

THE BAHA MOUSA PUBLIC INQUIRY

Inquiry Chairman: The Rt. Hon. Sir William Gage

SUBMISSIONS IN REPLY ON BEHALF OF Colonel MENDONÇA

1. We bear in mind the Chairman's request that any Submissions in Reply be carefully focussed to deal concisely with any new issues arising from other Core Participants' Closing Submissions which directly affect our client.
2. The only Closing Submissions in respect of which any reply is made, are those of the Detainees.
3. A number of assertions have been made about Colonel Mendonça in that document. We do not seek to repeat submissions already made on behalf of Colonel Mendonça: they, in our view, address the issues raised in the Closing Submissions on behalf of the Detainees. The Inquiry will obviously examine those issues and consider whether there is any cogent evidence at all to support any of the assertions made.
4. There is one matter which does have to be addressed. If it is not addressed there is a real risk of a misleading picture with regard to the state of the evidence in relation to a particular issue being presented to the Inquiry. It concerns the allegations made in Part II at §§195-197 [SUB 002269-70] about the visit to the TDF by Colonel Mendonça on the night of Sunday 14 September 2003.
5. It is not correct to describe Private Reader at §195, as having "consistently recalled the CO being present outside the TDF on the

evening of the first day”. The uncertainty of the timing of his observation and the lack of consistency is illustrated by his evidence to the Inquiry [BMI 28/155/7-28/156/14 and BMI 28/205/8-28/207/13].

6. It is correct that Colonel Mendonça used the word “evening” in his witness statement of 22 October 2003 [MOD007108]. However, it is incorrect to suggest that in his SIB interview of 29 March 2005 he was also describing the visit as having taken place in the “evening” as opposed to the night.
7. He specifically said “I recall visiting the detention facility that night ... It was dark ...” [MOD019098]. The interviewing officer uses the word ‘evening’ shortly afterwards and Colonel Mendonça uses the same word in response. He went on to repeat “It was dark” [MOD019100]. He referred to the nature of the light coming in from outside and the fact that he might have used his torch and, last two lines, “It was dark” [MOD019101].
8. The significance of these inaccurate portrayals of the evidence is that they are used as a platform to make wholly unwarranted suggestions to the detriment of Colonel Mendonça as set out at §197 of the Closing Submissions of the Detainees. Those suggestions should plainly be rejected.

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