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Our Ref.:

Your Ref.:

Date:

L/JC/JM/10386/12(JM)

12 June 2012

BY HAND

Department of Justice,
2nd Floor, High Block
Queensway Government Offices,
66 Queensway,
Hong Kong

Dear Sirs,

Re : **Claim on behalf of Mr Sami Al-Saadi against HKSARG**

We have been instructed by Mr. Sami Al-Saadi and his family members ("our clients") to bring a claim for damages against the Government of the Hong Kong Special Administrative Region ("HKSARG") for its complicity in collaboration with the British, United States and Libyan secret services in the unlawful detention and inhuman and degrading treatment in Hong Kong in or about March 2004; the extraordinary rendition of our clients from Hong Kong to Tripoli, Libya in or about March 2004; and the torture, inhuman and degrading treatment, batteries and assaults our clients sustained during the flight; the subsequent unlawful detention, torture, inhuman and degrading treatment, batteries and assaults of our clients perpetrated by the Libyan authorities while they were detained in Tripoli; and for their personal injuries and consequential losses suffered by our clients arising thereof.

The particulars of the Claimants are as follows :-

1.

Name: Mr Sami Al-Saadi (also spelled "Sami Assaadi") (aka "Abu Munthir/Abu Mundir Assaadi", "Said Mostafa Assaadi", "Yusuf Azziwani" or "Hisham Mohammed")
DOB: 21st March 1966
Address: Uthamn Ibn Affan Street, Tripoli, Libya

2.

Name: Ms Khadidja Al-Saadi
DOB: 26th November 1991



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3.

Name: Mr Mostapha Al-Saadi
DOB: 20th April 1993

4.

Name: Mr Anes Al-Saadi (by his father and next friend, Sami Al-Saadi)
DOB: 5th January 1995

5.

Name: Ms Arowa Al-Saadi (by his father and next friend, Sami Al-Saadi)
DOB: 18th January 1998

6.

Name: Ms Karima Ait Baaziz
DOB: 9th October 1971

Background

We outline below the circumstances giving rise to the claim based on the evidence that we have thus far obtained.

Detention in Hong Kong

Mr Al-Saadi is a Libyan citizen and former resident of the UK. He fled Libya in 1988 following persecution by Colonel Gaddafi's regime. In 1993, he went to the UK as an asylum seeker and he in 1994 was granted indefinite leave to remain. He subsequently left the UK after fears for his safety and eventually moved with his family to Guangzhou in Mainland China.

In around early 2004, Mr Al-Saadi decided that he and his family were no longer safe in Guangzhou and set out to seek asylum in Norway. Mr Al-Saadi travelled with his wife, Ms Baaziz and four children (two daughters Khadidja and Arowa and two sons Mostapha and Anes), all of whom were minors, via Hong Kong and Beijing. All were travelling on false passports since as an exiled Libyan opponent of Colonel Gaddafi's regime, it was not possible for Mr Al Saadi to obtain a Libyan passport.

In Beijing the family's passports were identified as being false and the family were sent back to Hong Kong, arriving there on or about 15th March 2004. Upon arrival, Mr Al-Saadi and his family were all immediately arrested and detained by the authorities



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of the Hong Kong Special Administrative Region.

The family were detained overnight in two cells in a prison, which they believed to be in or near the airport : Ms. Baaziz, with both daughters and Mr. Al-Saadi with both sons. Both cells were tiny and dirty – barely big enough to fit the bunk beds in each one. Ms. Baaziz slept in a bed with her younger daughter, Arowa, while Khadidja slept in the top bunk. They were provided with rice and mushrooms to eat.

The following day the whole family were taken to a “security room” within Hong Kong airport, where they remained for approximately 13 days. They were kept under constant surveillance by a team of about 7-10 guards at any one time. They were not allowed to wash or change their clothes throughout this period. They were escorted by two guards each when they went to the toilet and they were accompanied by a guard inside the toilet cubicle, which they found humiliating. Arowa, the youngest child, who was then just 6 years old, found it particularly difficult to go to the toilet in such circumstances. The children were provided with thin mattresses on which to sleep, and were given dirty cover sheets. Ms. Baaziz had to do with trying to sleep on a small couch. They were exhausted, anxious, and dirty.

