

MOD-83-0000285-A

Filed on behalf of the Claimant
Deponent: Philip Joseph Shiner
1st Witness Statement of Deponent
Exhibits: "PJS1", "PJS2", "PJS3", "PJS4", "PJS5", "PJS6"
Dated: 18.05.04

IN THE HIGH COURT OF JUSTICE

ACO Ref: CO/2242/2004

ADMINISTRATIVE COURT OFFICE

BETWEEN:

**THE QUEEN (on the application of MAZIN
JUM'AA GATTEH AL-SKEINI and others)**

Claimants

and

THE SECRETARY OF STATE FOR DEFENCE

Defendant

WITNESS STATEMENT

of

PHILIP JOSEPH SHINER

I, **PHILIP JOSEPH SHINER** of Public Interest Lawyers, Newhall Place, 16-17
Newhall Hill, Birmingham, B3 1JH, SAY AS FOLLOWS:

1. I am the solicitor with the conduct of this application for judicial review concerning the deaths of Iraqi civilians in South East Iraq during the period of occupation of that territory by the UK Government.

2. The purpose of this witness statement is three-fold: one, to explain why, in the light of the position in Iraq, it was necessary to file the twelve witness statements ('the draft statements') in draft form at the permission stage; two, to explain how these statements were obtained and to exhibit the working papers; three, to introduce further relevant facts and materials in respect of those cases that the claimants will focus upon.
3. It is well known that the situation in Iraq is particularly difficult at the moment, and that it has been for some time. Mr Justice Collins recognized the position at the directions hearing on 11 May. It has had a number of relevant consequences for this litigation.
4. The situation in Iraq in October 2003 made it impossible for me to travel to Basra to take instructions from my clients. Consequently, Fahim Mazhary¹, a man of Iraqi descent, was employed by Public Interest Lawyers to travel to Basra on my behalf. I prepared a standard form questionnaire so the answers could be translated into witness statements on his return. I now produce "PJS1" a copy of an English version of that questionnaire. Mr Mazhary translated the questionnaire into Arabic. I now produce as "PJS2" true copies of the Arabic version of the questionnaires². On arrival in Basra, Mr Mazhary contacted a local human rights organization, which put him in touch with the first twelve claimants in this case. Following his return in early February 2004, I produced the draft statements from his translation to English of the Arabic questionnaires.
5. At the time of drafting the statements, I had applied for public funding from the LSC on 25 February 2004³. I had requested the applications to be dealt with as a matter of utmost expedition as Counsel and I were concerned about the need to preserve evidence and for the enquiries to proceed as a matter of urgency. I expected the applications to be determined within days and that if certificates were granted I would be able to instruct my caseworker to return to Iraq. He could then arrange for the statements to be signed and brief the clients on developments in the UK.

¹ Mr Mazhary is fluent in Arabic and has lived in the Middle East for many years.

² There are no questionnaires for Baha Mousa or Kifah Taha Al Mutari as these were dictated directly by Mr Younis on his visit to Iraq (see below paragraph 6).

6. In mid-March I was approached by another Iraqi, Mr Mazin Younis, who has now settled in the UK. His credentials as a caseworker were impressive as he used to live in Basra where his father practiced as a lawyer. Accordingly, I decided to offer him a temporary contract of employment to visit Basra as soon as the LSC had determined the application for certificates⁴. Unfortunately the LSC delayed so much that, in view of the pending twelve month deadline under the Human Rights Act 1998⁵, I decided that again I would have to pay for this caseworker to return to Iraq⁶.
7. Mr Younis left for Iraq on 29 March. As the situation in Iraq dramatically worsened, it was not until 23 April that he was able to travel to Basra. Once there, Mr Younis took statements on my behalf from Colonel Daoud Mousa and a witness Kifah Taha Al-Mutari about the death in custody of Baha Mousa⁷. The signed statements are shortly to be filed and served in these proceedings. Mr Younis also gathered further information from the clients whom Mr Mazhary had met on his visit to Iraq.
8. By this time the time limit under section 7(5) of the Human Rights Act 1998 was approaching in relation to the case of Abbas Kuhdayar Gatteh, the earliest of the deaths in question (the time limit relates to the Claimants' argument that there has been a breach of the *substantive* obligation in Article 2 of the European Convention on Human Rights rather than relating to the *procedural* obligation). I took the view that, even though the LSC had still not made a decision on funding, it was essential that claims be put in on a protective basis. I was also concerned about the need to preserve evidence, as I have mentioned above. Accordingly, I decided to lodge the claims on 5 May 2004 (the day before the expiration of the time limit in the case of Mr Gatteh) on the basis of the unsigned statements that were put into the court bundle with a view to having them perfected and signed as soon as the difficult circumstances in Iraq permitted. I apologise to the Court that I did not make it clear that they were draft statements. This was because I thought that this was apparent from the fact that they were

³ An application was made to the Special Cases Unit for certificates of public funding.

