

REDRESS

Seeking Reparation for Torture Survivors

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FOREIGN AFFAIRS COMMITTEE: HUMAN RIGHTS INQUIRY

Submissions of The Redress Trust (REDRESS): 24 April 2009

SUMMARY OF SUBMISSIONS

- The FCO's Human Rights Annual Report 2008 does not deal satisfactorily with the UK's anti-torture obligations in the context of its counter-terrorism policies
- The consistent allegations of UK complicity in 'extraordinary renditions' over the past several years, including specific aspects concerning Diego Garcia, as well as the role of UK agents in interrogations and other related matters, remain unanswered despite numerous detailed inquiries by a number of parliamentary committees; an independent public inquiry is now needed
- Most if not all of these serious concerns, including direct and indirect UK complicity in torture, straddle the mandates of several parliamentary committees, and along with what can broadly be described as a stalemate between Parliament and the Executive, are added reasons for an independent public inquiry
- Specific concerns relating to transfers of prisoners in Iraq and Afghanistan give rise to related concerns that the UK is breaching its anti-torture obligations, which too need to be fully and impartially investigated

INTRODUCTION

1) This submission is put forward in response to the Foreign Affairs Committee's (FAC) call for evidence in respect of its new inquiry into human rights.

2) The Redress Trust (REDRESS) is an international non-governmental organisation with a mandate to 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.¹

3) The submission focuses on counter-terrorism and human rights (specifically the prohibition against torture) as dealt with in the FCO's Human Rights Annual Report 2008 (hereafter the Annual Report), as well as the responsibilities of the FCO for securing the human rights of British citizens and others overseas.

4) In December 2008 REDRESS published a Report *The United Kingdom, Torture and Terrorism: Where the Problems Lie*² (hereafter the REDRESS Report) and a hardcopy is furnished herewith. The REDRESS Report deals in detail with three main

¹ See generally www.redress.org

² <http://www.redress.org/documents/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf>

areas: the UK and 'extraordinary renditions'; victims (UK nationals and former non-national UK residents) of the 'war on terror'; deportations and diplomatic assurances. References are made to aspects of the REDRESS Report in this submission.

5) In the Annual Report's section on Counter-terrorism and human rights³ the FCO speaks of "tensions and challenges" stating that although its "human rights and counter-terrorism agendas [are] generally mutually reinforcing" one area where there are "challenges and difficult decisions" is "the use of intelligence possibly derived through torture [by other countries which] presents a very real dilemma."⁴

6) The "challenges" are not restricted to the *use* of such information. What is also of grave concern is the active or passive *collusion* of the UK with those countries in obtaining such information to begin with. The active aspect involves the role played by UK agents in collaborating with overseas agencies who use torture both generally and in specific cases, while the passive element involves the failure of the UK to protect UK nationals and others with links to the UK who have faced the risk of torture.

7) Regarding 'extraordinary rendition', including Diego Garcia (DG), the Annual Report repeats what it and the Government has stated over the years: it has not and will not "approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture"⁵, and that other than the two admitted incidents of renditions through Diego Garcia the UK accepts US assurances that no other use of DG, including within its territorial waters, has been made to detain and/or interrogate detainees.

8) The REDRESS Report reiterates the arguments for a proper inquiry into all relevant aspects of rendition flights which could be linked to the UK⁶; this and additional concerns regarding Diego Garcia are also dealt with below.⁷

9) Many of the issues have been the subject of inquiries by the Joint Committee on Human Rights (JCHR) and the Intelligence and Security Committee (ISC), and of course the FAC. The Defence Committee too has been involved. While this is understandable given the committees' different mandates it is submitted that the division into human rights, security matters and foreign affairs has to date failed to bring the necessary pressure to bare on the Executive to comprehensively answer the legitimate public concerns which have been repeatedly raised. This is a further reason for a more all-embracing mechanism in the form of an independent inquiry.

THE CASE OF BINYAM MOHAMED (BM)

10) The background to the detention and extraordinary rendition of BM is well known and a summary up to December 2008 is set out in the REDRESS Report.⁸ On 26 March 2009 the Attorney General announced that the allegations concerning possible criminal wrongdoing in relation to BM have now been handed to the Metropolitan Police to commence an investigation.⁹ This is to be welcomed, but the development should not now be used by the Secretary of State for Foreign and

³ Pgs 14-17. See also pg 9 under Counter- terrorism

⁴ Pg 15

⁵ Pgs 16-17

⁶ Pgs 13-24

⁷ Paras 23-27

⁸ Pgs 46-48

⁹ Hansard 26 Mar 2009 : Column WS51 Written Statement by the Attorney-General (Baroness Scotland of Asthal) available at <http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90326-wms0001.htm>

Commonwealth Affairs (hereafter Mr Miliband) to avoid questions arising from the long saga involving BM.

