

PART 2: ALLEGATIONS OF UNLAWFUL KILLING AT CAMP ABU NAJI

CHAPTER 1: IDENTIFYING THOSE ALLEGED TO HAVE BEEN UNLAWFULLY KILLED AT CAMP ABU NAJI

2.1 The first part of the terms of reference requires the Inquiry to:

“...investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004...”

2.2 The allegation of unlawful killing of Iraqi prisoners by British soldiers at Camp Abu Naji was by far the most significant of the various allegations made by the claimants in the judicial review proceedings. On any view, it was an allegation of the utmost seriousness and was thus the central allegation that the Inquiry was required to investigate.

2.3 From the outset there was a stark dispute between the Iraqi and military evidence with regard to this first part of the terms of reference and there were thus a significant number of important issues for the Inquiry to resolve. The List of Issues sets out a number of questions which the Inquiry sought to answer in order to determine the truth or otherwise of this central allegation, at Issues 1-18, and 26-51. In Issue 50 the crucial question in relation to the allegation itself is stated in the following terms:

“50. To establish whether any live Iraqis captured in the course of the battle and detained at CAN died within the Facility. If so, to establish:

(a) The name and personal details of each such person;

(b) The circumstances of the death of each such person (including the time and location of their death);

(c) The identity of any person responsible for such death.”

2.4 In short, the Iraqi witnesses claimed that the evidence demonstrated that there had been an unspecified number of live Iraqi men taken into Camp Abu Naji by the British military on 14 May 2004, who were subsequently handed back to their families dead the next day, the inescapable conclusion being that they had been unlawfully killed by the British military in the camp during the intervening period.

2.5 Broadly stated, the British military contended that the evidence clearly established that a total of 20 Iraqi dead had been recovered from the overall area of the battle on 14 May 2004, as well as nine live Iraqi detainees, with the entirety of the deceased being killed in the course of the fighting. As a result, all 20 of those deceased were taken back to Camp Abu Naji on 14 May 2014 for the purposes of identification and the dead bodies were then handed back to the Iraqi civilian authorities on 15 May 2014.

1. Concession by Iraqi Core Participants

- 2.6** However, in the event, on 20 March 2014 (day 167 of the oral hearings) and at the conclusion of the main body of the military evidence to the Inquiry (and thus, to all intents, after the Inquiry had heard all the evidence it was likely to hear), Mr Patrick O'Connor QC made an important public statement to the Inquiry on behalf of the Iraqi Core Participants⁴⁸ which included the following concession:

“The List of Issues (Issue 50) requires the Inquiry to ‘establish whether any live Iraqis captured in the course of the battle and detained at CAN died within the Facility’.

This is born out of the Inquiry’s terms of reference to ‘investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of unlawful killing at Camp Abu Naji on 14 and 15 May 2004 ... and to make recommendations’.

The Iraqi Core Participants will not submit that, on the balance of probabilities, live Iraqis captured during the course of the battle on 14 May 2004, died or were killed at CAN.”

- 2.7** Although Mr O'Connor QC made it clear that the concession was limited to the issue of deaths at Camp Abu Naji, based on the then state of the evidence and that it was made in circumstances in which disclosure was said to be still incomplete, it was nevertheless a very significant concession. In effect, on behalf of the Iraqi Core Participants it was accepted that the central allegation simply could not be made good, having regard to and notwithstanding the huge amount of oral and documentary evidence that had been heard and considered by the Inquiry.
- 2.8** As it seems to me and despite the Iraqi Core Participants’ foregoing concession, since I have heard, seen, read and carefully considered this vast body of evidence, it remains necessary and of the utmost importance that I should set out my conclusions as to what happened on the 14-15 May 2004 and that I should state my findings of fact and conclusions with regard to the questions raised in Issues 1-18 and 26-51 in some detail.
- 2.9** In an ideal world an Inquiry such as this might have hoped to have, at the very least, forensically sound video and/or photographic evidence of the arrival and departure of Iraqi dead and detainees at the British camp, so that the identity, numbers and physical condition of each person at each stage could be established with little room for doubt or disagreement. But such evidence was not available here. In its absence, the Inquiry had to consider what evidence was available in order to try to arrive at the same point.
- 2.10** It was always common ground that on 15 May 2004 a number of bodies of deceased Iraqis had been handed over to the local population by the British military at the gates of Camp Abu Naji. But the evidence available to the Inquiry at its outset disclosed a lack of agreement even about the number and identities of the bodies handed back. It was therefore essential, as a first step, for the Inquiry to try to identify each person who had been killed on 14-15 May 2004 and thereafter to establish which bodies were at Camp Abu Naji during the 24-hour period in question. Clearly, those who died as a result of the events of those two days but whose bodies never entered Camp Abu Naji could not have been unlawfully killed there. That is the subject of the first two chapters of this Part of the Report.

