

# Perpetual Impunity: Lessons learned from the global system of rendition and secret detention



Dr Ruth Blakeley, University of Kent  
Dr Sam Raphael, Kingston University

Paper presented at the British International Studies Association Annual Conference, Dublin 18-20 June 2014

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## Abstract

It is now well documented that the Blair government was colluding at the highest levels in the global system for the rendition, detention and interrogation of terror suspects, at the same time as repeatedly denying any involvement. This paper seeks to explain why the UK so confidently maintained its position of denial. The main argument is that involvement in the global rendition system was facilitated and protected by an architecture of impunity. That is to say that the global rendition system deliberately consisted of a set of practices that were designed to ensure impunity for those agents involved at various levels, particularly Western governments and their intelligence agencies. Furthermore, if aspects of a state's involvement were exposed, the architecture of impunity was sufficiently robust that the state could control the level of exposure. For example, the state could allow the light to be shone on certain aspects but could keep others very much in the dark. The state could also take specific actions to mitigate the effects, for example by withholding key information, destroying evidence, or by deflecting attention. Finally, where state involvement was exposed, again because the architecture of impunity was so robust, the authorities were in a strong position to seriously hamstring or avert investigations into wrongdoing. We conclude by offering some reflections on what this tells us about the challenges of holding governments to account for human rights violations of this nature, especially where they arise through a transnational network of state violence/crime.

## Introduction<sup>1</sup>

It is now well documented that the Blair government was colluding at the highest levels in the global system for the rendition, detention and interrogation of terror suspects, at the same time as repeatedly denying any involvement. Furthermore, recent research has shown that UK involvement in rendition from 2001-2010 was much more extensive than previously thought.<sup>2</sup> There have been at least 1622 flights in and out of the UK by aircraft involved in the rendition programme. Of these, 144 were entering UK territory while suspected of being involved in specific renditions operations. 51 different UK airports were used by 84 different aircraft that have been linked to the rendition programme. Only the US and Canada have been used more frequently by aircraft involved in renditions operations.<sup>3</sup> Through its various forms of complicity in rendition, the UK has violated numerous articles of international law aimed at protecting human rights.<sup>4</sup> Specifically, extraordinary rendition and the accompanying detention in secret violate the following: the prohibition of arbitrary detention;<sup>5</sup> the right to a fair trial;<sup>6</sup> the prohibition of torture and cruel, inhuman and degrading treatment or punishment;<sup>7</sup> and the prohibition of enforced disappearance.<sup>8</sup> Complicity in rendition and secret detention may mean that states fall foul of international laws concerning *non-refoulement* and the requirement that states are in no way accessories to human rights violations. Indeed they have certain responsibilities to prevent those violations. For example, under the Convention Against Torture, states have obligations to try to prevent torture by other parties. The transfer of an individual to

<sup>1</sup> This work was supported by the UK's Economic and Social Research Council [RES-000-22-4417: The Globalisation of Rendition and Secret Detention].

<sup>2</sup> Ian Cobain, 'UK provided more support for CIA rendition flights than thought – study', *The Guardian*, 22 May 2013 2013. <<http://www.guardian.co.uk/world/2013/may/22/uk-support-cia-rendition-flights>> Accessed: 16 June 2014. Academics and the London-based legal action charity Reprieve have compiled the world's largest set of public flight data relating to those aircraft suspected of involvement in the global network of renditions, secret detention and torture, with access made available to the database via an interactive map. The database contains flight data on 122 US-registered civilian aircraft, as well as some military flights into Guantanamo Bay. In total, the current version of the database contains over 11,000 individual flights, many of which have been logged by more than one source of data. Of particular importance have been the results of a Freedom of Information project by Access Info Europe and Reprieve that has unearthed significant new flight data on renditions aircraft. This has not been integrated before now, and sits in the Database alongside data from Eurocontrol, Council of Europe and European Parliament investigations, and a range of other sources. See: Sam Raphael and Ruth Blakeley, 'Rendition Flights Database', 22 May 2013. <<http://www.therenditionproject.org.uk/global-rendition/the-flights/index.html>> Accessed: 16 June 2014.

<sup>3</sup> Ibid.

<sup>4</sup> A number of scholars have shown that the rendition and/or secret detention of a detainee necessarily entails multiple violations of their human rights, as codified in the national law of many states, as well as in international human rights law and international humanitarian law. See for example: John T Parry, 'The Shape of Modern Torture: Extraordinary Rendition and Ghost Detainees', *Melbourne Journal of International Law*, 6 (2005); Leila Nadya Sadat, 'Extraordinary Rendition, Torture and Other Nightmares from the War on Terror', *George Washington Law Review*, 75:5/6, (2007); Margaret Satterthwaite, 'Extraordinary Rendition and Disappearances in the "War on Terror"', *Gonzaga Journal of International Law*, 1 2006. <<http://www.gonzagajil.org/pdf/volume10/Satterthwaite/Satterthwaite.pdf>> Accessed: 26 March 2011; Margaret Satterthwaite, 'Rendered Meaningless: Extraordinary Rendition and the Rule of Law', *George Washington Law Review, Public Law Research Paper No. 06-36*, 2007. <<http://ssrn.com/abstract=945711>> Accessed: 26 March 2011; Margaret Satterthwaite, 'What's Wrong with Rendition?', *American Bar Association, National Security Law Report*, 4 2007.

<[http://www.abanet.org/natsecurity/nsrlr/2007/API\\_ABA\\_National\\_Security\\_Newsletter\\_68384.pdf](http://www.abanet.org/natsecurity/nsrlr/2007/API_ABA_National_Security_Newsletter_68384.pdf)> Accessed: 26 March 2011; Margaret Satterthwaite and Angelina Fisher, 'Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law', *The Long Term View*, 4 2006. <<http://www.mslaw.edu/MSLMedia/LTV/6.4.pdf>> Accessed: ; David Weissbrodt and Amy Bergquist, 'Extraordinary Rendition and the Torture Convention', *Virginia Journal of International Law*, 46:4, (2006).

<sup>5</sup> For example, Article 9 of the International Covenant on Civil and Political Rights. UN, 'International Covenant on Civil and Political Rights', 1976. <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> Accessed: 6 March 2013.

<sup>6</sup> See for example Articles 9 and 24 of the ICPR. UN, 'International Covenant on Civil and Political Rights'.

<sup>7</sup> UN, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', 1985. <<http://www.hrweb.org/legal/cat.html>> Accessed: 4 May 2005.

<sup>8</sup> UN, 'International Convention for the Protection of All Persons from Enforced Disappearance', 2006.

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IntConventionEnforcedDisappearance.aspx>> Accessed: 6 March 2013.

another state where there is a risk that the individual faces torture is prohibited.<sup>9</sup> It is clear that rendition itself violates international human rights law, as do a number of the accompanying practices that have become key features of the global rendition system.

Despite being a signatory to the various human rights conventions referred to here, collusion by Britain in rendition has taken a number of forms. As we explore in more detail below, UK airports and airspace have been used extensively by renditions aircraft. UK territory has been used for the refuelling of aircraft involved in renditions. UK authorities have passed questions to those involved in interrogations of individuals that have been subjected to rendition, secret detention and torture. UK authorities initiated renditions of individuals to Libya, which were then facilitated by the CIA and resulted in the arbitrary detention and torture of victims by Gaddafi's regime. UK authorities have received intelligence obtained during the interrogation of individuals that have been subjected to rendition, secret detention and torture. UK intelligence agencies have been informed by detainees that they have been subjected to torture and have failed to act.

This paper seeks to explain why the UK maintained its position of denial, despite overwhelming evidence of its involvement. This paper seeks to explain why the UK so confidently maintained its position of denial. The main argument is that involvement in the global rendition system was facilitated and protected by an architecture of impunity. That is to say that the global rendition system deliberately consisted of a set of practices that were designed to ensure impunity for those agents involved at various levels, particularly Western governments and their intelligence agencies.<sup>10</sup> Furthermore, if aspects of a state's involvement were exposed, the architecture of impunity was sufficiently robust that the state could control the level of exposure. For example, the state could allow the light to be shone on certain aspects but could keep others very much in the dark. The state could also take specific actions to mitigate the effects, for example by withholding key information or by deflecting attention. Finally, where state involvement was exposed, again because the architecture of impunity was so robust, the authorities were in a strong position to seriously hamstring or avert investigations into wrongdoing. We begin by sketching out this architecture of impunity that was built into the global rendition system. With reference to specific examples of UK complicity, we explore how the UK was able to take advantage of the architecture of impunity to deny its involvement and avert or hinder processes aimed at fully investigating UK complicity. We conclude by offering some reflections on what this tells us about the challenges of holding governments to account for human rights violations of this nature, especially where they arise through a transnational network of state violence/crime.

