



All Party Parliamentary Group on Extraordinary Rendition
House of Commons

Dick Marty MEP
Committee on Legal Affairs and Human Rights
Parliamentary Assembly of the Council of Europe
F-67075 Strasbourg Cedex
France

9th November 2010

Dear Mr Marty

Re: Report on state secrecy as an obstacle to judicial or parliamentary accountability

You asked for information on my experiences as Chairman of the All Party Parliamentary Group on Extraordinary Rendition. I hope that the following is useful to your report.

I have used a number of methods to try to get to the truth about Britain's involvement in extraordinary rendition. Those relevant to your report include asking Parliamentary Questions, lobbying Parliamentary committees and calling for a judge-led inquiry. I have also made simultaneous Freedom of Information requests for the same information in both UK and US jurisdictions, which have both led to litigation. It is thought to be the first time that a British MP has sued the American Government. These efforts have met with varying degrees of success.

1. Parliamentary Questions

Parliamentary Questions have proven reasonably useful for obtaining information about policy and procedures, and bringing a measure of parliamentary accountability to allegations about rendition. However, they have been less effective in producing information about individuals, particular events or specific documents. This kind of information has often been withheld on the grounds that, for example, its release 'would, or would be likely to, prejudice the effectiveness of our armed forces'; its release 'would or would be likely to prejudice international relations'; 'it is the Government's longstanding policy not to comment on intelligence related issues'; 'we are unable to provide further information on this matter'. I attach copies of examples of these questions and answers.

2. Freedom of Information

The gaps in information provided through Parliamentary Questions and Ministerial correspondence led me to make Freedom of Information (FOI) requests to the Foreign Office and Ministry of Defence for the release of information relating to rendition (parallel requests have also been made in the US). However, the bulk of this information has been withheld under various exemptions in the Freedom of Information Act. The process has also been subject to repeated and lengthy delays.

Having been underway for almost three years, it is not possible to describe all of the Group's experiences with FOI requests here. However, the government's responses have been inadequate. In one case the Foreign Office purported to provide all the information I requested (on US assurances regarding the use of Diego Garcia) but in fact did not. And in another the Ministry of Defence failed to apply the Act at all, simply refusing much of my request without reference to the Act.

Exemptions that have been cited to justify refusals to provide information include that the information would prejudice international relations; that it would prejudice the capability of UK Forces; that it was legally privileged; health and safety reasons; and that it constituted personal data. Many requests have been refused because they relate to security agencies, an exemption under the FOIA Act which is not subject to the public interest test¹. In addition, the Government has changed their reliance upon the various exemptions at different stages of the process.

The Group is now in the process of taking this request, along with three others, to the UK Information Tribunal. It is unsatisfactory that we should have to commence litigation. While some exemptions on the release of information are necessary it is not clear that they are being properly applied by government. I am also disappointed that this process has taken more than two and a half years from the time that I first made the requests.

I also made FOI requests to US agencies including the CIA, Department of Defence, Department of Justice, State Department and the Department of Homeland Security. These were met with similar refusals to provide the requested information and yielded less than 2,000 highly redacted pages of records. In late 2009, following a year of administrative appeals against refusals to release the requested information, the APPG filed a complaint in the United States District Court for the District of Columbia seeking to compel the US Government to release the requested information. The litigation is ongoing.

¹ These exemptions are found in Sections 23, 26, 27, 38, 40 and 42 of the Freedom of Information Act 2000

3. Intelligence and Security Committee

The main form of official parliamentary accountability for the security services is the Intelligence and Security Committee (ISC), which was established in 1994. This group of nine MPs and Peers is appointed by the Prime Minister to exercise parliamentary oversight of secret intelligence and security matters. The Committee takes evidence from the security services and prepares annual and special reports, which are submitted to the Prime Minister. These are published, often in redacted form.

The establishment of the ISC was a major step forward in exercising some level of parliamentary scrutiny over the intelligence agencies. However, its record in getting to the truth on rendition is poor. It produced a report on rendition in 2007 which concluded that *“The Committee has therefore found no evidence that the UK agencies were complicit in any “extraordinary rendition” operations.”*² This conclusion, and the report itself, have since been discredited by confirmations of the use of Diego Garcia and the High Court’s findings in the case brought by Binyam Mohamed: *“The ISC report could not have been made in such terms if the 42 documents had been made available to it.”*³

The ISC subsequently insisted that it had not been denied evidence from the agencies, but it is unclear why it was not able to reach the truth. Inadequate record keeping of flights was blamed for its failure to discover that Diego Garcia had been used, but after documents were unearthed in the Binyam Mohamed court case that were not provided to the ISC in its investigation, the Director General of the Security Service wrote to the ISC, stating that he: *“cannot fully explain why [the information] was not discovered in... our... records... Service systems in place at the time should have located this information.”*⁴ Whatever the reason, it is clear that the ISC was not able to establish the facts regarding British involvement in rendition. I hope that the newly reappointed committee will revisit this and assess the reasons for its problems.

4. Other forms of accountability: Inquiry

On 6th July 2010, the Government announced an inquiry into allegations of UK involvement in the mistreatment of detainees abroad during the so-called ‘war on terror’. I had been campaigning for such an inquiry for over a year and I warmly welcomed the announcement as a huge step forward.

² ISC Report into Rendition Conc. D

³ 4th February 2009 High Court judgment. The APPG has not been directly involved in the court cases. The Binyam Mohamed case in particular might be relevant to your report. As you will know, this case involved an attempt by Mr Mohamed to secure information from the UK government about his detention and mistreatment.

