



Home Office

Assurances in Extradition Cases

Obtaining & Monitoring Assurances

January 2016

Scope of the Review

1. This review seeks to improve the Government's understanding about how assurances in extradition cases are monitored, and how breaches of those assurances can be identified or, better still, prevented. It also aims to examine what improvements could be made to current arrangements and processes. The Home Office engaged the Foreign and Commonwealth Office (FCO) to establish which Government and Non-Government agencies had been, or could be, involved in following up on assurances, and also establish whether there is more that the Government can do so that the Government can be confident that assurances are being upheld. This review does not address the extent to which the courts are right to order extradition on the basis of an assurance, as this is clearly a matter for the courts.
2. This review was able to draw from the evidence provided to the House of Lords' Select Committee Report on Extradition Law ('the Committee')¹, and its final report. In building on this evidence, this review assessed the current and potential role of Government Departments, the courts, prosecutors and Non-Government Organisations (NGOs) to identify the ways in which the Government can ensure that assurances given in extradition cases are respected.
3. This review sets out:
 - who is involved in obtaining assurances, and how and in what circumstances these assurances are obtained; and,
 - the approaches of different Government Departments (including the role of consular posts), the courts, prosecutors and NGOs in following up on assurances.
4. This review draws a number of conclusions from the evidence and analysis and sets out recommended actions for both the Home Office and the FCO.
5. Other than the case of *Othman* and the role of NGOs, this review does not closely examine the issue of Deportation with Assurances (DWA) given that the two are very different processes. Whilst NGOs do have a role in some DWA cases, as expanded upon in paras 33-36, this system is not directly transferrable to the extradition process. Firstly, the numbers are significantly fewer than in extradition cases (only 12 cases have been successfully removed in the ten years that the DWA process has been operating). Secondly, under the DWA scheme there is a clear public interest to deport given their terrorism-related activity, whereas extradition may be utilised for a far wider range of extradition offences. Finally, the DWA process is not reliant on NGO involvement activity to be successful. In countries where there is no NGO presence, alternative arrangements are possible and independent monitoring by an NGO is not considered by the courts to be a prerequisite in DWA cases.

¹ [Extradition: UK Law and Practice \(10 March 2015\)](#)

Summary of Findings

6. On the whole, current arrangements are working well and there was no evidence to suggest that assurances are being routinely breached by Requesting States. The respective agencies involved in the extradition process are sufficiently aware of the need to secure assurances in relevant cases and are taking sensible measures to plan ahead where certain assurances on specific areas are likely to be a regular feature in extradition requests from individual countries (e.g.. in relation to prison conditions).
7. However, the review also found that there was scope to improve on these arrangements, especially in the field of data sharing. Greater sharing of information on assurances, particularly where breaches or potential breaches have been identified, will increase the likelihood that future extradition requests to countries where such breaches have come to light will be placed under greater scrutiny by the courts, leading to increased protection for the rights of those subject to the extradition process. The following table sets out the principal findings from the review:

Obtaining Assurances
<ul style="list-style-type: none"> • Consideration of assurances is a matter for the court and they subject them to rigorous scrutiny
<ul style="list-style-type: none"> • Where appropriate the Government should be involved in obtaining assurances
<ul style="list-style-type: none"> • We have found no evidence to suggest that assurances are being breached on a regular basis
Monitoring Assurances: Role of the Courts
<ul style="list-style-type: none"> • It is open to the courts to seek or require further details in the assurance as to how the country concerned might demonstrate it was adhering to specific commitments
<ul style="list-style-type: none"> • Where breaches, or potential breaches, of assurances come to light, which may result in changes to the original conditions attached to an assurance, this information should be shared between all of the relevant agencies that are involved in the extradition process
<ul style="list-style-type: none"> • When considering the adequacy of an assurance in any particular case, the courts should place appropriate weight on any assurance previously obtained in extradition requests from the same requesting country
Monitoring Assurances: Role of Prosecutors
<ul style="list-style-type: none"> • Given legal constraints around their role there can be no formal role for prosecutors in proactively monitoring assurances post- extradition
<ul style="list-style-type: none"> • Nevertheless, in the course of representing a Requesting State in extradition proceedings, prosecutors can advise on the requirement to demonstrate objective verification (as in Othman) and seek instructions on how that State intends to demonstrate this for the

