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

29 September 2010

Dear Sir Peter

Re: Inquiry Terms of Reference and Protocol

Following his Statement, announcing the establishment of your Inquiry, the Prime Minister said in response to my question: *"I can confirm that the inquiry will be able to look at all those issues [all allegations of complicity in rendition, including on rendition flights, the use of Diego Garcia and the transfer of prisoners in theatre], including rendition, extraordinary rendition and the case that the hon. Gentleman mentions involving Diego Garcia"*.

It is essential that your Inquiry gets to the truth on rendition. This is needed to restore public confidence, which has been eroded by a steady stream of revelations and allegations. It must also ensure that as much information as possible is placed in the public domain.

As I understand it, neither the Terms of Reference, nor a Protocol on the treatment of information referred to by the Prime Minister, have been formulated. With that in mind, I attach proposals for both the Terms of Reference and the Protocol, summarised in this letter.

These documents will need to enable you to satisfy the requirements of the Prime Minister's Statement. The Protocol has been drafted to encompass all aspects of the work envisaged by that Statement. The proposals for the Terms of Reference cover only the rendition aspect of it.

Terms of Reference

The Terms of Reference of the Inquiry should specifically address the involvement of Ministers, officials (intelligence and civil service), the Armed Forces and/or other individuals in rendition, that is, the transfer of an individual from one jurisdiction or another outside the normal legal processes of extradition, deportation, etc. This should include:

- Ministerial and inter-governmental policy discussion, the actions of individual officers or soldiers on the ground, and everything in between;

- extraordinary rendition, that is a rendition where the detainee is at risk of mistreatment, including renditions to Guantanamo Bay, to countries known to torture their detainees and to US secret detention facilities;

- rendition 'circuit flights', that is, flights on the way to or from carrying out a rendition but without a detainee onboard;

- the use of British territory, transport facilities and airspace;

- the transfer of detainees in theatre;

- the legal, procedural and administrative framework in place to prevent UK involvement in such practices in the future, its adequacy and recommendations for the future.

Protocol on Documents and Information

In his letter to you of 6 July 2010 the Prime Minister made reference to the need to agree a Protocol on the treatment of information and the balance of public and private evidence. Previous inquiries of this type have been guided by similar protocols with the government on the disclosure of documents, and the treatment and publication of information. The key points relevant to the Protocol are:

What should be provided to the Inquiry?

- Permanent Secretaries of all relevant departments should be asked to sign a personal certificate that the Inquiry has been given all the relevant information held by their department, and that they have specifically brought to the Inquiry's attention all matters relevant to the Inquiry.

- The Inquiry should be given sufficient investigating officers and legal experts to examine documents and ensure that all relevant information has been provided.

- There must be a presumption that witnesses asked to appear before the Inquiry do so. The Prime Minister has pledged that staff of departments and agencies will be required to cooperate fully with the Inquiry. However, it is not clear what will happen if the Inquiry wants to hear evidence from former ministers or staff who no longer work for the Government. The Inquiry should make it clear that it will publish the names of all those who have been asked to cooperate and have refused.

- All witnesses should be required to give an undertaking that their evidence is complete and true.

- Foreign nationals, including officials and former officials, should not be discouraged from giving evidence. Although the Prime Minister has stated that the Inquiry cannot 'expect' to take evidence from the personnel of other countries, this should not be taken as a restriction, or bar.

What should be published?

- There should be a presumption in favour of publication of all information, written or oral, provided to the Inquiry. It should be the Inquiry which decides, subject to a final determination by the Prime Minister, what information is published. Each specific exercise of Prime Ministerial discretion to redact should be made clear in the Inquiry's final report. The Protocol should set out the circumstances in which this discretion could be exercised (e.g. national security).

<u>Timing</u>

- Two obstacles to the Inquiry's prompt start are related civil and criminal cases. I attach a legal opinion which shows that a range of measures are available to avoid undue prejudice to the ongoing civil and criminal matters. In particular, it is difficult to argue that civil cases need be a bar.

- I agree with the Prime Minister's view that the Inquiry needs to happen promptly, while recognising that in exceptional circumstances the Inquiry must be able to come back and ask for more time.

The establishment of your Inquiry is a huge step forward, for which I had been campaigning for a long time and I warmly welcome it. I will be sending a submission on the substantive rather than procedural issues, as far as they pertain to rendition, in due course.

