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REPRIEVE

The Rt. Hon. Sir Peter Gibson
c/o Ripley Building
26 Whitehall
London
SW1A 2WH
United Kingdom

08 September 2010

Re: Inquiry into alleged UK involvement in the mistreatment of detainees held abroad

Dear Sir Peter

Following the announcement by Prime Minister David Cameron on 6 July of an inquiry into allegations of UK involvement in the mistreatment of detainees held abroad, the AIRE Centre, Amnesty International, British Irish RIGHTS WATCH, Cageprisoners, Justice, Liberty, Redress, Reprieve, and the Medical Foundation for the Care of Victims of Torture, write to offer a number of constructive comments to ensure the success of the inquiry.

A sufficiently empowered and transparent inquiry could discharge the United Kingdom's duty to effectively investigate damaging allegations of knowledge and/or involvement by state actors or agents in the torture, ill-treatment or rendition of individuals that have arisen in the last decade. Such an inquiry could also play an important role in clarifying how involvement in torture, ill-treatment or rendition might be prevented in the future.

It is incumbent on governments to promptly and effectively investigate all allegations of torture and other related human rights abuses. In order to comply with basic human rights standards, it is essential that the inquiry be:

- (1) **Prompt.** The earliest events that this inquiry must consider occurred at least a decade ago. Delay has increased the damage caused by allegations of involvement in torture and ill-treatment and has already reduced the potential for the inquiry to uncover the truth.
- (2) **Independent.** The persons responsible for and carrying out the inquiry must be fully independent of any institution, agency or person who may be the subject of, or are otherwise involved in, the inquiry. Where allegations of involvement in torture and ill-treatment have been made, an independent response is particularly important in order to preserve confidence in the administration of justice.

- (3) **Thorough.** The inquiry must be sufficiently empowered, staffed, and resourced to be thorough, wide-ranging and rigorous. It must be able to pronounce on state responsibility for knowledge and involvement in the serious human rights violations that have been alleged and to identify any individuals responsible for such abuses, including establishing the responsibility of superior officers for crimes committed by subordinates under their effective control. The inquiry must be capable of determining whether any conduct was unlawful and thus must be empowered to: secure all relevant evidence and testimony; interview victims and their families; question any eye witnesses; take statements of any officials alleged to have been involved in violations; secure appropriate medical reports; and consider any evidence which implicates any public officials or agents of the state.
- (4) **Subject to public scrutiny, with the participation of victims.** The inquiry must be open to adequate public scrutiny. Survivors or victims must be involved in the process to ensure their right to effective investigation and redress, and special measures must be adopted to ensure this participation is supportive, safe and effective; non-governmental organizations have an important role to play in this regard. The participation of survivors, victims and civil society ensures the adherence of the inquiry to the rule of law, prevents any appearance of collusion in or tolerance of illegal acts, and helps safeguard victims' rights to an effective remedy and reparations.

It is fundamental to the legality, credibility and utility of the inquiry that it complies with the United Kingdom's international human rights obligations, including standards arising from the Convention against Torture, the European Convention on Human Rights, and the common law.

Terms of reference

The terms of reference of the inquiry must permit the consideration of the full range of alleged abuses. To that end, we propose the following terms:

“The inquiry shall be empowered to inquire into knowledge of and involvement in the unlawful rendition of individuals, and torture and other cruel, inhuman or degrading treatment of detainees held abroad, by any UK state actors and agents, including corporate bodies, in the lead up to the 11 September 2001 attacks in the USA and subsequent to them. The inquiry shall examine both policy and practice, and make recommendations.”

The development of satisfactory terms of reference - in consultation with the survivors and victims of abuses, their representatives, and interested non-governmental organizations - is essential to ensure that the inquiry provides effective redress for all victims of the alleged abusive practices, identifies the policies that gave rise to them, and suggests appropriate reforms.

Conduct of the inquiry

The UK government has noted a variety of reasons for establishing a forensic inquiry - the reputational damage to the country and the security services caused by the allegations; the desire on the part of the security services to establish their integrity; the resource burden on the security services in lengthy court cases; exploitation of the allegations by extremists for propaganda purposes; and the need to systematically get to the truth and ensure that such abuses will not happen again. Our organizations would add to this list the requirement of effective redress for any victims of these alleged abuses and the need to hold accountable those responsible for serious human rights violations.