purpose of the assurance

- In relation to OPCAT (the Optional Protocol to the UN Convention Against Torture), prosecutors may wish to suggest use of the National Preventative Mechanism (NPM) in cases where the court considers an assurance is necessary
- The practice of the CPS to seek 'leading judgments' is helpful in expediting high volumes of similar claims in respect of a particular issue upon which numerous assurances are being sought
- The CPS (also Crown Office and PPSNI where relevant) should routinely share with the Home Office all details of extraditions (Part 1 and Part 2) that have taken place on the basis of an assurance

Monitoring Assurances: Role of Government and Consular Channels

- The Home Office should inform the FCO of British nationals extradited subject to assurances
- The FCO should feed back information of any breaches or potential breaches of assurances to the Home Office, and be willing to share specific information on human rights and the criminal justice systems in particular countries to assist the courts where an assurance is required
- In the case of foreign nationals extradited by the UK, the current arrangements could be improved. The Home Office should adopt a risk-based approach and make arrangements, subject to relevant legal obligations, to share, in a more systematic fashion, information on assurances with the country of the extradited person's nationality so that they may take steps to offer the relevant consular support
- Where breaches or potential breaches of assurances are identified, the courts should be informed of this by the Home Office, where it has been brought to its attention, so that any breach may be considered in the determination of the acceptance of future assurances from that country
- The Home Office should centrally collate details of assurances.

Monitoring Assurances: Role of the National Crime Agency

- There is little scope for NCA ILOs to become more routinely involved in the sharing of information on assurances

Monitoring Assurances: Role of Non-Government Agencies (or Organisations)

- The FCO's consular posts should take decisions about onward sharing of assurances with trusted NGO's, taking a risk-based approach to mitigate risk against breaches of assurances
- The FCO should explore whether NGOs could be included within a developed chain of information-sharing, in following up on and monitoring assurances

Obtaining Assurances

1. Although obtaining assurances in death penalty cases has a specific basis in legislation², this review does not examine assurances regarding the death penalty as these are comparatively easy to monitor and there are currently no grounds for believing that they are not being honoured. Instead the focus of this review is other types of assurances relating to human rights concerns, which are largely around prison conditions, and include:
 - Type of prison;
 - Size of prison cells;
 - Mental health facilities in prison;
 - Overcrowding; and
 - Generally unsanitary conditions
2. In these cases, where there are substantial grounds to believe that a person's human rights are at risk of being breached were extradition to be ordered, the Requesting State may be invited to provide an assurance which, if judged to be adequate, may be accepted as sufficient mitigation such that extradition could be ordered. The responsibility is on the Requesting State, assisted by the Crown Prosecution Service (CPS), to provide such an assurance. If the court is not satisfied with the assurance it will discharge the Requested Person on the grounds that extradition would not be compatible with his or her human rights, in accordance with its obligations under the Extradition Act 2003 ('the 2003 Act').
3. The Government can be involved in obtaining assurances. In the extradition case of Babar Ahmad and Others^{3,4}, the Home Office requested that the US Government give assurances in clear terms, not only that it would not seek the death penalty, but also that the applicants would not be prosecuted before a military commission, that they would not be designated as enemy combatants, and that they would be given the full panoply of rights and protections that would otherwise be provided to defendants facing similar charges before a US federal court. These specific assurances were duly provided by the US, and the European Court of Human Rights (ECtHR) and UK courts found that the assurances were sufficient to remove the risk of violation of the applicants' human rights, and that there was no reason to doubt that the assurances would be upheld⁵.
4. In the deportation case of *Othman*⁶, the ECtHR offered guidance on the general criteria upon which assurances should be assessed, and upon which our courts now assess assurances in extradition cases. The *Othman* criteria are set out at **Annex A**. The

