

# Inquiry into the killing of Iraqi civilian begins in London

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A public inquiry into the killing of Iraqi civilian Baha Mousa by British soldiers in September 2003 opened in London on July 13.

Mousa, a 26-year-old hotel receptionist worker, was one of seven hotel workers detained by members of the Queen's Lancashire Regiment in Basra, in southern Iraq, on September 14. Each of the detainees was hooded, bound, subjected to stress positions and brutally beaten for several days.

Two days after his arrest, Mousa died in British Army custody as a result of multiple injuries. Photographs and medical records showed that he had suffered 93 injuries, including four broken ribs, a fractured nose and smashed wrists. He had a ligature tied around his neck.

Baha Mousa's father, Daoud Mousa, had last seen his son alive when he arrived at the hotel to pick him up from work. Arriving there he found his son and the six others lying on the hotel lobby floor with their hands behind their heads. He was informed by a British officer—"Lieutenant Mike"—that his son was being detained as part of a routine investigation and the operation would be completed within hours.

Daoud was visited three days later by British military policemen and was informed that his son had died in custody. He was asked to identify the body. Daoud told a High Court hearing in 2004 that he had been "horrified" by the state of his son's body.

According to one witness, another person detained by the British Army, "I heard Baha Mousa screaming. I was still hooded, but it sounded like he was in another room. I heard him scream: 'Please help me, blood is coming out, please help me, I am going to die.' The last thing I heard him say was, 'My nose broke.' After this there was silence."

It was not until four years later that a court martial hearing was held over Mousa's death. In what has been the only war crimes conviction of a British soldier under the International Criminal Court Act, a single soldier, Corporal Donald Payne, pled guilty to acts of inhumanity. On April 30, 2007, Payne was jailed for one year and dismissed from the army for inhumanely treating civilian detainees. In his defence, Payne claimed he was following orders. His defence counsel noted that it was "puzzling" that an unnamed senior army officer was not on trial.

A judge at the court martial accused six other members of the Queen's Lancashire Regiment of maintaining a "wall of silence" around Mousa's killing. The six were acquitted of negligence and abuse over Mousa's death and the ill-treatment of the other Iraqis.

Daoud Mousa was not allowed to take part in the court martial. To this day, no one has ever been convicted of actually killing his son.

It was not until March 2008 that the Ministry of Defence (MoD) finally admitted breaching the human rights of Mousa and others. Defence Secretary Des Browne stated that "substantive breaches" of parts of the European Convention on Human Rights, which protect the right to life and prohibit torture, had been committed. Two months later Browne announced that a public inquiry would be held into Mousa's death.

The MoD's admission was the result of a protracted legal battle by Daoud Mousa. Alongside Baha's two orphaned sons, he sued the MoD for compensation in the High Court.

Baha's family received an interim payment of just £1,500 by the MoD. They rejected a further "final" offer of another £2,500. In July 2008 the MoD agreed to pay £2.83 million in compensation to the families of Baha Mousa and nine other Iraqi men mistreated by British troops.

The MoD had argued that British troops engaged in overseas operations beyond the borders of Europe were not covered by European human rights law. This was rejected in December 2004 by High Court judges Lord Justice Rix and Justice Forbes. They ruled that the European Convention on Human Rights also covered territorial "outposts," including prisons in foreign countries under the control of British personnel. Citing Article 2 of the European convention, they concluded an independent inquiry into Mousa's death had to be convened, as it had not occurred "in the highways or byways of Iraq but in a military prison under the control of British forces."

## The Baha Mousa Public Inquiry

The Baha Mousa Public Inquiry is being chaired by Sir William Gage, a retired Court of Appeal judge, and has a very restricted remit. Its purpose is to "investigate and report the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any members of the 1st Battalion, the Queen's Lancashire Regiment in Iraq in 2003, and to make recommendations."

It cannot “bring back into question the clearing of the men at the Court Martial Hearing.” According to the inquiry web site, “Under section 2(1) of the Inquiries Act 2005 the Inquiry has no power to make a determination about any person’s criminal or civil liability.”

