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"We took our seven down to the edge of the stream just outside the village...

Then we heard shooting from one of the other groups so instinctively almost, we opened fire on the men. Once we started firing we seemed to go mad. The old man died immediately from one bullet. The one that was furthest away took about seven bullets before he finally stopped crawling... I remember the water turning red with their blood."

Sworn statement of
William Cootes, Scots
Guardsman

"There was something to be said for mass executions."

Reported comment of
Malayan colonial
Attorney General, Sir
Stafford Foster-Sutton,
the official who was
responsible for the first
official investigation
into the Batang Kali
massacre

"[The premature termination of the Scotland Yard investigation following the 1970 election] was quite a rude awakening, really. I didn't think it could happen. I felt that we might have got somewhere. We could have got to the truth. Which was what I wanted to do."

Ron Dowling, Senior
Detective involved in
the second investigation

A Very British Cover-up

A briefing for members of the House of Commons and the House of Lords on the Government's response to calls for an inquiry into the 1948 Batang Kali massacre

In 1948, Scots Guardsmen shot dead 24 unarmed Chinese labourers in the rubber tapping village of Batang Kali, part of what was then colonial Malaya. Many of their bodies were mutilated and their village was razed to the ground. Their dependents were left destitute. Several members of the patrol have subsequently given statements that they were ordered to execute the villagers extra-judicially, that the male villagers were divided into groups to be shot, and that they were later coached to say that this had happened during a mass escape attempt.

These events have been the subject of investigations by print journalists, a BBC documentary and, a recently published book, *Slaughter and Deception at Batang Kali*, copies of which have been sent to MPs and Peers with this briefing. The victims' families have called on the Government to set up an independent inquiry. Yet far from taking responsibility for this most shameful episode in British military history, the current Secretaries of State for Defence and Foreign and Commonwealth Affairs told the victims' families this month that they are not even minded to commission an inquiry or undertake further investigations so that the truth of what happened can be made public. Nothing is said about making reparation. No apology has been offered.

Instead, the Government continues to shelter behind two woefully inadequate investigations that took place in 1949 and 1970. The first was a superficial cover up. Some of those involved have since made sworn statements about how they gave false accounts to make sure they and other Guardsmen were exonerated. The investigator, Sir Stafford Foster-Sutton, later distanced himself from his own conclusions, describing the massacre as a "*bona fide mistake*" rather than the thwarting of a mass escape bid. The second investigation, by the Metropolitan Police, was aborted prematurely for what one of the lead officers firmly believed were political reasons.

The stubborn fact is that, if a proper investigation of events at Batang Kali was necessary in 1949 or 1970, as was accepted, it is equally necessary now.

The failure to carry out such an investigation to date is a very British cover-up, in which the worst features of colonialism - powerful self interest on the part of the armed forces and bureaucratic obfuscation over decades - have, so far, conspired to ensure that the events at Batang Kali remain unanswered for and inadequately explained. That is unacceptable both legally and morally. It is a gross affront to the very idea of 'British justice'.

This briefing explains why concerned Parliamentarians should act immediately to bring this disgraceful state of affairs to an end. The need for Parliamentary intervention has never been more pressing: although Ministers have said they will listen to further representations, the opaque and pedestrian nature of the reconsideration process to date has given the victims' families little cause for optimism.

In reality, if Parliamentarians do not act, the alternative is likely to be a long, drawn out legal battle. But there has been more than enough delay already. There is an overwhelming case for a proper investigation, along with an immediate apology and reparation being made to victims' families. They should not be forced to go to law to make it.

"A commander must exercise all care and skill with regard to what he does, and must use force without recklessness or negligence taking care to produce no more injury than is absolutely unavoidable for the purposes of protecting persons or property.

A commander must not use lethal weapons unless it is his honest opinion that less extreme measures will not suffice."

'Duties in Aid of the Civil Power' (the contemporary manual for the British military forces deployed in Malaya)

The known facts

The Batang Kali massacre occurred during what was referred to as the 'Malayan emergency', a guerrilla war between colonial forces and the communist Malayan National Liberation Army, who were principally of Chinese ethnic origin. Hostilities took place mainly in rural areas. MNLAs were fed, voluntarily and otherwise, by villagers in the regions in which they operated.

A counter-insurgency operation was launched in the Selangor region, now in peninsular Malaysia, because British forces had received intelligence of 'bandit' (insurgent) activity there. As part of this operation, between 11 and 12 December 1948 soldiers of the 7th Platoon, G Company, 2nd Battalion of the Scots Guards surrounded and took control of the village of Batang Kali, part of a rubber tapping estate. None of the villagers was wearing a military uniform or emblem. None was armed, and none offered any violence to the patrol. In those circumstances, contemporary military manuals explain that force is only to be used in *extremis* and then kept to a minimum.

