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Insulating Universal Human Rights from the 'Ethical Foreign Policy' Threat

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Abstract

At the heart of the notion of an ethical foreign policy is the assumption that foreign policy can help deliver liberty and security around the globe. Yet, as Conor Gearty has argued, in our contemporary 'neo-democratic' world, liberty and security are not the universal goods they are often considered to be. Rather they are selectively granted, and curtailed for those considered a threat to the status quo. Where liberty and security are curtailed, this is often in the name of the universal freedoms that neo-democracies claim to uphold. When the Blair government was elected in 1997, Foreign Secretary Robin Cook announced that British foreign policy must have an ethical dimension. There has been much debate on whether UK foreign policy under the Blair government can be argued to have been 'ethical'. The focus of debate has tended to be the UK's military interventions. Far less attention has been paid to the direct role played by UK authorities, through its intelligence services, in human rights violations under the New Labour and subsequent Coalition governments. This paper seeks to further the debate on the ethics of UK foreign policy since 1997. It does so by offering a detailed account of the UK's involvement in the CIA's rendition programme, and shows that the UK was far more involved in rendition and secret detention between 2001 and 2010 than was previously assumed. Threaded through the analysis is an account of the various measures taken by the New Labour subsequent Coalition governments to suppress the evidence of UK involvement. We conclude by offering some reflections on the role human rights organisations, litigators, and investigative journalists are increasingly playing in defending the universalism of rights, for publics that rarely appreciate what is really at stake.

Introduction

Shortly after Tony Blair's government was voted into office in May 1997, the new Foreign Secretary, Robin Cook, announced that British foreign policy 'must have an ethical dimension'.¹ He stated, 'We are instant witness in our sitting rooms through the medium of television to human tragedy in distant lands, and are therefore obliged to accept moral responsibility for our response.'² Such rhetoric was invoked to justify the various subsequent military interventions undertaken by the two Blair governments (1997-2001 and 2001-2007).³ The degree to which UK foreign policy under the Blair government can be argued to have been 'ethical' and motivated by human suffering has been widely debated. The focus of debate has tended to be the UK's military interventions, especially in light of the controversy surrounding the 2003 invasion of Iraq, and the emergent norm of states having a 'responsibility to protect'.⁴

Far less attention has been paid to the direct role played by UK authorities, through its intelligence services, in human rights violations under the New Labour and subsequent Coalition governments. When Cook argued in 1997 that human rights would be 'at the heart of our foreign policy',⁵ he seemed to have in mind warring, repressed and suffering nations overseas, rather than individuals with whom the UK's intelligence services would be dealing. But in evaluating the ethics of the foreign policies of recent UK governments, the time is now ripe to consider their record in dealing with individuals considered a threat to UK national security. Publicly, following 9/11, the defence of human rights was declared a crucial weapon in the fight

¹ The Rt. Hon. Robin Cook MP, 'Mission Statement for the Foreign and Commonwealth Office', 1997. <<http://www.britishpoliticalspeech.org/speech-archive.htm?speech=292>> Accessed: 4 August 2014.

² The Rt. Hon. Robin Cook MP, 'Mission Statement for the Foreign and Commonwealth Office'.

³ For example, in relation to NATO's intervention in Kosovo in 1999, Tony Blair argued that no one could doubt that NATO's action was justified. He spoke of 'unspeakable crimes taking place' and referred to the 'tear-stained faces of the hundreds of thousands of refugees streaming across the border', who had 'heart-rending tales of cruelty' to tell. See: The Rt Hon. Tony Blair MP, 'Doctrine of the International Community', 1999. <<http://webarchive.nationalarchives.gov.uk/+www.number10.gov.uk/Page1297>> Accessed: 4 August 2014. While the overriding aim of the invasion of Afghanistan in 2001 was to disable Al Qaida, humanitarianism also played its part in justifying the intervention. Blair stated that the Afghan people 'are victims of the Taliban regime. They live in poverty, repressed viciously, women denied the most basic human rights and subject to a crude form of theocratic dictatorship that is as cruel as it is arbitrary'. See: The Rt Hon. Tony Blair MP, 'Statement to the House of Commons', 8 October 2001. <<http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo011008/debtext/11008-01.htm>> Accessed: 4 August 2014. Furthermore, As Bulley has argued, while Blair and Foreign Secretary from 2001, Jack Straw, justified the 2003 invasion of Iraq on grounds of curtailing Saddam Hussein's WMD programme which they alleged posed an imminent threat to the UK, once no weapons were found, the retroactive justification centred on Iraq as a case of humanitarian intervention. For a helpful overview, see: Dan Bulley, 'The politics of ethical foreign policy: A responsibility to protect whom?', *European Journal of International Relations*, 16:3, (2010), pp. 449-51. Notably, Robin Cook was never persuaded of the case for intervention, arguing in his resignation speech that he did not think Saddam Hussein presented the 'clear and present danger to Britain' that Blair and President Bush claimed he did, and did not believe Britain and the US should embark on military action without the support of the UN Security Council. See: The Rt Hon. Robin Cook MP, 'Resignation Speech in the House of Commons', 2003. <<http://www.totalpolitics.com/speeches/parliament/resignation-speeches/33853/resignation-speech-in-the-house-of-commons.shtml>> Accessed: 4 August 2014.

