REDRESS

Seeking Reparation for Torture Survivors

Joint Committee on Human Rights:

The alleged use of UK airports in extraordinary renditions and the implications of this for UK compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

Submissions of the Redress Trust
22 December 2005

I. Introduction

1. On 30 September 2005 and 14 October 2005, The Redress Trust (REDRESS) put forward submissions to the Joint Committee on Human Rights (JCHR) in response to its calls for evidence into the subjects of the implementation of the UNCAT in the United Kingdom and counter-terrorism policy and human rights, respectively.

2. These current submissions are supplementary to the afore-mentioned submissions in respect of the specific issue of allegations that United Kingdom airports have been used by US security aircraft as stopovers in extraordinary renditions, transporting (terrorist) suspects to jurisdictions where they may be tortured, and the implications of this for the UK's compliance with UNCAT.

3. On 30 November 2005 REDRESS submitted a letter to the Secretary of Transport, requesting that the Government properly investigate the allegations of the UK's role in "renditions" and "extraordinary renditions" and that it takes steps to prevent any future violations. The letter is annexed to this submission (Annex I).

II. Background

4. Since the Guardian newspaper ran stories in September 2005[1] on what it branded as CIA flights involved in the clandestine transportation of terrorist suspects using UK airports, there has been a flurry of further developments surrounding this and related issues, including the following: further extensive print media and television reports on this alleged practice and matters apparently connected to it such as secret USA detention and interrogation centres in Eastern Europe; questions in Parliament; the creation of an All Party Parliamentary Group on Extraordinary Renditions; enquiries by the UN Special Rapporteur on Human Rights and Counter-terrorism to the UK Government about the flights; the Council of Europe has opened a formal inquiry into the alleged "extraordinary renditions" by the CIA and the role of Council of Europe members in the practice; USA Secretary of State Condoleezza Rice has made statements setting out the official USA position; Foreign Secretary Jack Straw has been questioned by the Commons Foreign Affairs committee. This illustrates how the issue has become one of major and growing public concern over the past three months.

5. The immediate matter of concern to the JCHR is any UK role in the USA's "rendition" and "extraordinary rendition" programme that could constitute a breach of the UK's obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). But the JCHR should consider that the matter is currently much more than a USA - UK issue: thus, in assessing the UK's actions in relation to and in response to these allegations, it should consider the broader debate surrounding the issue of "renditions". For

[1] The Guardian revelations on 12 and 13 September 2005 were not the first media reports linking CIA flights to UK airports. The UK Sunday Times referred to the link in a report on 14 November 2004.

example, Swiss parliamentarian Dick Marty, who is conducting the Council of Europe inquiry, has criticised the lack of information from Secretary of State Rice during her December 2005 visit to Europe. Leaders of parliamentary delegations to the Parliamentary Assembly will be asked to take initiatives within their parliaments in order to obtain more precise information on this matter. The Committee on Legal Affairs and Human Rights will request that the Bureau of the Assembly include an urgent debate on the issue at the Assembly's next plenary session (23-27th January 2006.). The German authorities are investigating the abduction of German citizen Khaled Al Masri.[2] On 15th November 2005 a Spanish judge announced that he would investigate whether the Son Sant Joan airport in Majorca was used by the CIA to transport detainees. The Norwegian government is said to have asked the US Embassy for information on a plane which landed in Oslo on the 20th July 2005. The Swedish government has asked the civil aviation authorities for full information following that aircraft suspected of belonging to the CIA landed at Swedish airports during the last three years. Swiss authorities are attempting to ascertain whether aircraft chartered by the CIA had violated Swiss sovereignty by landing on several occasions in Geneva during 2003 – 2004.

6. In the course of these developments there have been numerous factual allegations made concerning the use of UK airports and airspace in what are sometimes referred to as "renditions" and sometimes "extraordinary renditions", including details of some of the aircraft used, destinations, alleged terrorist suspects which could have been on the planes, and other such matters. For example, frequent reference has been made to a "Gulfstream V" used for "extraordinary renditions" which has visited British airports on several occasions along with a Boeing 737 which was said to have been hired by American agents[3]; movements of the Gulfstream V coincided with various incidents of "extraordinary rendition"; aircraft apparently involved in these operations have flown into the UK over 200 times since September 11 2001, involving 19 British airports and RAF bases, in particular, Prestwick, Glasgow[4]; the case of Saad Iqbal Madni, seized by Indonesian Intelligence Agents on 9 January 2002 and flown by the Gulfstream V to Cairo, is raised, it having been alleged that the aircraft then left Cairo on 15 January 2003, stopping at Prestwick airport before returning to Washington. However, no hard evidence has yet emerged that any particular aircraft carried any particular individual through the UK in the course of "extraordinary rendition."

