

The Binyam Mohamed case: Top UK judges find US and Britain guilty of torture

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The Appeal Court in Britain this week rejected efforts by the Foreign Office to suppress seven paragraphs of a report drawn up by British judges in August 2008, based on their access to more than 40 US intelligence documents. The paragraphs, now published in redacted form on the Foreign Office web site, find that Binyam Mohamed, a former Guantanamo Bay prisoner, was subjected to treatment that “could readily be contended to be at the very least cruel, inhuman and degrading treatment by the United States authorities.”

The posted document also states: “The treatment reported, if had been administered on behalf of the United Kingdom, would clearly have been in breach of the undertakings given by the United Kingdom in 1972.”

Ethiopian-born Mohamed, a British resident, was arrested in Pakistan on April 10, 2002 as he was about to board a flight to Britain. After being imprisoned and tortured in Pakistan, he was turned over to the FBI.

A victim of extraordinary rendition at the hands of the CIA, he was flown to Morocco, where he was again tortured, including being slashed with scalpels or razor blades on his chest and penis. He was then moved to Afghanistan, where he was frequently tortured in the infamous “Dark Prison” before being finally detained in Guantanamo Bay, Cuba.

There he was held for four years, again suffering torture and abuse. He was released in February 2009 without charge, after nearly seven years in prison.

Mohamed is suing the British government on the grounds that the M15 intelligence agency was complicit in his torture and provided questions and information to his interrogators.

The legal attempt by Foreign Secretary David Miliband to suppress the incriminating paragraphs of the judges’ report is part of a broader effort to suppress findings that implicate the US and British governments in war crimes.

The Obama administration has been a full partner in these efforts. It demanded that the British government suppress the findings on Mohamed on the grounds that their publication would damage security and intelligence cooperation between the two countries. Miliband cited the position of the US to argue that disclosure would threaten British national security.

In response to the British Appeal Court ruling and publication of the contested paragraphs, Ben LaBolt, a spokesman for President Obama, stated, “As we warned, the court’s judgment will complicate the confidentiality of our intelligence-sharing relationship with (Britain), and it will have to factor into our decision-making going forward.”

The British government’s arguments were dismissed by Sir Igor Judge, the lord chief justice; Lord Neuberger, the master of the rolls; and Sir Anthony May, president of the Queen’s Bench. In his ruling, May rejected the claim by the government of Prime Minister Gordon Brown that disclosure would threaten the UK’s national security.

He said, “In principle, a real risk of serious damage to national security, of whatever degree, should not automatically trump a public interest in open justice which may concern a degree of facilitation by UK officials of interrogation using unlawful techniques which may amount to torture or cruel, inhuman or degrading treatment.”

The judges had little choice in rejecting Miliband’s appeal, given that Judge Gladys Kessler, in a US court case involving Farhi Saeed Bin Mohammed, a Guantanamo prisoner from Algeria, had previously acknowledged that the account of Binyam Mohamed’s torture was based on “credible” evidence. In her now declassified ruling, Kessler stated, “Binyam Mohamed’s trauma lasted two long years. During that time, he was physically and psychologically tortured. His genitals were mutilated. He was deprived of sleep and food.

“He was summarily transported from one foreign prison to another. Captors held him in stress positions for days at a time. He was forced to listen to piercingly loud music and the screams of other prisoners while locked in a pitch-black cell. All the while, he was forced to inculcate himself and others in plots to imperil Americans. The government does not dispute this evidence.... even though the identity of the individual interrogator changed (from nameless Pakistanis, to Moroccans to Americans).”

Lawyers acting for the British Foreign Secretary had previously accused the Appeal Court judges of “charging in” to a diplomatically sensitive issue and “jeopardising UK intelligence sharing.” Miliband said that he had spoken with US Secretary of State Hillary Clinton about the case, which was being followed carefully at the highest levels in the US “with a great deal of concern.”

The Appeal Court judges agreed to withhold one paragraph, number 168, which is particularly critical of MI5. The legal parties were given until yesterday to oppose the decision to suppress paragraph 168.

The paragraph is already known to make even clearer the damning verdict against the US, MI5 and the British government. A leaked letter to the Appeal Court from David Miliband's defence lawyer, Jonathon Sumption QC, demanded that the paragraph be removed on the grounds that it was “likely to receive more public attention than any other parts of the judgments.”

Sumption noted in his letter that in the still-suppressed paragraph of the draft judgement, the Master of the Rolls, Lord Neuberger, refers to MI5 officers as having “deliberately misled” parliament and of sharing a “culture of suppression.”

These observations, Sumption argued, “will be read as statements by the Court” that MI5 “does not in fact operate a culture that respected human rights or abjures participation in coercive interrogation techniques,” and “was in particular true of Witness B [the MI5 agent who visited Binyam in Pakistan in 2002 and is accused of collusion in his torture], whose conduct in this respect is characteristic of the service as a whole.”

Neuberger apparently states that “it appears likely that there were others.”

In his letter, Sumption continues that it will be concluded that “officials of the Service deliberately misled the Intelligence and Security Committee” and that this suppressed information was shared “by the Foreign Office.”

The letter warns that “the suggestion that the Court should distrust any UK government assurance based on

the Service’s advice and information will unquestionably be cited in other cases.”

Lord Neuberger told the court that, after receiving the letter, he had agreed to amend the relevant section “quite significantly.” But his attempt to stem the tide has failed.

The partial publication of the suppressed paragraphs has already created a major political crisis. Liberal Democrat leader Nick Clegg demanded to know if ministers were told the US had changed its rules on torture after the 9/11 attacks, stating that either the government knew, or MI5 was engaged in a cover-up.

“We can only conclude that the Security Services either kept the information to themselves, or they informed ministers who failed to act immediately,” Clegg said. “Both of these would suggest at best a cover-up and at worst collusion in torture. Knowledge of Britain’s potential complicity in torture looks likely to have gone to the very top of government.”

Conservative Shadow Home Secretary David Davis told the BBC there were 15 other cases that suggested a culture of collusion or complicity in torture by both MI5 and MI6.

Kim Howells, the chairman of the parliamentary Intelligence and Security Committee (ISC), launched a public defence of MI5 head Jonathan Evans, rejecting accusations that he had misled Parliament. He stated that he had seen no evidence that MI5 had colluded in torture, flatly contradicting the judges’ findings. Again contradicting the judges, he claimed that Evans had assured him that MI5 had not withheld any documents relating to Mohamed’s treatment from the ISC.



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