

BREAKING THE CHAIN

ENDING IRELAND'S
ROLE IN RENDITIONS

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PREFACE

This report is published on 26th June 2009, International Day Against Torture, as the recent practice of rendition has been so inextricably linked with torture or other ill-treatment. The gross human rights violations associated with the US programme of rendition and secret detention – including enforced disappearance and arbitrary detention, as well as torture and other cruel, inhuman and degrading treatment - are only possible in a world where states stay silent when they ought to challenge such violations. Ireland has been a vocal critic of the US renditions programme, and other aspects of what the previous administration called its 'war on terror'. But the Irish Government has resolutely failed to match this rhetoric with action. It has assisted US renditions through its virtual open door to CIA planes at Shannon airport. It has steadfastly refused to heed calls from national and international bodies for an investigation into abuse of Ireland's airports and airspace. It has failed to take any preventative measures to guard against further abuse. It has instead insisted on relying on so-called "assurances" from the US Government. It would be hard to imagine a similar response in a situation where foreign aircraft transiting Irish airports had a known link to other forms of illegal activity, such as illegal drug trafficking.

Now, a change in direction may at last be on the horizon. US President Barack Obama issued orders ending the CIA's long-term secret detention programme, prohibiting torture, setting a date for the closure of the detention centre at Guantánamo Bay, and establishing a Task Force to advise on how best to ensure that individuals are not transferred to other states to face torture (and how best to ensure that transfers respect international obligations).¹ The Irish Government has established a Cabinet Committee on Aspects of International Human Rights, whose activities include reviewing and strengthening legislation governing the search and inspection of suspected rendition flights, and to ensure that civil and police authorities have the necessary powers in this regard. Amnesty International Ireland has publicly given its welcome to this new Cabinet Committee. However, its stated remit is overly narrow, and the purpose of this report is to outline gaps that need to be addressed. We also call on the Government to announce a timeframe for the completion of this review, and that its outcome be made public.

Thousands of people all over Ireland have marched, protested and lobbied politicians to ensure that Ireland no longer assists, tolerates, or in any way allows its territory to be used

to facilitate renditions. Amnesty International members and other activists have maintained a constant presence at Shannon Airport monitoring the activity of suspected rendition flights. Most recently we saw the momentum continue to build with local authorities around Ireland, including Shannon and Limerick, declaring their areas to be rendition free zones.

Government has taken an important step by bringing these matters to the cabinet table. But we need to ensure that this review is comprehensive and meaningful. If Government and its committee follow through, this will be a massive victory for human rights across the globe. Ireland will be to the fore in stemming this human rights abuse. The Irish public, who we know have shared our agony over Ireland's association with such a barbaric practice, will finally be in a position to commend Government for showing political and moral leadership towards ending the human rights violations that lie behind the sanitized term, 'rendition'.

We are very grateful to the writer, Michael McCaughan, for his valuable contribution to this report.

Colm O'Gorman
Executive Director, Amnesty International Ireland

INTRODUCTION

“Our analysis of the CIA "rendition" programme has revealed a network that resembles a ‘spider’s web’ spun across the globe. [...] It is now clear – although we are still far from having established the whole truth - that authorities in several European countries actively participated with the CIA in these unlawful activities. Other countries ignored them knowingly, or did not want to know.”

Report by Mr Dick Marty for the Parliamentary Assembly of the Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, 12 June 2006, in which Ireland was identified as a ‘stop-over point.’

Since December 2005, Amnesty International (AI) has been calling on the Irish Government to establish an independent inquiry to investigate thoroughly all allegations that aircraft engaged in renditions have transited its airspace or airports.² AI has consistently recommended that Ireland’s laws and procedures in granting overflight or landing clearances to foreign aircraft, both state and civilian, should be reviewed in order to identify how Ireland may have been facilitated, directly or indirectly, violations of international law by other states. This review must make solid recommendations for reform, we have said, which Government must then implement.

AI has also repeatedly urged that more immediate steps should be taken. The Irish authorities should establish procedures aimed at discovering whether aircraft presenting as “civilian” are in fact “state aircraft” bypassing restrictions ordinarily placed on official or military flights. All requests for overflight or landing authorisations by foreign aircraft, other than regularly scheduled commercial flights, should require the provision of sufficient information as to allow effective monitoring regarding the identities and status of all persons on board, the purpose of the flight and its final destination. Clauses should be inserted in all bilateral or multilateral agreements for granting overflight or landing permission to foreign aircraft, that the human rights of passengers shall be respected; and monitoring and control systems should be put in place for periodically checking that they are being complied with. Whenever necessary, the right to search civil planes should be exercised.

Under international law, states that facilitate transfers of individuals to countries where they know or should know that there is a risk of their being tortured or ill-treated, violate their own human rights obligations by doing so. Even where rendition aircraft are not carrying detainees while in a state's territory, but are known to be en route to or returning from the transfer of a person to risk of torture or furthering an act of enforced disappearance, the state may violate its human rights obligations if it fails to take measures to prevent or investigate the circumstances.

Yet, in the three years since AI first wrote to the Government, nothing has happened. Government has taken no specific preventative or investigative action to date. Rather than take measures to identify past violations of Irish territory or prevent future violations, the Government has instead simply denied any possibility that Irish airports or airspace could have been used by US rendition flights. There remains some confusion about what Government means when it claims that Ireland is not used for rendition. While Government denials may have been based on an understanding that being used for rendition means that an actual rendition victim has transited through Ireland, it has not conceded the cooperation issue, i.e. that Ireland has facilitated renditions through making rendition circuits possible. Any kind of participation in rendition circuits should be admitted and investigated.

The Government has continued to insist that it may legitimately rely on US "assurances" that Ireland has not and will not be used for rendition purposes. The US Government has chosen its expressions so carefully that, even if Ireland were to take their assurances at face value, as with assurances to other European states, they have been explicitly limited to the transfer of actual prisoners through a state's physical territory. They do not address overflights or landings of planes on rendition circuits. AI, the Council of Europe and the European Parliament have repeatedly stressed that reliance on "assurances" does not fulfil Ireland's human rights obligations. The Irish Human Rights Commission too has repeatedly made this point, and advised Government to establish an effective regime of monitoring and inspection.

In a welcome move, the Government has established a Cabinet Committee on Aspects of International Human Rights, whose activities include reviewing and strengthening legislation governing the search and inspection of suspected rendition flights, and to ensure that civil and police authorities have the necessary powers in this regard. This report builds on AI's previous recommendations for domestic action outlined above, by setting out some of the main factors contributing to a continuing significant risk that Ireland may continue to facilitate the practice of renditions by allowing foreign aircraft involved in renditions to transit Irish airspace and airports. This report will be submitted to the Cabinet Committee, and AI will campaign for that Committee to investigate thoroughly the laws, procedures, rules and practices for granting overflight and landing clearances, determine how those

laws, procedures, rules and practices should be strengthened, and how compliance could be checked.

Recommendations are made to the Cabinet Committee on Aspects of International Human Rights to ensure that a clear, robust and transparent system for monitoring and inspecting foreign aircraft is finally put in place. Our 9 overarching recommendations are:

- The Committee must finally acknowledge that Ireland has been used as a stopover on known renditions circuits, and confirm that Government now takes seriously its responsibility to prevent future abuses.
- The Committee's review and any future system of monitoring must proactively seek to identify aircraft and operators that have used Irish territory or airports to effect renditions, instead of depending on research by citizens, journalists or NGOs.
- The review must go beyond legislation governing the search and inspection of suspected rendition flights. It must assess Ireland's systems for the collection of information from unscheduled civilian aircraft making 'technical stopovers'. Currently, the Irish authorities cannot proactively identify foreign aircraft engaged in illegal activity.
- The review must recommend a concrete process whereby aircraft operators will be required to provide detailed and sufficient information before landing or overflight permission is granted – such information should include the full flight plan of the aircraft; the full names, nationalities, status and passport numbers of all passengers on board.
- The review must set out how reporting, verification and control systems will be enhanced so that aircraft engaged in state activities attempting to present as 'civilian' aircraft for the purposes of overflight or landing clearance can be detected and identified as such. This is how rendition flights operate - 'below the radar' - and is a violation of Ireland's sovereignty and international law.
- The review must address aircraft suspected of involvement in renditions transiting Irish airspace, not just airports.
- Given Government's steadfast refusal to establish an independent and impartial investigation of the use of Irish territory in renditions, the outcome of this review must be made public, at the earliest opportunity.
- Government spokespersons must no longer purport to rely solely on mere assurances provided by the US Government when it comes to ensuring that Irish territory is not used to facilitate renditions.

Sets of recommendations are addressed to the Minister for Justice, Equality & Law Reform, Minister for Transport, and An Taoiseach.

A. A REPORT ON RENDITIONS - WHY NOW?

WHAT IS “RENDITION”?

Amnesty International uses the term “rendition” to describe the international transfer of individuals from the custody of one state to another by means that bypass judicial and administrative due process. Renditions violate international law by failing to respect requirements of due process, and frequently involve multiple human rights violations, including unlawful and arbitrary detention; torture or other ill-treatment; and enforced disappearance.

“Rendition” is a term used by US governments - not a term of international law - to describe a practice, typically covert, by which individuals have been detained by or on behalf of US agencies in other states, and secretly removed from those state.

Terms such as “rendition”, “extraordinary rendition”, and “rendition to justice” have no agreed international meaning and the terminology is frequently manipulated by states to attempt to justify their actions or policies. Amnesty uses the term “rendition” to describe any international transfer of individuals from the custody of one state to another by means that bypass judicial and administrative due process. Amnesty opposes all renditions as they violate international law by failing to respect requirements of due process, and frequently involve multiple human rights violations, including unlawful and arbitrary detention; torture or other ill-treatment; and enforced disappearance.

Before September 2001, the USA carried out renditions which they generally referred to as “renditions to justice” - presumably in an attempt to suggest that the ends justified the means. As such, renditions had little to do with justice, and generally involved abducting or otherwise taking custody of a person outside of US territory and bringing them, secretly and without due process, to the USA for the purposes of prosecution and trial. The usage of this term varies, however, and sometimes “rendition to justice” is used to refer to transfer of a suspect by US agents to a foreign country, at least nominally for criminal investigation, prosecution and trial, often involving torture or other ill-treatment, unfair trials, or extrajudicial execution. While rendition for these purposes would not necessarily involve torture or other ill-treatment, it is generally inconsistent with international law and violates the human rights of the detainee.

