



Secretary  
Working Group on Arbitrary Detention  
22 July 2022

**Re: Response to the observations of the UK in the matter of Mr. Zayn Al Abidin Muhammad Husayn (Abu Zubaydah)**

We write in response to your letter dated 1 July 2022 attaching the UK government's response of 21 June to our petition to the Working Group on Arbitrary Detention (the petition) regarding the arbitrary detention of our client, Mr. Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah).

We note the UK Government's clear statement regarding its commitment to the prohibitions on torture and arbitrary detention. We are hopeful that the stated seriousness with which the Government takes allegations of complicity and assurances that 'lessons have been learned' will be converted into engaging constructively to provide the redress due to our client. Regrettably, this has not been the case to date.

The government's observations are unresponsive to the facts presented, and requests for relief made, in the petition. They provide no indication of having taken any measures to recognize or address its responsibility for violations of our client's rights, to investigate thoroughly and independently, to make public the truth in relation to UK complicity in rendition more broadly, to provide reparation or to take steps to bring to an end the ongoing violations to which it has contributed.

The UK government makes various questionable observations, worthy of brief response.

First, pursuant to the assurance of having 'learned lessons', the government refer to "*three separate investigations and reports published by the UK Intelligence and Security Committee of Parliament in 2005, 2007 and 2018; Sir Peter Gibson's detainee inquiry report, published in 2013; related police investigations; and thorough internal reviews by the security and intelligence agencies...*" It has not however addressed the reality behind the extremely limited and problematic processes that have taken place, which fall far short of its international obligations.

- The government makes reference to Peter Gibson's inquiry but makes no reference to the fact that it was marred by very serious limitations from the outset and suspended, such that its report was never completed. The problems included among others, excessive secrecy, Government control of what would be disclosed to the public, the absence of input from those harmed and inability to challenge secret evidence. Ultimately its was suspended on the basis that criminal investigations were underway (yet as noted below those also ran

aground without public scrutiny).<sup>1</sup> Although at the time this inquiry was suspended the government committed to an independent judicial inquiry at a later date, this has not transpired. An All-Party Parliamentary Group (APPG) has criticised the “government decision to resile from its previous commitments to a judge-led inquiry” as wholly unacceptable.”<sup>2</sup>

- Responsibility for continuing the incomplete Gibson investigation was turned over to the Intelligence and Service Committee (ISC), to which the government also refers, and which has also been relied upon to justify the decision not to have an judicial inquiry.<sup>3</sup> The ISC had not initially been tasked with conducting the inquiry because of concerns regarding lack of impartiality and credibility.<sup>4</sup> Despite its limitations, the 2018 report of the ISC Parliamentary Committee gave rise to important information, including on the UK’s contribution to our client’s arbitrary detention and torture (see petition). These should have provided a trigger to thorough independent and transparent investigations, charges when appropriate, and reparation, but did not. The ISC itself found its access to key witnesses blocked and concluded that ‘we would be unable to conduct an authoritative Inquiry and produce a credible Report ...’. Notably it found that its report “is not, and must not be taken to be, a definitive account. The job is not done.”<sup>5</sup> The government has however failed to provide essential follow up. It has not recognised or addressed the findings of this parliamentary process in respect of our client’s situation. It is surprising that the government cites the report as evidence of it having taken allegations seriously, when that report itself notes that:

*“[w]hile there have been small improvements made since 2007, we remain unconvinced that the Government recognizes the seriousness of rendition and the potential for the UK to be complicit in actions which may lead to torture, CIDT or other forms of mistreatment.”<sup>6</sup>*

- While the state makes reference to “related police investigations” (and these contributed to the closure of the Gibson enquiry), it provides no details or information as to the nature of any such investigations. The observations do not indicate that investigation are ongoing.

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<sup>1</sup> Ian Cobain, *Why did the Gibson inquiry into rendition disappear?*, The Guardian, 6 July 2015,

<https://www.theguardian.com/commentisfree/2015/jul/06/gibson-inquiry-rendition-david-cameron-uk-torture>

<sup>2</sup> APPG Press Release, <https://www.extraordinaryrendition.org/component/jdownloads/send/35-2019/393-2019-18-7-oral-statement-press-release.html>.

<sup>3</sup> UK Intelligence and Security Committee of Parliament, ‘Detainee Mistreatment and Rendition: 2001-2010’ (28 June 2018), Doc. HC 1113 (‘UK Parliamentary Report’), Annex A, §NN.

