

REPRIEVE

GHOST DETENTION ON DIEGO GARCIA



“The Convention Against Torture does not apply on Diego Garcia”
The British government

“All life forms, including live shell fish, are protected by British law.”
The US Navy

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GHOST PRISONERS ON DIEGO GARCIA

The question of renditions and detentions involving Diego Garcia is not new: the matter was first publicly raised in an open letter to then Prime Minister Tony Blair on 28 December 2002 when Human Rights Watch wrote: 'We...urge you to take steps to ensure that torture does not take place on British soil, including the islands that are part of British Indian Ocean Territory. According to press reports in the United States, U.S. forces are holding and interrogating suspected al-Qaeda detainees at a U.S. 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. ...We also urge you to request a commitment in writing from the U.S. government as a condition of continued use of the island that it will comply with international law governing the treatment of detainees.'¹

In a subsequent series of questions and answers in Parliament from 2003 until 2008, the UK Government consistently denied that any detainees were on Diego Garcia, saying that the US would have to ask for UK permission to bring any detainees to the island, that the US had not done this, and that nobody was being held on or near the island.² In October 2003 Time Magazine published a report citing interrogation records from the US prisoner Hambali that had reportedly been taken on the island,³ and in November 2003 the UK Bar Human Rights Committee wrote to Foreign Secretary Jack Straw raising concerns about the use of the island as well as US ships off-shore (both within and outside the 3-mile territorial limit), and specifically included a reference to "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]."⁴ Over the following years further revelations would appear in the international media citing various high-level sources in the US administration concerning detentions on the island,⁵ and US officials would make public statements at best non-committal, and sometimes

¹ See: www.hrw.org/press/2002/12/uk1230ltr.htm.

² See these collected in the Bar Human Rights Committee briefing paper 'Diego Garcia: Footprint of Freedom?' 17 Nov. 2003, at pp. 16-17, at: www.barhumanrights.org.uk/docs/diegogarciafootprintsoffreedom.pdf.

³ See Simon Elegant, 'The Terrorist Talks', *TIME*, 5 October 2003, available at <http://www.time.com/time/magazine/article/0,9171,1101031013-493256,00.html?cnn=yes>.

⁴ Letter dated 19 Nov. 2003, p. 2, at: www.barhumanrights.org.uk/docs/Jack_Straw_DG.pdf.

⁵ Involving "high-level" US prisoners including Abu Zubaydah, Khaled Sheikh Mohammed, Hambali, and Mustafa Setmariam Naser (see 12072-12073 Selsky, Andrew, 'Guantanamo transcripts paint portraits of detainees, but much remains cloudy', Associated Press, 3/4/06: <http://www.globalsecurity.org/org/news/2006/060403-gtmo-transcripts.htm>, accessed 26/4/07); 06.09.06 Transcript of: 'Background Briefing By A Senior Administration Official And A Senior Intelligence Official On The Transfer Of Cia Detainees To The Department Of Defense's Guantanamo Bay Detention Facility'; The White House Conference Center Briefing Room; 06.09.07 Detainee Biographies from the Office of the Director of National Intelligence. In February 2008, Gen. Michael Hayden, the Director of the CIA, admitted that two of these prisoners who had been subjected to waterboarding (an ancient torture technique that involves controlled drowning) in CIA custody. Abu Zubaydah was also concededly subjected to 'Long Time Standing', when a prisoner is forced to stand, handcuffed and with his feet shackled to an eye bolt in the floor for more than 40 hours, and 'The Cold Cell', in which a prisoner is left to stand naked in a cell kept near 50 degrees and is repeatedly doused with cold water. (see Brian Ross and Richard Esposito, 'CIA's Harsh Interrogation Techniques Described', ABC News, 18 November 2005, available at <http://abcnews.go.com/WNT/Investigation/story?id=1322866>).

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confirming the use of Diego Garcia for secret detentions.⁶ This would be re-iterated by well-respected international investigators at the Council of Europe and the United Nations.⁷

In response to all of these concerns, the UK Government has consistently referred to US assurances, suggesting that there is limited British presence on, and responsibility for, the island. For example, in June 2004 the Foreign Secretary Straw stated: "The United States authorities 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."⁸ And in its inquiry into UK involvement in renditions of July 2007, the UK Intelligence and Security Committee relied on assurances by the US government, simply stating:

"... the U.S. has given firm assurances that at no time have there been any detainees on Diego Garcia. Neither have they transited through the territorial seas or airspace surrounding Diego Garcia. These assurances were last given during talks between U.S. and UK officials in October 2006."⁹

UK PRESENCE ON DIEGO GARCIA

⁶ Some US officials have appeared to be trying to skirt the issue: At a Defence Department Operational Update Briefing on 14 July 2004, Principal Deputy Assistant Secretary of Defence Laurence Di Rita stated in response to the question of whether there are detainees at Diego Garcia: "I don't know. I simply don't know." (available at www.globalsecurity.org/military/library/news/2004/mil-040714-dod01.htm). Others have forthrightly admitted US involvement in Diego Garcia. For example, US Military General Barry McCaffrey, former head of Southcom, has now stated twice on US National Public Radio that Diego Garcia has been used by the United States to hold prisoners in the "War on Terror": In an interview with Deborah Norville for MSNBC Tonight on May 6, 2004 General McCaffrey, a retired United States Army General, stated: "We're probably holding around 3,000 people, you know, Bagram Air Field, Diego Garcia, Guantanamo, 16 camps throughout Iraq." (at 04/05/07 MSNBC 'Deborah Norville Tonight for May 6' at 21493 <http://www.msnbc.msn.com/id/4924989>). And on 5 December 2006, General McCaffrey again referred to Diego Garcia in interview with Robert Siegel on NPR, when speaking about suspected terrorists, saying: "They're behind bars, they're dead, they're apprehended. We've got them on Diego Garcia, in Bagram Airfield, in Guantanamo" (see Reprive file: 06.12.05 'McCaffrey on NPR').

⁷ Senator Dick Marty, Rapporteur for the Council of Europe's investigation into illegal inter-state transfers involving Council of Europe Member States, has made strong comments regarding Diego Garcia's involvement in rendition, and the related obligations of the UK government to investigate the matter. The Council of Europe's June 2007 report stated: "We have received concurring confirmations that United States agencies have used the island territory of Diego Garcia, which is the international legal responsibility of the United Kingdom, in the "processing" of high-value detainees. It is true that the UK Government has readily accepted "assurances" from US authorities to the contrary, without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner."⁷ (See Parliamentary Assembly of the Council of Europe, 'Illegal Interstate Transfers involving Council of Europe Member States', ('Parliamentary Assembly Report (2007) June 2008, p17, pt 70.)

In June 2008 the UN's Special Rapporteur on Terrorism spoke of "very, very serious" allegations that the United States is secretly detaining terrorism suspects in various locations around the world, notably aboard prison ships in the Indian Ocean region.⁷ (See <http://news.bbc.co.uk/2/hi/americas/4632087.stm>.)

⁸ House of Commons Hansard text 21 June 2004 : Column 1222W. In its inquiry into UK involvement in renditions of July 2007, the UK Intelligence and Security Committee exclusively referred to assurances by the US government, simply stating: "...the U.S. has given firm assurances that at no time have there been any detainees on Diego Garcia. Neither have they transited through the territorial seas or airspace surrounding Diego Garcia. These assurances were last given during talks between U.S. and UK officials in October 2006." July 2007; Intelligence and Security Committee – Rendition – para 197.

⁹ July 2007; Intelligence and Security Committee, 'Rendition', at para 197 http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf.



Why the UK should feel it able to rely on US assurances alone is hard to understand, since the UK has a significant presence on Diego Garcia, and has clear civil and criminal legal jurisdiction - and obligations - when it comes to activities on the island. Diego Garcia is part of the British Indian Ocean Territory (BIOT), and is a British Overseas Territory. The UK has a significant military and administrative presence on Diego Garcia. BIOT was created by the BIOT Order of 1965. Section 4 of this Order creates a Commissioner, who has the power to make laws under Section 11. BIOT Ordinance No.3 for 1983 establishes an appellate structure, and creates a Supreme Court at Section 6. This court 'shall be a superior court of record with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with all the powers, privileges and authority which is vested in or capable of being exercised by the High Court of Justice in England.'¹⁰ The BIOT Supreme Court may sit in Diego Garcia or London, and appeal lies to the BIOT Court of Appeal and from there to the Privy Council.¹¹

Diego Garcia has its own independent administration, run by the East Africa Desk of the Foreign and Commonwealth Office in London. The Senior UK official on the island is called the British Representative, and he is there under the authority of the Foreign and Commonwealth Office.¹² The British Representative is the Commanding Officer of Diego Garcia's civil administration, known as "Naval Party 1002" (NP 1002).