There is no dispute that the patrol shot dead 24 unarmed Chinese rubber tappers over the course of the two days they were stationed at Batang Kali. One villager, Luo Hui-Nan, was killed on the first night by Sergeant Douglas. The remainder were shot in groups the following day, shortly after most of the women and children had been taken away in trucks. Only one man survived. Many of the victims' bodies were mutilated. The village was burned to the ground, leaving the victims' dependents destitute. The bodies were left where they lay, and had begun to decompose by the time the women and children were allowed to return.

The patrol involved in the Batang Kali killings comprised approximately 16 men. Some nine are still alive, including many of those who have already given evidence under caution to the police and in sworn statements. They have never been contacted by the Ministry of Defence or Foreign and Commonwealth Office in connection with the continuing reconsideration exercise. In 1948, many were on National Service. Some had only recently completed basic training. For the most part, then, these were not experienced, professional soldiers and there was no officer above the rank of Sergeant in the patrol. Indeed a 1970 internal army memo by Colonel Fletcher, Lieutenant Colonel Commanding Scots Guards offered this candid assessment:

"[t]his was indeed the rump, not only of G Company but of the detachment at KKB. It included drivers, drummers and even sick men".

The inadequate investigations

At the time

An investigation - of sorts - was carried out immediately following the incident on the instructions of the colonial administration's Attorney General Sir Stafford Foster-Sutton. But neither he nor anyone else questioned the sole male survivor, nor any of the women or children who witnessed what happened (nor has any UK official done so since). There is no reliable evidence that any formal military, civil or judicial inquiry took place.

Contemporaneous material has come to light through the Public Records Office showing that Sir Stafford's investigation was superficial and perfunctory: merely questioning some of those Army personnel involved, and serving only the interests of those who might otherwise have been held responsible. Those records also show that Sir Stafford's personal views about

the utility of “*mass executions*” as a public order measure made him a manifestly unsuitable person to investigate.

The document detailing Sir Stafford’s findings does not survive. The best record appears to be a telegram dated 1 January 1949, in which the High Commissioner informed the Colonial Office that:

“... the soldiers, who had been posted with the object of protecting the clearing from external attack, did everything that it was possible for them to do to stop the escaping Chinese before resorting to force. Moreover, one Chinese had been shot the previous day during an attempted escape and the others had been warned of the danger to them should they attempt to follow his example.”

There has never been an explanation, much less a credible one, as to what was in fact done to stop the alleged escapees. Nor has it ever been explained why lethal force was resorted to. On any rational view, it is impossible to credit that it was necessary (or possible for a ‘rump patrol’ of twelve newly-arrived conscripts) to kill all but one of the men in the village to prevent each and every one of them from escaping.

Sir Stafford himself admitted to the BBC’s *World at One* programme in 1970 that:

“There was no formal inquiry at all. Having satisfied myself the statements were true, I made a statement to the press and the matter came to an end.”

On 26 January 1949 the Colonial Secretary, Mr Creech Jones, gave a written answer reporting the Attorney General’s conclusion that “*had the Security Force not opened fire, the suspect Chinese would have made good an attempt at escape which had been obviously pre-arranged*”. But, when pressed during the *World at One* interview, Sir Stafford said that he was “*absolutely satisfied that a bona fide mistake was made*”. One of these statements must be false. But even were the contemporary, official version correct, immediate resort to lethal force has never been a lawful response to an unarmed captive running into the jungle.

The aborted 1970 investigation

In February 1970, *The People* newspaper published material including extracts from statements made by four members of the patrol which shot villagers in Batang Kali. They said, in essence, that the villagers had not been trying to escape, and that their patrol had simply been ordered to take them out in three groups and shoot them. Some indicated that this was a pre-planned retaliation for a recent fatal attack on Hussar servicemen by insurgents. As to the 1949 investigation, this was openly acknowledged as a cover up. In the words of one of the Guardsmen, Allen Tuppen:

“After the incident, we went back to our camp. A few days later I heard there was going to be an inquiry into what happened on the patrol. I cannot remember who but someone told us what story we were to tell. It was that the men were out of the hut and tried to escape. We were all told to tell this story at the inquiry, but I cannot remember who said we should. The inquiry was held at Kuala Lumpur by a senior civilian. We were questioned separately and I told the story we had agreed to tell, knowing it was not true.”

Another, William Cootes, said this:

“... one of the sergeants or Captain Ramsey... warned the men if it was proved that we had murdered these Chinese we would all get about

"... It is extremely doubtful if a villager's recollections of an incident which happened 22 years ago could ever be accurate, especially as the terrain has since changed beyond recognition ..."