## **The global rendition system and its architecture of impunity**

The global rendition system was deliberately fragmented, highly secretive, and dependent on the outsourcing of key operational aspects of it to privatised entities or third party states. In other words, considerable care was taken about the roles that different parties would play, giving them the capacity to plausibly deny their complicity.

The logics behind rendition are firstly, to facilitate the secret detention of a terror suspect, and secondly, to exclude the possibility of review by the domestic courts of the US or the home country of the detainee. On

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<sup>9</sup> Article 3. UN, 'Convention Against Torture'.

<sup>10</sup> A survey of the literature would suggest that most academic work on impunity for human rights violations has tended to focus on police states and military regimes, with a large literature particularly on the Latin American national security states from the 1940s to the late 1980s. There is relatively little work on impunity of Western states. We see this paper as a spring board for a wider project on Western states and regimes of impunity, which will eventually involve comparing the architecture of impunity at the heart of the global rendition system with the architectures of impunity within police states and military regimes.

17 September 2001, President George W. Bush sent a memo to the Director of the CIA granting presidential approval for 'clandestine intelligence activity', and authorisation for the CIA's subsequent 'terrorist detention and interrogation program'. While the memo remains classified, its topic was disclosed in January 2007 when the CIA filed a declaration to the Courts insisting that it was too sensitive for release. This followed a Freedom of Information request for its declassification by the American Civil Liberties Union. Within weeks of issuing the memo, on 13 November 2001, President Bush issued an Executive Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism.<sup>11</sup> This Order provided the Department of Defense (DoD) with the authority to detain indefinitely any non-American in any place in the world, as long as they were determined by the US Government to pose a terrorist threat. Together with the September 2001 memo to the CIA, this Order laid the foundations for the arbitrary detention of thousands of detainees in Afghanistan and Iraq at sites intended for this purpose, including at the Bagram Airbase, Afghanistan, and the Abu Ghraib prison, Iraq, as well as for military rendition and extraordinary rendition and the secret detention of hundreds of detainees around the globe in the five years that followed.

As already indicated rendition took on a number of forms and as such, contributed to the deliberately fragmented nature of the global rendition system. As we will show below, the very fact that different forms were practised could be used by the UK to deny aspects of its involvement. Rendition is not a term defined by international law. At the heart of all forms or definitions of rendition is the movement of detained persons across state boundaries in a manner which is outside of any legal framework, such as legal extradition proceedings. Building on attempts that have been made to scope out various sub-categories of rendition, particularly the work of the UK Parliament's Intelligence and Security Committee (ISC),<sup>12</sup> we consider the following to be substantive types of rendition: rendition to justice; military rendition; and extraordinary rendition. Rendition to justice involves the transfer of persons from one jurisdiction to another for the purposes of standing trial within an established and recognised legal system. This form of rendition was used by the US during the Reagan and Clinton administrations, usually to apprehend terror suspects and try them in the US, but was largely discontinued during the 'War on Terror' as other forms of rendition expanded.<sup>13</sup> Military rendition involves the extra-judicial transfer of persons (detained in or related to a theatre of military operations) from one state to another, for the purposes of official military detention in a military facility. Those subjected to military rendition are not held in secret, although the legality of their capture, transfer and continued detention may be disputed. Their treatment, including interrogation methods employed, may also contravene international and domestic law. The transfer of hundreds of battlefield detainees from Afghanistan (and the Afghanistan-Pakistan border region) to Guantánamo Bay, via US Department of Defense-run facilities in Afghanistan, are instances of military rendition, as are the transfer of battlefield detainees from Iraq to detention facilities in other states. Extraordinary rendition refers to the extra-judicial transfer of persons from one jurisdiction or state to another, where this involves the capture and transfer outside of the recognised theatres of conflict in Iraq and Afghanistan, or where it otherwise involves transfer to secret detention outside of the normal legal system.

Those subjected to extraordinary rendition are usually held in secret detention. Secret detentions took place in a variety of contexts and this was a significant factor in helping to shield the programme and the secret detentions from wider scrutiny. Some detainees were held in a number of official Department of

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<sup>11</sup> George Bush, 'Executive Order: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism', in (The White House, Washington DC: Federal Register, vol.66, no.2, 2001).

<sup>12</sup> ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition', 2007.

<[http://www.therenditionproject.org.uk/pdf/PDF%20173%20\[UK%20Intelligence%20and%20Security%20Committee%20Special%20Report%20Rendition%20July%202007\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20173%20[UK%20Intelligence%20and%20Security%20Committee%20Special%20Report%20Rendition%20July%202007].pdf)> Accessed: 6 March 2013.

<sup>13</sup> James D. Boys, 'What's so extraordinary about rendition?', *The International Journal of Human Rights*, 15:4, (2011); Margaret Satterthwaite and Angelina Fisher, 'Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law'.

Defense (DoD)-run detention sites in the theatres of conflict in Afghanistan and Iraq. These detentions have either occurred in separate facilities within the compounds, or within the main structures themselves. Some detainees in these facilities have been moved around during ICRC visits, in order to keep them off the list. It is often unclear which agency has been primarily responsible for such detainees, although it is likely to be the CIA, in conjunction with specific DoD units. Similarly, there is evidence that secret detentions have occurred within US military facilities outside of these conflict zones, including most notably at the US Naval Base at Guantanamo Bay, Cuba. Other suspected US military facilities include those in Diego Garcia, Djibouti, Bosnia, Kosovo, and Germany. Furthermore, there is some evidence to suggest that US Navy vessels have been used to hold detainees in secret. Again, it is not always clear in these cases whether the CIA or the DoD has been the primary detaining authority.

Scores of detainees, including those designated as 'high-value detainees' (HVDs), have been held in isolated facilities built and run by the CIA. These prisons, often referred to as 'black sites', were constructed after September 2001 under newly-granted authority from President Bush. Although the existence of the CIA detention programme was publically acknowledged by President Bush in September 2006, the US Government has refused to discuss the locations of these sites. Evidence shows that black sites were operational in Afghanistan, Thailand, Romania, Poland and Lithuania.<sup>14</sup>

Proxy detention facilities, run by foreign security forces, have also been used by the US for secret detention. Most detainees held at these sites have been rendered by the CIA, either from a CIA-run black site, from a US military facility, or from their point of capture and initial detention. During proxy detention, most experience sustained interrogation under torture, led by the host security forces but often with input from CIA and other Western intelligence and security agencies. After this period of detention, detainees are either returned to the CIA (where they are generally transferred to official detention at Guantanamo Bay), or return to their home country for release or for trial and/or continued detention. Proxy detentions have generally taken place in the Middle East and North Africa; namely, in Jordan, Syria, Egypt, Libya and Morocco. Uzbekistan has also been mentioned as a possible location of proxy detentions. Secret detentions have often occurred at the location of capture, in either formal or secret sites run by local security forces. These detentions are either conducted in conjunction with the CIA or other Western agencies, or lead to a transfer to CIA control within a relatively short time period. Countries where initial secret detention has occurred include The Gambia, Malawi, Zambia, Sudan, Kenya, Tanzania, Morocco, Mauritania, Dubai,

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<sup>14</sup> AP, 'Bright Light': Inside secret CIA prison in Romania', *Associated Press*, 8 December 2011.

<<http://hosted.ap.org/interactives/2011/cia-romania/>> Accessed: 16 June 2014; Ian Cobain, 'Lithuania faces legal action over prisons set up for CIA rendition programme', *The Guardian*, 27 October 2011.

<<http://www.theguardian.com/world/2011/oct/27/lithuania-cia-rendition-prisons-european-court>> Accessed: 16 June 2014; Matthew Cole, 'Officials: Lithuania Hosted Secret CIA Prison to get "Our Ear"', *ABC News*, 2009.

<[http://www.therenditionproject.org.uk/pdf/PDF%20157%20\[ABC%20News%20-%20Lithuania%20Hosted%20Secret%20Prison,%2020%20Aug%202009\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20157%20[ABC%20News%20-%20Lithuania%20Hosted%20Secret%20Prison,%2020%20Aug%202009].pdf)> Accessed: 19 June 2012; Matthew Cole and Brian Ross, 'Exclusive: CIA Secret "Torture" Prison Found at Fancy Horseback Riding Academy', *ABC News*, 18 November 2009.

<<http://abcnews.go.com/Blotter/cia-secret-prison-found/story?id=9115978>> Accessed: 16 June 2014; John Goetz and Kristopher Sell, 'CIA-Geheimgefängnis is Bukarest enttarnt', *Panorma*, *ARD*, 8 December 2011.

