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Information presented by the Equality and Human Rights Commission of Great Britain*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Equality and Human Rights Commission of Great Britain,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

Annex

Written statement submitted by the Equality and Human Rights Commission on the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

19th session of the Human Rights Council
(27 February – 23 March 2012)

The Detainee Inquiry

During the thirteenth session of the HRC the Equality and Human Rights Commission (The Commission) made a statement giving its opinion on the special procedures joint study on secret detention and torture, which contained allegations of complicity in torture against the UK government. We called for the UK government urgently to put in place a review process to assess the truth or otherwise of the many allegations of complicity in torture that had been made against it both in that report and in many other sources.

We said that:

> "Any review process must satisfy both the Commission and the public:
>
> - that those carrying out the review will be given complete access to all of the relevant materials,
> - that the review team are completely independent of government and appointed in a transparent and independent manner;
> - that, whilst ensuring that any real and substantial risks to national security are protected, the review will be as open and transparent as possible, putting as much material in the public domain as possible and holding as many evidence sessions in public as possible; and
> - will publish its findings as soon as possible with the fewest redactions consistent with the protection of national security."

Initially, the Commission was delighted that the government set up an Inquiry, chaired by Sir Peter Gibson, to investigate the allegations that officers from the UK's intelligence and security services may have been complicit in torture committed by foreign agencies.

However, it quickly became clear that the proposed Inquiry did not have sufficient powers and the means to conduct an independent and rigorous investigation so as to enable it to remain credible and to comply with the investigative obligations that arise under international human rights law. This Commission wrote to the Inquiry Chair and Panel and to the government on several occasions seeking to persuade them that modifications were needed to the Inquiry process. However, when the Terms of Reference and Protocol for the Inquiry were published on 10 August 2011 few of the concerns raised by us, nor those of the former detainee's representatives, or the NGO community had been addressed. In particular it was clear that key hearings would be held in secret; and that a senior

government official, the cabinet secretary, would have a veto over what information would be made public.[1]

The government stated that the Inquiry did not have to comply with Article 3 ECHR investigation requirements, as it had not been set up in order 'to examine allegations of torture and other ill-treatment, which give rise to particular requirements under Article 3 ECHR'. Lawyers acting for former detainees and 10 non-governmental organisations[2] indicated that they would not participate in the inquiry, believing that the terms of reference and protocols would not establish the truth of the allegations or prevent the abuses from happening again.[3]

In November 2011 the Commission wrote to the Secretary of State again urging that the Inquiry's methods be revised. We reiterated that the Inquiry should be robust, as open as possible, thorough and effective. We understand the need for careful handling of information that may compromise the security and intelligence services or that might impact on public security, and we do not consider that it would be desirable or appropriate for all the evidence the inquiry hears to be made public. Nevertheless we considered that the operating model set out in the Protocol set up too secretive a process which would not permit for sufficiently rigorous examination of the evidence and which in giving an absolute veto to the Cabinet Secretary in relation to disclosure could have led to a complete lack of transparency.

We set out in some detail what changes would be required to enable the Inquiry properly to fulfil its remit in terms of its legal powers, the mechanisms for ensuring effective victim participation and compliance with international human rights standards. We were also very concerned that detainees and NGOs were boycotting the Inquiry because of what they considered to be fundamental flaws in the process.

As further criminal investigations into rendition of individuals to Libya had recently been commenced, the UK government decided to conclude the Inquiry in January 2012, but has committed itself to holding an independent judge-led inquiry at some point in the future.[4]

The Commission welcomes the government's decision to wind up the Detainee Inquiry. It never had the legitimacy that a body charged with such an anxious task should possess. The Commission also welcomes the decision in January this year to instigate criminal investigations into allegations of Britain's involvement in rendition to and torture in Libya.

Criminal investigations are of course the key to identifying individual perpetrators of torture, or complicity, and must be pursued with rigour. However, as the Special Rapporteur points out in his report:

> "The independent structure and mandate of commissions of inquiry may also make them well suited for identifying institutional responsibility and proposing reforms. Due to the numerous sources of evidence and facts submitted to commissions of inquiry, they are often able to pinpoint the failure of particular policies and detect systemic shortcomings or practices of certain Government agencies."

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[1] The Detainee Inquiry, 2011. *Terms of Reference and Protocol published*. Available at http://www.detaineeinquiry.org.uk/2011/07/news-release-terms-of-reference-and-protocol-published/.

[2] These organisations were: Liberty, Redress, Amnesty International, Cageprisoners, the Aire Centre, Freedom from Torture, Human Rights Watch, Justice, Reprieve, and British Irish Rights Watch

[3] Liberty, Redress, Amnesty International, Cageprisoners, Address, the Aire centre, Freedom from Torture, Human Rights Watch, Justice, Reprieve and British Irish Rights Watch letter to the chair of the inquiry. Available at: http://www.amnesty.org.uk/uploads/documents/doc_21711.pdf.

[4] Statement made by the Lord Chancellor and Secretary of State for Justice (Mr Kenneth Clarke). Hansard HC, col 752 (18 January 2012). Available at: http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm.

As the Special Rapporteur asserts, "the scope and type of information uncovered by commissions of inquiry are often different from the information that is disclosed through formal criminal investigation and prosecution. Whereas prosecutions are intended to fulfil a State's duty to achieve individual accountability, they may only bring to light a limited amount and type of information. ...While focused on accountability, commissions of inquiry also delve more deeply and broadly into the relevant facts and circumstances that led to the violations than a prosecutorial investigative authority would. In this way, a commission of inquiry can help to establish a more complete picture of how and why torture occurred by analysing not just the human, legal and political consequences of a State policy of torture but also by revealing insights into wider patterns of violations, institutional involvement and responsibility, and command responsibility, as well as provide valuable background information and leads to witnesses."

For these reasons we urge this government not to forget its commitment to hold a full inquiry in the future. Such an inquiry will be a very important step forward towards restoring this country's reputation for strict adherence to international human rights standards. It is essential that following the conclusion of the current criminal investigations, and any prosecutions that result from them, when the new inquiry is set up it does not repeat the errors of the one that never got properly underway.

The procedural safeguards required are clear: the power to compel witness testimony, access to all relevant documentation whether in the hands of the state or an independent party, formal status for the victims of the allegations to enable effective participation such as cross-examination of witnesses through counsel, disclosure to the parties and to the public of as much information as possible, and decisions as to closed proceedings and confidentiality to be made by the inquiry panel rather than by government[5].

The Commission's primary concern is that the inquiry is, by the time it reports, in a good position to make recommendations to government as to ways in which guidance, policies or procedures can be improved in future so as to make a real difference to detainees and to prevent human rights abuses in future.

[5] These points are made fully in the Special Rapporteur's report at paras 64-68.