



House of Lords
House of Commons
Joint Committee on Human
Rights

Prisoner Transfer Treaty with Libya

Thirteenth Report of Session 2008–09



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*Report, together with formal minutes and
written evidence*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current membership

HOUSE OF LORDS

Lord Bowness
Lord Dubs
Lord Lester of Herne Hill
Lord Morris of Handsworth OJ
The Earl of Onslow
Baroness Prashar

HOUSE OF COMMONS

John Austin MP (Labour, *Erith & Thamesmead*)
Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)
Mr Virendra Sharma MP (Labour, *Ealing, Southall*)
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)
Mr Edward Timpson MP (Conservative, *Crewe & Nantwich*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm.

Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Rebecca Neal (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Emily Gregory and John Porter (Committee Assistants), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

Contacts

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1 Report

1. A treaty between the UK and Libya on the transfer of prisoners was signed on 17 November 2008 and laid before Parliament on 27 January 2009.¹ We decided that it potentially raised human rights concerns and wrote to the Secretary of State for Justice on 3 March indicating that we intended to scrutinise the treaty and requesting that ratification be delayed until the end of April, so that we could publish a substantive report.² The Secretary of State replied on 12 March to say that he would delay ratification only until the Easter recess because “a delay beyond early April is likely to lead to serious questions on the part of Libya in regards to our willingness to conclude [this and three other judicial cooperation] agreements”.³

2. We sent questions about the treaty to the Secretary of State on 17 March and he replied on 27 March.⁴ Our correspondence is published with this report. We are grateful for the speed with which the Secretary of State replied but regret that we have been unable to publish a substantive report on the treaty before Easter and, therefore, before ratification. **We note that the Secretary of State cited exceptional reasons why ratification of the treaty could not be delayed until we had been able fully to scrutinise the treaty. In our view, when a select committee states that it intends to scrutinise a treaty, ratification should be delayed until the committee’s inquiry has concluded.** We make some further comments about parliamentary scrutiny of treaties in our second report on the UN Convention on the Rights of Persons with Disabilities.⁵

3. Although we have been unable to publish a substantive report on the treaty before ratification, we draw the Government’s attention to an error in the Secretary of State’s letter to us of 27 March. In his answer to our question six, Mr Straw states that a deportation order for a prisoner being transferred to Libya “would be subject to appeal in the normal way”. **This is incorrect: although judicial review is available, there is no right of appeal against such orders by foreign prisoners.**⁶

¹ Cm 7540

² Page 5

³ Page 6

⁴ Page 6

⁵ Twelfth Report, 2008-09, *UN Convention on the Rights of Persons with Disabilities*, HL Paper 71, HC 398, paragraphs 14-18.

⁶ Section 35 of the UK Borders Act 2007.

Formal Minutes

Tuesday 31 March 2009

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness Lord Lester of Herne Hill Lord Morris of Handsworth The Earl of Onslow Baroness Prashar	Dr Evan Harris MP Mr Edward Timpson MP
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Draft Report (*Prisoner Transfer Treaty with Libya*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 3 read and agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Morris of Handsworth make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 3 and 17 March.

[Adjourned till Tuesday 21 April at 1.30pm.]

Written Evidence

Letter from the Chairman to Rt Hon Jack Straw MP, Secretary of State for Justice, dated 3 March 2009

We recently received a copy of the treaty between UK and Libya signed on 17 November 2008 concerning the transfer of sentenced prisoners (Cm 7540) and the associated explanatory memorandum, signed by Rt Hon David Hanson MP. The explanatory memorandum is dated 17 January and, as I understand it, ratification may occur any time after 5 March once the period for parliamentary scrutiny under the Ponsonby Rule has elapsed.

My Committee discussed the treaty at its meeting last week and intends to send you some specific questions about human rights safeguards. I hope we will be in a position to send these questions next week. Depending on your reply, we may wish to publish the correspondence or publish a short report. Either way, we should be in a position to conclude our scrutiny of the treaty by the end of April. I would be grateful if you could delay ratification of the treaty until that time, to enable us to conclude our work.

Letter from Rt Hon Jack Straw MP to the Chairman, dated 12 March 2009

Thank you for your letter of 3 March in which you sought an extension of the time allowed under the Ponsonby Rule for consideration of the UK/Libya Prisoner Transfer Agreement. I am keen to facilitate further discussion by the Joint Committee on Human Rights but I am unable to consent to full extension requested. I am however, willing to delay ratification until the House rises for the Easter recess. This will give the Committee an additional 16 sitting days to consider the Treaty further.