Letter from High Commission to FCO, 19 May 1970

"... [Malaysian] villagers' powers of recall are rarely accurate. They are likely to become less so, as it seems that the terrain has changed beyond recognition in the intervening period ..."

Letter from FCO to DPP's office, 2 June 1970

"there were few, if any, standard orders or the SOPs [standard operating procedures] which are common today: In 1948 these were being worked out on the ground by those already involved in the emergency... still less [were there] the sort of orders governing the opening of fire such as there were in Borneo in 1964-66. Only after our early experiences, and casualties, were these orders written".

Minute of 17 February 1970, Colonel Fletcher

14 years in prison and it was vital to tell the same story. We were also told not to tell the true story to anyone, and to stick to the version of the incident that we had agreed on."

Following publication of this and other newspaper articles, Denis Healy, the then Secretary of State for Defence, invited the Director of Public Prosecutions to consider the allegations. He in turn asked Scotland Yard to undertake inquiries. An investigation team, headed by Detective Chief Superintendent Frank Williams, was set up. Williams' second in command was another senior detective, Ron Dowling.

Interviews began with some of the soldiers, deferring interviews with the sergeants who had led the patrol until more information had been obtained. The team planned to continue the investigation in Malaysia by meeting eyewitnesses and undertaking forensic work. A minute dated 8 May 1970 indicated that DCS Williams expected to spend several weeks in Malaysia later in the summer, and that only after that visit would he return and interview *"the central figures"* in the UK. As Dowling subsequently told the BBC:

"we thought it was essential to get into Malaya and try to find out exactly what had happened."

Yet remarkably, given his seniority and status within Scotland Yard, DCS Williams and his team were not allowed to proceed with this meticulously planned investigation in a proper, independent way. On the contrary, on learning about the proposed visit to Malaysia, the British High Commission in Kuala Lumpur wrote a letter to the Foreign and Commonwealth Office forcefully expressing their concerns. These were duly relayed direct to the DPP's office. Meanwhile, apparently unknown to DCS Williams, senior figures within the army privately accepted that the legal basis on which force could properly be used was, at best, ambiguous, and was being *"worked out on the ground"* as the counter insurgency operation developed. None of these machinations took place in the public domain, of course: they have only come to light recently as a result of Government files being transferred to the Public Records Office under the 30 year rule.

This correspondence (see left for examples) makes uncomfortable reading for anyone concerned about the rule of law and the principle that all should be equal before it.

Following the general election of 18 June 1970, the Labour Government was replaced by a Conservative administration. On 29 June 1970 the DPP wrote to the Ministry of Defence stating that he did not propose to ask the police to pursue their inquiries further. The inevitable consequence was that the visit to Malaysia to gather testimony and forensic evidence never took place. Nor did interviews of the *"central figures"* that had been considered necessary by the police. The DPP, himself a former member of the Irish Guards, gave as the reason for his decision *"substantial conflict amongst the soldiers"*, and other concerns about evidence that might be relied upon to support a prosecution. He concluded that there were insufficient prospects of obtaining adequate evidence to support a criminal prosecution.

Yet criminal investigations are, inevitably, focussed narrowly on the elements of the criminal offences being considered. And their outcome depends entirely on a very high hurdle being surmounted: the facts must be proved as being beyond reasonable doubt. A criminal investigation, even if completed is seldom, if ever, an adequate or satisfactory way of inquiring into an incident such as the Batang Kali massacre; and indeed, it was not on this occasion. As officials privately admitted at the time *"[the] fact that insufficient evidence is to hand to prosecute is not, unfortunately, quite the*

"The Ministers seem more concerned with technical issues instead of focusing their mind to find out whether the British soldiers had violated any basic human rights so that amends can be made and the risk of future repetition reduced. Recent brutalities committed by the British Army in Iraq show that there is much still to learn from historical wrongs like the events at Batang Kali. It is undeniable that there were incomplete investigations."

The only option for any authority which claims to uphold human dignity is to find out the truth."

Co-ordinator of the
Action Committee Quek
Ngee Meng's reaction to
the 21 August letter

same thing as demolishing the allegations" (DPS Army minute, 1 July 1970). This even appeared to have been accepted at ministerial level: a letter from the Under-Secretary of State for Army of 12 February 1970 noted *"If [the DPP] decides not to prosecute, either after further investigations or without, then we will have to consider whether there is anything further that we should do. There are, of course, a number of possibilities..."* One identified for future consideration was a public inquiry. Yet the position taken in public was rather different. A minute from a Mr Ekins-Daukes to AG Secretariat dated 7 August 1970 indicated with thinly veiled relief that an article in *The People* of 5 July read like *"a sign-off"* on the story, continuing:

"[i]f no reaction is forthcoming, the matter will probably now remain buried in the public mind in perpetuo, and quietly forgotten."

