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Government rules muzzle Torture Inquiry

Procedure rules announced today by the Justice Secretary Ken Clarke concerning the forthcoming Detainee Inquiry are likely to breach UK and international standards for investigating allegations of torture according to JUSTICE, the human rights and law reform organisation.

Although the Detainee Inquiry will be chaired by a retired Court of Appeal judge, Sir Peter Gibson, new procedural rules published today gives the government the final say on what material the Inquiry can publish in its final report. By contrast, the Court of Appeal in the Binyam Mohamed case in February 2010 ruled that the court had the final say on whether disclosure of classified material was necessary in the public interest.

The rules released today also provide for large parts of the Detainee Inquiry to be held behind closed doors, including a blanket provision that no evidence will be given in public by current or former members of the security and intelligence services (other than the Heads of each service), even if the evidence they give concerns matters already in the public domain. The Inquiry will have no power to compel witnesses to appear, and does not plan to take evidence from overseas witnesses.

The government has also confirmed that the Inquiry is not meant to comply with the relevant UK and international law governing investigations into torture. British courts have repeatedly recognised that article 3 of the European Convention on Human Rights, for instance, imposes a duty on the UK government to carry out an 'effective investigation' of allegations of torture.

Eric Metcalfe, JUSTICE's director of human rights policy, said:

English law prohibits torture and complicity in torture.

But despite disturbing allegations of British officials interrogating men tortured in foreign jails, the government appears to have no intention that the Inquiry actually complies with the UK law governing investigations in this area.

Today's rules mean that the Inquiry is unlikely to get to the truth behind the allegations and, even if it does, we may never know for sure. However diligent and committed Sir Peter and his team may be, the government has given itself the final word on what can be made public.

For further comment, please contact Eric Metcalfe, JUSTICE's human rights policy director, on 020 7762 6414 (direct line) or emetcalfe@justice.org.uk.

Notes for editors

1. In a letter dated 6 July 2010, the Prime Minister David Cameron asked Sir Peter Gibson to undertake an inquiry into 'whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11'. In addition to Sir Peter, a retired Court of Appeal judge and the Intelligence Services Commissioner from 2006 to 2010, panel members will also include Dame Janet Pareskeva and Peter Riddell. The terms of reference and the protocol for the Detainee Inquiry can be found on its website: www.detaineeinquiry.org.uk.
2. The start of the Inquiry has been delayed pending resolution of civil proceedings involving the British nationals detained in Guantanamo Bay brought against the UK government and investigations by the CPS into UK intelligence personnel. The civil cases have since been settled and it is understood that the CPS investigation will conclude shortly.
3. JUSTICE is one of a group of NGOs that has met with the Detainee Inquiry's commissioners and legal team to urge the adoption of procedural rules that would comply with relevant UK and international standards, including article 3 of the European Convention on Human Rights.
4. In February 2010, the Court of Appeal ruled that classified material held by the Security and Intelligence Services could be disclosed contrary to the insistence of the government on the grounds that it was necessary for the public interest in the fair administration of justice. See e.g. the statement of Lord Judge, the Lord Chief Justice at para 57: 'unless the control principle is to be treated as if it were absolute, it is hard to conceive of a clearer case for its disapplication than a judgment in which its application would partially conceal the full reasons why the court concluded that those for whom the executive in this country is ultimately responsible were involved in or facilitated wrongdoing in the context of the abhorrent practice of torture. Such a case engages concepts of democratic accountability and, ultimately, the rule of law itself' ([2010] EWCA Civ 65).
5. The prohibition against torture is part of English criminal law, the European Convention on Human Rights and the UN Convention against Torture.
6. In particular, section 134 of the Criminal Justice Act 1988 makes it a criminal offence for a public official 'in the United Kingdom or elsewhere' to 'intentionally inflict severe pain or suffering on another in the performance or purported performance of his official duties'. English criminal law also makes it a criminal offence to solicit, encourage, aid or assist another person to commit torture.
7. Article 3 of the European Convention on Human Rights prohibits torture and inhuman and degrading treatment and punishment. The European Court of Human Rights and UK courts have repeatedly held that article 3 also imposes a duty on the UK government to conduct an 'effective investigation' of allegations of torture, including an investigation that is independent, impartial, subject to public scrutiny and ensures effective access for victims.
8. In 1967, Lord Justice Salmon, chair of the Royal Commission on Public Inquiries, strongly criticised the use of public inquiries sitting mostly in secret: 'The public may be left with the feeling that the Inquiry, if behind closed doors, is no more than what is sometimes referred to as "the usual whitewashing exercise,, - the odds against any such tribunal being able to establish the truth, if the truth is black, are very heavy indeed. Any government which in the future adopts this procedure will lay itself open to the suspicion that it wishes the truth to be hidden from the light of day'.

Chairman of Council **Baroness Kennedy of The Shaws QC** *Director* **Roger Smith OBE**

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