If there was at least a pretence that those subjected to rendition were being - however unlawfully - delivered to some type of legal process, any such pretence was dropped after 11 September 2001. In what came to be known in the US as “extraordinary renditions”, terror suspects in one country were abducted or otherwise taken into custody, on behalf of or with the direct participation of US agents, and then secretly and without due process transferred to third countries where they were either held secretly by the US, or turned over to the local government for further detention and interrogation, often in secret. In September 2006, then US President George W. Bush finally acknowledged the practice of “extraordinary rendition” when he referred somewhat opaquely to the existence of a covert programme implemented by the CIA to arrest, detain and interrogate overseas terrorist suspects.³

Although several rendition victims were ultimately brought to unfair trials in countries including Egypt, Syria and Yemen, there can remain little doubt that this was not the aim of the transfer. The fact that these suspects were destined for torture or other cruel, inhuman or degrading treatment in the receiving country, or subject to indefinite detention, often in secret, without judicial review, was not merely a risk that was ignored, but the very point of the transfer.

Rendition in any form is inconsistent with international law, as it bypasses the ordinary framework of lawful procedures such as extradition, deportation, or transfer of sentenced persons, depriving the individual of the rights of due process and judicial remedy (especially in respect of judicial supervision of deprivation of liberty, and protection from transfer to risk of torture or other ill-treatment, enforced disappearance, and similar human rights violations). Rendition victims are commonly held indefinitely in arbitrary detention; many have been held in secret or incommunicado detention for years, and given no opportunity to challenge the legality of their detention. Detainees have been subjected to torture or other cruel, inhuman or degrading treatment during and following rendition. Rendition may also be part of or a prelude to enforced disappearance. A specific case of rendition will often include a combination of some or all of these types of violations. Some victims have ended up in the jails notorious for their use of torture, in countries including Egypt and Syria. Others have found themselves in US-run detention centres where they have suffered torture or other ill-treatment and been denied the legal rights due to detainees.

The use of planes masquerading as civilian aircraft has been a key component of the US rendition programme since the mid-1990s, as claiming civilian status allows the flights to bypass overflight and landing restrictions placed on state aircraft. While usually planes registered to private companies, and which may often be used for legitimate private business, on some occasions have been leased by or on behalf of the CIA, and are carrying state agents conducting state business and are therefore state aircraft.

There is substantial evidence to suggest that Ireland has played a role in the rendition circuit, through turning a blind eye to breaches of Irish and international law perpetrated on or using foreign state aircraft claiming to be “civilian” in violation of this country's human rights obligations.

ACCOUNTABILITY IN EUROPE

“It is paradoxical to expect bodies without any real investigatory powers – the Council of Europe and the European Parliament – to adduce evidence in the legal sense. Indeed, these European bodies have been prompted to undertake such investigations owing to a lack of willingness and commitment on the part of national institutions that could, and should, have completely clarified these allegations which from the outset did not appear to be totally unfounded.”

Report by Mr Dick Marty for the Parliamentary Assembly of the Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, 12 June 2006

In 2005, reports repeatedly hit the headlines alleging that European states were involved in the US renditions programme. Questions were increasingly raised in European parliaments, and criminal investigations into individual cases gathered steam in Italy. By the end of the year, the Council of Europe had launched a two-pronged inquiry into alleged CIA activities in Europe, one led by the Secretary General of the Council of Europe, Terry Davis, the second by Senator Dick Marty on behalf of the Parliamentary Assembly of the Council of Europe. In January 2006, the European Parliament of the European Union also set up a Temporary Committee to investigate the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, which issued its final report in 2007. Each of these inquiries has confirmed AI's long-standing concern that European airports and airspace were used by CIA planes repeatedly linked to renditions.⁴ European states must be held responsible for their involvement in US renditions.⁵

Much of the evidence to those inquiries came not from those with reason to be in the know – intelligence agents, government agencies and airport officials – but from those who had been deliberately kept in the dark: victims' relatives, lawyers, human rights activists and journalists.

The Council of Europe's Secretary General described most of Europe as "a happy hunting ground for foreign secret services",⁶ with a lack of oversight and judicial control over the activities of these security services. He found that states' existing overflight and landing procedures do not provide adequate safeguards against abuse, and mean that it is virtually impossible for States to assess with certainty whether aircraft transiting through their airspace or even using their airport facilities are used for purposes incompatible with human rights standards. Where many states had adopted a 'see no evil, hear no evil approach', he said: "Not knowing is not good enough, regardless of whether ignorance is intentional or accidental."⁷

Senator Marty described a 'spider's web' of US rendition circuits and secret detention across Europe. He identified seven European states as potentially responsible for violations of the rights of specific individuals; and several others that colluded, actively or passively, in the USA's detention or transfer of unknown persons. "Insofar as they did not know, they did not want to know", he said.⁸

The Council of Europe Secretary General's final report made a number of important recommendations for action at the Council of Europe level aimed at:

- Ensuring accountability of security services
- Adopting a framework for human rights clauses for bilateral agreements related to transiting state and civil aircraft; and
- Adopting a framework of a model procedure for waiving immunity for officials suspected of serious human rights violations, including international crimes.

That little action has been taken by the Council of Europe member states to implement the recommendations for international action by the Council of Europe's Secretary General is disturbing. It appears that Ireland is one of the most supportive of the Secretary General's proposals, in particular his proposals to set up an Ad Hoc Committee and subcommittees to progress Council of Europe measures. However, AI understands that there is little wider support among the member states. Today, there remains little or no indication that Council of Europe nations will support the Secretary General's 2006 proposals of their own accord, particularly those relating to control of security services and state immunity, as they are most reluctant to cede control in these matters to any international regime.

The European Parliament report from its temporary committee published in February 2007 also made recommendations to the EU Council and EU member states, but no action has been undertaken by either to date to implement the recommendations of the Parliament.¹⁰ On 19 February 2007, the European Parliament adopted a resolution stating that "new elements which have come to light have confirmed that several member states of the EU were involved with or had actively or passively cooperated with the American authorities in

the transport and/or illegal detention of prisoners by the CIA and the American army, in Guantánamo and in secret prisons".¹¹ It criticised the lack of satisfactory responses during the plenary session of 3 February. It called upon the member states, the Commission and the Council to "fully implement the recommendations made by the Parliament in its report" of 2007 and to help to establish the truth, by opening investigations and cooperating with the competent bodies. It stressed the importance of determining responsibilities regarding both secret detention centres, and the rendition programme that made them possible.

DOMESTIC ACTION ON RENDITION REQUIRED NOW

As described above, the US rendition programme existed long before 11 September 2001. As will be set out in Section B, Ireland's involvement as a stopover point for aircraft involved in renditions has been publicly known since 2005. AI and other organisations have been campaigning for years to reverse the assault on human rights standards that has been such a damaging element of the so-called 'war on terror'. That European Governments have failed to act collectively to implement recommendations from the Council of Europe and European Parliaments makes Ireland's taking domestic action all the more critical.

US President Barack Obama's decision to close the detention facility at Guantánamo Bay represented an important first step towards upholding and promoting human rights, as do the executive actions he has taken against torture and other ill-treatment. However, he and his administration seem to have decided that renditions will continue in some form. On 22 January 2009, President Obama signed three Executive Orders and one Presidential Memorandum in relation to the detention policy of the US and related matters, including the closure of the Guantánamo Bay detention centre. The Executive Order entitled 'Ensuring Lawful Interrogations' establishes a Special Task Force with a remit in part to "study and evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic law, international obligations and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control".¹² In effect, therefore, this Order does not prohibit the practice of renditions per se. In response, the Irish Government said: While we would prefer to see a clear renunciation of the practice of rendition in any circumstances, the Special Task Force's terms of reference include some clearly very positive elements.¹³

A glimmer of light has recently emerged in the establishment by the Irish Government in November 2008 of a Cabinet Committee on Aspects of International Human Rights. The establishment of the Cabinet Committee, combined with increased public awareness in

Ireland and the changing international context, now suggests that we may see progress on ending Ireland's role in the undermining of rights, and re-establishing Ireland's voice as a positive moral force in international fora. Especially so long as it seems that the US rendition programme may continue in some form, it is critical that action on renditions receive due attention from the Irish Government.

The Committee's establishment arose as a result of commitments made in June 2007 in the 'Programme for Government 2007 – 2012',¹⁴ where the new Irish Government declared that it is "completely opposed to the practice of extraordinary rendition", and made some welcome - although limited - commitments in this regard, mainly through prioritising effective enforcement of the Criminal Justice (United Nations Convention Against Torture) Act, 2000 and other statutes by An Garda Síochána. It also committed to ensuring "that all relevant legal instruments are used so that the practice of extraordinary rendition does not occur in this State in any form". The Government would "address deficiencies" in aspects of regulation of civil aviation under the Chicago Convention and make resources available for specialized Garda training to guarantee "effective protection for the dignity of all persons within or passing through the State". This commitment, while laudable, contained no timeframe for achievement of these objectives, and established no mechanism to bring the issue forward and convert aspiration into reality.

The new Cabinet Committee is intended to remedy this situation. Its membership includes the Minister for Communications, Energy and Natural Resources, Minister for the Environment, Heritage and Local Government, Minister for Foreign Affairs, Minister for Justice, Equality and Law Reform, Minister for Transport, and An Taoiseach. The Committee also stated its intention to approach the transition team of then-President-Elect Barack Obama seeking a clear commitment that the use of both extraordinary rendition and interrogation techniques that are considered torture (such as waterboarding) would be ended, and the detention facility at Guantánamo closed without delay. At this time, the Minister for Justice also pledged to provide an update on the implementation of a programme for government commitment in relation to Garda human rights training.

While its terms of reference are not public, it is reported that its programme of work includes the review and strengthening of legislation and resources in respect of civil and Garda authorities' powers regarding the search and inspection of suspected rendition flights.¹⁵ We are heartened that the role of civil authorities are included in the Committee's review remit, since the powers, functions and responsibilities of a number of authorities beyond An Garda Síochána - and civil aviation authorities in particular - must be addressed in any such review. However, while AI hailed the Committee's announcement as "a welcome victory for human rights in Ireland",¹⁶ it immediately submitted comments to the Committee expressing concern at the apparent narrowness of its brief vis-à-vis Ireland's role in renditions, which are referred to later in this report.

Labour Party TD Michael D Higgins has presented a Private Member's Bill on the same issue, The Air Navigation and Transport (Prevention Of Extraordinary Rendition) Bill 2008, as an important addition to the ongoing legislative debate on the issue of rendition.

As the Committee has met just once, and the lack of closer regulation of Irish airspace remains an open invitation to abuse, now is critical juncture for the Irish Government to move beyond simple condemnation of renditions, and take measures against the practice. In a Lansdowne Market Research poll for AI in 2006, a convincing majority (76%) said they were in favour of an inspection regime at Shannon. We in Irish society need to keep the pressure on.

