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United Kingdom: Disclosed documents further demonstrate urgent need for an effective inquiry into the UK's role in the torture and ill-treatment of detainees held in overseas custody

The disclosure in the High Court on 14 July 2010 of a number of previously secret documents relating to the UK authorities' knowledge of and involvement in the detention of UK nationals and UK residents in the custody of US and other overseas intelligence agencies, joins a mounting pile of evidence of the UK's involvement in the detentions and treatment of detainees in ways that violated its international human rights obligations.

The disclosed documents, most of which are in themselves partially or significantly redacted, offer a glimpse into the role played by a variety of UK officials, including officers of the UK's Security Service (MI5) and Secret Intelligence Service (MI6), ministerial officials, civil servants and government lawyers, among others, and point squarely, once again, to the urgent need for an independent, impartial, and effective inquiry to establish the truth about these grave human rights violations.

The disclosed documents—which include policy guidance and legal advice to the intelligence services, reports by officers of the intelligence services carrying out interrogations in the field, and communication between government departments about general policy and individual cases of UK nationals and residents in the custody of overseas intelligence agencies—were revealed in today's *Guardian*, after having been disclosed through the course of a civil claim for compensation brought through domestic courts by six former Guantánamo Bay detainees who are all either UK nationals or UK residents (see background information).

Amnesty International has researched and campaigned on the cases of these men and other related cases for a number of years, and has continued to lead the call for an inquiry into credible allegations of UK involvements in grave human rights violations, in light of the mounting evidence and in light of what is already known, both with regard to these specific cases and UK authorities' counter-terrorism policy and practice.ⁱ

Based on the documents disclosed yesterday, Amnesty International is profoundly troubled by:

(1) the apparent decision of the former government, with the authority and knowledge of the executive at the highest levels, to actively block provision of consular access to UK nationals and residents held in overseas custody, where it was evident they were likely to be transferred to US custody at Guantánamo Bay if consular services were not provided;ⁱⁱ

(2) the stated policy, again with authorization at cabinet minister level, that it was the UK government's preferred outcome that the detained UK nationals and residents be transferred to US custody in Guantánamo Bay rather than to UK custody;ⁱⁱⁱ and

(3) documents containing legal advice and policy guidance to MI6 officers stating that the law does not require UK intelligence officers to intervene to prevent people from being tortured or subjected to ill-treatment even if there are indications that this may be happening, because

the detainees are not in UK custody or control.^{iv} The guidance contained in an MI6 message dated 11 January 2002 advised UK intelligence officers in the field commenting on the ill-treatment of detainees that “given that they [i.e. the detainees] are not within our [i.e. UK] custody or control, the law does not require you to intervene to prevent this.” The guidance further states that only “if circumstances allow”, should intelligence officers “consider drawing [the ill-treatment] to the attention of a suitably senior US official locally” and that the UK’s stated commitment to human rights meant that UK officers should make their US counterparts understand that UK officers could not “be party to such ill treatment” nor “be seen to condone it”.

Amnesty International considers that taking advantage of the situation of a person by interrogating him or her, or seeking to have others question him or her on the state’s behalf, knowing that the person is likely being tortured or ill-treated, or are detained in circumstances which amount to an enforced disappearance, and while making no attempt to prevent the abuse, is a violation of the UK’s fundamental human rights obligations, in particular the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment, and the requirement that states must seek to prevent torture anywhere and at all times.

The Court of Appeal of England and Wales, in recent proceedings in the case of Binyam Mohamed, a UK resident subject to rendition, has referred to the role of MI5 as being “far beyond that of a bystander or witness to the alleged wrongdoing”.^v Amnesty International considers that the documents disclosed yesterday confirm that assessment.

Amnesty International notes the announcement on 6 July 2010 by the UK Prime Minister of an inquiry into the UK’s involvement and possible complicity in the torture and other human rights violations of detainees held in counter-terrorism operations overseas, to be chaired by Sir Peter Gibson.^{vi} Given that the exact terms of the inquiry are not yet known, Amnesty International remains concerned by certain aspects of the inquiry, namely whether the inquiry will have sufficient authority and independence from the executive to meet the requirements of the UK’s international human rights obligations, the degree to which the inquiry’s hearings will be held in secret and the extent to which the evidence will be kept from the public and from the victims of the alleged grave human rights violations.

Any such inquiry must fully investigate the policy and practices (including the role of intelligence agencies, armed forces, civil servants, government lawyers and ministers) in these alleged grave human rights violations.

Background information

The civil claim giving rise to the recent disclosure concerns six former Guantánamo Bay detainees, all UK nationals or UK residents – Bisher al-Rawi, Richard Belmar, Omar Deghayes, Binyam Mohamed, Jamil el-Banna and Martin Mubanga – who are seeking damages from the UK government on the basis that British intelligence agencies were complicit in their detention, torture and other mistreatment. The six men and one other former Guantánamo Bay detainee had lodged a civil claim against the MI5, MI6, the Foreign and Commonwealth Office, the Home Office and the Attorney-General (the latter only in a representative capacity) for human rights violations they suffered during their rendition to and detention at various locations, including Guantánamo Bay. They are bringing a test case and there are other potential claimants who, depending on the success or otherwise of their claim, may follow them in suing the UK authorities with similar claims. In November 2009 a High Court judge had ruled that the UK government could in principle rely on secret evidence in closed hearings, from which the claimant and their lawyers would be barred. Six of the claimants subsequently appealed this judgment to the Court of Appeal. The Court of Appeal ruled on 4 May 2010 that the UK government cannot rely on closed material procedures in the civil lawsuit brought by six former Guantánamo Bay detainees over alleged complicity in torture by UK government authorities. Closed material procedures would allow courts to consider secret material presented by UK authorities in closed sessions; claimants and their lawyers of choice

