



Seeking Reparation for Torture Survivors

TIME TO END THE SMOKE AND MIRRORS

Positive Obligations to Respond to “*Extraordinary Renditions*”

Memorandum to the UK Government, July 2007¹

Introduction.....	1
UK position on ‘extraordinary rendition’ – see no evil, ask no evil, hear no evil?	2
Council of Europe recommendations fall on deaf ears?	2
Need for accountability and scrutiny.....	4
Need for a public inquiry: ambit and scope.....	6
Summary of Recommendations	7

Introduction

1. The Redress Trust (REDRESS) is an international non-governmental organisation with a mandate assist survivors of torture to access adequate and effective remedies and reparation for their suffering. Since its establishment in December 1992, it has accumulated a wide expertise on the rights of victims of torture both within the United Kingdom and internationally. [see www.redress.org]

2. This Memorandum is produced in furtherance of the measures proposed by the All Party Parliamentary Group on Extraordinary Rendition (APPG) to the Secretary of State for Transport in May 2007, which REDRESS supports.

¹ For more information on this Report and on REDRESS’ work, please see the organisation’s website: www.redress.org. Contacts to REDRESS on this report should be made through Kevin Laue at REDRESS: Kevin@redress.org; 020 7793 1777.

UK position on 'extraordinary rendition' - see no evil, ask no evil, hear no evil?

*'We would expect the US authorities to seek permission to render detainees via UK territory and airspace, including overseas territories, and we will grant permission only if we are satisfied that the rendition would accord with UK law and our international obligations.'*²

3. REDRESS' view is that the Government is obligated to do much more than wait for the US to seek permission to render detainees via UK territory/airspace.

4. The Government's position is entirely reliant on the US acting in good faith and always in fact asking for permission. Given the acknowledgment of the US programme³ and the circumstantial evidence that UK territory has already been used, clear and specific criteria and mechanisms need to be identified and implemented as soon as possible.

5. The Government's policy is also inconsistent with the UK's obligations under national and international law to prevent torture and cruel, inhuman and degrading treatment and punishment; avoid any collusion, aiding or abetting of acts of torture and other ill-treatment; conduct a full and impartial investigation into any and all credible allegations of same, capable of leading to the punishment of those responsible and the compensation of those wronged.⁴

Council of Europe recommendations fall on deaf ears?

6. There have been consistent calls from various European bodies and officials at the highest level for the problem of "extraordinary renditions" and secret detention centres to be dealt with on a European-wide basis:

- In March 2006 COE Secretary General Terry Davis called for better safeguards against abuse following his February 2006 report under Article 52 of the European Convention on Human Rights (ECHR). Existing procedures to monitor who and what is transiting through European airports and airspace do not provide adequate safeguards against abuse; no COE member state appeared to have established any kind of procedure in order to assess whether civil aircraft are used for purposes which would be incompatible with internationally recognised human rights standards; the existing rules on state immunity create considerable obstacles for effective law enforcement in relation to the activities of foreign agents.⁵
- In March 2006 legal experts from the COE's Venice Commission said that under the ECHR and other international laws, member states should refuse to allow transit of

² See "Note From Andrew Tyrie to The Intelligence And Security Committee" dated 30 October 2006 at page 5, available here: http://www.extraordinaryrendition.org/index.php?option=com_docman&task=doc_details&gid=40&Itemid=27. This position was reiterated on 26th June 2007 by Minister Kim Howells: "we have made it clear to the US authorities that we expect them to seek permission to render detainees via UK territory and airspace, and that we will grant permission only if satisfied that the rendition would accord with UK law and our international obligations" [Hansard Column 47WH http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070626/halltext/70626h0004.htm#column_25WH].

³ <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>.

⁴ See REDRESS' submission to the JCHR on The alleged use of UK airports in extraordinary renditions and the implications of this for UK compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 22 December 2005, available at: <http://www.redress.org/casework/JCHRrenditions22Dec05.pdf>.