III. Summary of these submissions

7. These submissions will focus on the legality of "renditions" and "extraordinary renditions" under UNCAT. The submissions explain:

   - The practice of "rendition" and its legality under human rights law
   - How "renditions" may involve torture or ill treatment and thus be in breach of UNCAT
   - That "renditions" to secret detention centres may constitute the crime of enforced disappearances and may be tantamount to torture or ill treatment
   - How the UK has an obligation to ensure that its airspace and airports are not used in connection with practices of "rendition" in possible violation of UNCAT, including transfers to secret or regular detention centres and/or to countries where there are substantial grounds for believing that the individual will be tortured even if there is an arrest warrant or court order against the individual.

[2] See interview with investigative journalist Stephen Grey which refers to the case, available at http://www.democracynow.org/article.pl?sid=05/12/07/1519249.

[3] Sunday Times November 2004.

[4] Guardian 12 and 13 September 2005.

- That the use of UK airspace and the refuelling in UK airports of flights carrying out "rendition" operations involving torture or ill treatment, is contrary to the UK obligations under UNCAT and might constitute aiding and abetting in torture giving rise to State responsibility and individual criminal responsibility.

- That the UK therefore has an obligation under UNCAT to investigate the allegations of "renditions" promptly and impartially.

- That the UK is under an obligation to review its existing laws, practices and mechanisms to prevent these acts, and if such allegations are confirmed, to implement effective guarantees of non-repetition.

IV. The Practice of "Renditions"

Renditions to justice

8. The United States has long acknowledged the practice of "renditions to justice" as necessary to combat transnational crime. This practice consists of transferring individuals outside legal procedures for prosecution or trial in the US or in other countries through forcible abductions or other forms of irregular renditions such as luring or arbitrary deportations.[5] In a recent statement, the US Secretary of State, Condoleezza Rice, acknowledged that the US has been using "renditions" for decades to transport terrorist suspects from the country where they where captured to their home country or to other countries where they can be *questioned, held or brought to justice*. It is not clear from this statement whether the US considers this practice to be lawful, as it only describes "renditions to justice" as permissible under international law.[6] In any case this practice seems to go further to what the US and in some cases US courts, had acknowledged to be within the boundaries of international law.[7]

9. Even if a "rendition" does not infringe upon the sovereignty of the host State (e.g., the abduction is performed with its consent) and is carried out with the purpose of sending the individual to stand trial, it would still constitute an arbitrary detention/expulsion and a breach of the individual's fair trial rights..[8]

10. This has been recognised by international courts and human rights bodies. For example, the Inter-American Juridical Committee highlighted the "incompatibility of the practice of extraterritorial abduction with the rights of due process to which every person is entitled, no matter how serious the crime they are accused of, a right protected by international law.*"*[9]

[5] See *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions"* (New York: ABCNY and NYU School of Law, 2004) page 15. See also Extraterritorial Abductions, footnote 1.

[6] See footnote 8.

[7] See footnote 5.

[8] See *Transcript: Secretary of State Rice's Remarks Prior to Departing for European Trip* http://www.washingtonpost.com/wp-dyn/content/article/2005/12/05/AR2005120500462_pf.html. The statement by Rice included the following: "*One of history's most infamous terrorists, best known as "Carlos the Jackal," had participated in murders in Europe and the Middle East. He was finally captured in Sudan in 1994. A rendition by the French government brought him to justice in France, where he is now imprisoned. Indeed, the European Commission of Human Rights rejected Carlos' claim that his rendition from Sudan was unlawful."* The case to which she referred is *Illich Sanchez Ramirez v France,* Application No 28780/95, Commission Decision of 24 June 1996. Her assertion that this case is authority for "renditions" being lawful is an over-simplification. The application was "essentially…about the deprivation of [Ramirez's] liberty by the French authorities" (page 161), the Commission stating that "in so far as the application concerns the circumstances in which the applicant was allegedly deprived of his liberty in the Sudan, it is outwith the jurisdiction of the Commission, *ratione personae*, since the European Convention on Human Rights does not bind that State, and would, therefore, have to be rejected as being incompatible with the provisions of the Convention."(ibid).

