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Seven myths about UK military abuses against civilians in Iraq

1. **"The abuses were carried out by a few bad apples."**
   The UK Ministry of Defence has approved payments totalling £20 million to settle 331 cases of violations committed by UK service personnel against Iraqi nationals in Iraq.[1] The former chief legal adviser to the British Army in Iraq has written that the pattern of abuse during interrogation of detainees 'appears systematic'. In particular, the use of the 'five techniques' (hooding, stress positions, white noise, sleep deprivation, and deprivation of food and drink), banned under UK law since the 1970s and since found by the Belfast Court of Appeal to constitute torture, was alleged to be widespread. Some 600 further cases before the courts alleging abuse against Iraqi civilians are yet to be resolved.

2. **"The investigations are a witch hunt."**
   Far from being imaginary or exaggerated for political reasons, the abuses for which UK forces have been held responsible represent serious violations of fundamental rights, including killing, false imprisonment and inhuman and degrading treatment. In perhaps the most well-known case, Mr Baha Mousa, a hotel receptionist in Basra, was beaten to death over the course of 36 hours in detention, the autopsy recording 93 separate injuries.[2] Mr Nadheem Abdullah, another civilian, was dragged from the passenger seat of a taxi, and beaten to the ground, dying from a blow from a rifle butt to the back of his head.[3] In four test cases decided at the High Court in December 2017, four civilians were awarded damages for unlawful detention, beating (including with rifle butts, to the back and head), sensory and sleep deprivation, and other inhuman and degrading treatment, including in one case being made to lie prone while soldiers repeatedly ran over the victim's back.[4]

3. **"Vexatious claims have been promoted by a few unscrupulous lawyers."**
   Following action taken by the Solicitors' Disciplinary Authority against one lawyer, ministers have argued the need for new legislation to stop 'vexatious' claims. However, hundreds of claims of abuse of detainees by UK forces have now been proven in court, confirmed by judicial inquiry, or been subject to compensation awards paid by the Ministry of Defence (MOD). A 'vexatious' claim at law is one which is frivolous or made in bad faith without legal basis. Rather than applying this standard to dismiss claims, there are indications that both the former Iraq Historic Allegations Team and the Service Police Legacy Investigations have pursued a policy of closing investigations into any cases which were considered less serious than the domestic criminal law standard of grievous bodily harm,[5] including effectively dismissing evidence of conduct which might have met the international human rights standard of inhuman and degrading treatment or even torture.

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[1] Up until December 2018.
[2] Sir William Gage, Report of the Baha Mousa Inquiry, 8 September 2011; https://www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report
[3] Iraq Fatality Investigations, Consolidated report into the death of Nadheem Abdullah and the death of Hassan Abbas Said, 20 March 2015; https://www.gov.uk/government/collections/iraq-fatality-investigations
[4] Alseran & Ors v Ministry of Defence [2017] EWHC 3289 (QB) (14 December 2017)
[5] MoD, Systemic Issues Working Group, 'Systemic Issues Identified from Service Police and Other Investigations into Military Operations Overseas: August 2018', as cited in E Stubbins Bates, 'Distorted Terminology: The UK's closure of investigations into alleged torture and inhuman treatment in Iraq', 68 ICLQ, July 2019, p720.

4. **"That there have been so few prosecutions shows there is nothing really to worry about."**
   The Prosecutor of the International Criminal Court reiterated in December 2019 her long-held view that 'the information available provides a reasonable basis to believe that in the period from 20 March 2003 through 28 July 2009 UK servicemen committed the following war crimes against persons in their custody in the context of armed conflicts in Iraq: wilful killing/murder (article 8(2)(a)(i)) or article 8(2)(c)(i)); torture and inhuman/cruel treatment (article 8(2)(a)(ii) or article 8(2)(c)(i)); outrages upon personal dignity (article 8(2)(b)(xxi) or article 8(2)(c)(ii)); rape and other forms of sexual violence (article 8(2)(b)(xxii) or article 8(2)(e)(vi)).[6] In order to determine whether to open a full investigation herself, the ICC Prosecutor is currently examining whether the UK's domestic proceedings were undertaken *genuinely*. The question, then, is not whether the relative lack of prosecutions is down to a lack of evidence but whether it demonstrates an unwillingness on the part of the UK authorities genuinely to prosecute.

5. **"Repeated investigations have meant that service personnel have had to live under threat of prosecution for years on end."**
   Both the Iraq civilian litigation and the Iraq Fatality Investigations have been the subject of adverse comment in the media incorrectly implying that they are investigating service personnel with a view to prosecution. In fact, the 600 cases still outstanding that are part of what is known as the Iraq civilian litigation are claims for civil damages against the UK government (Ministry of Defence), not criminal prosecutions against individual service personnel. The Iraqi Fatality Investigations, a judicial inquiry into Iraqi deaths involving British forces, is limited by its mandate to cases which are referred to it by the MOD only after it has been decided that there is no realistic prospect of a criminal conviction and all criminal investigations have been completed.[7]

6. **"Making soldiers follow legal rules will impair battlefield effectiveness."**
   Nearly all the claims considered by the court to date concern the alleged abuse of individuals held in British detention facilities or under the custody of UK personnel. The alleged abuses therefore did not occur during the conduct of active hostilities but rather at times and in locations when the victims – the majority of whom were civilians – were under the effective control of UK armed forces personnel and did not present a threat. There is in any case no evidence that following the laws of war impairs effectiveness on the battlefield. To the contrary, armed forces that have a good record in observing the Geneva Conventions and other legal rules governing armed conflict are generally better disciplined and have a more effective chain of command.

7. **"The UK military don't want these cases looked at."**
   This depends on whom you ask. For example, the legal services branches of the three armed services and the service police have a long record of seeking to ensure that the law of armed conflict and, more recently, human rights law, are observed by UK military personnel. Upholding the law is essential to military discipline, as well as the reputation of the armed forces, and requires the effective suppression of breaches. While the cases of abuse against detainees and other civilians clearly create a PR problem for the Ministry of Defence, there are many personnel within the armed services working to ensure that potential violations are prevented and suspected cases properly addressed.

and… **"ISIS / Al-Qaeda would do the same."**

Yes they would. But is that the standard by which the conduct of the UK's armed forces should be judged?

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[6] International Criminal Court – Office of the Prosecutor, *Report on Preliminary Examination Activities 2019*, December 2019.
[7] https://www.gov.uk/government/collections/iraq-fatality-investigations