During their detention in Hong Kong, Ms. Baaziz was interrogated separately from her husband by people she assumed to be from the Hong Kong authorities. She was questioned in English, without an interpreter, about their previous address in the UK, where they had shopped when they lived there, and the details about their time in the UK. She was also asked whether she knew various named individuals.

After 7-10 days the family were told that they were going to be returned to China. The entire family was then taken under armed guard, to board a commercial airline flight, on which other passengers were already seated. Armed guards came aboard the flight with them. They were distressed by the manner in which they were made to board the flight, which clearly drew attention to them. Khadidja reports feeling that the other passengers would think that they were terrorists, given the manner in which they were being treated.

Then, after being seated on the plane for about 30 minutes, the whole family were ordered off the plane, under armed guard, and returned to the “security room,” in which they had been previously detained. They remained under armed guard in this room for another three days or so again, they were not allowed to wash and were provided with inadequate sleeping arrangements. They were distressed, exhausted and fearful about their fate.



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Rendition from Hong Kong to Libya (March 2004)

On or about 28th March 2004, Mr. Al-Saadi and his family were again taken from the security room, under armed guard, to board an airline flight. It has since been ascertained that this plane was a chartered flight operated by Egypt Air. The aircraft was a Boeing 777-200 with flight numbers MSR3864 & MSR3865. The four children were made to board the flight first, ahead of their parents. The lights in the plane were switched off and it was devoid of passengers, creating a sinister atmosphere. The aircraft and crew appeared to be Egyptian. A Libyan woman approached the children and they saw other Libyan agents walk up and down the aisle.

Khadidja (then 12 years old) and her sister Arowa (then 6 years old) were made to sit on either side of the Libyan woman, who told the girls that she had to hear everything they said to each other. Mostapha (then 11 years old) and his brother Anes (then 9 years old) were made to sit some rows in front; they were prevented from playing together.

In the virtual darkness, the aircraft started taxiing. The children could not see if their parents had boarded the flight and were petrified that they were about to take off without them. Khadidja was terrified that there had been a case of mistaken identity; that they had been separated from their parents and wrongly assumed to be Egyptian. She feared that they would be tortured if sent to Egypt. She cried out as the plane started moving and tried to run towards the front of the aircraft, but was prevented from doing so.

Mostapha was terrified that they were going to be thrown off the plane mid-air and be killed. His heart would pound whenever the Libyan woman agent came over to speak to him and his brother. Anes had barely been without one of his parents at any time in his life up until that point. During the flight, Anes and Mostapha were separated, after guards apparently thought they were speaking in sign language.

Sometime after Mostapha and Anes had been separated, a male guard told Mostapha that their parents were on the flight, but would not allow him to see them, as a result of which Mostapha did not fully believe him.

The children were escorted by a Libyan guard whenever they went to the toilet, which, again, they were not allowed to use in privacy.



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On being forced on to the rendition flight, Ms. Baaziz was roughly cuffed with her hands behind her back. She was distressed and frightened and did not see whether her children had also been made to board the aircraft. Ms. Baaziz was made to sit toward the front of the plane, although she was initially kept some rows back from her husband. A curtain separated Ms. Baaziz and Mr. Al-Saadi from their children. On recognizing the Libyan dialect of the security agents on board the flight, Ms. Baaziz immediately knew they were being rendered to Libya and began screaming hysterically. Having spent the previous decade trying to escape the clutches of the Gaddafi regime with her family, she feared that they – or at least her husband Mr. Al-Saadi – would be executed on their arrival. Along with the Libyan intelligence officials, she saw that the plane had an Egyptian crew. Ms. Baaziz remained in an extremely distressed state throughout the 17 hour journey. She was eventually allowed to sit closer to her husband, who himself had lost consciousness part-way through the flight.

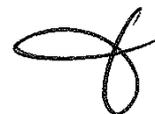
Shortly before the flight landed in Tripoli, the children were told to go see their mother at the front of the plane as she was very ill and might be dying. They were also told to say goodbye to their father, implying that he was also about to die. Distraught, the children made their way forward. Khadidja recalls that she had to drag herself forward, clutching on to the seats, while crying. She saw a Libyan agent laughing at her clear distress. When the children reached their mother she was still crying hysterically, saying they were being flown to their deaths. On seeing their father, handcuffed to his seat, with a needle in his arm, looking gravely ill and weak, the children were terrified. Khadidja passed out.

