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Your Ref:

Our Ref: **JB/RS/Madni**

Date: **13th July 2009**

By Fax & Post: 7008 2144

(1) Rt Hon David Miliband MP
Secretary of State for Foreign & Commonwealth Affairs

(2) Her Majesty's Commissioner for the British Indian
Ocean Territory

Foreign & Commonwealth Office
King Charles Street
London
SW1A 2AH

Dear Sirs,

Mr Mohammed Saad Iqbal Madni – Pre Action Protocol Letter before Claim

Our client is a Pakistani national. He was detained in Jakarta on 9 January 2002, handed over to the US government officials and subjected to 'extraordinarily rendition' to Cairo, Egypt where he was held incommunicado and tortured.

Mr Madni believes, and evidence strongly supports that belief, that he was rendered via Diego Garcia, part of the British Indian Ocean Territory. Mr Madni then remained in Cairo for some three months, before being transported to the United States Airforce Base in Bagram, Afghanistan, in April 2002, from where, almost a year later, he was taken to Guantánamo Bay, Cuba. In both locations, he was subjected to further torture and inhuman and degrading treatment. Mr Madni was released from Guantánamo Bay on 31 August 2008.

Complicity in torture

United States officials were complicit in Mr Madni's torture. In summary:

(1) US personnel carried out Mr Madni's rendition from Indonesia to Egypt on 10th/11th January 2002. They transported him via Diego Garcia, using a CIA owned Gulfstream V registered by the US Federal Aviation Authority as N379P.

(2) US personnel were complicit in Mr Madni's unlawful interrogation and detention in Egypt. In particular, four US personnel were present at his

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interrogations on 11th/12th January 2002 where he was given high voltage electric shocks to his body and was denied medicine for his bleeding. Those personnel actively participated in his interrogation by supplying information and questions for him to his Egyptian interrogators.

- (3) US personnel were directly responsible for Mr Madni's unlawful rendition to and detention in Afghanistan and Guantánamo Bay. On 11 April 2002, Mr Madni was handed over by the Egyptian authorities to US personnel and flown to the US Airforce Base in Bagram, Afghanistan where he was beaten, tortured and kept in solitary confinement. On 22 March 2003, Mr Madni, still in US custody, was then flown to Guantánamo Bay where he was subjected to a regime of sleep deprivation known as the "frequent flyer programme" amounting to cruel, inhuman and degrading treatment. He was also interrogated by a range of personnel, including, we understand, one UK national in April 2003.

Diego Garcia

US torture flights and detentions involving Diego Garcia were first raised publicly in an open letter from Human Rights Watch to then Prime Minister, Tony Blair on 28 December 2002. Human Rights Watch drew the Government's attention to:

"press reports in the United States that US forces are holding and interrogating suspected al-Qaeda detainees at a US operated facility on the island of Diego Garcia...The allegations...if true, would place the United States in violation of some of the most fundamental prohibitions of international human rights and humanitarian law...the treatment of detainees on Diego Garcia also implicates the legal obligations of the British government".

Throughout 2003, the UK Government continued to deny the allegations. For example, on 8th January 2003, Baroness Amos, Parliamentary Under-Secretary of State for the Foreign and Commonwealth Office, stated:

"the United States Government would need to ask for our permission to bring any suspects to Diego Garcia. It has not done so and no suspected terrorists are being held on Diego Garcia and, under current British Indian Territory law, there would be no authority for the detention of Al'Qaeda suspects in the territory".

In November 2003, in a letter to the then Foreign Secretary, Jack Straw, the Bar Human Rights Committee specifically raised the question of *"the transit of any*

detainees across UK territory, for example, by landing by air on the island of Diego Garcia before being transported [off-shore]". In response to these growing public concerns, the Government's position has been that:

"The United States have repeatedly assured us that no detainees have at any time passed in transit through Diego Garcia or its territorial waters or have disembarked there and that the allegations to that effect are totally without foundation. The Government is satisfied that their assurances are correct" (statement of then Foreign Secretary, Jack Straw to Parliament on 21 June 2004).

On 21 February 2008, UK Foreign Secretary David Miliband conceded by statement to Parliament and letter to Clive Stafford Smith that two rendition flights each carrying US detainees had stopped on Diego Garcia in January and September 2002. He stated to Parliament:

"Contrary to earlier assurances that Diego Garcia had not been used for rendition flights, recent US investigations have now revealed two occasions, both in 2002, when this had in fact occurred. An error in the earlier US records meant that these cases did not come to light. In both cases a plane with a single detainee on board refueled at the US facility in Diego Garcia. The detainees did not leave the plane, and the US government has assured us that no detainees have ever been held on Diego Garcia or any other Overseas Territory or through the UK itself since then" (Hansard, HC Debates, 21 February 2008, Col 548).