[9] Inter-American Juridical Committee, *Legal Opinion Regarding the Decision of the Supreme Court of the United States of America* C.J.I./RES/II/15/91.

11. Similarly the European Court of Human Rights (ECtHR) has recognised the principle that all transfers whether described as expulsion, extradition, deportation or otherwise, need to comply with the minimum procedural guarantees prescribed under domestic and international law. In *Bozano v France*[10] the Court determined that legal procedures affect not only the validity of the transfer but also the legality of holding the individual under detention for the purpose of the removal.

12. Bosnia and Herzegovina's Human Rights Chamber also analysed the legality of transfers under the European Convention on Human Rights (ECHR) in *Bensayah against Bosnia and Herzegovina*[11], a case involving the illegal surrender to US custody of a Yemeni terrorist suspect. The Human Rights Chamber explained that Protocols Four and Seven of the ECHR specifically recognise the absolute prohibition of expulsion of nationals (art 3 of the Fourth Protocol) and the prohibition of *arbitrary* expulsion of aliens—that is, expulsions not based on "a decision reached in accordance with the law" (art 1 of the Seventh Protocol). It concluded, therefore, that if local authorities cooperate with the surrender of an individual(s) to the authorities of another State for the purpose of 'rendition', it is a breach of the ECHR.

13. This view has also been echoed by the UN Human Rights Committee.[12]

Renditions to interrogations and/or detention and "extraordinary renditions"

14. As described in the Background (above), reports by journalists, non-governmental organisations and international bodies contain credible allegations that the US is conducting an "off the record" practice of inter-State transfers of terrorist suspects to third countries and/or to secret detention centres outside of US territory where there is substantial likelihood that the detainees may suffer torture or ill treatment. This practice has been labelled "extraordinary renditions".

15. Regardless of the method employed to transfer individuals (off or on the record renditions) and the jurisdictions involved, the detention of individuals outside of any legal process is a breach of their right to liberty and to be free from arbitrary detention. Moreover, if the location of the person is kept secret, it can also constitute an enforced disappearance, which is a crime under international law.[13]

16. As has been established by international courts and human rights bodies, "disappearances" can constitute a form of torture or ill treatment to the victim as well as to his/her family.[14]

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[10] *Bozano v. France* (1986) 9 EHRR 297.

[11] *Bensayah against Bosnia and Herzegovina* (4 April 2003, case no. CH/02/9499).

[12] See Cleberti de Caariego v Uruguay Communication No R13/56, 29 July 1981; Lopez v Uruguay Communication No R12/52, 29 July 1981; Giry v Dominican Republic, UN Doc CCPR/C/39/D/193/1990, Decision of 20 July 1990.

[13] According to the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, an enforced disappearance occurs when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law." Article 7 of the ICC Rome Statute, establishes that widespread or systematic enforced disappearances of persons is a "crime against humanity" and falls within the jurisdiction of the Court. Rome Statute of the International Criminal Court**,** U.N. Doc. 2187 U.N.T.S. 90, *entered into force* 1 July 2002.

[14] According to the Working Group on Enforced Disappearances, a "disappearance itself constitutes ipso facto torture or other prohibited ill-treatment. "The very fact of being detained as a disappeared person, isolated from one's family for a long period is certainly a violation of the right to humane conditions of detention and has been represented to the Group as torture." (see UN doc. E/CN.4/1983/14, para 131). "Disappearances" are a form of torture as regards the relatives of the "disappeared" person and potentially as regards the "disappeared person." See: U.N. Declaration on Enforced Disappearances (Art. 1): "Any act of enforced disappearance...constitutes a violation of the rules of international law guaranteeing, inter alia...the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment." The UN Human Rights Committee has taken several decisions on individual petitions which indicate that "disappearances" amount to torture. See: *Quinteros v Uruguay*, (107/1981, para.14); also *El-Megreisi v Libya* (Report of the Human Rights Committee, Vol.II, GAOR, 49th Session, Supplement 40 (1994), Annex IX T, paras 2.1-2.5); *Mojica v. Dominican Republic* (449/1991, para 5.7). See also European Court of Human

Additionally, it has been widely recognised that disappearances, unofficial detention centres, arbitrary and/or incommunicado detention, not only can constitute torture and ill treatment but also put the individual at high risk of torture or other forms of ill treatment.[15]

V. The UK and "renditions"

17. The UK has an obligation to ensure that its airspace and airports are not used in connection with practices of rendition in possible violation of UNCAT, including transfers to secret detention centres; to other detention centres for the purposes of questioning (i.e. Guantanamo Bay); or to countries where there are substantial grounds for believing that the individual will be tortured (despite existing arrest warrants or court orders).