⁴ The following works are indicative of a larger body of writings that have debated various aspects of the UK's foreign policy under the Blair government, with a particular focus on the implications of various military interventions for the claim that UK foreign policy would have an 'ethical dimension': Dan Bulley, 'The politics of ethical foreign policy: A responsibility to protect whom?'; David Chandler, 'Rhetoric without responsibility: the attraction of 'ethical' foreign policy', *The British Journal of Politics & International Relations*, 5:3, (2003), pp. 295-316; Noam Chomsky, *The New Military Humanism* (Monroe, ME: Common Courage Press, 1999); Mark Curtis, *Unpeople. Britain's Secret Human Rights Abuses* (London: Vintage, 2004); Mark Curtis, *Web of Deceit: Britain's Real Role in the World* (London: Vintage, 2003); Eric Herring and Glen Rangwala, *Iraq in Fragments: The Occupation and its Legacy* (London: C. Hurst and Co, 2006); Michael Ignatieff, *Empire Lite: Nation Building in Bosnia, Kosovo, Afghanistan* (London: Vintage, 2003); Richard Little and Mark Wickham-Jones (eds.), *New Labour's Foreign Policy: A New Moral Crusade?* (Manchester: Manchester University Press, 2000); Nicholas J. Wheeler and Tim Dunne, 'Good international citizenship: a third way for British foreign policy', *International Affairs*, 74:4, (1998), pp. 847-70. A small body of literature has also considered the implications of UK involvement in the arms trade for the claims that the UK was pursuing an ethical foreign policy. Neil Cooper, 'The Pariah Agenda and New Labour's Ethical Arms Sales Policy', in Little and Wickham-Jones (eds.) *New Labour's Foreign Policy: A New Moral Crusade?* (Manchester: Manchester University Press, 2000), pp. 147-67; Anna Stavrianakis, *Taking Aim at the Arms Trade: NGOs, Global Civil Society and the World Military Order* (London: Zed, 2010).

⁵ The Rt. Hon. Robin Cook MP, 'Mission Statement for the Foreign and Commonwealth Office'.

against terrorism. For example, on 25 March 2002, in a speech at the Foreign Policy Centre, UK Foreign Secretary Jack Straw declared, 'Our national interests are served where human rights, democracy and the rule of law prevail. Where these are threatened our well-being is at risk.'⁶ We now know that in secret, in the years following 9/11, scores of individuals were kidnapped, illicitly and arbitrarily detained, and tortured, as part of the CIA's programme for the rendition, secret detention and torture of terror suspects.⁷

Until recently, the UK's role in the global rendition system has been shrouded in considerable secrecy. Certainly very little was known when scholars were beginning to critique the military interventions in Afghanistan in 2001 and Iraq in 2003. Through the painstaking work of investigative journalists, human rights investigators and litigators, and a small number of scholars, sufficient evidence has now come to light to enable a meaningful and detailed account of the UK's role in the global rendition programme. This paper therefore seeks to further the debate on the ethics of UK foreign policy since 1997. It does so by considering the role that the UK's intelligence services played in the rendition programme. In this sense, the paper is intended to update earlier work that evaluated the degree to which the UK was complicit in the torture of terror suspects.⁸

The paper begins by offering a brief account of an argument made by Conor Gearty,⁹ which helps explain the disconnection between the UK's rhetoric on human rights and freedom, and its treatment of terror suspects. The assumption underpinning our analysis is that the liberty and security promised by an 'ethical foreign policy' are far from universal goods. Rather, as Gearty has argued, in our contemporary 'neo-democratic world', they are selectively granted and curtailed for those considered a threat to the status quo. Ironically, where liberty and security are curtailed, this is often justified with reference to the universal freedoms that neo-democracies claim to uphold.¹⁰ The paper then offers a detailed account of the UK's involvement in the rendition programme, and shows that the UK was far more involved in rendition and secret detention between 2001 and 2010 than was previously assumed, and as such, was facilitating torture in ways not previously understood. UK involvement included: allowing UK airports and airspace to be used extensively by renditions aircraft; allowing UK territory to be used for the refuelling of aircraft involved in renditions; the initiation by UK authorities of 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; the passing of questions by UK authorities to those involved in interrogations of individuals that have been subjected to rendition, secret detention and torture; the receipt by UK authorities of intelligence obtained during the interrogation of individuals that have been subjected to rendition, secret detention and torture;

⁶ The Rt Hon. Jack Straw MP, 'Speech by Jack Straw at the Third Anniversary of the Foreign Policy Centre', 25 March 2002. <<http://fpc.org.uk/articles/168>> Accessed: 5 August 2014.

⁷ Rendition and secret detention violate numerous articles of international law. E.g. The prohibition of arbitrary detention, see: Article 9, UN, 'International Covenant on Civil and Political Rights', 1976. <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> Accessed: 6 March 2013. The right to a fair trial, see: Articles 9 and 24 of the ICPR. The prohibition of torture and cruel, inhuman and degrading treatment or punishment, see: 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. The prohibition of enforced disappearance, see: 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. 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 another state where there is a risk that the individual faces torture is prohibited.

⁸ In 2011, Jamie Gaskarth concluded that UK authorities could be argued to have been complicit in torture of terror suspects in so far as they had failed to condemn the behaviour of allies such as the US in their use of techniques that were tantamount to cruel, inhuman and degrading treatment and punishment, in failing to act on reports of abuse of detainees early on in the 'War on Terror', and in accepting intelligence without adequately questioning whether it had been obtained under torture. See: Jamie Gaskarth, 'Entangling alliances? The UK's complicity in torture in the global war on terrorism', *International Affairs*, 87:4, (2011), pp. 945-64.

