



Joint Committee on Human Rights
Submissions of Human Rights Watch and the Redress Trust
30 November 2005

Human Rights Watch (HRW) and REDRESS would like to clarify their response to the Joint Committee on Human Rights (JCHR) on 21 November 2005 to the hypothetical question posed about whether the police should investigate a tip about a bomb on the London Underground where that tip was known to have been obtained under torture in a third country.

At the outset, our organisations wish to state that they consider the likelihood of such a situation to be extremely remote. It is highly unlikely that a third country would volunteer such information, since it would be an admission of a breach of its international obligations, and could trigger potential prosecution in other countries including in the UK under the Criminal Justice Act. Moreover, the head of MI5 gave evidence to the Judicial Committee of the House of Lords that where a foreign Government declines to provide the source of intelligence information, the UK will generally not ask further questions about it.

If such a tip were to come into the hands of the police, our organisations recognise that they would be under a duty to verify it, since to not do so would potentially risk the lives of passengers on the London Underground. But the answer cannot end there. Torture is illegal conduct of the most serious kind. The UK Government would also have a responsibility to make genuine inquiries with the State that provided the information about the circumstances in which it was obtained.

Relevant questions include: how many people were tortured in order to obtain the information, what were their names, ages, and genders, were children or family members of suspects tortured, what methods of torture were used, for how long were the victims subject to torture, and what injuries did they suffer as a result.

The UK should also examine whether the conduct amounts to a crime of torture subject to the jurisdiction of the international criminal court or universal jurisdiction under the torture convention.

Similarly, the UK would be under an obligation to investigate how the information came into the hands of the UK police and/or other UK officials. The Arar Inquiry in Canada—established to investigate Canadian complicity in the rendition of a Canadian national to torture in Syria in 2002—has made clear that when torture is committed abroad it does not occur in a vacuum. Evidence before the Inquiry showed that the Canadian police shared intelligence with the Syrian Government knowing that there was a real risk that Maher Arar was being ill treated.

If the British Government obtains information knowing it has been extracted by torture, it is bound under international law to conduct an independent investigation to establish whether UK agents were complicit, and to take appropriate measures to prevent similar acts in the future.

If the UK Government were to accept the material without raising questions about the illegal conduct by the sending Government, investigating potential violations of international criminal law, and signaling its profound opposition to the use of torture under any circumstances, then it would be effectively condoning the torture that took place, and arguably be encouraging further torture, in breach of its erga omnes obligations to prevent torture.

If the UK government repeatedly fails to inquire about the circumstances in which intelligence is obtained—especially in countries where torture is widespread, and repeatedly fails to make clear that it is fundamentally opposed to the use of torture as a means of obtaining such information, then it is complicit in that torture, and in clear breach of its international obligations not to commit torture and to prevent it from occurring elsewhere.

All of which is respectfully submitted,

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