

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE:
AL GBR 11/2018

30 August 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 33/30, 34/19, 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the United Kingdom's alleged involvement in torture and extraordinary renditions in the context of the so-called "war on terror", between 2001 and 2010, and the reported lack of willingness of your Excellency's Government to carry out genuine judicial inquiries into the possible criminal involvement of some intelligence personnel.

According to the information received:

The United Kingdom's alleged involvement in extraordinary renditions

Following the events of 11 September 2001 (9/11), the United States of America (US), through the Central Intelligence Agency (CIA), sought to fight the so-called war on terror through a secret detention programme under which detainees were held in CIA prisons, outside of the United States, and subjected to acts amounting to torture, including walling, waterboarding, mock executions, forced nudity, sleep deprivation or rectal feeding. These so-called "enhanced interrogation techniques" were carried out in conjunction with the extraordinary rendition programme that allowed the CIA to engage in the transfer, without legal process, of a detainee to the custody of a foreign government, allowing interrogations to be beyond the reach of US law.

Evidence emerged suggesting that UK intelligence agencies assisted the CIA in the kidnappings, detentions and interrogations of individuals after 9/11 and their subsequent torture and ill-treatment.

On 10 May 2018, the UK Government formally acknowledged its involvement in the rendition and subsequent treatment of two Libyan citizens, [REDACTED] and [REDACTED]. According to the information available, in 2004, the CIA abducted [REDACTED] and his wife, who was pregnant at the time, in Thailand, and rendered them to Libyan security services following a tipoff from the Secret

Intelligence Service (MI6). ██████████ was detained for four months at the Tajoura prison and released 21 days after giving birth. ██████████ was detained at the Abu Salim prison for seven years where he suffered systematic ill-treatment and torture at the hands of Libyan law enforcement personnel. Instead of a formal criminal investigation, the UK Government apologised to the couple who then withdrew all litigation in UK courts.

On 28 June 2018, a report of the parliamentary Intelligence and Security Committee (ISC) found that the United Kingdom's Secret Intelligence Service agencies were complicit in the commission of torture and other cruel, inhuman or degrading treatment or punishment of detainees in overseas US prisons, or "black sites", in Iraq, Afghanistan, and Cuba from 2001 to 2010. The report recorded 13 incidents where UK personnel were first-hand witnesses to acts of torture and ill-treatment committed against detainees by law enforcement officials. In at least 25 incidents, UK personnel have been told by detainees that they had been mistreated by others.

The report also recorded 232 cases where it appears that UK personnel continued to supply questions or intelligence to liaison services despite the fact that they knew or had serious grounds to suspect that a detainee had been or was being subjected to torture and other ill-treatment. The ISC recorded 198 cases where UK personnel received information obtained from detainees whom they knew had been subjected to torture and other ill-treatment. Additionally, the ISC report found that in 28 cases, the UK agencies personnel have reportedly suggested, planned or agreed to rendition operations proposed by other countries. It further identified 22 cases where the agencies provided intelligence to enable a rendition operation to take place and 23 cases where they failed to take action to prevent a rendition.

Lack of genuine investigation

In July 2010, the then-Prime Minister David Cameron announced the launch of a judge-led investigation into UK's involvement in extraordinary renditions and torture of detainees. The inquiry was however halted in January 2012 by the UK Government. The then-Justice Secretary Kenneth Clarke announced that the UK Government would hold a judicial inquiry once all related police investigations have been concluded.

On 18 December 2013, the ISC began carrying out a provisional inquiry. On 10 May 2018, the ISC delivered two complete reports to Downing Street for publication. On 28 June 2018, the ISC published its final report.

While the ISC investigation revealed important new details of UK complicity in torture and renditions, it seemed to fall short of a human rights-compliant investigation. As the ISC itself stated in the report, "the terms and conditions imposed" by the UK Government have left it "unable to conduct an authoritative

inquiry” or “produce a credible report”. Membership and activities of the ISC remained under the control of the Prime Minister, who held an absolute veto over who sat on the committee and what information could be made public.

Following the publication of the report, the All-Party Parliamentary Group on Extraordinary Rendition called for an independent, judge-led inquiry into UK’s involvement in renditions and torture of detainees after 9/11. A number of members of Parliament reportedly echoed this call.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern at the alleged involvement of UK security agencies in extraordinary renditions and torture and other cruel, inhuman or degrading treatment or punishment of detainees in the context of the war on terror, as reported by the ISC. We are also concerned at the perceived lack of willingness of your Excellency’s Government to conduct genuine, independent and impartial judicial investigations into the said alleged involvement.

We would like to take this opportunity to remind your Excellency’s Government that the absolute prohibition of torture constitutes one of the few universally recognized peremptory norms of international law. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as in article 7 of the ICCPR. The human right to be free from torture and other ill-treatment is absolute and non-derogable and, therefore, continues to apply in situations of armed conflict, a conclusion reinforced by the relevant provisions of international humanitarian law and international criminal law.

We would like to remind your Excellency’s Government that article 12 of the CAT requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that acts of torture have been committed. Articles 5 and 7 require States parties to the Convention to establish jurisdiction and to prosecute suspected perpetrators of torture. It is therefore a concern of the utmost gravity that, despite express and public acknowledgement by your Excellency’s Government of the involvement of UK state officials in the renditions and torture of detainees after 9/11, no judicial investigation or prosecution has yet been initiated against the perpetrators.

Please note that the realization of the right to truth, at both the individual and the collective levels, requires free accessibility of information on human rights violations, as indicated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/68/362). Please also refer to the reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/24/42 and A/HRC/21/46).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide full details of any penal, disciplinary, administrative or other measures taken by your Excellency's Government in compliance with its duty to investigate, prosecute and punish all acts of torture committed by or with the involvement of its officials. If no legal proceedings have taken place, please explain why, and how this is consistent with the relevant international legal obligations of the United Kingdom.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting your response, we respectfully urge your Excellency's Government to take all necessary measures to launch an independent judicial investigation into UK's involvement in the renditions and torture of detainees after 9/11. In the event that independent investigations confirm the accuracy of the above allegations, effective measures should be taken to address the violations committed and to prevent their recurrence.

We would like to inform your Excellency's Government that after having transmitted a joint letter to the Government, the Working Group on Arbitrary Detention may transmit the cases referred to therein through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint letter and the regular procedure.

As per usual practice, this communication and Your Excellency's Government's response will feature in the periodic report to the Human Rights Council for its consideration. Moreover, given the importance and urgency of this matter, we may decide to express our concerns publicly in the near future.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Nils Melzer
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punishment

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