



Seeking Reparation for Torture Survivors

SMOKE AND MIRRORS REMAIN

INTELLIGENCE & SECURITY COMMITTEE REPORT DOES NOT END CONCERNS OVER
TORTURE, RENDITIONS AND THE RULE OF LAW -
POSITIVE OBLIGATION TO RESPOND TO 'EXTRAORDINARY RENDITIONS' REMAINS

30 July 2007

On 17 July 2007 REDRESS submitted a Memorandum on Rendition to the UK Government calling on it, *inter alia*, to take specific positive steps to ensure that it abides by its national and international law obligations to prevent torture and cruel or inhuman or degrading treatment.¹ Following the public release of the Intelligence and Security Committee's Report on Rendition on 26 July 2007² and the Government's response³ we make the following observations:

The Intelligence and Security Committee (ISC) approach

1. The Intelligence and Security Committee (ISC) Report ('the Report') defines⁴ the terms "Rendition", "Rendition to Justice", "Military Rendition", "Rendition to Detention", and "Extraordinary Rendition" without acknowledging that none of these are legal terms under either UK domestic law or international law; they are only descriptive of various actions or purposes. The Report doesn't mention that that every form of "Rendition" happens outside of legal methods of transfer such as extradition, deportation, removal or exclusion.⁵

2. The Report acknowledges that all the variations of "Rendition" involve extra-judicial transfer, without indicating that this means unlawful transfer. At the same time, the Report explicitly acknowledges that under UK domestic law rendition to the UK for trial has been found to constitute a blatant and extremely serious failure to adhere to the rule of law.⁶

3. It is not just "Extraordinary Rendition" which is of grave concern, but *all* unlawful transfers whether they be for detention, trial, military tribunal hearings, or specifically to seek information under the real risk of torture. Every rendition is a breach of the rule of law, and almost every rendition puts a person at some risk.⁷

4. The ISC says it is not the purpose of its inquiry to reach conclusions on the legality of the actions of any United States agencies under US law, but it does try to contextualise US action within that country's interpretations of international law.⁸ However, this is done in a cursory fashion and cannot be regarded as a comprehensive analysis. Furthermore, the tacking-on of the view of an official in the UK's Foreign Secretary's Private Office that in

¹ <http://www.redress.org/documents/MemoExtraordinaryRendition17July07.pdf>

² http://www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf

³ http://www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_rendition.pdf

⁴ Paragraph 7.

⁵ Footnote 2 to the Report, page 6.

⁶ Paragraphs 10-11.

⁷ Even so-called "Rendition to Justice" in the US. Why else did the UK Government refuse to grant permission in a pre-9/11 case where the US wanted to render two persons through the UK to the US? See Report at paragraph 45.

⁸ Paragraphs 19-21.

certain circumstances rendition could be legal sits oddly within the context of the US interpretation of international law, and in any event the rest of the quotation doesn't support the initial proposition.⁹

5. In our submission, therefore, a principled approach to the problem of "Rendition" necessitates an explicit, constant and unambiguous awareness that the very reason it has aroused so much concern is that is indeed unlawful under UK and international law.

Combating terrorism

6. The Report refers to the significance of UN Security Council Resolution 1373 (2001) in the fight to combat terrorism.¹⁰ This places an obligation on States under international law to implement specific and other measures to combat terrorism. However, the Security Council followed Resolution 1373 and subsequent resolutions on countering terrorism with a declaration attached to Resolution 1456 (2003) on 20 January 2003. This draws specific attention to human rights obligations within the fight against terrorism, reminding States that they "must ensure that any measures taken to combat terrorism comply with their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law."

7. In the context of examining specific cases of UK involvement in what the ISC calls US "Renditions to Detention", it records "*a lack of regard, on the part of the US, for UK concerns.*"¹¹ This raises serious implications for how the UK can be involved in **any** aspect of the US renditions programme without a real risk of compromising UK obligations.¹²

Records, disclosure and transparency

8. It is heartening to note the ISC's statement that requests for renditions through UK airspace are a matter of fundamental liberties and that proper searchable records should be kept.¹³ The Government's response is that the FCO now has the clear lead on renditions policy with established points of contact with other Government departments.¹⁴ However, that does not constitute an assurance.