² Section 94 of the Extradition Act 2003 prevents the Secretary of State from ordering extradition in cases where a person could be, will be, or has been sentenced to death unless an adequate, written assurance is received from the Requesting State

³ [Babar Ahmad and Others v The United Kingdom - 24027/07 \[2012\] ECHR 609 \(paragraphs 104-108\)](#)

⁴ [Hamza & Ors v Secretary of State for the Home Department \[2012\] EWHC 2736 \(Admin\)](#)

⁵ [Babar Ahmad & Ors v United Kingdom - 24027/07 \[2010\] ECHR 1067 \(6 July 2010\)](#)

⁶ [Othman \(Abu Qatada\) v The United Kingdom - 8139/09 \[2012\] ECHR 56](#)

Committee highlighted a number of examples in their report of this being applied and heard evidence from Mark Summers QC⁷ that the *Othman* criteria were being taken seriously in extradition cases. For example, in one (unreported) case, where again the Government was involved in obtaining the assurance, a UK national was sought by way of a European Arrest Warrant ('EAW') issued by another Member State. The Magistrates' Court looked closely at the prison conditions that the defendant was likely to face once extradited and concluded that, if extradited, there was a real risk he would be subject to a violation of his human rights as a result of the conditions in which he would be kept, specifically with regard to overcrowding, lack of personal space and poor facilities. The burden then fell to the authorities in the Requesting State to satisfy the court that such a violation would not, in fact, occur. In this case, a specific letter of assurance from the country concerned provided the necessary assurances to the courts as to the standards of hygiene, access to medical care and personal prison space that the defendant would receive. In the opinion of the District Judge, the assurance was found to be adequate pursuant to the *Othman* criteria and he was therefore satisfied that the defendant's human rights would not be violated on extradition.

5. Whether to accept assurances is clearly a matter for the court. However, there may sometimes be complex and sensitive issues which require State to State discussions in obtaining such an assurance. These discussions must remain wary of the risk of damaging effective extradition and wider bilateral relations. A role for Government therefore remains where an intervention can assist in explaining domestic processes and laws.

Mutual Trust

6. The UK's extradition arrangements are built upon a foundation of broad mutual trust of most other countries' judicial systems and, as the Committee acknowledged, there is a "presumption that a country with which the UK has extradition arrangements will not violate the human rights of a Requested Person". This approach is also based on the concept of comity with other nations. However, as the Committee also acknowledged, the extent of this presumption is rebuttable and will vary based on countries' human rights records and the international legal basis on which extradition is sought. Part 1 of the 2003 Act, which transposes the EAW Framework Decision⁸, puts mutual recognition at the centre of the principles by which the EAW operates in the UK.
7. In practice the courts take a similar starting point in terms of considering assurances in the context of the principles of mutual recognition. In the case referred to above in paragraph 4, for example, the District Judge found that "*my starting point in considering this challenge is to remind myself that [Member State], as a member of the Council of Europe is presumed to be willing and able to fulfil its obligations under the Convention and that threshold is a relatively high one. The evidence to rebut the presumption must be "clear, cogent and compelling" and have to be powerful*".

⁷ [Select Committee on Extradition Law - Revised Transcript \(22 October 2014\)](#)

⁸ [Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States \(2002/584/JHA\)](#)

8. In considering which countries may be relied upon to uphold assurances given in extradition cases, signatories to both the European Convention on Human Rights (ECHR) and the European Convention on Extradition (ECE) may also be presumed to offer reliable assurances which will be upheld. However, as mentioned above, this presumption may be challenged due to individual countries' or particular institutions' human rights records.
9. It is therefore clear that the reliance that can be placed on assurances, and the extent of any presumption regarding respect for human rights, will depend on a number of different factors (e.g. *Othman* criteria). However, in broad terms assurances can be initially categorised based on the particular international agreement underpinning the request for extradition (this is also reflected in how the Requesting States are designated under the 2003 Act):
 - European Arrest Warrants pursuant to the EAW Framework Decision, issued by EU Member States who are signatories to the ECHR;
 - Extradition requests under the ECE;
 - Countries with which the UK has long-standing and close ties; and
 - Others

The table at **Annex B** breaks down the number of incoming extradition requests to the UK into these categories over the last two years for which full figures are available, and these figures may give some indication of where assurances may be required.

