



All Party Parliamentary Group on Extraordinary Rendition
House of Commons

Sir John Chilcot
Iraq Inquiry
35 Great Smith Street
London
SW1P 3BG

16th March 2010

Dear Sir John,

Re: Extraordinary Rendition

Introduction

1. I am writing to you about extraordinary rendition from Iraq in my role as Chairman of the All Party Parliamentary Group on Extraordinary Rendition. I apologise for the late submission, which I understand from your website will be acceptable¹.
2. The treatment of people captured by UK Forces during the Iraq war and rendered elsewhere will no doubt already form an important part of your inquiry. It is necessary to determine what happened, and how it happened, by examining the decisions that were made regarding the official or unofficial policy on detainee transfers in order to learn lessons for future military interventions. Your inquiry is well-placed to get to the truth on the involvement of UK Forces in mistreatment and rendition in Iraq, and to identify the lessons that can be learned, including whether changes in law and policy are necessary.

¹ Last year, the Government announced, and Parliament agreed, that there should be a "wide ranging and independent inquiry to establish the lessons to be learnt from the United Kingdom's engagement in Iraq, which will consider the run-up to the conflict, the military action and reconstruction;" (Standing Order No. 31(2) on 24th June 2009). You correctly interpreted these broad terms of reference in your opening speech, in which you declared that the Inquiry would cover events from 2001 to 2009, and consider "the UK's involvement in Iraq, including the way decisions were made and actions taken, to establish, as accurately as possible, what happened and to identify the lessons that can be learned."

3. I would be very grateful if your committee of inquiry would examine the following questions:

1. **How many individuals have been captured by the UK and transferred to another state's control in Iraq?**
2. **How many of these detainees were subsequently rendered to another country?**
3. **Was a policy of capture without detention among UK forces in place in Iraq? Was this official or unofficial? Is it still in place? What was (or is) the purpose of that policy?**
4. **How many detainees were held 'on behalf' of other forces?**
5. **Has the government made any inquiries to the US about the reasons for continuing to hold the two transferred detainees? Has the government requested to visit them, or their return? Has the government made any effort independently to investigate their treatment or condition?**
6. **Why did it take five years for the two renditions to come to light?**
7. **What lessons can be learned from the 2004 renditions for future military operations?**
8. **What investigation has been made into the allegations of Ben Griffin and what was concluded?**
9. **What were the contents of the second MOU and how did it differ from the first? Why was it changed?**
10. **Is UK policy on detainee transfers adequate to prevent Britain becoming involved in extraordinary rendition in the future?**
11. **Is the UK's reliance on US assurances and US record checks appropriate to establish whether detainees captured or detained by UK Forces have subsequently been rendered? Is reliance on those assurances appropriate to ensure that they are not maltreated? What improvements are needed in the UK's record keeping on these issues?**

4. The rest of this submission will first explain the role of the APPG and the problems we have encountered in gaining answers to these questions.

Second, it will provide details of known facts and serious allegations relating to the UK's involvement in extraordinary rendition from Iraq. This will include early allegations from former soldier Ben Griffin about knowledge of torture practices in Iraq and UK Forces and the alleged avoidance by the UK of legal obligations to captured detainees by adopting a systematic policy of detention without arrest; the Government's admission in 2009 that two men originally captured by British forces and transferred to US authority were rendered to Afghanistan; the paucity of detail and information released regarding those two detainees; inconsistencies with details of the Memoranda of Understanding between detaining powers; the failure of the Government, thus far, properly to investigate or respond to these concerns. Third, it provides some extracts from the Foreign Affairs Committee's 2008 report on Human Rights, which reflects a number of the issues raised by the Group.

The All-Party Parliamentary Group on Extraordinary Rendition

5. I established the All Party Parliamentary Group on Extraordinary Rendition in December 2005. It has two main objectives: to get to the truth on rendition and British involvement in it, and to ensure that the framework in place to prevent British involvement in rendition is sufficiently rigorous.

6. The UK needs to get to the truth to bring closure to this issue and to enable us to restore trust and regain the moral high ground. A more robust framework of law and practice is required to give the public confidence that the UK will not be involved in extraordinary rendition in the future. The APPG has recently published proposals to this end, with the assistance of Freshfields Bruckhaus Deringer².