⁹ Conor Gearty, *Liberty and Security* (London: Polity, 2013).

¹⁰ Conor Gearty, *Liberty and Security*.

and the failure of UK intelligence agencies to act when they have been informed by prisoners that they have been subjected to torture. Threaded through the analysis is an account of the various measures taken by the New Labour governments and the subsequent Coalition government to suppress the evidence of UK involvement.

Neo-democracy and the erosion of universal human rights

Since the terror attacks of 9/11, we have witnessed the extreme curtailment of the freedoms of thousands of individuals suspected, often on flimsy grounds, of having connections to terrorism. In the most serious cases, we have learned of their kidnap, arbitrary and illicit detention without trial, and torture, discussed below. In his work, *Liberty and Security*,¹¹ Conor Gearty argues that the global fight against terrorism has played a significant role in halting the expansionist trend of universal liberty and democracy. We now 'drift away from democratic fundamentals and back towards elite readings of liberty and security',¹² so that these terms no longer retain their 'ostentatiously universal' qualities. Rather, these words 'hide inequality and unfairness by seeming to reach all when in fact in their practical impact they are tailored to the few'.¹³ Those elite readings of liberty and security, Gearty argues, have their origins in the democratic impulse of the Enlightenment. He argues that this impulse was 'grafted onto earlier unjust systems'¹⁴ the result of which was that democratic society was constructed as a compromise between power and the people. Elites would always only concede liberty provided their own wealth and power was not threatened. The majority were content with this, since they were free to pursue individualistic desires. But those wishing to radically alter the structures of power would be met with oppression.¹⁵

This can help explain why the 'responsibility to protect' norm is invoked so readily to justify overseas interventions, based on the assumption that they are intended to thwart large scale suffering. Meanwhile, the very same states, espousing such humanitarian rhetoric, are also complicit in highly secretive actions that violate fundamental rights, such as the right not to be tortured or arbitrarily detained without charge or trial. Gearty documents numerous ways in which fundamental freedoms have been eroded for the suspect, and not insignificant, minority. As well as extraordinary rendition and prolonged illicit detention, Gearty cites the following: extra-judicial and extra-territorial killings of Osama bin Laden and Anwar al-Awlaki by US forces; interceptions of emails and telephone calls without warrants in the US; detention without arrest for extended periods in the US and UK; subjecting individuals in the UK to stringent control orders without charging or trying them for any crime; and stripping foreign nationals detained by US and allied forces of their habeas corpus rights and their prisoner of war status under the Geneva Conventions.¹⁶ The claim that is repeatedly invoked to justify these violations of basic rights under International Human Rights Law, and International Humanitarian Law, as Richard Jackson has shown in some detail with reference to the speeches of key officials in the Bush and Blair governments,¹⁷ is that the minority subjected to these present a dangerous and existential threat to those values we hold most dear in the West; liberty, democracy, and security.

Furthermore, the rhetoric of these states now calls into question the degree to which universal respect for democracy, the rule of law and human rights can meet contemporary security challenges.¹⁸ This was

¹¹ Conor Gearty, *Liberty and Security*.

¹² Conor Gearty, *Liberty and Security*, p. 5.

¹³ Conor Gearty, *Liberty and Security*, p. 4.

¹⁴ Conor Gearty, *Liberty and Security*, p. 14.

¹⁵ Conor Gearty, *Liberty and Security*, p. 22.

¹⁶ Conor Gearty, *Liberty and Security*, pp. 76-92.

¹⁷ Richard Jackson, *Writing the War on Terrorism. Language, Politics and Counter-Terrorism* (Manchester: Manchester University Press, 2005).

¹⁸ Conor Gearty, *Liberty and Security*, pp. 5-6.

articulated by President Bush in a press conference on 15 September 2006, as his proposed Military Commissions Act was being debated in the Congress and Senate. The Military Commissions Act was a response to the Supreme Court's ruling in June 2006, in *Hamdan v Rumsfeld*. The Supreme Court rule that it was unlawful to deny habeas corpus rights to Guantánamo prisoners, and that the Geneva Conventions should apply to them. During Bush's press interview, he described Common Article 3 of the Geneva Conventions, which he stated prohibits 'outrages on human dignity' as 'vague'. He argued that the Military Commissions Act would provide much more clarity on what US armed forces could be permitted to do, than the Geneva Conventions do.¹⁹ Bush both misquotes Common Article 3, (it refers to outrages upon personal dignity) and omits the important clarifications that the Article contains on what exactly is prohibited. It reads:

*the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*²⁰

Common Article 3 clearly prohibits the types of treatment that we now know the Bush administration sanctioned for prisoners held in its rendition and detention programme; they did amount to cruel treatment, torture, and humiliating and degrading treatment. We can see, why, therefore, Bush was quick to dismiss the relevance of Common Article 3. Unfortunately, the effect of repeated claims by senior state representatives about the existential threat posed by the terrorists, and the inadequacy of international legal systems to address that current threat, all feeds into the erosion of the universality of democracy, the rule of law and human rights, and contributes to the passive acceptance by frightened or misled publics about what is at stake. As Gearty argues, 'those of us fortunate enough to enjoy liberty in fact as well as theory seem to see enemies everywhere and appear quite prepared to truncate their liberty while contriving to continue to believe not only in our own freedom but in liberty as a universal value'.²¹ It is in this context that the UK was able to join the US in supporting, condoning and carrying out actions that violate international law as part of the fight against terrorism, and in which the UK authorities repeatedly denied involvement and sought to halt full investigation into its role.