9. It has taken a host of Parliamentary Questions, press reports, hearings by a variety of UK Parliamentary Committees, inquiries by the Council of Europe and European Parliament, litigation, and reports from NGOs, to throw light on the UK's involvement in renditions, including the issue of UK airspace and airports. The Government's failure to be open on matters relating to renditions is in itself of concern, more so in the admitted context of the difficulty which the security services are having in working with the US around this specific issue.¹⁵

10. National security confidentiality does not absolve the Government from dealing robustly and openly with fundamental threats to liberty arising from acts of commission or omission wherever and whenever UK officials are involved. Any other approach is itself a threat to democracy.

The special relationship

11. The ISC is to be commended for its forthright expression of the implications of the US rendition programme: "*The rendition programme has revealed aspects of the usually*

⁹ Paragraph 22.

¹⁰ Paragraph 24.

¹¹ V, page 43.

¹² The ISC sees it as giving rise to even wider issues: "This has serious implications for the working of the relationship between the US and UK intelligence and security agencies" - *ibid.*

¹³ B, page 18.

¹⁴ Page 1 of Government Response

¹⁵ See below, 11-12.

close UK/US relationship that are surprising and concerning. It has highlighted that the UK and US work under very different legal guidelines and ethical approaches.”¹⁶ This creates an inherent difficulty, whenever rendition is involved, for co-operation between the UK and US in a way which ensures that the UK is indeed acting within its legal obligations.

12. The ISC also finds that “*although the US may take note of UK protests and concerns, this does not appear materially to affect its strategy on rendition.*”¹⁷ This re-iterates the inherent difficulty just mentioned, especially when traditional reliance on specific caveats and assurances can no longer always be relied upon.¹⁸

13. The Government’s answer is to refer to the US position as expressed by Ms Rice on 5 December 2005, as well as subsequent US legislation.¹⁹ However, it makes no sense to rely on Ms Rice’s general assurances in reply to the real question, which is how to work with the US on anything touching renditions when specific assurances have been breached, without breaking UK national law and international law. Furthermore, given the differences in legal and ethical approaches between the two countries, reliance on US domestic law is also no answer at all.

14. Neither the ISC nor the Government has faced up to this basic issue. Both rely on better and more comprehensive guidelines for UK officials, together with Ministerial decision-making, but everything is premised on the US acting in good faith, knowing that it has not always done so in the past, and knowing that its approach to the law (including international law) is seriously at variance with the UK’s.

15. While there is no easy solution, given that it is in the UK’s national interest to work with the US in combating terrorism, part of the UK Government’s policy should include positively confronting the US within a united European perspective of the problems arising from the US rendition programme. The Council of Europe and the European Parliament have proposed comprehensive measures to tighten safeguards even within the US’ determination to continue,²⁰ but they have gone further and are also proposing ways to change US policy itself. Thus the European Parliament in its February 2007 resolution included the following:²¹

“[The Parliament notes] the reports by reputable media operators that extraordinary rendition, illegal detention, and systematic torture involving many people is continuing, and considering the declaration by the current US Government that the use of extraordinary rendition and secret places of detention will be continued; [the Parliament] therefore calls for an EU-US counter-terrorism summit to seek an end to such inhumane and illegal practices, and to insist that cooperation with regard to counter-terrorism is consistent with international human rights and anti-torture treaty obligations;”

16. Such an approach is vital not only to deal with the inherent difficulty of both working with the US and not breaking UK national law and international law, but also because, as the ISC heard, the very programme itself is counter-productive in the struggle against terrorism.²²

¹⁶ Paragraph 156.

¹⁷ Y, page 49.

¹⁸ See paragraph 124 for a clear breach of a caveat.

¹⁹ Government Response, paragraphs 6-7

²⁰ See REDRESS’ recent Memorandum at pages 6-7.

²¹ Paragraph 231 of EU resolution: [file:///P:/My%20Documents/EURO%20PARL/P6_TA-PROV\(2007\)0032.htm](file:///P:/My%20Documents/EURO%20PARL/P6_TA-PROV(2007)0032.htm). The resolution was adopted on 14 February 2007.