I am placing a copy of this letter in the public domain.

Yours sincerely

ANDREW TYRIE

Chairman, All-Party Parliamentary Group on Extraordinary Rendition

Terms of Reference

To conduct an investigation into allegations of UK involvement in rendition and/or the maltreatment of detainees abroad, in the aftermath of the attacks of 11 September 2001 up to and including the date of this Inquiry. This includes, but is not limited to, the involvement of HMG, British officials, the intelligence agencies, the Armed Forces and/or other individuals or organisations. The inquiry's investigation should specifically include, but not be limited to:

(a) rendition – that is, the transfer of detainees from one country or jurisdiction to another outside the normal legal framework of extradition, deportation, etc;

(b) extraordinary rendition – that is, a rendition where the detainee faces a risk of maltreatment. This includes a risk of treatment that would constitute torture or cruel, inhuman or degrading treatment under UK law, and a risk of being held incommunicado, for example, at a secret detention facility or Guantanamo Bay;

(c) flights or any other forms of transport through UK airspace or territory, including overseas territories, and the use of UK transport facilities, to facilitate such renditions or extraordinary renditions;

(d) rendition 'circuit flights' – that is, flights on the way to or from carrying out a rendition, which can be said to form part of the circuit that rendition flights are known to adopt, but without a detainee onboard – through UK airspace or landing on UK territory, including overseas territories;

(e) any other use of British territory, including overseas territories such as Diego Garcia and the Turks and Caicos islands;

(f) the transfer of prisoners in theatre, including those captured/detained/arrested by UK Forces, UK Special Forces and UK Forces operating in a Joint Task Force;

(g) the sharing and requesting of intelligence, and the interviewing of individuals subjected to rendition, extraordinary rendition or other maltreatment overseas;

(h) the discussion of law, policy and procedure on these issues between HMG and other governments at all levels, including, but not limited to the United States, other allies, countries known to have been involved in the rendition or extraordinary rendition programme, countries in which detainees are known to have been held;

and make recommendations on such changes to law, policy and procedure that the Inquiry may deem necessary in the light of their findings.

ALL PARTY PARLIAMENTARY GROUP ON EXTRAORDINARY RENDITION

PROTOCOL BETWEEN THE GIBSON INQUIRY AND HER MAJESTY'S GOVERNMENT REGARDING DOCUMENTS AND OTHER WRITTEN AND ELECTRONIC INFORMATION

1. BACKGROUND

1.1 This Protocol addresses:

(a) the production, handing and protection of documents and other written and electronic information (the "**Information**") supplied to the Gibson Inquiry (the "**Inquiry**") by Her Majesty's Government ("**HMG**"); and

(b) the procedures for the release into the public domain of, or public reference to, such Information.

2. AIMS

2.1 This Protocol is designed to ensure that:

(a) the public know how Information will be provided to the Inquiry by HMG, and are aware of the procedures governing the release of, or reference to, this Information by the Inquiry;

(b) the Inquiry can have confidence in the completeness of the Information it receives from HMG; and

(c) HMG can have confidence that the Information it provides to the Inquiry is handled and protected appropriately and in accordance with the law.

3. SCOPE OF THE INQUIRY

3.1 In establishing the Inquiry, the Prime Minister said in his statement of 6 July 2010 to the House of Commons:

> *...while there is no evidence that any British officer was directly engaged in torture in the aftermath of 9/11 there are questions over the degree to which British officers were working with*

foreign security services who were treating detainees in ways they should not have done.

About a dozen cases have been brought in court about the actions of UK personnel including, for example, that since 9/11 they may have witnessed mistreatment such as the use of hoods and shackles.

This has led to accusations that Britain may have been complicit in the mistreatment of detainees.

This Inquiry will be able to look at all the information relevant to its work, including secret information.

... So we will have a single, authoritative examination of all these issues.

3.2 Having announced the Inquiry, the same day the Prime Minster wrote to its Chairman, Sir Peter Gibson, to define further the Inquiry's scope:

> *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 Guantánamo Bay. The Inquiry is of course free to examine any of these cases it wishes, consistent with reaching general conclusions on the above within the set timetable.*

3.3 The Prime Minister has made it clear both in his statement and in answering questions in the House of Commons that the scope of the Inquiry will be broad and encompass further, related issues, including but not limited to rendition (including rendition flights), extraordinary rendition, the use of Diego Garcia, and the transfer of prisoners in theatre.[1]

4. PROVISION OF INFORMATION

4.1 In establishing the Inquiry, the Prime Minster went on to detail to the House of Commons the access to Information the Inquiry will enjoy:

> *It will have access to all relevant government papers – including those held by the intelligence services.*

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1 Hansard, 6 July 2010, Column 182.