The administrative office of DG showing US and UK flags¹³

The British Representative is also Commander of the Royal Navy, as well as the Magistrate, the Coroner, and the Registrar of Marriages.¹⁴ Approximately fifty further British Royal Navy and Marines personnel work for NP 1002, carrying out policing and customs duties. A detachment of Royal Marines carries out security for the entire Chagos Archipelago.¹⁵

¹⁰ Bar Human Rights Committee, 'Diego Garcia: Footprint of Freedom? Briefing Paper on Reports of Unlawful Detentions', 17 November 2003, at p5.

¹¹ Bar Human Rights Committee, 'Diego Garcia: Footprint of Freedom? Briefing Paper on Reports of Unlawful Detentions', 17 November 2003, at p5.

¹² Bar Human Rights Committee, 'Diego Garcia: Footprint of Freedom? Briefing Paper on Reports of Unlawful Detentions', 17 November 2003, at p5.

¹³ Found at: <http://www.dg.navy.mil/web/2006/html/administrative.htm>.

¹⁴ Bar Human Rights Committee, 'Diego Garcia: Footprint of Freedom? Briefing Paper on Reports of Unlawful Detentions', 17 November 2003, at p5.

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It is clear that the UK takes its legal responsibility on the territory far more seriously when it comes to the peculiarly British concern of animal welfare, than it does its duties to protect humans from the universally prohibited offence of torture. Peter Sands points out that according to the UK Joint Nature Conservation Committee, 'enforcement of conservation measures, such as for the existing bird sanctuaries, is the responsibility of the senior UK representative stationed on the island in his role as Magistrate'.¹⁶ And the United States Navy boasts on its official website for Diego Garcia that, '[a]ll life forms, including live shell fish, are protected by British law.'¹⁷ Indeed, the UK Foreign and Commonwealth Office oversees a fleet of patrol boats in BIOT waters which regularly interdicts vessels suspected of illegally fishing for tuna and other marine life, forcibly seizing catches, ejecting foreign vessels from BIOT waters, and imposing fines.¹⁸ According to one former US serviceman who has spent time on Diego Garcia: 'the Brits own the island but all they do is raise the Union Jack, run customs, and operate the Brit Club every night. There are many feral chickens, cats and donkeys running about. All of whom are subjects to the crown and you get in big trouble if you kill one and tried by the Brit Magistrate (usually the same bloke that raises the flag, run customs, and tends bar at the Brit Club).'¹⁹

British responsibility extends far beyond the rights of wildlife on Diego Garcia: the US Navy's 'Integrated Natural Resources Management Plan' of 2005 makes it clear that: 'US federal policies and programs apply only to the extent that the UK agrees that they should be applicable and as they conform to British Indian Ocean Territory (BIOT) policies and programs. The full governmental and civilian judicial authority...rests with the British Representative (BRITREP), a Senior Royal Navy Commander.'²⁰ And whilst the 1966 Anglo-American Agreement grants the US military authorities the right to exercise criminal and disciplinary jurisdiction over persons subject to US military law, the UK authorities retain 'exclusive jurisdiction over members of the United States forces with respect to offences, including offences relating to security, punishable by law in force in the territory but not by the law of the United States'.²¹

Considered alongside the UK's relatively lively activity when it comes to protecting tuna and feral chickens, its passive attitude with respect to investigating the serious allegations that have arisen over the past eight years with regard to US torture involving Diego Garcia, is all the more difficult to comprehend.

SUSPICIOUS FLIGHTS THROUGH DIEGO GARCIA CONFIRMED BY DAVID MILIBAND

¹⁶ D Proctor and V Fleming (eds.), 'Biodiversity: The UK Overseas Territories' (Joint Nature Conservation Committee, London 1999) 42; found in Sands, Peter, 'Diego Garcia: British-American legal Black Hole in the Indian Ocean?' (Journal of Environmental Law, January 2009). Worryingly, this mirrors Guantánamo Bay, where one of the embarrassing points raised in the original litigation concerned the fact that the island's animals enjoyed better protection than the prisoners – giving rise to the clarion call that prisoners would be better off if they had "Equal Rights with Iguanas."

¹⁷ Found at http://www.dg.navy.mil/web/2006/html/general_information.htm, last checked 28 April 2009. The UK, through the BRITREP, generally monitors environmental matters.

¹⁸ See for example reports at the Indian Ocean Tuna Commission at: <http://www.iotc.org/English/index.php>. It may be true the UK is ignoring massive and regular offences against the environment committed by the US in BIOT in favour of a rather single-minded pursuit of the rights of tuna-fish in the territory, but this is still far more than it has ever done in the context of allegations of secret imprisonment on the island.

¹⁹ "Ordie", contributing to the online forum 'militaryphotos.com', found at:

<http://www.militaryphotos.net/forums/showthread.php?t=127159>. Last checked 29 April, 2009.

²⁰ INRMP Diego Garcia 2005 (n 75) 2–1 (found in Sands, Peter, 'Diego Garcia: British-American legal Black Hole in the Indian Ocean?' (Journal of Environmental Law, January 2009).

²¹ See Anglo-American Agreement 1966 (n 8), Annex II, Art 1(b)(ii), and INRMP Diego Garcia 2005 (n 75) 2–1 (found in Sands, Peter, 'Diego Garcia: British-American legal Black Hole in the Indian Ocean?' (Journal of Environmental Law, January 2009). 5

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Finally, in February and July 2008, Foreign Secretary Miliband stated that two prisoners had been rendered through Diego Garcia, despite previous US assurances that this had never happened.

On 21 February 2008, UK foreign secretary David Miliband conceded by statement to Parliament and by letter to Clive Stafford Smith that two rendition flights carrying US prisoners had stopped on Diego Garcia, in January and September 2002. By statement to parliament, Mr Miliband said, '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 search meant that these cases did not come to light. In both cases a plane with a single detainee on board refuelled at the US facility in Diego Garcia. The detainees did not leave the plane, and the US government has assured us that no US detainees have ever been held on Diego Garcia or any other Overseas Territory or through the UK itself since then'²²

In an email message obtained by ABC News and the Associated Press, CIA Director-General Michael Hayden made a statement limited only to "refuelling" on Diego Garcia: 'The refuelling, conducted more than five years ago, lasted just a short time. But it happened. That we found this mistake ourselves, and that we brought it to the attention of the British government, in no way changes or excuses the reality that we were in the wrong. An important part of intelligence work, inherently urgent, complex, and uncertain, is to take responsibility for errors and to learn from them...Our government had told the British that there had been no rendition flights involving their soil or airspace since 9/11. That information, supplied in good faith, turned out to be wrong.'²³

In respect of the individuals on board, David Miliband said on 21 February 2008: 'The House will want to know what has become of the two individuals in question. There is a limit to what I can say, but I can tell the House the following. The US government has told us that neither of the men was a British national or a British resident. One is currently in Guantanamo Bay. The other has been released.'²⁴ Since then, despite pledging to 'work through the details and implications of this information',²⁵ the UK has done nothing further to clarify the situation, except that 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.²⁶

However, the UK government declined to conduct a proper investigation into these revelations, and merely invited NGOs and MPs to submit questions regarding further suspicious flights. The result was inevitable: Mr Miliband announced in July 2008 that the US had assured Britain that no further instances of rendition had been found.

²² 08.02.21 David Miliband statement to Parliament, 'Terrorist Suspects (Rendition)'; and 08.02.21 David Miliband letter to Clive Stafford Smith.

²³ See 08.02.21 Reprieve file 000 Diego Garcia file index 146, 149.

²⁴ 08.02.21 David Miliband statement to Parliament, 'Terrorist Suspects (Rendition)'.

²⁵ 08.02.21 David Miliband statement to Parliament, 'Terrorist Suspects (Rendition)'.

²⁶ House of Commons Hansard Text, Column 253243, 12 February 2009.