<<http://daserste.ndr.de/panorama/archiv/2011/ciagefaengnis101.html>> Accessed: 16 June 2014; Adam Goldman, 'The hidden history of the CIA's prison in Poland', *The Washington Post*, 23 January 2014. <[http://www.washingtonpost.com/world/national-security/the-hidden-history-of-the-cias-prison-in-poland/2014/01/23/b77f6ea2-7c6f-11e3-95c6-0a7aa80874bc\\_story.html](http://www.washingtonpost.com/world/national-security/the-hidden-history-of-the-cias-prison-in-poland/2014/01/23/b77f6ea2-7c6f-11e3-95c6-0a7aa80874bc_story.html)>

Accessed: 16 June 2014; Adam Goldman and Matt Apuzzo, 'Inside Romania's secret CIA prison', *Associated Press*, 8 December 2011. <<http://www.independent.co.uk/news/world/europe/inside-romania-s-secret-cia-prison-6273973.html>> Accessed: 16 June 2014; David Johnston and Mark Mazzetti, 'A window into CIA's embrace of secret jails', *New York Times*, 12 August 2009.

<<http://www.nytimes.com/2009/08/13/world/13foggio.html>> Accessed: 16 June 2012; Jason Leopold, 'Revealed: Senate report contains new details on CIA black sites', *Aljazeera America*, 9 April 2014. <<http://america.aljazeera.com/articles/2014/4/9/senate-cia-torture.html>> Accessed: 16 June 2014; Craig Whitlock, 'Lithuania investigates facility that may have been CIA "black site"', *The Washington Post*, 19 November 2009. <<http://www.washingtonpost.com/wp-dyn/content/article/2009/11/18/AR2009111803994.html>> Accessed: 16 June 2014.

Yemen, Thailand, Indonesia, Pakistan, and Macedonia. Lastly, secret detentions in the context of the 'war on terror' have occurred in several countries where the entire process of capture, detention, interrogation (and occasionally rendition) takes place outside of the direct control of US or other Western agencies, but where there is evidence of complicity by these states. Pakistan, Bangladesh, Kenya, Somalia, Ethiopia.

The many and varied options for detaining suspects as part of the rendition programme is significant in that it made it very difficult to trace them and evidence their existence. As we will show, it also enabled the transfer of detainees through multiple different detention facilities in different countries and on different continents, further shrouding the whereabouts of individuals in secrecy.

Disorientation of detainees was a key feature of the global rendition system. This disorientation begins with the initial preparations of a detainee for transfer on board a rendition flight. Detainees are subjected to a 20-minute preparation process, described to Dick Marty, investigator for the European Parliament, by a CIA officer as a 'twenty minute takeout' designed to reduce the detainee to 'a state of almost total immobility and sensory deprivation'.<sup>15</sup> Many detainees have reported an identical process involving being stripped, often by having their clothes cut from their body. They would be gripped from all sides throughout the process, and often punched, kicked or shoved. When naked, they were photographed, and be subjected to a full cavity examination. Suppositories were often administered anally, before being dressed in a diaper and a tracksuit or boiler-suit (jump-suit). Detainees were then blindfolded, sometimes after having cotton wool taped to their eyes. Headphones or ear defenders were placed on their ears, sometimes with loud music played through them. Loose hoods were then placed over the head, which reached down over the shoulders. Hands and feet were shackled, and may then have been connected to other detainees.<sup>16</sup> Many detainees subjected to rendition were transferred between multiple facilities throughout their time in captivity, and they report taking weeks and months to work out the location of a new detention site, with some never being completely certain. Where detainees were interrogated, the use of interrogators of various nationalities also had disorienting effects, leaving detainees to second guess which state or states were behind their rendition. These processes of disorientation of detainees were all designed to make it very difficult for the details of a detainee's case to be proven, enabling those states involved to evade accountability.

Another feature of the global rendition system that laid the ground for complicit parties to plausibly deny their involvement was the heavy reliance on a wide network of private companies for operational purposes. The flights which linked the global secret detention system were ostensibly made by private, civilian aircraft, with the US Government's hand hidden behind a layer of private businesses. However, investigations during 2004 and 2005 by the *Washington Post*<sup>17</sup> and the *New York Times*<sup>18</sup> blew the cover on a set of companies which appeared to exist only on paper, and which acted as a front for CIA activity to go unnoticed. These 'shell companies' hid between 25-30 aircraft owned by the CIA, some of which were heavily involved in the rendition programme. Alongside this facade of independent aircraft operations, a significant part of the CIA's rendition programme was genuinely outsourced to a network of private companies. Between them, these companies provided the aircraft and crew for specific rendition operations (according to stated requirements from the 'end user'), positioned the aircraft at the start of the operation (usually in Washington), and delivered a range of logistical services necessary for global trips.

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<sup>15</sup> Dick Marty, 'Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States', 2006. <[http://www.therenditionproject.org.uk/pdf/PDF%2068%20\[EP-MEM-2006-06%20Alleged%20Secret%20Detentions\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%2068%20[EP-MEM-2006-06%20Alleged%20Secret%20Detentions].pdf)> Accessed: p.21.

<sup>16</sup> Dick Marty, 'Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States'.

<sup>17</sup> Dana Priest, 'Jet is an Open Secret in Terror War', 27 December 2004. <<http://www.washingtonpost.com/wp-dyn/articles/A27826-2004Dec26.html>> Accessed: 1 September 2005.

<sup>18</sup> Scott Shane, Stephen Grey and Margot Williams, 'CIA Expanding Terror Battle Under Guise of Charter Flights', *New York Times*, 31 May 2005. <[http://www.nytimes.com/2005/05/31/national/31planes.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2005/05/31/national/31planes.html?pagewanted=all&_r=2&)> Accessed: 12 June 2014.

These included filing flight plans with relevant air traffic authorities, securing overflight permissions, landing and handling permits, reserving hotels for overnight stops, and providing catering. Numerous companies have owned, operated and supported the aircraft linked to the renditions programme, while others have acted as brokers (sourcing the operating companies to supply the aircraft for the CIA).<sup>19</sup> As details of the global rendition system emerged, the CIA and found new ways to try and evade detection of rendition operations, including by filing false flight logs, and having more than one aircraft land at a site to carry out rendition operations, making it difficult for investigators to know with any certainty which if the two flights was the rendition operation, and which was a decoy.<sup>20</sup>

Even after the role of private companies was exposed, and investigative work by the Council of Europe, the European Parliament, a range of NGOs and journalists got underway to try and fully understand and explain the global rendition system, as well as hold states to account, those states, including the UK, continued to deny their involvement. Using the UK as an example, we will show that even when confronted with the evidence, the authorities indulged in various forms of denial. And where investigations looked likely to ensue, they went to considerable lengths to hamstring these. We argue that the denial of complicity and the hamstringing of investigative processes was possibly largely because of the architecture of impunity that had been built into the global rendition system.

## The UK in Denial

UK authorities found various ways to deny their involvement in rendition, all of which are in line with mechanisms of denial identified by Stanley Cohen in his work aimed at explaining how states seek to cover up knowledge of and involvement in atrocities. Cohen suggests that authorities have three possibilities as to *what* is being denied, which he terms 'literal denial', 'interpretive denial', and 'implicatory denial'.<sup>21</sup>

Literal denial involves asserting that something did not happen or is not true.<sup>22</sup> It can also involve efforts to go on the counter-offensive by smearing those who allege wrongdoing.<sup>23</sup> Interpretive denial involves giving a different meaning to the facts from what seems apparent to others, rather than stating outright that something is not true.<sup>24</sup> This might involve suggesting that an incident was isolated rather than systematic.<sup>25</sup> It might involve denying responsibility by claiming that an act was accidental,<sup>26</sup> or by suggesting that some other party is responsible.<sup>27</sup> It might involve euphemism,<sup>28</sup> for example, the Bush administration coined the term 'enhanced interrogation techniques' to describe what others would understand as torture. It might also involve recourse to legalism,<sup>29</sup> a device also used by the Bush administration, which sought to argue that the Geneva Conventions did not apply to detainees captured in

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<sup>19</sup> Ruth Blakeley and Sam Raphael, 'The Aircraft', *The Rendition Project*, May 2013. <<http://www.therenditionproject.org.uk/global-rendition/the-aircraft/index.html>> Accessed: 16 June 2014; Ruth Blakeley and Sam Raphael, 'The Companies', *The Rendition Project*, May 2013. <<http://www.therenditionproject.org.uk/global-rendition/the-companies/index.html>> Accessed: 16 June 2014.

<sup>20</sup> See for example analysis by The Rendition Project of the rendition of Ramzi Bin al-Shibh from Morocco to Poland, 6-13 February 2003: <http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N379P-030206.html>. See also Ian Cobain and James Ball, 'New Light shed on US government's extraordinary rendition programme', *The Guardian*, 2013. <<http://www.theguardian.com/world/2013/may/22/us-extraordinary-rendition-programme>> Accessed: 3 March 2014.