B. IRELAND'S INVOLVEMENT

THE "EVIDENCE"

On 1 December 2005, when asked about CIA rendition planes using Shannon airport, the then Minister for Foreign Affairs said in the Oireachtas: "If anyone has any evidence of any of these flights please give me a call and I will have it immediately investigated." In response, AI brought to the Irish Government's attention flight logs showing that six planes known to have been used by the CIA for renditions had made some 800 flights in or out of European airspace including 50 landings at Shannon airport.

Since then, the Council of Europe and the European Parliament inquiries have also identified Shannon airport as a stopover point in the US renditions programme, and the Irish Government as one of those states avoiding its international human rights responsibilities in refusing to investigate allegations that aircraft linked to renditions have landed in Ireland, or to take measures to prevent such acts. Ireland was one of those deemed by Senator Dick Marty in 2006 as having passively colluded in US renditions, by allowing Shannon airport to be used by aircraft linked with renditions without restriction or oversight. His report for the Council of Europe Parliamentary Assembly described Shannon as a refuelling stop-over point for renditions. As outlined below, that airport has appeared in a number of confirmed CIA rendition flight circuits. European Parliament investigators estimated that the number of CIA-related flights landing in Ireland was 147, a figure they described as "a conservative projection". The Irish Government dismissed this figure as "grossly inflated".¹⁷

The Minister for Foreign Affairs has repeatedly stated that there is no evidence, nor even any concrete and specific allegation, that prisoners have been brought through Ireland as part of a rendition operation. Indeed, there is no instance where it has been proven that a known individual was transferred through Ireland. In this regard, monitoring of flight records by "plane spotters" (see below) is of limited use without specific details of those flights – for example, who was on the plane and why.

However, this insistence on "evidence" of detainees in transiting aircraft overlooks the fact that specific aircraft identified as stopping over in Shannon have been known to have been routinely used by the CIA in renditions. However, some of these aircraft were also used in ordinary commercial aviation with no CIA connections, that is planes leased by reputable corporations were used on one or two occasions by the CIA – N85VM/N227SV is one such

plane. A report by AI in 2006¹⁸ outlined how 'civilian aircraft' – leased or operated by the CIA – were used in the rendition programme to bypass restrictions on overflight or landings of state aircraft. It identified a number of US companies (some CIA front companies and some ordinary private charter companies) used to charter or operate aircraft involved in such activities and it examined in detail flights undertaken by four aircraft between 2001 and 2005. Each of these aircraft had been involved in at least one well-known rendition operation. AI calculated that between them, the four aircraft had landed in Ireland 79 times, mostly at Shannon, but also once or twice in Dublin. AI has not stated or implied that all of these flights were rendition-related, but several circuits were known to have involved Shannon airport, and the true extent is likely to be much higher.

- **Staging post in rendition circuits**

Several aircraft are known to have transited Ireland directly en route to or returning from rendition missions involving known victims. A rendition 'flight circuit' is a chain of connected rendition-related missions made by the same plane within a limited period of time, typically between five days and two weeks. A "circuit" is usually understood to be the plane's entire mission, starting and ending in the USA. The planes identified as linked to renditions were based in the USA, and during any one rendition circuit would often stop off in numerous locations, ultimately returning to the USA.¹⁹

The following table sets out details of Shannon's place in the rendition circuits of four known individuals, each of whom reportedly suffered torture at their final destination.

Abu Omar

Abu Omar, an Egyptian cleric who had been granted asylum in Italy, was abducted in Milan on 17 February 2003 by CIA agents, assisted by an Italian Carabinieri officer. He was taken to the joint US/Italian airbase at Aviano, Italy, and then flown to the US airbase at Ramstein, Germany. From there he was flown on a CIA-leased plane to Egypt. He described his experiences in Egypt to AI in an interview weeks after his final release in 2007: "I was hung like slaughtered cattle, head down, feet up, hands tied together behind my back, feet also tied together and I was exposed to electric shocks all over my body and especially the head area to weaken the brain and paralyse it and in the bipples and my genitals and my penis..." In April 2004 Abu Omar was released and warned not to tell anyone what had happened. Three weeks later he phoned his wife and friends, he was promptly re-arrested and detained until February 2007.

On 18th February 2003 Airplane registration number NV85VM landed in Shannon airport at 5.52am directly from Egypt where it had deposited Abu Omar. It refuelled before leaving for the USA. (This particular plane stopped in Shannon on at least 30

occasions and in Dublin airport once. Its owners have admitted that they leased the plane to the CIA on occasion, but noted that it was more often used as an ordinary commercial charter for business flights.)

Circuit: Washington, Germany, Cairo, **Shannon**, Washington

Khaled al Maqtari

Khaled Abdu Ahmed Saleh al-Maqtari is one of those known to have been held in the CIA's secret detention program, before being returned to Yemen in 2006, and released in 2007.²⁰ In 2004, Khaled al-Maqtari was held at the notorious hard site at Abu Ghraib – where he has described a regime of beatings, sleep deprivation, suspension upside down in stressful positions, intimidation by dogs, induced hypothermia and other forms of torture or ill-treatment. He was then secretly transferred to a US-run prison in Afghanistan, and later to a CIA "black site" in an unidentified third country, where he spent two years in complete isolation, the victim of an enforced disappearance. On 20th Jan 2004 Airplane registration number N8068V, a Gulfstream V jet previously known as N379P, stopped in Shannon for refuelling en route to Baghdad where Khaled al Maqtari was picked up for transfer to Afghanistan.

Circuit: Washington, **Shannon**, Larnaca, Baghdad, Kabul, Prague, Washington

Khaled el Masri

Khaled el-Masri, a German national of Lebanese origin, was abducted on 31 December 2003 while seeking to enter Macedonia. He was detained for 23 days by armed men in plain clothes, believed to be Macedonian agents, and interrogated and allegedly ill-treated. He was then driven to an airport, probably at Skopje, and handed to US officials. He says he was then shackled to the floor of a plane and flown via Iraq to Afghanistan. There he was held in a US-run prison in Kabul, where he was allegedly beaten and half starved, and interrogated by US agents. After the US authorities apparently realized they had made a mistake, Khaled el-Masri was flown to an airport somewhere in the Balkans in May 2004 and then driven to the Albanian border. The Albanian authorities appear to have arranged his flight back to Germany. On 17 January 2004, en route to Skopje where it picked up Khaled el Masri, Airplane registration number N313P landed in Shannon at 7.29am

Circuit: Washington, **Shannon**, Larnaca, Rabat, Kabul, Algiers, Palma de Mallorca, Skopje, Baghdad, Kabul, Timisoara or Baneasa, Palma de Mallorca, Washington
 (This aircraft has stopped in Shannon airport 23 times and Dublin twice)

Binyam Mohamed

Former UK resident Binyam Mohamed was released without charge from Guantánamo

Bay in February 2009. He had been unlawfully detained in harsh conditions for more than six years, and was allegedly tortured and otherwise ill-treated over prolonged

periods. His physical and mental health had reportedly declined alarmingly prior to his release. He was arrested at Karachi airport in April 2002 and handed over to US custody three months later. In July 2002, he was reportedly transferred on a CIA-operated plane to Morocco, where he was held for about 18 months and allegedly tortured, including by having his penis cut by a razor blade. He was allegedly subjected to further torture after his rendition to the "dark prison" in Kabul, Afghanistan, in January 2004. After five months, he was reportedly transferred to the US airbase in Bagram, and suffered further alleged ill-treatment there, before being transferred in mid-September 2004 to Guantánamo where he remained until February 2009. On its return to the USA after reportedly depositing Binyam Mohammed in Morocco, aircraft N379P landed at Shannon on 22 July 2002, and departed the following day for Washington.

Circuit: Washington, Frankfurt, Amman, Kabul, Islamabad, Rabat, **Shannon**, Washington

A second known rendition aircraft, N313P, transitted Shannon en route to carrying out the rendition of Binyam Mohammed from Morocco to Afghanistan, arriving from Washington on 16 January 2004, departing the next day.

Circuit: Washington, **Shannon**, Larnaca, Rabat, Kabul, Algiers, Palma de Mallorca, Skopje, Baghdad, Kabul, Timisoara or Baneasa, Palma de Mallorca, Washington
Several requests were made by his UK lawyers in 2008 to the Irish Government seeking information about the details of the stopovers, and the identities of the operatives on board the aircraft who stayed overnight in Shannon on those two occasions. The Irish Government has not furnished this information.²¹

THE GOVERNMENT REACTION

It appears that these aircraft presented to the Irish aviation authorities as civilian aircraft, and availed of automatic clearance under rules governing such flights. However, these aircraft were in fact performing state functions and should therefore have presented as state aircraft. International law provides that a foreign state aircraft must have permission from the territorial state for any flight that transit the state's territory. The Ministers for Transport or Foreign Affairs have never properly addressed the evidence that aircraft involved in

'extraordinary rendition' activities appear to have stopped and refueled at Shannon, or that those on rendition circuits have in fact used Shannon. In initial responses to AI and the Oireachtas regarding the latter, the Minister for Foreign Affairs declared that such aircraft were not engaged in illegal activity at the time. The position later changed to the assertion that this evidence was retrospective, and could not have been known to the Irish authorities at the time. While it might have been excusable that these aircraft were not identified and denied overflight and landing clearance at the time, Ireland's subsequent refusal to investigate these activities, to review any permissions given to the USA vis-à-vis military or other state flights, or to introduce preventative measures, cannot be excused.

In particular, Government's steadfast refusal to carry out an investigation of the facts and circumstances of these rendition flights is shocking. Known cases of Irish airports involved in rendition circuits date from before the end of 2005, when widespread publicity and condemnation in Europe appears to have forced a rethink in US policy, and any subsequent renditions were likely to have been carried out by different aircraft, possibly using different routes. However, if it emerges that Irish airports or airspace appear on more recent rendition circuits, and Ireland could have detected or prevented use of its territory for these purposes, Ireland will be implicated in further violations of its human rights obligations by any failure to act. This is particularly so given that it has now been on notice for at least several years and the above-mentioned international inquiries left Ireland in no doubt as to the need for action.

Following his presentation to the European Parliament, the Minister for Foreign Affairs reportedly said that he had banned the aircraft known as the Guantánamo Express from Irish airports.²² Firstly, if the Minister felt that the US assurances were sufficiently robust, it is strange that he banned the transiting of this aircraft. (Note, the aircraft identified specifically as the 'Guantánamo Express' in the EU report was the Gulfstream V, N379P/N8068V/N44982, which was put up for sale by the CIA in late 2005 and now has no known connection with the CIA.) Secondly, if one aircraft linked with renditions is banned, it is surprising that other aircraft with direct links to CIA renditions were not also banned.