The UK Foreign and Commonwealth Office must urgently clarify:

- *What is the scope and terms of the FCO's "inquiry" into renditions, and is the inquiry ongoing?*
- *How long has it known the identities, rendition history and current situation of the people concerned;*
- *Why has it not released this information?*
- *What assurances if any have been sought by the British and/or granted by the Americans in relation to these individuals, and when?*

IDENTIFYING THE PRISONERS

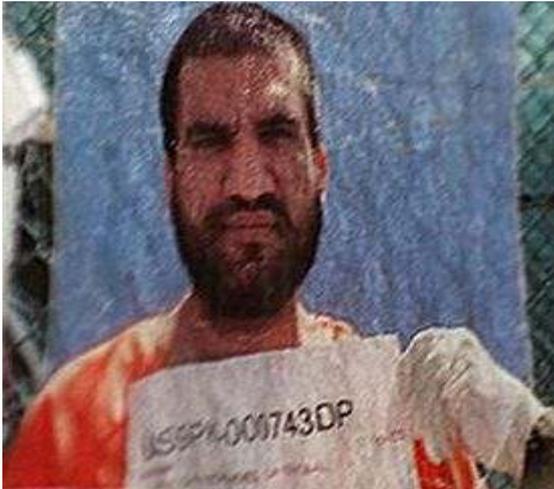
In identifying the two prisoners referred to, we have been given limited information by the British government. However, it was ultimately not difficult to identify one of the prisoners concerned. From the information available, we can say that the two prisoners were rendered in January or September 2002, stopping over in Diego Garcia for refuelling purposes. Either or both prisoners may have been in Guantanamo Bay at some point, but only one of them was still there in February 2008. That prisoner since been released, and had been returned to his home country sometime between September 2002 and February 2008.

With the above information it has been possible through a process of elimination followed by investigative work to identify one of the prisoners rendered through Diego Garcia.

- The most useful fact to start with is that one of the prisoners was still held in Guantanamo Bay by February 2008, but by November 2009 he had been released to his home country. By identifying all prisoners released from Guantanamo between 14 February 2008 and November 2009, we compiled a list of possible prisoners;
- From that list, we discarded all individuals apprehended after January 2002;
- From that refined list, we investigated detention histories, and discarded individuals whose detention history does not include a rendition where Diego Garcia would be a feasible refuelling stop-over;
- This leaves only one individual, a dual Pakistani-Egyptian man named Mohammed Saad Iqbal Madni.
- We then searched for supporting evidence including flight logs and speaking to the prisoner himself, to provide further support for this assertion.

MUHAMMED SAAD IQBAL MADNI

i. Background



Mohammed Saad Iqbal Madni²⁷

Mohammed Saad Iqbal Madni was detained in Jakarta on 9 January 2002, reportedly at the request of the CIA. According to the Washington Post, US authorities urged the Indonesians to apprehend him after they claimed to have discovered a link to Richard Reid, the so-called British ‘shoe bomber’.²⁸ On 11 January 2002, with no judicial oversight of his transfer, Madni describes being pushed aboard an unmarked, US-registered Gulfstream V jet at a military airport in Jakarta, and taken to Cairo.²⁹ Madni spent 92 torturous days in Cairo before being taken to Bagram Airforce Base and then Guantanamo Bay, where he remained until his release in August 2008. The London Guardian reported on Madni’s case as early as March 2002, when Madni was still being tortured in Egypt: ‘Madni was taken from Indonesia to Egypt on a US-registered Gulfstream jet without a court hearing after his name appeared on al-Qaida documents. He remains in custody in Egypt and has been subjected to interrogation by intelligence agents.’³⁰

Regarding the apparent reason for his apprehension, Madni has persistently denied any connection with Richard Reid. In his Combatant Status Review Tribunal he maintained that he was betrayed by one of four radical Islamists whom he met by accident on a trip to Indonesia in November 2001 to deal with family business after his father’s death: ‘After I went to Indonesia, I got introduced to some people who were not good. They were bad people. Maybe I can say they were terrorists. When someone gets introduced to someone, it is not written on their foreheads that they are bad or good’.³¹

This account is corroborated by a Washington Post investigation, which found that during his time in Jakarta, Madni had spent ‘hours on end watching television at a friend’s house,’ and when he was not doing that, handing out business cards ‘identifying him as a Koran reader for an Islamic radio station’. The New York Times reported that the entire, embarrassing basis for Madni’s capture, rendition and torture was that Madni was, in the words of one of his uncles, a young man who ‘had a childish habit of trying to portray himself as important’, and had simply made something up, that bombs could be hidden in his shoes, to impress his new friends in Jakarta. The comment was picked up by Indonesian

²⁷ US Department of Defence photograph of Mohammed Saad Iqbal Madni, found at http://en.wikipedia.org/wiki/Hafez_Qari_Mohamed_Saad_Iqbal_Madni.

²⁸ Rajiv Chandrasekaran and Peter Finn, ‘US Behind Secret Transfer of Terror Suspects,’ Washington Post, 11 March 2001.

²⁹ Rajiv Chandrasekaran and Peter Finn, ‘US Behind Secret Transfer of Terror Suspects,’ Washington Post, 11 March 2001.

³⁰ Duncan Campbell ‘US sends suspects to face torture,’ The Guardian, Tuesday March 12, 2002; <http://www.guardian.co.uk/Archive/Article/0,4273,4372442,00.html>.

³¹ Mohammed Saad Iqbal Madni Combatant Status Review Tribunal Transcript.



intelligence agents, who were monitoring the men, and relayed to the CIA, who decided to pick Madni up after Richard Reid's failed shoe bomb attack a few weeks later. A US intelligence official speaking to the New York Times confirmed Madni's uncle's account, calling Madni a 'blowhard' who 'wanted us to believe he was more important than he was.' Thus, Madni's seven-year journey through the secret prison system was based on a single ill-advised comment.³²

ii. Apprehension

Mohammed Saad Iqbal Madni was seized at 4am on 9 January 2002, in Jakarta, Indonesia.³³

iii. Rendition #1

In the evening of 10 January 2002, Madni says that he was bundled aboard a plane at an airport in Jakarta, which took off around 10pm.³⁴ A Washington Post report of March 2002 speaks of eye-witnesses at that time seeing a man being bundled aboard an unmarked, US-registered Gulfstream V jet at a military airport in Jakarta, which took him to Cairo.³⁵ This is further corroborated by Eurocontrol flight-logs, which were not released until many years after the first reports of Madni's rendition, showing the movements of a well known rendition plane Gulfstream V with tail-number N379P, which has been dubbed "the torture taxi" by journalists and plane spotters around the world.³⁶ The logs show that N379P left Washington at 16:47 on 9 January 2002, arriving in Cairo at 03:32 in the morning of 10 January 2002.³⁷ According to The Sunday Times, N379P collected some Egyptian security personnel and flew them to Cairo to assist with the rendition of Madni.³⁸

The New York Times, which published an interview with Madni soon after his release in August 2008, reports that 'during the flight to Cairo, Mr. Iqbal said, he was bleeding from his nose, mouth and ears, and was unable to move because shackles wound tightly around his body.'

Madni has since told Reprieve that the plane stopped over once en-route to Egypt, and that people took photographs of him at that point: 'the plane did stop for thirty minutes en route to Cairo. He was hooded and some cameramen came into the plane and took pictures of him. He remembers the camera flashes. He was never taken out of the plane. Madni's recollection of being photographed during his rendition is consistent with the accounts of other rendition victims.'³⁹

³² Perlez, Bonner, Masood, 'An Ex-Detainee of the U.S. describes a 6-Year Ordeal', New York Times, 27 May 2009.

http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

³³ See Reprieve file, 'MSIM to Sultana Noon'.

³⁴ See Reprieve file, 'MSIM to Sultana Noon'.

³⁵ Rajiv Chandrasekaran and Peter Finn, 'US Behind Secret Transfer of Terror Suspects,' Washington Post, 11 March 2001.

³⁶ This Gulfstream executive jet has been successively registered as N379P, N8068V and N44982, and in February 2000, it was registered by the CIA front company Premier Executive Transport Services, at the beginning of 2004 it was re-registered as N44982, and in December 2004 it was re-registered again as N44982 by Bayard Foreign Marketing, described by Amnesty International as "a phantom company registered in Oregon state since August 2003. The plane was sold in early 2006. Until August 2005 Premier Executive Transport planes were licensed to land at US bases world-wide. N379P could be configured for eight to 18 passengers.

³⁷ See Reprieve file, 'Madni Logs'.

³⁸ Stephen Grey, 'US Accused of Torture Flights', Sunday Times, 14 November 2004.

