

AMNESTY INTERNATIONAL PUBLIC STATEMENT

UK: Proposed torture inquiry must be independent, impartial and thorough

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In response to the announcement by the UK Foreign Secretary, William Hague, confirming that the UK government will hold an inquiry into allegations of UK complicity in torture and other human rights abuses of individuals detained abroad, Amnesty International stresses that to meet its obligations under national and international human rights law the UK Government must ensure that any such inquiry is independent, impartial and thorough. The organization considers that it is essential that this inquiry remove the cloak of secrecy surrounding the activities of agents of the UK, including intelligence officials, overseas, and ensure that those responsible for human rights violations are held accountable, including bringing those responsible to justice.

Amnesty International believes that the time is long overdue for such an inquiry, which must not be delayed by the ongoing criminal investigations and civil law suits that concern allegations of UK complicity in torture and other human rights abuses. These processes are not mutually exclusive; rather each plays a vital role in ensuring that real accountability is achieved.

The inquiry should investigate credible allegations and evidence implicating UK officials and agents in torture or other ill-treatment, arbitrary detentions, enforced disappearance, and renditions of individuals overseas, since 11 September 2001. The inquiry should also consider the policies and practices that led to the UK becoming involved in these violations of human rights. The inquiry should be mandated to make recommendations for genuinely independent scrutiny of the intelligence services, aimed at ensuring their full accountability.

Amnesty International believes that the scope, methods and findings of the inquiry must be made public. Amnesty International recognizes that there may be limited circumstances in which particular items of information potentially relevant to an investigation into serious human rights violations cannot be made public particularly where the disclosure of that information would endanger the life or physical security of an individual. However, such decisions must be made independently of the executive, applying limited and precisely defined grounds that are specified in advance. Any assertion of the need for confidentiality, including one made on the grounds of national security, should be determined by an authority that is independent of the executive and be subject to judicial review. No invocation of state secrecy may ever be permitted that would prevent an independent, impartial, and thorough investigation of human rights violations, prevent perpetrators from being held accountable, or prevent a victim from receiving effective remedy and reparation.

Amnesty International considers that an inquiry under the Inquiries Act 2005 may not be independent enough from the government. An inquiry established under the Inquiries Act 2005 would allow the government minister who established the inquiry significant and wide-

ranging powers to impose restrictions on the inquiry if he thinks it is necessary “in the public interest” to do so. Furthermore if established under the Inquiries Act 2005 the government would retain the power to appoint and dismiss the Chair of the inquiry; to set the terms of reference for the inquiry, and to change them during the inquiry; to appoint, in consultation with the chair of the inquiry, all the members of the inquiry panel; to bring the inquiry to an end at any point, having consulted the Chair and given reasons for the decision to end it; to impose restrictions on public access to the inquiry hearings and to withhold any material from the final published report of the inquiry.

Amnesty International calls on the UK government to ensure that the inquiry into allegations of UK complicity in torture and other abuses of people overseas is genuinely independent, impartial and effective by ensuring it is not subject to such direct government control.

Amnesty International believes that at a minimum this inquiry should seek to answer the following questions:

1. What have been the UK government’s policies and practices in response to violations of human rights such as torture or other ill-treatment, enforced disappearances, renditions and unlawful detentions perpetrated by the USA and other states against people, including UK nationals, held overseas since 11 September 2001?
2. What has been the UK government’s policy and practice in relation to seeking to obtain, receiving, sharing and using information that may have been extracted under torture or otherwise obtained unlawfully, since 11 September 2001?
3. What steps did the UK government take when in 2003 the International Committee of the Red Cross first raised concern about grave human rights abuses at the hands of Coalition Forces in Iraq, including in relation to torture practices at Abu Ghraib?ⁱ What steps did the UK government taken in relation to subsequent credible allegations of grave human rights abuses in other countries?
4. What were the terms of the agreement/s the UK signed at the request of the US administration in the aftermath of 11 September 2001 purportedly under the principle of collective defence under Article 5 of the North Atlantic Treaty?ⁱⁱ
5. Were there further bilateral agreements on cooperation in the context of the US-led “war on terror” between the UK and the USA, and if so, what did they entail?
6. What oversight mechanisms were in place to ensure that adequate record-keeping was maintained with respect to counter-terrorism policy and practices?
7. How many times since 11 September 2001, and precisely in what circumstances, have authorizations under section 7 of the Intelligence Services Act 1994 been issued?ⁱⁱⁱ
8. What was the guidance regarding the role of the security services in the treatment and interviewing of detainees held overseas prior to 11 September 2001? Has it changed since then? And if so, when, how many times, in what respects, and why?
9. What has been the role of military intelligence agencies and agents in all and any of the above?
10. What has been the role of lawyers and civil servants in all and any of the above?

Amnesty International is also disappointed that several of the positions announced by the new UK government in “The Coalition: our programme for government” on 20 May 2010 appear to continue or even extend related policies of the previous government which Amnesty International has long criticized. For example, the government has chosen to simply repeat in

identical terms the narrow line that it will not “condone” torture, while failing to specify how in practice UK agencies will avoid contributing to or benefiting from torture by others, let alone actively combating torture. In addition, the new government has signalled a continuation and expansion of its predecessor’s misconceived experiments with diplomatic assurances against torture in the hopes of justifying expulsions of individuals to other countries where torture is practised on a systematic or widespread basis against such individuals.

(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.)

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i In February 2004, the ICRC presented a report to the then Coalition Forces in Iraq (i.e. including to the UK) detailing a number of serious violations of international humanitarian law by these forces in Iraq, including brutality against protected persons during arrest and initial detention, sometimes causing death or serious injury, as well as various methods of torture and other ill-treatment inflicted on detainees. The report summarized concerns that had regularly been brought to the attention of the Coalition Forces throughout 2003.

ii On 4 October 2001, the NATO Secretary General announced that “at the request of the United States” it had agreed measures “to expand the options available in the campaign against terrorism”, including: enhanced intelligence sharing and co-operation; blanket overflight clearances for the US and other allies for military flights related to operations against terrorism; access to ports and airfields on NATO territory for support of counter-terrorism operations, including for refuelling; assistance to states “subject to increased terrorist threats as a result of their support for the campaign against terrorism”; increased security for US facilities on NATO territory; enhanced NATO support for counter-terrorism operations. However, the text of the actual agreement has never been made public; indeed, NATO refused to provide it to the Council of Europe, even on a confidential basis. Further, it appears that “additional components” not mentioned in the official announcement “have remained secret”. The 2007 report by the Parliamentary Assembly of the Council of Europe found that rather than actually constituting an agreement for collective self-defence, the measures put in place by NATO members “comprise the very permissions and protections the United States had sought for itself as it embarked on its own military, paramilitary and intelligence-led counter-terrorism operations”.

iii Section 7 of the Intelligence Services Act 1994 provides a waiver of liability to intelligence service personnel for illegal acts, including criminal offences, committed abroad in certain circumstances.