I have not reached this decision lightly but the delay that you request would mean delaying ratification of the agreement until the end of April or possibly even later. Ratification of the agreement by the United Kingdom has already been delayed by six days due to February recess and delaying it further would take us well into the second quarter of the calendar year. Furthermore, delays in the ratification of this Treaty would have an impact on three other treaties in the field of judicial cooperation which are due to be ratified this month. Both the Foreign Secretary and I believe that, in the interests of our judicial and wider bilateral relations with Libya, it is important to ratify all four as far as possible at the same time.

In May 2007, the then Prime Minister signed a Memorandum of Understanding with Libya in which he committed the United Kingdom to concluding with Libya a prisoner transfer agreement, an extradition agreement, and agreements on mutual legal assistance and civil and commercial law. As you have noted, all four agreements were signed in London on 17 November 2008.

These four agreements form a package of legal instruments in the field of judicial cooperation. It had been our intention to exchange Instruments of Ratification on each element of the package before the end of March. It is on this basis that both the UK and

Libya have been proceeding. Libya has already completed its integral procedures and is ready to ratify. A delay beyond early April is likely to lead to serious questions on the part of Libya in regards to our willingness to conclude these agreements. The UK Libya relationship is one of great importance. It has been transformed since Libya's voluntary renunciation of Weapons of Mass Destruction in 2003. The agreements are part of the UK Government's continuing effort to work with Libya to engage constructively with the international community.

I note your intention to provide me with questions by the Committee this week. If you are able to do so this will help me to ensure that you receive a full response to your questions at the earliest opportunity.

Letter from the Chairman to Rt Hon Jack Straw MP, dated 17 March 2009

Thank you for your letter of 12 March in which you indicated that you are willing to delay ratification of this Treaty until the House rises for the Easter recess and that you will endeavour to ensure answers to my Committee's questions at the earliest opportunity.

My Committee's main concerns about the Treaty relate to the lack of human rights safeguards in the Treaty itself, the value of such safeguards in any event in relation to Libya, and the limited opportunity to challenge on human rights grounds a decision to transfer.

As you will be aware, the Memorandum of Understanding between the UK and Libya dated 18 October 2005 concerning the provision of assurances in respect of persons subject to deportation contains a number of detailed assurances concerning the protection of the human rights of the deported person, including, for example, that they will be afforded adequate accommodation, nourishment and medical treatment, and treated in a humane and proper manner in accordance with internationally accepted standards. The MOU also provides for an independent monitoring body to monitor implementation of the assurances.

In *AS and another (Libya) v Secretary of State for the Home Department* the Special Immigration Appeals Commission (SIAC) considered the reliability of these assurances and concluded that there was a real risk that the individuals who were to be deported in that case, on the ground that they were a threat to national security, would be treated in a way which breached Article 3 ECHR notwithstanding the assurances contained in the MOU. SIAC concluded, at para. 371 of its decision:

“ ... we think that there is a real risk that that would happen. The need in this case to make a large allowance for the unpredictable reaction, which in the short term or occasionally diverges from the pragmatic path upon which the Libyans are set means that we cannot eliminate the real risk which we have identified. The fact that the direction of Libyan foreign relations would largely remain the same does not remove the risk. There are no domestic changes, institutions or considerations which would assist. Above all the risk is not reduced sufficiently by the monitoring system because it is at these times that its limitations would be most evident and felt. We have to bear in mind that the monitoring system is intended to deter and check on potential breaches which can occur quite quickly, and to alert the UK's diplomats to the

problem rapidly. The diplomatic pressure which the UK could bring to bear and the responses adverse to Libya's interests which it could deploy, would not be engaged if the monitoring were ineffective to report on possible abuse. We do not therefore have the confidence which we need to have, for the return of the Appellants not to breach the UK's international obligations. In short there is too much scope for something to go wrong, and too little in place to deter ill-treatment or to bring breaches of the MOU to the UK's attention."

The Court of Appeal upheld SIAC's decision ([2008] EWCA Civ 289) and we understand that the Government has not appealed against the Court of Appeal's decision.

The Treaty on the Transfer of Prisoners does not contain even those human rights safeguards contained in the MOU which the UK courts have found to be insufficient to remove the real risk of torture of those it was sought to deport on national security grounds.