<sup>21</sup> Stanley Cohen, *States of Denial. Knowing About Atrocities and Suffering* (Cambridge: Polity Press, 2001), p. 7.

<sup>22</sup> Stanley Cohen, *States of Denial*, p. 7.

<sup>23</sup> Stanley Cohen, *States of Denial*, pp. 7, 112-13.

<sup>24</sup> Stanley Cohen, *States of Denial*, p. 7.

<sup>25</sup> Stanley Cohen, *States of Denial*, p. 61.

<sup>26</sup> Stanley Cohen, *States of Denial*, p. 60.

<sup>27</sup> Stanley Cohen, *States of Denial*, p. 61.

<sup>28</sup> Stanley Cohen, *States of Denial*, p. 107.

<sup>29</sup> Stanley Cohen, *States of Denial*, p. 107.

the 'War on Terror', since they were 'enemy combatants' rather than prisoners of war. Finally, implicatory denial involves neither the denial of facts nor the interpretation of those facts. Rather it involves the denial or minimisation of the psychological, political or moral implications that conventionally follow from the events in question. This often involves the rationalisation of state actions.<sup>30</sup> For example, US officials in recent years have repeatedly argued that the indefinite detention without charge or trial of detainees in Guantánamo Bay is not as serious as opponents of the policy suggest, since the detainees in question are extremely dangerous, and therefore, the abuse of their human rights is a minor issue compared with the risks they pose to US citizens if released. It might involve denial of the victim, perhaps by arguing that the injury to a victim was not wrong in the circumstances.<sup>31</sup> It might involve trying to 'neutralize the wrongfulness of the act by minimizing any resultant hurt or injury'.<sup>32</sup> It might also involve appeals to the righteousness of the actor or indeed the act, or to necessity.<sup>33</sup> It might also involve appeals to the exceptional nature of the circumstances, or it might involve making advantageous comparisons with other, less savoury actors.<sup>34</sup>

After evidence emerged in 2005 that renditions related aircraft had landed on UK territory, UK authorities were repeatedly asked about British involvement in rendition and alleged complicity in torture. The UK government's typical response was to state that the UK unreservedly condemns torture or cruel, inhuman or degrading treatment, it does not participate in it, solicit it, encourage or condone it, for any purpose, and claims to abide by its commitments under international law.<sup>35</sup> This repeated response is an obvious example of literal denial. Numerous examples of this are seen in oral evidence given to the House of Commons Foreign Affairs Select Committee on 13 December 2005. Jack Straw stated before the House of Commons Foreign Affairs Select Committee, 'We know of no occasion where there has been a rendition through UK territory, or indeed over UK territory, nor do we have any reason to believe that such flights have taken place without our knowledge'.<sup>36</sup> This was a case of literal denial. He went further, stating that, 'Unless we all start to believe in conspiracy theories and that the officials are lying, that I am lying, that behind this there is some kind of secret state which is in league with some dark forces in the United States, and also let me say, we believe that Secretary Rice is lying, there simply is no truth in the claims that the United Kingdom has been involved in rendition full stop, because we have not been'.<sup>37</sup> Thus, as well as denying UK involvement in rendition, Jack Straw was quick to smear those making the allegations as 'conspiracy theorists'.

In Straw's evidence before the Select Committee, we also find an example of interpretive denial.<sup>38</sup> Straw admitted to having approved two requests from the Clinton administration to carry out two renditions to justice, not extraordinary renditions, during his time as Home Secretary, and stated he had been satisfied about the nature of the likely treatment they would receive in the US.<sup>39</sup> He was therefore admitting that renditions had occurred but was asserting that these were qualitatively different from what was being alleged, since these were renditions to justice, not to torture. He did not acknowledge that both are illegal under international law. By pointing to this very small number of cases, he was also implying that these had been isolated incidents and in no way linked to any systematic programme of UK complicity in rendition. He

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<sup>30</sup> Stanley Cohen, *States of Denial*, p. 8.

<sup>31</sup> Stanley Cohen, *States of Denial*, p. 61.

<sup>32</sup> Stanley Cohen, *States of Denial*, p. 61.

<sup>33</sup> Stanley Cohen, *States of Denial*, p. 110.

<sup>34</sup> Stanley Cohen, *States of Denial*, p. 111.

<sup>35</sup> JCHR, *Allegations of UK complicity in torture (23rd Report of Session 2008-09, HC230)* (London: TSO, 2009), pp. Ev. 33-4.

<sup>36</sup> UK, 'Examination of Witnesses (Questions 20-51)', *House of Commons Select Committee on Foreign Affairs*, 2005.

<<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmfaaff/uc168-i/uc76802.htm>> Accessed: 17 June 2013.

<sup>37</sup> UK, 'Examination of Witnesses (Questions 20-51)'.

<sup>38</sup> Stanley Cohen, *States of Denial*, p. 7.

<sup>39</sup> UK, 'Examination of Witnesses (Questions 20-51)'.



therefore gave a very partial answer to the question, which deflected from the concerns of the committee, and contribution to the wider pattern in his evidence of denying any UK involvement in extraordinary renditions.

A further example of interpretive denial can be found in the case of the use of the UK island territory in Diego Garcia for rendition operations. Mohammed Saad Iqbal Madni was rendered from Jakarta, Indonesia to Egypt on 10-11 January 2002.<sup>40</sup> He had been detained in Jakarta at the request of the CIA. He was transferred on board one of the CIA's own Gulfstream V jets, with the registration number N379P, and flown to Egypt where he was tortured for three months before being rendered again to Afghanistan, and then finally Guantánamo Bay. The aircraft stopped for refuelling *en route* between Indonesia and Egypt, landing on the British island of Diego Garcia with Madni on board.

N379P left its home base of Johnston County Airport in the afternoon of 9 January, just several hours after Madni had been arrested in Jakarta. It flew first to Washington Dulles International Airport, where it stayed for just over an hour. It then flew direct to Cairo, landing in the middle of the night. The aircraft disappears from the flight records at this point, reappearing six days later on 15 January, where it leaves Cairo in the morning and flies to Glasgow Prestwick, Washington and then on to Johnston County, arriving just before midnight. Although there are no flight records documenting the whereabouts of N379P between 9-15 January, other evidence points to this aircraft having flown from Egypt (where it had landed to pick up Egyptian agents) to Indonesia in order to pick up Madni, before returning to Cairo with Madni on board, stopping off for fuel in Diego Garcia on the way. Madni has testified that he was put onto a plane in the evening of 10 January and taken to Egypt.<sup>41</sup> Indonesian officials speaking to the *Washington Post*,<sup>42</sup> have stated that this aircraft was a Gulfstream V jet, matching the description of N379P.

After 5-7 hours in the air, the aircraft stopped for 30 minutes, during which time he was photographed but kept on the plane. It then took off again, flying for a further 3-4 hours before landing in Cairo in the morning of 11 January. Analysis conducted by Reprieve has demonstrated that the stopover location was almost certainly Diego Garcia.<sup>43</sup> This matches with the flying times provided by Madni, the distances involved, and the known speed of a Gulfstream V. It is also confirmed by a letter from then UK Foreign Secretary David Miliband to Reprieve's Director Clive Stafford Smith in February 2008, where he admitted that a 'plane with a detainee on board had refuelled in Diego Garcia in January 2002.'<sup>44</sup> There is no other known detainee transfer at that time whose route would have taken them via Diego Garcia, meaning that it is highly likely that the detainee in question was Madni.

In September 2002, the same aircraft flew completed a circuit that made several stops on the way, undertaking multiple renditions to transfer detainees between several destinations, including Diego Garcia. Specifically, it is likely to have rendered Ramzi Binalshibh from Afghanistan to continued CIA detention in Morocco, and two other detainees – Hassan bin Attash and Abu Otaibi Hadarami – from Afghanistan to proxy detention in Jordan. This circuit is also likely to have involved the rendition of a detainee from Southeast Asia to Egypt, via Diego Garcia.<sup>45</sup> The striking thing here is that Milliband admitted to one of the

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<sup>40</sup> For full details of this rendition operation, see: <http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N379P-020109.html>

<sup>41</sup> Reprieve, 'Ghost Detention on Diego Garcia', 20 May 2009. ([http://www.reprieve.org.uk/static/downloads/Microsoft\\_Word\\_-\\_2009\\_05\\_20\\_FAC\\_Submission\\_DG.pdf](http://www.reprieve.org.uk/static/downloads/Microsoft_Word_-_2009_05_20_FAC_Submission_DG.pdf), accessed 26 March 2011).