11) Thus in addition to whether or not UK agents are deserving of prosecution, aspects which arose squarely out of the recent UK litigation were: the US' attitude to the UK if the court was to order the public release of certain apparently torture-related documents; as well as the UK Government's response to that attitude. In the debate in the House of Commons on 5 February 2009¹⁰ Mr Miliband's clear position throughout was that it was the US who had sought to halt any such public disclosure,¹¹ and at no stage did he hint that it was the UK who had suggested to the US that it should adopt such a position.

12) However, a subsequent newspaper report has said that "his [Mr Miliband's] officials solicited a letter from the US state department to back up his claim that if the evidence was disclosed, Washington might stop sharing intelligence with Britain."¹² The same newspaper report then quoted an MP as saying the move was possibly "one of the most outrageous deceptions of parliament, the judiciary and the British people. There must be an immediate investigation, with all related correspondence made public."¹³ The Government's response was described as follows: "The FCO said it asked the US to make its position clear in writing 'to inform both us and the court'. It said this was 'both perfectly sensible and the correct thing to do.'"¹⁴

13) It is submitted that this is an important issue. There would appear to be no reason why it should not be fully disclosed precisely how the US position came about. Only if all the correspondence and communications are disclosed (at least to the Committee if there is any reason why they shouldn't be made public) can it be ascertained who was taking the lead. This is of concern irrespective of the rights or wrongs of either the US or UK Governments' final position, or both, as presented to the court.

14) Another issue of concern is the UK's belated efforts to press the US to release and return BM and the other former resident non-nationals, as well as UK nationals, from Guantanamo Bay. The Annual Report¹⁵ glosses over the fact that the Government fought hard in the courts to avoid taking responsibility for these men. The REDRESS Report details the chronology and litigation involving both sets of detainees.¹⁶ Concern over the Government's delayed action is not merely one of regret for what happened under Mr Miliband's predecessors, but because of the lack of a UK policy to protect its nationals and others linked to the UK who have no other state to which they can look for protection when they face a real risk of torture.

¹⁰ Hansard 5 February 2009: Column 989 et seq. available at

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090205/debtext/90205-0006.htm>

¹¹ For example, at Column 990-991: 'What the United States said—and it appears in the open, public documents of this case—is that disclosure of the documents by order of our courts would be "likely to result in serious damage to US national security and could harm existing intelligence information-sharing...between our two governments". That is a simple affirmation of the facts of intelligence co-operation and it is worth noting that last night, in response to the High Court judgment, the US National Security Council reaffirmed the long-standing US position concerning the importance of protecting sensitive national security information and preserving the long-standing intelligence-sharing relationship between our two countries.'

¹² Report by Ian Cobain and Richard Norton-Taylor, Guardian 16 February 2009 available at

<http://www.guardian.co.uk/world/2009/feb/16/pakistan-torture-mi5-agent-binyam>

¹³ Ibid. The MP was Edward Davey, Liberal Democrat foreign affairs spokesman.

¹⁴ Ibid.

¹⁵ Pg 16: "In 2004 and 2005 the UK was the first government to secure the release of all its nationals detained in Guantanamo Bay. We have since gone further and requested the release of all those held there who were previously legally resident in the UK."

¹⁶ Pgs 33-41

15) Even once Guantanamo Bay is closed this will not end the need for the UK's intervention with foreign powers when such persons are detained as terrorist suspects or otherwise, and face the real risk of torture. There are already numerous other cases where the UK has been seen to be at best dilatory in its intervention and at worst complicit.¹⁷ What is required is a clear policy statement from Mr Miliband that the UK will not accept the torture of its nationals abroad, nor torture of those non-nationals who can legitimately claim UK protection; that if the real risk of torture occurs the UK will take timely, vigorous and effective steps for it to end; that in all cases of torture of such persons it will espouse their claims for reparations.

16) In the absence of such a policy and effective action, there remains a serious deficiency in the UK's anti-torture programme in the one area where it ought to be most obvious that something can and should be done: the protection of UK nationals and the non-nationals described.

ALLEGATIONS OF UK COMPLICITY IN TORTURE

17) In addition to Binyam Mohamed the REDRESS Report also refers to other national and non-national former residents detained at Guantanamo Bay, who have alleged the UK was complicit in their rendering and/or their subsequent torture and/or ill-treatment. In fact all of them allege such UK involvement in one way or another, either after their detention and in the time leading up to their rendition or afterwards, or both.

