

Iraq Fatality Investigations

Inspector: Sir George Newman

Progress Statement – 12 March 2018

This is a statement about the current cases being investigated in accordance with letters of appointment and Terms of Reference issued by the Ministry of Defence and accepted by me.

The cases of Ali and Shabram

1. I reported in the case of Ali, which involved the death by drowning of a young Iraqi whilst in the custody of British soldiers, in a report presented to Parliament in September 2016 (Cm 9324). I became concerned in the course of that Investigation that there were grounds for believing that the drowning of Mr Ali could have occurred and originated within a wider context of events, namely a number of instances of looters being soaked in water by soldiers in an attempt to punish and deter them from looting (see section 7: Part 2 at paragraph 7.2 Cm 9324). I concluded that the “relevance of other instances of looters being soaked in water would need to be considered” (paragraph 7.11). At the date of the report, whether these other instances could be considered was dependent upon decisions to be made by others, particularly as to whether prosecutions were to follow. The recent decision not to prosecute any soldiers in connection with the death of Mr Shabram enables me to consider all the circumstances of that case and to consider it under the matters remaining to be dealt with in Part 2 of the report in Ali.
2. For completeness, I should add that there are allegations of “wetting” instances where no death arose. I shall have to consider them as well. The range and extent of the allegations has given rise to a need for investigation into the extent of the knowledge throughout the chain of the military command both in London and in Iraq of what was occurring in connection with looting and the adequacy of the response. I referred to relevant paragraphs of the Chilcot Report in paragraph 7.9 of my report in Ali as providing a starting point.

3. It will be obvious that the investigation of the wider circumstances surrounding the treatment of looters in Basra and elsewhere and the allegations of wetting will require assistance from a number of witnesses. At this stage, it is impossible to say how long it will take but it is likely to be a significant length of time. Further, I am not in a position to give an estimate as to how long the investigation into Mr Shabram's death will take or when hearings will commence, but my Terms of Reference require me to act expeditiously. I will consider whether it will be possible, in order to avoid delay, to publish my findings in connection with the immediate and surrounding circumstances of Mr Shabram's death before I complete the much wider investigation involved with the preparation of Part 2 of the Ali report.
4. It is already widely known that circumstances surrounding the death of Mr Shabram have been investigated by the Royal Military Police and by the Iraq Historic Allegations Team. Before I can proceed to investigate the facts, I shall have to review very extensive documentation generated by these previous investigations. The previous investigations were concerned with whether there was evidence to justify a prosecution. As is well known that is not my purpose. The criminal and civil culpability of individuals is expressly stated to be outside my Terms of Reference. I have not yet had time to examine all of the material which is available and to apply my mind to the lines of inquiry which I shall have to pursue.
5. It is my normal course to start by contacting persons who are likely to be needed to assist me with evidence. I ask for their agreement and offer them the opportunity of obtaining legal advice and where necessary medical support. As has happened in the case of Shabram, many of the witnesses have already been seen and have made statements about what they recall. These statements provide a good starting point for my investigation into the facts, but there are invariably further questions of detail and disagreement which arise for clarification. Invariably, witnesses fulfil their public duty and assist by giving evidence about what happened. Underpinning the need for cooperation from witnesses and to provide legal comfort to them, I shall seek assurances from the Attorney General and other prosecuting authorities, including the Prosecutor of the International Criminal Court, that evidence given to me by any individual will not be used against that individual in any future criminal proceedings. In addition it should be noted that, before a reference can be made to me to investigate,

it must be clear that there will be no prosecution. Taken together, these circumstances are likely to make any attempt, made subsequently to my investigation, to prosecute, vulnerable to being declared an abuse of process. The comfort which the above assurances should provide is designed to encourage, in the public interest, a full investigation enabling Parliament, the media, and the public generally to be informed about the circumstances of a death. It is a long-acknowledged principle in a civilised society that the state should, in certain circumstances, investigate the facts surrounding a death.

6. Having contacted witnesses, it is generally helpful to meet with them and, if they have them, their lawyers. They will have been given the opportunity of obtaining a lawyer to advise and guide them if they so wish. At this meeting, I can agree a timetable for the production of evidence to me. Frequently, witnesses request sight of all the statements obtained and material from previous investigations to be made available to their lawyers before they make any fresh statement which they will provide to me. In many instances, a witness being supplied with any statement he or she has already made simply confirms to me that the previous statement contains his or her recollection of the events. Where copies of all statements are requested, it leads to long delay and considerable expense before the account of a witness can be seen by me. Since I am investigating facts, and not allegations against anybody, I would prefer to be given either the facts as they are recollected by the witnesses or confirmation that there is nothing to add to any existing statement. Following such statements, I can see where there may be disagreement and I can pursue the lines of inquiry which I consider fit to be pursued and then provide the witnesses with an opportunity of seeing the relevant material upon which my inquiries may be based.
7. I have mentioned this matter now partly because it illustrates the uncertainty about how long an investigation can take, but also in order to give notice to those who will be involved and will receive a request from me to give their account to consider what may be the best way forward.

