

All party Parliamentary Group on Extraordinary Rendition
House of Commons

Dr Kim Howells MP
Chairman
Intelligence and Security Committee
Cabinet Office
70 Whitehall
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Re: Extraordinary Rendition

I am writing to ask that your Committee add its voice to the calls of the Joint Committee on Human Rights, Lord Carlile, the Government's independent reviewer of terrorism legislation, David Cameron, Nick Clegg and most experts in the field, for a judge-led inquiry into the whole issue of rendition.

A series of assurances, given by you when a Minister and other Ministerial colleagues, and by the Intelligence and Security Committee, have turned out to be unfounded and flawed. Several High Court judgements have also undermined the credibility of assurances. This is why, in order to restore public confidence, a judge-led inquiry is now widely considered to be essential. It can draw on your current investigation, reopened at the request of the Prime Minister in March, as well as the work of the Parliamentary Select Committees.

The public's confidence has been shaken by a number of episodes, including the involvement of the Government in the Binyam Mohamed case, and the unreliability of assurances on Diego Garcia and detainee transfers in Iraq.

The case of Binyam Mohamed

On 28 August 2008 I wrote to your Committee setting out discrepancies between the evidence given to the ISC and its subsequent findings, and the judgment of the High Court in the case of Binyam Mohamed which was published on 21 August 2008. I wrote again on 21 January 2009, 5 February

2009 and 16 March 2009. Your Committee undertook to revisit the relevant conclusions and report in full on this when possible.¹

On 31 July 2009, the High Court revised aspects of its 21 August 2008 judgment in the case involving Binyam Mohamed. The revisions challenged the quality of the information provided to your Committee for its first rendition enquiry. In particular, they raise further questions about the knowledge of the Security Service of the location, conditions and treatment of Binyam Mohamed during his detention; the timescale and extent of the sharing of information on Binyam Mohamed between the Security Service and US authorities; and the reasons for the three visits to Morocco of Witness B, during the time that Binyam Mohamed alleges he was being tortured in Morocco.

Your Committee concluded that a transfer to a secret facility constitutes an 'extraordinary rendition', and cruel and inhuman treatment, "*because there is no access to legal or other representation*".² The revised judgment makes clear that Security Service officials, including other desk officers, had read reports of the detention and treatment of Binyam Mohamed prior to his interview by Witness B in Pakistan. It also sets out that the Security Service facilitated the interview of Binyam Mohamed until at least April 2003, at a time when they knew he was being held in a 'covert location', and in the knowledge of what was contained in the reports on his detention and treatment. In the light of this revised judgment your Committee may want to revise its conclusion that: "*The Committee has therefore found no evidence that the UK Agencies were complicit in any "Extraordinary Rendition" operations*".³

I have set out passages of this revised judgment, some of which were contained in their original form in my letter of 28 August 2008, in an Annex to this letter.

Diego Garcia

In October 2007 I wrote to you in your position as Minister of State at the Foreign Office, setting out my concerns that rendition flights may have used Diego Garcia. Your reply set out that: "*we have had robust assurances from the US that at no time have there been any detainees either on Diego Garcia, or transiting through the UK's territorial seas or airspace surrounding Diego Garcia. I have confidence in these assurances.*"

¹ Intelligence and Security Committee, Annual Report 2007-08, paragraphs 164-165.

² ISC Report into Rendition, para 8.

³ ISC Report into Rendition, conc D.

We now know that your confidence in these ‘*robust assurances*’ was unfounded. The Foreign Secretary subsequently confirmed in an apologetic statement to the House of Commons that rendition flights had used Diego Garcia. The public still cannot have confidence that the full facts about the extent to which Diego Garcia has been used are known, either to your Committee or to the public.

Your Committee and Public Confidence

An essential task of the ISC is to buttress public confidence in the intelligence services and their accountability to the elected Government of the day, and to Parliament. I am concerned that a recent interview you gave may have inadvertently prejudiced that confidence. On the Today Programme on 10 August 2009 you said that you were “*confident*” that your Committee knows what is going on on rendition. You also said: “*we’ve never been denied any evidence from any of the agencies...*” It is now a matter of public record that your Committee did not know what was going on. On 4 February 2009 the High Court ruled that crucial documents were not made available to your Committee by the Security Service, and that this in turn led to your Committee’s Report on Rendition being inaccurate. The ruling concluded: “*the ISC Report could not have been made in such terms if the 42 documents had been made available to it*”.