⁴⁸ [167/203/12] – [167/10/1]

2.11 Thereafter, I consider the issues surrounding the identities of the dead and the way(s) in which they met their deaths, starting with the events on the battlefield to try to ascertain the point at which the death of each individual had occurred.

2. Iraqi Death Certificates

2.12 Putting to one side the testimony of witnesses, the Inquiry gathered together all the death certificates provided to it relating to Iraqi deaths and which had been collated as part of the previous Royal Military Police (“RMP”) investigations into these events. The Inquiry also took steps to obtain copies of those death certificates independently of the RMP material, including procuring copies from Iraqi witnesses who provided statements to the Inquiry, and by contacting hospitals and local authorities in Al Majar al’Kabir and the surrounding area to confirm the identities of those whose deaths were recorded on 14-15 May 2004.

2.13 In total the Inquiry obtained death certificates for 29 individuals (see Table 1, as set out in paragraph 2.15 below).

2.14 In addition to the death certificates obtained by the Inquiry, there was evidence amongst the RMP investigation materials, citing one further Iraqi deceased – named Ahmed Kareem Al Garry. This individual was assigned the Al-Sweady Inquiry (ASI) number 24. The Inquiry did not have a death certificate for this person, but added the name to the list for investigation (see below).

2.15 In total therefore, the Inquiry collected the names of 30 individuals. Each individual deceased person under consideration was given a number from 1 to 30 and the prefix ‘ASI’ to aid identification,⁴⁹ as follows:

Figure 1: Iraqi Deceased relating to events of 14-15 May 2004

ASI No.	Name	Certificate No.	Cause(s) of Death on Certificate
1	Ahmad Khaz’al Jabratallah Khalaf Al-Hilifi	978165 MOD007680	1) Several bullets to the body 2) Area of the left eye is blue in colour 3) Lacerations of the right (hand) starting from the shoulder with a sharp object 4) Signs of beating and torture all over the body
2	Haydar Hatar Mtashar Khayban Shamkhi Al-Lami	978168 MOD007684	1) Several bullets to the body 2) Mutilation of the genitals (cutting of the penis)

⁴⁹ Because of the variation that occurs due to the need to transliterate names from Arabic script to English, this was necessary in order to ensure that where name variations appeared this did not lead to mis-counting of the number of individuals. No disrespect is intended to any of the deceased by the allocation of numbers in this way