Shortly afterwards, the flight landed at a military airport in Tripoli, likely to have been the international military airport at Mitiga.

Arrival and Detention in Libya (March to June 2004)

Before being made to descend from the aircraft, Ms Baaziz and her husband were hooded with black hoods and blindfolded. They were then made to descend from the aircraft, while cuffed and with zipties around their ankles, trying not to fall. On being hooded, Ms. Baaziz believed that she and Mr. Al-Saadi were about to be executed. She worried deeply about the fate of their children if she and her husband were killed.

The children were also escorted off the flight by the security agents. Mostapha and Anes were blindfolded and put in a vehicle without either of their parents. Khadidja and Arowa were put in a vehicle with their hooded mother. The female Libyan agent from



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the flight sat in the back of the vehicle with them, while a male agent sat in the front, mockingly twirling his pistol. They could not see where their father or brothers were being taken.

The family were then driven, in the separate vehicles, to Tajoura prison. Mostapha and Anes remained blindfolded on reaching the prison. They could hear dogs barking aggressively and people screaming. Mostapha was terrified that they were to be thrown to the dogs to be eaten alive, believing that was happening to those he could hear screaming.

At Tajoura, Mr. Al Saadi was met by Moussa Koussa, the head of the Libyan intelligence agency. Meanwhile, Ms. Baaziz and her children were taken to the place in prison which became their home for the next two and a half months. Moussa Koussa came to visit them that first day and lied to them that they would be home that evening.

Ms. Baaziz was taken for interrogation on the day of their arrival in Libya. She was questioned in detail about her life, including her time in Britain. She was also questioned about other Libyans who lived in the UK and who used to visit her and Mr. Al-Saadi while they lived there. Ms Baaziz continued to be interrogated at intervals during her detention. She believed that the Libyan security officials were interrogating her in part to check the veracity of her husband's answers. On one occasion she told the interrogators that she had nothing more to tell them, following which they stopped Mr. Al-Saadi's visits to the family. In response, Ms Baaziz and the children went on a hunger strike for 2-3 days, and Mr. Al-Saadi was eventually allowed to visit them again.

At Tajoura, the family's every move was monitored. They were placed under constant guard and the atmosphere was very tense, which they all found very difficult. They had rare visits from Mr. Al-Saadi, who had been told by Moussa Koussa that the children had to be brainwashed before they could be reintegrated into society and that was why they were being kept in detention. The children remained deeply worried about Mr. Al-Saadi's fate.

All four children and their mother were made to sleep in the same small room throughout their detention. There were only two beds; Mostapha and Anes slept on the floor on spare cover sheets; Khadidja slept in one of the beds and Arowa and Ms. Baaziz in the other. The children would also be questioned by the guards from time to time, for example, about their lives outside Libya and whether they knew some of their father's friends. There was nothing for the children to do all day, other than read Gaddafi's propaganda material: they were bored, frustrated and anxious.



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Finally, after approximately two and a half months of detention, Ms. Baaziz and the four children were released. On their release they had no idea when, or whether, they would see Mr. Al-Saadi again. They were collected by members of Mr. Al-Saadi's family, who were strangers to them, but who cared for them on their release and helped them to adjust to life in Libya.

Mr. Al-Saadi was held in Tajoura for approximately three years, from 2004 to the end of 2007. For much of that time, he was held in isolation and was subjected to a regime of intensive interrogation and torture by Libyan security agents. On at least a dozen occasions, he was severely beaten by agents who kicked, punched and beat him with batons or flogged him with a whip. He was also subjected to electric shocks to various parts of his body, which caused him extreme pain. He was denied proper medical treatment for his diabetes.

On at least two occasions during his detention, he was visited by Moussa Koussa, who informed him that the Libyan security services were working closely with the US and UK Security Services.

During a number of his interrogations, Mr. Al-Saadi was asked questions about and shown photographs of Libyans based in the UK. On one occasion, he was visited by two agents of the UK Security Services, who questioned him. A Libyan interrogator was present throughout this meeting and Mr. Al-Saadi did not feel able to inform the UK agents of his maltreatment. It had been made clear to him that if he informed the British agents of his maltreatment, he would suffer further and harsher mistreatment.