18) Recent reports have referred to cases other than former Guantanamo Bay detainees. Thus a newspaper has said that "senior officials in both MI5 and MI6 have reviewed their files and fear that 15 similar cases [to Binyam Mohammed] could also lead to police investigations."¹⁸ An even more recent campaigning group's report details 29 cases altogether, including one prior to 11 September 2001, thirteen former Guantanamo Bay detainees, and others in Pakistan, Jordan, the United Arab Emirates, Syria, Egypt and Kenya.¹⁹

19) The FCO may say that as these allegations concern the security services they do not fall within the FAC's mandate but that of the ISC; it may also argue that they should be raised with the Attorney General or the police; in the House of Commons debate on 5 February 2009 referred to above²⁰ the chair of the ISC said that "the Investigatory Powers Tribunal ... is the only body with the legal power to investigate fully any allegation of misconduct by the UK agencies."²¹ However, while the responsibilities may straddle different ministries, parliamentary committees and other bodies, these self-evidently include the FCO.

20) The torture and other ill-treatment which UK nationals and non-national UK residents detained as terrorist suspects have suffered illustrates the ineffectiveness of the UK Government's approach to date in protecting these detainees from multiple violations of their rights; there are also serious questions to be answered about the UK's role in the processes concerned.

¹⁷ See below para18

¹⁸ Duncan Gardham and Con Coughlin, Daily telegraph 28 March 2009 available at <http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/5063053/Torture-inquiry-reveals-15-new-cases.html>

¹⁹ Cageprisoners report, April 2009 "Fabricating Terrorism II : British Complicity in Renditions and Torture" available at <http://www.cageprisoners.com/>

²⁰ Footnote 10

²¹ Dr Kim Howells MP at Column 997

21) Information has been revealed as a result of various court cases brought in the UK as well as through parliamentary inquiries. There is prima facie evidence that the UK has not fulfilled its obligations under the UN Torture Convention in numerous respects including failure to prevent torture and other prohibited ill-treatment but also a subsequent failure to properly investigate the allegations.

22) What is urgently required is a full, independent and impartial public inquiry into all aspects of the treatment of these UK nationals and non-national residents, including the role of the UK authorities at all relevant times. Where the UK is found to have been at fault reparations must be made and those responsible must be held accountable. Mr Miliband should be asked how any other (and necessarily fragmented) approach can continue to be justified.

EXTRAORDINARY RENDITION (INCLUDING THE POSSIBLE ROLE OF DIEGO GARCIA)

23) It is submitted that 'extraordinary rendition' cannot be separated from the UK's alleged complicity in torture of terrorist-suspects, and the concerns are inextricably linked. The Annual Report itself acknowledges that 'extraordinary renditions' give "rise to increase risk of torture or cruel, inhuman or degrading treatment."²²

24) The REDRESS Report chronicles many of the attempts of the JCHR, the ISC, the FAC and other responsible bodies²³ to interact with the Government on the issue of 'extraordinary rendition', including Diego Garcia (DG). However, despite the 'drip, drip' of disclosures over the past eight or so years the Government's position remains unaltered in all essentials, and it is submitted that there is in reality a stalemate between Parliament and the Executive as to what is the right thing to do.

25) In the circumstances it is submitted that the FAC should add its voice to the call for an independent and impartial judicial inquiry into all aspects concerning the UK's involvement in the US programme.

26) Concerning the two instances of admitted rendition through DG, a specific unanswered issue is what precisely happened to the two men who were rendered through DG and have now been returned to their countries of nationality.²⁴ If the US is not prepared to divulge this information to the UK and/or to authorise the UK to disclose what it already knows from the US, then the FCO should interview the men itself for full details of how and from where they were rendered, what happened to them at Guantanamo Bay, and what has happened to them on their return to their countries of nationality.

27) Although the UK cannot formally espouse the two individual's cases, the fact that their human rights were violated on UK territory by a foreign state is sufficient for the UK to take up their cases in a humanitarian capacity. The FCO should be asked whether it is prepared to follow this up, and if not why not.

