

Covering up Torture

The case of Binyam Mohamed

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Geoff Hoon was Secretary of State for Defence from 1999 to 2005. Shami Chakrabarti is the Director of Liberty. They both appeared on BBC Television's 'Question Time', broadcast on the evening of 5 February 2009, and chaired by David Dimbleby. We reprint excerpts from their exchanges about Binyam Mohamed, which are preceded by introductory remarks about his case from the Reprieve website (www.reprieve.org.uk).

Mr Mohamed has been on hunger strike in Guantanamo Bay.

Binyam Mohamed was born in Ethiopia and came to Britain in 1994, where he lived for seven years, sought political asylum, and was given leave to remain while his case was resolved. In 2002, while travelling in Pakistan, Binyam was arrested on a visa violation and turned over to the US authorities. When they refused to let him go, he asked what crime he had committed, and insisted on having a lawyer if he was going to be interrogated. The FBI told him, 'The rules have changed. You don't get a lawyer'.

Binyam refused to speak to them. British agents then confirmed his identity to the US authorities, and he was warned that he would be taken to a Middle Eastern country for harsh treatment.

On 21 July 2002, Binyam was rendered to Morocco on a CIA plane. He was held there for 18 months in appalling conditions. To ensure his confession, his Moroccan captors tortured him, stripping him naked and cutting him with a scalpel on his chest and penis. Despite this, Binyam said that his lowest point came when his interrogators asked him questions about his life in London, which he realized could only have been provided by the British intelligence services, and he realized that he had been betrayed by the country in which he had sought asylum.

Binyam's ordeal in Morocco continued for about 18 months until January 2004, when he was transferred to the 'Dark Prison' near Kabul, Afghanistan, a secret prison run by the CIA, which resembled a medieval dungeon with the addition of extremely loud 24-hour music and noise.

Speaking of his time in the 'Dark Prison', Binyam said:

‘It was pitch black, no lights on in the rooms for most of the time. They hung me up for two days. My legs had swollen. My wrists and hands had gone numb. There was loud music, Slim Shady [by Eminem] and Dr. Dre for 20 days. Then they changed the sounds to horrible ghost laughter and Halloween sounds. At one point, I was chained to the rails for a fortnight. The CIA worked on people, including me, day and night. Plenty lost their minds. I could hear people knocking their heads against the walls and the doors, screaming their heads off.’

From there he was taken to the US military prison at Bagram airbase, and finally, in September 2004, to Guantánamo Bay, where he remains.

In June 2008, the US Department of Defense put Binyam forward for trial by military commission, a novel legal system, conceived in November 2001, which was described by Lord Steyn, a British law lord, as a ‘kangaroo court’ (see *Spokesman 81 and 89*). Clive Stafford Smith, Binyam’s lawyer, together with other British legal representatives applied for the release of documents held by the British and American Governments.

Now, in an extraordinary ruling, two British judges sitting in the case of Binyam Mohamed have revealed how the US government has ‘threatened’ the British government with reprisals should the British reveal evidence that American agents were involved in his rendition and torture. The judges end the decision with a plea to President Obama to reconsider President Bush’s remarkable policy of retribution against anyone who might reveal American crimes:

‘If the information in the redacted paragraphs which we consider so important to the rule of law, free speech and democratic accountability is to be put into the public domain, it must now be for the United States Government to consider changing its position or itself putting that information into the public domain.’ (Mohamed v. Secretary of State, at point 107.)

No fewer than eight times, the judges refer to the American ‘threat’ made against their closest ally, the British. (Mohamed v. Secretary of State, at points 62, 70, 73, 76, 76, 76, 77, 107). The British intelligence services have 42 documents that apparently demonstrate abuse of Binyam Mohamed, a British resident.

‘The US is under a legal duty to investigate the crime of torture, not to suppress evidence that it happened,’ said Reprieve Director Clive Stafford Smith. ‘And the UK has a similar duty. For the Foreign Secretary to give in to these illegal demands by the Bush Administration is capitulation to blackmail, pure and simple. It is hardly Britain’s finest hour. As the judge’s say, it is up to President Obama to put his money where his mouth is. He must repudiate his predecessor’s reprehensible policy.’

This was the setting for Geoff Hoon's encounter with Shami Chakrabarti on 'Question Time'. A member of the audience, Hayley Bray, asked:

Is Britain being held to ransom by America over the alleged torture of Binyam Mohamed?

Geoff Hoon: No it isn't, and I will try to explain why not. The information that was required by this man and his lawyers was made available. First of all, classified information from the United Kingdom was made available to his lawyers. And then a request that that information from the United States, classified information, would be made available to his lawyers. And again that happened. The issue in the case was not about his rights as a defendant because they had been properly defended by the provision of information. The issue was whether that information should be made public. That information came from the United States. It was their intelligence, and it is a basic principle when sharing that kind of sensitive information that is gathered in order to protect society that it should be for the country who owns the information to decide whether it should be made public. Therefore it is a matter for the US to decide whether its intelligence should be made public. His rights as a defendant were properly protected because that information was given to his lawyers, and was available for use in his trial.