In 2008, the Council of Europe Commissioner for Human Rights called for effective prevention and investigation measures to prevent renditions taking place through Irish territory and airspace, and a review of the current inspection and monitoring arrangements.

²³ The UN Human Rights Committee also recommended in 2008: "The State party should establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated."²⁴

NATIONAL INQUIRIES

The Government has stated that its response to the Secretary General of Council of Europe Article 52 inquiry constitutes an investigation and that, particularly given that its response was one of the few deemed by the SG not to require further clarification, no further investigation is necessary.²⁵ This Article 52 response cannot be deemed a serious and meaningful investigation, lacking sufficient detail and analysis. In a letter to the Minister for Foreign Affairs of 20 December 2005, AI Ireland had requested that, in its response to this inquiry, the Government provide clear information on the procedures in force enabling Ireland to exercise its responsibility to monitor the legality of any use made of its territory by the USA. Rather than detail monitoring and investigation procedures relevant and appropriate to the allegations in question, the Government response cursorily described various legal routes whereby the state should act upon a complaint being made formally to it, without entering into any meaningful analysis as to their usefulness or appropriateness in circumstances where the allegations already brought to the Government's attention might be well-founded; and these routes largely centred on the general role of An Garda Síochána in detecting, preventing and prosecuting crime, and on court actions that individuals who have been illegally detained and transported could take in the highly unlikely event that they were able to take cases to Irish courts. The response described how various domestic laws would be breached in the event that renditions were effected using Irish territory, but not how those laws have been or might be applied in this particular circumstance.

Speaking of the Government response in the Dáil on 22 February 2006, the Minister for Foreign Affairs said: "It clearly ... shows that as far as the Government and its agencies are concerned, Shannon was not used in any way for extraordinary rendition."²⁶ AI wrote to the Minister stating that nothing in the response showed clearly that Shannon (or Irish territory or airspace) had not been so used - rather that the response revealed that the Irish Government had not taken meaningful steps to discover whether or not Irish territory and airspace has been, or is likely to have been, so used.

The Oireachtas too has failed in this regard. Where the European Parliament recommended to the Irish Government in February 2007 that a parliamentary inquiry be conducted into the use of Irish territory by US aircraft linked with renditions, the Minister for Foreign Affairs has quite rightly pointed out that it is not for the executive to tell the Oireachtas what to do. However, parties in the executive arm of Government have majorities in the Oireachtas, weakening the latter's ability to exercise scrutiny over the former. The establishment of a Seanad select committee to examine claims about the use of Shannon Airport by the USA for the illegal transport of prisoners had been proposed, but this was subsequently dropped due to objections from Fianna Fáil (one of the political parties in government) Senators, without whose support, the Leader of the Seanad felt the proposal would not be adopted. On two further occasions a motion to institute an inquiry into Ireland's role in renditions was

voted down in Seanad Éireann, and both Houses of the Oireachtas have passed motions supporting the Government's policy in this area. However, on 19 December 2007, the Oireachtas Joint Committee on Foreign Affairs held a hearing on the Irish Human Rights Commission report, '*Extraordinary Rendition: A Review of Ireland's Human Rights Obligations*'. Also, the Joint Committee on Foreign Affairs, to assist in resolving its concerns, invited the US Ambassador to Ireland to appear before it to answer questions on this issue, but the invitation was declined.

This repeated failure by the executive and legislative arms of government to properly investigate Ireland's role in renditions makes it more vital that the Cabinet Committee conduct a thorough review, and its findings be made public.

- **Irish Human Rights Commission**

Ireland's Human Rights Commission has engaged robustly with the Irish Government on renditions. It has repeatedly expressed the view, beginning with its *Resolution in relation to claims of US aircraft carrying detainees* published on 23 December 2005, that Government should inspect suspicious aircraft landing at Shannon or any other Irish airport. It announced an investigation in late 2007, which it published in December of that year. The report of its investigation makes a number of recommendations, including that "a reliable and independently verifiable system of inspection" be introduced, and "[a]ircraft from any State in relation to which suspicion exists should be subject to the inspection regime". Minister Noel Treacy has outlined Government policy on this matter:

"No plausible evidence has been produced that aircraft have passed through Shannon Airport carrying prisoners being transported as part of an extraordinary rendition operation. The number of supposedly implicated flights that have transited through Shannon is minuscule in comparison with the overall number of flights of similar aircraft stopping there. A policy of spot checks could have only a cosmetic affect...To carry out inspections would imply that we are not prepared to accept the categorical assurances given to us by the friendly government of a country with which we have an exceptionally close relationship."²⁷

The Irish Human Rights Commission also recommended that "[t]o facilitate proper inspection of relevant aircraft, detailed information about the purpose of the flight, its destination and the names of passengers on board should be required by the aviation authorities and received in advance of any such aircraft landing. The provision of relevant details should be a condition for entry to the State". It also recommends: "Consideration should be given to establishing a Garda sub-station at Shannon Airport, which would obviate the need for citizens alleging the entry of suspected aircraft having to make a complaint in Shannon Town. In any event, any complaint to a member of An Garda Síochána concerning an aircraft possibly engaged in an 'extraordinary rendition' flight should be investigated

immediately, including inspection of the aircraft by the member or members concerned.”

ASSURANCES FROM US AUTHORITIES

The Irish Government has received explicit assurances from the US authorities that “no persons have been transported illegally through Irish territory and that no person would be so transported”. These assurances have no legally binding effect, and due to the secrecy surrounding renditions, States that rely solely on diplomatic promises that renditions will not be effected through their territory run an unacceptable risk of only discovering after the fact, if at all, that these assurances have been breached.

The Government has continued to assert that, in the absence of evidence of renditions through Ireland, it can rely on those assurances. It has consistently responded in the same fashion to AI's representations that such assurances are inadequate. Also, it is incontrovertible that planes on rendition circuits have landed there, indicating that the assurances do not cover this situation. (A copy of the assurances is available in the Irish Human Rights Commission's 2007 report.) The Council of Europe and the European Parliament reports have also stressed that reliance on such assurances does not fulfil a state's human rights obligations.

The Government has repeatedly stated that it is satisfied that it is entitled under the ECHR to rely on clear and explicit factual assurances given by the Government of a friendly State, on a matter that is within the direct control of that Government.²⁸ After the revelations that the US breached similar assurances given to the UK (regarding Diego Garcia),²⁹ the Minister for Foreign Affairs simply emphasised to the US the importance of the assurances: “Following the British Foreign Secretary's statement to the House of Commons on 21 February regarding information received by his Government from the US Government concerning the passage of two extraordinary rendition flights through Diego Garcia in 2002, on my instructions the Political Director of my Department contacted the US Embassy and emphasised to the Deputy Chief of Mission the great importance the Government attaches to the reliability of the assurances received from the United States Government on extraordinary rendition. I have since personally written to the Ambassador of the United States, H.E. Thomas C. Foley, to reiterate this point and to emphasise my own strong views on the issue.”³⁰

The Irish Government position on assurances appears unchanged today. On the day that Barack Obama was declared US president-elect (5/11/08), An Taoiseach, Brian Cowen TD, speaking in the Dáil, reiterated his position: “We fully accept the assurances given to us from the US government”.

Quite why the Irish Government has so far refused to concede the unreliability of such assurances, and identify and address the gaps in its regulation of overflight and landing clearances, is impossible to ascertain. It would be hard to imagine a similar response in a situation where foreign aircraft transiting Irish airports had a known link to other forms of illegal activity, such as illegal drug trafficking.

Government representatives have frequently asserted that Ireland views the USA as a friendly state. The Minister for Foreign Affairs, Dermot Ahern, told the European Parliament inquiry: "Ireland enjoys a very close bilateral relationship with the United States based on ties of kinship and history which span several centuries". Ireland's economic dependence on the USA has been a speculated factor - one in four jobs are generated by US companies in Ireland, and US influence on Irish political and economic identity is so great that a politician notably stated that Ireland was "spiritually a lot closer to Boston than Berlin". (Mary Harney, Tanaiste, July 2000)

AN GARDA SÍOCHÁNA

"A person, whatever his or her nationality, whether within or outside the State, who – (b) does an act with the intent to obstruct or impede the arrest or prosecution of another person, including a person who is a public official, in relation to the offence of torture, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life."

Criminal Justice (United Nations Convention Against Torture) Act, 2000, Section 3. Related offences

An Garda Síochána is responsible for the detection and investigation of criminal acts conducted in Irish territory. Aside from the ordinary powers and duties of An Garda Síochána under criminal law, including the UN Convention Against Torture Act, they have further express powers to enter and inspect aircraft under the Air Navigation and Transport Act 1988 and Air Navigation and Transport (Amendment) Act 1998. While initially the then Minister for Justice asserted that Gardaí were not empowered to board and inspect foreign aircraft, it was quickly clarified that while "military aircraft" are exempt from Garda powers, this is not the case with civil aircraft. The police have the power to enter civilian aircraft and conduct a search on grounds of reasonable suspicion that certain offences have been committed on that aircraft. If they board without reasonable suspicion, they are exposing themselves to liability, but if they have the reasonable suspicion they may legitimately use this power.

Air Navigation and Transport (Amendment) Act 1998

Section 49 - Power to Enter and Inspect Aircraft

49.—(1) An authorised officer may enter an aircraft which is within an airport where he or she considers it necessary for the purpose of exercising any power conferred on him or her by or under this Act or the Act of 1988.

(3) An authorised officer may—

(a) at any time require the operator or registered owner of the aircraft to produce for inspection by him or her such documents relating to the aircraft or passengers or goods on board the aircraft as he or she may require; or

(b) inspect the aircraft for the purpose of ensuring compliance with this Act or bye-laws made under this Act.

(4) If the operator or registered owner of the aircraft refuses or fails to comply with a requirement of an authorised officer under subsection (3) that person shall be guilty of an offence.

