

THE BAHA MOUSA PUBLIC INQUIRY

VICTIMS’ RESPONSE: MENDONCA SUBMISSIONS

1. This document sets out the response of the victims to the closing submissions made on behalf of Mendonca. The victims cross-refer to their own opening and closing submissions as “VOS” and “VCS” respectively, followed by the relevant Part and paragraph number(s).
2. The victims’ main submissions in relation to this witness can be found at the following places in their own written documents: VCS Pt II [456-459], Pt V [163-201] and [234-237]. As to the doubt cast upon Mendonca’s account of his visiting the TDF while the detainees were there, see Pt II [194-200] and [204-206].
3. While the victims accept Mendonca’s critique of pre-deployment planning and resourcing his tendency to describe himself as a victim of circumstances alone indicates a continuing denial of his own personal responsibility.
4. The concept of mission command that he relies so heavily upon¹ falls to be interpreted completely differently if it is shown that Mendonca knew that both hooding and stress positions were being used as SOPs on the base. In those circumstances the level of oversight would necessarily need to be far more stringent. That is why (for reasons set out at VCS Pt V [173-175]) Mendonca has always been ambivalent about acknowledging the so-called Brigade sanction, because it proves too much. Once it is accepted that the CO was under the impression that Brigade had sanctioned a set of techniques that his guard were untrained in, but would be integral to implementing, a *Bolan* type test of professional misconduct must be entirely recalibrated.² This is a point that applies to all the relevant chain of command (i.e. Provost Sgt, BGIRO, RSM, Adjutant, 2IC and CO, as well as multiple commander and Company commander). The victims’ submissions that Mendonca has not told the truth about his knowledge of and

¹ SUB000047 [15-23].

² See the questions asked by the Chairman during Major Englefield’s evidence to that effect at BMI 65/25/22 – 26/10 and 121/7 to 125/22. See also VCS Pt V [185].

sanctioning of the conditioning techniques are set out at VCS Pt V [163-178]. The terrible implications arising out of the failure to ensure exceptional safeguards for exceptionally sanctioned activity are set out at Pt V [179-201].³

5. As regards Mendonca’s starting premise that Payne and Peebles hold the fundamental responsibility for what occurred,⁴ the victims maintain that the shortcomings of both those soldiers ought to have been taken into account by the chain of command, for which see VCS Pt V [195-196].

6. As regards the use of the generator at BG Main and the accounts given by Lamb, Potter, Smith and Lighten, contrary to Mendonca’s submissions,⁵ the victims regard this evidence as indicating at the very least that Mendonca knew that there was concern about detainees being placed at this location. In that respect, they submit that the evidence of Lighten on this subject is reliable to the extent that the matter would have been raised and left with the CO to handle. Lighten’s evidence was that “he had implicit trust” in Lamb and Potter.⁶ They reported their concerns to him and were told that the matter had been referred up. Lighten’s written evidence to the Inquiry that the concern was referred to Mendonca who told him that “this was a matter of operational security and as such was not my company’s business”.⁷ In oral evidence he expressed less certainty about the matter, but he did believe that he had referred the matter to the CO. A blunt response in the manner described in his statement was acknowledged by Lighten as in keeping with Mendonca’s style of leadership in relation to a matter like this.⁸ Having seen Mendonca give evidence one can, it is submitted, well appreciate this. There was also more general evidence about detainees being placed at the generator on other occasions.⁹ Peebles’ first response when the matter was put to him in evidence was that there had been some form of discussion about “white noise” (VCS Pt II [226-227]). The very obvious positioning of the generator on the HQ site would underscore that this practice was widely known about at BG Main.¹⁰

³ Cf. SUB000060 [44-61].

⁴ SUB000041 [3-4].

⁵ SUB000053 [29].

⁶ BMI 56/114/5-6.

⁷ BMI05974 [84]. See also Lamb BMI05143 [8] to [10] and Potter BMI05784 [38] to [43], Smith BMI 44/136/16 – 141/12, 158/20 – 160/25 and MOD003229.

⁸ BMI 56/148/10 – 149/20.

⁹ Seeds MOD004036-041, MOD004052, BMI04175 [15-16] and Slicker MOD004816-819.

¹⁰ See, for example, Aktash BMI03485 [50], MOD005078 and BMI 16/31/1-21.

7. The victims’ submissions on the culture of violence inside the Battle Group are set out at VCS [202-261]. The scope and depth of that evidence indicate that violence was not abnormal and in that sense was culturally acceptable in many quarters and systemic.¹¹ While it is not submitted that Mendonca would have known about all the violence, he was responsible for creating a style of leadership where the company commanders did not take matters to him, and a robust treatment mentality prevailed throughout the Battle Group. The recognition of the need for robust treatment got lost in translation when it was cascaded down and Mendonca should have been aware of that risk.
8. Due to its correlation with other evidence, particularly Richards, the victims do not regard the Mackenzie diary as a “thoroughly suspect document”.¹² Aside from being partially corroborated, it would make no sense for Mackenzie to lie about his involvement with the Mirror photographs but to continue to stand by the veracity of the diaries, if they were not a reflection of real events. The people referred to in the Mirror interviews, Soldiers A and B, also had knowledge of treatment that occurred in relation to these detainees, for example being made to drink urine and being urinated upon. This matter is dealt with at VCS Pt V [225-229].
9. Contrary to his submissions,¹³ as regards the events at BG Main between 14 to 16 September the victims maintain that the CO did know about the conditioning techniques, would have been aware of noises of beasting and pain emanating from the TDF and probably stayed away from the TDF so as not to be implicated with the knowledge of those events. If the CO did visit the TDF on the Sunday night he would have seen far more than he admits, although for that very reason the victims doubt that he did pay that visit and has merely said that he did at an early point in answering questions about this incident in order to protect himself from an alternative criticism that he neglected his duty to do so (Pt II [194-200] and [204-206]). In the aftermath of the death, Mendonca and his chain of command complied with their duty in form, but not in substance, for the reasons set out in VCS Pt II [331-352]).

¹¹ Cf. SUB000054 [30-43].

¹² SUB000055 [34].

¹³ SUB000073 [62-71].

10. Given the degree to which the neglect of Division, Brigade and Battle Group are implicated in the mismanagement of prisoner handling throughout the tour, the victims are compelled to cast doubt upon the overall wisdom in recommending Mendonca’s DSO (which he relies upon¹⁴) without even citing the debacle that was known to have occurred in the Baha Mousa case.¹⁵ Alternatively, a real question arises as to whether Mendonca would have or should have been awarded a DSO given the overall evidence of what occurred during that tour. Certainly the extent to which Moore continued to stand by his endorsement of Mendonca’s leadership at the Court Martial can no longer stand as an informed and impartial assessment of how the CO controlled and directed his regiment.¹⁶ In saying that, the victims remain neutral as to the broader benefits that Mendonca and 1 QLR brought to Basran society for the reasons set out at Pt II [459].

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9 July 2010

¹⁴ SUB000044 [8].

¹⁵ Moore BMI 99/73/21 – 75/14.

¹⁶ Moore BMI 99/89/8 – 90/4.