⁴ Letter from the Security Service to the ISC– 30 June 2008. Quoted in ISC Annual Report 2008-2009

It is unclear how much of the evidence will be held in public. In his statement to the House of Commons, the Prime Minister said:

“[...] Neither can it be a full public inquiry. Of course, some of its hearings will be in public. However, we must be realistic; inquiries into our intelligence services are not like other inquiries. Some information must be kept secret – information about sources, capabilities and partnerships. Let us be frank: it is not possible to have a full public inquiry into something that is meant to be secret. So any intelligence material provided to the inquiry panel will not be made public, and nor will intelligence officers be asked to give evidence in public.”⁵

Of course, there will be some elements of the inquiry that must be held in secret to protect national security. But the inquiry should be as open and transparent as possible in its efforts to get to the truth.

Sir Peter Gibson and the government are now considering the Inquiry’s terms of reference and its treatment of documents and other evidence. It is crucial they get this right. In particular, there must be a presumption that all information provided to the Inquiry, written or oral, will be published. I wrote to the inquiry with proposals for the terms of reference and protocol on the treatment of information, attached.

Please do not hesitate to get in touch if you would like more information on any of this. I will be placing a copy of this letter in the public domain.

Yours sincerely

ANDREW TYRIE MP

⁵ Prime Minister David Cameron, 6th July 2010, Statement to the House of Commons on ‘Treatment of Detainees’, Hansard Column 176-177.

Chairman, All Party Parliamentary Group on Extraordinary Rendition

Parliamentary Questions – Examples

Iraq: Detainees [24 Apr 2008]

Mr. Tyrie: To ask the Secretary of State for Defence whether individuals captured by British forces during the conflicts in Iraq and Afghanistan have at a subsequent time been held at the United States detention facilities at (a) Bagram Theatre Internment Facility, (b) Balad Special Forces Base, (c) Camp Nama BIAP and (d) Abu Ghraib prison. [200771]

Des Browne: I am withholding the information requested as its release would, or would be likely to, prejudice the effectiveness of our armed forces.

However, I am confident in the processes that are in place to ensure that any persons captured by UK forces in either Iraq or Afghanistan and subsequently detained by US forces are held in accordance with the UK's policy and legal obligations.

Iraq: Detainees [24 Apr 2008]

Mr. Tyrie: To ask the Secretary of State for Foreign and Commonwealth Affairs whether UK forces have been engaged in active operations with US forces in Task Force 6-26. [197028]

Des Browne [*holding answer 26 March 2008*]: I have been asked to reply.

I am withholding the information requested as its release would or would be likely to prejudice international relations.

Pakistan: Terrorism [4 June 2008]

Mr. Tyrie: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to the Answer of 16 May 2008, *Official Report*, column 1815W, on Pakistan: terrorism, (1) what the Government's policy is on dealing with allegations of mistreatment made by British nationals in Pakistani custody; and if he will make a statement; [207357]

(2) whether any of the six detainees are still in Pakistani detention; [207358]

(3) in how many of the six cases the detainees were visited by other British officials; [207359]

(4) whether allegations of mistreatment other than those made to UK officials were taken into account in providing the Answer; [207360]

(5) for what reasons consular access was not sought in each of the six cases. [207361]

Dr. Howells: The Government take allegations of mistreatment very seriously. Where allegations of mistreatment are made by British nationals in Pakistani custody or following release from Pakistani custody and when we are asked to do so by the individual affected, we can raise those allegations with the appropriate authorities.

Of the six detainees referred to in the earlier answer, one remains in Pakistani custody. Both of the additional two detainees have been released.

British officials sought and were granted access to the two mono-British nationals. Priority was given to the welfare of the detainees. I can neither confirm nor deny whether UK officials met any of these individuals to discuss non-consular matters. It is the Government's longstanding policy not to comment on intelligence related issues.

The answer provided to the earlier question, 16 May 2008, *Official Report*, column 1815W, does not take into account allegations of mistreatment other than those made to UK officials.

Consular access was not sought in all of the six cases, as four of the individuals were dual Pakistani/British nationals in the country of their other nationality. The Pakistani authorities are under no obligation to inform us of the detention of a dual Pakistani/British national or to provide consular access. We are exceptionally seeking access to one dual national in accordance with our published policy on the death penalty, but this is yet to be given. We may make an exception to this rule if we consider that there is a special humanitarian reason to do so. If we become aware of an allegation of torture against a dual UK national held in the country of their other nationality, it is likely we would seek consular access and we would carefully consider raising the allegation with the local authorities. We would look at each situation on a case by case basis. However, if we were not aware of such allegations then we would not normally seek consular access.

Diego Garcia: Rendition [24 March 2009]

Mr. Tyrie: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to the Answer of 5 March 2009, *Official Report*, column 1747W, on Guantánamo Bay: detainees, for what reasons he is unable to provide further information on the matter; and whether his Department has been informed of the names of the two detainees rendered through Diego Garcia. [263671]

Bill Rammell [*holding answer 13 March 2009*]: We are unable to provide further information on this matter other than that given by my right hon. Friend the Foreign Secretary in his statement of 21 February 2008, *Official Report*, column 547.

USA: Detainees [25 January 2008]

Mr. Tyrie: To ask the Secretary of State for Foreign and Commonwealth Affairs whether any information has been passed to the UK from detainees held by the US administration since 2001, obtained through the use of interrogation techniques which may constitute torture, or cruel, inhuman or degrading treatment under British law, including the technique known as waterboarding. [182070]

Dr. Howells: It is the long-standing policy of the Government not to comment on matters relating to intelligence issues.

The UK unreservedly condemns the use of torture as a matter of fundamental principle. The Government, including its intelligence and security agencies, never uses torture for any purpose, including obtaining information. Nor would we instigate action by others to do so.