<sup>4</sup> This decision has been widely criticized by, *inter alia*, the UN, the House of Commons’s All-Party Parliamentary Group on Extraordinary Rendition (APPG), and a panoply of human rights organizations including Amnesty International, Reprieve, and Redress. See eg.. UN News, *UN rights experts criticize proposed UK investigation into torture allegations*, 24 Dec. 2013, <https://news.un.org/en/story/2013/12/458612-un-rights-experts-criticize-proposed-uk-investigation-torture-allegations>; All-Party Parliamentary Group on Extraordinary Rendition, *Press Release*, 18 July 2019, <https://www.extraordinaryrendition.org/component/jdownloads/send/35-2019/393-2019-18-7-oral-statement-press-release.html> (‘APPG Press Release’); justice.Org, *joint NGO letter on ISC investigation*, 25 March 2014, <https://files.justice.org.uk/wp-content/uploads/2015/01/06171931/Joint-letter-on-ISC-investigation-April-2014.pdf>. Cobain, *ibid*.

<sup>5</sup> UK Parliamentary Report, cited in All-Party Parliamentary Group on Extraordinary Rendition, *Press Release*, 18 July 2019, *ibid*.

<sup>6</sup> UK Parliamentary Report, Annex A, §NN.

The observations do not dispute that no individuals have ever been charged, or suggest that the UK even recognizes the importance of addressing the impunity at the heart of this case.<sup>7</sup>

As such, the investigations, proceedings, and reports mentioned in the response letter, are at best partial responses and at worse indications of the state's failure to address its role in the arbitrary detention of Abu Zubaydah and others.

The UK government also observes that “[r]egarding the Working Group’s request to clarify legal provisions, this is not relevant to the UK as Mr. Zubaydah has never been on UK soil while in detention, nor defined by UK authorities overseas.” We respectfully disagree.

- There are prima facie indications that Abu Zubaydah may in fact have been detained, albeit briefly, on UK territory and with UK complicity. As stated in our submission, both the European Parliament and the European Court of Human Rights (ECtHR) have found evidence indicating the Mr. Abu Zubaydah was onboard a CIA operated aircraft that stopped in London to refuel during the rendition of Abu Zubaydah from Thailand to Poland from 3-6 December 2002.<sup>8</sup> Per a 2010 report of the UN Human Rights Council (UNHRC), complicity in arbitrary detention arises ‘when it knew, or ought to have known, that the person would disappear in a secret detention facility, or otherwise be detained outside the legally regulated detention system’<sup>9</sup> and includes the “authorizing the landing of airplanes for refueling.”<sup>10</sup>
- In any event the UK is obliged to ensure an adequate legal framework governs the conduct of its agents that contributes to arbitrary detention and torture abroad. The observations are out of step with evolving law on the extra-territorial scope of human rights obligations which, while varying slightly between courts and bodies, makes increasingly clear that IHRL obligations are applicable where – as in this case - state agents exercise their authority in a manner that directly and foreseeably impacts rights abroad.<sup>11</sup> Moreover, where states are responsible for rendering ‘aid and assistance’ to other states, there is plainly no territorial link or control of persons required.<sup>12</sup> In the present case, the UK’s own parliamentary report found the UK to have supplied questions for our client despite knowledge they would involve the use of torture which represents, at a minimum, aiding

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<sup>7</sup> APPG Press Release, <https://www.extraordinaryrendition.org/component/jdownloads/send/35-2019/393-2019-18-7-oral-statement-press-release.html>.

<sup>8</sup> European Parliament, ‘Report on the alleged use of European countries by the CIA for transportation and illegal detention of prisoners’ (30 January 2007), Doc. PE 382.246v02-00 (‘2007 European Parliament Report’), para 78.; *Zubaydah v. Poland*, (App. 7511/13) Judgement of 24 July 2014, paras 93-94. Reports record 107 landings of rendition aircraft in the UK (see petition)

<sup>9</sup> HRC, ‘Joint Study on Global Practices in relation to Secret Detention’ (19 February 2010) UN Doc. A/HRC/13/42 (‘HRC Joint Study’) page 3-4.

<sup>10</sup> *Id.* at page 5. Article 16, Articles on State Responsibility on ‘aiding and assisting’.

<sup>11</sup> For a recent expression of the rule see UNHRC General Comment 36 right to life, which elaborates on UNHRC GC 31, and makes clear that where states have a direct and foreseeable impact on rights abroad, they can be responsible under the ICCPR. The ECtHR has a narrower approach but it too has found jurisdiction to arise where (as in this case) states made decisions at home which impacted rights of individuals abroad (see for examples SSRN). The UNWGAD like other human rights courts and bodies consistently made clear, human rights obligations arise beyond a state’s borders where states exercise a degree of power, authority or control, including in the context of the ERP and Guantánamo Bay, though to date that has concerned responsibility of the US as detaining authority (WGAD al Baluchi opinion, para 37, citing UN Joint Report on the Situation of detainees at Guantánamo’, paras 10–11 noting states ‘must ensure the rights under the Covenant to anyone within its power or effective control’.)