The Attorney General, Baroness Scotland, ruled that any soldiers who appear as witnesses to the inquiry will not have their testimony used against them should criminal proceedings arise.

On the first day of the inquiry the participants were shown a one-minute video clip of the brutal treatment being meted out to six barefoot detainees, who are seen hooded with their hands bound with plasti-cuffs. It is not clear if Baha Mousa was among the six.

The six men are seen leaning in ski “stress positions” with their knees bent against the stone walls of a small room. Two are forced back into stress positions by Corporal Payne, who physically and verbally abuses them. Payne screams at one of the men who is seated in a slumped position, “Get up you f---ing ape. Now! Get up now!” He again screams, “Get up!” before forcefully pulling the man up by the head and pushing him back against the wall.

The hearing heard how one of the detainees was made to dance “like Michael Jackson.” A third man was urinated on, while seven others suffered varying degrees of abuse.

The use of stress positions, the hooding of prisoners, sleep, food and water deprivation, as well as white noise sound torture were prohibited in 1972 in the UK under the Conservative Party government of Edward Heath. This followed disclosures of the use of these techniques against Irish Republican Army detainees in Northern Ireland. Heath announced that any future government planning to authorise such methods would “probably” have to seek permission from parliament to do so and that the practises would be made illegal “in any future operations worldwide, unless parliament decided otherwise.”

On the first day of the inquiry into Mousa’s killing, a secret document by senior officers was released. Justifying the violent torture methods employed in Iraq, the document was dated May 17, 2004, nearly a year after Mousa’s death, and claimed that “PJHQ [the Permanent Joint Headquarters at Northwood in Middlesex] was unaware of the Heath ruling until it was raised in the last two weeks.”

Not only were the techniques banned under the Heath administration, but the inquiry also heard that after a judgment by the European Court of Human Rights, in 1977 the Labour government’s attorney general gave an “unqualified undertaking, that the five techniques will not in any circumstances be reintroduced as an aid to interrogation.”

It is not conceivable that the highest levels of the government and military top brass were unaware of the legislation banning these torture techniques.

The video footage was first shown in private at Payne’s court martial hearing three years ago and has been concealed ever since. Phil Shiner, the solicitor acting for the family of Baha Mousa and the survivors of the incident, wrote in the July 13 *Guardian* that the “cover-up is staggering to behold.... This video was shown three years ago at the court martial, but has been kept secret until today on the flimsiest of public interest excuses concerning troop security.”

Whilst it is evident that Baha Mousa was killed as the result of a particularly brutal attack by British soldiers, his death is only the tip of the iceberg. Speaking just before the inquiry opened, Shiner said, “There are hundreds of cases of Iraqi torture and abuse at British detention facilities.”

The week before the Mousa inquiry, a High Court hearing forced the MoD to agree to hold an inquiry to investigate claims that Iraqis were tortured and killed by British troops in what became known as the battle of “Danny Boy” in Maysan Province in Iraq in May 2004.

According to a *Guardian* report, “The father of an Iraqi killed by British forces during the battle, together with five other Iraqis who were detained on the same date, allege they were beaten and abused, during and after their original detention.”

It adds, “They, and other witnesses, also allege that a far larger number of men were detained and transported from the battlefield and that, while their vision was obscured by blacked-out goggles, they overheard the unmistakable sounds of torture at the base.”

The article continues, “Evidence of torture included close-range bullet wounds, the removal of eyes, and stab wounds. The Iraqis have been asking the high court in London to order an independent public inquiry into claims they were mistreated and that British soldiers may have killed up to 20 captives.”

Finding against government lawyers, Lord Justice Scott Baker condemned the MoD for its use of secrecy in the Danny Boy case. He said the MoD had made “partly false” statements in an attempt to keep its interrogation techniques secret by using a public-interest immunity [PII] certificate.

A London-based organisation, the Iraqi League, announced last week that, based on its initial interviews with claimants, there were at least another 30 or 40 potential claims. A member of the league, Mazin Younis, said, “I absolutely believe there have been incidents from 2004 until 2008. Thousands of soldiers have either witnessed abuse or cooperated in it. The stories are all very similar. The raid starts at home, they are kicked and beaten and hooded.”



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