³⁹ Binyam Mohamed was photographed when he was rendered from Pakistan to Morocco, and Morocco to Kabul, and both Khaled El-Masri and Mohamed Al-Zeri were photographed during their renditions. Binyam Mohamed said that that as he was being taken onto a plane in Rabat, "there was a white female with glasses...One of them held my penis and she took digital pictures." See Reprieve file AlHabashi Unclassified at p20. Khaled El-Masri said: "They took off my blindfold...As soon as it was removed, a very bright flashlight went off and I was temporarily blinded. I believed from the sounds that they had taken photographs of me from throughout." See declaration of Khaled El-Masri in support of Plaintiff's Opposition to the United States' Motion to Dismiss, in *El-Masri v. Tenet et al*, Eastern District Court of Virginia in Alexandria, 6 April 2006, at p9; And see Office of the Parliamentary Ombudsman (Sweden), "Interview Conducted with State Official X of the Security Police (Sapo)",

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The time taken from Jakarta to this place was about 5 to 7 hours and then it was another 3 or 4 hours to Cairo.⁴⁰ The distance from Jakarta to Diego Garcia is 3797 km (2359 miles or 2050 nautical miles). N379P had an average range of 5,800 nautical miles, cruising at between 459 and 585 knots.⁴¹ At 470 knots, then, the flight duration is consistent with Madni's estimate that the first leg of the flight took 5-7 hours.⁴² The distance from Diego Garcia to Cairo is 6032 km (3748 miles or 3257 nautical miles). Again, Madni's recollection of the flight duration of 3-4 hours for this second leg, including a stop-over of around 30 minutes, is consistent with the above average cruising speed of N379P. And, in the long flight across the Indian Ocean from Jakarta to Cairo, a stop-over on Diego Garcia would be eminently logical: As the grandfather of the unsuccessful 2008 presidential candidate, US Admiral John S McCain (1884–1945,) once put it, 'as Malta is to the Mediterranean, Diego Garcia is to the Indian Ocean – equidistant from all points'.⁴³

The UK Foreign and Commonwealth Office must urgently clarify:

- *When did the UK government become aware of the apprehension of Mohammed Saad Iqbal Madni, or of an individual believed at the time to be a close associate of Richard Reid;*
- *If they knew about Mr Madni's apprehension at the time that he was transferred through Diego Garcia;*
- *If and when any British personnel saw or spoke to Mr Madni whilst he was being transferred through Diego Garcia or at any time between his apprehension in January 2002 and his release in August 2009.*

IMPRISONMENT AND TORTURE IN EGYPT

Madni says he arrived in Egypt on 11 January 2002, at 11:30am.⁴⁴ When the plane landed, he was told he was in Cairo. He was assigned a basement room like "a grave," about 6 feet by 4 feet, he said, and was kept there for 92 torturous days.⁴⁵ In an interview with the New York Times, Madni said that on January 11, 12 and 20, 2002, he was interrogated for 12 to 15 hours on each occasion.⁴⁶ He described his interrogators as Egyptians, but also noted that there were other men in the room whose faces were covered and who did not speak, but who passed notes with questions to the Egyptians.⁴⁷

Eurocontrol flight logs show that Madni's rendition plane stopped over in Cairo for six days after dropping him, before returning to Washington via Prestwick, again utilizing UK territory. It is possible

Case No. 2169-2004, 30 September 2004, comment made at p13: "He wasn't naked, he had his underpants on; the upper body was undressed and then his picture was taken."

See also Amnesty Report 'Human Cargo' at p42 Al-Maqtari was stripped naked and had photos taken. See also Surviving the Darkness p15 Bashmilah describes being stripped and photographed. See also the Human Rights Watch Report online report 'The Case of Marwan Jabour' who describes being stripped naked and videoed, at <http://www.hrw.org/reports/2007/us0207/2.htm>

⁴⁰ See Reprive file. Sultana Noon email to Clara Gutteridge (27 April 2009).

⁴¹ Amnesty International, 'USA: A case to answer, from Abu Ghraib to secret CIA custody: the case of Khaled al-Maqtari,' AI Index: AMR 51/03/2008, at p16.

⁴² 1 international knot = 1.852 km/hr.

⁴³ A Bhatt, 'The Strategic Role of the Indian Ocean in World Politics: The Case of Diego Garcia' (Ajanta, New Delhi 1992), at p 7.

⁴⁴ See Reprive file, 'Sultana Noon email to Clara Gutteridge', 27 April 2009.

⁴⁵ See Reprive file, 'Guantanamo tribunal hearing transcript'

⁴⁶ See Reprive file, 'Guantanamo tribunal hearing transcript'

⁴⁷ Perlez, Bonner, Masood, 'An Ex-Detainee of the U.S. describes a 6-Year Ordeal', New York Times, 27 may 2009.

http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

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therefore that some of the US rendition crew were the masked men Madni describes being present at the interrogations on 11 and 12 January 2002, before flying home.⁴⁸

Madni told the New York Times that his Egyptian captors tried to torture a confession out of him, and that when he told them that he had never been to Afghanistan nor had he met Usama Bin Laden, they responded by giving him electric shocks and forcing him to take drugs: "I cry and I yell," he said. "Also they gave me brain electric shocks." He said he was forced to consume liquids that were laced with drugs "so you don't know what you are talking about."⁴⁹

One witness who may be able to corroborate Madni's account of what happened in Egypt is Mamdouh Habib, who had been arrested on October 5, 2001 in Karachi, Pakistan. During October 2001, Mamdouh was detained in Pakistan, beaten and humiliated by the Pakistanis, and interrogated by the Americans. In November 2001, Mamdouh was then sent to Egypt where for the next five months, overlapping with most of the time that Madni spent in Egypt, his Egyptian captors shocked him with high-voltage wires, hung him from metal hooks on walls and beat him,⁵⁰ before he was eventually sent to Guantanamo Bay. According to three British men who were in Guantanamo Rhuheh Ahmed, Asif Iqbal and Shafiq Rasul, Mamdouh Habib himself was in "catastrophic shape" when he arrived at Guantanamo: most of his fingernails were missing, and when he was asleep he regularly bled from his nose, mouth and ears.⁵¹

In addition, a Russian prisoner released from Guantanamo in 2004, Rustam Akhmyarov, said that in Guantanamo, Madni told him of his time 'in an underground cell in Egypt, where he never saw the sun and where he was tortured until he confessed to working with Osama bin Laden,' and added that he 'recalled how he was interrogated by both Egyptian and US agents in Egypt and that he was blindfolded, tortured with electric shocks, beaten and hung from the ceiling.'⁵²

The UK Foreign and Commonwealth Office must urgently:

- Clarify if and when the British government sought assurances from the US or Egyptian government as to Mr Madni's treatment whilst he was in Egypt;
- Reveal all records and communications, including flight-logs, flight manifests and any other records, corroborating Madni's account of his illegal detention and torture in Egypt;
- Request from the US government any records and communications, including photographs, corroborating Madni's account of his illegal detention and torture in Egypt.

AFGHANISTAN

⁴⁸ See Reprieve file, Madni log.

⁴⁹ Perlez, Bonner, Masood, 'An Ex-Detainee of the U.S. describes a 6-Year Ordeal', New York Times, 27 May 2009, http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁵⁰ Richard Phillip, WWSW, 26 April 2002, found on www.Cageprisoners.com/articles.php?id=6546; Dana Priest, Dan Eggen "Terror 'Suspect Alleges Torture: Detainee Says U.S. Sent Him to Egypt Before Guantanamo' 6 January 2005, Washington Post.

⁵¹ Dana Priest, 'Detainee Sent Home from Australia,' Washington Post.

⁵² Andy Worthington, 'Rendered to Egypt for torture, Mohammed Saad Iqbal Madni is released from Guantánamo', 4 September 2008, <http://www.andyworthington.co.uk/2008/09/04/rendered-to-egypt-for-torture-mohammed-saad-iqbal-madni-is-released-from-guantanamo/>.



Madni told Reprieve that in April of 2002, the Americans flew him to Bagram, the American air base outside the Afghan capital, Kabul.⁵³ Again, Eurocontrol flight-logs exactly match Madni's recollection. This time, Madni was flown via a joint US/German airbase near Tashkent, where he changed planes before being taken onto Bagram.⁵⁴

In an interview with the New York Times, Madni describes being held in Bagram for almost a year for further interrogation. Madni said that in Bagram he was shackled and handcuffed in a small cage with other detainees, and for a period of six months, shifted from cell to cell every few hours so that he was deprived of sleep.⁵⁵ In Bagram, his interrogators were still intent in extracting a confession: 'A C.I.A. person said, 'We forgive you; just accept you met Osama bin Laden.' I said, 'No, I'm not going to say that.'⁵⁶

One former prisoner who was in Bagram with Madni has spoken of a US/Egyptian interrogator called "Khalid", who was particularly focused on Madni.⁵⁷ It has also been suggested that by the time Madni got to Bagram, some prisoners believed that he was working for the US, and that he was sent to Guantanamo "with a job to do". Madni would ultimately spend over seven years in US custody, in wretched conditions which brought him to a repeated psychological breaking point, attempting suicide on numerous occasions during his five years in Guantanamo Bay. Given his particularly bad treatment, and the fact that complete cooperation with captors is the ideal end of any torture process, it seems clear that the nature of any such relationship between Madni and his captors was rather more evidential of his swift and complete breakdown under torture and the conditions of his confinement than of any "special relationship" with his US captors.⁵⁸

The UK Foreign and Commonwealth Office must urgently:

- Clarify if and when the British government sought assurances from the US government as to Mr Madni's treatment whilst he was in Afghanistan;
- Reveal all records and communications, including flight-logs, flight manifests and any other records, corroborating Madni's account of his illegal detention and torture in Afghanistan;
- Request from the US government any records and communications, including photographs, corroborating Madni's account of his illegal detention and torture in Afghanistan.

