individual claim, or group of claims, dated on or after 10 May 2010, the following general directions shall apply.
6. The Defendants shall by no later than 12<sup>th</sup> November 2010 provide to the Claimants' solicitors, by way of pre-action disclosure, the following documents in each claim:
  - (a) Intelligence reports leading to the arrest and detention of a Claimant;
  - (b) All photographs or videos taken of a Claimant;
  - (c) All tactical questioning and interrogation reports and recordings relating to a Claimant;
  - (d) All statements and transcripts of interviews given by a Claimant during detention, including any video or audio recordings;
  - (e) All documents signed by a Claimant during his detention;
  - (f) All documentation created as a result of medical examinations or tests of a Claimant whilst in detention.

7. Notwithstanding that the Defendant shall disclose the documents listed above by no later than 4pm on 12<sup>th</sup> November 2010 it shall use its best endeavours to provide them to the Claimants' solicitor as soon as they become available.
8. If, and in so far as, any of the documents listed above are not in the possession and control of the Defendant then they shall serve on the Claimant a statement (verified by a signed Statement of Truth) setting out why such documents are not in their possession and the attempts that have been undertaken to locate them.
9. Paragraphs 6 and 7 above apply to all documents in the control of the Defendant including those in the control of the Royal Military Police.
10. By no later than 4pm, 5<sup>th</sup> July 2010 the Defendant is to file and serve a witness statement dealing with, in respect of each claim, the following:
  - i. Whether an investigation into the allegations raised has been or is being carried out;
  - ii. The extent of that investigation and the stage which it has reached;
  - iii. The nature of the documentation and material obtained as part of that investigation.
11. All the cases listed in the Schedule shall be listed together for a Case Management Conference before the Senior Master on 24<sup>th</sup> September 2010 (time estimate half a day), with a further Case Management Conference before the Senior Master to take place on 3<sup>rd</sup> December 2010 (time estimate one day).
12. Permission to apply including in respect of any individual claim or group of claims.



13. Costs in the claims.

Dated this 10<sup>th</sup> day of May 2010

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CHRISTIAN HARLANG	

KOPI

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

CLAIM NO: HQ09X01235  
& OTHERS

Before the Senior Master, Master Whitaker

IN THE MATTER OF:

IRAQI CIVILIAN LITIGATION  
AGAINST THE MINISTRY OF DEFENCE

GENERIC ORDER

UPON HEARING Leading Counsel for both parties at a Case Management Conference on 3 December 2010,

AND UPON the previous Orders made in these claims dated 10 May 2010 and 24 September 2010,

IT IS ORDERED THAT:

1. Paragraph 6 of the Order of 10 May 2010 be varied so that the Defendant is required to disclose:
  - i. The RMP/TNT records referred to at paragraph [33] of the Witness Statement of Paul Hamilton dated 30 November 2010, by 4pm, 31 January 2011.
  - ii. The RMP/TNT records referred to at paragraph [34] of the Witness Statement of Paul Hamilton dated 30 November 2010, by 4pm, 31 March 2011.
  - iii. the highly classified documents from Defence Intelligence by 4pm, 31 March 2011.
2. With respect to the remainder of pre-action disclosure specified in:
  - (i) paragraph 6 of the Order of 10 May 2010; and (ii) in paragraph 1

of the Order of 24 September 2010, the Defendant is to provide disclosure for Tranche 1 claims, on a rolling basis of approximately 1,000 documents each month (the disclosure each month to be provided on the basis of discrete batches of claimants), to commence from 31 March 2011 to December 2011, save for DVDs/video and/or audio recordings of Tranche 1 Claimants. The afore-mentioned disclosure is to continue on the last working day of each consecutive month. By 11 February 2011, the parties are to have used their best endeavours to agree the timetable for afore-mentioned disclosure in terms of the sequence in which disclosure of documents relating to each of the Tranche 1 claimants is to be given.

3. Paragraph 6(b) of the Order of 10 May 2010 is varied so that: (a) the Defendant is required to disclose all photographs of Tranche 1 Claimants by 31 January 2011; and (b) the Defendant is only required, by 31 January 2011, to inform the Claimants' solicitors of which DVDs/videos and/or audio recordings they intend to disclose, 14 days before the next CMC the Defendant is required to confirm:
  - i. The number of relevant DVDs/videos and/or audio recordings appertaining to the Claimants and to detail to whom they relate;
  - ii. whether PII certificates are to be issued in respect of these DVDs/videos and/or audio recordings, and if so whether redactions will be made to 'pixellate' such media, including redactions of faces to protect identities and redactions/edits to limit the disclosure of interrogation techniques and redactions for any other reason;
  - iii. whether in any event it will disclose pixellated DVDs/videos, and if so when, and if not, why not.
  - iv. Whether a ground for not disclosing the DVDs/videos and/or audio recordings referred to in (iii) is cost, and if it is, to file and serve evidence in support of this ground,

including evidence as to the cost of transcribing and translating such media and evidence as to whether such costs would have to be incurred in any event.