ASI No.	Name	Certificate No.	Cause(s) of Death on Certificate
3	Hamid Mez'el Kareem A'shour Al-Sweady	978169 MOD012534-35	1) Gunshot to the neck 2) Signs of torture 3) Gunshot to the foot 4) Breakage of the right (hand) starting from the shoulder 5) Complete disfigurement of the face
4	Ali Jasem Khalloufi Khreibet Al-Alyawi Al-Jamindari	978164 MOD007689	1) Several bullets to the face and head and the body 2) Cut traces on the neck with a big hole in the right cheek 3) Removal of the right eye 4) Cutting of the right (hand) starting from the shoulder
5	Abbas Atti Rahima Al-Hejeimi Al-Mozani	978170 MOD007692	1) Several bullets to the head and body 2) Disfigurement of the face
6	Husain Aziz Mu'bed Ali Al-A'mshani	978172 MOD007696	1) Bullet to the head, face and chest
7	Jassem Muhammad Hamdan Darweesh Al-A'mshani	978173 MOD007701	1) Bullet to the chest, abdomen and head
8	Ali Mawat Muhammad Ghudheib Al-Mozani	978163 MOD007705	1) Several bullets in all parts of the body 2) Change of the body complexion to blue 3) Signs of torture and beating on the right side of the body under the arm (armpit)
9	Hassan Radhi Khafeef Al-Keemy Al-Aosi	978158 MOD007708	1) Several bullets in all parts of the body and head 2) A hole in the right side of the body at close range
10	Firas Radhi Kahyoush Shazar Al-Grawi	978155 MOD007711	1) Gunshot to the head, entrance wound from the front, exit wound from the back
11	Kazem Ouda Baday Al-Baltani	978161 MOD007715	1) Several bullets to the abdomen and feet
12	Sadeq Jasseb Ghaylan Ne'ma Sahn Al-Majidi	978157 MOD007719	1) Entrance and exit bullet wound to the neck
13	Muhammad Maleh Ghlewi Atiya Obeid Al-Malki	978152 MOD007723	1) Entrance bullet wound from the right side of the head , exit wound from the left side of the head

ASI No.	Name	Certificate No.	Cause(s) of Death on Certificate
14	Tareq Muhammad Husain Al-Muhammadowi Al-Khalifa	978077 MOD007727 n.b. dated 20/5/04	1) Bullet to the back of the head 2) Disfigurement of the right shoulder with cuts 3) Bullets to the chest and abdomen from the front
15	Haydar Jamal Mshatat Kazem Al-Malki	978160 MOD007731	1) Several bullets to the body and head
16	Adnan Karam Yaseen Laheet Al-Hujeimi Al-Mozani	978166 MOD007734	1) Several bullets to the neck and chest
17	Hamza Malek Moalla Khaleefa Ja'far Al-Isma'ili	978162 MOD007738	1) Entrance wound in the head and an exit wound
18	Adel Abdelzahra Atti Al-Hujeimi Al-Mozan	978171 MOD007741	1) Several bullets to the head and body
19	Atheer Abdelameer Ja'far Sarout Al-Shweili	978153 MOD007745	1) Entrance bullet wound to the right side of the back with an exit wound in the chest area
20	Abbas Mahood Jheijeh Dawood Al-Mozani	978078 MOD007748 n.b. dated 20/5/04	1) Gunshot to the face 2) Removal of the eye 3) Breakage to the jaw 4) Bullet to the abdomen
21	Majed Jubair Suweid Edayyem Al-Shweili	978151 MOD007752	1) Several entrance bullet wounds with deterioration of the abdomen and thigh
22	Husain Jasseb Ghazi Al-Muhammadowi	978167 MOD007756	1) Several bullets to the head and foot
23	Ali Dawood Aleiwi Al-Malki	978156 MOD007759	1) Entrance bullet wound to the front of the head with exit wound to the back of the head
24	Ahmed Kareem Al-Garry [Outside ToR]	[Not disclosed]	[Outside ToR]
25	Nissan Rasem Jabbar Al-Abbadi Al-Ruhaimi	978154 MOD007763	1) Bullet to the left side of the head 2) Bullet to the upper part of the abdomen
26	Muwafaq Abdulzahra Alijouhi Aluboudi [Outside ToR]	748944 [Not disclosed]	[Outside ToR]
27	Sa'd Abdallah Mohsen Katafa Al-Ma'loukhi	748593 MOD007770	1) Stopping of the heart's muscle due to a stroke caused by an accident

ASI No.	Name	Certificate No.	Cause(s) of Death on Certificate
28	Muhammad Nasser Al-Doughaan	978159 MOD007774	1) Entrance and exit bullet wound to the head
29	Rahma Abdelkareem Al-Hashimi	978076 MOD027704	1) [Cause of death not relevant to resolution of ToR]
30	Muhammad Abdelhussain Al-Jeezani	683449 MOD022728 dated 9/11/06	1) [Cause of death not relevant to resolution of ToR]