GUANTANAMO

Madni arrived at Guantánamo, on March 23, 2003.⁵⁹ It is evident from accounts of fellow prisoners that Madni was in a particularly bad mental and physical state in Guantánamo. Rustam Akhmyarov recalled that he was 'was passing blood in his faeces,' and recalled that he overheard US officials telling him, 'we will let you go if you tell the world everything was fine here' Mamdouh Habib has confirmed Akhmyarov's analysis, recalling how Madni had 'pleaded for human interaction.' He said that he overheard him saying, 'Talk to me, please talk to me ... I feel depressed ... I want to talk to

⁵³ See Reprieve file, 'Sultana Noon email to Clara Gutteridge', 27 April 2009.

⁵⁴ See Reprieve file, 'Madni flight-log'.

⁵⁵ Perlez, Bonner, Masood, 'An Ex-Detainee of the U.S. describes a 6-Year Ordeal', New York Times, 27 May 2009. http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁵⁶ Perlez, Bonner, Masood, "An Ex-Detainee of the U.S. describes a 6-Year Ordeal", New York Times, 27 May 2009. http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁵⁷ See Reprieve file, 'Clara Gutteridge memo', 29 April 2009.

⁵⁸ See Reprieve file, 'Clara Gutteridge memo', 29 April 2009.

⁵⁹ See Reprieve file.



somebody ... Nobody trusts me' On the 191st day of his incarceration, according to Madni's own account, he attempted to commit suicide.⁶⁰ Habib remembers that at Guantanamo Madni became so depressed he tried to hang himself twice, and went on three hunger strikes.⁶¹

British citizens released in 2004, Ruhel Ahmed, Asif Iqbal and Shafiq Rasul, also recalled Madni in Guantánamo, saying that 'he had had electrodes put on his knees, and 'something had happened to his bladder and he had problems going to the toilet,' but explained that he had been told by interrogators that he would not receive treatment unless he cooperated with them, in which case he would be "first in line for medical treatment'.⁶² A 2007 court filing Washington Court of Appeals in 2007 Dr. Ronald L. Sollock, the commander of the Naval Hospital at Guantánamo Bay, reveals that from 2003 Madni was prescribed antibiotics, and that in April 2007 he was diagnosed with a perforated left eardrum, inflammation of the left external ear canal and inflammation of the left middle ear.⁶³

The UK Foreign and Commonwealth Office must urgently:

- Clarify if and when the British government sought assurances from the US government as to Mr Madni's treatment whilst he was in Guantanamo;
- Reveal all records and communications, including flight-logs, flight manifests and any other records, corroborating Madni's account of his illegal detention and torture in Guantanamo;
- Request from the US government any records and communications, including photographs, corroborating Madni's account of his illegal detention and torture in Guantanamo.

MR MADNI'S RELEASE

Madni finally returned home to Pakistan in August 2009.⁶⁴ After Guantánamo, Madni was flown on an American military aircraft to the Islamabad airport, where two American Embassy officers, First Lt. Brian Strait and Keith Easter, witnessed his release, according to a United States government document he displayed. He was admitted to a hospital in Islamabad for treatment, and then questioned for three weeks at a safe house by Pakistani intelligence officers in what Mr. Iqbal called friendly sessions. Pakistani security officers then drove him back to Lahore and his extended family. "It was like a new life for me," he said. "I was born again. There is no word to explain."⁶⁵

As a result of his experience in US secret prisons, Mr Madni is now unable to walk unaided, and according to Dr Mohammed Mujeeb, a professor of ear, nose and throat at the Services Hospital in

⁶⁰ Andy Worthington, 'Rendered to Egypt for torture, Mohammed Saad Iqbal Madni is released from Guantánamo', 4 September 2008, <http://www.andyworthington.co.uk/2008/09/04/rendered-to-egypt-for-torture-mohammed-saad-iqbal-madni-is-released-from-guantanamo/>.

⁶¹ Perlez, Bonner, Masood, "An Ex-Detainee of the U.S. describes a 6-Year Ordeal", New York Times, 27 May 2009. http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁶² Andy Worthington, "Rendered to Egypt for torture, Mohammed Saad Iqbal Madni is released from Guantánamo", 4 September 2008, <http://www.andyworthington.co.uk/2008/09/04/rendered-to-egypt-for-torture-mohammed-saad-iqbal-madni-is-released-from-guantanamo/>.

⁶³ April 2007 statement by Dr. Ronald L. Sollock, the commander of the Naval Hospital at Guantánamo Bay, filed with the Court of Appeals in Washington, referred to in: Perlez, Bonner, Masood, "An Ex-Detainee of the U.S. describes a 6-Year Ordeal", New York Times, 27 May 2009, http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁶⁴ Perlez, Bonner, Masood, 'An Ex-Detainee of the U.S. describes a 6-Year Ordeal', New York Times, 27 May 2009, http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁶⁵ 2009-05-27, Perlez, Bonner, Masood, 'An Ex-Detainee of the U.S. describes a 6-Year Ordeal', New York Times, 27 May 2009 http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

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Lahore, by the time he returned home to Pakistan, Mr. Iqbal was dependent on a “long list of drugs,” and was also suffering debilitating psychological scarring from his experience.⁶⁶



Muhammed Saad Iqbal Madni since his release from Guantanamo⁶⁷

UK KNOWLEDGE OF THE RENDITION PROGRAMME

Mohammed Saad Iqbal Madni is an Egyptian national, and this fact may go some way to explaining the speed of his transfer – one of the first reported - as well as the apparently seamless cooperation between of the US, Egyptian and UK authorities in his abduction in the otherwise chaotic months after 9/11.

“Post 9/11” transfer to torture and US military and CIA detention has its roots in the early 1990s when under President Clinton, express policies were formulated allowing for the extra-legal apprehension and transfer of terrorist suspects. In practise, in the early years this programme largely but not exclusively involved US-assisted delivery of Egyptian Islamists back to Egypt, where they routinely faced incommunicado detention, torture and often death.⁶⁸ At its inception, when he was rendered

⁶⁶ 2009-05-27, Perlez, Bonner, Masood, ‘An Ex-Detainee of the U.S. describes a 6-Year Ordeal’, New York Times, 27 May 2009 http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁶⁷ Perlez, Bonner, Masood, ‘An Ex-Detainee of the U.S. describes a 6-Year Ordeal’, New York Times, 27 May 2009, http://www.nytimes.com/2009/01/06/world/asia/06iqbal.html?_r=2&hp=&pagewanted=all.

⁶⁸ The first known US rendition of an “Islamist” took place in 1995, with the case of Egyptian Gama’a leader Tal’at Fu’ad Qassim. At the time of his abduction, 38 year old Qassim was living in exile in Denmark where he had been granted political asylum. In September 1995, he was abducted in Croatia en-route to Bosnia. According to the Croatian Foreign Ministry, Qassim was expelled for “violating Croatian residency laws.” (Nadia Aboou al-Magd, ‘Leading Islamic Militant Reported Missing in Croatia,’ Associated Press, 23 September 1995). Before being forcibly transferred to Egypt, Qassim was allegedly questioned aboard a U.S. Navy vessel, and the handover to Egypt took place in the middle of the Adriatic (Anthony Shadid, ‘Syria is Said to hand Egypt suspect Tied to Bin Laden,’ Boston Globe, 20 November 2001; Andrew Higgins and Christopher Cooper, ‘Cloak and dagger: a CIA-backed Team Used Brutal Means to Crack Terror Cell,’ Wall Street Journal, 20 November 2001).

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from Jakarta via Diego Garcia to Cairo, Mohammed Saad Iqbal Madni's transfer resembled one of these earlier Egyptian renditions, and it was therefore a procedure that the British would have been familiar with.

