



Accountability for Torture by Private Military Contractors

The Cases against Titan/L-3 and CACI

human
rights &
corporate
accountability

The release of the photographs and video documenting horrific torture of Iraqi prisoners detained by the U.S. at Abu Ghraib drew demands for accountability and redress from around the world, including from top Bush Administration officials. Subsequent investigations led to the court-martial of a small number of low-level U.S. soldiers as well as documentation of the role played in the torture at Abu Ghraib and other detention facilities by contractors from two U.S. corporations: L-3 Services, Inc. (formerly Titan Corporation) and CACI International, Inc. Titan/L-3 was initially hired to provide translation services for U.S. personnel at Iraqi prisons. CACI was contracted to provide interrogation services. Publicly available information reveals that employees from both corporations were part of the conspiracy to torture Iraqi detainees at Abu Ghraib and other prisons yet no employee of either company has been convicted of any offense.¹ Since 2004, the Center for Constitutional Rights (CCR) has been working with a team of private attorneys on behalf of hundreds of Iraqi plaintiffs on a series of civil lawsuits against these private military contractors.

Accountability for Violations by Private Military Contractors

These lawsuits are part of CCR's effort to secure accountability for human rights abuses committed by military contractors. This issue is only growing in importance as the United States' reliance on military contractors is expanding.

Over the last decade, private companies have made billions by providing a vast array of services in Iraq and Afghanistan ranging from security escorts for government officials to intelligence gathering and analysis to logistical support. The wars in Iraq and Afghanistan have been the most contracted out wars in United States history—and the overreliance on contractors which began with the Bush administration continues unabated under the Obama administration. Indeed, during Obama's term, the number of contractors on the ground in both countries has surpassed the number of troops. Abuse and fraud by contractors in both warzones have been rampant.²

Currently there is no effective U.S. system of contractor accountability and oversight in place. Generally speaking, the US Department of Justice (DoJ) is responsible for investigating and prosecuting these incidents. However, the DoJ has too often failed to prosecute even the most serious of human rights abuses

by contractors, including but not limited to the torture that took place at Abu Ghraib and other detention centers in Iraq. Several investigations into torture, including by the military itself, have concluded that CACI and L-3 contractors participated in "sadistic, blatant, and wanton criminal abuses." But no contractors have been charged with any crimes. In order to secure some redress for the victims of human rights abuses and hold contractors accountable for their actions, CCR working with private attorneys, have brought several civil lawsuits in US courts for the war crimes and torture that took place in Abu Ghraib and other prisons.

Al Shimari v. CACI and Al-Quraishi v. Nakhla and L-3

Al Shimari v. CACI International was brought in the Eastern District of Virginia on behalf of four "hard site" victims of torture at Abu Ghraib prison. According to statements by co-conspirators, CACI employees Steven Stefanowicz and Daniel Johnson directed and caused some of the most egregious torture and abuse at Abu Ghraib. Plaintiffs were subjected to electric shocks, sexual assaults, being stripped and kept naked, forced to witness the rape of a female prisoner, sensory deprivation, mock executions, stress positions, broken bones, and deprivation of oxygen, food and water as well as other dehumanizing acts of torture.

Al-Quraishi v. Nakhla and L-3 Services, Inc., filed in the District of Maryland, includes claims of torture and war crimes as well as state law tort claims brought on behalf of 72 Iraqi plaintiffs who were abused at more than 25 prisons in Iraq. The acts of torture the plaintiffs were sexual assault, sleep deprivation, beatings, painful stress positions, sensory deprivation, electric shocks, threats (including with unleashed dogs), denial of medical treatment and other brutal acts. In addition to being a case against L-3, this case specifically names L-3 employee and U.S. citizen Adel Nakhla as a co-conspirator for his role in instigating, directing and participating in torture and other abusive conduct. Nakhla is alleged to have held down a fourteen-year old boy as his co-conspirator raped him and to have held plaintiff Mr. Al-Quraishi down while a co-conspirator poured feces on him.