7. Since 2005, I have raised concerns in Parliamentary Questions and submissions to Select Committees, including the Foreign Affairs Committee and the Defence Committee, that the procedures in place to ensure the proper treatment of detainees captured by UK Forces in Iraq and subsequently handed over to US or Iraqi forces were inadequate, and that our Armed Forces may have thereby been dragged into rendition. The points I raised were denied by the government at the time, but later turned out to be true. This issue has been taken up by both Select Committees, but as early as 2005 the Foreign Affairs Committee criticised the Government's "policy of obfuscation."³ The Government has not, so far, carried out the steps recommended by the Foreign Affairs Committee in its most recent Human Rights Report (relevant sections of the Government's response are attached).

² All Party Parliamentary Group on Extraordinary Rendition, 'Extraordinary Rendition: Closing the Gap', November 2009.

³ Foreign Affairs Committee, Sixth Report 2004-05, para 98.

UK Involvement in Extraordinary Rendition

8. The Government first described the understanding in place with US, Iraqi and Afghan forces on the issue of detainee transfers in the following terms: *“Whenever we have passed an individual from UK jurisdiction into the jurisdiction of the Iraqi, Afghan or US authorities, we have had in place an understanding that they would not transfer that individual to a third country without first seeking our consent or at least informing us of their intention”*.⁴ This ‘understanding’ appeared inadequate at the time, and has subsequently been demonstrated as such by the confirmed renditions in 2004.

9. On 25 February 2008, Mr Ben Griffin, a former SAS soldier who had been on active service in Iraq, alleged that UK Special Forces were responsible for detaining many victims of rendition while operating in a joint UK/US Task Force: *“Individuals detained by British soldiers within this Task force have ended up in Guantanamo Bay Detention Camp, Bagram Theatre Internment Facility, Balad Special Forces Base, Camp Nama BIAP and Abu Ghraib Prison.”*

10. This statement illustrated the shortcomings of the government’s policy of relying on US assurances. Mr Griffin claimed that he and others had wide knowledge of illegal US interrogation techniques: *“Throughout my time in Iraq I was in no doubt that individuals detained by UKSF and handed over to our American colleagues would be tortured...It was the widely held assumption that this would be the fate of any individuals handed over to our America colleagues. My commanding officer at the time expressed his concern to the whole squadron that we were becoming “the secret police of Baghdad”.*

11. Ben Griffin further alleged that a UK policy was in place which attempted to avoid legal obligations towards those that the UK had detained: *“As UK soldiers within this Task Force a policy that we would detain individuals but not arrest them was continually enforced. Since it was commonly assumed by my colleagues that anyone we detained would subsequently be tortured this policy of detention and not arrest was regarded as a clumsy legal tool used to distance British soldiers from the whole process.”*

12. This allegation is supported by Australian documents made public under its Freedom of Information Act (attached), which cast further light on Australia’s acknowledged policy of capturing individuals in Iraq, without officially detaining them, but subsequently handing them over to US forces. By ensuring that US servicemen were always present when Australian Forces captured individuals, Australia did not in a legal sense ‘detain’ a single individual in Iraq. Griffin’s allegations suggest that a similar policy was in

⁴ Letter from Rt Hon Des Browne MP to Andrew Tyrie MP, 31 January 2008.

place for UK Forces. However, the ethics of such a practice would benefit from careful examination by your inquiry.

13. On 26 February 2009 the Defence Secretary was forced to confirm in an Oral Statement that individuals captured by UK Forces and transferred to US detention had been subsequently rendered to Bagram Detention Facility in Afghanistan. The Defence Secretary stated: *“Two individuals were captured by UK forces in Iraq. They were transferred to US detention, in accordance with normal practice, and then moved subsequently to a US detention facility in Afghanistan.”*⁵

14. The Statement set out that: *“In retrospect, it is clear to me that the transfer to Afghanistan of these two individuals should have been questioned at the time.”* It makes clear that officials were aware of the renditions in 2004. This is troubling, both because of the lengthy failure to investigate and question the transfer of the two individuals and because, in responses to my Parliamentary Questions, the government had denied that any detainee handovers had resulted in renditions for four years after officials knew of the case.