3. Iraqi Judicial Files

- 2.16** As part of its investigations in Iraq the Inquiry spoke to a number of judges in Al Majar al’Kabir and the surrounding area. These enquiries established that the judicial authorities in Al Amarah had collated and maintained 34 files said to relate to those who died as a result of the events of 14-15 May 2004.⁵⁰
- 2.17** The Inquiry obtained a copy of the list of the 34 names on the files held by the judicial authorities and translated the names.⁵¹ Comparing that list to the list of 30 names originally collated by the Inquiry, it was clear that there were four additional names on the list – i.e. numbers 12, 15, 21 and 32.⁵² Further enquiries were therefore undertaken to establish whether these four additional names were individuals whose deaths did or might fall within the Inquiry’s terms of reference.
- 2.18** The Iraqi judicial files asserted that these individuals had died on 14 May 2004. The Inquiry therefore conducted enquiries to ascertain whether the deaths of these four individual were to be considered under the Inquiry’s terms of reference.
- 2.19** Initially copies of the death certificates⁵³ for the four men named were obtained from each relevant judicial file and translated. On the basis of the dates of death shown on three of the certificates (i.e. the certificates in respect of the individuals numbered 15, 21 and 32), the Inquiry was able to exclude those names from its list of Iraqis who might have been unlawfully killed at Camp Abu Naji on 14-15 May 2004. The date of death on the certificate for individual number 12 was blank.
- 2.20** As part of the general enquiries carried out by the Inquiry’s agent in Iraq, hospitals and health centres in Al Majar al’Kabir and the surrounding area were visited and their registers of deaths on 14-15 May 2004 inspected. The name of individual number 12 does not appear in any of those registers.⁵⁴ The product of the agent’s enquiries is set out in a witness statement at⁵⁵ and the items exhibited therein.

⁵⁰ It is of note that Mohanad Abdallah Obaid Khalifa Al-Ibadi (witness 100) – a police officer with access to the police files relating to these events – provided alongside his Inquiry witness statement in February 2013 a list of 33 names of ‘victims’ of the events of 14-15 May 2004 (PIL000986). That list – save for the omission of the name of Muhammad Nasser Al-Doughaan (ASI 28) – is identical to the list of 34 names in the files held by the judicial authorities and inspected by the Inquiry

⁵¹ (ASI007302)

⁵² (ASI007302)

⁵³ A request to use the originals was refused

⁵⁴ Whereas the names of those already on the Inquiry’s list, and in respect of whom other evidence supports them having died on 14-15 May 2004, do appear on those registers

⁵⁵ Inquiry Agent (ASI018556)

4. Ahmed Kareem Al-Garry (ASI 24) & Muwafaq Abdulzahra Alijouhi Aluboudi (ASI 26)

- 2.21** As indicated above, the Inquiry did not have a death certificate for Ahmed Kareem Al-Garry (ASI 24) but had included his name in the list because it appeared amongst the Royal Military Police (RMP) investigation materials. Initial enquiries were made into the identity of this person in order to ascertain whether the circumstances of his death were in fact relevant to the terms of reference. His father was located, and he confirmed that Ahmed Al-Garry had died in circumstances that had nothing to do with the events of 14-15 May 2004.
- 2.22** There was a death certificate for Mowafaq Abdulzahra Alijouhi Aluboudi (ASI 26). The Inquiry located his parents who agreed to provide the Inquiry with a witness statement. However, when they attended to do so, it became clear that their son had died in April 2004.
- 2.23** Both Ahmed Kareem Al-Garry (ASI 24) and Mowafaq Abdulzahra Alijouhi Aluboudi (ASI 26) have therefore been considered from an early stage to be outside the terms of reference of this Inquiry. Their names remain on the Inquiry's list of deceased persons in order that it should reflect the enquiries carried out, but they are noted as 'Not within ASI ToR.'
- 2.24** Excluding Ahmed Kareem Al-Garry (ASI 24) and Mowafaq Abdulzahra Alijouhi Aluboudi (ASI 26) from consideration, 28 names therefore remained on the list of deceased in respect of whom the Inquiry sought to establish the circumstances and cause of death.

