

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim Numbers: HQ08X01180,
HQ08X01413
HQ08X01416
HQ08X03220
HQ08X01686

B E T W E E N :

- (1) BISHAR AL RAWI
- (2) JAMIL EL BANNA
- (3) RICHARD BELMAR
- (4) OMAR DEGHAYES
- (5) BINYAM MOHAMMED
- (6) MARTIN MUBANGA

Claimants

and

- (1) THE SECURITY SERVICE
- (2) THE SECRET INTELLIGENCE SERVICE
- (3) THE ATTORNEY GENERAL
- (4) THE FOREIGN AND COMMONWEALTH OFFICE
- (5) THE HOME OFFICE

Defendants

EXHIBIT LC8



Intelligence and Security
Committee

Rendition

Chairman

The Rt Hon Paul Murphy MP



Intelligence and Security Committee

Rendition

Chairman:

The Rt. Hon. Paul Murphy, MP

Presented to Parliament by the Prime Minister

by Command of Her Majesty

JULY 2007

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From: The Chairman, The Rt Hon Paul Murphy MP

INTELLIGENCE AND SECURITY COMMITTEE
70 Whitehall, London SW1A 2AS

ISC 160/2007

28 June 2007

The Rt Hon Gordon Brown MP
Prime Minister
10 Downing Street
London SW1A 2AA

Dear Gordon,

I enclose the Intelligence and Security Committee's Report on *Rendition*. Our inquiry has considered whether the UK intelligence and security Agencies had any knowledge of, and/or involvement in, rendition operations, and also the Agencies' overall policy for intelligence sharing with foreign liaison services.

The Committee would be grateful if you would lay this Report before Parliament as soon as possible.

Yours ever,
Paul

PAUL MURPHY

THE INTELLIGENCE AND SECURITY COMMITTEE

The Rt. Hon. Paul Murphy, MP (Chair)

The Rt. Hon. Michael Ancram QC, MP

The Rt. Hon. Alan Beith, MP

Mr Ben Chapman, MP

The Rt. Hon. Lord Foulkes of Cumnock
(from 7 February 2007)

The Rt. Hon. George Howarth, MP

The Rt. Hon. Michael Mates, MP

Mr Richard Ottaway, MP

Baroness Ramsay of Cartvale
(until 6 February 2007)

Ms Dari Taylor, MP

The Intelligence and Security Committee (ISC) was established by the Intelligence Services Act 1994 to examine the policy, administration and expenditure of the Security Service, Secret Intelligence Service (SIS) and Government Communications Headquarters (GCHQ). The Committee has developed its oversight remit, with the Government's agreement, to include examination of the work of the Joint Intelligence Committee (JIC) and the Intelligence and Security Secretariat, which includes the Assessments Staff in the Cabinet Office. The Committee also takes evidence from the Defence Intelligence Staff (DIS), part of the Ministry of Defence (MoD), which assists the Committee in respect of work within the Committee's remit.

The Prime Minister, in consultation with the leaders of the two main opposition parties, appoints the ISC members. The Committee reports directly to the Prime Minister and through him to Parliament, by the publication of the Committee's reports.

The members are subject to Section 1(b) of the Official Secrets Act 1989 and have access to highly classified material in carrying out their duties. The Committee takes evidence from Cabinet Ministers and senior officials – all of which is used to formulate its reports.

The Committee is required by the Intelligence Services Act to produce an Annual Report on the discharge of its functions, which the Prime Minister is required to lay before Parliament. The Committee can produce other reports on specific topics. When laying a report before Parliament, the Prime Minister, in consultation with the Committee, excludes any parts of the report (indicated by the *** in the text) that would be prejudicial to the continuing discharge of the functions of the three intelligence and security Agencies. To date, no material has been excluded without the Committee's consent.

79. In cases in which SIS was involved in early 2004, this more cautious approach to assisting rendition operations is confirmed. Where SIS shared intelligence with foreign liaison services to assist "Renditions to Justice" *** they sought Ministerial approval, which was obtained subject to assurances on the treatment of the individuals. The Chief of SIS confirmed that assurances were obtained and shown to have been kept:

We do not consider that the Service's involvement in... these cases was in breach of the relevant international law obligations governing assistance by one State in the expulsion of an individual by another State. Nor was there a risk of torture or cruel, inhumane or degrading treatment as SIS had, in accordance with the policy set out in Richard Mottram's letter [to the Committee], obtained case-by-case assurances [regarding] treatment.⁶⁴

80. In late April 2004, reports emerged of the mistreatment of detainees by soldiers at the U.S.-run Abu Ghraib prison in Iraq. In light of those reports, SIS wrote to the Foreign Secretary explaining that any operations that may lead to U.S. custody of detainees were considered on a case-by-case basis.

81. In mid-2004, SIS asked Ministers for approval to assist with an operation that, whilst it was intended to bring about arrests by local authorities, could have led to "Renditions to Detention", possibly to secret facilities. They received approval to proceed, dependent on any rendered detainees being treated in accordance with the relevant international conventions. In the event, the U.S. did not attempt to conduct any renditions as a result of this operation.