VI. UNCAT prohibits "renditions" involving torture

18. Torture and other cruel, inhuman or degrading treatment or punishment (ill treatment) are prohibited by UNCAT. Article 1 defines "torture" and although UNCAT does not contain a definition of ill treatment, Article 16 establishes an obligation to prevent it and specifies that:

> *"In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment."*

These Articles refer to, among others, interrogations rules; the obligation to undertake an effective investigation; the individual right to complain; and the right to an effective remedy and adequate reparation.

19. It is important to note that although Article 3 of UNCAT specifically prohibits the expulsion, return or extradition of a person to a State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture (or at risk of subsequent transfer to a risk of torture),[16] and does not cover other forms of ill treatment, nonetheless the UK is bound under the International Covenant on Civil and Political Rights (ICCPR)[17] and the ECHR[18] not to transfer anyone where there is a risk of either torture *or* ill treatment.

VII. UNCAT's non-refoulement obligation and "renditions"

20. The principle of *non-refoulement* contained in Article 3 of UNCAT is also a principle under customary international law[19] which applies to legal procedures of extradition, deportation or expulsion of individuals from the jurisdiction of one State to another. A breach of this principle gives rise to State responsibility. *Mutatis mutandis*, all transfers, including those outside legal procedures, need to comply with this principle or otherwise the transferring State would be committing an additional international wrongful act.

Rights (*Kurt v. Turkey,* Eur.Ct.Hum.Rts, Case No.15/1997/799/1002, 25 May 1998, para.134); The Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of 29 July 1988. Series C N° 4, para.187).

[15] Idem.

[16] According to the UN Committee Against Torture, " the Phrase 'State' in article 3 refers to the State which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited" - *General Comment No. 01: Implementation of article 3 of the Convention in the context of article 22 : . 21/11/97. A/53/44, annex IX, CAT General Comment No. 01. (General Comments*)

[17] The Human Rights Committee has interpreted Article 7 of the ICCPR prohibiting torture and ill treatment as implicitly prohibiting *refoulement.* See HRC General Comments No. 20 (1990, at § 9), and No. 31 (2004, §12). For individual communications, see e.g. *Chitat Ng v. Canada*, (1994, § 14.1); *Cox v. Canada* (1994); *G.T. v. Australia* (1997).

[18] In *Soering* and in subsequent cases, the ECtHR identified *non-refoulement* as an 'inherent obligation' under Article 3 of the Convention in cases where there is a "real risk of exposure to inhuman or degrading treatment or punishment." *Soering v. UK (*1989, § 88).

[19] See E. Lauterpacht and D. Bethlehem (2001) An Opinion on the Scope and Content of the Principle of Non-Refoulement, available on the UNHCR website (Global Consultations page), §§ 196-216).

21. In this context, it has been suggested that both the sending State and the transit State may be exonerated from liability under international law if diplomatic assurances are obtained from officials of the receiving State that persons transferred into their jurisdiction will not be subject to torture or ill treatment. REDRESS has already indicated in its previous submission (dated 14 October 2005) that diplomatic assurances are incapable of ascribing legality to transfers to locations where there is a real risk of torture in violation of the principle of non-refoulement (see *Chahal v. United Kingdom* (1996) 23 EHRR 413). It would be even more objectionable if such assurances were used to ascribe legality in an e*xtrajudicial transfer, or in a transfer to a secret detention facility.*

22. Article 16 of the *"Draft articles on Responsibility of States for internationally wrongful acts*" adopted by the International Law Commission (ILC) in 2001 provides:

> *"A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:*
>
> *a) That State does so with the knowledge of the circumstances of the internationally wrongful act; and*
>
> *b) the act would be internationally wrongful if committed by that State".*[20]

23. If an official aided or abetted in the perpetration of torture, they may be criminally responsible for the underlying offence.[21] Article 4 of UNCAT requires States to ensure that all forms of torture are offences under their criminal laws, including all acts that constitute participation in, complicity in, or an attempt to commit torture. Article 5 specifies that States should exercise their criminal jurisdiction even when the acts are committed outside their territory.