- v. Whether there are any other conditions it wishes to attach to the disclosure of such evidence, specifying those conditions.
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- 4. Paul Hamilton, Head of Policy and Disclosure Coordination within the Directorate of Judicial Engagement Policy (DJEP) at the Ministry of Defence, is required to serve at the end of each month, beginning January 2011, a witness statement updating the Court and the Claimants' solicitors as to the progress which the Defendant has made in respect of disclosure. If for any reason Paul Hamilton is unable to provide his monthly witness statement it is permitted for his deputy to do so.
  - 5. Both parties are to file and serve cost schedules detailing costs incurred to date in prosecuting and defending these claims/intended claims as the case may be (sub-divided if possible as between 'Tranche 1' and 'Tranche 2' claimants, and the Kammash claimants) by 31 January 2011. The issue of the need for an ongoing review of costs is to be considered at the next CMC.
  - 6. Subject to the Senior Master's availability, these claims are to be listed for: (a) a CMC with a time estimate of a day at the end of February 2011; and (b) a CMC with a time estimate of two days in March (principally intended to deal with any PII issues), on dates to be fixed in liaison with clerks for leading Counsel. The clerks for leading Counsel are to attend upon the Senior Master within the next 10 days in order to assist in the fixing of the CMCs. Paul Hamilton is required to attend both CMCs.
  - 7. Paragraph 6 of the Order of 24 September 2010 be varied so that in respect of Tranche 2 claims the Defendant is required to begin the

process of search and collection of documents in April 2011, but is not required to disclose them by 22 June 2011. The actual date for the disclosure of documents is to be reviewed at a future CMC. Subject to the Senior Master's availability this CMC is to be fixed in a date in June with a time estimate of one day, in liaison with clerks for leading Counsel. The clerks for leading Counsel are to attend upon the Senior Master within the next 10 days in order to assist in the fixing of this CMC.

8. In respect of the claims **AZH & Others** (known as the 'Kammash' claims):
  - (a) by 10 December 2010 the Defendant is to serve upon the Claimants' solicitors a PII certificate relating to disclosure prepared for the purposes of the related public law proceedings (CO/6345/2008) and provided to Leigh Day over a period starting 22 October 2010 and ending on 3 November, in respect of any redactions made on the grounds of national security or otherwise in the public interest;
  - (b) by 17 December 2010 the Defendant is to serve upon the Claimants' solicitors a PII certificate relating to DVDs/ previously disclosed to Public Interest Lawyers in the related public law proceedings (CO/6345/2008) and provided to Leigh Day on 25 November in respect of any redactions made on the grounds of national security or otherwise in the public interest;
  - (c) by 28 April 2011 the Defendant is to serve upon the Claimants' solicitors all remaining DVD/video footage relating to the remaining Kammash Claimants, namely ETQ and DHA, redacted on PII grounds as appropriate; and

(d) by 28 April 2011 the Defendant is to provide disclosure of all remaining paper and electronic documents in relation to those Claimants in respect of whom no disclosure has yet been made.

9. Permission to apply including in respect of any individual claim or group of claims.
10. Costs in the claims, save that the Claimants are to be awarded 33 per cent of their costs referable to the CMC of 3 December 2010 in any event. The issue of costs generally in these claims is a matter which is to be considered at the February 2011 CMC.

The Guardian

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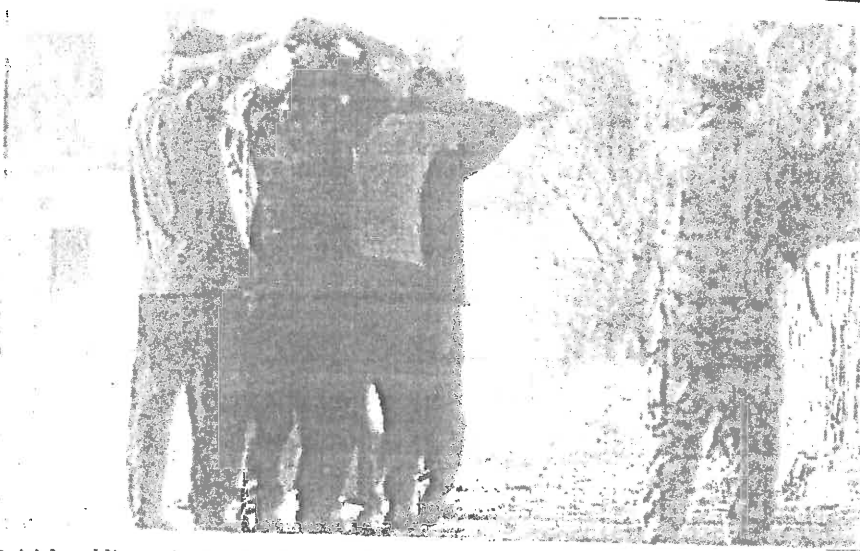
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## MoD pays out millions to Iraqi torture victims

Lawyers and human rights groups say 400 settlements show 'systemic' abuse

Ian Cobain

The Guardian, Thursday 20 December 2012 21.00 GMT



British soldiers take Iraqi prisoners: human rights groups and lawyers are calling for a public inquiry into the UK's detention and interrogation practices in Iraq following the 2003 invasion. Photograph: Reuters

The Ministry of Defence has paid out £14m in compensation and costs to hundreds of Iraqis who complained that they were illegally detained and tortured by British forces during the five-year occupation of the south-east of the country.