¹ See Taguba Report on Treatment of Abu Ghraib Prisoners In Iraq (2004) news.findlaw.com/hdocs/docs/iraq/tagubarpt.html and Fay Report on Investigation of Intelligence Activities At Abu Ghraib (2004) news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf

² See Transforming Wartime Contracting: Controlling costs, reducing risks [final report], Commission on Wartime Contracting (2011) www.wartimecontracting.gov/docs/CWC_FinalReport-lowres.pdf

In May 2012, after a rare review by the full panel of Fourth Circuit judges, 11 of the 14 judges decided to dismiss L-3 and CACI's appeals. Their decision remanded the case back to the lower courts that had previously rejected the corporations' novel claims of immunity, in order to allow fact-finding to proceed.

Saleh v. Titan

The case *Saleh v. Titan*, filed in June 2004, included as plaintiffs more than 250 individuals who were swept up in military raids in Iraq and detained at prisons under the control of the U.S., including at Abu Ghraib. The suit charged that Titan/L-3 and CACI violated international, federal and state law by participating in a torture conspiracy, along with U.S. government personnel, that led to the rape and other acts of torture, assault and killing of Iraqi detainees. After five years of litigation, *Saleh v. Titan* was dismissed in September 2009 in a 2-1 decision by the Court of Appeals for the District of Columbia. When asked its opinion on the dismissal, the Obama administration acknowledged flaws in the appellate court's reasoning for dismissing the case, but argued that the Supreme Court should not allocate its time and resources to review the dismissal of the case. On June 27, 2011 the Supreme Court denied the Plaintiffs' petition for certiorari, thereby ending the case.

Legal Arguments Contractors Use to Avoid Accountability

Despite the many years of litigating torture at Abu Ghraib involving private military contractors, so far the actual allegations of torture in these cases have never been seriously examined, much less ruled on, by the courts. None of the plaintiffs in any of these cases has yet to have his or her day in court to tell their account of what they suffered. The reason is because the private military contractors have raised many legal defenses— many of which we have argued are plainly inapplicable to private corporations — which have taken up the court's time and resources. So far, CACI and Titan/L-3 have focused the courts on any question but whether the plaintiffs were tortured. The following are several of the defenses claimed by the contractors:

- **government contractor defense** argues that contractors were operating under the control of the U.S. military and therefore cannot be held liable for their actions because all they were doing is what the government told them to do and the actions of the government in "combat" cannot be reviewed by a court.
- **political question doctrine** argues that the lawsuits deal with fundamentally political or policy choices that courts should refrain from reviewing and, in light of the separation of powers, should leave to the executive or legislative branches;
- **derivative immunity** argues that that their behavior constituted combatant activities for which the United States is itself immune and for which contractors, in turn, should be immune.



Mr. Al-Janabi, a plaintiff in Al-Quraishi v. Nakhla and L-3 is an Iraqi blacksmith who was held in Abu Ghraib for nearly a year and tortured by L-3 and co-conspirators.

Furthermore, a majority of the Court of Appeals for the District of Columbia created a new defense when they dismissed *Saleh v. Titan* under a "battlefield preemption" theory, which essentially aims to bar civil lawsuits from addressing abuses and other torts that occur on a "battlefield." Of course, plaintiffs challenge that the torture at issue in these cases constitutes "combat" and that Abu Ghraib and other prisons are "the battlefield." This defense, if allowed to stand, could have far reaching consequences for contractor accountability.

CCR is steadfastly opposed to immunities such as these for private military contractors. Victims of torture at Abu Ghraib and other prisons in Iraq have waited long enough to have their day in court. Stand with CCR as we demand that torturers be held accountable, no matter who they are or where they torture.

What can you do?

Call or write your Representatives and Senators and urge them to support the Stop Outsourcing Security Act (HR 2665 and S 1428), introduced by Representative Schakowsky and Senator Sanders. This Act would limit military contracting.

Sign up for CCR action alerts to receive updates and calls to action about contractors in Iraq and other corporate human rights cases on our website www.ccrjustice.org

Learn more about some of the plaintiffs' stories by visiting collaborating artists' webpage www.detaineeproject.org

For more information...

Visit CCR's Stand Down! End Human Rights Abuse by Military Contractors webpage here: www.ccrjustice.org/stand-down