Britain's role in the Global Rendition System

UK authorities were not formally confronted with allegations of complicity in the CIA's global rendition programme until 2005, when evidence first emerged that UK airports had been stop-off points for a series of private jets that had been contracted through a series of 'shell companies' that the CIA was using to undertake rendition operations. Investigations during 2004 and 2005 by the *Washington Post*²² and the *New York Times*²³ 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

¹⁹ In practice what the Military Commissions Act did was limit the rights of prisoners in the 'War on Terror', further, stripping them of the right to have their cases heard in US civil courts, insisted on closed military trials, where neither they nor their legal representatives would be granted access to the charges against them. See:

[http://www.therenditionproject.org.uk/pdf/PDF%2022%20\[Military%20Commissions%20Act%202006\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%2022%20[Military%20Commissions%20Act%202006].pdf)

²⁰ ICRC, 'Convention (III) Relative to the Treatment of Prisoners of War.', 1949.

<<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68>> Accessed: 2 May 2005.

²¹ Conor Gearty, *Liberty and Security*, p. 107.

²² 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.

²³ 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&> Accessed: 12 June 2014.

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. It was Dana Priest at the *Washington Post* in 2004 who first revealed UK airports had been stop-off points for aircraft involved in rendition operations, specifically, Glasgow's Prestwick airport from 2002 onwards.²⁴

Over the years that followed, the UK was quietly providing logistical support in the form of refuelling stops for rendition operations.²⁵ Some details of this were revealed when two parallel intergovernmental investigations reported their findings: the first, led by rapporteur Giovanni Claudio Fava was established by the European Parliament, which formed a 'temporary committee to investigate the presumed use of European countries for the transportation and illegal detention of prisoners by the CIA' (hereafter, TDIP); the second was established by the Council of Europe, and was led by rapporteur Dick Marty through the Parliamentary Assembly's Committee on Legal Affairs and Human Rights (hereafter, PACE).²⁶ These two investigations confirmed many of the details of European complicity in CIA rendition and secret detention which had surfaced in prior investigative work and court cases. It was the Council of Europe investigation in particular, however, which firmly set out details of European complicity, particularly details of the transport of prisoners through European airspace, and European airports, including British ones, since Marty was able to obtain full data of flights by CIA-linked aircraft through European airspace. PACE concluded that there existed a 'global spider's web' of rendition and secret detention involving CIA black sites, Department of Defense detention facilities, third country prisons, and rendition flights linking these sites.²⁷ We now know that UK logistical support was far more extensive than either of the investigations was able to document, and furthermore, that UK involvement entailed much more than simply providing logistical support; the UK's MI6 was itself orchestrating rendition operations well before any evidence emerged in the public domain of any UK involvement in the programme.

The use of UK airports, UK territory, and UK airspace for rendition operations

Following Priest's revelations, UK Foreign Secretary Jack Straw was eventually called to give evidence to the House of Commons Foreign Affairs Select Committee on 13 December 2005 as part of its inquiry into alleged abuses of detainees in the 'War on Terror'. He stated, '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'.²⁸ He further stated, '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'.²⁹ As we will show, well before Jack Straw gave evidence in 2005, UK airports had been used many times for refuelling and stop-overs by aircraft en route

²⁴ Dana Priest, 'Jet is an Open Secret'.

²⁵ Stephen Grey, *Ghost Plane: The True Story of the CIA Torture Program* (New York: St Martin's Press, 2006), p. 231.

²⁶ EU, 'Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (2006/2200(INI)) [A-0020/2007]', 2007. <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>> Accessed: 30 January 2011; 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:

²⁷ Marty 2006, Section 2, para 24-91.

²⁸ 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/uc768-i/uc76802.htm>> Accessed: 17 June 2013.

²⁹ UK, 'Examination of Witnesses (Questions 20-51)'.

to, or having just completed rendition operations. Furthermore, UK intelligence authorities had in fact orchestrated the renditions of numerous individuals. UK intelligence agents also had full knowledge of the renditions of numerous British citizens.

By 2012, investigators had gathered evidence which showed that UK airports had been used 210 times by aircraft linked to rendition operations.³⁰ Even this did not reveal the full extent of the CIA's reliance on the UK for logistical support. Recent research by The Rendition Project and Reprieve has shown that UK involvement in rendition from 2001-2010 was much more extensive than previously thought.³¹ 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, for refuelling en route to carry out a transfer of a prisoner, or having just delivered a prisoner from one state to another. 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.³²

Furthermore, evidence has also come to light that as early as January 2002, (just weeks after first being briefed on the CIA's rendition programme), the UK island territory of Diego Garcia was used for the refuelling of aircraft involved in rendition operations. Allegations that prisoners were being transferred via Diego Garcia were first made in December 2008, when Human Rights Watch wrote to the Prime Minister about the matter. On 8 January 2003, FCO Minister Baroness Amos, in a statement to the House of Lords, denied that the US was holding prisoners in Diego Garcia, a claim she repeated on 28 April, and which Tony Blair repeated on 14 January 2004,³³ Mohammed Saad Iqbal Madni was rendered from Jakarta, Indonesia to Egypt on 10-11 January 2002.³⁴ 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

³⁰ Ian Cobain, *Cruel Britannia. A Secret History of Torture* (London: Portobello Books, 2012), p. 213.

³¹ Ian Cobain, 'UK provided more support for CIA rendition flights than thought – study', *The Guardian*, 22 May 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.