Indeed, Madni's case is demonstrative of the way that the US secret prison system grew out of existing practises and arrangements with partner-states such as Egypt, with the help of cooperating states such as the UK. Whilst the rendition programme would expand in the years following the invasion of Afghanistan to involve many new partners, the US' strong relationships with Egypt would remain, as demonstrated by the large number of prisoners of many nationalities sent to Egypt for torture in the years following the invasion of Afghanistan.⁶⁹ It is inconceivable that the UK was not aware of the "pre-9/11" rendition programme that was operating throughout the 1990s, involving transfers indistinguishable from Madni's rendition: there were numerous public statements by US officials

2001). After his return to Egypt, the Egyptian government refused to answer any questions about Qassim's whereabouts, and he was denied access to his family or a lawyer. Qassim had already been tried and convicted *in absentia* by an Egyptian Military tribunal. Qassim was not retried after his return to Egypt, and is believed to have been executed by the Egyptian government. In a 2004 interview with Human Rights Watch, Qassim's lawyer said, 'I didn't see him. I don't think that anyone managed to see him, except for security of course. And those who carried out the execution...we heard about [his abduction] as soon as he was kidnapped. But we didn't know where he was.' (Human Rights Watch Interview with Muntassir al-Zayyat, Cairo, November 2004, in 'Black Hole: The Fate of Islamists Rendered to Egypt,' Human Rights watch, May 2005 Vol. 17, NO. 5 (E), at p20)). Qassim's case has been described as a turning point for both for the Egyptians and the Americans: Richard Clarke has written that the 1995 US decision to take Qassim into custody was prompted by a recognition within the Clinton Administration of the threat posed by International Terrorism (Richard Clarke, 'Against All Enemies: Inside America's War on Terror--What Really Happened,' 2004 p13), and according to Human Rights watch, 'Qassim's case is the first known rendition by the U.S. government to a third country with a record of torture. The Qassim case marked a first of sorts for the Egyptian government as well. Its handling of the Qassim case – complete disappearance, refusing to allow any access to the individual, either by his family or his lawyers – would be repeated many times in the years to come.' (For a detailed account of Qassim's case and some other early renditions involving Egypt, see 'Black Hole: The Fate of Islamists Rendered to Egypt,' Human Rights watch, May 2005 Vol. 17, NO. 5 (E), at p20).

⁶⁹ In June 1995, three months after the disappearance of Tal'at Fu'ad Qassim, President Clinton issued Presidential Decision Directive (PDD) 39, which authorised the "return of suspects by force". Much of this Directive is still heavily redacted, however the following has been unclassified: 'When terrorists wanted for violation of U.S. law are at large overseas, their return for prosecution shall be a matter of the highest priority. ... If we do not receive adequate cooperation from a state that harbors a terrorist whose extradition we are seeking, we shall take appropriate measures to induce cooperation. Return of suspects by force may be effected without the cooperation of the host government, consistent with the procedures outlined in NSD-77, which shall remain in effect.' (Presidential Decision Directive 39, June 21, 1995, available at <http://www.fas.org/irp/offdocs/pdd39.htm>). In May 1998, a new directive (PDD-62) was issued, outlining ten policy programmes, the first of which was called "apprehension, extradition, rendition and prosecution." (9/11 Commission, Staff Statement no. 5, in the 9/11 investigations, at page 7, [online] http://www.9/11commission.gov/staff_statements/staff_statement_5.pdf (retrieved April 25, 2008).

The list of all ten policy programs can be found in 'U.S. Counter-Terrorism Policy and Organization,' Roger Cressey, Director, Transnational Threats, National Security Council, September 27, 2000. PDD-62 is still classified; an online fact sheet is available at <http://www.fas.org/irp/offdocs/pdd-62.htm> (last checked April 25, 2008)). More renditions to Egypt followed soon after this Directive was issued, with the rendition of five Egyptian nationals from Albania to Egypt in July 1998. Four men – Ahmad Ibrahim Al-Sayyid Al-Naggar, Shawqi Salama Mustafa, Muhammad Hassan Mahmud Tita and Ahmad Isma'il 'Uthman were arrested in Tirana by Albanian and US agents and questioned by US agents before being handed over to the Egyptian SSI (EOHR, 'The Returnees from Albania,' April 1999, from *Black Hole: The Fate of Islamists Rendered to Egypt*, Human Rights watch, May 2005 Vol. 17, NO. 5 (E), at p20). The Egyptian Organisation for Human Rights has said that a fifth man, 'Issam 'Abd Al-Tawab 'Abd al-Alim was also rendered in the same month from Sofia, Bulgaria to Cairo by the CIA. (EOHR, 'The Returnees from Albania,' April 1999).

The Egyptian Organisation for Human Rights says that all five of the men were tortured upon their return to Egypt, and that al-Naggar was kept permanently locked in a room knee-deep in dirty water for 24 hours for much of the period of his detention, and had electric shocks applied to various parts of his body during interrogation EOHR ('The Returnees from Albania,' April 1999). All men were held incommunicado in a "ghost" villa until their trial ('Black Hole: The Fate of Islamists Rendered to Egypt,' Human Rights Watch, May 2005 Vol. 17, NO. 5 (E)).

According to Human Rights watch, between 1995 and 2001, at least 31 Egyptians would be rendered from around the world to Egypt with the help of the United States, with no judicial process whatsoever, and often to face torture and death ('Black Hole: The Fate of Islamists Rendered to Egypt,' Human Rights Watch, May 2005 Vol. 17, NO. 5 (E)).

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about the programme at the time,⁷⁰ and in 2006 Jack Straw conceded to the UK parliament that permission had been sought by the US for five renditions in 1998 alone, through UK territory.⁷¹

And it is inconceivable that the UK was not aware that in the months following 9/11, the rendition programme accelerated, and broadened in scope. According to media reports, a few days after the 9/11 attacks, the White House issued a new directive – still classified – giving the CIA wide powers to carry out renditions without White House approval for each individual case.⁷² Like earlier cases, renditions post 9/11 have involved both US and foreign state territory and the transfer of foreign nationals to third countries by “host” states, facilitated by US aircraft and/or personnel.⁷³ Excluding

⁷⁰ In 1998, then-FBI Director Louis J. Freeh confirmed to the Senate Judiciary Committee that rendition had been used by the United States, neglecting to specify numbers or details of any cases, except those of two men rendered to the US to stand trial for the Embassy Bombings. Mr Freeh also highlighted the fact that rendition nearly always occurs with the co-operation of foreign governments: ‘During the past decade, the United States has successfully returned 13 suspected international terrorists to stand trial in the United States for acts or planned acts of terrorism against U.S. Citizens. (This figure includes the renditions of two suspects in the August 7, 1998, bombing of the U.S. Embassy in Nairobi, Mohamed Rashed Daoud Al-Owhali and Mohamed Sadeek Odeh.)... The majority of terrorist renditions engaged in the United States government have been accomplished with the cooperation of the foreign government in whose jurisdiction the terrorist suspect was located (U.S. Counterterrorism Policy: Hearing Before the Senate Judiciary Committee, 106th Cong. (Sept. 1998) (statement by Louis J. Freeh, Director of Federal Bureau of Investigation), available at http://www.fas.org/irp/congress/1998_hr/98090302_npo.html (retrieved 27 April 2008)). The House-Senate Joint Inquiry into the September 11th Attacks confirmed this position in 2004, saying that “dozens” of renditions had occurred before 9/11 with the help of foreign governments: ‘Working with a wide array of foreign governments, CIA and FBI have helped deliver dozens of suspected terrorists to justice. CTC [Counterterrorist Center] officers responsible for the renditions program told the Joint Inquiry that, from 1987 to September 11, 2001, CTC was involved in the rendition of several dozen terrorists.’ (Steven Strasser, ed., “The 9/11 Investigations,” Public Affairs Reports, 2004, p. 463). And on 21 May 2002 the US Office of the Coordinator for Counterterrorism released a list of “terrorists” extradited or subject to rendition between 1993 and 2001. This list is clearly partial, as it does not list any of the Egyptian cases described above. That notwithstanding, individuals on this list alone were rendered by the US with the help of governments as far flung as South Africa, the Philippines and Jordan, among others, showing that even in the years before 9/11 renditions were being conducted by the US with the co-operation of partners spanning at least three continents (US Office of the Coordinator for Counterterrorism, Extraditions and Renditions of Terrorists to the United States, 1993-2001, 21 May 2002; <http://www.state.gov/s/ct/rls/crt/2001/html/10256.htm>). Statements by US officials and government committees confirm that rendition was a well-established practise even before 9/11. In her speech from Andrews Airforce Base in December 2005, Condoleezza Rice said: ‘For decades, the United States and other countries have used “renditions” to transport terrorist suspects from the country where they were captured to their home countries or to other countries where they can be questioned, held, or brought to justice.’ (Remarks Upon Her departure For Europe,” Secretary Condoleezza Rice, Andrews Airforce Base, 5 December 2005). And in his statement before the 9/11 Commission in 2004, former CIA Director George Tenet admitted that over 80 cases of rendition had occurred prior to September 11, 2001. Counterterrorism Policy: Hearing Before the National Commission on Terrorist Attacks Upon the United States (March 24, 2004) (statement by George Tenet, former Director of Central Intelligence Agency), [online] http://www.9-11commission.gov/archive/hearing8/9-11Commission_Hearing_2004-03-24.pdf (retrieved 27 April 2008); Other witnesses to the Commission stated that the CIA played the leading role in renditions, but other agencies such as the FBI were sometimes involved: See Counterterrorism Policy: Hearing Before the National Commission on Terrorist Attacks Upon the United States, Kojm Statement, “Though the FBI is often part of the process, the CIA is usually the main player.”).

