

# REDRESS

*Seeking Reparation for Torture Survivors*

## MEMORANDUM TO THE UK MINISTRY OF DEFENCE ON THE AITKEN REPORT:

### An investigation into cases of deliberate abuse and unlawful killing in Iraq 2003 and 2004

31 January 2008

The Aitken Report was commissioned by General Sir Mike Jackson, the then Chief of the General Staff in February 2005. He was asked to consider what measures need to be taken in order to safeguard and improve the army's operational effectiveness in the light of allegations of abuse in Iraq and criticism in the Defence Select Committee.

The Redress trust (REDRESS) is an international nongovernmental organisation with a mandate to ensure respect for the principle that survivors of torture and other cruel, inhuman or degrading treatment and punishment and their family members have access to adequate and effective remedies and reparation for their suffering. REDRESS has closely followed the conduct of UK forces in Iraq which have resulted in the abuse of Iraqi civilians, including the death of Baha Mousa and others, and is a follow up to a Report published by REDRESS in October 2007 entitled: *UK Army in Iraq: Time to Come Clean on Civilian Torture*. This Memorandum is a response to the Aitken Report made public on 25 January 2008.

#### General shortcomings with the Aitken Report

The Aitken Report, "*An investigation into cases of deliberate abuse and unlawful killing in Iraq 2003 and 2004*", is limited to "those instances where members of the British Army are alleged or proven to have mistreated Iraq civilians outside the context of immediate combat operations."<sup>1</sup> A number of shortcomings arising from the Report are immediately apparent.

Firstly, the Report does not explore whether and to what extent British forces were authorised to use the previously banned five techniques in conditioning prior to tactical questioning and interrogation, because the Report is limited to the conduct of British soldiers. This is a major issue of concern which remains unresolved to this day.

Secondly, the Report concentrates on six allegations of "abuses which could not be mitigated by decision made by British soldiers 'in the heat of the moment,' or in the face

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<sup>1</sup> The Aitken Report (available at <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/DoctrineOperationsandDiplomacyPublications/OperationsInIraq/TheAitkenReport.htm>) para 2

of an immediate threat to their own safety; but rather which appeared to have been committed in a deliberate and callous manner”.<sup>2</sup> However, the picture that emerges in virtually every case of this kind is one of a lack of accountability. In particular, where the victims were in detention one would expect it to be a priority to find out who was accountable for the events that took place, and this has still not emerged to date. REDRESS has previously noted, for example, that basic paperwork, such as logs showing an audit trail of soldiers responsible for detainees at any one time, was not properly kept.<sup>3</sup> This is one of the reasons why it is still not known who was responsible for the death of Baha Mousa.

Thirdly, the explanations identified by the Report are that troops were expected to convert from a high-intensity war to peacekeeping overnight, and that they were spread too thin, but the Report fails to mention why many other mistakes occurred.<sup>4</sup> Further, the responsibility for many of these mistakes must lie with the Government itself, and those responsible should be brought to account.

Finally, for matters such as the timing of the invasion, to some extent the resources used, the legal advice regarding the applicability of human rights law, and the manner in which the conditioning techniques were banned in the 1970’s, an internal army investigation is clearly not the appropriate forum. Nothing short of a full independent inquiry will suffice.

### **The need for further investigations**

Some have called the Report “a whitewash.”<sup>5</sup> It has certainly avoided a number of the key questions and problems arising from the abuse of Iraqi civilians by UK troops, and in that sense is something of a distraction. The Report itself does not purport to address all these questions and problems, and does acknowledge that there are some areas that ought to be investigated further, referred to below. Moreover, there are other issues which extend beyond the responsibility of the Army to the Government which are not mentioned at all. It is because of all these unresolved issues that the need for a full independent inquiry remains, now more so than ever. Without these matters being fully investigated then there will indeed have been a whitewash.

### **Acknowledged areas needing further investigation:**

#### *1. Details which came to light through the R v Payne court martial*

The Report acknowledges that there are “matters arising from the court martial in connection with the death of Baha Mousa which will need to be examined further.”<sup>6</sup> However, REDRESS believes it is essential that any further inquiry should be widened beyond the criminal sphere. The mistakes made over this period were *not* just those of a few bad apples in the military - the system itself failed in a number of ways.