10. The Committee stated that “there can be no confidence that assurances are not being breached”. However, this review disagrees, and finds the evidence provided to the Committee suggests that in the majority of cases: there is a strong level of mutual trust; that there is a clear presumption that human rights concerns are respected by the Requesting State; and, that assurances will be respected without the need for monitoring.
11. Nevertheless there have been occasions when the effectiveness of this presumption has been questioned, and the Committee raise a particular example in the case of *Wolkowicz*⁹. Mr Wolkowicz was extradited following receipt of assurances from Poland that his medical needs would be met whilst in detention if extradited. He has subsequently commenced proceedings through the ECtHR against Poland in relation to his treatment, arguing that it did not respect the assurance given. It should be noted that, at the time of compiling this review, there is no final decision on this matter so it is unknown whether or not the assurance given has been breached.
12. Conversely, this review looked closely at the extradition case of *Vernon & Ors*¹⁰. In this case Frazer Heesom was extradited to South Africa after an assurance was obtained by the CPS from the South African authorities. The assurance specified that Heesom would be held in a particular prison in Johannesburg. However, following extradition, Heesom requested that he serve his sentence at a different prison and provided an affidavit to that effect. The South African authorities considered this request and, in a move which can be considered a matter of good practice, sought the views of the Home Office who, after consulting the District

⁹ [Polish Judicial Authority v Wolkowicz \(Alias Del Ponti\) \[2013\] EWHC 102 \(Admin\)](#)

¹⁰ [Vernon & Ors v Republic of South Africa \[2014\] EWHC 4417 \(Admin\)](#)

Judge, advised they had no objection to the request being granted. The High Court and Heesom's solicitors were also notified.

Findings

- Consideration of assurances is a matter for the court and they subject them to rigorous scrutiny.
- Where appropriate the Government should be involved in obtaining assurances.
- We have found no evidence to suggest that assurances are being breached on a regular basis.

Monitoring Assurances

The Role of the Courts

13. This review looked at the current role of the courts in considering the extent to which an assurance itself could and should specify how it would be implemented, post-extradition. Indeed, the role of the courts in specifying how assurances should be followed up was a key recommendation of the Committee who concluded that “*greater consideration be given to including in assurances details of how they will be monitored. The Government and CPS should be particularly astute to request such details when they are seeking assurances*”. In her letter to the Committee of 13 January 2015, the Home Secretary noted Committee member Baroness Jay’s proposal that the UK courts should be responsible for monitoring assurances and this review considers this point further.
14. As noted above the *Othman* criteria are regularly applied by the extradition courts when determining whether assurances are adequate. One of the criteria applied is objective verification, viz., whether compliance with the assurance can be objectively verified through diplomatic and/or other channels including providing unfettered access to the Requested Person’s lawyer. Whilst those who gave evidence on assurances before the Committee were not unanimous in their views, there was evidence that the courts could ask for evidence of how assurances would be followed up, post-extradition (applying the eighth *Othman* criterion – see **Annex A**) and seek specific guarantees to that effect, should the courts deem it necessary.
15. It is entirely a matter for the courts as to whether the assurance itself is deemed sufficient, and in many cases there will be a presumption that the Requesting State will honour any guarantees or commitments given in the assurance. In their consideration of this issue, courts will consider whether, in line with the eighth of the *Othman* criteria, an assurance is capable of being objectively verified (see **Annex A**). However, where the defence challenges this presumption it is for the courts to determine whether further assurances from the issuing country would prove effective in satisfying the relevant concerns. Equally, the courts are open to consider whether further details in the assurance itself as to how the country concerned might demonstrate it was adhering to specific commitments.
16. Where breaches or potential breaches of assurances are identified and brought to the attention of the Government, as in *Vernon & Ors*, this should be brought to the attention of the courts. Anand Doobay (leading extradition lawyer and Baker Review panel member) told the Committee of there being “*a vicious circle*” whereby extraditions were continuing to take place to countries where assurances were not being honoured. This review found no evidence to support this claim. Nonetheless, the risk of this could be mitigated by greater information sharing, but also courts being wary of relying too heavily on assurances obtained in previous extradition requests and should consider each case, and the *Othman* criteria, on a case-by-case basis.