And it will be able to take evidence – in public – including from those who have brought accusations against the Government and their representatives, and interest groups.

Importantly, Mr Speaker, the head of the civil service and the intelligence services will ensure the Inquiry gets the full co-operation it needs from departments and agencies.

4.2 In line with the Inquiry's aims, and the Prime Minister's commitment to ensure the Inquiry has access to all Information it deems necessary, HMG commits to undertake comprehensive, thorough and rigorous searches to identify any Information it holds which the Inquiry requests. All Information identified during a search will be supplied to the Inquiry as soon as possible and without delay.

4.3 It is clear that Information which is related to or held by HMG, the armed forces (including special forces) and / or the intelligence services will be crucial to the Inquiry achieving its aims of having an *"authoritative examination of all these issues"*. In keeping with this aim, there will be a presumption that all material requested by the Inquiry will be disclosed to the public, subject to the procedure set out in section 6 below.

4.4 HMG will require Ministers, staff in the civil service, armed services and intelligence services to cooperate fully with the Inquiry's requests for oral evidence.[2] In order to facilitate the open and frank disclosure of oral evidence, the Attorney General has agreed to provide an undertaking that evidence given by witnesses may not be used against them in criminal proceedings. The Cabinet Secretary and heads of the intelligence services will set out analogous undertakings to staff in respect of disciplinary proceedings based on their evidence.

4.5 All witnesses who appear before the Inquiry will provide an undertaking that the evidence they give is complete and true.

4.6 The Inquiry may wish to call on persons to give evidence who are not, or are no longer, in Government, the civil service, the intelligence services or the armed forces. Should such persons refuse to appear before or to cooperate fully with the Inquiry, the Inquiry will publish

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2 The Prime Minister's letter to Sir Peter Gibson, 6 July 2010, p.3.

such refusal along with their names both at the time of the refusal and in its final report.

4.7 In order to facilitate the proper examination of this material, Ministers and heads of relevant civil service departments, the intelligence services and the armed forces will give an undertaking to provide not only the documentation requested, but also actively to draw the attention of the Inquiry to all specifically relevant matters. The Inquiry takes a wide view of what is "relevant" for its purposes, and Ministers and department heads will undertake to adopt a similarly wide interpretation.

4.8 The Permanent Secretaries of all relevant departments shall sign a personal certificate that all relevant Information held by their Department has been provided to the Inquiry.

4.9 There will be a presumption that all oral evidence will be disclosable subject to the procedure set out in section 6 below. However, the Inquiry may grant anonymity in cases where it is satisfied that those who seek it have genuine and reasonable fears as to the potential consequences of disclosure of their personal details, provided that the fundamental objectives referred to in sections 3 and 4.1 are not prejudiced.

4.10 The obligation nevertheless remains firmly on those who seek anonymity of any kind to justify their claim. Applicants for anonymity must supply the Inquiry with a written explanation of the basis of their application, together with any material relied upon in support of it. Of course, unless and until the application is refused, the Inquiry will not reveal any information in its possession, disclosure of which might pre-empt its ruling. The Inquiry will circulate any written applications for anonymity to all interested parties and invite their submissions before making a ruling, subject to any claim for public interest immunity.

4.11 In response to this commitment by HMG, the Inquiry commits:

(a) that it will adhere to the relevant Government security rules and procedures covering all levels of security classification and any specific procedures relating to the handling of individual documents which HMG identifies at the time the Information is passed to the Inquiry or as soon after this as practicable;

(b) that it will adhere to any commitments HMG has in place with foreign governments or international bodies in respect of the security and non-disclosure of Information originating from that foreign government or international body;

(c) that those who shall have access to any HMG Information held by the Inquiry, including the Secretariat staff, the members of the Inquiry Committee and any expert assessors the Inquiry engages, will be appropriately security cleared, in line with Government rules and procedures for security clearance for access to classified Information, including the applicability of the Official Secrets Act;

(d) that it will follow the procedures set out in sections 5 and 6 below regarding the publication of Information; and

(e) that it will file, record, store and retain both Information passed to it, and any material it generates, in a manner consistent with Cabinet Office standards on filing, record keeping, storage and retention of official material in order for a complete record of the Inquiry to be returned to the Cabinet Office, where it will be treated in accordance with the usual statutory requirements affecting public records, on the Inquiry's closure.