⁵ Secretary General's report under Article 52 ECHR on the *Question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*, 28 February 2006 [https://wcd.coe.int/ViewDoc.jsp?Ref=PR110\(2006\)&Sector=secDC&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR110(2006)&Sector=secDC&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE).

prisoners where there is a risk of torture. If this is suspected, they should search civil planes or refuse overflight to state planes.⁶

- In June 2006 Dick Marty said in his first report that there was a global "spider's web" of illegal US detentions and transfers, and alleged collusion in this system by 14 COE member states, seven of whom (including the UK) may have violated the rights of named individuals.⁷ Following the report PACE called for the dismantling of the system of secret prisons, oversight of foreign intelligence services operating in Europe and a common strategy for fighting terrorism which does not undermine human rights.⁸
- In June 2006 COE Secretary-General Terry Davis made concrete proposals to European governments for laws to control the activities of foreign intelligence services in Europe, reviewing state immunity, and making better use of existing controls on over-flights, including requiring landing and search of civil flights engaged in state functions.⁹
- In February 2007 a European Parliament report came to similar conclusions to Mr Marty, saying EU countries "turned a blind eye" to extraordinary renditions across their territory and airspace.¹⁰
- In June 2007 Mr Marty submitted a second report to PACE's Legal Affairs Committee, focusing in particular on secret detentions. He found new evidence that US "high-value detainees" were held in secret CIA prisons in Poland and Romania during the period 2002-5 and alleged a series of partly secret decisions among NATO allies in October 2001 which provided the basic framework for illegal CIA activities in Europe.¹¹

7. Of particular importance are the COE Secretary General's proposals of June 2006 in relation to aircraft, given the inherent weakness in the status quo. In summary he called for the following practical approach, drawing on the work of the other reports set out above as well:¹²

- i. Member States should introduce safeguards and controls to be used to the maximum extent possible, and should require effective guarantees of respect for human rights in relation to overflight and transit through their airspace.
- ii. The use of civil aircraft for rendition purposes constitutes a violation of the Convention on International and Civil Aviation of 7 December 1944 (Chicago Convention), and should be denounced.
- iii. Under international law State aircraft enjoy immunity but no overflight rights and therefore consent for overflight could and should be made conditional upon guarantees and control procedures concerning respect for human rights. If a State aircraft has been presented as if it were a civil aircraft the territorial State may

⁶ Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion no.363/2005 *On the International Obligations of Council of Europe Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners*, 17 March 2006. [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)009-e.asp](http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp)

⁷ http://assembly.coe.int/Main.asp?Link=/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.htm

⁸ <http://assembly.coe.int/Main.asp?link=/Documents/Records/2006/E/0606271000E.htm#5>

⁹ Secretary General Document SG(2006)01 http://www.coe.int/t/dc/press/source/20060907_DocSG_en.doc

¹⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0032+0+DOC+XML+V0//EN&language=EN>

¹¹ http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=2974

¹² Paragraph 12 of Secretary General Document SG(2006)01 http://www.coe.int/t/dc/press/source/20060907_DocSG_en.doc

require landing and such an aircraft for which State functions have not been declared will not be entitled to immunity and can be searched.

8. As has been recommended already by the COE, the UK Government should exercise its right to search civilian aircraft when and as necessary. A policy on searches should be adopted and its implementation subject to appropriate public scrutiny. Suspect civil aircraft should be searched, and those identified as having been used in the past should be closely monitored. Although this provision has always existed, the growing evidence of such aircraft having been involved in unlawful practices makes it imperative that full use is made of the rights contained in the Convention. Together with the further mechanisms proposed by the APPG, the COE and the European Parliament, a comprehensive system can and should be enforced in respect of civil aircraft which will go a long way to making it much less likely that such aircraft can be used for such purposes in future.

9. In respect of State aircraft, the Government should be inquiring as to the purpose of suspect flights. They should also condition permission to use airspace with a waiver of immunity, as has been recommended by the COE.

Need for accountability and scrutiny

10. To date, the UK Government has failed to fully investigate the allegations that “extraordinary renditions” have taken place. The Government has indicated that “we carried out extensive searches of official records and found no evidence that detainees were rendered through the UK or overseas territories since 1997 if there were substantial grounds to believe that there was a real risk of torture”. Yet, all the Government has revealed to date is basic information on five US requests for permission to render persons through the UK.