While he was held in Tajoura, Mr. Al-Saadi was also visited twice by agents of the US Central Intelligence Agency (CIA), who interrogated him and accused him of having links to the Al-Qaeda terrorist organization.

In around December 2007, Mr. Al-Saadi was transferred from Tajoura to Abu Salim prison, where he was held until March 2010. For approximately fourteen months of his detention at Abu Salim, he was held in a tiny cell in virtually complete isolation. During this period, he was again subjected to interrogations by the Libyan authorities, frequently accompanied by severe beatings. As a result of this treatment he eventually made false confessions to a variety of matters with which he in fact had no involvement.

In 2009, Mr. Al-Saadi was charged with a range of crimes, subjected to a blatantly unfair purported trial, and sentenced to death. He remained in prison on death row until March 2010, when he was released by the Libyan authorities.



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Release, the 2011 Revolution and Mostapha's Detention

Following their release, Ms. Baaziz became particularly worried about their youngest son, Anes. He would say almost nothing, easily lose his temper, and appear to overreact to situations.

Ms. Baaziz and the children continued to struggle with daily life as best they could while Mr. Al-Saadi's prolonged detention continued. They were allowed sporadic visits to Mr. Al-Saadi, although they did not see him for over a year after he was transferred to Abu Salim prison.

The family's passports had been confiscated on their arrest and were never returned to them. In consequence, after their release from prison, they were effectively trapped in Libya.

Mr. Al-Saadi was eventually released from detention in March 2010 and the family were reunited. However a condition of Mr. Al-Saadi's release was that he was not allowed to leave Libya, so the family were still unable to leave.

When the revolution against the Gaddafi regime started in February 2011, Mr. Al-Saadi was approached by Saif Al Islam Gaddafi, one of Colonel Gaddafi's sons, and asked to speak out on television in favour of Colonel Gaddafi, in an attempt to quell the revolution. Mr. Al-Saadi refused. As a result, the family felt in danger and were compelled to leave their home, moving to another area of Tripoli. Their home was subsequently ransacked by mercenaries.

Despite moving, Mr. Al-Saadi and his family continued to be monitored by the Gaddafi regime. On or about 27 April 2011, Mr. Al-Saadi and Mostapha were seized by Gaddafi forces when driving together from their home.

Mostapha, who like his father suffers from Type 1 diabetes, was bundled into a car, between two of Gaddafi's soldiers. His head was covered and pushed between his legs. He was then badly beaten, including with the butt of a gun, before being told that he was going to be executed. Mostapha was then driven a short distance, dragged out of the car and made to kneel on the ground with his hands on his head. He was told that was going to be shot dead. Utterly terrified and helpless, Mostapha said the Shahada prayer (the Muslim prayer to be said just before death). However, before the trigger was pulled, he heard his captors being ordered to take him to internal security instead.



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Mostapha was then driven to the internal security prison in Deraiby, Tripoli. On finding his insulin and needle on him, the guards accused him of being a drug addict and beat him up again. His eyes were still covered at this stage and he could not see a thing. He then became aware that his father was in the same cell as him. Although his eyes were later uncovered, he could still barely see in the cell, as there were no lights and it was pitch black.

Although Mostapha's insulin was returned to him, it was kept by those detaining him in a freezer, so he was unable to use it. Further, as he did not have a meter with him to measure his blood sugar, he was scared to eat in case he became hyperglycaemic. As his detention continued, he became weak and dizzy and feared that he would fall into a coma.

After approximately 15 days of being held in the same cell, Mr. Al-Saadi was removed and not returned. Thereafter, Mostapha was beaten up each day for the remainder of his time in detention. He was beaten particularly severely on the day of his release, 20 May 2011.

Following Mostapha's release and Mr. Al-Saadi's continued disappearance, the family felt that life in Libya had become too dangerous for them and that they had no choice but to try to escape. In about June 2011, after a terrifying failed attempt, Ms. Baaziz and the four children managed to flee Libya at night in a large rubber dinghy from the coastal town of Zuwara, reaching Tunisia about 7 hours later. They travelled on to Djerba, where they stayed for about two months.