<sup>12</sup> Art 16 ILC Articles, in the Petition.

and assisting arbitrary detention and torture abroad (which arises irrespective of territorial location or the detaining power).

- Indeed ‘the Principles’ adopted by the government in the aftermath of the CIA programme, to which it refers, apply beyond the states territory.<sup>13</sup> The listed activities covered by them include: ‘interviewing a person in the detention of a foreign authority, [] soliciting intelligence from a detainee via a foreign authority[,...] passing intelligence to a foreign authority concerning an individual detained by that authority.’<sup>14</sup> There can be little doubt in light of the 2018 UK Intelligence and Security Committee of Parliament Report 2019 report that the treatment of our client would have fallen foul of the Principles; indeed it would appear that it was this reality that led to their adoption.
- The adoption of the Principles represent a promising and significant step in the development of human rights compliant approach to inter-state cooperation. But they do not detract from the obligation on states to ensure that conduct of UK government personnel, at home or abroad, that violates rights or aids and assists serious violations by other states, is governed by law that protects human rights, and that the legal and policy framework are enforced in practice.

Finally, the government observations refer to civil proceedings that were brought by Abu Zubaydah against the UK government following the ISC report revelations concerning questions sent from the UK to be posed to our client during torture. While the government is not required to comment on pending proceedings, nor should it hide behind such proceedings as a purported basis for refusing to engage meaningfully with these international proceedings or to account for its failure to meet its international obligations.

As the Government notes, it has attended hearings and engaged in litigation through our client’s UK solicitors. It has argued that the applicant must argue his tort claim under ‘the law of the Six Countries’ where he may have been arbitrarily detained at the time,<sup>15</sup> despite the fact that this would be unduly burdensome for a victim of a global and secret detention programme. The UK lost the argument on appeal, but the government has sought leave to appeal to the Supreme Court. In this sense the UK Government has regrettably chosen to delay the legal process rather than engaging with its responsibility and obligations of reparation.

In conclusion, the UK government observations ignore the fact that the UK has still not meaningfully addressed its role in the rendition programme, and specifically in our client’s ongoing arbitrary detention and torture. It has not acknowledged or apologised. It does not even purport to have met its obligations regarding a thorough investigation, public truth and accountability. It does not deny that there have been no efforts at reparation, or assistance with relocation or rehabilitation, of our client whose existence and suffering they prefer to ignore.

We therefore reiterate the requests for relief set out in the petition. We emphasise the following:

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<sup>13</sup> Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees, July, 2019, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/818306/20190718\\_The\\_Principles\\_relating\\_to\\_the\\_detention\\_and\\_interviewing\\_of\\_detainees\\_overseas.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818306/20190718_The_Principles_relating_to_the_detention_and_interviewing_of_detainees_overseas.pdf), 13.21r

<sup>14</sup> *Id.* at §6(a-b; A-B).

<sup>15</sup> *Zubaydah v. The Foreign and Commonwealth Office and al.*, Judgment in Preliminary Issue [2021] EWHC 331 (QB), para 89.

1. The UK is a well known strategic ally of the United States. Interventions by the UK to ensure that the flagrant denial of justice of our clients rights at Guantanamo is brought to an end could be particularly valuable. As a state complicit in Abu Zubaydah's arbitrary detention, it should take all possible measures to ensure the United States immediately ends his arbitrary detention in a humane and rights-respectful manner. It should offer to receive the victim and provide rehabilitation or to assist with the relocation and rehabilitation, working with the US and third party countries to facilitate reestablishing a life after 20 years of arbitrary detention.
2. In furtherance of the UK's international obligations, and the commitments it expressed in its response to the UNWGAD as to 'lessons learned', it is long overdue for the UK to acknowledge and apologise for its role in the violations of the rights of Abu Zubaydah and others.
3. It should conduct a full and transparent investigation into the UK's role in Abu Zubaydah's torture, rendition, and arbitrary detention identified in the SCI report.
4. Following on from Scottish Justice Secretary Humza Yousaf's request for access to the full unreacted US Senate Committee on Intelligence Torture Report, the UK government should pursue public access to the full report. It should make clear that information related to the UK's role in torture or arbitrary detention should not be subject to US state secrecy doctrine intended to protect relations between states<sup>16</sup>;
5. It should clarify which lessons it has learned and measures taken to avoid repetition, beyond the adoption of the Principles recognized above. clarify measures to be taken (in addition to the adoption of the Principles) to ensure that violations will not occur in the future, that Principles would be met in practice, and that future violations would be met with accountability instead of obfuscation and impunity as at present.

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<sup>16</sup> Abu Zubaydah v US noted in Response to Polish Govt 2272022