

HOUSE OF COMMONS

LONDON SW1A 0AA

Sir Peter Gibson
The Detainee Inquiry
35 Great Smith Street
London
SW1P 3BQ

30 June 2011

A handwritten signature in cursive script, appearing to read "Andrew Tyrie".

Re: Detainee Transfers

Thank you for your letter of 26 May 2011.

I am concerned by some of the decisions that you appear to be taking. Your Inquiry is primarily concerned with rendition – indeed the areas you might need to address, not considered to be rendition, are relatively few. This is set out in the accompanying annex.

The Defence Secretary has confirmed in a recent letter to me that the MOD's "separate arrangements" do not address rendition. Information provided to me following successful Freedom of Information litigation against the MOD shows the inadequacies of previous investigations. Future MOD investigations into rendition will be no more useful – they do not have adequate records. This is set out in more detail in my letter of 30 June to the Minister for the Armed Forces, attached.

I do not agree with you that the problem of investigating detainees transferred in theatre is "*a matter for [me] to resolve with the Secretary of State for Defence and his officials*". Giving the public confidence that we have got to the bottom of UK involvement in rendition must be a primary task.

I am placing a copy of this letter and your letter to me – containing the italicized extracts - in the public domain.

A handwritten signature in cursive script, appearing to read "Andrew Tyrie".

ANDREW TYRIE

Chairman, All Party Parliamentary Group on Extraordinary Rendition

30 June 2011

Note on Overlap between Inquiry and Rendition

Allegations

In announcing the Inquiry, the PM referred to the following allegations: *“For the past few years, the reputation of our security services has been overshadowed by allegations about their involvement in the treatment of detainees held by other countries. Some of those detainees allege that they were mistreated by those countries. Other allegations have also been made about the UK's involvement in the rendition of detainees in the aftermath of 9/11.”* It can be assumed that the Inquiry is intended to address them.

Indeed, the Prime Minister made this clear in his letter to Sir Peter: *“The purpose of this Inquiry is to examine whether, and if so to what extent, the UK Government and its intelligence agencies were involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas, or were aware of improper treatment of detainees in operations in which the UK was involved. The particular focus is the immediate aftermath of the attacks of 11 September 2001 and particularly cases involving the detention of UK nationals and residents in Guantanamo Bay.”*

So far as I am aware, the allegations are:-

1. In general terms, knowledge of, approval of, participation in, and/or receipt or passing of information connected to: mistreatment by the US, including coercive or enhanced interrogations; US secret detention centres; the US High Value Detainee Programme (all of which formed a part of the rendition programme).
2. That rendition flights have used UK airspace and/or airports, including Diego Garcia.
3. That rendition ‘circuit flights’ have used UK airspace and/or airports, including Diego Garcia.
4. Guantanamo Bay. In particular UK involvement in the transfer to Guantanamo and mistreatment of UK nationals and residents at Guantanamo, or approval for Guantanamo Bay more generally, including the interviewing of other detainees at Guantanamo Bay and the passing and/or receipt of information for use or

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obtained at Guantanamo. Everyone held at Guantanamo Bay was rendered there. So all issues related to Guantanamo Bay fall under 'rendition'.

5. Involvement in the rendition and mistreatment of Binyam Mohamed. This includes allegations that he was interviewed by UK officials, that the UK passed information and questions to the US when he was being mistreated and detained incommunicado, and that the UK was otherwise involved in his detention and mistreatment. As Binyam Mohamed was detained in Pakistan, rendered to Morocco and subsequently to Guantanamo, all allegations relating to Binyam Mohamed relate to rendition.
6. Involvement in the rendition of Bisher al-Rawi and Jamil el-Banna. Telegrams from UK officials and other evidence have led to allegations that these two UK residents were detained and rendered to Afghanistan and then Guantanamo at the behest of the UK.
7. Other involvement in the detention, interview and/or transfer of intelligence in relation to individuals held in the 'war on terror'. The only other allegations I am aware of in this category, beyond UK nationals and residents, and Guantanamo, relate to Pakistan and Bangladesh, and the 2007 Horn of Africa renditions. The latter is rendition, the former are addressed below.
8. That UK forces captured detainees and handed them over to the US, from where they were subsequently transferred out of the country and/or mistreated. This covers allegations involving Joint Task Forces (Ben Griffin) and ordinary UK forces (e.g. the two confirmed 2004 renditions). Transfers outside the country, and arguably all hand-overs (as they involve a transfer of jurisdiction), are covered by rendition.