<sup>42</sup> Rajiv Chandrasekaran and Peter Finn, 'US Behind Secret Transfer of Terror Suspects', *Washington Post*, 2002. ([http://www.infowars.com/saved%20pages/Police\\_state/torture\\_wapost.htm](http://www.infowars.com/saved%20pages/Police_state/torture_wapost.htm), accessed 6 March 2013).

<sup>43</sup> Reprieve, 'Ghost Detention on Diego Garcia'.

<sup>44</sup> David Milliband, 'Letter to Clive Stafford Smith from David Milliband, Foreign Secretary', (London: Foreign and Commonwealth Office, 2008).

<sup>45</sup> For a detailed account of the September 2002 rendition circuit then included a stopover in Diego Garcia, see: <http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N379P-020911.html>

flights, but made no reference to the later one, nor to subsequent landings on Diego Garcia in 2004. Research by The Rendition Project would suggest that Diego Garcia was used for further renditions, including the rendition of a number of people from the Far East to Libya in 2004, discussed below.

These partial admittances by UK officials are symptomatic of the inbuilt architecture of impunity at the heart of the global rendition system. As we now know, however, months before Straw gave his evidence to the Foreign Affairs Select Committee, UK security services were involved in orchestrating renditions to torture of a number of Libyans from the Far East to Gaddafi's regime. Furthermore, we now also know that the use of UK territory for the refuelling of aircraft involved in rendition operations was much more extensive than the two flights referred to by Straw, discussed in more detail below.

Long before Straw was before the Select Committee in December 2005, the UK had been involved in the initiation of renditions from Asia to Libya. This came to light in late 2011, when Human Rights Watch managed to obtain the so-called Tripoli documents. These were documents formerly held by the Libyan intelligence chief, Musa Kusa, and obtained by Human Rights Watch on 3 September 2011, just after the fall of the Gaddafi regime, and explained in detail in their report, *Delivered into Enemy Hands*.<sup>46</sup>

The documents show that UK intelligence services initiated the rendition of Abdel Hakim Belhadj (also known as *Abu Abdullah al-Sadiq*) and his pregnant wife, Fatima Bouchar, from Bangkok to Libya, in early March 2004. Belhadj had left Libya in 1988 and during the 1990s became leader of the Libyan Islamic Fighting Group (LFIG), aimed at overthrowing Colonel Gaddafi's regime. In early 2004, Belhadj and Bouchar suspected they were being monitored by the authorities, and decided to seek asylum in the UK. On 21 February 2004 they were detained at Beijing airport and deported back to Malaysia. Afraid of being deported to Libya, on arrival at Kuala Lumpur Belhadj claimed that he was an Iraqi refugee and wished to claim refugee status. The couple were then detained and interrogated in Kuala Lumpur for two weeks.

The Tripoli Documents show that British Security Services knew of their detention in Malaysia and arranged with the Libyan and American services to render Belhadj and Bouchar back to Libya. On 1 March, a week after the two had been sent to Malaysia, MI6 sent a fax to the office of al-Sadiq Karima, Head of Libyan International Relations Department, informing them of Belhadj's detention.<sup>47</sup> The Americans also were clearly aware of Belhadj's whereabouts, perhaps tipped off by the British, and arranged for him and Bouchar to be rendered back to Libya. On 4 March, the CIA sent two memos to the Libyan security services. The first memo, *Urgent Request Regarding the Extradition of Abdullah al-Sadiq from Malaysia*, stated that the Americans were 'working energetically with the Malaysian government to effect the extradition of Abdullah al-Sadiq [Belhadj] from Malaysia', and that 'of course, once we have Sadiq in custody, we will be very happy to service your debriefing requirements and we will share the information with you'.<sup>48</sup> The memo went on to request that the Libyans refrain from exerting pressure on the Malay authorities 'until we have custody of Sadiq'. The second memo from 4 March, *Clarification Regarding the Rendition of Abu Abdullah al-Sadiq*, made it clear that 'our service [the CIA] is committed to rendering the terrorist Abu Abdullah al-Sadiq to your custody', and that they were 'very hopeful for a (sic) expeditious resolution to this matter'.<sup>49</sup>

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<sup>46</sup> HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya', 2012.

<[http://www.hrw.org/sites/default/files/reports/libya0912webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf)> Accessed: 6 March 2013.

<sup>47</sup> MI6, 'Abdullah Sadeq (Fax sent by MI6 to the office of al-Sadiq Karima, Head of Libyan International Relations Department)', 2004. Accessed:

<sup>48</sup> CIA, 'Urgent Request Regarding the Extradition of Abdullah al-Sadiq from Malaysia (Memo sent by CIA to Libyan Security Services), 4 March 2012).

<sup>49</sup> CIA, 'Clarification Regarding the Rendition of Abu Abdullah al-Sadiq (Memo from CIA to Libyan Security Services', 4 March 2004.

Two follow-up memos were then sent from the CIA to Libyan intelligence on 6 March. The first, *Planning for the Capture and Rendition of Abdullah al-Sadiq*, informed the Libyans that the Malay authorities were planning to put Belhadj and Bouchar on a commercial flight from Kuala Lumpur to London via Bangkok the next day, on 7 March.<sup>50</sup> It went on to state that 'we are planning to arrange to take control of the pair in Bangkok and place them on our aircraft for a flight to your country'. It also requested the presence of Libyan intelligence officers during the rendition.<sup>51</sup> The second memo from 6 March, headed *Schedule for the Rendition of Abdullah al-Sadiq*, provided 'important information with regard to the upcoming rendition of LIFG leave Abdulla al-Sadiq and his wife to your custody'.<sup>52</sup> The memo listed the flight plans for the rendition circuit, including for an overnight in the Seychelles for which the Libyan officers accompanying the American team were advised to 'have the proper documentation'. The flight plans also included a refuelling stopover in Diego Garcia on return from Thailand, with the detainees on board. The memo was clear that 'the US officers will exercise control over this operation until the detainees are remanded to your government in Tripoli', and that 'our regulations stipulate that your officers refrain from bringing weapons of any type, cameras, cell phones or recording devices on board the aircraft'.

The rendition of Belhadj and Bouchar appears to have followed the broad plan laid out in the CIA's memos to Libyan intelligence. They were released from detention in Malaysia at some point in the first week of March, and told they could travel to the UK. The flight they were placed on, however, stopped in Bangkok on the way to London, and they were both detained again in the airport's waiting room. At that point, they were handed over to US agents and detained in what they believe was a secret prison in or near to the airport. The exact location of the facility is unclear, although it is thought to have been within the airport perimeter or close by.<sup>53</sup>

Belhadj and Bouchar were separated and report being held, interrogated and tortured in Bangkok for several days. On either 8 or 9 March, Belhadj and Bouchar were rendered to Libya. Analysis of flight data by Reprieve and the Rendition Project demonstrates that the couple were rendered on board the CIA-owned Boeing 737 with registration number N313P.<sup>54</sup> Eurocontrol and Federal Aviation Administration data shows that this aircraft had flown from the US to Libya on 7 March, and was back in the country on 9 March, from where it continued onwards to conduct a second rendition (of Yunus Rahmatullah and Amanatullah Ali from Iraq to Afghanistan). The CIA memo headed *Schedule for the Rendition of Abdullah al-Sadiq*,<sup>55</sup> both confirms the other sources of data and also provides details for the aircraft's movements between 7-9 March. According to this memo, the aircraft picked up the detainees from Bangkok and departed at 23:30 GMT. It then flew to the British island of Diego Garcia where it refuelled, before departing again at 05:30 GMT and landing in Tripoli 11 hours later.

On arrival in Tripoli, Belhadj and Bouchar were driven to Musa Kusa's 'external security' prison in Tajoura (Kusa was Gaddafi's Head of Libyan Intelligence). Bouchar was kept for a further three months, was interrogated and psychologically tortured and denied medical treatment for the first two months. She was

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<sup>50</sup> CIA, 'Planning for the Capture and Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Lybian Security Services), 6 March 2004.

<sup>51</sup> CIA, 'Planning for the Capture and Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Lybian Security Services), 6 March 2004.

<sup>52</sup> CIA, 'Schedule for the Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Libyan Intelligence Services), 6 March 2004.

<sup>53</sup> Leigh Day, 'Letter of Claim to Treasury Solicitor's Department', *Leigh Day & Co Solicitors*, 2011. Accessed: HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya'. Ian Cobain, 'Special Report: Rendition Ordeal that Raises New Questions About Secret Trials', *The Guardian*, 2012. <<http://www.guardian.co.uk/world/2012/apr/08/special-report-britain-rendition-libya>> Accessed: 6 March 2013.