4.12 All interested parties who wish to question a witness, who might have information which the Inquiry has ruled should not be disclosed, should provide to the Inquiry a detailed synopsis of the matters which they wish to raise. If the Inquiry is persuaded that they do raise matters of relevance, then Counsel to the Inquiry can discuss the synopses with the relevant Government Department, which would have an opportunity to raise objections, which in turn can then be considered by the Inquiry. By this means it should be possible to reduce, though probably not eliminate, the prospect of time consuming delays while questions of relevance and non-disclosure are debated and ruled upon in the course of the oral evidence. It may also be possible after consideration of the synopses, to construct warnings to witnesses which provide them with specific and clear guidance. Finally, it may be the case that after considering the synopses, the best course to take would be to seek a further written statement from the witness in question.

5. PUBLICATION OF INFORMATION

5.1 The Inquiry may release into the public domain, or make public reference to, Information provided to it by HMG where the Inquiry and HMG have followed the procedures set out in section 6 below. These procedures are intended to avoid the release of any Information the disclosure of which would, or would be likely to:

(a) cause harm or damage to the public interest, guided by the normal and established principles under which the balance of public interest is determined on grounds of Public Interest Immunity in proceedings in England and Wales including, but not limited to:

(i) national security, defence interests or international relations;

(ii) the economic interests of the United Kingdom or of any part of the United Kingdom;

(iii) prejudice, in the case of legal advice (following any voluntary waiver of legal professional privilege ("**LPP**") rather than material facts), the position of HMG in relation to ongoing legal proceedings;

(iv) prejudice the course or outcome of any ongoing statutory or criminal inquiry into matters relating to the Information proposed for release;

(v) breach the principle of LPP; and

(vi) commercially sensitive Information;

(b) endanger the life of an individual or otherwise risk serious harm to an individual;

(c) breach the rules of law which would apply in proceedings in England and Wales under the provisions of Section 17 of the Regulation of Investigatory Powers Act 2000;

(d) breach the rules of law applicable to the disclosure of Information by the Security Service, SIS or GCHQ, the third party rule governing non-disclosure of intelligence material, or

other commitments or understandings governing the release of sensitive Information; or

(e) breach the Data Protection Act 1998.

6. AGREEING PUBLICATION OF INFORMATION

6.1 Where the Inquiry decides that it wishes to publish any Information provided to it by HMG, or reference to such Information, in its final report or at any other point in its proceedings, it shall first follow the procedure set out below for agreeing with HMG the form in which the Information is made public or referred to publicly.

6.2 The Inquiry will notify the department, agency or service within HMG which is the originator of the Information, or that was the recipient of the Information if it originated from a third party outside HMG (the "**Lead Government Department**"), what Information it wishes to include in its final report, or otherwise release into the public domain, including by making public reference to it, and in what form (including any proposed redactions or alternative means of inclusion or release of the Information).

6.3 The Lead Government Department, following consultation with other government departments with an interest in the Information and, where applicable, any third party source of that Information, will respond to the Inquiry, in writing, as soon as possible and generally within **[10]** working days (noting that consultation with third parties outside HMG may take longer) either:

(a) confirming that the Information can be published as proposed by the Inquiry; or,

(b) advising the Inquiry why it considers that any or all of the Information proposed for publication would breach the provisions of paragraph 5.1 above.

6.4 In the event of paragraph 6.3(b) above, the Lead Government Department will also advise the Inquiry, within the same time frame or as soon as practicable thereafter, whether:

(a) the application of redactions to the Information, or an alternative means of inclusion or release of the Information, would allow publication without causing any of the breaches cited; or,

(b) if withholding the Information in its entirety was the only way to prevent any of the harms of breaches cited.

6.5 Where, having received advice from the Lead Government Department as set out in paragraphs 6.3(b) and 6.4 above, the Inquiry is content to make any proposed redactions in full, or an alternative means of inclusion or release is agreed with the Lead Government Department, it shall write to the Lead Government Department confirming this. The Inquiry will then be free to publish the Information in the agreed form.