Civil and criminal liability

The Prime Minister also stated that "*We cannot start that inquiry while criminal investigations are ongoing, and it is not feasible to start it while so many civil law suits remain unresolved... That is why we are committed to mediation with those who have brought civil claims about their detention in Guantanamo.*" So it can be presumed that these criminal investigations and civil law suits also go to the heart of what the Inquiry will examine.

So far as I am aware, these cases are:-

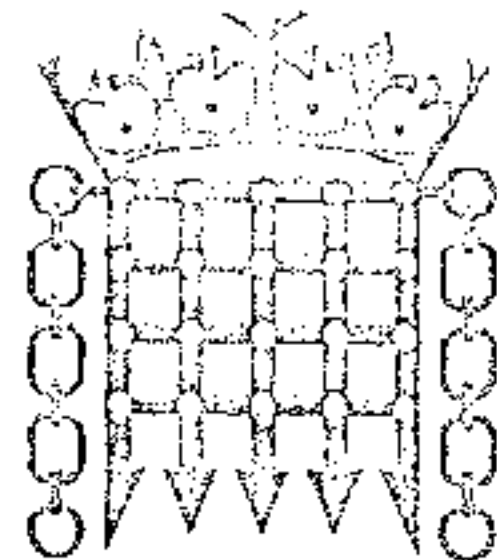
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1. Binyam Mohamed. The High Court judgment in this case led to the instigation of criminal investigations into witness B, and other more general enquiries. The general enquiries are ongoing. As discussed above, this all relates to rendition.
2. The Guantanamo detainees' civil action. UK nationals and residents detained at Guantanamo Bay settled this case with the government in November 2010. Again, this is clearly related to rendition.
3. MI6, which reportedly referred one of its own officers to the Attorney General in September 2009. I am not aware of the status of this investigation or the allegations to which it relates.

Other allegations

The only cases that I can think of, that the Inquiry might address but which do not involve rendition, are:-

1. Allegations of UK involvement in the mistreatment of detainees in Pakistan. This was documented by the *Guardian* and *Human Rights Watch* throughout 2009. UK nationals of Pakistani origins were allegedly tortured by the ISI. UK officials apparently instigated their detention in Pakistan and interviewed them while they were detained and being tortured, and the UK allegedly received information obtained through torture before a number were sent back to the UK (this transfer does not appear to be a rendition but the facts are somewhat unclear and will need to be examined by the Inquiry).
2. This was broadened to include Bangladesh by the *Guardian*. Similar allegations to those above were made.
3. Any UK involvement in the mistreatment of detainees captured *by the US* and held *by the US* in theatre, but not removed from the country or passing through UK hands at any time. Such detainees would not have been rendered, but the UK may have been involved in interviewing them and/or receiving information at times when they were being held incommunicado or otherwise mistreated by the US.



HOUSE OF COMMONS

LONDON SW1A 0AA

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Ministry of Defence
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London SW1A 2HB

30 June 2011

A handwritten signature in cursive script, appearing to read 'Andrew Tyrie'.

Re: Rendition

Thank you for your letter of June 2011.

I hope the government will reconsider its position on the examination of detainee transfers by the Gibson Inquiry.

The Defence Secretary's letter to me of 14 June 2011 makes clear that, contrary to the impression given by the Prime Minister, there are no current investigations into rendition. Information provided to me following successful Freedom of Information litigation against the MOD shows the inadequacies of previous investigations. Future MOD investigations into rendition will be no more useful – they do not have adequate records.

The MOD's "separate arrangements"

The MOD's arrangements to examine military detention operations in Iraq and Afghanistan post-2003 were set out in full in a Written Answer to me by the Defence Secretary.ⁱ I address each of them in turn here.