<sup>54</sup> For full details of the rendition operation, see: <http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N313P-040306.html>

<sup>55</sup> CIA, 'Schedule for the Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Libyan Intelligence Services, dated 6 March 2004)'.

finally released on 21 June 2004, although was not permitted to leave the country, and gave birth to her son on 14 July.<sup>56</sup>

Belhadj remained in Tajoura for four years. He was tortured repeatedly, including beatings, sleep deprivation to the point of delirium, being hung from walls and subjected to psychological torture.<sup>57</sup> He was held in solitary confinement, in a tiny dark cell, and refused permission to bathe for three years. Moreover, he says that he was interrogated by American and British agents, and those from other European countries. In an interview with *The Independent*, Belhadj described being interrogated by three British agents over two sessions.<sup>58</sup>

The involvement of British and American intelligence in the interrogations of Belhadj is corroborated by the Tripoli Documents. Indeed, one of the 6 March memos discussing the upcoming rendition, headed *Planning for the Capture and Rendition of Abdullah al-Sadiq*,<sup>59</sup> is clear that providing American access to the detainee was to be a *quid pro quo* for the CIA effecting his rendition, stating that 'we also appreciate your allowing our service direct access to al-Sadiq for debriefing purposes once he is in your custody'.

Once Belhadj and Bouchar were detained in Tajoura, the CIA sent two memos seeking to arrange access for American agents. One memo from the CIA to Libyan intelligence, undated and untitled, discusses a proposal for the two services to build on their 'nascent intelligence cooperation' by taking 'an additional step in cooperation with the establishment of a permanent CIA presence in Libya'.<sup>60</sup> It also states that:

*We are also eager to work with you in the questioning of the terrorist we recently rendered to your country. I would like to send to Libya an additional two officers, and I would appreciate if they could have direct access to question this individual. Should you agree, I would like to send these two officers to Libya on 25 March.*

In a separate memo, dated 17 March and headed *Travel to Libya*,<sup>61</sup> the CIA made arrangements for the two agents to travel to the country on 25 March to 'discuss the recent rendition'. Although the individual is not named in either memo, the dates discussed strongly suggest that they are referring to the rendition and interrogation of Belhadj.

Likewise, the Tripoli Documents include a memo from Mark Allen, who was then Director of Counterterrorism at MI6, to his counterpart in Libya, Musa Kusa.<sup>62</sup> Dated 18 March, it primarily discusses the upcoming visit by Prime Minister Tony Blair to Libya. However, it also explicitly congratulates Kusa on the 'safe arrival' of Belhadj and discusses securing direct British access to the detainee's interrogations:

*Most importantly, I congratulate you on the safe arrival of Abu Abd Allah Sadiq [Belhadj]. This was the least we could do for you and for Libya to demonstrate the remarkable relationship we have built over the years. I am so glad. I was grateful to you for helping the officer we sent out*

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<sup>56</sup> HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya'.

<sup>57</sup> For details of Belhadj's and Bouchar's treatment and torture, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/abdel-hakim-belhadj-&-fatima-bouchar.html>

<sup>58</sup> Kim Sengupta, 'Libyan rebel leader says MI6 knew he was tortured', *The Independent*, 2011.

<<http://www.independent.co.uk/news/world/africa/libyan-rebel-leader-says-mi6-knew-he-was-tortured-2349778.html>> Accessed: 6 March 2013.

<sup>59</sup> CIA, 'Planning for the Capture and Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Lybian Security Services, dated 6 March 2004)'.

<sup>60</sup> CIA, *Memo from CIA to Libyan Intelligence (undated and untitled)* (2004).

<sup>61</sup> CIA, 'Travel to Libya (Memo from the CIA to Libyan Intelligence Services)', 2004.

<sup>62</sup> MI6, 'Memo from Mark Allen, MI6, to Musa Kusa, Department of International Relations and Collaboration, Libya, 18 March 2004.

*last week. Abu 'Abd Allah's information on the situation in this country is of urgent importance to us. Amusingly, we got a request from the Americans to channel requests for information from Abu 'Abd Allah through the Americans. I have no intention of doing any such thing. The intelligence on Abu 'Abd Allah was British. I know I did not pay for the air cargo. But I feel I have the right to deal with you direct on this and am very grateful for the help you are giving us.*

As well as directly interrogating Belhadj, documents unearthed by *The Mail on Sunday* from the abandoned British Embassy in Tripoli and marked UK Secret include 'long lists of questions and background intelligence that MI5 and MI6 asked Libyan interrogators to put to Mr Belhadj during sessions where he claims he was being tortured'.<sup>63</sup>

After about four years in Tajoura, Belhadj was convicted in court for armed insurrection against the regime, in a trial where the only evidence allowed was a report from the Libyan security services, and where he did not have a chance to talk with a lawyer. He was sentenced to death, but when he agreed to participate in a 'de-radicalisation and reconciliation process', his conditions improved, and he was finally released on 23 March 2010.

In a case very similar to that of Belhadj and Bouchar, the Tripoli documents, as explained by Human Rights Watch, also show that MI6 initiated the rendition of Sami Mostefa al-Saadi, along with his wife and four children, from Hong Kong to Libya, via Bangkok, on or about 28 March 2004. In December 2012, having sued the UK government for MI6's involvement in his rendition, al-Saadi accepted £2.23 million from UK government in compensation in an out of court settlement. Nevertheless the UK government, despite making the settlement, refused to accept any liability. The settlement does raise important questions about what was known by senior government officials, what evidence there is of UK involvement, the extent to which that involvement was sanctioned at the very top of government, and whether the settlement was made to prevent evidence coming out through court proceedings.<sup>64</sup>

The striking thing about these cases is that very senior members of the UK intelligence services were heavily involved in orchestrating the rendition operations. Yet months afterwards, the UK Foreign Secretary categorically denied any UK involvement in rendition before the Foreign Affairs Select Committee, and no one was any the wiser that these operations had taken place. There are two possibilities here. The first is that his denial was a lie, and he knew what the Security Services had been involved in. The second is that Straw himself had been kept in the dark about the renditions. Either way, the case is illustrative of the ways in which the global rendition system had itself been built to withstand exposure. From March 2004 to December 2005, no evidence came to light about the renditions of the Libyans. Indeed they were not exposed for a further 6 years after Straw's appearance. The operation was highly secretive, and outsourced to third party states and corporate operators. It all occurred well away from the UK mainland, and it would seem that only very small numbers of UK intelligence operatives knew of the operation. Even if Straw also knew, there were sufficient inbuilt safeguards that enabled him to deny any UK involvement, thereby protecting both the intelligence services and the executive.

## Evading accountability

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<sup>63</sup> Abdul Taher and David Rose, 'MI6 agents pushed 49-point list of questions to Tripoli torture victim interrogators "under torture chamber door"', *Mail on Sunday*, 2012. <<http://www.dailymail.co.uk/news/article-2136750/MI6-agents-pushed-49-point-list-questions-Tripoli-torture-victim-interrogators-torture-chamber-door.html>> Accessed: 6 March 2013.

<sup>64</sup> For detailed analysis of the case, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/sami-al-saadi.html>

Despite repeated denials by the UK authorities, evidence about UK complicity has continued to trickle out. As this has occurred, the authorities have had to work much harder than simply denying involvement outright. Here we explore a number of cases that indicate UK authorities went to considerable lengths to suppress evidence that would reveal the full extent of their involvement. First we consider the attempts by the authorities to suppress evidence in legal proceedings on behalf a Binyam Mohamed, a UK citizen subjected to rendition and secret detention. We then examine the various inquiries launched to investigate UK complicity to show how the government sought to limit their scope and evade full accountability.