These mistakes include problems with training, and not just the content of training programs which the Report suggests can and have been put right with a new training video; instead, the problem lies with the type of training itself. The 1<sup>st</sup> Queen Lancashire Regiment, deployed after the invasion, was trained for War Fighting rather than Occupation or Peace Support. If the Army was expecting a humanitarian disaster, as

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<sup>2</sup> Ibid, para 3

<sup>3</sup> *UK Army in Iraq: Time to Come Clean on Civilian Torture*, REDRESS, 2007, hereinafter “the REDRESS Report” (available at [http://www.redress.org/publications/UK\\_ARMY\\_IN\\_IRAQ\\_-\\_TIME\\_TO\\_COME\\_CLEAN\\_ON\\_CIVILIAN\\_TORTURE\\_Oct%2007.pdf](http://www.redress.org/publications/UK_ARMY_IN_IRAQ_-_TIME_TO_COME_CLEAN_ON_CIVILIAN_TORTURE_Oct%2007.pdf)) pp 41-42

<sup>4</sup> Some of the main mistakes that have not been explained in the Report are listed below on p 3

<sup>5</sup> See <http://news.bbc.co.uk/1/hi/uk/7208273.stm>

<sup>6</sup> The Aitken Report, para 7

suggested, then why were Battlegroups deployed after the end of the War Fighting stage still being trained in the same way as the invading forces?

The Report does not even try to examine whether the proper policy on tactical questioning and interrogation was followed in Iraq. In this regard the Report offers no explanation as to why Brigade Headquarters authorised the use of the banned techniques, and how legal advisers were shown doctrine allowing the use of hooding and stress positions. The Report acknowledges, though, that these key concerns need to be examined further.

The question of why the 1972 ban on conditioning techniques was not passed down within the military remains unanswered. What is still totally unclear is why the assurance by Prime Minister Heath in the House of Commons that hooding, wall standing, sleep and food deprivation, and the use of noise, would never again be used by UK armed forces as an aid to interrogation, without a ministerial statement, was ignored by the current Government, as well as by the Army. Why did Joint Intelligence Committee (A) apparently limit Heath's statement to internal security operations when no such limitation was made to the House? Why was the MOD policy on the issue in 2003 not as clearly articulated as it ought to have been? The statement that the current policy "is in line with international and domestic law"<sup>7</sup> needs to be independently verified. It is perhaps telling that the Report offers no such assurances that the doctrine in 2003 was in compliance with international and domestic law.

It seems that confidential policies and doctrine on questioning and interrogation were simply not fit for purpose at the time, and yet the UK public are now meant to accept, on the say-so of the Report, that everything has been put right. Clearly there is need for independent assurance that this is the case. Furthermore, those responsible for the mistakes must be identified and made accountable.

## 2. *Planning*

The problems relating to planning for the invasion and afterwards are acknowledged in the Report. It argues that planning concentrated on contingencies in the case of a humanitarian disaster rather than on dealing with criminal activity. However, what is not explained is why the Army seemed unprepared even for dealing with Prisoners of War during the invasion, and why internal calls for increased resources dedicated to detention were not heeded.<sup>8</sup>

### **Unacknowledged areas needing further investigation**

In addition to the above which can be said to arise explicitly or implicitly from the Report, there are numerous other questions of legitimate concern which remain unanswered:

1. Why was the detention policy decentralised to the Battlegroups when they were not adequately trained for this task? Why were policies for accountability not put in place at these Battlegroup detention facilities?
2. What legal advice was given to the Army regarding the applicability of human rights law?
3. Why were tactical questioners apparently instructing ordinary soldiers, that is those with no training in tactical questioning, to condition detainees prior to their

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<sup>7</sup> The Aitken Report, para 21

<sup>8</sup> See the REDRESS Report, pp. 34-35

questioning? Has doctrine now been put in place to make tactical questioners responsible for the whole process, including conditioning?

4. How has the *Al Skeini* judgement of the House of Lords, that the Human Rights Act and the European Convention on Human Rights applies to overseas detention facilities, affected policy on detention within the Armed Forces?
5. Has training regarding the responsibility of medical staff to document evidence of abuse within detention facilities been updated? What is the role of medical personnel regarding the use of conditioning prior to questioning?
6. Why were US soldiers apparently handling British-held detainees at the Joint Forward Intelligence Team facility within Camp Bucca? What techniques were these US soldiers using on detainees for which the UK was responsible?
7. The integration of UK forces with US forces should also be investigated as some problems were caused by incompatible systems.

In REDRESS' view, therefore, the Report has done little to indicate that those responsible for multiple failures will be brought to account and certainly nothing for the victims of past abuses