



All Party Parliamentary Group on Extraordinary Rendition
House of Commons

Annual Review 2009

1. Background.....	1
2. Publication of Legal Proposals to Criminalise UK Involvement in Extraordinary Rendition.....	1
3. US Rendition Litigation under the Freedom of Information Act.....	2
4. Emergence of Further British Involvement in Extraordinary Rendition.....	3
5. APPG Visit to Washington DC and New York.....	4
6. Collaboration with Foreign Affairs Committee.....	4

1. Background

The All Party Parliamentary Group on Extraordinary Rendition was established in December 2005 to investigate claims that the United States had been abducting individuals and transferring them for interrogation either to third countries known to use torture, or to secret ‘black sites’ run by the CIA, and that the UK had been complicit in these ‘extraordinary renditions’. Financial support this year was secured from the Oak Foundation, Foundation Open Society Institute and the Persula Foundation.

2. Publication of Legal Proposals to Criminalise UK Involvement in Extraordinary Rendition

After extensive consultation, the All Party Parliamentary Group on Extraordinary Rendition has concluded that the existing law needs to be bolstered sufficiently to ensure that British airspace and airports are not being used for extraordinary rendition. Recent disclosures of UK involvement, the two acknowledged rendition flights through Diego Garcia, and further allegations surrounding the use of British airspace and airports for rendition flights, demonstrate that the current legal framework does not adequately deter the use of UK territory for the purposes of rendition.

In response, the APPG developed legal proposals, with pro bono assistance from Freshfields Bruckhaus Deringer LLP, to prohibit and criminalise involvement in rendition flights as a practical and achievable means of preventing UK airspace and

territory being used for such extraordinary renditions in the future. These proposals recommend that the following should be criminalised:

1. the use of UK transport facilities for extraordinary rendition of any type;
2. facilitating extraordinary rendition using UK transport facilities;
3. ‘circuit flights’ using UK transport facilities (flights passing through the UK to enable a rendition but without a detainee onboard at the time);
4. failure by controllers of transport facilities in the UK to prevent the use of those facilities for the purposes of extraordinary rendition.

By establishing a specific criminal offence that focuses on rendition flights themselves, the APPG’s proposal addresses, for the first time, specific conduct that constitutes UK involvement in extraordinary rendition. This proposal therefore provides a proper deterrent for participation in extraordinary rendition. No country has as yet established a clear specific prohibition on extraordinary rendition *per se*. There is an opportunity for the UK to take the lead in crystallising an effective prohibition. It is hoped that this proposal will act as a beacon to those in other jurisdictions seeking to ensure that their countries are not involved in renditions in the future.

The proposals were published in a consultation document entitled “Extraordinary Rendition, Closing the Gap” in November 2009. This is available on the Group’s website (www.extraordinaryrendition.org) or in paperback from the APPG. The proposals have so far received a positive welcome from MPs and the Government has promised to provide a full response to the proposals in the coming months.

3. US Rendition Litigation under the Freedom of Information Act

In response to the refusal of governments on both sides of the Atlantic to disclose information about the rendition programme the APPG launched its International Freedom of Information Campaign in late 2008. Freedom of Information Act requests to various US agencies – including the CIA and the State Department – have been made requesting information on the US rendition programme and British involvement in it. They have resulted in the disclosure of less than 2,000 highly-redacted pages of records by the US Government, all of which are published on the Group’s website.

In December 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. This is thought to be the first time that a British MP has sued the American Government. The aim of this groundbreaking litigation is to get to the truth on rendition and British involvement in it.

4. Emergence of Further British Involvement in Extraordinary Rendition

Over the last year more evidence has come to light regarding the nature of the US extraordinary rendition programme, and UK involvement in it.

