

REDRESS

Seeking Reparation for Torture Survivors

House of Commons Defence Committee Oral Evidence: "UK Operations in Iraq": Tuesday 24 July 2007 Memorandum from the Redress Trust

Introduction

1. The Redress Trust (REDRESS) is an international non-governmental 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.
2. We are concerned about detention and internment by UK forces in Iraq. We respectfully invite the Committee to use the oral evidence session on "Operations in Iraq" on 24 July as an opportunity to raise a number of concerns regarding the treatment of detainees in UK detention facilities that emerged during the court martial *R v Payne & Others*.
3. We believe that the Minister for the Armed Forces needs to deal with these issues regarding detention and internment in Iraq, and we feel it would be useful for the Committee to investigate whether the concerns of various members of the military expressed during the court martial have now been addressed. It would also be an opportunity for the Committee to ask the Minister whether he agrees with former Attorney General Lord Goldsmith QC that there should be an inquiry in to how the army came to authorise particular conditioning techniques.¹
4. These concerns are based mainly on evidence from some key dates in the court martial transcript, and not a full reading of the whole record. In the limited time available it is not possible to deal with everything arising from the transcript which is a lengthy document. We respectfully suggest that the Committee could possibly make further use of the transcript to raise more questions.

¹ 'We need to understand why anybody thought, if they did - and somebody obviously did - that these were permissible techniques to be used. I think that is something which needs to be inquired into.' Lord Goldsmith giving oral evidence to the Joint Committee on Human Rights, 26th June 2007, Q196, <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc394-iii/uc39402.htm>

Detention at the Battle Group Level

5. One of the developments which led to abuse in Iraq during the Occupation was a shift in policy from transferring detainees to a central facility for holding and questioning within a matter of hours to one allowing Battle Groups to detain and question their own detainees for a number of days. The period between capture and delivery to a central detention facility was a known “danger point” where abuse could occur.² Indeed much of the previous abuse, including the tragic death of Baha Mousa, took place at the Battle Group level.
6. Given this, and noting the Memorandum from the Ministry of Defence sent to the Committee,³ we welcome the move of internees to the more permanent Divisional Internment Facility (DIF) at Basra Air Station. This move may have already taken place. However, if not, we feel it important for the Minister to assure the Committee that the new facility will be operational before the temporary facility at Shaibah Logistic Base is closed (otherwise the current internees there might be dispersed back to Battle Group or some other ‘lower’ level), and that in any event the length of time in custody at the Battle Group level will not increase.
7. A further issue arising in the court martial was American reluctance to take in internees at British run facilities (at which the Americans nevertheless strongly influenced policy) during the night, and as a result detainees had to be held over night at the Battle Group level and for longer than had been recommended.⁴ The Committee should seek assurances that this is not the case with regard to the temporary facility at Shaibah Logistics Base and that it will not occur or is not occurring at the new dedicated DIF at Basra Air Station.
8. Given the history of poor procedures and treatment at the Battle Group level the Committee should inquire into the current procedures for holding and questioning detainees at the Battle Group level. Issues that should be raised include the procedures for documenting the treatment of detainees, whether a dedicated⁵ guard detail and rota is in place to ensure accountability,⁶ and the training given to regimental medical staff regarding the reporting of possible detainee abuse.⁷

‘Conditioning’

9. The court martial heard evidence that it was standard procedure of the Intelligence Corps to use conditioning techniques⁸ that the Government gave assurances in 1972 to the House of Commons would no longer be used.⁹ We

² R v Payne Court Martial transcript, 08/12/06 pg 63-64

³ <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmdfence/209/7011108.htm>

⁴ Transcript, 08/12/06, pg 43

⁵ Transcript, 11/12/06, pg 78-79, and

⁶ Transcript, 22/11/06, pg 18, also 13/12/06 pg 33-34

⁷ Transcript, 11/12/06, pg 12-16

⁸ Transcript, 08/12/06, pg 12

⁹ Hansard, col 744, 2 March 1972, referring to the Parker Committee report.

feel it is important that the Committee ask the Minister to investigate the implementation of the 1972 ban and how these techniques came to be used in Iraq despite the ban, and despite the 1978 ruling of the European Court of Human Rights that the techniques constituted inhuman and degrading treatment.¹⁰ In our view this is a fundamental issue of Ministerial responsibility given the history of the ban.¹¹

10. The court martial also showed gaps in doctrine on the subject of prisoner of war and civilian detainee and internee handling.¹² It has been somewhat addressed by new advice contained in four Joint Doctrine Publications (JDPs)¹³ on the subject. However, the extent to which this has been implemented in practice remains unclear. The Committee should pursue the extent to which the new doctrine is actually used in practice.

Training

11. One of the main issues with regard to conditioning was a lack of Tactical Questioners with up-to-date training. The Committee should seek to find out whether adequate Tactical Questioners and interrogators are now deployable. Further, the Committee should question the Minister as to what conditioning techniques are still used in Iraq, which ones are still taught, and whether in refresher courses it is taught that some previously used techniques are illegal.¹⁴

Safeguards

12. JDP 10-1 now advises that medical officers are not to state 'that a subject meets a specific mental or physical standard for interrogation',¹⁵ for ethical reasons. We are concerned that the medical examination prior to questioning may have been removed. We invite the Committee to seek clarification from the Minister of the precise role of medical staff before, during and after questioning.

¹⁰ Ireland v. United Kingdom, 1976 Year Book on the European Convention on Human Rights 512, 748, 788-94

¹¹ Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of person suspected of terrorism. (Parker Report) March 1972 Cmd 4901 majority report § 37

¹² Transcript, 13/12/06 pg 130, see also pg 96 on lack of policy regarding involvement with US questioners

¹³ JDP 10-1 2006, JDP 10-1.1 2006, JDP 10-1.2 2006 and JDP 10-1.3 2006, available at <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/DoctrineOperationsandDiplomacyPublications/JDP/>

¹⁴ It has been stated that "wall standing" and the "Ski Sit" positions are not stress positions but are used in conditioning, see transcript 14/12/06 pp 41-42 and 67. Clearly the length of time in any one position is determinative of the stress it causes.

¹⁵ JDP 10-1, page 5D-3 (70 in the PDF document)

Summarised Questions

- What is the expected time frame that units are to place detainees in the custody of the Divisional Temporary Detention Facility and/or the Divisional Internment Facility?
- To what extent are detainees held by Units (Battle Groups)?
- Will this change with or during the move to the Divisional Internment Facility?
- Is the Divisional Temporary Detention Facility and will the Divisional Internment Facility be run by the UK or the US, and to what extent?
- Will it take in detainee/internees 24 hours a day?
- What procedures are in place to ensure that Human Rights Act is applied at these facilities?
- Since the Ministry of Defence conceded in the *Al Skeini* that the Human Right Act applies to UK detention facilities in Iraq during, and of course the House of Lords judgement itself, have any procedures or conditions of detention changed, and if so, how?
- Has the document JDN 3/05 '*Tactical Questioning, Debriefing and Interrogation*' or other documents been modified to reflect the applicability of the Human Rights Act to detention facilities abroad?
- Has the Ministry of Defence any plans to make the internal reviews and investigations into detainee abuse available to the Committee for scrutiny?
- Are procedures now in place to ensure that important procedures and orders are not lost when Units are replaced?
- To what extent do detainees go through a medical examination before undergoing questioning?

Dated 18 July 2007