Findings

- It is open to the courts to seek or require further details in the assurance as to how the country concerned might demonstrate it was adhering to specific commitments.
- Where breaches, or potential breaches, of assurances come to light, which may result in changes to the original conditions attached to an assurance, this information should be shared between all of the relevant agencies that are involved in the extradition process.
- When considering the adequacy of an assurance in any particular case, the courts should place appropriate weight on any assurance previously obtained in extradition requests from the same requesting country.

Role of Prosecutors

17. This review notes the proactive work of the CPS in seeking 'leading judgments' in relation to extradition to EU Member States to provide courts with a generalised assurance on a particular area. These judgments draw conclusions from evidence on a particular human rights issue and set out expected standards of treatment for all those extradited to a particular Member State from the point at which the judgment is handed down. For example, following a number of case-specific assurances that were sought and subsequently provided by Romania in relation to prison conditions, as these had already proved to be sufficient in the eyes of the High Court, the CPS proactively sought a generalised assurance in this area. A leading judgment from the Divisional Court¹¹, which ruled upon the sufficiency of the minimum conditions in the generalised assurance which applies to all Romanian cases going forward, is considered to be extremely helpful in expediting high volumes of similar claims in respect of a particular issue upon which numerous assurances were being sought.
18. The CPS have also been proactive in securing an assurance with Hungary concerning prison conditions, which guarantees a set amount of personal space for any person extradited to Hungary under an EAW. In addition to this, the CPS sought an additional measure through the insertion into the assurance of a paragraph relating to monitoring. This came about through an awareness of the Optional Protocol to the UN Convention Against Torture (OPCAT)¹² which countries like Hungary have signed, ratified and implemented. As part of the implementation process, signatory countries have to establish a National Preventative Mechanism (NPM). In Hungary's case, this is their General Ombudsman and it is this body that has been tasked with ensuring compliance with the assurance. The CPS has yet to have this version of the assurance tested in the Divisional Court but expect this to occur later in 2016. To date, 80 countries have ratified OPCAT so the potential exists to use the NPM as a means to ensure compliance with assurances in countries that have implemented the Treaty.

¹¹ [Blaj & Ors v Court of Alesd, Romania & Ors \[2015\] EWHC 1710](#)

¹² [Optional Protocol to the UN Convention Against Torture \(OPCAT\)](#)

19. This proactive incorporation of a monitoring 'clause' in general assurances, sought from countries where this is a possibility, is to be welcomed, whilst it is recognised that such an approach may not be possible in every instance due to the specifics of individual cases. Nevertheless, it may be possible for prosecutors to be more proactive in securing details from the Requesting State about how assurances are to be monitored and verified.
20. However, contrary to the views of the Committee this review does not see a greater or more formalised role for the prosecutor in proactively monitoring assurances are post-extradition, given they cannot go beyond the point at which the law allows (the functions of the CPS are limited by statute) and they are bound by the requirements of the court in obtaining the necessary assurances in acting for the issuing / Requesting State.
21. Given the implications for bilateral relations, the Home Office has not sought to routinely publish details of assurances that have been obtained through diplomatic or other channels, but for the purposes of this review it is worth noting that in the interests of transparency, letters of assurance provided by other countries are being shared by the CPS with the Crown Office and Procurator Fiscal's Office, and Public Prosecution Service for Northern Ireland (PPSNI) to enable them to test similar assurances in the Scottish courts and in Northern Ireland. It is recommended that prosecutors should also share details of all cases (Part 1 and Part 2) that require assurances with the Home Office, so that a central record can be made to facilitate future work in this area.