6.6 Where, on the other hand, the Inquiry believes that any proposed redactions are not desirable or are too broad in their scope, or that the proposal to withhold the information in its entirety is unnecessary, it may refer the matter in the first instance, to the Cabinet Secretary, who will assist in seeking an agreement between the Lead Government Department and the Inquiry on the form in which the Information could be published. Should such a situation occur, the Inquiry will go into close session until the question is resolved.

6.7 If agreement cannot be reached, the Inquiry may refer the matter to the Prime Minister. The Prime Minister will assist in seeking an agreement between the Lead Government Department and the Inquiry on the form in which the Information may be published. The Inquiry Chairman will decide whether and in what form the Information may be published, subject to a final determination by the Prime Minister.

6.8 Where a decision is made that the Information cannot be published, the Inquiry shall not release that Information into the public domain. The Inquiry shall indicate that Information it would have wished to publish has been withheld at each point in its Report where the Information would have been published. It will set out the differences in opinion between the Inquiry and the Prime Minister in as much detail as is consistent with the non-publication of the relevant Information.

Sir Peter Gibson
Ripley Building
26 Whitehall
London
SW1A 2WH
11 October 2010

Andrew Tyrie MP
House of Commons
London
SW1A 0AA

Dear Mr Tyrie,

Thank you for your letter dated 29th September.

I am most grateful to you for the detailed and carefully drafted terms of reference and protocol which you included with your letter. As you know, the Prime Minister specified in his letter to me what he called the parameters of the Inquiry to provide a basis for the final terms of reference to be agreed between the Government and the Inquiry panel. Similarly he indicated that a protocol on the treatment of information and the balance of public and private evidence should be agreed with the Government. We have received suggestions from a number of interested parties on those matters. In considering what our response should be when we seek to agree those terms and that protocol with the Government, we will give careful attention to all the suggestions made to us including your views. Both the terms and the protocol once agreed will be published before the Inquiry commences.

I thank you also for the legal opinion which you included. That was written before the Prime Minister announced the Inquiry. During his statement to the House and in his letter to me, the Prime Minister made clear that the Inquiry will not commence until the criminal investigations have ended and sufficient progress has been made in settling the civil litigation. He indicated that he hoped that the Inquiry would start before the end of 2010. Unless there is some significant slippage in the satisfaction of the conditions laid down by the Prime Minister, I hope you will understand why we will not be asking him to alter those requirements.

I am sorry that there appears to have been some delay in the receipt by us of your letter. I understand that you now have the contact details of the Secretariat. If you have any further points which you wish to draw to our attention, please feel free to contact us.

Yours sincerely,

Sir Peter Gibson

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

Andrew Tyrie MP
House of Commons
London
SW1A 0AA

29 November 2010

Dear Mr Tyrie

The Detainee Inquiry

You will be aware from the press reports and the Justice Secretary's statement in the House of Commons on 16 November that a mediated settlement of the civil damages claims has been reached. This meets one of the two conditions which the Prime Minister in his letter to me of 6 July 2010 and in his statement to the House of Commons the same day had stipulated should be satisfied before the Inquiry could start. However, the other condition, the ending of the criminal investigations, has only partly been fulfilled, there still being matters under investigation, and it remains uncertain when the Inquiry can start. Given that we are now in the latter part of November, there is a real possibility that it will not start until after the end of the year.

Some NGOs have written to us asking to speak to us before we agree with the Government the final terms of reference and Protocol on evidence. We are intending to have a meeting with such groups. Although in your letter of 29 September you did not ask to meet with us, we think it appropriate to give you the opportunity to attend that proposed meeting, if you would like to do so. The Inquiry Secretariat will shortly be arranging a suitable date for such a meeting, probably to be held early in the New Year. If you indicated a wish to attend, we would be pleased to see you. The Secretariat would then get in touch with you.

Yours sincerely

Sir Peter Gibson

ANDREW TYRIE MP

HOUSE OF COMMONS
LONDON SW1A 0AA

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

25 January 2011

Dear Sir Peter,

Re: Rendition

I'm very grateful to you and the team for coming to see me last week and for providing such a full briefing. You suggested that I write to you on a number of issues and I've also attached some supplementary material. Please don't hesitate to come back to me on any of this.