In order for the inquiry to fulfil its purposes, we recommend the following:

- (1) The inquiry must appoint a strong legal team with sufficient expertise to deal with the range of human rights, intelligence, and secrecy issues that it is likely to face;

- (2) The presumption must be that each stage of the inquiry will be public, with as much evidence as possible to be heard and considered in public;
- (3) The inquiry must ensure that survivors and victims have standing as parties to the inquiry and have a right to legal representation funded by the inquiry. Survivors, victims and their representatives must be kept informed of all information relevant to the investigation and have access to hearings and the ability to make submissions;
- (4) Other interested parties, including the intelligence services, must also have standing and the right to legal representation funded by the inquiry. They and their representatives must be kept informed of all information relevant to the investigation; and have access to hearings and the ability to make submissions;
- (5) The inquiry must require that all relevant documents be disclosed to the inquiry by the government; the head of the inquiry must have the power to decide whether or not to make such documents public;
- (6) The inquiry must aim to achieve maximum possible disclosure. Any determination that certain information should be kept confidential, including on the grounds of national security, should be made applying limited and precisely defined grounds that are specified in advance; an independent mechanism should be developed to ensure that any decision by the inquiry panel to withhold such information is in the public interest;
- (7) The inquiry must ensure that any invocation of secrecy or confidentiality on the part of the government, its agents, or the inquiry does not: prevent an independent, impartial, and thorough investigation of alleged human rights violations; prevent the government and individual perpetrators from being held accountable; prevent a victim from receiving an effective remedy, including reparation; or prevent full and public disclosure of the truth;
- (8) The inquiry must be empowered to require the production of evidence, subject to ordinary rules of admissibility, and must also be able to require a person to attend the inquiry to give evidence or to provide a written statement. It must be an offence for a person to fail to do anything that is required of him or her regarding the production of evidence. It must be an offence to do anything to distort or alter evidence provided to the inquiry;
- (9) The inquiry panel must request the cooperation of agents and officials of foreign states who can provide relevant evidence, and that the government should support such requests;
- (10) The inquiry panel should be empowered to enforce cooperation from corporations doing business in the UK who are alleged to have had knowledge of or been involved in any abuses that are the subject of the inquiry;
- (11) It is imperative that the inquiry report be published, and that any redactions for national security reasons be agreed by the inquiry panel and be subject to review by a court. The inquiry must be empowered to not only establish particular facts, practices and policies, but should also consider the adequacy of measures in place to prevent the occurrence of any wrongdoing in the future. The final report must be made public and should at a minimum include the conclusions and recommendations based on findings of fact and applicable law, in sufficient detail to satisfy the requirement of full and public disclosure of the truth about UK responsibility for the human rights violations in question.

Involvement of Non-Governmental Organizations

The direct participation of civil society is imperative for the proper conduct of this inquiry.

First, the allegations of UK involvement in illegal conduct are wide ranging in time and nature. Various NGOs have been at the forefront of establishing such patterns of conduct, and are in a position to assist the inquiry in designing its scope and in pursuing certain lines of inquiry.

Second, the participation of survivors and victims, which is a requisite component of an effective, human rights-compliant investigation, is complicated in many instances. For example, some who might have substantial evidence of great relevance to the terms of the inquiry remain in illegal detention in Guantanamo Bay and elsewhere. It is important that their voices should be heard.

Third, the credibility of this inquiry rests on the extent to which it properly engages with public concerns about these most serious allegations. Allowing for close NGO scrutiny will ensure that the inquiry is seen to be robust and fair.

NGOs should have the opportunity to be present throughout the inquiry, including representation by counsel, and have the opportunity to make submissions regarding any aspect of the inquiry.

We believe that a human rights compliant inquiry that provides full victim and NGO participation by implementing the above modest suggestions has every prospect of success, and encourage the inquiry's engagement with the victims, their representatives, and the broader NGO sector.

Yours sincerely

The AIRE Centre

Amnesty International

British Irish Rights Watch

Cageprisoners

Justice

Liberty

The Medical Foundation for the Care of Victims of Torture

Redress

Relieve

cc:

The Rt. Hon. Dame Janet Paraskeva
The Rt. Hon. Peter Riddell
The Rt. Hon. David Cameron, Prime Minister
The Rt. Hon. Nick Clegg, Deputy Prime Minister
The Rt. Hon. Baroness Neville-Jones
Sir Gus O'Donnell
Sir Peter Ricketts