The case of Mahmud

8. This Investigation concerns the death of a prisoner of war (sometimes referred to as a POW or an EPW) in the early weeks of the invasion of Iraq in 2003. For convenience, I shall refer to EPW throughout this statement in both the singular and plural context.
9. The facts were that Australian forces captured 63 EPW and by arrangement transferred them to British forces to be conveyed by helicopter and handed over into the custody of US forces.
10. The legal context of the operation was firmly and clearly set by the Geneva Convention III, the laws of armed conflict and customary international law. Prior to the date of the invasion, in December 2002, a Deployed OPs Instruction ('DOI') and thereafter subsequent DOIs instructed UK forces in the law governing the handling of EPW. At the commencement of the invasion, a coalition of UK, US and Australian forces had entered into an agreement for the way in which their respective roles would be performed in connection with the handling of EPW.
11. The legal requirements in connection with EPW handling fell into three distinct parts: (1) treatment upon and after capture; (2) obligations where death in custody occurred; and (3) investigations and reporting of deaths within the chain of command and to the International Committee of the Red Cross (ICRC). My investigation has involved consideration and inquiry into each of these parts of the transfer of the deceased.
12. My investigation must comply with the requirements under Article 2 of the European Convention on Human Rights. In brief, it must be an investigation into all the circumstances surrounding the death of the EPW as well as an investigation into whether the procedural requirements of Article 2, for example the requirement for proper investigation and reporting by the relevant authorities, had been met.
13. I have to report that an initial significant uncertainty has arisen in connection with the identity of the deceased, to date said to be Tariq Sabri Mahmud. In my report on this issue I shall set out the various lines of inquiry which I have pursued. For the moment it is clear that the identity of the deceased is in doubt. My investigations under Article

2 should include, where possible, contact with the family of the deceased, providing them with an opportunity to present to me their own suggestion as to relevant lines of inquiry. The likelihood is that this will not be possible. There are only one or two steps left which could shed light on the deceased's identity, but it has to be said that those involved in pursuing them in Iraq are not optimistic about their outcome. I have asked the firm of QC Law and in particular the partner Zainab Al Qurnawi, who has assisted me in the task, to undertake an advisory role and provide me with any necessary Iraqi context or considerations which might be relevant in Iraq.

14. I have been able to consider the voluminous statements and reviews which took place before my appointment. As a result, I have been able to see a number of witnesses and to obtain an account of their involvement in the operation. I have also seen a number of witnesses in the chain of command who have been able to provide accounts to me of the part they played in the events immediately after the death occurred. It is clear that no adequate investigation took place between the date of the deceased's death on 11th April 2003 and a date in June 2003 when, as a result of an anonymous telephone call, an RAF police investigation (called OP RAKER) commenced.
15. Sometime ago I directed that statements should be given to lawyers appointed to those eyewitnesses who wished to have legal advice. The voluminous documentation in the case has been provided to them, and I am anticipating receipt of the statements from witnesses by 16th March 2018 at the latest. There are many potential witnesses whom I have to consider. When I have had a chance to consider these anticipated statements from eye-witnesses, I shall be able to consider how I should proceed with the process of putting further questions, which I have little doubt I shall have to put, to the various witnesses. It is likely that there will be oral evidence and questioning in connection with a number of topics. I will give notice of the steps I decide to take.
16. I have also made various requests for disclosure relating to the course of the reporting of the death and any decisions made which might explain why no adequate investigation took place in accordance with the requirements of the law. These disclosure requests have to a significant extent been met, but there are still some outstanding matters.

Miscellaneous

17. We have moved from the premises which we occupied in Horse Guards for nearly four years to 23 Essex Street, London, WC2R 3AA. Our new telephone number is 020 7413 4715. We are also moving our website because our existing website provider is closing down. Details of our new website will be made available in due course.

18. I would like to take the opportunity of emphasising that the Terms of Reference for these Investigations merit detailed attention in order to have an accurate and informed understanding of the reach and purpose of them. Further valuable information can be obtained from comments I have made which are on the website from time to time and which appear in greater detail in section 2 of the report into the death of Abdullah and Said (Cm 9023) and similar introductions to each of the written reports which have been submitted to Parliament and appear on the website.

SIR GEORGE NEWMAN