

S002

FURTHER SUBMISSIONS

This further submission is intended to supplement the Response to Potential Criticisms ('RPC') submitted on behalf of S002 in the TSol's Appendix to the Generic Submissions [SUB001961, in particular at SUB001969]. The Tribunal is referred to those submissions.

Should the Inquiry contemplate criticising S002 along any of the lines set out below, the following is submitted on his behalf:

i. Did not, or did not adequately, pass up the chain of command reports that arresting soldiers were continuing to bring prisoners to the JFIT with hoods on after the prohibition of hooding was instituted.

1. It would be unfair to criticise S002 in this regard. It was S002's evidence that S040 reported to him on one or two occasions that there had been instances of prisoners being delivered to the JFIT wearing hoods [S002 BMI 82/123/8-11]. This was corroborated by S040's evidence [S040 BMI 67/214/13 and SUB002027]. S002 then raised the matter with 1 Div Headquarters, in particular Col Mercer and possibly also Col Marriott.
2. Col Mercer was not asked whether S002 told him of any mistreatment or violation of the hooding ban. Rather, Col Mercer only said in evidence that he himself never saw hoods used again at the TIF after the ban. While his legal officers were instructed to "be on the lookout" for mistreatment at the TIF, they were not responsible for receiving the prisoners, and were therefore not in a position to determine whether prisoners were hooded on arrival [BMI 68/52/21-53/15]. Further, the legal advisers were either seldom at the JFIT [Christie BMI 69/161/22ff; Christie BMI07213, SUB001590] or were rarely within the JFIT compound [for example Major Frend, who spent most of his time in the Operation Command Tent BMI 69/104/1; BMI02899; SUB001675]. It was therefore wholly plausible that they did not see hoods in use after prohibition. The evidence of S002 and S040 is therefore to be preferred in relation to the use of hooding after the prohibition. It is notable that S015, S002's successor, also received reports that on two or three occasions prisoners were delivered hooded to the TIF by British troops [S015 BMI 84/105/7].

3. In any event, the evidence of Col Mercer or the legal advisers is wholly irrelevant to the issue as to whether that the information was passed up the chain of command by S002, which he maintains he did. Col Marriott was not asked whether S002 informed him that hooded prisoners were being delivered to the JFIT, but rather he was asked whether he was aware that prisoners had injuries on arrival [Marriott BMI 98/174/11-98]. As such, S002's evidence is unchallenged in this regard.

ii. *Failed to inform S015 of the background to the prohibition on hooding*

4. No criticisms can fairly be made of S002 along these lines. S015 was deployed in July 2003, approximately four months after the ban was instituted. S015 was aware on arrival that hooding was banned [S015 BMI 84/103/24]. S015 indicated that although he did not specifically recall S002 mentioning the ban on hooding to him during the handover, it was possible that he may have done [BMI06528]. It is acknowledged that in oral evidence S015 stated that he was likely to have remembered if he had been told during handover about the controversy regarding hooding [S015 BMI 84/103/5].
5. S002 believed that he did raise the issues pertaining to hooding with S015 [S002 BMI 82/138/11-17]. However, even if he did not pass on information as to the past concerns raised by the ICRC and the debate over the legality of hooding, it is unclear why these matters would have been relevant to S015. The main point of relevance to S015's work was the ban on hooding, of which S015 was aware. There was no need to inform him of the historic legal debate as he was not a lawyer. In addition, no further concerns about hooding were raised by the ICRC, and therefore there were no ongoing ICRC issues about which S015 needed to be informed.