Towards the end of August 2011, following the fall of Tripoli, they suddenly received a call from Mr. Al-Saadi, who told them he had been released from Abu Salim prison, where he had been transferred. Mr. Al-Saadi arrived in Djerba a few days later, but only stayed with the family for one night, before heading on to Tunis for medical treatment, as he was seriously ill. Ms. Baaziz and the children returned to Tripoli at the end of August 2011. Mr. Al-Saadi joined them about a fortnight later and they began the process of starting to rebuild their lives.

In addition to our clients' own testimony, documents held by the Libyan security services which have come to light subsequent to the fall of Colonel Gaddafi's regime provide evidence of the complicity of the HKSARG in facilitating our clients' rendition to Libya. We attach copies of a number of these documents and highlight particularly relevant extracts below :-



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- Correspondence from the British Security Service to the Libyan Security Service dated 10th June 2003 forwarding intelligence and personal details of a number of Libyan Islamists living in the UK, and noting one member was a 'close associate of Sami Assadi, who was at the time the leader of LIFG in the UK.'
- An Interpol arrest request sent from Interpol Tripoli to Interpol Hong Kong.
- A document of United States origin which shows that discussion had taken place between the United States and the HKSARG to coordinate an extraordinary rendition operation relating to Mr. Al-Saadi.
- Subsequent correspondence between the Libyan security services and the security services in Hong Kong discussing the details and requirements for Mr. Al-Saadi's rendition.

Legal Claim

It is our clients' case that the actions and omissions outlined above on the part of the HKSARG, acting through their officers, servants and/or agents amounted to:

- i) Complicity to torture, conspiracy to injure and trespass to the person:

Our clients allege that the HKSARG, their servants or agents assisted, encouraged, acquiesced in, and were otherwise unlawfully complicit in their unlawful rendition to Libya and in the torture, inhuman and degrading treatment, batteries and assaults inflicted upon them by the Libyan authorities.

For the avoidance of doubt, our clients allege that the HKSARG, their servants or agents were further complicit in their prolonged unlawful detention and treatment, by aiding both the British and the Libyan authorities with resources to be used in effecting their extraordinary rendition.

- ii) Misfeasance in public office:

The HKSARG, their servants or agents were acting in purported exercise of their powers as public officers. Our clients allege that their knowledge or at least reckless indifference to the injury caused to our clients by the conduct of the HKSARG, and their



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use of statutory powers of detention and removal for an unlawful collateral purpose, namely a rendition for the purpose of illegal detention and torture, amount to misfeasance in public office.

iii) Negligence:

If it is alleged by the HKSARG that they are not in law vicariously liable for all and any of the intentional torts described above, then our clients will assert that there were negligent omissions on behalf of the HKSARG in failing to prevent the passing of information and assistance in respect of Mr. Al-Saadi to the Libyan and/or US authorities where it should have been apparent that our clients faced a real risk of unlawful treatment as a consequence.

As a result of the abovementioned unlawful acts and omissions, our clients have suffered personal injuries and consequential losses, further details of which will be provided in due course.

Without prejudice to any arguments on limitation which may subsequently be raised by any party to the anticipated proceedings, please confirm within 14 days whether your clients agree to a limitation holiday applying to Mr. Al-Saadi's potential claims as outlined above, failing which we are instructed to issue proceedings and/or application for pre-action disclosure in respect of the same without further notice.

Should the HKSARG deny liability in this matter, we expect you to provide us with copies of the following documents which are or have been within your clients' control :

- All communications (including attachments) sent from the HKSARG and/or their servants or agents to the former Libyan government/authorities and/or their servants or agents, pertaining to our clients;
- All communications (including attachments) sent from the HKSARG and/or their servants or agents to the US authorities and/or their servants or agents, pertaining to our clients;
- All communications (including attachments) sent from the HKSARG and/or their servants or agents to the authorities of the United Kingdom of Great Britain and Northern Ireland Government and/or their servants or agents pertaining to our clients;



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- All HKSARG documents relating to the rendition of Mr. Al-Saadi and his family.

Our clients reserve the right to draw this letter to the attention of the Court on any subsequent application for pre-action disclosure or generally on the issue of costs.

We look forward to your prompt acknowledgement of this letter.

Yours faithfully,



Ho, Tse, Wai & Partners.

Encl.