82. From 2004 it became clear to SIS and the Security Service that their existing guidance to staff on dealing with foreign liaison services was insufficiently detailed given the increasing requirement to cooperate with foreign services in counter-terrorism operations. They therefore began to expand their guidance, and as elements were finalised they were formally issued to staff.⁶⁵

⁶⁴ *Ibid.*

⁶⁵ *Advice on participation in detention operations and interviews was formally issued to SIS and Security Service staff in 2005. In 2006, all three Agencies formally issued updated guidance to staff on the exchange of intelligence with foreign liaison services (in GCHQ's case it was issued to operational staff only). This expanded guidance better equipped staff to understand their responsibilities and, for operational staff, at what point in any given operation to involve Agency legal advisers, policy departments or Ministers.*

Safeguards in SIS and the Security Service

171. The Security Service and SIS use a system of safeguards to ensure that their intelligence does not result in torture or mistreatment. These safeguards take the form of conditions which restrict the use that a liaison partner may make of UK intelligence. We have been told that such conditions are understood by intelligence and security services globally, as they all use similar conditions to ensure that one agency does not endanger another agency's sources through their incautious use of intelligence. Intelligence and security agencies accept and respect these conditions because failure to do so would mean that they might not be trusted to receive intelligence in the future.

172. Agency staff are briefed on the system of safeguards as part of their induction training. This was supplemented, prior to 2004, by informal advice from line managers, to whom all staff were advised to refer any concerns. Since 2004, SIS and the Security Service have revised their guidance to staff on the use of these safeguards to ensure that no mistreatment to individuals arises from the sharing of intelligence, and joint guidance, approved by Ministers, was issued to all SIS and Security Service staff in 2006. This guidance is entitled *Guidance on dealing with liaison services: Agency policy on liaison with overseas security and intelligence services in relation to detainees who may be subject to mistreatment*. There is separate guidance for staff involved in questioning detainees in the custody of foreign liaison services, which was the topic of the Committee's March 2005 report into the handling of detainees.¹²⁷

173. The Director General of the Security Service told the Committee: "[The guidance] is designed to give clear steerage to staff about levels of authorisation and deciding what you can pass and what you cannot pass."¹²⁸ The document is extremely detailed. At the outset the guidance makes it clear that, whilst it is necessary for the UK Agencies to work with foreign liaison services to counter terrorism, the UK Agencies will not condone the use of torture or mistreatment. When a risk of mistreatment is foreseen, then caveats and assurances are used to minimise the risks. Finally, where, despite the use of caveats and assurances, there is still considered to be a risk of mistreatment, senior managerial or Ministerial approval is required.

174. The guidance includes a comprehensive legal briefing, covering the responsibilities of Agency staff under UK law, and the responsibilities of the UK in international law. The overall policy on possible mistreatment related to liaison activities is described as follows:

¹²⁷ Cm 6469.

¹²⁸ Oral evidence – Security Service, 23 November 2006.

The Security and Intelligence Agencies do not participate in, solicit, encourage or condone the use of torture or inhuman or degrading treatment. For reasons both ethical and legal, their policy is not to carry out any action which they know would result in torture or inhuman or degrading treatment. Where there is considered to be a risk that the Agencies' actions will be unlawful, the actions may not be taken without authority at a senior level. In some cases, Ministers may need to be consulted.

In practical terms, this means there is a range of options available to staff when they share intelligence with foreign liaison services, dependent on the likelihood and risk of torture or CIDT being foreseen. We have examined the guidance documents setting out these options and we believe that they are in line with the objectives set out above.

175. This guidance is designed to ensure that the Agencies' actions, where the possibility of torture or CIDT is foreseen, comply with their, and the UK's, legal obligations. The Agencies' knowledge of the workings of foreign liaison services is critical in assessing the risks involved in cooperation with them.

Conclusions and Recommendations

AA. The Committee notes that the UK Agencies now have a policy in place to minimise the risk of their actions inadvertently leading to renditions, torture or cruel, inhuman or degrading treatment (CIDT). Where it is known that the consequences of dealing with a foreign liaison service will include torture or CIDT, the operation will not be authorised.

BB. In the cases we have reviewed, the Agencies have taken action consistent with the policy of minimising the risks of torture or CIDT (and therefore "Extraordinary Rendition") based upon their knowledge and awareness of the CIA rendition programme at that time.

CC. Where, despite the use of caveats and assurances, there remains a real possibility that the actions of the Agencies will result in torture or mistreatment, we note that the current procedure requires that approval is sought from senior management or Ministers. We recommend that Ministerial approval should be sought in all such cases.

DD. The Committee considers that "secret detention", without legal or other representation, is of itself mistreatment. Where there is a real possibility of "Rendition to Detention" to a secret facility, even if it would be for a limited time, then approval must never be given.