(5) This section shall not apply to aircraft engaged exclusively in the service of the State

"Authorised officer" means—

(a) member of the Garda Síochána,

(b) in relation to a State airport—

(i) a person, or a person belonging to a class of persons, authorised in writing by the company to perform the functions conferred on an authorised officer by or under this Act or the Act of 1988, or

(ii) unless and until the Minister otherwise determines under subsection (4) of section 48, a person who immediately prior to the commencement of this section was an authorised officer within the meaning of paragraph (b) of the definition of authorised officer in section 15(1) of the Act of 1950 (as amended by section 25 of the Act of 1988), or

(c) in relation to an airport in the State, other than a State airport, a person, or a person belonging to a class of persons, authorised in writing by the Minister to perform the functions conferred on an authorised officer by or under this Act or the Act of 1988;

"authorised person" means a person appointed in writing by the company to perform the functions conferred on authorised persons by or under this Act;

"the Authority" means the Irish Aviation Authority;

"the company" means Aer Rianta, cuideachta phoiblí theoranta

To date, the role of "authorised officer" is performed only by members of An Garda Síochána.

An Garda Síochána have investigated a number of complaints from members of the public. According to the December 2007 report on renditions from the Irish Human Rights Commission, six such files were investigated by the Gardaí, and two forwarded to the Director of Public Prosecutions. The DPP decided not to bring prosecutions in any case owing to what the Minister for Foreign Affairs described as "a complete lack of evidence that any unlawful activity has occurred."³² This is not surprising given the nature of the information given to the police, and illustrates not that allegations of US transporting of prisoners through Irish airports or airspace cannot be substantiated. The evidentiary burden is clearly such that it is ineffective to rely on members of civil society, i.e. individuals and organisations without law enforcement powers, to be the investigators in this context, with the Irish State remaining passively awaiting such information to emerge. That Government spokespersons have also responded to information brought to the attention of the Irish Government by AI suggesting that the organisation should make a complaint to the Garda Síochána has been similarly unhelpful.

The Minister for Transport has recently suggested that Garda powers to board and inspect aircraft are insufficiently clear and robust however: "[G]ardaí must always be mindful that they have to form reasonable opinions that something illegal is going on. The fact that a plane might at some stage have been involved in extraordinary rendition in some other country is, of itself, not enough in current circumstances for gardaí to board and inspect an aircraft. It is important, therefore, to review all of that, including how the law can be strengthened."³³ He continued: "At the first meeting of the Cabinet committee, it was agreed that the statutory powers available to the civil authorities and to An Garda Síochána regarding the search and inspection of aircraft, including those under the Air Navigation and Transport Acts, would be reviewed in the context of the obligations on the State under the Chicago Convention, which governs international civil air transport." He explained: "The review is being undertaken by the Attorney General's office in conjunction with the relevant officials and the outcome will be considered by the Cabinet committee in due course. Together with my colleagues, the Minister for Justice, Equality and Law Reform, Deputy Dermot Ahern, the Minister for Foreign Affairs, Deputy Martin, and the Minister for the

Environment, Heritage and Local Government, Deputy Gormley, I am anxious to clarify this matter and strengthen the legislation as quickly as possible.”

It is impossible to ascertain what sort of investigations have been carried out by the Gardaí into reports of suspicious aircraft, especially as there is a virtual blanket exemption for Gardaí from requests under the Freedom of Information Acts which touch on ‘state security’ issues.

On the matter of rendition the Gardaí operate on the principle of criminal law, i.e. just as something untoward must have happened before the Gardaí have the right to enter your house, so too must something have happened on board a flight for Gardaí to move toward inspection. However, under the Garda Síochána Act 2005, the Gardaí are also under duty bound to act to prevent crime, not merely to react to one already committed.³⁴ As the situation currently stands in practice regarding suspected rendition aircraft, the burden of supplying ‘reasonable evidence’ falls on the person who is reporting possible suspicious aircraft to the Gardaí. This is where the dilemma lies and the need for clarification from the Cabinet Committee.

Those citizens or persons in the state who make attempts to use their police force to prevent or prosecute renditions are left in a difficult situation. There may or may not be a statutory impediment to the Gardaí inspecting aircraft. It is entirely unclear how an individual can persuade the Gardaí that they have ‘reasonable suspicion’ that a crime is about to be committed (with respect to advance notice of the arrival of a suspicious aircraft) or that a crime may have been committed (e.g. past involvement of planes). There must be clear and agreed criteria for inspection so that it is not left to the individual discretion of the Gardaí.

Under Section 20 of the Garda Síochána Act, the Minister for Justice may determine and revise priorities for An Garda Síochána. The Garda Commissioner produces an annual policing plan for An Garda Síochána – under section 22 of the Act, matters to which the Garda Commissioner must have regard when preparing policing plans include “priorities determined by the Minister” and “relevant Government policy”. In no statement by the Minister for Justice of An Garda Síochána priorities, or in any annual policing plan, has the service’s role regarding renditions been referenced. This is despite the inclusion in the Programme for Government of the key priority of preventing renditions.

SHANNONWATCH

The work of a small team of determined individuals based in the Shannon region, called Shannonwatch, ³⁵ has played an important role in monitoring Shannon airport's links with renditions. A five-person team of individuals has logged flights at Shannon for five years, building a database with details on the global rendition circuit. Along with traditional observational plane-spotting techniques, the group now uses aviation monitoring technologies to record the details of civilian and military planes landing at Shannon and using the airspace around Shannon. They report that number a of planes that are known to have been implicated in the rendition circuit have been recorded, some as recently as May 2009. ³⁶ The group logs and records all flight data for future use.

The monitors have also lodged formal complaints with the Gardaí demanding inspection of particular aircraft in advance of arrivals at Shannon. The group reports that it has been questioned, harassed, arrested and members brought before the Courts, and claim that the Gardaí have adopted an adversarial, hostile approach to their inquiries. One member, Dr Edward Horgan reportedly has been forced to seek written assurances, via legal correspondence with Aer Rianta, backed up with letters to the Garda Inspectorate, to affirm his right to enter Shannon Airport and carry out activities in defence of human rights. Dr Horgan first saw the Gulfstream Jet, which later came to be known as the Guantánamo Bay Express, on 18 February 2003 at Shannon. Once Dr Horgan and his fellow monitors had obtained more information on the flight records of the plane a complaint was lodged with Gardai in October 2004 at Shannon Garda station. Since then Dr Horgan has been arrested after photographing a US military plane from a public car park, and again for refusing to leave the airport after being requested to do so. On another occasion Dr Horgan and 19 peace activists were served with an injunction to prevent them 'trespassing' at Shannon airport.

As we await an effective official regime of monitoring and inspection of foreign aircraft, individual activists deserve encouragement and support. (The Annex to this report outlines the investigations undertaken the Spanish authorities in the el Masri case on foot of information provided by individuals.)

The Irish Government has defended Ireland's lack of investigatory zeal on reports of suspicious aircraft on the grounds of the difficulty in obtaining material evidence. The Minister for Foreign Affairs explained to the European Parliament Committee in 2007:

"The onus in relation to the provision of information is limited to requiring civil aircraft to file a flight plan three hours in advance of arrival at an airport, the flights in question are all transit flights and they make what are known as 'technical stops' ... there is no requirement for such flights to lodge information about passengers, crew or cargo...

based on that type of information, it is virtually impossible to know if anything is on that plane.”

The issue has become somewhat circular. In a question asked of the Minister for Foreign Affairs during the 2007 European Parliament Committee hearing, Sarah Ludford MEP (ALDE) said: “So if you found out what those planes have been doing in their previous history, you might find a basis of reasonable suspicion, and I put to you that there is an incentive to avoid checking them out so that you can avoid saying that the police ought to investigate them.” The Minister replied: “...our Minister for Justice has said time and time again that he would expect our police service to intervene if there were, under the law, suspicion of illegal activity being carried out. To date, despite an exhortation by him, me, the Prime Minister and others, for people to come forward – Shannon Airport is a very open place – no evidence at all has been brought forward.”

AVIATION REGULATION

The Department of Transport has the power to refuse permission for foreign civil aircraft to land. Of the thousands of flights which have sought permission to land only five have been refused permission in the past number of years and one reason for a refusal is when it is believed that certain munitions are being carried.

“I believe, and I said this in the context of the future, that the international community needs to look at the Chicago Convention, because, from the minute I became involved in this issue – I became Minister in September 2004; I had been in other ministries – it was the first time I became aware of the fact that, under the Chicago Convention – which is 60 years old – that as regards flying in and out of Ireland but also flying in and out of every Member State in the European Union we have a situation in the world now that Member States of the European Union and indeed the wider world do not know by and large what is transiting in and out of their airports.”

Then Minister for Foreign Affairs, Mr Dermot Ahern TD

Though the use of Ireland for rendition flights might seem more immediately connected to domestic criminal legislation it has become apparent that national and international legal instruments regulating civil aviation will need to be reviewed against human rights treaties in order to ensure a secure and predictable legal process that will serve to reduce the risk of Ireland's future involvement in renditions. Not enough emphasis has been placed in the

Irish debate on the process for the Irish aviation authorities' distinguishing between foreign state and civilian aircraft. While, as outlined above, An Garda Síochána has not adequately fulfilled its role through utilising the search and inspection powers it holds, the Irish aviation authorities too have failed to respond to the abuse of "civilian aircraft" status. As abovestated, when requested to introduce an airport search and inspection regime, the Government has stated that it would be impossible for it to decide which aircraft to inspect, if an inspection system were in place. Without this sort of information, it is left to plane-spotters and journalists to try to play this role, and leaves An Garda Síochána unable to enforce Irish laws.

If aircraft that are used for state functions are relying on the blanket overflight or landing permission given to civilian aircraft, it is unclear if these aircraft are automatically breaching Irish law (see below).. The Air Navigation (Foreign Military Aircraft) Order, 1952 prohibits foreign military aircraft from flying over or landing in the State except by the express invitation or permission of the Minister for Foreign Affairs. For the purposes of this Order, the expression military aircraft "means aircraft used in military service"; and the expression "aircraft used in military service" includes "naval, military and air force aircraft, and every aircraft commanded by a person in naval, military or air force service detailed for the purpose".

The critical weakness is that Irish aviation authorities do not demand the sort of information that would trigger suspicion of illegal activity, including falsely presenting as civilian aircraft. The then Minister for Foreign Affairs conceded that all that is required of an unscheduled foreign civil aircraft when making a 'technical stop' is to file a flight plan three hours in advance of arrival at an airport. There is no requirement for such flights to lodge information about passengers, crew or cargo. They are not requested to file a full itinerary, just immediately prior and subsequent landing points. As the Minister has said, "based on that type of information, it is virtually impossible to know if anything is on that plane". Of course, a fundamental problem remains that any system that relies on truthful reporting by the aircraft is subject to the same weaknesses that allowed the rendition flights to occur in the past. On the one hand, the volume of civilian flights is such that every flight cannot be inspected. On the other, if a CIA agent, front company or contractor is already willing to misrepresent their status, then they may simply make misrepresentations regarding any other kind of information they were required to provide in order to avoid any screening mechanism to identify suspicious flights. Therefore the regime would require reasonable compliance checks. However, this dilemma is within the control of the Irish Government to resolve and rectify.