³² *Ibid.*

³³ Sir Peter Gibson, 'The Report of the Detainee Inquiry', December 2013, pp. 12-14. <http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf> Accessed: 5 August 2014.

³⁴ For full details of this rendition operation, see: <http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N379P-020109.html>

evening of 10 January and taken to Egypt.³⁵ Indonesian officials speaking to the *Washington Post*,³⁶ 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.³⁷ This matches with the flying times provided by Madni, the distances involved, and the known speed of a Gulfstream V. It was 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'.³⁸ On 21 February, he also issued a Commons statement indicating that a rendition took place through Diego Garcia on two occasions in 2002.³⁹ There is no other known prisoner transfer at that time whose route would have taken them via Diego Garcia, meaning that it is highly likely that the prisoner 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 prisoners 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 Jordan. This circuit is also likely to have involved the rendition of a prisoner from Southeast Asia to Egypt, via Diego Garcia.⁴⁰ It is not clear from the available evidence whether this was the second of the two rendition operations that Miliband was referring to. 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.

Orchestration of rendition operations by MI6

Long before Straw gave evidence before the Foreign Affairs 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 on 3 September 2011, just after the fall of the Gaddafi regime, Human Rights Watch obtained the so-called Tripoli documents of the Libyan intelligence chief, Musa Kusa.⁴¹

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.

³⁵ 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> Accessed: 26 March 2011.

³⁶ 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> Accessed: 6 March 2013.

³⁷ Reprieve, 'Ghost Detention on Diego Garcia'.

³⁸ David Milliband, 'Letter to Clive Stafford Smith from David Milliband, Foreign Secretary', in (London: Foreign and Commonwealth Office, 2008); David Milliband, 'Letter to Clive Stafford Smith from David Milliband, Foreign Secretary'.

³⁹ Sir Peter Gibson, 'The Report of the Detainee Inquiry', p. 19.

⁴⁰ 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>

⁴¹ The documents are explained in detail in a Human rights Watch Report: 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> Accessed: 6 March 2013.

The Tripoli Documents show that British Security Services knew of their detention in Malaysia and arranged with the Libyan and American intelligence 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.⁴² 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'.⁴³ 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'.⁴⁴

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.⁴⁵ 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.⁴⁶ 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'.⁴⁷ The memo listed the flight plans for the rendition circuit, including 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. 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.⁴⁸

⁴² MI6, 'Abdullah Sadeq (Fax sent by MI6 to the office of al-Sadiq Karima, Head of Libyan International Relations Department)', 2004. Accessed:

⁴³ CIA, 'Urgent Request Regarding the Extradition of Abdullah al-Sadiq from Malaysia (Memo sent by CIA to Libyan Security Services, dated 4 March 2012)', 2004. Accessed:

⁴⁴ CIA, 'Clarification Regarding the Rendition of Abu Abdullah al-Sadiq (Memo from CIA to Libyan Security Services, dated 4 March 2004)', 4 March 2004 (2004).

⁴⁵ CIA, 'Planning for the Capture and Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Lybian Security Services, dated 6 March 2004)', 2004. Accessed:

⁴⁶ CIA, 'Planning for the Capture and Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Lybian Security Services, dated 6 March 2004)'.

⁴⁷ CIA, 'Schedule for the Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Libyan Intelligence Services, dated 6 March 2004)', 6 March (2004).

⁴⁸ Leigh Day, 'Letter of Claim to Treasury Solicitor's Department', in *Leigh Day & Co Solicitors* (London: 2011). HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya', p. 93. Ian Cobain, 'Special Report: Rendition Ordeal

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.⁴⁹ 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*,⁵⁰ 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 prisoners 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, interrogated, psychologically tortured, and denied medical treatment for the first two months. She was finally released on 21 June 2004, although was not permitted to leave the country, and gave birth to her son on 14 July.⁵¹ Belhadj remained in Tajoura for four years. He was tortured repeatedly and held in solitary confinement.⁵² 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.⁵³

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*,⁵⁴ 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'.⁵⁵ 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.

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.

⁴⁹ For full details of the rendition operation, see: <http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N313P-040306.html>

⁵⁰ CIA, 'Schedule for the Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Libyan Intelligence Services, dated 6 March 2004)'.
⁵¹ HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya', p. 99.

⁵² 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 he had no legal representation. 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. For details of Belhadj's and Bouchar's treatment and torture, see: HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya', pp. 91-99.

⁵³ 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.

⁵⁴ CIA, 'Planning for the Capture and Rendition of Abdullah al-Sadiq (Memo sent by the CIA to Libyan Security Services, dated 6 March 2004)'.
⁵⁵ CIA, *Memo from CIA to Libyan Intelligence (undated and untitled)* (2004).

In a separate memo, dated 17 March and headed *Travel to Libya*,⁵⁶ 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.⁵⁷ 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 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'.⁵⁸

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 2004.⁵⁹ 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.⁶⁰

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.

Intelligence sharing and failure to act on allegations of torture

As well as orchestrating renditions, MI5 and MI6 interrogated numerous prisoners held by the CIA as part of the rendition programme in Afghanistan and Guantánamo Bay, as investigative journalist. They did little

⁵⁶ CIA, 'Travel to Libya (Memo from the CIA to Libyan Intelligence Services)', in (2004).

⁵⁷ MI6, 'Memo from Mark Allen, MI6, to Musa Kusa, Department of International Relations and Collaboration, Libya (dated 18 March 2004)', 18 March (2004).

⁵⁸ 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.