⁴ I trained him as I had trained Mr Mazhary.

⁵ The first death of the twelve occurred on 6 May 2003.

⁶ For the record that there will be no claim for the LSC for any of my team's work conducted to date.

⁷ This followed from preliminary contact between Colonel Daoud Mousa and Mr Mazhary on the first visit to Iraq.

unsigned. I should also say by way of explanation that one of the reasons why I did not have time to give this issue of unsigned statements the requisite thought arose from the lack of funding, which was taking up a lot of my time. The claim was lodged without any funding being available from any public or other source as the Legal Services Commission had not determined the applications for certificates. Indeed, it had not done so at the time of the Directions Hearing on 11 May when permission was granted, and still has not done so, although correspondence has continued throughout.

9. Of the five cases that the judicial review application will focus on, Mr Younis has confirmed to me the accuracy of the draft statements. I have arranged for signed copies to be obtained and sent back to me as soon as possible⁸. Mr Younis did not ask the five witnesses to sign the draft statements while he was in Iraq as he expected that I would want the statements expanded in the light of his further instructions. As the claim has now been lodged these statements will be signed, with further information about the incidents being produced as set out below. I have checked the draft statements against the further accounts. I am satisfied that it is appropriate to ask the witnesses to sign the draft statements that I prepared in February 2004.
10. I now produce as "PJS3" short further accounts of several of the incidents. The additional material has emerged from Mr Younis' interviews with these five witnesses and I consider that it may assist the court in due course. A brief summary of the extra detail in each case follows:

Mazin Jumaa Gatteh Al-Skeini

This further evidence mainly identifies the place where the deceased was killed, approximately one kilometre from where the funeral party was held. There is marked on a photograph of the scene the position of the deceased and that of the two British soldiers. There is also a further account of the aftermath of the killing and, in particular, details of conversations between the deceased's father and Captain Tai.

⁸ He was able to do this as he had interviewed each of the five witnesses in person. Moreover, he had gathered from them additional information in the form of short statements, as well as photographs of individuals and locations described.

Muhammad Abdul Ridha Salim

I understand from Mr Younis that the widow has now received the sum of \$1,500 from the British Army in February 2004 by way of ex-gratia compensation.

Hannan Mahaibas Sadde Shmailawi

The further account details the shooting of the deceased as she left the room where she was having dinner with her family to investigate shots fired by British soldiers. The same incident led to the death of Ali Kadhim Msankhi and the shooting in the left arm of the youngest son of the first deceased (Hannan) who is pictured. Finally the room outside which Hannan was shot is pictured.

Waheed Sayay Muzban

There is no further information to be added about this case.

Raid Hadi Sabir Al Musawi

The further account includes evidence from a witness who saw the deceased being shot, and an account of the hooding and stripping naked of two of the deceased's brothers when they tried to pursue the case with the British Army. One photograph shows the street where the incident took place and Mr Younis has marked on a copy of this the location of the deceased and of the British soldiers. Another photograph shows the deceased in hospital shortly before he died. The bandages show that a single bullet has entered one side of his stomach and exited from the other.

Baha Mousa

I am exhibiting as "PJS4" various press articles that substantiate the witness evidence of Colonel Mousa and the witness Kifah Taha Al Mutari. I am also exhibiting as "PJS5" various documents sent to me by letter 14 May 2004 from Madden & Finucane, Solicitors, Belfast. Finally, I am exhibiting as "PJS6" further statements from witnesses as to what happened to Baha Mousa while in detention.

I believe that the facts stated in this witness statement are true.

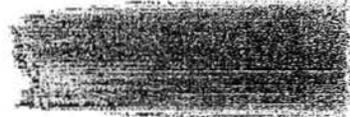
Signed

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PHILIP JOSEPH SHINER

Dated

18 May 2004
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B E T W E E N:

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and

THE MINISTRY OF DEFENCE

FIRST WITNESS STATEMENT

of

PHILIP JOSEPH SHINER