We are also concerned about the adequacy of the recourse to a court for a prisoner who wishes to challenge on human rights grounds the decision to transfer them. A prisoner who a court recommends for deportation at the time of sentencing has a right of appeal against the recommendation for deportation. However, a prisoner who the Secretary of State subsequently decides to deport, while they are serving their sentence, has no right of appeal against that decision, only the right to apply for judicial review. Although the judicial scrutiny given to decisions which affect human rights on judicial review is more intensive under the Human Rights Act, it is still inferior to a full right of appeal on the merits of the decision to deport, to an appellate court, with full fact finding powers and the power to substitute its own decision on the merits if it disagrees with the Secretary of State's decision. There is also no right of appeal against a decision of the Secretary of State to transfer a prisoner to Libya under the Treaty, only a right to challenge that decision by way of judicial review.

In the light of the above, we would be grateful to receive your answers to the following questions:

Q1: How many Libyan nationals are currently detained in UK prisons?

Q2: How many of those have been convicted of terrorism-related offences?

Q3: What do you consider to be the relevance of the judgments of SIAC and the Court of Appeal that the assurances contained in the MOU with Libya did not remove the real risk that the deportees in that case would be subjected to treatment contrary to Article 3 ECHR?

Q4: Why does the Treaty on Prisoner Transfer not include any human rights safeguards concerning matters such as treatment, conditions and independent monitoring?

Q5: What is the justification for not providing a full right of appeal on human rights grounds to a prisoner whom the Secretary of State decides to transfer under the Treaty?

Q6: Why do the conditions for transfer in Article 3 of the Treaty not include that “they would otherwise be deported at the end of their sentence”, which is one of the preconditions of transfer without consent under Article 3 of the Additional Protocol to the European Convention on the Transfer of Sentenced Persons?

I would be grateful if you could respond at the earliest opportunity in order to enable us to report to Parliament prior to ratification if we think it appropriate.

Letter from Rt Hon Jack Straw MP to the Chairman, dated 27 March 2009

Thank you for your letter of 17 March in relation to the Prisoner Transfer Agreement (PTA) which has been signed between the United Kingdom and Libya. The letter contains a number of specific questions in relation to the PTA, principally concerned with the issue of safeguards for transferred prisoners. I address those questions below but it may help if, perhaps, at the outset, I state that the UK Government is mindful of its human rights obligations and we would not proceed with the compulsory transfer of any serving prisoner unless we were satisfied that such a transfer would be compliant with our obligations such as under Articles 3 and 8 of the European Convention on Human Rights (ECHR).

As your Committee is aware, the Police and Justice Act 2006 removed the requirement in the Repatriation of Prisoners Act 1984 for the consent of a prisoner to transfer in each case. The Government has made it clear, including in answers to parliamentary questions, that, wherever possible, it will seek to negotiate bilateral prisoner transfer arrangements on this basis. The PTA with Libya will be the first “no consent” PTA to be ratified. Active negotiation of the PTA commenced in June 2007 and the initial text was based closely on the model agreement used for previous prisoner transfer agreements; which was in turn drawn from the European Convention for the Transfer of Sentenced Persons of 1983. Only slight amendments were made to the text to remove the requirement for prisoner consent. Since that time, a new model agreement has been developed which takes more explicit account of the different nature of “no consent” transfers. It is our intention that, if any compulsory transfer of prisoners are sought under this PTA, the safeguards spelled out in the new model will be applied. In any event, the UK’s obligations under the European Convention on Human Rights and the Human Rights Act will of course apply in relation to any transfer under this PTA.

Under all existing prisoner transfer agreements to which the UK is party, applications for transfer are considered on a case-by-case basis. This principle will continue under the PTA with Libya, but in addition to the normal procedures there will also be an assessment of compatibility of transfer with Article 3 of the ECHR which will include seeking advice as to the current state of Libyan prisons. A prisoner would be advised of the Government’s intention to transfer and would be invited to make written representations. These representations would be taken into account when determining whether or not transfers should proceed. Any decision to proceed would have to be compatible with the Government’s obligations under the Human Rights Act and with ECHR and would be subject to judicial review.

Moving on to the Committee’s specific questions:

Q1: How many Libyan nationals are currently detained in UK prisons?

As at 31/12/08 there were 26 Libyans in UK prisons, of whom 25 were in England and Wales and one in Scotland.

Q2: How many of those have been convicted of terrorism-related offences?

One prisoner only has been convicted of a terrorism-related offence.