11. In 2005 Liberty formally asked a range of UK authorities to investigate whether UK airports had been used to transport persons to known torture destinations. Eighteen months later a senior police officer concluded no “extraordinary rendition” flights operated by the CIA have come through the UK. However, as stated by six leading human rights organisations:¹³

“[The police] appear mainly to have concentrated upon reviewing the publicly available literature and media reports rather than conducting an in-depth independent investigation, of the type called for by the Council of Europe and the European Parliament. During the time taken for this review the practice of 'extraordinary rendition', by which people are abducted, detained outside the rule of law, and flown to third countries where they have faced torture, has become recognised as fact. President Bush has admitted the existence of secret prisons operated by the CIA around the world and the Council of Europe has identified bilateral agreements by European governments with US authorities which gave the CIA a blank cheque to land, refuel and fly aircraft over their territories without any checks.

It is clear that the [police] review will not do, especially if the UK is to live up to its commitments on the complete prohibition on torture and cruel, inhuman or degrading treatment or punishment. Until a full and independent investigation takes place into all aspects of the extraordinary rendition programme, there will always be a suspicion of UK government collusion in this practice.”

¹³ London Times 14 June 2007, by AMNESTY INTERNATIONAL (UK), HUMAN RIGHTS WATCH, JUSTICE, LIBERTY, REDRESS, MEDICAL FOUNDATION FOR THE CARE OF VICTIMS OF TORTURE.

12. The role of the UK in “extraordinary renditions” is also a matter of concern for the UK Parliament. In addition to the numerous submissions made by the APPG, the House of Lords and House of Commons Joint Committee on Human Rights (JCHR) has endeavoured to examine the issue. In 2006 the JCHR sought to have a meeting with the Director General of the Security Service to look at, amongst other things, any information which the Service may have about extraordinary renditions using UK airports.”¹⁴ However, she declined to meet the JCHR, prompting it to note the following:

*“[W]e regret that we did not have the opportunity to ask her a number of important questions of concern to us in connection with this inquiry. We have no desire to obtain access to State secrets, but we do consider it to be a matter of some importance that the head of the security services be prepared to answer questions from the parliamentary committee with responsibility for human rights.”*¹⁵

13. The basis of her refusal was that “extraordinary rendition” (as well as the other human rights issues which the JCHR had wished to raise with her) were already being investigated by Parliament’s Intelligence and Security Committee (ISC). Yet, the ISC does not make known its findings unless the Executive arm of Government decides to place before Parliament its reports, and then it can do so in a redacted form. To date no conclusions from the ISC on “renditions” or “extraordinary renditions” has reached the public domain. This absence of proper public accountability for what was first exposed in the media several years ago is unacceptable in a parliamentary democracy.

14. The key COE recommendations in the Secretary-General’s report regarding both national *and* third country security services in these regards are germane and also ought to be a priority for the UK government:¹⁶

- National security services should function and be based on clear and appropriate legislation providing for adequate safeguards against human rights abuse, with proper parliamentary oversight and, where human rights are affected, judicial control.
- A proper balance must be found between accountability and the necessary confidentiality of classified information.
- Foreign security services operating on the territory of Council of Europe member States need to be covered by a comprehensive legislative framework providing accountability and supervision

¹⁴ Counter Terrorism Policy and Human Rights, Twenty-fourth report of Session 2005-2006, at page 97 <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/240/240.pdf>

¹⁵ Paragraph 161

¹⁶ At paragraphs 5-8.

Need for a public inquiry: ambit and scope

15. 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;
- 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.

Summary of Recommendations

16. The UK Government should take the following urgent steps:

- i. Set up an independent inquiry into any UK involvement in “extraordinary renditions”
- ii. Set in place clear mechanisms to prevent the UK being part of any such programme in the future
- iii. 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
- iv. 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
- v. The Intelligence Services Committee investigation into “extraordinary renditions” should be made public. All if any redactions should be strictly limited to areas in which legitimate national security concerns exist, and the same should be subject to independent review.
- vi. Breaches of the law should be exposed and those responsible made accountable
- vii. Victims should be compensated without delay