Hundreds more claims are in the pipeline as Iraqis become aware that they are able to bring proceedings against the UK authorities in the London courts.

The MoD says it is investigating every allegation of abuse that has been made, adding that the majority of British servicemen and women deployed to Iraq conducted themselves "with the highest standards of integrity".

However, human rights groups and lawyers representing former prisoners say that the abuse was systemic, with military interrogators and guards responsible for the mistreatment acting in accordance with both their training in the UK and orders issued in Iraq.

The campaigners are calling for a public inquiry into the UK's detention and interrogation practices following the 2003 invasion. An inquiry would be a development the MoD would be eager to avoid.

Payments totalling £8.3m have been made to 162 Iraqis this year. There were payments to 17 individuals last year and 26 in the three years before that.

The average payment to the 205 people who have made successful claims has been almost £70,000, including costs. The MoD says it is negotiating payments concerning a further 196 individuals.

Lawyers representing former prisoners of the British military say that more than 700 further individuals are likely to make claims next year.

Most of those compensated were male civilians who said they had been beaten, deprived of sleep and threatened before being interrogated by British servicemen and women who had detained them on suspicion of involvement in the violent insurgency against the occupation. Others said that they suffered sexual humiliation and were forced into stress positions for prolonged periods.

Many of the complaints arise out of the actions of a shadowy military intelligence unit called the Joint Forward Interrogation Team (Jfit) which operated an interrogation centre throughout the five-year occupation. Officials of the International Committee of the Red Cross complained about the mistreatment of detainees at Jfit not long after it was first established.

Despite this, the interrogators shot hundreds of video films in which they captured themselves threatening and abusing men who can be seen to be bruised, disoriented, complaining of starvation and sleep deprivation and, in some cases, too exhausted to stand unaided.

A former soldier who served as a guard at Jfit told the Guardian that he and others were ordered to take hold of blindfolded prisoners by their thumbs in between interrogation sessions then drag them around assault courses where they could not be filmed.

He also confirmed that the prisoners were often beaten during these runs, and that they would then be returned for interrogation in front of a video camera.

The interrogators were drawn from all three branches of the forces and included a large number of reservists.



During proceedings brought before the high court in London, lawyers representing the former Jfit prisoners suggested the interrogation centre could be regarded as "Britain's Abu Ghraib".

Questioned about the compensation payments, an MoD spokesperson said: "Over 120,000 British troops have served in Iraq and the vast majority have conducted themselves with the highest standards of integrity and professionalism. All allegations of abuse will always be investigated thoroughly. We will compensate victims of abuse where it is right to do so and seek to ensure that those responsible are brought to justice."

Lutz Oette, legal counsel at Redress, a London-based NGO which helps torture survivors get justice, said: "The payments provide a long overdue measure of redress. However, for the victims compensation without truth and accountability is a heavy price to pay. For justice to be done there is a need for a full independent inquiry to establish what happened and who is responsible.

"Looking at the number of claimants and scale of payments, there clearly seems to be a systemic problem. It is high time for this to be fully accounted for, first and foremost for the victims but also the British public, which has an obvious interest to know the truth behind the figures."

Next month, the high court will hear a judicial review of the MoD's refusal to hold a public inquiry into the abuses. Human rights groups and lawyers for the former prisoners say the UK government is obliged to hold an inquiry to meet its obligations under the European convention on human rights – and particularly under article three of the convention, which protects individuals from torture.

After a hearing, the high court highlighted matters supporting the allegations of systemic abuse. These included:

- The same techniques being used at the same places for the same purpose: to assist interrogation.
- The facilities being under the command of an officer.
- Military doctors examining each prisoner at various stages in their detention.
- Investigations by the Royal Military police that were concluded without anyone being held to account.

If the court does order a public inquiry, responsibility for any systemic abuse is likely to be traced up the military chain of command and beyond.

The MoD claims no public inquiry is necessary as it has instituted an investigation body, the Iraq Historical Allegations Team (Ihat), which is examining the abuse allegations as well as a number of prisoner deaths in British military custody.

After that investigators examined the videos shot at Jfit, three interrogators were referred to the Service Prosecuting Authority with a recommendation that war crimes charges be considered.

Prosecutors eventually decided that the matters were insufficiently serious for war crimes charges and that disciplinary charges were unlikely to lead to convictions. They concluded that one soldier had committed offences, but that this was "in accordance with the training that they had been given"; it would be inappropriate to charge him.

Other inquiries have led that to recommend that the MoD makes compensation payments to former prisoners.

But lawyers for the former prisoners believe that is insufficiently independent as it answers to MoD officials. One investigator quit that alleging that the organisation's inquiry is not genuine, but more a face-saving exercise.

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