There appear to be two possibilities. Either the evidence was or is denied to your Committee. Alternatively, your Committee is not in a position to know what evidence to request. It is extremely important that the ISC has, and should be seen to have, the capacity to obtain such information. Confidence in the ISC’s ability to do this will not have been helped by its decision not to replace the investigator when John Morrison was sacked in July 2004.

As you may know, I am a strong supporter of the ISC and know the dedication with which Parliamentary colleagues sitting on it go about their work. The need to sustain confidence in the Committee and in those who protect us is particularly important at a time of terrorism. It is in this light that my worries about the extent to which the ISC may have been misled and my conclusion that a judge-led inquiry is now essential, should be taken. Many argue that the ISC should be turned into a full Select Committee of Parliament and I am inclined to support the need for further reform. But in the meantime we need to ensure that the current arrangements work to their best effect.

I am putting a copy of this letter in the public domain.

ANDREW TYRIE

Chairman, All-Party Parliamentary Group on Extraordinary Rendition

ANNEX I

“29. (v)(a) By 19 August 2002, the SyS were aware that BM was being held in a covert location where he was being debriefed. Direct access was not possible but the SyS were able to send questions to the US authorities to be put to him.

[...]

30. (iv) On 15 April 2003, the SyS requested, in the light of BM’s reported cooperation, a further interview by Witness B; a list of over 70 further questions was also sent.

(v) Further information from debriefings of BM was supplied to the United Kingdom authorities by the United States authorities on 14 November 2003, 14 January 2004 and 15 March 2004.

[...]

35.A It is clear from documents subsequently supplied to us that Witness B visited Morocco once in November 2002 and twice in February 2003. As no information about these visits was available at the time of the hearing Witness B was not questioned in the open or closed sessions about these visits or the document referred to at paragraph 30.(iv). We have also been informed that the SyS maintains that it did not know that BM was in Morocco in the period in question.

[...]

87. (iv) In May 2002, the SyS and SIS received reports containing information relating to BM’s detention and treatment in Pakistan. The details of the reports are set out in the closed judgment.

(v) Our finding after the hearing was that the probability is that Witness B read the reports either before he left for Karachi or before he conducted the interview. Since the hearing we have been provided with the documents to which we have referred at paragraph 17 which show a briefing document was prepared for sending to him.

(vi) If, contrary to the finding we made after the hearing, Witness B had not read them prior to going to Karachi or after the arrival at Karachi and prior to the interview, we have no doubt that other persons within the SyS, including

persons more senior to Witness B, must have read the reports and must have appreciated what they said about BM's detention and treatment at Karachi. Those officers should have drawn to the attention of Witness B these matters either before or after the interview. **It is now clear that the reports were studied by other desk officers.**

[...]

(ix) By 30 September 2002, it was clear to the SyS that BM was being held **at a covert location** (either by the authorities of the United States or under the direct control of the United States) which was not a United States military facility, such as Bagram. It is clear to us that they **knew** that he was not in a regular United States facility, that the facility in which he was being detained and questioned was that of a foreign government (other than Afghanistan) and that United States authorities had direct access to information being obtained from him.

(x) The SyS were supplying information as well as questions which they knew were to be used in interviews of BM from the time of his arrest whilst he was held incommunicado and without access to a lawyer or review by a court or tribunal. They continued to supply information and questions after they knew of the circumstances of BM's detention and treatment as contained in the reports of the series of interviews in May 2002 and after September 2002 when they **knew** the circumstances related to his continued detention which we have described in subparagraph (ix).

[...]

88. (ii) The SyS continued to facilitate the interviewing of BM by providing information and questions after 17 May 2002 until **at least April 2003** in the knowledge of what had been reported to them in relation to the conditions of his detention and treatment and his interviews in Karachi in May 2002 to which we have referred.

[...]

(iv) The SyS continued to facilitate interviews by the United States authorities after September 2002 when they knew BM was still incommunicado and when they **knew** that he was not in a United States facility and that the **undisclosed** facility in which he was being detained and questioned was that of a foreign government (other than Afghanistan) and that the United States authorities had direct access to information being obtained from him.”