⁵⁹ HRW, 'Delivered Into Enemy Hands. US-Led Abuse and Rendition of Opponents to Gaddafi's Libya', pp. 102-11.

⁶⁰ For detailed analysis of the case, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/sami-al-saadi.html>

to halt the ongoing incarceration of prisoners, and in some cases, encouraging their transfer from custody in Afghanistan to Guantánamo Bay. These include Omar Deghayes, and the 'Tipton Three', Shafiq Rasul, Asif Iqbal, and Jamal al-Harith.⁶¹

In the case of Bisher al-Rawi and Jamil el-Banna, the UK shared intelligence with the CIA and other states which has then be used as the basis for their rendition. The three UK residents were arrested by Gambian authorities on arrival in Banjul on 8 November 2002, detained and interrogated by US agents in the country, and then rendered to Afghanistan before being transferred to Guantánamo Bay. Jamil el-Banna is a Jordanian-Palestinian with refugee status in the UK. Bisher al-Rawi is an Iraqi national who had been living in the UK since 1984, following the detention and torture of his father by Saddam Hussein's secret police. He obtained British residency in 1985, and had indefinite leave to remain in the UK.

During the 1990s, al-Rawi formed a friendship with Muslim cleric Abu Qatada, now infamous for his protracted legal battle to evade deportation from the UK to Jordan, a case he lost in July 2013.⁶² In 1996, al-Rawi was asked by Qatada to assist him as an interpreter at a meeting with British officials (al-Rawi assumes they were members of the police or intelligence services). In subsequent years he was called upon to act as a translator on an informal basis for British intelligence services. After 9/11 this relationship intensified, and al-Rawi became the channel of communication between MI5 and Qatada. However, relations between al-Rawi and the Agency became increasingly strained and ended just a few months before British authorities arrested Qatada in October 2002.

On 1 November 2002, al-Rawi, el-Banna and Abdullah El Janoudi travelled together to Gatwick Airport on a business trip to meet Bisher's brother, Wahab al-Rawi, in The Gambia. Together with another friend, Omar Omeri, the men had set up a joint venture to start a peanut-oil processing factory in The Gambia. However, the three men were arrested at the airport and detained under the Terrorism Act 2000. They were interrogated for four days at Paddington Police Station, with the ostensible reason for their arrest being the discovery of a 'suspect electronic device' in al-Rawi's luggage. Indeed, classified UK Government documents released during the civil case brought against Jeppesen Dataplan⁶³ in 2006 include a telegram sent by MI5 to the CIA, dated 1 November 2002.⁶⁴ This stated that al-Rawi was an 'Islamic extremist', and that the police had recovered 'some form of home-made electronic device. Preliminary inquiries including X-ray suggest that it may be a timing device or could possibly be used as some part of a car-based Improvised Electronic Device'. The British Security Services had clearly been following the men beforehand: six days earlier, on his way to The Gambia, Wahab al-Rawi had been stopped and extensively questioned about the new business, and about Abu Qatada. Moreover, the luggage search was conducted covertly, authorised by a warrant signed by the Home Secretary.

On or about 4 November, after four days of questioning, the men were released. The battery charger, which had apparently precipitated the arrest, was returned to al-Rawi. It was clear at this point that the device had been assessed as harmless; a position confirmed in a telegram from MI5 to MI6 and the Foreign and Commonwealth Office on 11 November, which stated that it was 'a commercially available battery

⁶¹ Ian Cobain, *Cruel Britannia. A Secret History of Torture*, pp. 214-34.

⁶² PA, 'Abu Qatada deported from UK', *The Guardian*, 2013. <<http://www.theguardian.com/world/2013/jul/07/abu-qatada-deported-from-uk>> Accessed: 5 August 2014.

⁶³ The case, on behalf of al-Rawi and several other plaintiffs, including Binyam Mohamed, was aimed at securing damages from Jeppesen Dataplan for its complicity in the rendition and torture of the plaintiffs, since Jeppesen had providing flight planning services for the aircraft involved in their renditions. Ultimately, however, the case itself was not heard in court, after the US Government intervened, asserting 'state secrets privilege' and claiming that the litigation would damage national security interests.

⁶⁴ MI5, 'Detention of Islamists at Gatwick Airport (Telegram from MI5 to the CIA, dated 1 November 2002)', 2002. <[http://www.therenditionproject.org.uk/pdf/PDF%20293%20\[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20A%20\(Dec%202007\)\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20293%20[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20A%20(Dec%202007)].pdf)> Accessed: 5 August 2014.

charger that had been modified by Bisher al-Rawi in order to make it more powerful'.⁶⁵ However, this assessment was not passed onto the CIA. Instead, on 4 November MI5 sent a telegram headed *Travellers to Gambia*, which asked the CIA to pass on the men's travel plans to the Gambian intelligence service, and to communicate the Gambians' reaction back to MI5.⁶⁶ Specifically, the telegram stated that 'We would be grateful for feedback on the reaction of the Gambians to this intelligence. In particular, we would be interested to learn if they are able to cover these individuals whilst they are in Gambia'.

On 8 November, the three men attempted to travel to The Gambia for a second time (this time successfully). The same day, MI5 sent another telegram to the CIA, headed *Individuals Travelling to Gambia*, which provided the exact flight details, including the flight number and delayed take-off time, and the names and dates of birth under which the three men were travelling.⁶⁷ Significantly, unlike the previous telegrams, this one did not include the caveat that the intelligence provided was 'for research and analysis purposes only and may not be used as the basis for overt, covert or executive action'.