Chicago Convention

"The call I made regarding the Chicago Convention on International Civil Aviation is based on this. When I examined the issue closely, it defied my logic that aeroplanes should be allowed to fly in under the convention of 1944 giving very little information on what or whom they are carrying to the authorities where they are landing or transiting."

Minister for Foreign Affairs, Dermot Ahern TD, 21 March 2007

The principal international legal instrument governing civilian air transit is the Chicago Convention On International Civil Aviation (known as the Chicago Convention). The Chicago Convention was signed on 7 December 1944 by 52 States, since expanded to include almost every country in the world, including Ireland. The Chicago Convention established the International Civil Aviation Organisation (ICAO) as a specialised agency of the United Nations, charged with coordinating and regulating international air travel. The Convention established rules of airspace, aircraft registration and safety for civilian aviation, and detailed the rights of the signatories in relation to air travel. Its provisions apply to civil aircraft, leaving detailed regulation and control of State aircraft to national authorities since this area engages states' foreign and security policy matters.

In the Preamble to the Convention, it was stated that "the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security." The signatory nations thus committed themselves to "certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner..." Below are some of the key articles of the Convention, including Article 16, which emphasizes the right of each nation to monitor and inspect planes if the need arises.

Chicago Convention

Article 3

- a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.
- b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.
- c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.

Article 5

Right of non-scheduled flight

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing.

Article 16

The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this convention.

Article 34

Journey log books

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this convention.

Article 88

Penalty for non-conformity by State

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter.

The Convention was signed at a time when commercial air travel involved only a small portion of the population. As times have changed, legislation has struggled to keep pace. There is no requirement, under the Convention to provide information on passengers, crew or cargo if it is a transit flight. Of course, this does not necessarily preclude states from unilaterally making transit or overflight dependent on the provision and verification of such information. While the Convention as it currently stands provides no express requirement for the supply of information on passenger, crew or cargo if a transit flight, states are required to interpret its provisions in a manner that complies with international human rights law, and there is nothing in this Convention to prevent the Irish authorities from demanding this information, and refuse clearance if such information is not provided. Interestingly, the right to search aircraft on landing or departure under Article 16 is not made subject to any requirement of "reasonable grounds" or other suspicion of wrong-doing, apparently leaving open the possibility of a system of inspection of such planes on a random (or for that matter any other) basis.

It may be that Ireland will be unwilling to take such action unilaterally, unless this is an express requirement of the Chicago Convention or other treaties. Yet, if a state is obliged to take certain measures pursuant to its human rights obligations under international law, nothing in the Chicago Convention can in itself provide an excuse for a failure to take those measures. Nevertheless, while continuing to campaign for Ireland to unilaterally introduce national regulations, AI would welcome a strengthening of the international regime to safeguard against human rights abuses and supports the Irish Government's initiative vis-à-vis the Chicago Convention.

In seeking a review of the Convention, it is unclear if the Irish Government believes that the list of types of flights deemed to be state aircraft covers the circumstances in which the CIA operates renditions. While some rendition aircraft have been directly owned by the CIA, more frequently they are leased from private contractors. It should in any event also be noted that the Convention only specifies certain types of flights as being "deemed" to be state aircraft, and does not purport to define "state aircraft" exhaustively, for either the purposes of the Convention or otherwise. Promoting a review of the Convention's provisions for international civil aviation controls, and how they could be revised to attend to renditions, has been a stated government priority. In the 2007 Programme for Government is the following commitment: "Ireland will seek EU and international support to address deficiencies in aspects of the regulation of civil aviation under the Chicago Convention." Government should explain publicly what deficiencies it sees in the Convention, efforts it has made at the ICAO to this end, and what results it has achieved. If member states of ICAO have resisted the Convention's adaptation to address renditions or have failed to recognise that it must be interpreted and applied in a manner consistent with international human rights obligations, Government should state so.

State/civil aircraft under Irish law

The clarification of definitions of state/civil aircraft in Irish law too is a crucial preparatory step toward establishing a regime of search and inspection of suspicious planes. The question has constantly been raised as to whether existing legislation can address this significant factor in detecting and preventing rendition. In his speech to the Dáil on 13 June 2006 the Minister for Foreign Affairs did not deny that CIA aircraft stopped and were refuelled at Shannon. He merely made the point that “given that at most the allegations are that such aircraft passed empty through Ireland, it is impossible to see how even if such aircraft were to be identified and searched the outcome of such searches would shed any particular light on the matter”. This overlooks the point that, if CIA-owned or operated aircraft identified themselves as ‘civilian aircraft’ while being used in military or police services, they may have been deemed as “state aircraft” by Article 3 of the Chicago Convention (or could otherwise have qualified as such under general international law), and would seem to have violated the Convention by misrepresenting themselves as civilian. This must be clarified by Government.

Irish law is unclear as to the status to be accorded to rendition flights. The Air Navigation (Foreign Military Aircraft) Order, 1952 prohibits foreign military aircraft from flying over or landing in the State except by the express invitation or permission of the Minister for Foreign Affairs. For the purposes of the Order, the expression military aircraft “means aircraft used in military service”; and the expression “aircraft used in military service” includes “naval, military and air force aircraft, and every aircraft commanded by a person in naval, military or air force service detailed for the purpose”. The Order provides that every foreign military aircraft flying over or landing in the State on the express invitation or with the express permission of the Minister shall comply with such stipulations as the Minister may make in relation to such aircraft. The aircraft identified by AI and others as having landed in Ireland and linked with rendition have clearly used the civilian process for landing permission. It is not clear if they come within the definition of military aircraft for the purposes of Irish law since they are operated by secret services. Notwithstanding the complexities of civil aviation law, therefore, Government can quite easily amend this Order to make this inclusion of aircraft operated by foreign secret services (or enact a new Order that fully encompasses this category). This would facilitate a regime to guard against situations where civilian aircraft are covertly used by foreign states to avail of freedoms in the Chicago Convention. If sufficient information were demanded of ‘civilian’ aircraft, including full flight plan, full names and nationalities of all passengers on board, and the purposes of their travel, the national authorities would be in a position to enforce this amended Order. This matter must be clarified and addressed by the Cabinet Committee.

The duties and responsibilities of the Irish Aviation Authority play a key role in establishing whether the Irish State is committed to detecting and preventing rendition through Irish

airspace. The Aviation Regulation & International Relations Division of the Department of Transport is responsible for representing Ireland's position in the formulation of EU aviation legislation and policy. Significantly the Division also transposes EU Regulations and Directives into Irish law, implements International Aviation Conventions, and formulates policy in response to developments in international aviation. It also has responsibility for 'administering and issuing authorisations and traffic rights for commercial civil aviation flights into and out of Ireland.'

The Minister for Transport has declined to meet with AI on the basis that renditions are a matter for the Department of Foreign Affairs, illustrating the Department's intentional or unintentional failure to recognise its key responsibility in ending the involvement of Irish airports in rendition circuits. Similarly, the Irish Aviation Authority and Dublin Airport Authority (which has responsibility for Cork and Shannon Airports) have declined to meet AI. This lack of engagement gives emphasis to our call for the Cabinet Committee's review to be made transparent and public.

CONCLUSION & RECOMMENDATIONS

To its credit, the Irish Government has been a strident critic of the US rendition programme and other aspects of what the previous US administration called the “War on Terror”. Within the Council of Europe, Ireland has made clear its support for consideration of the proposals for action made by the Secretary General of the Council of Europe in 2006, and its willingness to join in agreed action by Member States. It is time for Government to show political and moral leadership on this issue at home.

However, it is now beyond doubt that Shannon airport has been used as a stopover point by the US intelligence services in rendition circuits. Even if aircraft are not physically carrying rendition victims at the time they enter Irish territory, where such aircraft are en route to or retuning from renditions missions Ireland has an obligation to investigate such situations and to take measures that seek to prevent the use of its territory or airspace for such purposes. This responsibility Government has initially denied, and thereafter failed to discharge.

While proven instances of the use of Shannon airport by the US intelligence services in rendition circuits date from before 2005, when combined with the various international inquiries and advice provided by the Irish Human Rights Commission, Government can be in no doubt about its duties to investigate how Irish territory has been used to facilitate flights on rendition circuits. If evidence emerges that Irish airports or airspace appear on more recent rendition circuits and Ireland could have detected or prevented use of its territory for these purposes but has failed to do so, Ireland would be implicated in further violations of its human rights obligations. It is finally time for action.

There is a risk that the election of US President Barack Obama might give the Irish public a false impression that rendition and similar covert practices may be at an end. Statements by the President and his administration, as well as the historic record, suggest otherwise. The nature of covert action shifts and changes in the light of public scrutiny and other factors, but the vast machinery of US intelligence (and that of other nations) continues to operate abroad without adequate – or often any – oversight, and there remains a risk that only the most obvious and egregious abuses will be eliminated. AI will maintain vigilance in seeking to follow the shifting nature of covert action and continuing to attempt to uncover any

human rights violations the veil of secrecy might be used to conceal, including but by no means limited to rendition

While the Cabinet Committee's consideration of issues relating to rendition cannot be said to constitute the independent and impartial investigation called for by AI, the Council of Europe, European Parliament and the UN Human Rights Committee, it is nevertheless welcome. The Committee must conduct and implement its review as comprehensively as possible. But Government must also support and encourage a climate in which the investigation of suspicious planes is viewed as necessary and urgent, rather than embarrassing and potentially damaging to the national interest. It is time for Government to take decisive action. The recommendations listed below are aimed largely at the Cabinet Committee, but sets of recommendations are also made to the Minister for Transport, Minister for Justice, Equality and Law Reform, and An Taoiseach.

RECOMMENDATIONS

1 - The New Cabinet Committee:

The announcement of the Committee was made on 1 November 2008, and we understand that the Committee has met just once. While its remit is wider, on the specific issue of renditions through Ireland, media and Oireachtas reports indicate that the Committee intends to review and strengthen legislation and resources in respect of civil and Garda authorities' powers regarding the search and inspection of suspected rendition flights. We are heartened that the role of civil authorities is included in the Committee's review remit, since the powers, functions and responsibilities of a number of authorities beyond An Garda Síochána - civil aviation authorities in particular - must be addressed in any such review.