UK authorities have also sought to suppress evidence in legal proceedings on behalf of victims. The case of Binyam Mohamed al-Habashi illustrates this well. On his release from years journeying through the global rendition system, Binyam Mohamed alleged that UK intelligence agents had been present and participated in his interrogation, knew of his torture, and failed to act. They had also shared intelligence with foreign agencies about him. Mohamed is an Ethiopian national who had been legally resident in the UK since 1994. He had travelled to Afghanistan in the summer of 2001, supposedly in an attempt to overcome a drug addiction. On 10 April 2002, he was arrested in Karachi Airport, Pakistan, while attempting to return to the UK. Pakistani immigration officers detained Mohamed at Karachi Airport for three days. On 13 April, he was transferred to the Pakistani-run Landi Prison, and held for seven days. On 20 April, Mohamed was transferred to an interrogation centre run by Pakistani intelligence services (ICI) in Karachi, and was held there for three months. In July 2002, Mohamed was transferred from Pakistan to Morocco where he was held and repeatedly tortured until January 2004. He was subsequently transferred to CIA custody and rendered again, this time to the 'Dark Prison' near Kabul. He was subjected to further torture and interrogation by the CIA. He was finally taken to Guantánamo Bay in September 2004, where he remained until his release and return to the UK in February 2009.<sup>65</sup>

While in Pakistan, he was interrogated by four FBI agents, three of whom were identified as 'Chuck', 'Terry' and 'Jenny'. During their interrogations of Mohamed, they threatened him with torture by foreign security forces. According to a declassified version of Mohamed's testimony to his lawyer, Clive Stafford Smith (provided in August 2005 when Mohamed was still in Guantánamo Bay),<sup>66</sup> the interrogator 'Chuck' threatened: 'If you don't talk to me, you're going to Jordan. We can't do what we want here, the Pakistanis can't do exactly what we want them to. The Arabs will deal with you'. 'Terry' also threatened him with transfer to Israel or Jordan, and even to the British: 'The SAS know how to deal with people like you'. This was typical of the disorientation of detainees referred to above, whereby reference was made to the intelligence services of various states, leading the detainee in a position of uncertainty over who was responsible for their rendition, detention and torture.

When the Americans were not present, Mohamed was beaten repeatedly with a leather strap. At one point, a Pakistani pressed a gun into his chest and waited: 'I knew I was going to die. He stood like that for five minutes. I looked into his eyes, and I saw my own fear reflected there. I had time to think about it. Maybe he will pull the trigger and I will not die, but be paralyzed. There was enough time to think the possibilities through.' After that incident, 'Chuck' came into the room, said nothing, but just stared at Mohamed.

Mohamed claims that he was also interrogated by two MI6 officers, one of whom identified as 'John'. According to Mohamed:

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<sup>65</sup> For a detailed account of Mohamed's journey through the global rendition system, see:

<http://www.therenditionproject.org.uk/global-rendition/the-detainees/binyam-mohamed.html>

<sup>66</sup> Clive Stafford-Smith, 'Memo re: FBI involvement in the abuse of Binyam Mohammed (al Habashi), dated 24 August', in (Reprivee, 2005); Clive Stafford-Smith, 'Memo re: FBI involvement in the abuse of Binyam Mohammed (al Habashi), dated 24 August'.

*They gave me a cup of tea with a lot of sugar in it. I initially only took one. 'No, you need a lot more. Where you're going, you need a lot of sugar.' I didn't know exactly what he meant by this, but I figured he meant some poor country in Arabia. One of them did tell me I was going to get tortured by the Arabs.*

According to a heavily-redacted report from the UK's Intelligence and Security Committee published in July 2007, MI6 had testified behind closed doors that it had had no contact with Mohamed at any point.<sup>67</sup> MI5, however, did admit that one of its officers interrogated him while in Karachi, but 'denies that the officer told al-Habashi [Mohamed] he would be tortured'. In subsequent investigations regarding UK complicity in Mohamed's torture, that officer became known as Witness B. According to testimony heard by the Committee, 'the officer [Witness B] reported that he did not observe any abuse and that no instances of abuse were mentioned by al-Habashi'.

However, court documents since released demonstrate that MI5 in general – and almost certainly Witness B in particular – were aware of Mohamed's mistreatment by the US in Pakistan, *before* Witness B travelled to Pakistan to interrogate him. This, Mohamed's lawyers have argued, amounts to British complicity in his mistreatment. A summary of the 42 classified CIA documents handed to MI5 regarding Mohamed's treatment was included in a High Court decision concerning *Binyam Mohamed v Secretary of State* in August 2008.<sup>68</sup> However, this section of the decision – which ran to seven short paragraphs – was redacted from the open judgement on request by the Foreign Secretary, citing national security concerns. Further legal action eventually saw the decision to redact these findings overturned, and in February 2010 the paragraphs were released as an annex to a judgement by the Court of Appeal which dismissed an attempt by the Foreign Secretary to keep them classified.<sup>69</sup> They read:

*It was reported [to the Court] that a new series of interviews was conducted by the United States authorities prior to 17 May 2002 as part of a new strategy designed by an expert interviewer.*

*v) It was reported that at some stage during that further interview process by the United States authorities, BM [Mohamed] had been intentionally subjected to continuous sleep deprivation. The effects of the sleep deprivation were carefully observed.*

*vi) It was reported that combined with the sleep deprivation, threats and inducements were made to him. His fears of being removed from United States custody and "disappearing" were played upon*

*vii) It was reported that the stress brought about by these deliberate tactics was increased by him being shackled in his interviews*

*viii) It was clear not only from the reports of the content of the interviews but also from the report that he was being kept under self-harm observation, that the interviews were having a marked effect upon him and causing him significant mental stress and suffering*

*ix) We regret to have to conclude that the reports provided to the SyS [security services] made clear to anyone reading them that BM was being subjected to the treatment that we have described and the effect upon him of that intentional treatment*

*x) The treatment reported, if had been administered on behalf of the United Kingdom, would clearly have been in breach of the undertakings given by the United Kingdom in 1972. Although it is not necessary for us to categorise the treatment reported, it could readily be contended to be at the very least cruel, inhuman and degrading treatment by the United States authorities.*

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<sup>67</sup> ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition'.

<sup>68</sup> UK, 'R (b Mohamed) v Foreign Secretary: Approved Judgment with Amendments', in *Royal Courts of Justice* (London: 2009).

<sup>69</sup> UK, 'R(b Mohamed) v Foreign Secretary: Court of Appeal Judgement', in *Royal Courts of Justice* (London: 2010).

It should come as no surprise that the foreign secretary sought to suppress this evidence, given that when questioned by the Foreign Affairs Select Committee in December 2005, he had categorically denied that the UK intelligence officer who saw Mohamed had observed any abuse.<sup>70</sup> Straw's claim proved to be untrue. What is not clear is whether his denial was a lie, and he knew what the reports to the Security Services contained, or whether Straw himself had been misled by the Security Services. This again illustrates the challenges of unpicking who knew what and when in cases where organisations of the state are colluding in denial and points to the question of for whom is the architecture of impunity aimed at protecting most, the intelligence services or executive power.

We see further evidence of the UK seeing to suppress evidence in its approach to the various inquiries launched to investigate UK complicity in rendition. Following revelations of complicity in rendition of Dick Marty for the Council of Europe in 2006,<sup>71</sup> an inquiry into British involvement was undertaken by the UK's Intelligence and Security Committee (ISC). It published its report into whether the UK intelligence and security agencies had any knowledge of, and/or involvement in, rendition operations in July 2007. It concluded that MI5 had been 'indirectly and inadvertently' involved in the rendition of two men, Bisher al-Rawi and Jail el-Banna, by passing on information about them to the CIA, as they flew to the Gambia on a business trip. However, the Committee concluded that there was no evidence that any British agency had been 'directly involved' on the rendition programme, and that they had simply been slow to catch up with what the CIA was doing.<sup>72</sup> As the cases discussed above show, the conclusions of the ISC are completely at odds with the facts on the ground. Critics argue that this can in be explained by the lack of independence of the ISC, a Committee which is hand-picked by the prime minister in collaboration with the two main opposition party leaders. This criticism was repeated when the UK government announced that the stalled Gibson Detainee Inquiry would be handed to the ISC in December 2013.<sup>73</sup> See also:

<http://www.hrw.org/news/2014/04/08/joint-ngo-letter-uk-foreign-secretary-calling-judicial-inquiry-uk-complicity-oversea>

The Gibson Detainee Inquiry, launched by Prime Minister David Cameron in July 2010 was controversial from the outset. Within months of the announcement of the inquiry, leading human rights organisations indicated that they were concerned at the levels of secrecy that were being built into the inquiry at the insistence of the UK intelligence agencies that were supposedly the subject of the inquiry. Specifically they were alarmed that there would be no independent mechanisms for determining what evidence would be made public.<sup>74</sup> Despite raising these concerns with Gibson, the inquiry's terms of reference failed to meet the standards expected by leading human rights organisations, and in August 2011, they wrote collectively to the solicitor for the inquiry to announce that they would no longer participate. In particular, they were critical of the Inquiry for not allowed the detainees to ask questions or to see or hear evidence considered in secret session.<sup>75</sup> The inquiry faltered on without the involvement of the NGOs or detainees, and his interim report was presented to the prime minister in the summer of 2012. It was not released to the public until December 2013. Gibson concluded there was evidence that British intelligence officers were aware of mistreatment at US led detention facilities in Afghanistan, Guantanamo Bay and at prisons in Pakistan. He also raised 27 questions that he argued should be asked about the involvement of government ministers and officers of MI5 and MI6 in the abuse of detainees. One of the most critical questions he

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<sup>70</sup> UK, 'Examination of Witnesses (Questions 20-51)'.

