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REPRIEVE

Alun Evans
Secretary to the Inquiry
The Detainee Inquiry
35 Great Smith Street
London
SW1P 3BQ
United Kingdom

17 February 2011

Dear Mr Evans

Thank you for your letter of 16 February 2011 responding to our submission of 8 February to the Detainee Inquiry, regarding the human rights standards by which the Inquiry should be conducted.

You have asserted that “the purpose for which the Inquiry was established” was not, as our letter had stated “to examine allegations of torture and other ill-treatment, which give rise to particular requirements under Article 3 ECHR” (European Convention on Human Rights). In particular, you point to the fact that the allegations against UK actors involve complicity in torture, not direct participation in torture.

However, as we made clear in our letter of 8 February, the duty to investigate allegations of torture is not restricted to cases in which UK personnel are themselves alleged to have committed the acts in question. Under both UK and international law, it also extends to cases in which UK officials are alleged to have been complicit or involved in, or knowingly provided help or assistance to those committing acts of torture.

We note your suggestion that any questions about the Inquiry’s remit should be addressed to the Government, and we will be raising these issues with them as a matter of priority. However, the Detainee Inquiry must also recognise the seriousness of the allegations they are tasked with examining and the legal obligations that arise under domestic and international law with respect to them. Given the context in which the Inquiry has been established in relation to these allegations, we believe it is essential that the Inquiry itself make representations to the executive aimed at ensuring that the Inquiry can be carried out in a manner which satisfies the UK’s obligations under both domestic and international law.

First, under UK law, it is well understood that criminal responsibility for torture is not limited to those who commit acts of torture. It also extends to any person who aids, assists, counsels or procures another to commit torture (see section 8 of the Accessories and Abettors Act 1861, together with the more recent offences under Part 2 of the Serious Crimes Act, and the corresponding common law provisions under Scots law). UK law, then, only reinforces that such acts -- which are without question forms of complicity -- clearly fall within the scope of Article 3 of the ECHR. We therefore find it impossible to see how allegations of possible complicity in torture by UK officials could fail to trigger the UK's investigative obligations under Article 3 of the ECHR.

Secondly, under the UN Convention Against Torture, obligations to investigate arise in relation not only to acts of torture in which the state's agents directly inflicted the pain and suffering, but also wherever the pain and suffering was inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" on behalf of the state. Indeed, the UN Convention against Torture also expressly covers any "act by any person which constitutes complicity or participation in torture." In this context, we note credible, well-documented evidence that suggests UK complicity in torture or other ill-treatment, unlawful detentions and renditions, including:

- UK personnel being present during and participating in interrogations of detainees held unlawfully overseas in circumstances in which the UK knew or ought to have known that the detainees concerned had been or were at risk of being tortured and/or whose detention was unlawful;
- UK personnel providing information (e.g. telegrams sent by UK intelligence personnel to intelligence services of other countries) that led the USA and other countries to apprehend and detain individuals when the UK knew or ought to have known that these people would be at risk of torture and/or unlawful detention;
- The UK being involved in the US-led programme of renditions and secret detentions through, for example, the use of UK territory (e.g. Diego Garcia) and/or airspace;
- UK personnel forwarding questions to be put to individuals detained by other countries in circumstances in which the UK knew or ought to have known that the detainees concerned had been or were at risk of being tortured and/or whose detention was unlawful;
- UK actors soliciting, receiving and using information extracted from people detained overseas in circumstances in which it knew or ought to have known that the detainees concerned were being, had been or would be tortured and/or whose detention was unlawful.

These allegations pertain not just to individuals held by the US in Guantanamo Bay, but individuals held overseas in a number of different countries in the context of counter-terrorism operations, including, but not limited to, Pakistan, Bangladesh, Egypt, Kenya, Somalia, United Arab Emirates and Yemen.

The seriousness of these allegations, and the credible evidence that is already in the public domain supporting them, gives rise to an obligation under international law on the part of the UK to ensure that the allegations are effectively investigated. In order for the UK to discharge this obligation the investigation must be in conformity with human rights standards; that is, the investigation must be independent, impartial, thorough, subject to public scrutiny and include effective access for victims to the process.

Accordingly, the fact that the allegations against the UK relate to complicity and/or participation in torture, rather than UK actors and/or agents directly inflicting the pain and suffering in question, does not provide a legitimate reason to assert that the Detainee Inquiry should not be conducted in a manner capable of satisfying the UK's obligations under Article 3 of the ECHR and under the UNCAT.

We would like to make clear that although the Prime Minister has not expressly stated that the purpose of the Detainee Inquiry is to discharge the UK's obligations under international law, this does not mean

that these legal obligations can be disregarded. More generally, any failure to comply with the UK's international obligations in this area would raise serious doubts as to the purpose of establishing the Inquiry in the first place.

Yours sincerely

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The Rt. Hon. David Cameron MP, Prime Minister

The Rt. Hon. Nick Clegg MP, Deputy Prime Minister

The Rt. Hon. William Hague MP, Foreign Secretary

The Rt. Hon. Theresa May MP, Home Secretary

The Rt. Hon. Dominic Grieve QC MP, Attorney General

Dr Hywel Francis MP, Chair of the Joint Committee on Human Rights

Juan E. Méndez, UN Special Rapporteur on Torture

Martin Scheinin, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Thomas Hammarberg, Commissioner for Human Rights , Council of Europe