Detainee Handovers in Iraq

The APPG has been leading parliamentary investigation of this issue since 2007. Following submissions from the Group, the Defence Committee and the Foreign Affairs Committee took this up with the Defence Secretary and the Foreign Secretary at a joint evidence session in October 2008. In February 2009, the Defence Secretary was forced to admit that detainees captured by British Forces and transferred to US detention had subsequently been rendered from Iraq to Afghanistan. This contradicted earlier assurances given in 2004 that everyone captured by the UK and transferred to US forces remained in Iraq. Parliamentary Answers subsequently confirmed that both individuals were rendered to Bagram Air Base.

The Defence Committee has subsequently taken up deficiencies in the Secretary of State's 26 February 2009 Statement, highlighted by the APPG, with the Defence Secretary. His response confirmed that British officials were aware of the intention to transfer before it took place. It also appears to imply that a policy similar to that confirmed by Australia, of capture but not detention, existed for practical purposes – that the UK did not have any detention facilities outside MND (SE).

Binyam Mohamed

The APPG had long campaigned for the release of British resident Binyam Mohamed, and has pressed the Government to establish the full extent of British involvement in his rendition. On 11 February 2009 the Group held a second information session on Binyam Mohammed, with Lt Col Yvonne Bradley, Binyam Mohamed's Military Lawyer; Clive Stafford Smith, Counsel for Binyam Mohammed and Legal Director of Reprieve; David Rose, Contributing Editor of Vanity Fair; Lt Col Nigel Wylde QGM (via telephone link), former Army Officer specialising in intelligence and bomb disposal; as well as APPG officers Andrew Tyrie MP, Chris Mullin MP and Lord Hodgson.

Following his release later in February, Binyam Mohamed made further allegations of British involvement in his torture.ⁱ The Attorney General, in consultation with the Director of Public Prosecutions, has referred the alleged complicity of an MI5 officer in Binyam Mohamed's case to the police for investigation.ⁱⁱ In July 2009, the Metropolitan Police confirmed that they would investigate these allegations.ⁱⁱⁱ Other former Guantanamo detainees have also made similar allegations and begun legal action against the Government.

In February 2009 the APPG called for the Intelligence and Security Committee to reopen its inquiry into rendition following a further High Court judgment in the case of Binyam Mohamed which stated that “[t]he ISC Report could not have been made in such terms” had information seen by the Court been available to the Committee.^{iv} In March 2009 the Prime Minister asked the ISC to consider developments since the publication of its Report into Rendition, and committed to review and publish Governmental guidance to the intelligence services. In October 2009 the High Court ruled that a short summary of the treatment of Binyam Mohamed, redacted from its earlier judgment, should be published. The Government has appealed against this decision on the grounds that publication would harm the UK’s intelligence sharing relationship with the US.

5. APPG Visit to Washington DC and New York

The Chairman of the APPG, Andrew Tyrie MP, visited Washington and New York in May 2009 to discuss extraordinary rendition and related issues with key figures in the US Administration and Congress.

The aims of the visit were to learn about the changes in policy on rendition and related issues, in particular those implemented by the Executive Orders of President Obama and specifically the work of the task forces established to examine detention, interrogation and detainee transfer policy; to examine what the UK could do to assist the US in its policy change; to share the APPG’s perspectives and discuss the Group’s work on these issues, in particular to emphasise the APPG’s view that transparency is needed to enable the restoration of trust and the development of new policies going forward; and to discuss the need for a framework to deal with the difficult cases.

The APPG was told that the reforms being initiated by President Obama are being implemented but that a key challenge for the administration was determining what legal framework to apply to the rendition and/or detention of suspected terrorists. It found a willingness to gain international consensus for future policies and a desire for the UK to assess such approaches with open eyes and to offer support or advice where appropriate. A full report of the visit is available on the APPG’s website.