Q3: What do you consider to be the relevance of the judgments of SIAC and the Court of Appeal that the assurances contained in the MOU with Libya did not remove the real risk that the deportees in that case would be subjected to treatment contrary to Article 3 ECHR?

The judgments in question reflected the particular circumstances of the individuals concerned who were found to be threats to Libya's national security. The decision has no direct relevance to prisoner transfers. Decisions to transfer a particular prisoner under this PTA will likewise fall to be decided on the basis of the particular circumstances of the proposed transfer. In proposing the transfer of any prisoner under this PTA HMG shall of course act consistently with its obligations under ECHR and the Human Rights Act.

Q4: Why does the Treaty on Prisoner Transfer not include any human rights safeguards concerning matters such as treatment, conditions and independent monitoring?

Although this PTA provides for transfer without the prisoner's consent it does not require either party to seek or agree to the transfer of any particular individual prisoner. As outlined above, any compulsory transfer of a prisoner under this PTA would be subject to an Article 3 ECHR assessment and would have to be compatible with our international obligations. Where it is thought appropriate and necessary in any individual case, the Government will seek assurances about the conditions and treatment that the prisoner will receive in Libya and if satisfactory assurances cannot be reached, the Government will not proceed with the transfer.

Q5: What is the justification for not providing a full right of appeal on human rights grounds to a prisoner whom the Secretary of State decides to transfer under the Treaty?

Where transfer is sought on a compulsory basis a prisoner will be able to seek judicial review of the decision made by the Secretary of State or the Scottish Ministers. Such a review would have regard to the prisoner's human rights and the weight given to them by the decision maker. Given that prisoners already have the right to seek judicial review a formal appeal process is not considered necessary.

Q6: Why do the conditions for transfer in Article 3 of the Treaty not include that "they would otherwise be deported at the end of their sentence," which is one of the preconditions of transfer without consent under Article 3 of the Additional Protocol to the European Convention on the Transfer of Sentenced Persons?

As outlined above, the text of this first "no consent" PTA was drawn from the standard model previously used for voluntary transfers. The UK Government would not consider for compulsory transfer under this PTA any prisoner who would not be subject to

deportation at the end of their sentence. Indeed it will be part of the process of transferring the prisoner to seek a deportation order if one is not already in place prior to the consideration of transfer. This order would be subject to appeal in the normal way.

Email from Mr Peter J. Sullivan Sr, dated 13 March 2009

Please know that I am an American citizen and I lost a very dear friend of mine, Mike Doyle, in the terrorist bombing of Pan Am flight 103 over Lockerbie. Frequently, I pray for Mike and the other 269 victims that they may rest in peace and that their families may find peace and forgiveness. I assure you that both are elusive and difficult.

I am very fortunate that the Crown Office keeps me, and others, informed about the progress of Mr. Megrahi's appeal as well as the prisoner transfer agreement (PTA). Please accept my apologies for not understanding the British legal system, but I presume that this Committee has influence over the PTA and its ratification.

If that is true, then I would like to strongly recommend that the PTA not be ratified. I could present at least 270 compelling arguments as to why Mr Megrahi should not be considered for this release program as well.

More simply, Mr Megrahi was accused, tried and convicted in an unbiased court with fair criminal justice rules and procedures. Despite his poor, and perhaps declining health, he should not be released to be in the aid and comfort of his family until he is able to return the 270 victims of Pan Am 103 to their families. Since I do not believe that he will be able to accomplish that, he should, in my view, remain in Scottish prison, with adequate health care, food, shelter and religious freedom while his appeal process proceeds. By all measures, that is a more favourable fate than the fate that he bestowed on the victims of his heinous crime and mass murder four days before Christmas in 1988.

Please understand the gravity of his offence and do not yield to any exogenous pressures that may be influencing this process. Mr Megrahi is a murderer and should complete his sentence of life in prison until his demise. At that point, his remains can be transferred to his family and his soul can be judged by the ultimate authority and judge, hopefully with kindness and compassion, for his sake.

Thank you for your consideration of my thoughts and comments.

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Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
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Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper 62/HC 375
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Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I

Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
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Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
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Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
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Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
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Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
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Eighteenth Report	The Human Rights of Older People in Healthcare: Volume I- Report and Formal Minutes	HL Paper 156-I/HC 378-I
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume II- Oral and Written Evidence	HL Paper 156-II/HC 378-II
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Twenty-first Report	Human Trafficking: Update	HL Paper 179/HC 1056