24. J. Burgers and H. Danelius, who were actively involved in the drafting of the UN Convention against Torture, and have written one of the leading commentaries, emphasized:

> *"It is important, in particular, that different forms of complicity or participation are punishable, since the torturer who inflicts pain or suffering often does not act alone, but his act is made possible by support or encouragement which he receives from other persons. In many cases the torturer is merely a tool in the hands of someone else (…) the person or persons who instructed him should also be punished".*[22]

VIII. UNCAT requires the UK to investigate allegations of "renditions" within its jurisdiction that might have involved torture or ill treatment

25. As stated by Lord Bingham in the recent House of Lords' decision of *A (FC) and Others v. Secretary of State for the Home Department* UNCAT prohibits torture and ill treatment and establishes an obligation to investigate allegations promptly and impartially.[23]

26. Credible information suggesting that individuals are being transported by officials of another State, via the United Kingdom, to detention facilities for interrogation under torture or are being

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[20] http://www.un.org/law/ilc/texts/State_responsibility/responsibilityfra.htm.

[21] See Article 25 (3)(c) of the International Criminal Court Statute and Article 7(1) of the Statute of the International Criminal Tribunal for the Former Yugoslavia. This provision was interpreted in the *Furundzija* decision of the ICTY, where it was held that *"to be guilty of torture as an aider or abettor, the accused must assist in some way which has a substantial effect on the perpetration of the crime and with knowledge that torture is taking place."* ICTY *Furundzija* judgment (1998, § *257)*

[22] Burgers and Danelius, *supra* at p. 130. See also Human Rights Committee, General Comment No. 20, *'Tthe prohibition of torture and cruel treatment or punishment (Article 7)'*, 10 March 1992, UN Doc. HRI/GEN/1/Rev.7, at para. 13.

[23] *"A Committee against Torture was established under article 17 of the Torture Convention to monitor compliance by member states. The Committee has recognised a duty of states, if allegations of torture are made, to investigate them: PE v France, 19 December 2002, CAT/C/29/D/193/2001, paras 5.3, 6.3; GK v Switzerland, 12 May 2003, CAT/C/30/D/219/2002), para 6.10" A (FC) and Others v. Secretary of State for the Home Department*, [2005] UKHL 71, para 34 (Lord Bingham of Cornhill).

tortured and ill treated while transported, would imply a breach of UNCAT and must be investigated effectively.

IX. The UK is under an obligation under UNCAT to establish effective safeguards to prevent UK participation in "renditions" involving torture or ill treatment

27. Under Article 11 of UNCAT:

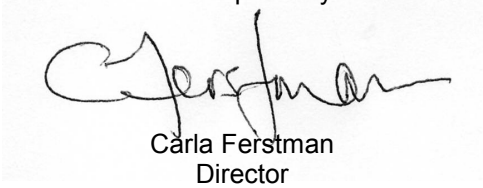
> *"Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."*

In other words, the UK should examine whether it has in place sufficient safeguards to prevent acts as have been alleged.

28. In addition to the duty to refrain from committing acts of torture and ill treatment, States have a positive obligation to protect individuals by ensuring that they are not subjected to conduct constituting a violation of international law. This positive duty requires States to investigate allegations of torture that may have occurred on their territory, including allegations of complicity or participation in torture, and to establish guarantees of non repetition.[24]

29. If an official investigation confirms these allegations, the UK is under an obligation to review its legislation, methods and practice regulating civil aviation (including measures for the identification of flights that might be transporting detainees exposed to the risk of torture or other ill treatment), to make sure that such acts are not repeated.

All of which is respectfully submitted



Carla Ferstman
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On behalf of REDRESS

[24] As Lord Bingham stated "… *the jus cogens erga omnes nature f the prohibition of torture requires member states to do more than eschew the practice of torture."* See footnote 23, para 34 (Lord Bingham of Cornhill).See also UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation,* General Assembly A/C.3/60/L.24, 24 October 2005.