However, if confined to the remit reported, this review may leave unaddressed the critical role of the state in proactively identifying aircraft and operators that may seek to use Irish territory or facilities to facilitate renditions or other human rights violations. This will leave the state authorities dependent on information-gathering conducted by individuals, NGOs, journalists and intergovernmental bodies. Certainly, a search and inspection regime can seek to identify where passengers are being carried through Irish territory illegally. But it is only through the demanding of sufficient information from foreign aircraft that seek landing permission, and its subsequent verification and assessment through monitoring and inspection, that Ireland can prevent foreign secret services from exploiting Irish territory. In addition, the issue of aircraft involved in renditions overflying Irish territory cannot be effectively addressed simply through a search and inspection mechanism.

Therefore, AI makes the following recommendations to the Committee regarding the ambit

of its review:

- The Committee should make public its terms of reference. It should publicly present tangible evidence that the issue is being taken seriously by explaining how often the committee has met and how its consideration of the issues and preparation for action are proceeding. It should also publicly invite submissions on its review, and engage in consultation on its findings.
- Given the seriousness and urgency of the task before the Committee, it should publicly announce a timeframe for the completion of this review. At the latest, it should complete its review within 12 months of its establishment, i.e. by end-November 2009.
- The review must address not just the powers and resources of the relevant authorities regarding search and inspection, but also their duties under national and international law to conduct such searches and inspections to ensure that the state is exercising due diligence in the prevention, detection, investigation and interruption of serious human rights abuses.
- Ireland's responsibility to prevent and investigate the use of Irish territory where foreign aircraft are carrying detainees illegally, or are en route to or returning from rendition missions, can only be discharged through an effective reporting, verification and control system. The review must therefore encompass the adequacy of systems for the collection of information from and about unscheduled civilian aircraft making 'technical stopovers'. Civil aviation legislation, policy, procedures and practice regulating the collection, analysis, verification and assessment of information, not only from the aircraft themselves but also other national and international sources, towards the advance identification of aircraft that may be reasonably suspected as engaging in illegal activity, must be reviewed. The review must make also recommendations towards a process where aircraft operators will be required to provide detailed and sufficient information before landing permission is granted – such information should include the full flight plan of the aircraft; the full names, nationalities and passport numbers of all passengers on board; whether or not any passengers are detainees; and the purposes of their travel – and this information be verified.
- This reporting, verification and control system must also ensure that aircraft engaged in state activities presenting as private aircraft for the purposes of overflight or landing clearance can be identified as such. It must also be a clear legal requirement that aircraft operators carrying out certain activities on behalf of intelligence agencies declare that the aircraft is being used for state purposes, even if the aircraft is chartered from a private company.
- Additional measures should be considered such as maintaining and updating a register of aircraft operators whose aircraft have been implicated in rendition flights. Any aircraft operator so identified should be provided with some form of mechanism for addressing accusations, perhaps by providing full information and details, including names, passport numbers, etc. about any previous suspicious flight. This helps them to clear their names if needed, and would provide a valuable source of information to assist in

investigations of past abuses. It would also deter operators from engaging with unlawful activities of the CIA or other secret service agencies.

- The review should encompass measures to ensure that Ireland's territorial waters are not open to being used to carry out or facilitate renditions and other human rights violations.
- To deal only with the search and inspection of aircraft would further risk effectively limiting the review to aircraft that actually land on Irish territory. While aircraft transiting Irish airspace, if suspected of engaging in illegal activity at the time, can be forced to land and be subject to inspection, this seems a somewhat theoretical mechanism, given the difficulty in ascertaining, in advance or even on a real-time basis, whether overflying aircraft are conducting or immediately en route or returning from a rendition. Therefore, the review should also consider other ways to address rendition aircraft using Irish airspace, such as taking action against states who are identified to have done so after the fact.
- Particularly in view of Government's refusal to undertake an independent and impartial investigation of the use of state territory in connection with renditions, the outcome of this review must be made public, at the earliest opportunity.
- The Committee should be centrally responsible for ensuring that its recommendations are fully implemented by relevant Government Departments and agencies through periodic meetings of those Departments and agencies, and it should issue periodic report progress reports to the Oireachtas.

In addition, AI urges the Cabinet Committee members to consider the following recommendations in the course of its review. The recommendations outlined below are directed at the Departments charged with specific responsibilities with regard to rendition.

2 - Department of Justice, Equality and Law Reform:

- A commitment to preventing and investigating aircraft linked with renditions must be explicitly included in the Minister for Justice's statement on An Garda Síochána priorities, and in annual Garda policing plans.
- A clear outline of any deficiencies in the Air Navigation and Transport Act 1988 and Air Navigation and Transport (Amendment) Act 1998 regarding Garda powers to enter and inspect civilian aircraft must be provided, and proposed amendments suggested.
- Guidelines should be produced by the Garda Inspectorate on what duties and responsibilities are incumbent upon members of the service, including under the Criminal Justice (United Nations Convention Against Torture) Act, 2000 and European Convention on Human Rights Act, 2003. This should include clear guidelines and criteria on what constitutes "reasonable suspicion" in relation to arriving planes, for the purposes of Garda enter and inspection powers.
- An analysis should be undertaken of what resources and legal provisions would be

necessary to establish a system of random spot-check inspection of landing aircraft.

- The Minister for Justice, Equality and Law Reform should make a public statement confirming the independence of the police in respect of preventing and investigating renditions, and an explicit expression of support for the investigation by An Garda Síochána of aircraft with a prior record of involvement in rendition circuits.
- Guidelines should be produced in consultation with An Garda Síochána on how complaints regarding aircraft should be handled and investigated. In line with the Irish Human Rights Commission's 2007 recommendations, every complaint lodged with An Garda Síochána involving suspected rendition links should be investigated in a rigorous and transparent manner. The results of those investigations should be presented in written form to the complainant. Investigations should involve direct liaison and partnership with other European nations, particularly Spain and Portugal, where police investigations have resulted in the requisition of flight and hotel records, and passport details.
- Guidelines should be set out by the Garda Inspectorate on how An Garda Síochána should comply with the right of individual 'planes-spotters' to lawfully conduct fact-finding.

3 - Department of Transport:

- 'Generic authorisations' for landing or overflight clearances for unscheduled civilian aircraft should be modified to stipulate the prior acceptance of rules regarding registration of details and other inspection measures. If additional legislation is required to this, it must be clarified that this is the case.
- It must be clarified if the 1952 Order is sufficiently robust to deal with renditions, i.e. if civilian aircraft engaged in renditions are in fact unconditionally caught within the definition of "military aircraft" since they are operated by foreign intelligence services. If this is not the case, the definition of aircraft subject to the 1952 Order provisions must be expanded to include all "state aircraft".
- Introduce a regime so that aviation leasing companies who do business with intelligence agencies declare to the aviation authority whether a hired plane is being used by the intelligence agency, and therefore is on official state business, even if a private company is hiring the plane.
- Consider the appointment of "Authorised Officers" beyond members of An Garda Síochána, as foreseen under Section 49 of the Air Navigation and Transport (Amendment) Act, 1998. All Authorised Officers should be specially trained.
- The Irish Aviation Authority should establish and maintain an up-to-date register of aircraft known to have been involved in, and aircraft operators whose planes have been implicated in, rendition (and other human rights violations). Air Traffic Control must then demand of these operators detailed information before landing or overflight

clearance is granted, and such operators should be targeted for particular attention in compliance monitoring and inspections.

- As the lead Department engaging in the ICAO, it must publicly set out the deficiencies identified within the Chicago Convention, and the steps it has taken towards its review.

The Government as a whole:

- Publicly acknowledge that Ireland has been used as a stopover on known renditions circuits, and confirm that it should not allow Irish territory or airspace to be used by aircraft that are en route to or returning from rendition missions, as well as those that actually have a rendition prisoner on board.
- Government spokespersons should no longer take the position that Ireland continues to rely solely on assurances provided the US Government that Irish territory has not been, and will not be, used for renditions.
- Consider the establishment of an Interagency Civil Aviation Monitoring and Inspection system. It is clear from the Irish Government's conceding that it is not in a position to proactively identify foreign aircraft that are engaged in illegal activity that a clear, robust and transparent system for monitoring and inspecting aircraft is required. The relevant Departments should consider the establishment of an interagency task force to devise and implement a monitoring framework to ensure foreign aircraft compliance with international law. This task force should include An Garda Síochána, the Irish Aviation Authority, and the Department of Transport. This task force would be charged with identifying, in advance, flights and operators potentially using Irish territory or airports to effect rendition or other human rights violations, instead of depending wholly on research by citizens, journalists or NGOs. This framework would also address other abuses of Irish airspace and territory by foreign 'civilian' aircraft, such as the illegal transfer of arms.
- Support and encourage a climate in which the investigation of suspicious planes by private individuals is viewed as necessary and their right, rather than an inconvenience.

ANNEX: SPANISH INVESTIGATION OF EL MASRI CASE

German citizen Khaled El Masri was abducted in Macedonia, and rendered to a secret prison in Afghanistan where he suffered illegal imprisonment. The aircraft in question had stopped over in Palma de Mallorca during the rendition circuit. In July 2005 lawyers and individuals presented a criminal complaint before the local Court in Palma de Mallorca, denouncing alleged torture and illegal detention, piecing together all the available local and international evidence. In its defence the Spanish Government justified its initial hands-off approach to the arrival of CIA-linked airplanes on Spanish territory on the grounds that the Chicago Convention permitted private aircraft to overfly a country or make technical stopoffs without advance notice.

An investigation by the Guardia Civil (Spanish police) was established, prompted not by a government initiative but by a formal complaint lodged by a group of Majorcan citizens based on information published by the *Diario de Mallorca* in March 2005 concerning the alleged stopover of planes suspected of involvement in rendition circuits. The prosecutor then urged the police to carry out the necessary investigations into a number of specific stopovers at the airport. Statements were taken from airport officials, security agents, representatives of companies charged with the maintenance of planes and local journalists who had published information on the flights.

The airport register only showed details for two occupants of one of the planes which stopped on Jan 17th 2004, the date on which Khaled El Masri was rendered. However Spanish police, using their powers of requisition, obtained the names and passport details of 50 occupants of possible rendition planes from hotel registers where crew members stayed on or around the same time. The Spanish police determined that there was insufficient evidence to proceed with the investigation which was thus wrapped up on 17 May 2005.

Journalists and citizens persisted in their pressing for an investigation. In January 2006, as public pressure grew, Spanish police carried out preliminary enquiries into the stop offs made by an aircraft with previous links to the rendition circuit, a plane registered as N4476S. These inquiries revealed the names of crew members, receipts in their name and telephone calls from the hotel where they stayed. Again the investigation was discontinued.