TRANSFER OF PRISONERS IN IRAQ AND AFGHANISTAN

28) REDRESS recently submitted its views to the FAC on the handing over of prisoners in Afghanistan in connection with the FAC's inquiry into foreign policy

²² Pg 17

²³ Including, for example, the All Party Parliamentary Group on Extraordinary Rendition

²⁴ REDRESS was informed of this in a letter from the FCO dated 6 January 2009

aspects of the UK's relations with Afghanistan.²⁵ That submission referred, inter alia, to the assertion in the FCO's Human Rights Annual Report 2007 that the UK is "confident that the human rights of detainees handed over by UK forces are not breached and they have access to sufficient food and clean water."²⁶ The FCO should be asked whether there is any significance in the fact that in the current Annual Report there is no such confident assertion.²⁷

29) Further, and again in regard to its inquiry into Afghanistan, the FAC very recently heard evidence of torture and renditions and the following exchange is recorded as uncorrected oral evidence:

"Q88 Ms Stuart: What I wanted to pursue a little more is the fact that we have evidence that Afghanistan was used for extraordinary rendition. We know there are memorandums of agreement between the allied forces and the American Government. Currently, the understanding is that anybody captured will be handed over to the Afghan authorities. Can we be certain that they will not be tortured?

Elizabeth Winter: I do not think we can be, no. Experience has shown that we cannot be sure. However much one might like to think that negotiations and keeping a watching brief would prevent it, I think it would be much better not to hand them over, to be honest."²⁸

30) In regard to 'extraordinary renditions' similar misgivings were recorded:

"Q91 Ms Stuart: If we say we cannot be sure about torture, can we be sure it is no longer a base for extraordinary rendition?

Elizabeth Winter: I could not be sure about that. I wouldn't know. Again I can try to find out from people who might, and what the rumours are. Whether I could get you any actual information I don't know. My guess is that everybody, including the British Government, is going to be fairly careful now about what they do and try to avoid it because they do not want bad publicity, to put it at its crudest."²⁹

31) The FAC will be aware of the debate in the House of Commons on 26 February 2009³⁰ in which Defence Secretary John Hutton revealed, amongst other important details, the transfer to Afghanistan by the US of two persons captured by the UK in Iraq who were handed over to the US there. Concerns remain as to what has happened to the two men, as well as others mentioned in the debate. For example, concerning Afghanistan, Mr Hutton said:

²⁵ On 23 January 2009

²⁶ Para 7 of the REDRES submission, referring to pg 125 of the 2007 Annual Report.

²⁷ See pg 122 of the current Annual Report. Other aspects of the current Annual Report on detentions in Afghanistan at this page are very similar to those in the 2007 Annual Report, and therefore the difference between the two should be queried.

²⁸ Uncorrected transcript of oral evidence 25 March 2009 available at

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcaff/uc302-ii/uc30202.htm>

²⁹ Ibid

³⁰ Hansard 26 Feb 2009: Column 394 Records of Detention (Review Conclusions) available

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090226/debtext/90226-0008.htm#09022651000004>

“As of 31 December 2008, our database holds the capture details of 479 individuals, including 254 who were subsequently transferred to the authority of the Government of Afghanistan, 217 who were released, and eight who died as a result of injuries sustained on the battlefield.”³¹

34) Cogniscent that the debate involved the Secretary of State for Defence and not Foreign Affairs (and which once more illustrates the straddling of responsibilities referred to earlier) a number of immediate questions arise: what has happened to the 29 who were not released or had died; how long have these 29 men been in custody; as to the eight who died, was it reasonable for them to be handed over when they must have had serious injuries.

35) The same debate also once again raised many of the fundamental concerns involving the US-UK relationship when it comes to counter-terrorism and the attitude of the previous US Administration (in particular) to torture compared to the UK's acceptance of its international and domestic human rights obligations. Release on 16 April 2009 in the US of four 'torture memos'³² has added more weight to the reasons behind this long-running problem. All of these concerns apply to Iraq and Afghanistan as well as the earlier issues covered in this submission.

RECOMMENDATIONS

36) The FAC should:

- call for a comprehensive, independent, judicial inquiry into all allegations of UK complicity in torture and/or other ill-treatment arising out of counter-terrorism, including all aspects of UK involvement in the US' 'extraordinary renditions' programme
- pending such an inquiry, press the Government for specific details of what it is doing about the UK nationals and non-national former residents who have alleged torture and/or other ill-treatment abroad, including all the former Guantanamo bay detainees now back in the UK but not restricted to these
- call on the Government to fully reveal the correspondence between the US and UK in the Binyam Mohamed case leading to the US and UK positions as put to the court
- seek full details of the two men rendered through Diego Garcia
- ask the Government what it is doing regarding reparations for all those who suffered abuse as a result of UK complicity
- press for a clearer, more effective, consistent and pro-active anti-torture policy concerning the detention abroad of UK and UK-linked terrorist suspects

All of which is respectfully submitted

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³¹ Column 396

³² Available at http://www.aclu.org/safefree/general/olc_memos.html