<sup>71</sup> Dick Marty, 'Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States'.

<sup>72</sup> ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition'.

<sup>73</sup> Ian Cobain and Richard Norton-Taylor, 'UK inquiry on rendition and torture to be handed to ISC', *The Guardian*, 18 December 2013. <<http://www.theguardian.com/world/2013/dec/18/inquiry-rendition-torture-isc>> Accessed: 16 June 2014.

<sup>74</sup> Ian Cobain, 'Torture inquiry is legally flawed, say rights groups as NGOs ponder boycott', *The Guardian*, 23 February 2011. <<http://www.theguardian.com/law/2011/feb/23/torture-inquiry-ngo-boycott-threat>> Accessed: 16 June 2014.

<sup>75</sup> BBC, 'Campaigners to shun inquiry into detainee "torture"', *BBC*, 4 August 2011. <<http://www.bbc.co.uk/news/uk-14397601>> Accessed: 16 June 2014.



raised was whether the UK had a deliberate or agreed policy of turning a blind eye to prisoner abuse and whether the UK intelligence agencies were willing to condone, encourage or to take advantage of rendition operations. The Guardian reported that those questions had been put to the heads of MI5 and MI6, and both were given a month to respond, and would be reporting to the ISC.<sup>76</sup> In March 2014, those NGOs that had pulled out of the Gibson Inquiry wrote to the Secretary of State for Foreign and Commonwealth Affairs, William Hague, and the Cabinet Secretary, Sir Jeremy Heywood, to question the suitability of the ISC to take the inquiry forward, given its past failures to uncover the full extent of rendition, and given the veto power held by the Prime Minister, meaning its inquiry could never be fully independent. They also urged the government to ensure that the responses to the questions put by Gibson to the heads of MI5 and MI6 be made public.<sup>77</sup> This has not happened.

This overview of the various inquiries into rendition shows that UK authorities have succeeded in hampering any full and independent inquiry into its role in the global rendition system. It has achieved this by choosing a government committee rather than an independent body to carry out the 2007 inquiry and the post-Gibson inquiry, and by allowing the terms of reference of those inquiries to be narrow in scope, precluding the involvement of victims of rendition, and upholding requests for evidence to be heard in secret session.

It will be interesting to see whether a police investigation into the use of Scottish airports by renditions-related aircraft will be any different. In June 2013, as a result of analysis of the Rendition Project's Flights Database, 13 highly suspicious flights by aircraft linked to rendition operations were identified as having passed in and out of Aberdeen, Wick and Inverness airports which were likely to have been refuelling stops during renditions operations.<sup>78</sup> Important questions remain unanswered about what specific knowledge Scottish or UK authorities had of these operations. The Rendition Project's research findings on the use of Scottish airports were covered in the Scottish Press.<sup>79</sup> This led to a subsequent debate in the Scottish parliament, following which the Lord Advocate for Scotland ordered an investigation by Police Scotland into potential criminal activity.<sup>80</sup> He stated:

The use of torture cannot be condoned. It is against international law and contrary to the common law of Scotland. A police inquiry was conducted into allegations of extraordinary rendition at Scottish airports in 2007 and 2008. Following the inquiry the police concluded that there was insufficient credible and reliable information to enable them to commence a criminal investigation. I'm aware of the information provided by the rendition project by researchers at Kent and Kingston universities. I consider that this information, and any other

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<sup>76</sup> Ian Cobain and Nick Hopkins, 'Rendition inquiry finds questions about UK involvement remain unanswered', *The Guardian*, 19 December 2013. <<http://www.theguardian.com/world/2013/dec/19/rendition-inquiry-questions-uk-involvement-unanswered>> Accessed: 16 June 2014.

<sup>77</sup> HRW and Others, 'Joint NGO Letter to the UK foreign Secretary Calling for a Judicial Inquiry into UK Complicity in Overseas Torture', *Human Rights Watch* 8 April 2014. <<http://www.hrw.org/news/2014/04/08/joint-ngo-letter-uk-foreign-secretary-calling-judicial-inquiry-uk-complicity-overseas>> Accessed: 16 June 2014.

<sup>78</sup> Alastair Munro, 'Scottish rendition flights police probe ordered', *The Scotsman*, 2013. <<http://www.scotsman.com/news/scottish-news/top-stories/scottish-rendition-flights-police-probe-ordered-1-2956834>> Accessed: 16 June 2013.

<sup>79</sup> Dani Garvelli, 'Unravelling the truth behind torture "torture flights"', *The Scotsman*, 9 June 2013. <<http://www.scotsman.com/lifestyle/unravelling-the-truth-behind-torture-flights-1-2960296>> Accessed: 12 June 2014.

<sup>80</sup> BBC, 'Rendition flights claim to be investigated by Police Scotland', *BBC*, 5 June 2013. <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-22788443>> Accessed: 16 June 2013; Alastair Munro, 'Scottish rendition flights police probe ordered'; Calum Ross, 'Urgent probe ordered into new illegal rendition claims', 6 June 2013. <ndition claims', *The Press and Journal*, 6 June 2013, <<http://www.pressandjournal.co.uk/Article.aspx/3267000>> Accessed: 16 June 2013.

information additional to that considered by the police in 2007, should be the subject of police consideration. I will thereafter ask Police Scotland to give consideration to this information.<sup>81</sup>

As the Scotsman reported:

He advised that police would require a high standard of proof for criminal proceedings to be brought. Mr Mulholland explained: "It should be recognised that in order for criminal proceedings to be raised it must be proved that a crime known to the law of Scotland has been committed. "Speculation, conjecture, innuendo and belief are insufficient. What you need is hard evidence, sufficient evidence to the requisite high standard of proof is required. But I am confident that the police will do their duty in this matter and conduct a thorough inquiry in accordance with the principles of Police Scotland."<sup>82</sup>

Blakeley and Raphael of The Rendition Project were called to give evidence to Police Scotland in November 2013. They presented detailed documentary evidence and gave lengthy formal statements to the two investigating officers. The investigation is on-going, and it remains to be seen whether criminal proceedings will follow.

## Conclusions

Our analysis demonstrates a kind of dependent relationship between the architecture of impunity at the heart of the global rendition system on the one hand, and the mechanisms deployed by the authorities to deny involvement and hamper investigation on the other. We have seen that many of the UK's denials were possible because of the way in which the system had been developed to be deliberately fragmented and highly secretive. It was deliberately designed to disorient detainees and to mislead those who might seek to investigate. We see this most strikingly in the cases where false flight data was logged or multiple aircraft were used for a transfer to cover the tracks of a rendition operation. This has enabled the UK to deny the extent of its involvement and evade accountability, even as the evidence grows.

Senior members of the UK government either did not know the full extent of the involvement of UK intelligence agencies in the rendition programme, or they deliberately lied and misled the public about the degree of UK complicity. If they did not know, this would imply that the intelligence agencies were misleading the government, by withholding information or lying when asked. This would suggest that, certainly in the case of the UK's involvement, the intelligence agencies were seeking to shield executive power from recriminations and that the purpose of the architecture of impunity was to protect government officials. Alternatively, if it is the case that the politicians were lying, it might be the case that they were seeking to shield the intelligence services from recriminations. Without further evidence it is not possible to reach a conclusion on this point. However, what this paper has shown is that whether or not senior members of the UK government knew the full extent of the UK's complicity, they went to considerable lengths to avert a full and proper investigation. This they did by restricting the remit of those inquiries that were launched, by refusing to allow those inquiries to be fully independent, and by upholding their own or the wishes of the intelligence services to hear evidence in secret.

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<sup>81</sup> Frank Mulholland and Alistair Munro, 'Scottish Rendition Flights Police Probe Ordered', 6 June 2013. <<http://www.scotsman.com/news/scotland/top-stories/scottish-rendition-flights-police-probe-ordered-1-2956834>> Accessed: 16 June 2014.

<sup>82</sup> Alastair Munro, 'Scottish rendition flights police probe ordered'.

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This research has implications for the global governance of human rights. Specifically, the UK government has been able to repeatedly evade full, independent investigation into allegations of complicity in serious violations of human rights. This raises important questions about the degree to which the UK's domestic legal frameworks, as well as international ones, are fit for purpose in dealing with state violence and crime, especially when it implicates dozens of states, including many powerful Western ones. A further significant implication that ensues from this research is that, to date, there has been very little analysis of how impunity is afforded to Western states that are involved in transnational networks of state crime and violence. Most of the research in this area has tended to focus on impunity in military regimes or police states. A comparison between the regimes of impunity operated in such states and the architecture of impunity around which the global rendition system was constructed is now called for. This might offer some basis by which domestic and international governance frameworks could be reformed.

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