Findings

- Given legal constraints around their role there can be no formal role for prosecutors in proactively monitoring assurances post-extradition.
- Nevertheless, in the course of representing a Requesting State in extradition proceedings, prosecutors can advise on the requirement to demonstrate objective verification (as in Othman) and seek instructions on how that State intends to demonstrate this for the purpose of the assurance.
- In relation to OPCAT (the Optional Protocol to the UN Convention Against Torture), prosecutors may wish to suggest use of the National Preventative Mechanism (NPM) in cases where the court considers an assurance is necessary.
- The practice of the CPS to seek 'leading judgments' is helpful in expediting high volumes of similar claims in respect of a particular issue upon which numerous assurances are being sought.
- The CPS (also Crown Office and PPSNI where relevant) should routinely share with the Home Office all details of extraditions (Part 1 and Part 2) that have taken place on the basis of an assurance

Role of Government and Consular Channels

22. The FCO told the Committee that they have a general consular commitment to safeguard the welfare of British nationals in prisons overseas; a protection to which all British prisoners abroad are afforded and which can take many forms. Much depends on the country concerned, and given that many assurances in extradition cases are in respect of prison conditions, where the FCO consider prison standards to be broadly comparable to, or exceed those in the UK, visits are not undertaken regularly (for example, in Western Europe, North America, and Australia). The evidence set out that, in places where prison conditions can be poor, or when prisoners are assessed by staff as vulnerable, consular officers do visit regularly and can take steps to improve a situation where there are concerns. This might include lobbying the authorities for improvements.
23. The FCO play a vital role in safeguarding the welfare of British nationals abroad. This review finds that, to help the FCO do more in proactively following up on the welfare of British nationals who have been extradited and with respect to the specific details of any assurance, a greater emphasis on sharing relevant data with consular staff should be implemented.
24. In the case of foreign nationals extradited from the UK to foreign jurisdictions, the FCO have had a limited role, given that their consular responsibilities are solely to British nationals. In practice, where the country to which the person is being extradited is not that person's nation state, the National Crime Agency (NCA) (in EAW/Part 1 cases) and the Home Office (in Part 2 cases) will inform the Requesting State of any third country interest (i.e. the country of nationality of the Requested Person) to enable them to make the necessary arrangements for receiving the person. No specific arrangements are made by the Home Office if an assurance has been provided in a specific case to enable any organisation to follow up on this. The current lack of process to share information is a shortcoming that should be resolved. However, any approach will need to involve a risk assessment of the potential harm if information about the individual extradited is passed to his nation state. For example, Mr X is a national of Country A. He is extradited from the UK to Country B. He may be at risk of mistreatment or death if details of the offending are passed back to Country A and he is later deported back there.
25. The Committee suggested that the routine publication of assurances would aid transparency. However, this review does not consider that the routine publication of assurances would enhance arrangements and considers such publication could damage bilateral relations in some cases and have the unintended consequence of potentially deterring other territories from making extradition requests, resulting in wanted criminals remaining free from being apprehended in the UK.
26. The role of the Home Office and FCO in following up on assurances is an area where potential improvements in the current arrangements have been identified. In particular, in the case of British nationals, this review finds that the Home Office should routinely inform the FCO of all cases where British nationals are being extradited on the basis of an assurance in order to enable consular staff to proactively monitor the situation.