5. "Martyrs poster"

- 2.25** A document was received from the journalist David Monaghan which contained 25 photographs of men said to have been killed on 14-15 May 2004, and which bore handwritten annotations including names.⁵⁶ Each photograph had a name typed on it in Arabic script – these names were translated by the Inquiry and appear in English⁵⁷.
- 2.26** Each of those names corresponds to one of the names on the Inquiry's list of 28 dead. ASI 10, ASI 28 and ASI 29 are not shown on the poster.
- 2.27** The poster has been used by relatives of the dead and other Iraqi witnesses to assist in making identifications of those who died on 14-15 May 2004. Where relatives were unable to make any identification from the KIA (Killed In Action) photographs (see below), or in some cases did not wish to look at such photographs to attempt to make an identification, their identification from the martyrs' poster has allowed the Inquiry to confirm an identification when taken together with other evidence.

6. Use made of Captain James Rands' "KIA" photographs

- 2.28** Having established a list of 28 individuals killed on 14-15 May 2004, the Inquiry sought to establish which of those individuals were shown in the photographs of dead Iraqis which had been taken at Camp Abu Naji on the evening of 14 May 2004 by the 1 PWRR Intelligence Officer, Captain James Rands.
- 2.29** The circumstances in which the Captain Rands' photographs were taken had been scrutinised previously in the judicial review proceedings. The photographs were once more the subject

⁵⁶ (MON000720)

⁵⁷ (ASI004748)

of a very detailed and careful scrutiny by the Inquiry. In the event, it is now clear that the evidence that the photographs had been taken at Camp Abu Naji by Captain Rands after the arrival of 20 dead bodies at the camp from the battlefield on 14 May 2004 and before their handover to the Iraqi civilian authorities on 15 May 2004 is essentially uncontroversial. Thus, in the course of his statement on behalf of the Iraqi Core Participants on 20th March 2004 (see paragraph 2.6 above), Mr Patrick O'Connor said this:

*"Many dozens of military witnesses have given evidence of the arrival and handling of the dead bodies which arrived at CAN on the evening of 14 May 2004. The bodies apparently arrived in vehicles directly from the battlefield outside the medical centre, were unloaded, examined, photographed and placed in a storage container overnight, before return the next day. ... After a great deal of forensic investigation the photographs of these bodies taken by Captain Rands outside the medical centre, have been connected to each of the 20 bodies which arrived and have been timed consistently with the sequence of events described ... above."*⁵⁸

- 2.30** It is therefore now accepted that, on the evening of 14 May 2004, Captain Rands photographed the bodies of 20 dead Iraqis who had been recovered from the battlefield that day and had been brought to and stored at Camp Abu Naji, before being handed over to the Iraqi civilian authorities the next day. It follows that none of the dead Iraqis who were photographed by Captain Rands had died at Camp Abu Naji during 14-15 May 2004 and it has never been suggested that any other Iraqis had died at Camp Abu Naji during that time, hence the concession referred to in paragraph 2.6 above. Nevertheless, it seems to me that the making of findings of fact with regard to the identities of these dead individuals and the place and general circumstances of their deaths in the light of all the evidence still remain as important aspects of this Inquiry's task of carrying out a full and proper investigation within its terms of reference.
- 2.31** The primary way that the Inquiry sought to identify the men shown in Captain Rands' photographs was by asking relatives of the deceased and other Iraqi witnesses to look at an album of the photographs⁵⁹. The Inquiry found that some family members were reluctant to look at the photographs, which are graphic in nature. A set was produced for the Inquiry which removed some of the detail of injuries and blood staining on the bodies in an attempt to encourage their use as an identification tool.⁶⁰
- 2.32** Where witnesses would not look at the photographs of the deceased, they were asked to look at the "Martyrs' Poster" and/or to provide the Inquiry with a photograph of their deceased relative before death so that a comparison could be made.

