

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL GBR 4/2019

19 August 2019

I have the honour to address you in my capacity as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In this connection, I would like to bring to the attention of your Excellency's Government information received that the Government has decided not to conduct a **judicial inquiry into the involvement of British officials in torture and ill-treatment in the course of British involvement in the United States' programme of detention and extraordinary rendition between 2001-2010.**

In two official reports of 28 June 2018, the United Kingdom Parliamentary Security and Intelligence Committee (ISC) concluded that British officials had been directly and indirectly involved in the extraordinary rendition and torture or ill-treatment of terrorist suspects in the framework of the United States' detention and the extraordinary rendition programme. The ISC also reported that the British Government had prevented it from accessing all the necessary evidence and witnesses, which rendered it unable to conduct a credible and thorough inquiry providing definitive findings in this respect. According to the official records published by the Parliament (House of Commons Hansard, Volume 663), in an oral statement in the House of Commons on 18 July 2019, Cabinet Office Minister David Lidington formally announced that "the Government have decided that it is not necessary to establish a further inquiry", claiming that there was neither a policy case, nor a legal obligation to do so. This decision reverses the long-held position of the Government since the initial Gibson inquiry, to undertake an independent, judge-led inquiry. The recent decision has provoked widespread calls by civil society and Members of Parliament supporting such a full judicial inquiry into the matter.

I would herewith like to express grave concerns at the decision of your Excellency's Government not to conduct a judicial inquiry into the involvement of British officials in allegations of torture and ill-treatment -- a decision which appears to be incompatible with the United Kingdom's international legal obligations.

The United Kingdom is obliged to criminalize acts of torture, including any form of attempt, complicity or participation in such acts (Art. 4 UNCAT), and to conduct prompt and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed by perpetrators under its jurisdiction (Art. 12 of the UNCAT). It bears emphasizing that this includes not only acts of torture carried out by British officials themselves, but also any form of attempt, complicity and participation on the part of British officials in acts of torture or ill-treatment perpetrated by others (Art. 4(1) UNCAT). The United Kingdom's legal obligation to prevent, investigate, prosecute,

punish and redress acts of torture and ill-treatment does not depend on the victim being within the physical custody or territorial jurisdiction of the United Kingdom, but equally applies where there is reasonable ground to believe that British officials aided, assisted, participated in, or otherwise contributed to extra-territorial acts of torture or ill-treatment (A/70/303). Not only the responsibility of officials at the operating level, but also the responsibility of superior officials and the political leadership must be fully investigated through competent, independent and impartial prosecutorial and judicial authorities (CAT/GC2, para 26). Where investigations show that criminal conduct has occurred, the United Kingdom is legally obliged to prosecute and punish the perpetrators and to provide redress and rehabilitation to the victims (Arts. 5-9 and 13-14 UNCAT).

These obligations, which can also be derived, as applicable, from the CCPR, the ECHR, international humanitarian law, international criminal law, and general international law, must be exercised and interpreted in line with the universally recognized principles of *pacta sunt servanda* and of good faith (Art. 26 and 31 VCLT). Where a State fails to take effective measures of prevention, investigation, prosecution and redress, although it knows or has reasonable grounds to believe that its officials have perpetrated, instigated, participated in, or otherwise contributed to acts of torture or ill-treatment, including through consent and acquiescence, it incurs international legal responsibility for such acts.

The 2018 reports of Parliamentary Security and Intelligence Committee unquestionably provide “reasonable ground” to believe that British officials have been involved in acts of torture and ill-treatment, whether through perpetration, attempt, complicity or other forms of participation. British authorities therefore have a clear and unequivocal treaty obligation to conduct a prompt and impartial investigation into these allegations and, in case of violations, to prosecute and punish the perpetrators, and to provide redress and rehabilitation to the victims.

I respectfully urge your Excellency’s Government to re-consider its decision and to follow-through with its initial plans for a judicial inquiry into the involvement of British officials in torture and ill-treatment, in full compliance with its obligations under international law.

I 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.

I may publicly express my concerns in the near future as, in my view this decision, upon which the press release will be based, is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The statement would indicate that I have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to International Law

In connection with the above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

I would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and

impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”