"Unlawful rendition"

My advice would be not to use this term. The lawfulness or otherwise of various types of rendition is often in dispute. Using the word "unlawful" might invite some to conclude that information they hold on a rendition, considered by them to be lawful, need not be disclosed to the inquiry. Differences of interpretation are widespread, even within government. A leaked Number 10 memo published in 2006 stated that "*rendition could be legal in certain limited circumstances*".[i] The previous government stated that "*we would consider all the circumstances of a request for rendition through the UK or our overseas Territories and we would only grant permission if we were satisfied that it would accord with our domestic law and international obligations*".[ii]

If you do decide to use the phrase, it will need to be carefully defined. For an inquiry to carry credibility on rendition it will need to cover the issues that I set out in my draft terms of reference.[iii] You explained that this was your intention, with the exception of the transfer of detainees in theatre. This would be problematic in other ways.

UK Forces' Involvement in Rendition and Transfer of Detainees in Theatre

It is important to be clear what the Prime Minister has asked you to do in this area. Specifically, he has asked you to look at whether "*the UK... [was]*

involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas..." This must include detainee transfers.[iv] The Prime Minister has said that "*military detention operations in Iraq and Afghanistan post-2003 are being addressed by separate arrangements made by the [MOD]*". This must mean that you are therefore responsible for detainee handovers up to the end of 2003.

Unfortunately, these 'separate arrangements', made by the MOD to examine the situation post-2003, appear inadequate.[v] The MOD's performance has been patchy, to say the least. It has included lost data, misleading statements by Ministers that have had to be corrected, apparent obfuscation to a number of reasonable requests for information and slowness of response to such requests. Given the above, and since you'll have to engage fully with the MOD for the pre-2004 work, it makes sense for your inquiry to consider the post-2003 military detention operations. Although more work for you it will enable clarity to be brought to an area which may otherwise be a source of claim and counterclaim for years.

As for the substance, there may well be a good deal to look at, both pre and post-2003. I attach an annex on the background which includes retractions by the Secretary of State for Defence of earlier assurances that UK Forces had not been involved in rendition. On 26 February 2009, in a statement to the House, he confirmed that in 2004 two detainees captured by UK Forces in Iraq and transferred to US forces had been subsequently rendered to Bagram in Afghanistan.[vi]

The Intelligence and Security Committee (ISC)

My strong advice would be to get a good investigator and I would very much support the allocation of extra resources to your inquiry for this. An investigator is not only essential to your work; his or her appointment would also buttress the confidence that others will be able to place in your findings.

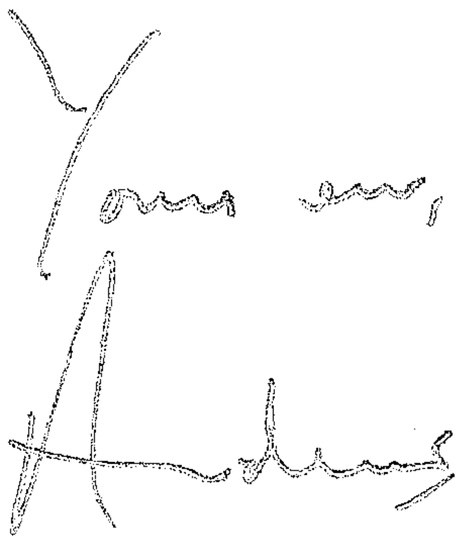
The ISC did not have an investigator at the time of its examination of rendition and this may have contributed to its failure to get to the truth.[vii] Its failure has been documented by a string of subsequent Ministerial Statements in Parliament, confirming UK involvement in rendition, and by the judiciary in the case of *Binyam Mohamed*.[viii] This has tarnished the Committee's credibility. The ISC problem is addressed more fully in the annex.

Provision of Information to the Inquiry

The least that's required is a personal certificate from the Permanent Secretaries of all relevant departments confirming that the Inquiry has been given all the relevant information held by their department, and that they have specifically brought to the Inquiry's attention all relevant matters. The Prime Minister's general commitment in his letter to you, that the inquiry "*will have access to all Government papers it requires*", is insufficient. In practice, he will not be in a position to prevent information from being overlooked or undiscovered during departmental searches. Permanent Secretaries probably will.