Shami Chakrabarti: I told you [earlier] I didn't think the snow was the greatest embarrassment [to Britain]. That answer was an embarrassment. [Applause from audience]. Our Court of Appeal ruled that it was in the public interest, including this public's interest, that serious, serious allegations of evidence of someone being tortured – I'm not even talking about a bit of waterboarding, we're talking about medieval torture involving razor blades – our Court of Appeal, in this country, yesterday said it was in our public interest that this kind of evidence be in the public domain so that we citizens of this country can all see it and ask questions about what our Government was up to when all this was going on, and what British agents were up to when all this was going on. It seems that counsel for the Foreign Office led the Court of Appeal to believe that there was some kind of threat. That was the phrase used by the Court. It's not my phrase. There was a threat to withdraw or revisit intelligence co-operation between the two countries, and only for that reason did the Court feel essentially bullied into not publishing, and I quote, that 'politically embarrassing information'. Then we hear from Number 10 spokespeople, and we hear from other Foreign Office spokespeople, in contradiction with what was said in Court, it seems, that no specific requests had been made of the new Obama Administration. Of course this was

embarrassing for President Bush and perhaps to the Government here in Britain. But President Obama has said, in terms, that we reject as false the choice between our safety and our ideals. And [Mr Hoon's] Government, his colleague the Foreign Secretary, didn't even ask President Obama if it would be permissible to obey the judgment of our courts and publish the information once and for all so that we can get to the bottom of this rotten business.

Dimbleby: True or false, Geoff Hoon?

Hoon: False. Because the one thing that you might have overlooked in listening to that very emotional account of what took place ...

Chakrabarti: Yes, I am emotional about torture. I certainly am.

Hoon: The British Government's case was upheld in court. The British Government's case succeeded. It was based on security, on intelligence, it was based on the proper protection of our people around the world against terrorism. If any country, including the US, wishes to release that information into the public domain, it is free to do so. It is not free for another country that has had access to that information to publicise it. That's what the issue was in the case, and the court upheld the British Government's position.

Dimbleby: Are you going to go back to President Obama, newly elected, and ask that these documents, in line with what Shami Chakrabarti says he has himself said, be released?

Hoon: This is entirely a matter for the American Administration.

Dimbleby: No, you can go and ask them.

Hoon: We could go and ask them but ...

Chakrabarti: The Foreign Secretary says he will not ask them. He will not engage in lobbying or campaigning of that kind. I'm emotional because I believe that torture is wrong.

Hoon: I believe that torture is wrong. There is no evidence that any British agent, or any British military person, anyone is engaged in any kind of torture whatsoever. It's important we maintain those standards. We will maintain those standards ... [Hoon twiddled biro] There is no knowledge of torture in the British system as far as the US is concerned ...

Dimbleby: What do you mean, there's no knowledge?

Hoon: We're just not aware that this happens ... [It has been] argued that we should release into the public domain sensitive intelligence.

Presumably you wouldn't say that the US should release our intelligence. Neither would we ...

Chakrabarti: Mr Hoon, the court wanted to disclose the evidence, not you.

Hoon: Let me just deal with this point. The intelligence may appear to be entirely routine. It may, for example, be a record of a conversation. It may look completely innocuous to anyone looking at it. But what it will tell the people, whether they're criminals or terrorists who are under investigation, it will tell them how that information has been obtained. It will disclose the kind of activities we engage in in order to protect our society. Therefore, the actual material may not tell you anything at all.

Chakrabarti: The Court of Appeal disagreed. Ladies and Gentlemen, who do you trust? Our Court of Appeal or this man [Geoff Hoon] over here?

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United Kingdom Special Forces (UKSF) have operated within a joint US/UK Task Force since the invasion of Afghanistan in autumn 2001, when Geoff Hoon had already been Defence Secretary for two years. He was to continue in this role for another four years, until 2005. In 2001, UK Special Forces fought alongside their US counterparts to put down a bloody revolt by captured Taliban fighters at Qalai Janghi fortress, near Mazar-i-Sharif in Afghanistan (see *Spokesman* 77). Some of the Taliban fighters who survived were then rendered to Guantanamo Bay. Following the invasion of Iraq, in 2003, this joint US/UK Task Force became very active. It has detained hundreds of people in Afghanistan and Iraq, including many non-combatants who were caught up in the search for so-called 'high value targets'. Some of these people have ended up in detention facilities in Afghanistan and Iraq. UK soldiers within the Task Force would detain individuals but not arrest them, in an attempt somehow to distance them from what would happen to their captives when they were handed over to the Americans. It was commonly assumed that they would be tortured. Ben Griffin, who was in the Special Air Service (SAS), reported his experiences at a press conference in London on 25 February 2008 (see *Spokesman* 99 'Extraordinary Rendition: Britain's Central Role').