The Iraq Historical Allegations Team has been the subject of recent controversy.ⁱⁱ The Defence Secretary confirmed to me in his letter that "*IHAT investigations are initiated when an Iraqi claimant alleges abuse by UK forces: [Ben] Griffin's allegations...do not fall within its remit*". In terms of the confirmed 2004 renditions: "*IHAT is not investigating these allegations*".

The Army Inspectorate Review into Detainee Handling "*does not address detainee transfers or rendition*" according to the Defence Secretary's letter. The Baha Mousa Inquiry is clearly limited to the circumstances surrounding

that particular case. The conclusion must be that there are no current MOD investigations into rendition.ⁱⁱⁱ

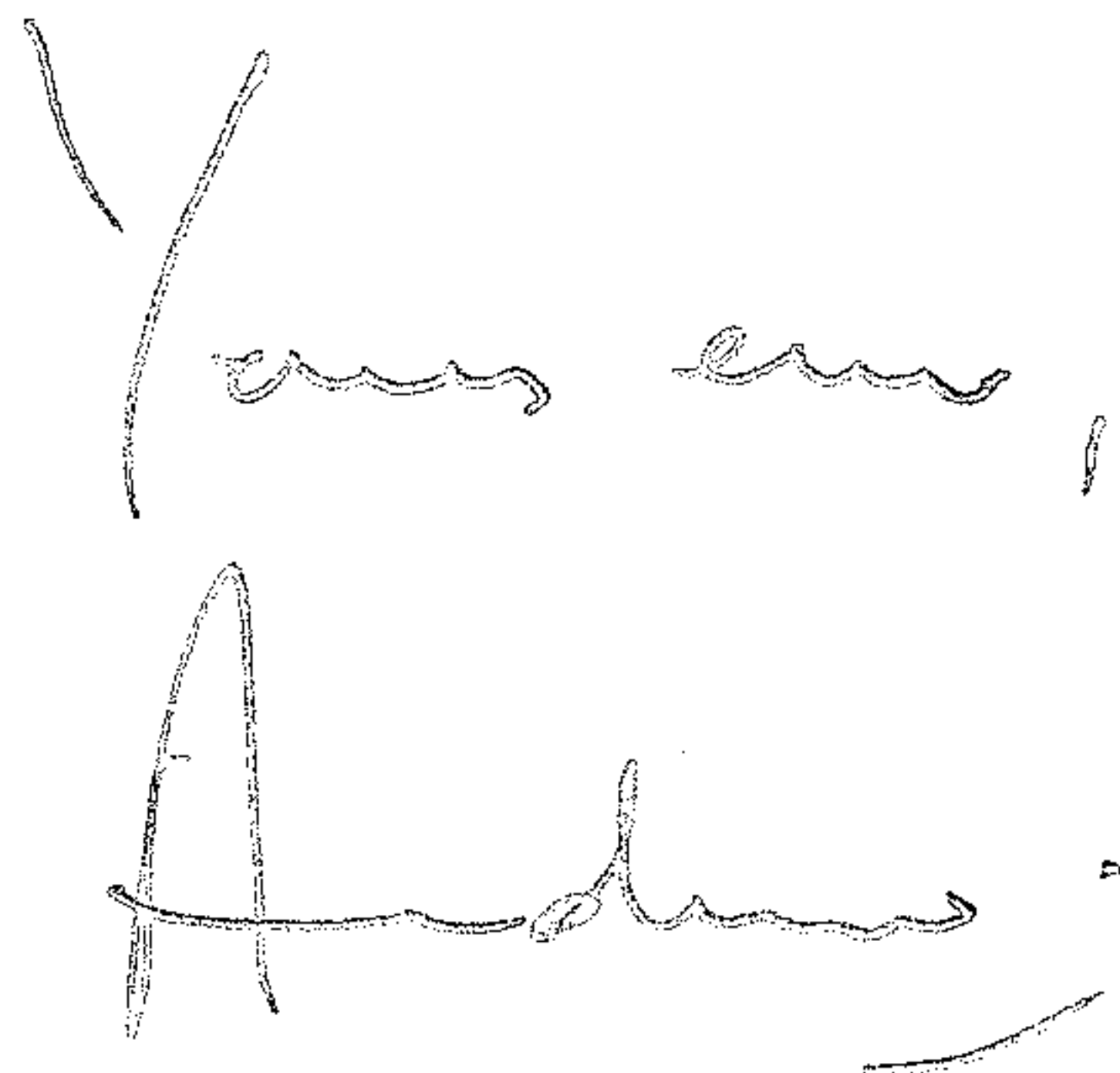
Previous investigations

Information released to me by the MOD following Freedom of Information Act litigation revealed that detainees were not tracked during the ‘warfighting’ phase, when thousands were handed over to the US.^{iv} Records were not fully examined or properly kept. So the MOD is not and was not in a position to carry out investigations of its own into rendition that can attract public confidence.

These failures in tracking and record keeping also go some way to explaining the failure of the Detention Practices Review to uncover the 2004 renditions and its inaccurate conclusions.^v Other instances may similarly have slipped through the net. You raised similar concerns in the House following the then Defence Secretary’s statement on 26 February 2009.^{vi}

In that statement the Secretary of State set out that a “*detailed investigation has already been completed by officials between last 2008 and early 2009 into the [2004 renditions]... A due diligence search conducted by US officials of the list of all those individuals captured by UK Forces and transferred to US detention facilities in Iraq, confirmed that this was the only case in which individuals were subsequently transferred outside of Iraq*” (emphasis added). The MOD’s reliance on US “due diligence searches” further suggests the inadequacies of its own investigations.

I am copying this letter to the Justice Secretary and to Sir Peter Gibson, and placing a copy in the public domain.

The image shows a handwritten signature in dark ink. The signature is written in a cursive style and appears to read 'Andrew Tyrie'. There are two distinct lines of handwriting, one above the other, both starting with a large, stylized initial letter.