²² Paragraph 156.

“Ghost flights”

17. The Report does not refer specifically to the oft-stated current UK Government policy that it expects the US to seek permission to render detainees via UK territory and airspace, and that permission will only be granted if the UK is satisfied the rendition accords with UK law and the UK’s international obligations. However, it can be taken as a given. The issue then arises, in the light of what the Report reveals about the US not always ‘playing by the same rules’, whether this is an acceptable policy.

18. While the ISC did look partially into allegations of CIA rendition flights through the UK as part of its background investigations, it did so noting that this didn’t fall within the ISC’s remit of being linked to the UK intelligence and security agencies. However, when the Joint Committee on Human Rights sought to hear evidence from the Director General of the Security Services last year on the same issue she declined to appear on the grounds that she had already given evidence to the ISC.²³ It is thus unclear what role Parliament is meant to play in holding the intelligence and security agencies to account on such basic human rights issues.

RECOMMENDATIONS

A. Need for a public inquiry: ambit and scope

19. REDRESS has already called for a public inquiry in its 17 July Memorandum. The placing in the public domain of the ISC Report does not obviate the need for a public inquiry – to the contrary, it serves to confirm the need for such an inquiry.

20. As REDRESS has already noted in its 17th July Memorandum, a proper independent UK inquiry and investigation into “extraordinary rendition” called for by the COE and European Parliament and indeed many others, is merited. Such an inquiry would need to examine, amongst other things, the following areas:

- All documentation related to the named suspect CIA flights which landed in the UK or flew over it, including flight plans and anything relating to the purposes of the flights and who was on them;
- Collation of such information and documentation with other information linking persons to those flights who are known to have been rendered and/or tortured;
- The sharing of information by the UK with the US which led to renditions and any involvement of UK security officers with US security officers in renditions;
- The role of UK security officers in interviews of persons rendered or held in secret detention, including supply of questions and intelligence information to foreign interrogators, interviews by UK interrogators;
- Whether UK security officers acted unlawfully in any involvement in renditions;
- What oversight existed for any UK involvement in the US programme;
- Any legal advice sought about possible UK complicity in rendition;
- Whether any individuals are entitled to compensation from the UK as victims of rendition;
- The extent to which UK anti-terrorist legislation, and both formal and informal arrangements between the UK and US or other foreign intelligence services, need to be reformed from a human rights perspective to avoid repetition of abuses;

²³ See REDRESS Memorandum page 5.

- The need for effective parliamentary monitoring and legal supervision over UK secret and intelligence services and the formal and informal networks of which they are part;
- Whether specific national laws to regulate and monitor the activities of third countries' secret services in the UK are adequate to prevent the abuse of human rights;
- Proper implementation of Article 3 of the Chicago Convention which excludes State aircraft from the scope of the Convention.

B. Set in place clear mechanisms to prevent the UK being part of any such programme in the future

- These mechanisms should be based on and make full use of all existing powers under the Chicago Convention, other international law provisions, and domestic law, and should be made public;
- The mechanisms should be supplemented, where necessary, by the creation of further safeguards as proposed by the APPG within the framework of the COE recommendations and the body of work done by it, and the Government should publicly endorse the COE approach;

C. Breaches of the law should be exposed and those responsible made accountable

- Victims should be compensated without delay;

D. Take a principled stance on the US programme of 'Extraordinary Renditions'

- Following the ISC's findings that the US rendition programme is placing the UK security and intelligence services in serious difficulties, the UK Government should take a much more public and principled stance against the US renditions programme; for example, similar to what it has done in respect of Guantanamo Bay (calling for its closure).
- The UK Government should assure the UK public that it is doing everything possible diplomatically at a bi-lateral level to persuade the US to abandon its renditions programme;
- Actively work with European allies in concrete ways, as already set-out in numerous high-level European reports, to bring the US back to a position where it is broadly working within the same legal and ethical framework as European countries, including of course the UK. For example, as was recommended by the European Parliament in its February 2007 resolution, hold an EU-US counter-terrorism summit to seek an end to such inhumane and illegal practices;
- Take all possible steps to facilitate the return of individuals rendered to Guantanamo Bay including in particular non-citizens with close ties to this country.