27. This review recognises the necessary difference in the FCO's approach between following up on the treatment of British nationals extradited to other countries compared with foreign nationals. However, there is scope for closer co-operation in the case of nationals of third countries with which the UK has good relations (e.g. sharing information with Brazilian authorities where a Brazilian national is extradited from the UK to the USA on the basis of an assurance, so as to enable effective monitoring by Brazilian consular staff with a right of access to the individual). Where diplomatic relations are more complicated, it may be possible to use NGOs to monitor assurances (their role is expanded upon below). Whilst it is not the responsibility of the FCO to routinely monitor foreign nationals abroad, it is in the UK's wider interest to ensure assurances given in respect of anyone extradited by our courts are effective and can be relied upon.
28. This review finds that there is more that the Home Office and FCO should do to ensure that in the case of foreign nationals extradited from the UK, the relevant country is made aware of their own national's situation in respect of an assurance given to the UK court, subject to the need to conduct a risk assessment as outlined above. This would enable that country to offer consular support, in the same way that the UK would offer support for British nationals.
29. The FCO plays an important role by reporting regularly on the human rights situation and law enforcement and criminal justice systems in the countries where they have a presence. It is likely that greater information sharing between the FCO and prosecutors, who in turn can notify the courts, will help mitigate the risk against breaches of assurances in extradition cases. Where specific assurances are provided to the courts and where extradition is ordered on the basis of that assurance, better information sharing with consular officials with a developed understanding of the situation in the country concerned can ensure those extradited do not suffer harm and that the extradition system remains effective.
30. Similarly, the FCO can share information on the general human rights and criminal justice situation in a particular country and, where an assurance is breached in a particular case, this will mean that the courts are better informed when it comes to decide whether and in what form to accept assurances in future cases.

Findings

- The Home Office should inform the FCO of British nationals extradited subject to assurances.
- The FCO should feed back information of any breaches or potential breaches of assurances to the Home Office, and be willing to share specific information on human rights and criminal justice systems in particular countries to assist the courts where an assurance is required.
- In the case of foreign nationals extradited by the UK, the current arrangements could be improved. The Home Office should adopt a risk-based approach and make arrangements, subject to relevant legal obligations, to share, in a more systematic fashion, information on assurances with the country of the extradited person's nationality, so that they may take steps to offer the relevant consular support.
- Where breaches or potential breaches of assurances are identified, the courts should

be informed of this by the Home Office, where it has been brought to its attention, so that any breach may be considered in the determination of the acceptance of future assurances from that country.

- The Home Office should centrally collate details of assurances.

Role of the National Crime Agency

31. NCA International Liaison Officers (ILOs) are part of an overseas network responsible for leading, coordinating and supporting the NCA's investigations into cross-border serious organised crime. The Home Office has previously involved the NCA in following up on a particular extradition case where assurances had been given. The Home Office communicated with the NCA Liaison Officer who in turn raised specific queries as to the person's welfare, where a possible breach of the assurance was being explored.
32. This review notes the FCO's evidence to the Committee which suggested that the role of the NCA could be expanded within a more developed information-sharing process. Whilst the NCA's involvement in the case referred to above proved useful in establishing the position, this review concludes there is no scope for NCA ILOs to become more routinely involved in the sharing of information on assurances, given it could compromise their ability to work with host. It would run the risk of appearing to the host nation that the NCA, and hence the UK, was attempting to evaluate and comment on their internal domestic processes. The role of the NCA is primarily about law enforcement and they would not have any advantages over the FCO in terms of access. Nevertheless, we would expect the NCA to share any information concerning breaches of assurances with the FCO if it were to come into their possession.

Findings

- There is little scope for NCA ILOs to become more routinely involved in the sharing of information on assurances

Role of Non-Government Agencies (or Organisations)

33. In considering the role of NGOs in monitoring assurances, this review has considered how they are utilised in DWA cases. Prior to deportation, the Special Immigration Appeals Commission (SIAC) applies the following test¹³ when considering whether assurances can remove a real risk of ill-treatment on return:
- i. the terms of the assurance must be such that, if they are fulfilled, the person returned will not be subjected to treatment contrary to Articles 2 or 3;
 - ii. the assurances must be given in good faith;
 - iii. there must be a sound objective basis for believing that the assurances will be fulfilled; and