⁵⁸ [167/207/6-24]

⁵⁹ (ASI000456)

⁶⁰ (ASI001161)

- 2.33** The result of this exercise was that the Inquiry was able to identify all the men shown in Captain Rands' photographs, and to link each of them to individuals on the Inquiry's list of deceased Iraqis as follows:

Figure 2: Identities of Iraqi Deceased in Captain Rands' KIA Photographs

Deceased ASI Number	Name	KIA Number (Rands Photographs)
1	Ahmad Khaz'al Jabratallah Khalaf Al-Hilifi	5
2	Haydar Hatar Mtashar Khayban Shamkhi Al-Lami	15
3	Hamid Mez'el Kareem A'shour Al-Sweady	13
4	Ali Jasem Khalloufi Khreibet Al-Alyawi Al-Jamindari	20
5	Abbas Atti Rahima Al-Hejeimi Al-Mozani	11
6	Husain Aziz Mu'bed Ali Al-A'mshani	12
7	Jassem Muhammad Hamdan Darweesh Al-A'mshani	17
8	Ali Mawat Muhammad Ghudheib Al-Mozani	16
9	Hassan Radhi Khafeef Al-Keemy Al-Aosi	9
11	Kazem Ouda Baday Al-Baltani	1
12	Sadeq Jasseb Ghaylan Ne'ma Sahn Al-Majidi	14
14	Tareq Muhammad Husain Al-Muhammadowi Al-Khalifa	7
15	Haydar Jamal Mshatat Kazem Al-Malki	3
16	Adnan Karam Yaseen Laheet Al-Hujeimi Al-Mozani	4
17	Hamza Malek Moalla Khaleefa Ja'far Al-Isma'ili	19
18	Adel Abdelzahra Atti Al-Hujeimi Al-Mozani	8
20	Abbas Mahood Jheijeh Dawood Al-Mozani	6
22	Husain Jasseb Ghazi Al-Muhammadowi	2
27	Sa'd Abdallah Mohsen Katafa Al-Ma'loukhi	10
28	Muhammad Nasser Al-Doughaan	18

7. Ambulance video footage

- 2.34** David Monaghan also provided the Inquiry with DVDs containing video footage taken on 15 May 2004 which depicts the collection of the deceased Iraqis from Camp Abu Naji that day, starting shortly after they left Camp Abu Naji and ending when the bodies were at the Al Sadr hospital in Al Amarah.
- 2.35** Included on one of these DVDs [DCM/6] were face shots of those said to have been killed on 14 May 2004. Sixteen of those shots had names superimposed on them in Arabic script; the names were translated and it was confirmed that they were amongst the list of 28 names created by the Inquiry. One shot had no name, but has been identified as Hamid Al-Sweady (ASI 3).

- 2.36** The footage on the discs, insofar as it covered the handover of the dead on 15 May 2004, included several shots of the dead bodies collected, both around the time of collection, and later, when the bodies had been prepared for burial.
- 2.37** Discs [DCM/5 & 6], as well as a disc labelled [DCM/8] and a fourth disc labelled “Third DVD” (received from Public Interest Lawyers – this disc contains further ambulance video footage) were provided to Mr Clive Evans, a Senior Forensic Consultant who provided expert image and facial comparison, along with Captain Rands’ photographs of the dead as extracted into [MBM/5]. Mr Evans was asked to correlate the bodies seen in the videos with Captain Rands’ photographs and he produced a report detailing his work and findings (ASI012341).⁶¹ He selected 37 still images of bodies from the various discs and considered whether any of those 37 images showed a body also shown in Captain Rands’ photographs. He concluded that all but one of the images from the videos namely image 37 taken from the ‘Third DVD’ – could be correlated, or possibly correlated, to one of the “KIAs” in Captain Rands’ photographs. He found no images correlating to KIAs numbered 4, 7, 11, 14, and 15. It is possible, therefore, that the videos include a dead body which was in addition to those photographed by Captain Rands at Camp Abu Naji.

⁶¹ Mr Evans’ report is attached as Appendix 8