



The Rt Hon William Hague MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH

Sir Jeremy Heywood
Cabinet Secretary
Cabinet Office
70 Whitehall
London
SW1A 2AS

25 March 2014

Dear Secretary of State and Cabinet Secretary

We are writing in response to the government's announcement on 19 December 2013 that the parliamentary Intelligence and Security Committee (ISC) has been tasked with examining allegations of UK complicity in torture and other ill-treatment of detainees held overseas; allegations that previously had been the subject of the Detainee Inquiry, chaired by Sir Peter Gibson.

The government had previously assured the public and the international community - both through the Universal Periodic Review process and during the recent examination of the UK by the Committee Against

Torture - that an independent judicial inquiry would be established.¹ Indeed, Prime Minister David Cameron had previously ruled out the possibility of the ISC carrying out the investigation, recognising that an inquiry led by a judge who is “fully independent of Parliament, party and Government” was required “to get to the bottom of the case”.²

This announcement therefore represents a U-turn on the commitments previously made by the Prime Minister, the Deputy Prime Minister and the Foreign Secretary to hold an independent, judge-led inquiry into torture.

The position of all of the under-signed organizations continues to be that an inquiry compliant with international human rights standards is what is required to get to the truth about these allegations and fulfil the UK’s obligations under international law. The interim report of the Detainee Inquiry, which highlights that the evidence it received indicates UK agents were aware of abuse of some detainees by other governments and that the UK government may have been involved in rendition and outlines 27 separate issues that should be subject to further investigation, only strengthens this call. We urge the government to make its replies to these 27 issues public.

We believe that the ISC is wholly unsuited to the task of carrying out an investigation of these issues and that as a result, any investigation it conducts is unlikely to get to the truth. We are therefore seeking clarity as to how the government believes it is possible to reconcile the limitations inherent in the ISC’s mandate and powers with the obligation under international law that the government conduct an independent, effective, thorough and impartial investigation into serious human rights violations that would be open to public scrutiny and allow for adequate victim participation.

Our previous objection to the Detainee Inquiry was that it fell short of the UK’s international human rights obligations and domestic obligations under the Human Rights Act to fully and independently investigate allegations of UK involvement in torture and other ill-treatment. The most concerning aspects of its design were that the government retained final say on what material could be disclosed to the public and that the protocol did not provide for an independent mechanism to decide on disclosure of national security material.

These concerns remain – indeed are all the more obvious – with respect to the ISC. Although the Justice and Security Act 2013 provided the ISC with some further powers, the membership and activities of the ISC remain under the control of the Prime Minister, who holds an absolute veto over who sits on the committee and what information it is allowed to see and publish. For example, the government retains the right to withhold information considered to be “sensitive” or on grounds of national security.³ The definition of what constitutes sensitive information is extremely broad and notably includes information provided by a foreign intelligence agency which can object to further disclosure of that information.⁴

Moreover, one of the issues that should be subject to investigation is the effectiveness of the oversight of the UK intelligence and security agencies during the relevant period. This would presumably include the role of the ISC and its previous failure to investigate these allegations in an effective and transparent manner when, in 2007, it reported that there was “no evidence that the UK Agencies were complicit in any ‘Extraordinary Rendition’ operations.”⁵

We note that the government has left open the possibility of a judge-led inquiry in the future, following the ISC investigation and the conclusion of select criminal investigations, providing that such an inquiry would add “further information of value to future policy making and the national interest”. However, this does not address the concerns that we have regarding the ISC investigation highlighted above.

¹ See, for example, the UK’s acceptance of UPR recommendation 110.84, where it reiterated its intention to hold an independent judge-led inquiry and the replies of the UK to the CAT list of issues (UN Doc CAT/C/GBR/Q/5/Add. 1) para. 23.4.

² Oral statement by Prime Minister David Cameron, 6 July 2010.

³ Justice and Security Act 2013, Schedule 1 (4)((4))

⁴ The Report of the Detainee Inquiry (para 1.25, page 6) noted that although it had received over 20,000 documents, notably some documents which required the consent of US authorities in order to be released were not supplied to the inquiry.

⁵ It should be noted that the Detainee Inquiry interim report also highlights a number of lines of inquiry that should be pursued in the course of further investigation, including whether complete and sufficient information was given by government and the relevant agencies to the ISC

Furthermore, we do not see any compelling reason why the process of establishing and commencing the work of an independent judicial inquiry cannot run parallel to current criminal investigations. The inquiry would address a broader range of issues than the criminal investigations and could begin work solely on those issues until the criminal investigations are concluded.

We are sharing a copy of this letter, as indicated below, with the Chairman of the Intelligence and Security Committee.

We would be grateful for a response to the concerns raised in this letter and look forward to your reply. Please address any response to the UK Research Team, Amnesty International (Peter Benenson House, 1 Easton Street, London WC1X 0DW, email: UK-SHR@amnesty.org, fax: 020 7956 1157) who will in turn forward any correspondence to all the signatory organizations.

Yours sincerely

Matthew Evans, Director, The AIRE Centre

Nicola Duckworth, Senior Director, Research, Amnesty International

Muhammad Rabbani, Managing Director, Cage

Keith Best, Chief Executive Office, Freedom from Torture

David Mepham, UK Director, Human Rights Watch

Andrea Coomber, Director, Justice

Shami Chakrabarti, Director, Liberty

Carla Ferstman, Redress

Clare Algar, Executive Director, Reprieve

Susan Bryant, Director, Rights Watch (UK)

cc. The Rt Hon Sir Malcolm Rifkind QC MP
Chairman
Intelligence and Security Committee
35 Great Smith Street
London
SW1P 3BQ

Ai Index: EUR 45/005/2014