Of the individuals in question, he said that *"neither of the men was a British national or British resident. One is currently in Guantanamo Bay. The other has been released"*.

On 12 February 2009, the Foreign Minister responded to a parliamentary question from Andrew Tyrie, saying that the prisoner who was previously stated to have been in Guantanamo Bay had since been released:

*"Mr Tyrie: To ask the Secretary of State for Foreign and Commonwealth Affairs whether one of the detainees rendered through Diego Garcia is still being held in the Guantanamo Bay detention centre.
Bill Rammell: Both of the individuals rendered through Diego Garcia in 2002 have been returned to their countries of nationality."*

Mr Madni

By a process of deduction and elimination, we have good reason to believe that Mr Madni was one of the two individuals rendered through Diego Garcia. For a transfer between Jakarta and Cairo, Diego Garcia is an obvious stopping point. Further, Mr Madni was in detention at the time of the original announcement on 21 February 2008, but has since been released. His account of his treatment is also consistent with him being rendered via Diego Garcia.

Mr Madni was released from Guantanamo Bay and returned home to Pakistan on 31st August 2008. Mr Madni's rendition for torture from Jakarta to Cairo by the US authorities was a serious criminal act. By permitting the US aircraft carrying out the rendition to land and refuel in Diego Garcia, HM Commissioner of the British Indian Ocean Territory and the UK Government have become mixed-up in arguable wrongdoing of the most grave kind.

Disclosure

Mr Madni now seeks disclosure of material held by the UK Government and HM Commissioner of the British Indian Ocean Territory that would support his allegations that he has been the victim of serious civil and criminal wrongdoing:

(1) All evidence held by the UK Government and HM Commissioner of the British Indian Ocean Territory concerning Mr Madni's initial detention and transfer to Egypt, in particular:

- (i) Confirmation of the fact that Mr Madni was rendered through Diego Garcia on 11th/12th January 2002 on board a Gulfstream V registered by the US Federal Aviation Authority as N379P;
- (ii) Details of when the UK Government and/or HM Commissioner of the British Indian Ocean Territory became aware of Mr Madni's detention, in particular whether they were aware of this at the time he was transferred through Diego Garcia;
- (iii) All internal UK government, military and other communications and records relating in any way to Mr Madni's flight through Diego Garcia;
- (iv) All communications and records between the UK government or military and any foreign government or military, relating in any way to Mr Madni's flight through Diego Garcia;

- (v) Details of what, if any, assurances were sought by the British and/or granted by the Americans in relation to Mr Madni's transfer through Diego Garcia;
- (vi) Details of if and when any UK personnel saw or spoke to Mr Madni whilst he was being transferred through Diego Garcia and their identities;
- (vii) Any records and communications, including photographs, corroborating Mr Madni's account of these experiences.

(2) All evidence held by and the UK Government and HM Commissioner of the British Indian Ocean Territory concerning Mr Madni's detention in Cairo and subsequent transfer to, and detention in, Bagram and Guantanamo, in particular:

- (i) Any records and communications, including photographs, corroborating Mr Madni's account of these experiences;
- (ii) The identity of the US and UK agents involved in his interrogation, detention and torture, as set out above;
- (iii) Details of if and when any other US or UK personnel saw or spoke to Mr Madni at any time between his apprehension in January 2002 and his release on 31 August 2008.

This information is urgently required for two purposes:

- (1) First, Mr Madni requires the above information to identify and bring civil and criminal action against individual wrongdoers in the United States, and potentially also in the United Kingdom. Without the information sought, Mr Madni is unable to identify the wrongdoers concerned or evidence their criminal conduct.
- (2) Second, Mr Madni requires the above information to bring civil actions for damages against individual wrongdoers in the United States, and potentially the United Kingdom. Again, without the information sought, Mr Madni is unable to identify the wrongdoers concerned or evidence their wrongful conduct. He is also unable to conclusively prove that he was one of the two individuals rendered via Diego Garcia referred to in Parliament.

Please confirm by return that the documents referred to above will be provided to Mr Madni. In the event that they are not provided, we consider that Mr Madni is

entitled to them under the principles identified in *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133 as applied in *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 2048 (Admin).

Preservation of documents

Please also confirm by return that you will immediately take steps to ensure that all the categories of document referred to in this letter will immediately be searched for, identified, secured and protected from loss or destruction.

Letter of claim

Please treat this letter as a letter of claim and respond in accordance with the pre-action protocol by 4.00 pm Monday 27 July 2009. For the avoidance of doubt, absent a satisfactory response, we intend to issue proceedings in both the High Court of England and Wales and the Supreme Court of the British Indian Ocean Territory.

Yours faithfully,

Leigh Day & Co
Leigh Day & Co

Cc: The Treasury Solicitor