ANDREW TYRIE

Chairman, All Party Parliamentary Group on Extraordinary Rendition

ⁱ They are the Iraq Historic Allegations Team (IHAT); the Baha Mousa Inquiry; the MOD's Strategic Detention Policy; and a review by the Army Inspector into the implementation of policy, training and conduct of detainee handling.

ⁱⁱ Iraq Historic Allegations team probe 'is a shambles, 14 June 2011, BBC <http://www.bbc.co.uk/news/uk-13757766>

ⁱⁱⁱ The final aspect of the MOD's "separate arrangements" is the Strategic Detention Policy. Although this does address rendition, it relates only to policy and not to the examination of past involvement. Further it sets out that the MOD and the Armed Forces should "[e]nsure that Detained Persons are not transferred from UK custody to any nation where there is a real risk at the time of transfer that the Detained Person will suffer torture, serious mistreatment or be subjected to unlawful rendition". Despite the confirmed 2004 renditions involving UK forces, the Defence Secretary has stated that "MOD does not accept that UK forces have been involved in any unlawful renditions". It is therefore far from clear that the Strategic Detention Policy will be effective in preventing such involvement in the future.

^{iv} In April 2003 alone 341 POWs were handed over to the US by the UK (Adam Ingram MP, Written Answer, 1 September 2004), and around 3000 detainees were transferred to the US detention facility at Umm Qasr between March and December 2003 (Rt Hon John Hutton MP, 26 February 2009, Statement).

^v Its inaccurate conclusion was that "*The Department will always be open to baseless speculation that we have been complicit in rendition or ill treatment. To end all speculation would require us to prove a negative. We can say, however, that there is no evidence of unlawful rendition and we have looked*".

^{vi} You said: "*The Secretary of State has come to the House today and presented the conclusions as comprehensive. Will he guarantee to the House that every record and every piece of information held by any element of the British Government armed forces, security and secret services and so on has been scrutinised exhaustively and that this is indeed the last word on the matter? ...it seems to me that Ben Griffin's allegation may be slightly different from the explanation that the right hon. Gentleman has given today.*"