6. Collaboration with Foreign Affairs Committee

The APPG made a number of submissions to the Foreign Affairs Committee on rendition and related issues, including in response to the Committee’s call for evidence in the course of its Human Rights Inquiry. The Group highlighted the paucity of information on the incidents of known UK involvement in rendition, and the Government’s failure properly to investigate these incidents and other allegations. The Committee published its Human Rights Annual Report 2008 in August 2009 and made

a number of important recommendations on rendition, allegations of UK involvement in torture and detainee transfers:

3. We conclude that it is unacceptable that the Government has not taken steps to obtain the full details of the two individuals who were rendered through Diego Garcia. We recommend that the Government presses the new US Administration to provide these details, and that it should then either publish them, or explain the reasons why it considers it would not be in the public interest to publish them.

[...]

6. We conclude that it is a matter of concern that many allegations continue to be made that the two acknowledged instances of rendition through British Indian Ocean Territory in 2002 do not represent the limit of the territory's use for this purpose. We further conclude that it is extremely difficult for the British Government to assess the veracity of these allegations without active and candid co-operation from the US Administration. We recommend that the Government requests the Obama Administration to carry out a further, comprehensive check on its records relating to the use of BIOT with a view to testing the truth of the specific allegations (including those set out in paragraph 34 above) relating to rendition through the territory...

[...]

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...

[...]

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...^v

In the same report, the FAC questioned the adequacy of UK law to prevent rendition, as well as the UK government's policy on circuit flights, which the APPG has long opposed:

4. We conclude that the use of Diego Garcia for US rendition flights without the knowledge or consent of the British Government raises disquieting questions about the effectiveness of the Government's exercise of its responsibilities in relation to this territory. We recommend that in its response to this Report, the Government indicates whether it considers that UK law has effect in British Indian Ocean Territory, and whether it considers that either UK law or the agreements between the US and UK over the use of BIOT were broken by the admitted US rendition flights in 2002.

5. ...We recommend that, in its response, the Government addresses the question of whether it considers that current aviation law and aircraft identification procedures are sufficient to identify flights which may be carrying out rendition both through Diego Garcia or elsewhere through UK airspace.

[...]

8. ...We recommend that the Government, in its response to this Report, sets out options for more effectively establishing whether flights, including those by civilian aircraft, are on their way to or from a rendition operation.

However, the report also concluded that an inquiry, for which the APPG has long campaigned, should not yet be opened:

19. ...We further conclude that any decision by the Government on whether to institute an independent judicial inquiry should await the conclusion of the current court cases.^{vi}

The APPG believes that the Foreign Affairs Select Committee should reconsider its suggestion that an independent judicial inquiry into allegations of UK complicity in torture should await a conclusion to current court cases. 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 have concluded that a judge-led inquiry into rendition is necessary. The APPG will continue to call for an independent inquiry into the UK's involvement in rendition and torture.

ⁱ BBC 'MI5 telegrams 'fed interrogation'', 7 March 2009 <http://news.bbc.co.uk/1/hi/uk/7930708.stm>

ⁱⁱ Written ministerial statement of the Attorney General, Baroness Scotland QC, on Binyam Mohamed, dated 26 March 2009, available at <http://www.attorneygeneral.gov.uk/NewsCentre/Pages/AttorneyGeneralDecisionOnBinyamMohamedInvestigation.aspx>.

ⁱⁱⁱ James Sturcke, 'Police launch investigation into Binyam Mohamed torture allegations', The Guardian, 10 July 2009, <http://www.guardian.co.uk/world/2009/jul/10/binyam-mohamed-torture-investigation-police>.

^{iv} In an earlier judgment the High Court found that the Security Service had 'facilitated' the interrogation of Binyam Mohamed by US authorities, and that "the relationship between the United Kingdom Government and the United States authorities in connection with BM was far beyond that of a bystander or witness to the alleged wrongdoing". *R (B Mohamed) v Foreign Secretary [2008] EWHC 2048*, http://www.judiciary.gov.uk/docs/judgments_guidance/mohamed_full210808.pdf.

^v Foreign Affairs Committee, 'Human Rights Annual Report 2008', Seventh Report 2008-2009, 21 July 2009, <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmfaff/557/55702.htm>.

^{vi} Ibid.