15. Responding to the revelations about the two individuals rendered to Afghanistan, and to Mr Griffin’s allegations, on 29 September 2008, I published a Legal Opinion prepared by Michael Fordham QC and Tom Hickman, barristers at Blackstone Chambers. The Opinion examines the legal responsibility of the UK under both domestic and international law with regard to transfer of detainees. It makes clear that assurances provided by another state that a detainee would not be mistreated do not absolve the UK of the obligation to examine whether these assurances provide sufficient guarantee that the individual will be protected. The Opinion specifically questions the legality of the UK accepting such assurances from the US. I have attached the Opinion to this letter.

Failure of the Government Properly to Investigate

16. The Defence Secretary’s Statement did not disclose the names of the individuals detained or set out how they had been treated⁶. It specifically excluded operations that go to the heart of the Ben Griffin allegations: *“In areas outside Multi-national division South East, UK forces have undertaken operations to capture individuals who were subsequently detained by the US. These individuals do not feature in the data I set out above, and I do not intend*

⁵ Statement by Defence Secretary John Hutton to the House of Commons, 26th February 2009.

⁶ The Charity Reprieve claim to have found and identified one of the two detainees who were transferred by the UK to US detention, and then rendered to Bagram. According to their report, one is named Amanatullah Ali, and the second is known as Salahuddin. Reprieve alleges that as a result of his abuse in UK and US custody, Salahuddin is now in a “catastrophic” mental and physical state, and spends most of his time in mental health cells in Bagram.

to provide further details on these detentions today.” This statement therefore provides no answer to the allegations of a much wider policy of detention without arrest, and leaves open the question of how many individuals captured by British Forces in Iraq were subsequently handed over to the US, and of these, how many were later rendered.

17. The Statement also appeared to be based upon a review that had already been shown to be flawed. Heavily redacted extracts of the review to which the Defence Secretary referred were disclosed to me following FOIA requests last year. The review includes this statement: *“The picture is a positive one. The UK has met its obligations by a combination of assurances, operational judgement, and record keeping. The department will always be open to baseless speculation that we have been complicit in rendition or ill treatment. To end all speculation would require us to prove a negative. We can say, however, that we have no evidence of unlawful rendition and we have looked.”* This conclusion appears inaccurate in light of the Secretary of State’s Statement. The accuracy of the review as a whole, on which the Secretary of State appears to rely, needs to be examined.

18. The Statement set out that, in relation to the two individuals rendered from Iraq to Afghanistan, *“We have been assured that the detainees are held in a humane, safe and secure environment meeting international standards consistent with cultural and religious norms. The International Committee of the Red Cross has had regular access to the detainees”*. In its 2007 Human Rights Report the Foreign Affairs Committee concluded that US assurances - that it does not use torture - were unreliable.⁷ If so, the above assurances must also be considered unreliable. Such reliance upon others to investigate and report on these detainees is unacceptable. It is unclear from the Secretary of State’s Statement whether or not the UK has taken any measures itself to establish the treatment of the two rendered detainees.

19. The Secretary of State made reference to the MOU with the US and Australia that was in place *“for the initial stages of the campaign in Iraq”*, which applied *“until it was replaced last year by a further MOU with the US”*. The content of the further MOU is unclear. In response to Freedom of Information Act requests from the APPG, going back over a year, the MOD has refused to disclose information on its agreements with the US. I hope your inquiry can establish how this Memorandum of Understanding has affected the protections in place as regards detainee handovers, in particular whether such protections are weaker than those of the initial MOU (discussed below) and whether it affects the rights and obligations of the Detaining Power as regards those it captures or detains.

⁷ Foreign Affairs Committee, Human Rights Report 2007, para 53.

20. The initial MOU sets out that the Detaining Power retains full rights of access to any detainee following a transfer, that the Detaining Power must agree to any onward transfer of a detainee and that the Detaining Power can demand the return of a detainee from the Accepting Power.⁸ It appears that under these powers the UK could demand access to establish the wellbeing of the two detainees. I hope your inquiry can establish whether this is the case, and if so make recommendations that the UK should do so as a matter of urgency.

