

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Police and Justice Bill
Liberty's short briefing on the
'Rendition' amendment for 3rd Reading
in the House of Lords

October 2006

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

Contact

Gareth Crossman

Director of Policy

Direct Line: 020 7378 3654

Email: GarethC@liberty-human-rights.org.uk

Jago Russell

Policy Officer

Direct Line 020 7378 3659

Email: JagoR@liberty-human-rights.org.uk

Introduction

1. This briefing is written in support of the new clause ‘Power to search aircraft involved in acts of rendition’ tabled by The Baroness D’Souza and others. It covers core issues explaining why Parliament should create appropriate powers to ensure that UK airports and airspace are not used for the transportation of people to face possible torture. Passing this amendment will ensure that UK legislation is sufficiently robust to ensure that our international and domestic human rights obligations are complied with. It would not imply that there has been any UK complicity in acts of rendition.

2. Evidence that the CIA has been using EU member state airspace and airports is overwhelming. In July 2006 the Council of Europe report written by Senator Dick Marty said the “United States has progressively woven a clandestine ‘spider’s web’ of disappearances, secret detentions and unlawful inter-state transfers, often encompassing countries notorious for their use of torture.” The report also stated that the United Kingdom had been used for “‘stopovers’ for flights involving the unlawful transfer of detainees”¹. In September President Bush confirmed the existence of so called ‘black sites’ to which people had been transported for detention and questioning under what he euphemistically referred to as “an alternative set of procedures”.

3. In March 2006 the Council of Europe Venice Commission, which considers the legality of acts within Europe, published an opinion on secret detention facilities and inter-state transport in March 2006. Its categorical conclusion was that member states have a duty to take action:

“If a Council of Europe member State has serious reasons to believe that an airplane crossing its airspace carries prisoners with the intention of transferring them to countries where they would face ill-treatment in violation of Article 3 of the European Convention on Human Rights, it must take all the necessary measures in order to prevent this from taking place.”²

¹ <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>

² [http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)009-e.asp](http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp)

This has been endorsed by the Parliamentary Joint Committee on Human Rights (JCHR) which stated in its Nineteenth Report:

*“Where there are credible allegations arising from previous records that a particular civil aircraft transiting UK airspace has been involved in renditions, and where the aircraft is travelling to or from a country known to practise torture or inhuman or degrading treatment, it should be required to land. Where such an aircraft lands at a UK airport for refuelling or similar purposes, it should be required to provide a full list of all those on board, both staff and passengers. On landing, it should be boarded and searched by the police, and the identity of all those on board verified. Wherever appropriate, a criminal investigation should be initiated.”*³

4. The Government has argued there is sufficient domestic law allowing investigation of possible rendition. We disagree. The main entry and search provisions are contained in the Police and Criminal Evidence Act 1984 (PACE). Powers under Sections 18 and 32 are dependant on an arrest being made. Section 8 allows a Magistrate’s warrant to be issued to search premises (including an aircraft) upon reasonable suspicion that one of several criteria are established. The problem in the application of Section 8 to rendition is that there will often be only a short time when a plane is on the ground. This would make the issuing and serving of a warrant impractical. In any event, given that belief that a plane might be involved in rendition must by its very nature be based on circumstantial intelligence, it is unlikely that this would amount to ‘reasonable suspicion’. Under PACE, entry without a warrant can only be effected to save ‘life and limb’⁴. While this would allow officers to enter a burning plane to save the lives of those on board, it could not allow the police to enter a plane that they suspected of involvement in rendition, not least as there is no immediate danger to the rendered persons life. The Police and Justice Bill also creates powers at Clause 13 to enter planes. However, these only relate to search for stolen and prohibited articles. The other legislative provisions covering airports are contained in the Customs and Excise Management Act 1979 but these relate to customs rather than policing powers and would not be suitable for use in investigating rendition.

³ <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/18511.htm>

⁴ Section 17.

5. The amendment creates the new robust framework called for by the Venice Commission and the JCHR. It gives the Secretary of State powers to require planes to land. It creates specific duties to search planes for evidence of rendition. Crucially in view of the nature of rendition these powers are triggered by “intelligence” rather than “reasonable suspicion”. They are limited to situations where a warrant could not otherwise be sought. Above all the amendment allows Parliament to send out the strongest message that the UK does not and will not allow its airspace or airports to be used for transportation to black sites and torture.

6. The Government has said that this amendment is unnecessary and replicates existing law. Even if there were some replication this is not a persuasive argument. Every Bill published in Parliament will partly replicate and clarify existing legislation to achieve a policy aim. There can be no more appropriate aim than to ensure that the UK is not complicit in torture.

Gareth Crossman

Liberty