I discussed this issue again with Lord Butler after our meeting. His earlier email to me on this is attached. It sets out some of the problems he encountered and the benefits of this approach. In particular, it will focus the minds of those directly responsible for providing documents to you. It will provide a personal incentive for them to ensure that all relevant documentation has been found and supplied. The inability of the Security Services to provide full and accurate information to the ISC, and the Court of Appeal's findings in the *Binyam Mohamed* case, highlight other potential obstacles to the provision of complete information to your inquiry.[ix] The findings of the Court of Appeal were particularly trenchant.

The correspondence strings are provided in chronological order. They provide a good deal of information not only on specific cases but also the scale of the task with which anybody except an inquiry with powers such as yours is faced.



ANDREW TYRIE

Chairman, All Party Parliamentary Group on Extraordinary Rendition

Annex: Supplementary Information

The 2004 Renditions

The involvement of UK Forces in rendition is now well established. I was initially told that there was none. The Defence Secretary's confirmation of the rendition of two detainees is particularly significant for inquiry because the facts have been extremely difficult to establish.

In summary, the facts are as follows. Following confirmation that rendition flights had used Diego Garcia, Ben Griffin, a former SAS soldier, made allegations that the UK had been capturing people and handing them over to the US in the knowledge that they would be rendered or mistreated. I made a number of FOIA requests which are currently the subject of litigation. Later, Australian Hansard and documents released under FOIA demonstrated that Australia had a policy of capturing people without detaining them, similar to that alleged by Ben Griffin. This was apparently because Australia had no detention facilities of its own in Iraq.

The government's responses did not give me confidence in its procedures and record keeping. As a result the APPG passed this information to the Defence and Foreign Affairs Select Committees and asked them to investigate. Following questioning on the same issues by the Defence Committee in October 2008, the Defence Secretary committed to make a statement to the House on this issue.

In was this statement, on 26 February 2009, that confirmed the involvement of UK Forces in rendition: *"Two individuals were captured by UK forces in Iraq. They were transferred to US detention, in accordance with normal practice, and then moved subsequently to a US detention facility in Afghanistan. This information was brought to my attention on 1 December 2008... Following consultations with US authorities, we confirmed that they transferred these two individuals from Iraq to Afghanistan in 2004. They remain in US custody there... officials were aware of this transfer in 2004. It has also been shown that brief references to this case were included in lengthy papers that went to the then Foreign Secretary and Home Secretary in April 2006... In retrospect, it is clear to me that the transfer to Afghanistan of these two individuals should have been questioned at the time. We have discussed the issues surrounding this case with the US Government. They have reassured us about their treatment..."*

Further information has emerged since the statement. In a subsequent Parliamentary Answer the MOD confirmed to me that both individuals had been held at Bagram. UK officials were aware of the intention to transfer the two detainees in March 2004 and knew in mid-June 2004 that the detainees had been transferred to Afghanistan.[x] The UK appears to be relying exclusively on US assurances regarding the treatment of the two rendered detainees. Such assurances have been called in question in the past.[xi] It is not clear that procedures have been put in place to ensure that such a transfer will be objected to and properly reported to Ministers in the future, and that proper records will be kept in future. I have recently raised these and other outstanding issues with the Defence Secretary and attach the relevant correspondence.

Separate MoD Arrangements

In a Parliamentary Answer to me the Defence Secretary outlined the "separate arrangements" that have been made as regards military detention operations in Iraq and Afghanistan after 2003. I attach it here. In summary, it is not clear that the *Army Inspectorate Review into Detainee Handling* investigated rendition. Only limited information about the remit and processes of the *Iraq Historic Allegations Team (IHAT)* appears to be available. It is not clear, for example, that it will be able to investigate the circumstances surrounding the 2004 renditions or allegations such as those made by Ben Griffin, nor that any of its work will be carried out publicly. The *Baha Mousa Inquiry* is clearly limited to that specific case. It is also not clear whether the *MOD's Strategic Detention Policy* is adequate, nor whether it would prevent involvement in similar renditions today. I set this out in more detail in my letter to the Defence Secretary of 19 January 2011.

The ISC's Failure

In its 2007 Report into Rendition the ISC cited the UK Agencies' *"lack of knowledge, at the time, of any possible consequences of U.S. custody of detainees."*[xii] Its Report also states: *"At the time [of Binyam Mohamed's alleged rendition from Pakistan to Morocco], the Agencies believed that al-Habashi would be transferred from Pakistan to Bagram Air Base and had no knowledge that he was the subject of further transfers. In this case, the Security Service *** had no knowledge of where he was being detained."*[xiii]