¹³ [BB v SSHD, 5 December 2006, para 5](#)

- iv. fulfilment of the assurances must be capable of being verified.
34. The Government has entered into a number of bilateral arrangements in respect of DWA cases, through Memoranda of Understanding or an Exchange of Letters. In some countries, these arrangements also allow for the role of an NGO in verifying compliance with the assurance. The Government is able to fund NGO activity in this field and training is provided on how best to effectively follow up on assurances that have been provided under these arrangements.
35. On a more general note away from DWA procedures, this review consulted with NGOs to seek their views on the issue of assurances. One of these NGOs, Prisoners Abroad¹⁴, works closely with the FCO and the National Offender Management Service (NOMS), helping British nationals to receive financial and other support whilst in detention. They have had experience of being contacted by British prisoners overseas when assurances have not been met, and these concerns have subsequently been raised with the FCO.
36. Despite this potential for NGOs to be involved in the monitoring of assurances for British nationals who are extradited overseas (and third country nationals where that is a possibility), concerns about resourcing and right of access to prisoners would be obstacles to this in practice. Moreover, from discussions with them there exists a sense that NGOs do not wish to be undertaking what they see as the work of Government. Whilst some NGOs may be willing to undertake this work, this cannot be taken as a blanket consensus, as NGOs would need to amend their remit radically and seek additional funding to take on this role.
37. This review therefore finds no evidence to suggest that NGOs can currently play a significant role in following up on assurances in extradition cases. However, a greater role should be explored by the FCO to establish NGOs within a more developed chain of information-sharing, to improve transparency in following up on assurances.

Findings

- The FCO's consular posts should take decisions about onward sharing of assurances with trusted NGOs, taking a risk-based approach to mitigate risk against breaches of assurances.
- The FCO should explore whether NGOs could be included within a developed chain of information-sharing, in following up on and monitoring assurances.

¹⁴ www.prisonersabroad.org.uk

ANNEX A - Othman Criteria

In 2012, Omar Othman (otherwise known as Abu Qatada) challenged his deportation to Jordan, where he had been convicted in his absence on various terrorism charges, in the European Court of Human Rights. The court found there would be a violation of his Article 6 rights, given the real risk of the admission of evidence obtained by torture at his retrial in Jordan, reflecting the international consensus that the use of evidence obtained through torture made a fair trial impossible. Following the ECtHR's judgement, the Government was able to secure his removal with the use of assurances, obtained pursuant to a Mutual Legal Assistance Treaty, that such evidence would not be admitted.

The ECtHR gave guidance on factors relevant to assessing the quality of and weight to be given to assurances, noting it was said that only in rare cases would the general situation in a country mean no weight at all could be given to such assurances:

- (1) whether the terms of the assurances have been disclosed to the court;
- (2) whether the assurances are specific or are general and vague;
- (3) who has given the assurances and whether that person can bind the receiving state;
- (4) if the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them;
- (5) whether the assurances concern treatment which is legal or illegal in the receiving state;
- (6) whether they have been given by a contracting state to the ECHR;
- (7) the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances;
- (8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring schemes, including providing unfettered access to the applicant's lawyers;
- (9) whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;
- (10) whether the applicant has previously been ill-treated by the receiving state; and
- (11) whether the reliability of the assurances has been examined by the domestic courts of the sending state.

These criteria confirmed the approach taken by the House of Lords two years previously in the case of *MT (Algeria) v SSHD*.¹⁵

¹⁵ *MT(Algeria) v SSHD* (2010) 2 AC at 22

ANNEX B – EAWs / Extradition Requests

Requests from Part 1 (EAW) Countries for 2013 / 2014

2013	2014	Total
5,522	13,460	18,982

Requests from Signatories to the ECE for 2013 / 2014

2013	2014	Total
37	28	65

Requests from Other Trusted Countries for 2013 / 2014

2013	2014	Total
9	12	21

Requests from Other Part 2 Countries for 2013 / 2014

2013	2014	Total
27	36	63