⁷¹ Mr Straw said that two requests had been granted and three had been denied. The requests that had been granted were for the rendition of suspects in the East Africa Embassy Bombings to the US, to stand trial. One of the denied requests was for the rendition of an individual to Egypt, and the other two were for renditions of “detainees” to the United States. ‘Straw denies cover-up of rendition flights,’ The Guardian, 20 January 2006:

<http://www.guardian.co.uk/politics/2006/jan/20/uksecurity.terrorism>

⁷² Apparently, renditions before 9/11 required prior inter-agency approval, led by the White House. See Douglas Jehl and David Johnson, ‘Rule Change Lets CIA Freely Send Suspects Abroad to Jails,’ New York Times, March 6, 2005 [online] <http://www.nytimes.com/2005/03/06/politics/06intel.html> (last checked 27 April 2008).

⁷³ See CBS 60 Minutes, ‘CIA Flying Suspects to Torture?’ March 6, 2005:

<http://www.cbsnews.com/stories/2005/03/04/60minutes/main678155.shtml> (last checked 27 April 2008); Jehl and Johnson, ‘Rule Change...’ New York Times; Channel 4 TV (U.K.), ‘Torture: The Dirty Business,’ (Part 3 of series on the U.S. government’s war on terror and the implications for the global ban on torture), March 1, 2005, post-production transcript on file with Human Rights Watch: <http://www.channel4.com/news/microsites/T/torture/cases.html> (retrieved 27 April 2008); Mayer, ‘Outsourcing Torture,’ The New Yorker; Stephen Grey, ‘CIA Prisoners ‘Tortured’ in Arab Jails,’ File on 4, BBC Radio, February 8, 2005.

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renditions from Afghanistan to Guantanamo Bay, of which there were hundreds by the end of 2002 that routinely crossed European airspace⁷⁴ according to US security sources, at least 150-200 renditions occurred between 9/11 and 2004.⁷⁵ Cases that have come to light since 2001 reveal that since 9/11, individuals have been rendered by the US to a wide list of states including Syria, Egypt, Morocco, Saudi Arabia, Jordan, Pakistan and Uzbekistan.⁷⁶

During the months between September 2001 and January 2002 when Madni was apprehended, at least five high-profile rendition cases were reported in the international media. These cases included: on 12 and 14 December 2001, Abu Faisal and Abdul Aziz were reportedly arrested in Pakistan by the US; on 11 November 2001, Ibn Al-Shaykh al-Libi was reportedly arrested in Pakistan; and in January 2002, suspected commander of al-Qaeda training camp Abd al-Hadi al-Iraqi was reportedly arrested.⁷⁷ In January of 2002, the US was cranking itself into full swing with preparations for a series of mass renditions from Afghanistan to Guantanamo Bay, as well as renditions far from the “theater of war” to the Cuban prison. The first military cargo plane to Guantanamo Bay, carrying at least two UK nationals, arrived in Guantanamo from Afghanistan on 20 January 2002, and on 19 January 2002, six Algerian men had been rendered by US agents from Bosnia to Guantanamo Bay despite being released by the Bosnian Supreme Court for lack of evidence, and despite an injunction from the Bosnian human rights chamber that four of them be allowed to remain in the country pending further proceedings.⁷⁸ By January 2002 when Mr Madni was rendered through Diego Garcia, the UK was already actively involved in what would become an accelerating pattern over the next three-four years, with a strong presence on the ground in Afghanistan, and evident involvement from the latter months of 2001 in the illegal detention process of their own nationals.⁷⁹

UK KNOWLEDGE AND POSSIBLE COVER-UP OF MR MADNI’S RENDITION FLIGHT

The 1976 Exchange of Notes between the U.K and U.S Governments in relation to Diego Garcia clearly requires that the UK must be informed of all intended movements of US ships and aircraft on or through BIOT territory, stating at paragraph 3: “The US Commanding Officer and the Officer in Charge

http://news.bbc.co.uk/1/hi/programmes/file_on_4/4246089.stm (last checked April 27 2008); Seymour Hersh, ‘Chain of Command: The Road from 9/11 to Abu Ghraib’ (New York: Harper-Collins), September 2004.

⁷⁴ See ‘The Journey of Death’, Reprieve report on Portuguese complicity in renditions to Guantanamo Bay.

⁷⁵ See Reprieve file.

⁷⁶ See e.g. Don van Natta, Jr., ‘U.S. Recruits A Rough Ally To Be a Jailer,’ New York Times, May 1, 2005; Human Rights Watch Report, ‘Still at Risk: Diplomatic Assurances No Safeguard Against Torture’ (April 2005), [<http://hrw.org/reports/2005/eca0405>] (retrieved May 5, 2005); Mayer, ‘Outsourcing Torture,’ The New Yorker. Ahmed Nazif, Prime Minister of Egypt, confirmed that the United States has transferred terror suspects to Egypt. See David Morgan, ‘U.S. has sent 60-70 terror suspects to Egypt – PM,’ Reuters, May 15, 2005. Mr. Nazif added that he does not know the exact number, “[t]he numbers vary. I have heard the number 60 or 70.”

⁷⁷ U.S. officials told Associated Press on January 8, 2002 and March 30, 2002, of al-Iraqi’s capture. See ‘Raid May Have Nabbed Bin Laden Lieutenant,’ Associated Press, March 30, 2002.

⁷⁸ Duncan Campbell ‘US sends suspects to face torture,’ The Guardian, Tuesday March 12, 2002; [<http://www.guardian.co.uk/Archive/Article/0,4273,4372442,00.html>].

⁷⁹ In January 2002, British citizens Shafiq Rasul, Asif Iqbal and Rhuhel Ahmed report their first contact with British military personnel whilst being held at the US prison camp in Kandahar, Afghanistan. They were all brought separately [Reprieve file, SR00012] to see an interrogator, who was wearing a maroon beret. He told them that he was from the SAS [Reprieve file, SR00013]; (2) Sometime between the end of December 2001, and 23 January 2002, British resident Shaker Amer reports being visited at Bagram Airforce Base by a British man who said he was with MI5. He told Shaker his name was “John”, and Shaker remembers that he was around 6ft tall. Shaker also recalls a visit in Kandahar by a young British man in a uniform, wearing a red beret, about 25-28 years old, 180lbs and red-faced [Reprieve file, Amer 05.02.10 at 2 and 4]; (3) Between 12 and 13 January 2002, Rhuhel Ahmed reports that he was interrogated again, once by MI5 and separately by the FCO. Rhuhel asked after Shafiq and Asif but was told by the MI5 official in the first interrogation that they had gone home because they had co-operated [Reprieve file, SF00019]; (4) Sometime between 8-23 January 2002, Sudanese citizen Sami Al-Hajj was questioned by the British in Bagram, who asked him to “co-operate” [Reprieve file, SME000154a];

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of the United Kingdom Service element shall inform each other of intended movements of ships and aircraft”,⁸⁰ In addition, the UK Foreign Office has stated that the United States would need to ask the permission of the UK should it bring any “unlawful combatants” onto the island,⁸¹ Despite this, it has been extremely difficult to obtain any flight records involving Diego Garcia. In response to questions about why the two flights conceded by David Miliband in February 2008 had taken so long to come to light, former Foreign Secretary Margaret Beckett has said, “It was very difficult for the government to go back and look at what had happened on previous occasions. There was not a clear, simple trace of record keeping. That may, I don’t know, have been the case in the United States also.”⁸² Why, we might well ask, is there not a simple trace of record keeping? It cannot be that complicated to keep records on aircraft coming through the base – indeed, it is required, and done routinely by any air traffic controllers. Worryingly, more than one independent source has since suggested that there had been logs of flights through Diego Garcia but the logs had since been destroyed.⁸³

An examination of detailed records available for four other rendition flights conducted by N379P reveal that the plane routinely operated under various “special status designators” (STS indicators) that might go some way towards explaining the difficulties in tracing records referred to by Margaret Beckett. If it were found that these STS indicators had been used for Mr Madni’s flight, this might explain in part why conventional records do not appear to have been easily available. Further, and more importantly, if found to have been used in the course of Madni’s rendition flight (and if they were not, this would have been a departure from the norm), these STS indicators would indicate both knowledge of and authorisation for the rendition at the highest eschelons of both the US and the UK governments, since by their very nature the STSs in question would indicate that the flights were being planned and executed with the full collaboration of the operating state (in this case the United States), and the “host” states through which the aircraft travelled (in this case, the United Kingdom).