21. The powers set out in the MOU appear inconsistent with the Defence Secretary's assertion, in a letter to the Defence Committee dated 17 November 2008, that the UK no longer has any legal obligations towards transferred detainees: "*the UK does not have legal obligations towards the treatment of individuals we have detained once they have been transferred to the custody of another state*". I wrote to the Defence Committee in December 2008 to register my concern that this assertion was misleading. Not only does it appear inconsistent with the MOU, but there are also a number of circumstances in which the UK would have continuing obligations toward a detainee it had transferred. I am given to understand that if an individual is transferred in circumstances where the transfer may have breached Article 2 or 3 of the ECHR, there may be a continuing obligation on the UK to investigate the circumstances of that transfer⁹. I am told that, as a general principle, where a person raises an arguable claim that they have been treated in violation of Article 2 or 3, an obligation is imposed on that state to have that claim investigated by an impartial investigator. There may also be continuing obligations under criminal law or tort law, in the event that a transferred detainee was subsequently visited by a British official, for example.

22. The Secretary of State stated that "*a significant number of people were held on behalf of other coalition forces*". It is unclear precisely what this means, and whether or not comprehensive records checks have been carried out in relation to these individuals. It is important to establish the legal status of

⁸ See 'An arrangement for the transfer of prisoners of war, civilian internees, and civilian detainees between the forces of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and Australia', 23 March 2003. This agreement sets out that: "4. Any prisoners of war, civilian internees, and civilian detainees transferred by a Detaining Power will be returned by the Accepting Power to the Detaining Power without delay upon request by the Detaining Power. 5. The release or repatriation or removal to territories outside Iraq of transferred prisoners of war, civilian internees, and civilian detainees will only be made upon the mutual arrangement of the Detaining Power and the Accepting Power. 6. The Detaining Power will retain full rights of access to any prisoners of war, civilian internees, and civilian detainees transferred from Detaining Power custody while such persons are in the custody of the Accepting Power".

⁹ According to the Legal Opinion I commissioned in 2008, if the UK has transferred an individual in its care to another state's authority where they are at risk of being subjected to cruel, inhuman or degrading treatment, the lawfulness of the transfer is questionable. As noted above, The Foreign Affairs Committee, in its Human Rights Annual Report 2007 concluded that US assurances that it does not use torture are unreliable. It is clear that some US interrogation techniques would be illegal under UK law.

people held “*on behalf of other coalition forces*”, who they are and how they have been treated.

23. The Statement set out that: “*In retrospect, it is clear to me that the transfer to Afghanistan of these two individuals should have been questioned at the time.*” The Statement also made clear that officials were aware of the renditions in 2004. It is important to ascertain why the transfer was not questioned at the time, and to ensure that lessons have been learned to make certain that such a transfer cannot happen again in the future. The ‘understanding’ described to me by the then Defence Secretary suggests that the procedures remain inadequate. Merely being informed of the intention to render a detainee from one jurisdiction to another would appear to be insufficient.

24. Finally, the Statement reveals that the Ministry of Defence has relied on a “*due diligence search by US officials*”, rather than by UK officials, to confirm that the two cases, admitted by the Secretary of State, are the only such cases. In other words, the government is relying on US assurances for its evidence that other individuals, captured by UK Forces and transferred to US detention facilities in Iraq, have not subsequently been transferred outside Iraq. The US has, in the past, provided inaccurate information to the UK on the issue of rendition (for example, on Diego Garcia). It is essential that the UK maintain sufficiently detailed records on detainees to allow it to ascertain this information for itself. I hope that your inquiry will make such a recommendation.

25. Following his Statement the Defence Secretary wrote to me on this issue¹⁰. He confirmed that every substantive letter I received from the Ministry of Defence last year on this issue of detainee transfers in Iraq has been inaccurate. This does not give me, or the public, confidence in assurances given.