In May 2006, Spain's Council of Ministers approved the National Security Programme for Civil Aviation, delegating the task of civil aviation security to the Civil Aviation National Security Committee which was mandated to avoid 'irregular activity' in airports. As late as November 2005 Spain's Minister for Foreign Affairs insisted before parliament that "according to government information" all stopovers in Spanish territory had occurred with 'full respect' for Spanish laws.

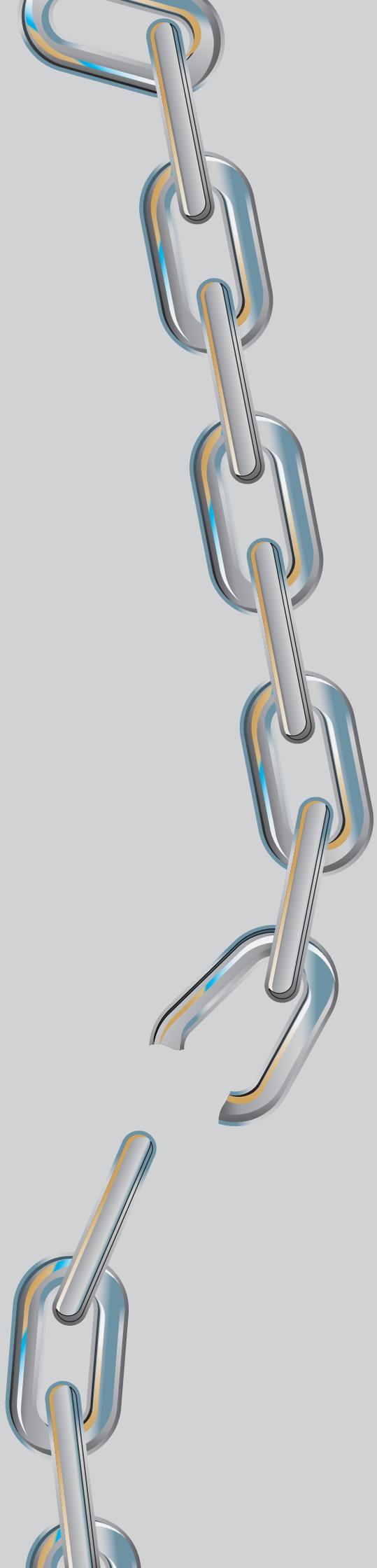
In June 2006, Spain's Audiencia Nacional (High Court) agreed to take on the Palma de Mallorca case, involving alleged torture, even though the crime itself occurred outside of Spain and regardless of the nationality of the culprit(s). This announcement came just two days after the publication of the findings of the Parliamentary Assembly of the Council of Europe (PACE), which included further details of CIA stopovers in Spain.

In February 2007, the High Court requested that the Spanish Government declassify intelligence reports relating to suspicious flights and investigate relevant flight information, collected by citizens and NGOs. In May 2007, at the judge's request, the Spanish airport and navigation authority, Aeropuertos Españoles y Navegación Aérea (AENA), was asked for details of some 50 flights which crossed Spanish airspace en route to or from Guantánamo between 2002 and 2007. The investigation uncovered a dozen flights which stopped off at army runways for reasons unknown. In May 2008, a judge requested from the Government, all documentation relating to the stop-offs at military bases and the identification and location of possible witnesses to the presence of these planes on Spanish territory.

ENDNOTES

- ¹ However, problems remain: see *The Promise of Real Change. . President Obama's executive orders on detentions and interrogations*, AI Index Number AMR 51/015/2009, 30 January 2009; *Mixed Messages: Counter Terror and Human Rights – President Obama's First 100 Days*, AI Index Number AMR 51/043/2009, 29 April 2009.
- ² Though the focus of this report is the use of Irish territory by the US renditions program, it should be recognised that other governments, too, have and continue to perpetrate renditions, for which they should be held responsible.
- ³ The White House, Office of the Press Secretary, 'Remarks by the President on the Global War on Terror (War against terrorism is a struggle for freedom and liberty, Bush says)', speech delivered in East Room of the White House, 6 September 2006; referred to in para 22 of the second Marty Report.
- ⁴ They also found that agents of some European countries participated in the apprehension of people destined for rendition or in the interrogation of such detainees once they were transferred to countries where torture is known to be routine, and also highlighted the fact that foreign intelligence agencies operate in Europe outside the rule of law and with little oversight or accountability.
- ⁵ See AI reports *Partners in crime: Europe's role in US renditions*, AI Index Number EUR 01/008/2006, 13 June 2006, and *State of denial: Europe's role in rendition and secret detention*, AI Index Number EUR 01/003/2008, 24 June 2008 for a comprehensive description of the involvement of European states in rendition and secret detention.
- ⁶ *Council of Europe Secretary General: publication of the report on alleged illegal detentions and rendition flights in Europe*, Press release - 110(2006).
- ⁷ *Secretary General sets the parameters of the Council of Europe inquiry into alleged CIA activities in Europe*, Press release - 703(2005).
- ⁸ Report by Mr Dick Marty for the Parliamentary Assembly of the Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, 12 June 2006.
- ⁹ *Secretary General's supplementary report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*, SG/Inf (2006)13, 14 June 2006.
- ¹⁰ *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI))*, Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners.
- ¹¹ European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)). Tabled by the PES, ALDE, Greens/EFA and GUE/NGL groups and adopted by 334 votes, 247 against and 86 abstentions.
- ¹² The Order also included provisions relating to the prohibition of interrogation methods incompatible with the Geneva Conventions, to the expeditious closure of CIA facilities and to International Committee of the Red Cross access to prisoners.
- ¹³ Minister for Foreign Affairs, Dáil Debate, 18 February 2009.
- ¹⁴ *A Blueprint for Ireland's Future 2007-2012* (June 2007).
- ¹⁵ *Green Party welcomes Govt moves on rendition - Programme for Government commitments being honoured*, says Cuffe, Green Party Press Release: Foreign Affairs, 3 November 2008.
- ¹⁶ *Massive victory for human rights*, Press Release, 3 November 2008.

- ¹⁷ *Statement by the Minister for Foreign Affairs Mr. Dermot Ahern TD on the European Parliament's Resolution on Extraordinary Rendition*, 14 February 2007.
- ¹⁸ *Below the Radar: Secret Flights to Torture and Disappearance*, AI Index Number AMR 51/051/2006, 5 April 2006.
- ¹⁹ Further details on rendition flights in the Council of Europe (Parliamentary Assembly of the Council of Europe report, 'Alleged Secret Detentions and Unlawful Interstate Transfers Involving Council of Europe Member States', AS/Jur (2006) 16 Part II, at Appendix 1
- ²⁰ See AI 2008 report, *United States of America: A case to answer. From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari*, AMR 51/013/2008.
- ²¹ See www.reprive.org.uk.
- ²² *Dermot Ahern reneges on promise to ban 'Guantanamo Express'*, Press Release, Labour Party MEP for Dublin, Proinsias De Rossa, 16/01/2007.
- ²³ *Report by the Commissioner on his Visit to Ireland 26 - 30 November 2007*, (CommDH(2008)9, Council of Europe, 2008).
- ²⁴ *Concluding observations of the Human Rights Committee on Ireland's third report*, CCPR/C/IRL/CO/3, 30 July 2008.
- ²⁵ The Government's Article 52 response is available at www.dfa.ie. It involved an inter-departmental review of the State's applicable law and practice by the responsible Government Departments and agencies.
- ²⁶ It is unclear if he meant that no detainees have actually landed in Ireland, or if "use" covered transfer and refueling on planes on renditions circuits.
- ²⁷ Then Minister of State for Foreign Affairs in Dáil Debate, 29 June 2006.
- ²⁸ The IHRC report contains interesting correspondence between the IHRC and the Irish Government where the Government is critical of the IHRC's "overly broad" interpretation of the international law pertaining to assurances on renditions (i.e. as opposed to diplomatic assurances in respect of torture).
- ²⁹ The British Government repeatedly cited US assurances that terror suspects had not been held on or transported through Diego Garcia, or its territorial waters or airspace, yet it later emerged that rendition had in fact occurred there.
- ³⁰ Dáil debate, 11 March 2008.
- ³¹ See below for outline of unclear distinction between civilian and state aircraft in Irish and international law.
- ³² Irish Government response to the European Parliament, Committee of inquiry, led by Claudio Fava.
- ³³ Dáil debate, 12 November 2008.
- ³⁴ Section 7: "(1) The function of the Garda Síochána is to provide policing and security services for the State with the objective of—(a) preserving peace and public order, (b) protecting life and property, (c) vindicating the human rights of each individual, (d) protecting the security of the State, (e) preventing crime, (f) bringing criminals to justice, including by detecting and investigating crime" Section 7 (2): "For the purpose of achieving the objective referred to in subsection (1), the Garda Síochána shall co-operate, as appropriate, with other Departments of State, agencies and bodies having, by law, responsibility for any matter relating to any aspect of that objective."
- ³⁵ See www.shannonwatch.org.
- ³⁶ They report that aircraft N478GS was recorded at Shannon on May 11th, 2009.



BREAKING THE CHAIN

ENDING IRELAND'S ROLE IN RENDITIONS

'Rendition' is a term used by US governments to describe how individuals have been detained by or on behalf of US agencies in other states, and secretly removed from those states. These individuals are destined for torture or other cruel, inhuman or degrading treatment, or subject to indefinite detention, often in secret, without judicial review.

Some victims have ended up in the jails notorious for their use of torture, in countries including Egypt and Syria. Others have found themselves in US-run detention centres where they have suffered torture or other ill-treatment and been denied the legal rights due to detainees.

The Irish Government has been a vocal critic of the US renditions programme, and other aspects of what the previous US administration called its 'war on terror'. But it has resolutely failed to match this rhetoric with action on Ireland's known links with the US renditions programme.

Several European countries have played a key part in the US global renditions chain – from active participation to passive collusion. Ireland has indirectly assisted US renditions through its virtual open door to CIA planes at Shannon airport. It has refused to heed calls from national and international bodies for an investigation into abuse of Ireland's airports and airspace. It has failed to take preventative measures to guard against further abuse. It has instead insisted on relying on so-called 'assurances' from the US Government.

Now, a change in direction may be on the horizon. The Irish Government has established a Cabinet Committee on Aspects of International Human Rights, whose activities include reviewing and strengthening legislation governing the search and inspection of suspected rendition flights, and to ensure that civil and police authorities have the necessary powers in this regard.

Government has taken an important step by bringing these matters to the Cabinet table. But it needs to ensure that this review is transparent, comprehensive and meaningful. This report outlines gaps that need to be addressed, so that Ireland no longer facilitates, directly or indirectly, violations of international law by other states. Ireland finally needs to break the global renditions chain.

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