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SECRETARY OF STATE

MSU 4/5/2K

19 March 2008

Your letter of 6 February asked for a list of all individuals who have been detained by the UK forces in Iraq and Afghanistan and for a copy of all documents relating to the undertaking between UK, Iraqi, Afghan and US authorities.

I am unable to comply fully with your request. On your first point, I have carefully considered the legitimate interests that underpin your request against the interests of those people whose names you have requested and, in the absence of any exemption from the non-disclosure provisions of the Data Protection Act 1998, regret that I am not able to provide you with this information.

On your second point, we have written agreements with the Governments of Iraq and Afghanistan. I regret that I am unable to provide you with a copy of our agreement with the Iraqi Government, as they have asked us not to put this document into the public domain. Our agreement with the Government of Afghanistan has previously been published, and I attach a copy as requested. I cover the position in relation to the US below.

Andrew Tyrie Esq MP
House of Commons

I can, however, give you an account of a programme of work relating to detention matters that I have set in hand which is relevant to your questions.

You will be aware of the allegations made by Mr Ben Griffin, formerly a member of the UK Armed Forces, that detainees captured by UK forces have been transferred to US forces under whose detention they have been tortured and/or unlawfully removed from Iraq. These allegations are serious and potentially damaging, to the reputation of the Armed Forces and to our relationships with the Iraq and US Governments. We have asked Mr Griffin as a matter of urgency to provide evidence to substantiate his allegations or to withdraw them.

Because I take such allegations very seriously, I have set in hand a review of detention practices in Iraq and Afghanistan, including an audit of the records relating to individuals captured by UK forces and subsequently detained by US forces. This review has been led by a senior British General and I have recently received his report.

Before describing his key findings, I should set the context. In order to support the Government of Iraq effectively and combat the insurgency, UK forces work closely alongside their US and Iraqi counterparts. This includes sharing capabilities, conducting joint operations and where necessary includes transferring persons initially captured by UK forces to US detention facilities within Iraq. I am quite clear that there remains a requirement for coalition forces to continue to detain individuals who threaten stability and security in Iraq.

On the basis of the review work that has been completed so far, I have confidence in the processes currently in place to ensure that persons captured by UK Forces and then detained by US forces are in accordance with UK policy and legal obligations. I have uncovered no evidence that anyone captured by the UK forces and detained by the US forces has been either mistreated or unlawfully renditioned. Work continues to review UK and US

records and those US records to which we have access and I will let you know when this further work is complete.

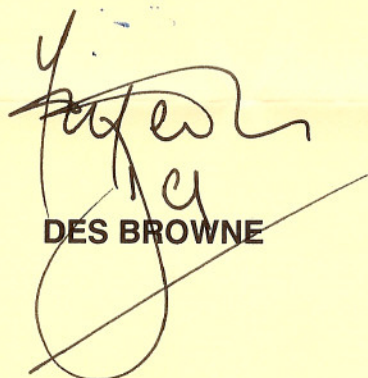
This understanding has been documented in various ways at different times, including in an MOU put in place in 2003 and the draft of a replacement MOU we are working to conclude; and in statements in UN Security Council Resolutions. It is backed up by assurances offered by senior US Commanders; by continuing access to US detention facilities; and by access to records.

In relation to our understanding with the US Authorities on the broader issue of rendition and torture, I am confident that the US is clear about the UK position as reiterated by David Miliband in his statement of 21 February.

I hope this letter serves to explain the basis of our approach to, and position on, detention matters. I should be glad to offer you a briefing by the relevant officials if you would find that helpful.

I have written in similar terms to Sir John Stanley, who also takes a close interest in these matters.

I shall place a copy of this letter in the library of the House.



DES BROWNE

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND
AND
THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF
AFGHANISTAN
CONCERNING
TRANSFER BY THE UNITED KINGDOM ARMED FORCES TO AFGHAN
AUTHORITIES OF PERSONS DETAINED IN AFGHANISTAN.
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INTRODUCTION

This Memorandum of Understanding records the arrangement reached between the Government of the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") and the Government of the Islamic Republic of Afghanistan ("Afghanistan"), hereinafter referred to jointly as the Participants, in the event of a transfer by the United Kingdom Armed Forces to Afghan authorities of persons detained in Afghanistan.