26. The Foreign Affairs Committee appears to agree. It reported on this issue in its Human Rights Annual Report 2008 in the following terms:

20. We conclude that it is a matter of concern that the Government has not provided details of the fate of individuals detained by US forces in Iraq as a result of operations by UK forces, or those captured by UK forces and detained by US forces. We recommend that, in its response to this Report, the Government informs us of the number of such detainees, relevant details of the circumstances of their capture and the degree of involvement of UK forces, and any assurances it has received from the US authorities about their treatment and whereabouts, on an individual basis. We further

¹⁰ Letter from Defence Secretary to Andrew Tyrie of 26th February 2009

recommend that the Government, in its response, provides us with a full statement of its record-keeping practice in respect of persons captured by UK forces in Iraq and Afghanistan, whether or not UK forces make the eventual detention.

[...]

22. *We conclude that the onward transfer to Afghanistan of two Pakistani men transferred from UK to US custody in Iraq in 2004 is of great concern. We do not regard the stated reason for this transfer, that US forces did not have sufficient linguists available in Iraq, as being convincing. We further conclude that it is not acceptable that the Government is unable to identify these detainees, or to provide assurances about their subsequent treatment. We recommend that the Government, in its response to this Report, identifies these men, and inform us of what steps it has taken to discover whether they have been treated in an acceptable way since being transferred to US forces. We conclude that the allegation by Reprieve that these two cases were not, as the Government asserts, isolated ones, gives cause for concern. We recommend that the Government investigates in detail any specific allegations put before it by Reprieve and reports to us the outcome of those investigations.*

[...]

24. *We conclude that although there may be scope for argument about the extent of the legal obligation on the UK to monitor the welfare of individual detainees after it has transferred them to another country, there is no doubt in our view that the UK is under a moral obligation to do so. Such monitoring is desirable not only to enable the Government to intervene if it receives information that an individual is being ill-treated, but also because any evidence thus revealed of systematic ill-treatment will call into question whether future transfers to that country should take place. We recommend that the Government takes the necessary action to ensure that it has mechanisms in place to allow it effectively to monitor the welfare of individuals transferred, and in its response to this Report sets out what specific steps it is taking.*

The FAC also expressed reservations about UK policy on handing over detainees to Iraqi and Afghan forces, given their concerns about torture and the use of the death penalty¹¹.

¹¹ "We conclude that the Government should have waited for the European Court of Human Rights to rule on whether the transfer of Faisal Attiyah Nassar Al-Saadoon and Khalaf Hussain Mufdhi to the Iraqi authorities in December 2008 was consistent with its obligations under the European Convention

27. The Government rejected these recommendations and has failed to take the simple steps needed to ascertain the individuals' identities and treatment:

53. The Government agrees with the Committee that the transfer of these two individuals by the US to Afghanistan should not have taken place. We have discussed options with the US Government for these individuals, including the possibility of return to their country of origin or country of detention. We have been informed that – according to the findings of the US military 6-monthly 'Enemy Combatants Review Board' assessments – they continue to represent significant security concerns. We have sought and received assurances about their welfare and treatment. The US has assured us that the detainees are held in a humane, safe and secure environment that meets international standards that are consistent with cultural and religious norms. The ICRC has had access to these individuals. A due diligence search by US officials of the list of all those individuals captured by UK Forces and transferred to US detention facilities in Iraq has confirmed that we have no reason to believe that this was anything other than an isolated incident. We would, of course, carefully consider any further credible information. We have nothing to add to previous statements on the issue of the identities of these two individuals. The Government has received a letter from Leigh Day, on behalf of Reprieve, on this issue and will respond in due course. A copy of the response will be passed to the FAC.¹²

*Yours sincerely,
Andrew Tyrie.*

ANDREW TYRIE

Chairman, All Party Parliamentary Group on Extraordinary Rendition

on Human Rights before proceeding with the transfer. We further conclude that explicit assurances that the death penalty would not be used in the event of a conviction in these cases should have been obtained in writing from the Iraqi authorities at the highest level." Para. 21, FAC Human Rights Report 2008

¹² Annual Report on Human Rights 2008 - Response of the Secretary of State for Foreign and Commonwealth Affairs, October 2009