would not have access to the material or the closed sessions and would, instead, have a court appointed Special Advocate to represent their interests. The Special Advocate would be prohibited from discussing any part of the secret material with the claimant or taking instructions from them after seeing the material, seriously impeding their ability to serve the interests of the claimant or render the proceedings fair. In a strongly worded judgment Lord Neuberger, the Master of the Rolls who headed a panel of three appeal judges hearing the case, stated “firmly and unambiguously” that the appeal should be allowed, on the grounds that permitting a closed material procedure in the absence of a statutory power to do so, would undermine one of the most fundamental principles of common law, that of fair trial. The most recent disclosure of documents arises from the litigation following the Court of Appeal’s decision, relating, in part, to efforts to agree on compensation arising from the civil claim via mediation. Amnesty International observed the hearings both before the High Court in October 2009 and the Court of Appeal in March 2010. See *United Kingdom: Court of Appeal rules that secret procedures violate fair trial rights in civil proceedings*, AI Index: EUR 45/003/2010, 5 May 2010, <http://www.amnesty.org/es/library/info/EUR45/003/2010>.

For further detailed information on Amnesty International’s call for an inquiry, see the report: *United Kingdom: Time for an inquiry into the UK’s role in human rights violations overseas since 11 September 2001*, AI Index: EUR 45/001/2010, March 2010, <http://www.amnesty.org/en/library/info/EUR45/001/2010>; and *United Kingdom: Proposed torture inquiry must be independent, impartial and thorough*, AI Index: EUR 45/005/2010, 24 May 2010, <http://www.amnesty.org/en/library/info/EUR45/005/2010>

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ⁱ See, among others, the following Amnesty International documents: *United Kingdom: Rights denied – the UK’s response to 11 September 2001*, AI Index: EUR 45/016/2002; *United Kingdom: Justice perverted under the Anti-terrorism, Crime and Security Act 2001*, AI Index: EUR 45/029/2003; *United Kingdom - Briefing for the Committee against Torture*, AI Index: EUR 45/029/2004; *United Kingdom: Amnesty International’s submission of 14 October to the UK Parliament’s Joint Committee on Human Rights in connection with the Committee’s inquiry into the subject of “counterterrorism policy and human rights”*, AI Index: EUR 45/050/2005; *United Kingdom: Human rights - a broken promise*, AI Index: EUR 45/004/2006; *Europe: Partners in crime - Europe’s role in US renditions*, AI Index: EUR 01/008/2006; *UK: Briefing to the Human Rights Committee*, AI Index: EUR 45/011/2008; *State of denial: Europe’s role in rendition and secret detention*, AI Index: EUR 01/003/2008; and *United Kingdom: Time for an inquiry into the UK’s role in human rights violations overseas since 11 September 2001*, AI Index: EUR 45/001/2010.

ⁱⁱ This decision is evidenced most clearly in the case of Martin Mubanga, a dual UK/Zambian national, who was detained in Zambia in March 2002 and subsequently subject to rendition to US custody in Guantánamo Bay. The documents disclosed yesterday include a partly-redacted exchange of communications between UK consular officials in Zambia and UK officials in London, in which the former appear to have been advised by the latter to not provide consular assistance to Martin Mubanga, with the result that he was transferred from Zambian custody to US custody at Guantánamo Bay. The Director General of MI5 had earlier confirmed to the UK’s Intelligence and Security Committee that Martin Mubanga had been interviewed twice by an officer of the UK intelligence services during his period in detention in Zambia. See *State of denial: Europe’s role in rendition and secret detention*, AI Index: EUR 01/003/2008, p. 12.

ⁱⁱⁱ A partly-redacted telegram from the Foreign and Commonwealth office dated January 2002, among the disclosed documents, which appears to have been authorized and/or signed by the then Foreign Secretary, Jack Straw states:

“The UK approach on the repatriation and prosecution of UK nationals [in US custody in Afghanistan facing transfer to Guantánamo Bay] is still being considered. Nevertheless, we accept that the transfer of UK nationals held by US forces in Afghanistan to the US base in Guantanamo

is the best way to meet our counter-terrorism objective by ensuring that they are securely held. However, a specialist team is currently in Afghanistan seeking to interview any detainees with a UK connection to obtain information on their terrorist activities and connections. We therefore hope that all those detainees they wish to interview will remain in Afghanistan and will not be among the first groups to be transferred to Guantanamo. A week's delay should suffice. UK nationals should be transferred as soon as possible thereafter."

A subsequent confidential note dated 26 February 2002 and prepared by an official in the Terrorism and Protection Unit at the Home Office, following a meeting the previous day between various UK officials, stated:

"The meeting agreed that UK should not be in any hurry to take back the detainees though FCO was quiet on this point"

^{iv} See, for instance, the following: Secret Intelligence Service message dated 11 January 2002 with the title "Al Qaida Detainees"; Chapter 32 of the Secret Intelligence Service's general procedural manual entitled "Detainees and Detention Operations" (April 2005); and a document entitled "Agency policy on liaison with overseas security and intelligence agencies in relation to detainees who may be subject to mistreatment" (July 2006); and Security Service "Flowchart: Passing or seeking information which may result in mistreatment" (July 2006).

^v *R (on the application of Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 2048 (admin), 21 August 2008, para. 88(v).

^{vi} See *UK torture inquiry must be independent and thorough*, AI Index: PRE01/225/2010, 7 July 2010.