Just treatment of the victims of a massacre and their families should not, however, depend on the newspaper column inches devoted to their plight.

The controversy today

Aside from the 1993 BBC documentary and a penetrating article by the Independent's Robert Verkaik (attached) the massacre has since received limited attention in the UK. That article and the publication of *Slaughter and Deception at Batang Kali* mark the turn of the tide. Meanwhile in Malaysia the very grave public concern about the incident has not abated. A campaigning group, the Action Committee Condemning the Batang Kali Massacre (<http://batangkalimassacre.wordpress.com/>) has been formed to press the case for the victims' families and the community at large. In March 2008, its members presented a petition to the British High Commission in Kuala Lumpur calling for an acceptance of responsibility and the payment of reparation for the victims' families and the community at large. The Government's considered response to all of this came 10 months later in a three paragraph letter of 21 January 2009 from the High Commissioner. This stated that Ministers had decided:

"[i]n view of the findings of two previous investigations that there was insufficient evidence to pursue a prosecution in this case, and in the absence of any new evidence, we see no reason to reopen and start a fresh investigation."

Legal action was threatened by this firm, Bindmans LLP, on behalf of one of the surviving eyewitnesses, Mrs Tham Yong. Her fiancé was shot and killed during the massacre and her home was destroyed. On 24 April 2009, shortly before judicial review proceedings were to be issued in the High Court, Ministers agreed to reconsider their position.

Some four months on, that reconsideration exercise has yet to be completed and what has been forthcoming so far has been profoundly disappointing to Mrs Tham, the other affected families and the Committee. In a letter from the Treasury Solicitor dated 21 August, those acting for the survivors' families were told that Ministers are:

"minded not to establish a public inquiry, and not to take any other investigation in to those events".

The letter is completely silent on whether any form of reparation will be made to the families of those killed and no apology is offered. The main reasons given for refusing an inquiry and any further investigation (whether legally required or not) are the passage of time since the killings took place and the *"resource intensive"* nature of any inquiry. It is said that *"few...*



"After the shooting we survivors were left without clothing, a home or any money. We had had nothing and had to rely on others for support. We were very sad because all these people who had been killed were innocent. They were not communists, nor had they seen any communists, yet they were killed.

In 1993-94 when the Malaysian activist Michael Chong brought the issue up, I supported him. He told me it would be very difficult to obtain justice, but I did not give up. I also later supported Ling Kit-Siang when he raised the issue; and now I support the Action Committee Condemning the Batang Kali Massacre. I also took part in the BBC programme 'In Cold Blood', which was broadcast in September 1992.

I will not give up, because innocent people were killed and those who survived went through a very difficult life."

Mrs Tham Yong whose finance, Zhang Shi, was fatally shot in the back on 12 December 1948.

original documents survive" in respect of the 1948 investigation (unsurprisingly, given its nature) that "key witnesses are ... in their eighties" and that the "organizational structure of the army has changed" in the 60 years since the massacre.

In reality, the reasons given in the 21 August letter are little more than a cynical attempt to put a sell by-date on justice. Yet some injustices are so grave that responsibility should be taken for them and all possible steps taken to put matters right, no matter how long ago they occurred as the actions of the South African and German governments in recent years have demonstrated. That is especially so when those responsible and their victims are still living. Neither Mrs Tham nor any other relative of those who were killed seeks retribution against the surviving Guardsmen; and, in any event, prosecution is unlikely to be in the public interest. But they do seek the truth, and proper reparation for what was taken from them. To suggest that should not happen because Mrs Tham and the Guardsmen involved are too old to give meaningful evidence is patronising. To imply that the case for righting a chronic injustice of this kind should be balanced against the resources needed is immoral.

This Government has the opportunity to take a principled, honourable course and put an end to the very British cover up of events at Batang Kali. So far, though, it has shown none of the moral courage exhibited by the Guardsmen who voluntarily came forward in 1970 to tell the true version of events.

Please add your voice to those calling for:

- an immediate, unequivocal acknowledgement that the killings were unjustified, and a commensurate apology to the victims' families;
- a thorough, transparent and independent investigation to establish the truth of what happened at Batang Kali and why; and
- reparation for the victims' families and the local community consistent with the UK's commitment to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN General Assembly Resolution 60/147 of 16 December 2005).

Representations should be made to:

- The Right Honourable Bob Ainsworth MP
Secretary of State for Defence
MOD Ministerial Correspondence Unit
5th Floor, Zone A, Main Building, Whitehall
London SW1A 2HB
- The Right Honourable David Miliband MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH

Urgent consideration should also be given to calling Mr Ainsworth and Mr Miliband before appropriate Parliamentary Committees to account for their stance.

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