As soon as al-Rawi, el-Banna and El Janoudi arrived in Banjul, Gambia, they were arrested by Gambian agents, along with Wahab al-Rawi and Omar Omeri, who had come to meet them at the airport. According to the heavily redacted 2007 Intelligence and Security Committee (ISC) report on Rendition, there is no evidence that British intelligence intended the men to be arrested:

*It seems to us that there are a number of possible reasons why the men were initially arrested. It is possible that the Gambian police or border authorities at Banjul airport decided to search the men based on a "hunch" – something that happens routinely at customs and immigration points around the world. It is also possible that the Gambians broke the caveats on the intelligence shared with them [the heading 'for research and analysis purposes only'] and chose to take executive action. Another possibility is that the US authorities neglected to pass on the caveats or instigated the men's arrest themselves. Whatever the reason for the men's arrest, it is clear that it was not at the instigation of the Security Service.*⁶⁸

Indeed, MI5 claim that they were only informed of the arrest on 10 November. The following day, they sent a telegram, headed *Individuals Detained in Gambia*, to MI6 and the Foreign and Commonwealth Office.⁶⁹ This set out some background information on the men, and stated that the Service was 'receiving updates from [REDACTED] regarding these detainees. We will forward any further relevant information in due course'. The five men were initially taken to the Gambian National Intelligence Agency (GNIA) Headquarters and questioned. The next morning, two Americans arrived and interrogated and photographed each of the men. They remained at this location for two days before being transported to what their captors referred to as a 'safe house'. Al-Rawi and El Janoudi were then returned to the GNIA headquarters, and before all four were transported to a second 'safe house'. There they were held in separate holding cells which were very small and without windows. The second safe house was controlled by Americans, and they were interrogated by both Americans and Gambians.

⁶⁵ MI5, 'Individuals Detained in Gambia (Telegram sent by MI5 to MI6 and the UK Foreign and Commonwealth Office, dated 11 November 2002)', 2002.

<[http://www.therenditionproject.org.uk/pdf/PDF%20294%20\[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20B%20\(Dec%202007\)\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20294%20[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20B%20(Dec%202007)].pdf)> Accessed: 5 August 2014.

⁶⁶ MI5, 'Travellers to Gambia (Telegram sent by MI5 to the CIA, dated 4 November 2002)', 2002.

<[http://www.therenditionproject.org.uk/pdf/PDF%20296%20\[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20D%20\(Dec%202007\)\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20296%20[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20D%20(Dec%202007)].pdf)> Accessed: 5 August 2014.

⁶⁷ MI5, 'Individuals Travelling to Gambia (Telegram sent by MI5 to the CIA, dated 8 November 2002)', 2002.

<[http://www.therenditionproject.org.uk/pdf/PDF%20296%20\[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20D%20\(Dec%202007\)\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20296%20[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20Al-Rawi%20Decl.,%20Ex.%20D%20(Dec%202007)].pdf)> Accessed: 5 August 2014.

⁶⁸ ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition', 2007, p. 41.

<[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.

⁶⁹ MI5, 'Individuals Detained in Gambia (Telegram sent by MI5 to MI6 and the UK Foreign and Commonwealth Office, dated 11 November 2002)'.

Omeri was released relatively quickly, while El Janoudi was kept for 26 days and Wahab al-Rawi for 27 days. After a further two days, and despite habeas corpus proceedings pending in the Gambian courts, al-Rawi and el-Banna were driven to the airport at Banjul. Flight data and associated documentation demonstrate that al-Rawi and el-Banna were rendered from The Gambia to Afghanistan on 8-9 December, via refuelling stopover in Egypt, on board the CIA-owned Gulfstream V jet with registration number N379P. Flight planning services were provided by Jeppesen Dataplan, a subsidiary of Boeing Inc. which arranged the logistical details for numerous CIA rendition flights.⁷⁰

The UK's Intelligence and Security Committee (ISC) launched an inquiry into British involvement in rendition,⁷¹ after the PACE investigation (discussed above) published its findings in 2006.⁷² In its heavily redacted report, released in 2007, the ISC 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. The ISC found that the CIA had told MI5 in late November that they intended to carry out a 'rendition to detention' operation to transfer the detainees to Bagram Airbase in Afghanistan. The ISC noted that the Security Service 'registered strong concerns, both orally and in writing, at this suggestion and alerted the FCO'. In response to these representations, as well as several made at the diplomatic level, the Americans declined to give the precise location of the detainees, saying only that there were good grounds for their detention and that they were being treated well. Despite finding evidence of 'indirect' and 'inadvertent' involvement of the UK security services in the rendition of al-Rawi and el-Banna, the ISC concluded that there was no evidence that any British agency had been 'directly involved' in the rendition programme, and that they had simply been slow to catch up with what the CIA was doing.⁷³

As the cases discussed here show, including that of al-Rawi *et al*, the conclusions of the ISC are 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 2013.⁷⁴ A further factor was the efforts made by the UK government to conceal the degree of British involvement.

One case that helpfully illustrates both UK complicity in rendition and UK efforts to suppress evidence of its involvement is that of British resident, Binyam Mohamed. On his release after years as a prisoner in the global rendition system, 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 2009.⁷⁵

⁷⁰ For more details, see analysis of the case by The Rendition Project: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/bisher-al-rawi-&-jamil-el-banna.html>

⁷¹ ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition'.

⁷² Dick Marty, 'Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States'.

⁷³ ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition'.

⁷⁴ 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.

⁷⁵ 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>

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),⁷⁶ 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'. 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:

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.