HAVING REGARD to the need to respect basic standards of international human rights law such as the right to life, and the prohibition against torture and cruel, inhumane and degrading treatment:

HAVING ACCEPTED the MOU for UK Forces deployed in Afghanistan dated 30 September 2005:

HAVE REACHED the following understandings:

PARAGRAPH 1 - DEFINITIONS

1.1 For the purposes of this Memorandum the following definitions apply:

- a. "United Kingdom Armed Forces" (UK AF) means the Armed Forces of the United Kingdom of Great Britain and Northern Ireland when deployed to the territory of the Islamic Republic of Afghanistan. The term includes all military personnel together with their ships, aircraft, vehicles, stores, equipment, communications, ammunitions, weapons and provisions together with the civilian components of such forces, as well as all air, sea and surface movement resources, together with their supporting services, required to deploy the forces mentioned above;
- b. "Area of Operations" means the sovereign territory of the Islamic Republic of Afghanistan including its airspace;
- c. "Detention" refers to the right of UK forces operating under ISAF to arrest and detain persons where necessary for force protection, self-defence, and accomplishment of mission so far as is authorised by the relevant UNSCRs.

PARA 2 - PURPOSE AND SCOPE

2.1 The purpose of this Memorandum is to:

- Establish the responsibilities, principles and procedures in the event of the transfer by the UK AF to Afghan authorities of persons detained in Afghanistan.
- Ensure that Participants will observe the basic principles of international human rights law such as the right to life and the prohibition on torture and cruel, inhumane and degrading treatment pertaining to the treatment and transfer of persons by the UK AF to Afghan authorities and their treatment.

PARA 3 - RESPONSIBILITIES OF PARTICIPANTS

3.1 The UK AF will only arrest and detain personnel where permitted under ISAF Rules of Engagement. All detainees will be treated by UK AF in accordance with applicable provisions of international human rights law. Detainees will be transferred to the authorities of Afghanistan at the earliest opportunity where suitable facilities exist. Where such facilities are not in existence, the detainee will either be released or transferred to an ISAF approved holding facility.

3.2 The Afghan authorities will accept the transfer of persons arrested and detained by the UK AF for investigation and possible criminal proceedings. The Afghan authorities will be responsible for treating such individuals in accordance with Afghanistan's international human rights obligations including prohibiting torture and cruel, inhumane and degrading treatment, protection against torture and using only such force as is reasonable to guard against escape. The Afghan authorities will ensure that any detainee transferred to them by the UK AF will not be transferred to the authority of another state, including detention in another country, without the prior written agreement of the UK.

PARA 4 - ACCESS TO DETAINEES

4.1 Representatives of the Afghan Independent Human Rights Commission, and UK personnel including representatives of the British Embassy, members of the UK AF and others as accepted between the Participants, will have full access to any persons transferred by the UK AF to Afghan authorities whilst such persons are in custody. The International

Committee of the Red Cross and Red Crescent (ICRC) and relevant human rights institutions with the UN system will be allowed to visit such persons.

4.2 UK personnel, including members of the UK AF will have full access to question any persons they transfer to the Afghan authorities whilst such persons are in custody.

PARA 5 - RECORD KEEPING AND NOTIFICATION OF CHANGE

5.1 The UK AF will notify the ICRC and the Afghan Independent Human Rights Commission, normally within 24 hours, and if not, as soon as possible after of when a person has been transferred to Afghan authorities. The Afghan authorities will be responsible for keeping an accurate account of all persons transferred to them by the UK AF, including, but not limited to; a record of any seized property, the detainee's physical condition following initial detention, record of transfer to an alternative holding facility and record of any prosecution status. Records should be available upon request.

5.2 The United Kingdom will be notified prior to the initiation of criminal proceedings involving persons transferred by the UK AF and prior to the release of a detainee. The United Kingdom will also be notified of any material change of circumstance regarding the detainee including any instance of alleged improper treatment.

PARA 6 - USE OF THE DEATH PENALTY

6.1 No person transferred by the UK AF to Afghan authorities will be subject to the execution of the death penalty.

PARA 7 - DURATION AND TERMINATION

7.1 This Memorandum will have effect upon the date of the later signature by the relevant authorities and will remain in effect unless terminated by mutual consent or by either Participant giving not less than six months' notice in writing to the other Participant.

7.2 In the event that this Memorandum is terminated, the relevant provisions will continue to be applied in respect of any matters not resolved at the time of termination.

7.3 Any dispute concerning the interpretation or application of this Memorandum of Understanding will be resolved exclusively by negotiations between the Participants.

The foregoing record represents the understandings reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Islamic Republic of Afghanistan upon the matters referred to therein.

Signed in Kabul on 23 April 2005, in duplicate in English and Dari languages. For the purposes of interpretation the English version is authoritative¹.

For the Secretary of State for Defence for the
Government of the United Kingdom of Great
Britain and Northern Ireland

For the Minister of Defence for the
Government of the Islamic Republic of
Afghanistan

¹ The Memorandum was actually signed on 30 September 2006, see HC Deb, 8 January 2006, col 77W