Mohamed's allegations were considered as part of the 2007 ISC investigation. It concluded that MI6 had testified behind closed doors that it had had no contact with Mohamed at any point.⁷⁷ 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 ISC, '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 2008.⁷⁸ 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.⁷⁹ 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*

⁷⁶ Clive Stafford-Smith, 'Memo re: FBI involvement in the abuse of Binyam Mohammed (al Habashi), dated 24 August', in (Repreive, 2005); Clive Stafford-Smith, 'Memo re: FBI involvement in the abuse of Binyam Mohammed (al Habashi), dated 24 August'.

⁷⁷ ISC, 'UK Parliament Intelligence and Security Committee Report: Rendition'.

⁷⁸ UK, 'R (b Mohamed) v Foreign Secretary: Approved Judgment with Amendments', in *Royal Courts of Justice* (London: 2009).

⁷⁹ UK, 'R(b Mohamed) v Foreign Secretary: Court of Appeal Judgement', in *Royal Courts of Justice* (London: 2010).

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.*

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 that the UK intelligence officer who saw Mohamed had observed any abuse.⁸⁰ Straw's claim proved to be untrue.

The degree to which the intelligence services and officials have sought to suppress evidence of British involvement was further highlighted with the publication of the report of the stalled Gibson Inquiry into detainee abuse in December 2013. The Inquiry, launched by Prime Minister David Cameron in July 2010 was controversial from the outset. Within months of its announcement, leading human rights organisations indicated they were concerned at the levels of secrecy that were being built in 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.⁸¹ 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 pulled out. 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.⁸² The Inquiry faltered on without the involvement of the NGOs or detainees, and Gibson's interim report was presented to the prime minister in the summer of 2012, but not released to the public until December 2013. The report consists mainly of an account of the many questions that the Inquiry would have wished to find answers to, had it been able to complete its work. 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 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.⁸³ Another was whether complete information was given to the ISC by the security services as part of its investigations.⁸⁴ 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.⁸⁵ 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

⁸⁰ UK, 'Examination of Witnesses (Questions 20-51)'.

⁸¹ 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.

⁸² BBC, 'Campaigners to shun inquiry into detainee "torture"', *BBC*, 4 August 2011. <<http://www.bbc.co.uk/news/uk-14397601>> Accessed: 16 June 2014.

⁸³ Sir Peter Gibson, 'The Report of the Detainee Inquiry', p. 28.

⁸⁴ Sir Peter Gibson, 'The Report of the Detainee Inquiry', p. 87.

⁸⁵ 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: a6 June 2014.

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.⁸⁶ This has not so far happened.

Conclusion

Successive UK governments have repeatedly claimed that they unreservedly condemn torture or other cruel, inhuman and degrading treatment and punishment, and they in no way condone or facilitate its use. They have also made much of their commitments to a foreign policy motivated by concerns for human suffering and a will to ensure freedom and security for populations subject to oppression around the globe. Yet the evidence shows that the UK has been involved in a whole raft of rendition-related activities that violate numerous obligations under international human rights law. Renditions aircraft have enjoyed hundreds of stopovers in dozens of UK airports. The UK has played an active role in orchestrating and facilitating renditions to countries where it knew there was a risk of torture, that it has actively participated in intelligence sharing which has led to renditions to torture, that it has encouraged intelligence agencies in other states in using torture, by using them as a conduit for its own intelligence gathering activities, and that it has repeatedly turned a blind eye when it has witnessed torture or the effects of torture on detainees, or when it has been explicitly told that torture took place. The UK has repeatedly failed to report cases of torture and other cruel, inhuman and degrading treatment or punishment to the appropriate authorities, despite obligations to do so under international law. Many of these things were going on well before UK officials denied any UK involvement.

One of the most troubling aspects of the UK's involvement is that none of those subjected to rendition, facilitated by the UK's intelligence services, have been found to have committed any terrorist acts by UK authorities. Furthermore, the supposed evidence in relation to them has proved extremely flimsy or non-existent, as the secret memos between MI5, MI6 and the CIA show. Gearty makes a compelling argument that the UK (and other powerful liberal democratic states) are able to get away with this to the extent that they do because in such states, many of us do enjoy liberty and security in fact as well as theory. Furthermore, because we have been drip-fed a message that our enemies are everywhere, and we face existential threats every single day, we are prepared to accept infringements of liberties, especially for others, and to a lesser extent, ourselves, yet still believe that the liberty we enjoy is a universal value.⁸⁷ This perhaps helps explain why there is relatively little public response on these issues, and why government inquiries into such practices can afford to be so partial, and inadequate.

Indeed, the evidence that has come to light about the UK's role in rendition has not been the result of partial investigative processes launched by successive New Labour and Coalition governments. Rather, it has resulted from the painstaking work undertaken by human rights investigators and litigators, working on behalf of individuals caught up in the global rendition programme, investigative journalists, and a small community of academics. This is evidenced throughout this paper by the extent to which our own analysis draws on the investigative work they have done, the source materials they have made publicly available, and the research we have completed in collaboration with them. What underpins their endeavours is an unflinching commitment to universal human rights for all, regardless of what an individual may be suspected of. Their work is crucial if we are to have any chance of holding our neo-democratic states to account for the unethical and secretive elements of their foreign policies, and if we are to halt the erosion of the universalism of rights for all.

⁸⁶ 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-oversea>> Accessed: 16 June 2014.

⁸⁷ Conor Gearty, *Liberty and Security*, p. 107.

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