⁸⁰ Exchange of Notes between the UK and US in relation to BIOT, at para 3.

⁸¹ Answer by Baroness Amos to a question from Baroness Williams of Crosby, answer by Baroness Amos to a question from Baroness Williams of Crosby, Lords Hansard Written Answers Text for 28 April 2003: Column WA58.

⁸² Reprieve File, 000 DG156, 24 February 2009.

⁸³ Reprieve file.



An examination of available “data-string” flight records⁸⁴ for the renditions on N379P of Bisher Al-Rawi, Jamil El-Banna, Binyam Mohamed and Mohamedou Ould Slahi reveals that in the course of all four rendition operations, N379P at various times declared itself to have the special status ‘STS/STATE’.⁸⁵ The prerequisite for this designation is clear: “Only those flights... that are specifically required by the State Authorities, e.g. military or civil registered aircraft used in military, customs and police services, shall use the sub-field STS/STATE indicator.”⁸⁶ For these flights, in other words, the operators were claiming an official status for N379P as an aircraft on state duty, only one category below the aircraft that carry Heads of State [STS/HEAD].

In addition, in the course of all four renditions, the operators of N379P also declared the plane to have the special status ‘ATFMEXEMPT’.⁸⁷ This STS designator is even more strictly limited, because once granted it allows deviations from planned routes and other important exemptions. In invoking this status, the aircraft was thereby exempted from adhering to the normal rules of air traffic flow management (ATFM), and did not, for example, have to wait at airports for approved departure

⁸⁴ These are “strings” of raw data that show all communications sent and received from key entities in respect of any one particular flight. The advantage of “data-string” information is that it presents a record of what actually happened, rather for example than what flight plans were filed in advance of a journey. A data-string is also a window into the various entities involved in a rendition flight, as messages are recorded alongside their “originator code”, thus revealing who or what sent a message or filed a designation. The originator code for Jeppesen is KSFOXLDI. The disadvantages of data-strings are that it is extremely difficult to obtain the full set of strings for any particular rendition circuit and therefore to build a full picture from the strings alone. Datastrings relating to different legs of any rendition circuit will be recorded by the local aviation authorities, and Eurocontrol is the only central repository for all datastrings relating to any flight through Europe. However, even with access to Eurocontrol’s repository (and we don’t – it is confidential), it is an extremely difficult and time-consuming task to extract the relevant data from the mass of communications. To locate the data strings relevant to the aircraft and dates requires a search through hundreds of thousands of messages – some in electronic form, some in hard copy – sent between different entities on two separate aeronautical telecommunications platforms. Most of these messages were sent over the Aeronautical Fixed Telecommunications Network (AFTN). The Aeronautical Fixed Telecommunications Network (AFTN) is a global messaging network. It provides for the exchange of messages to improve the safety, regularity and efficiency of international air navigation. Messages exchanged through the AFTN include flight plans, changes to flight plans, NOTAMs (Notices to AirMen), meteorological messages, distress messages, flight regularity messages, administrative and service messages. AFTN “message switching systems” route messages around the AFTN to their required destination(s). For all flights through European airspace, flight plans must be routed to the Central Flow Management Unit (CFMU) of Eurocontrol in Brussels (which calculates routes for all known air traffic). The flight plans are then in turn routed to the relevant ATC agencies, airports and air navigation services. In some cases important messages were sent additionally or exclusively over the network of the Société Internationale Télécommuniqué Aéronautique (SITA). Irrespective of whether AFTN or SITA was used to transmit the communication(s), every message had to pass through the Integrated Initial Flight Plan System (IFPS). IFPS messages are not all recorded in one place, but rather in a minimum of twenty-four (24) different “data sets” generated by the various input and output managers that marshal the system. The IFPS’ data sets are referred to by suffixes on the files in which they are stored: “pif”, “op” and “soc” are the suffixes most commonly used. There are three possible variables for each of these suffixes (i.e. pif1, pif2, pif3 / op1, op2, op3 / soc1, soc2, soc3) – and that any combination of two of the three “pif”, “op” and “soc” suffixes can be used to record data strings in a single file entry. No single combination will provide a comprehensive set of data strings for a particular flight circuit. Therefore, the task in sifting out the matching file entries from the irrelevant file entries is extremely tedious, and even when the searches were completed, the end product is a set of “raw” data for each flight circuits: hundreds of pages of relevant data strings, all of them written in aeronautical code. Finally, in order to translate and interpret the full set of data strings, they need to be divided into “cells” of data and input into databases that will make them more easily readable and comprehensible, analyzed, and then re-presented in a way that makes any conclusions drawn accessible to those with no specialist knowledge of aeronautical communication.

⁸⁵ See ‘Analysis of data strings related to the flight circuit of N379P, 17 to 23 July 2002, including the Islamabad-Rabat rendition of Binyam Mohamed’, at p.5, and ‘Supporting Datastring Analysis’, at rows 75, 92, and cells BA7, BA118/121, BA77, BA92.

⁸⁶ See ‘Eurocontrol IFPS Users Manual’, Section 57, on page 219, entitled ‘STS/STATE Indicator’.

⁸⁷ The data-string for Bisher and Jamil’s plane when it stopped over in Germany also shows that N379P was declared “ATFMEXEMPT/APPROVED” by its operators. See Reprieve file, ‘Extracts from additional documents relating to rendition of Bisher Al-Rawi and Jamil El-Banna.’ And See Eurocontrol, User Relations and Development Bureau, ‘IFPS Users Manual’, Edition No. 11.2, 30.03.2007 (‘Eurocontrol IFPS Users Manual’), available at <http://www.cfm.eurocontrol.int>; at Section 50, ‘Special Status Flights (STS)’, p. 50-1.

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slots.⁸⁸ Invoking this designation effectively allowed N379P to fly wherever it liked, whenever it liked, without having to file new flight-plans.⁸⁹ Crucially though, flights can only be granted this special status when they are ‘specifically authorised by the relevant national authority’ – a requirement that appears to be taken very seriously.⁹⁰ And since such exemptions are only granted when “specifically authorised by the relevant national authority,”⁹¹ The demonstrably complete ease of movement and lack of any evident record trail as N379P delivered Madni to torture in Cairo indicates that this designation may well have been wrongfully used to facilitate this rendition. Wrongful use of this designation in the course of Madni’s rendition flight would point to a significant degree of British complicity in the operation: as put by the investigator for Council of Europe Senator Dick Marty, ‘Both of these “special status” designations invoked for the aircraft N379P...vouch for the prior knowledge and collaborative planning input of the states whose territory or airspace was being traversed, because such exemptions “shall only be used with the proper authority.”⁹² Indeed, such is the strictness with which these designations are invoked and approved, every flight operator’s manual accessed by the consultant emphasizes the limitations on their use.⁹³

In addition to any wrongful usage of “STS designators”, N379P may have also been operating under a military travel order, categorised as the sort of military flight governed by the unpublished NATO agreements of 4 October 2001, in which NATO allies, “agreed today – at the request of the United States – to take eight measures, individually and collectively, to expand the options available in the campaign against terrorism.”⁹⁴ Only two of the eight measures set out in the agreement have been made public:

- (1) Blanket overflight clearances for the United States’ and other Allies’ aircraft for military flights related to operations against terrorism,
- (2) Blanket access to ports and airfields on NATO territory, including for refuelling, for United States and other Allies for operations against terrorism.⁹⁵

If N379P were operating under such an order, it is not clear that specific permission would be sought for any particular flight, rather some form of procedural notification may have sufficed. In keeping with the secrecy of most of the agreement, the nature of any records that may or may not have been created is similarly opaque. In addition, given the above agreement, it is also possible that after 4 October 2001, such operations could have come to be regarded as ‘routine’ by the US and the UK. It may be the case that under the law in Diego Garcia, ‘routine’ military operations may be exempted

⁸⁸ See Eurocontrol, User Relations and Development Bureau, ‘IFPS Users Manual,’ Edition No. 11.2, 30.03.2007 (‘Eurocontrol IFPS Users Manual’), available at <http://www.cfm.eurocontrol.int>; at Section 50, ‘Special Status Flights (STS)’, p. 50-1.

⁸⁹ See Eurocontrol, User Relations and Development Bureau, ‘IFPS Users Manual,’ Edition No. 11.2, 30.03.2007 (hereinafter ‘Eurocontrol IFPS Users Manual’), available at <http://www.cfm.eurocontrol.int>; at Section 50, ‘Special Status Flights (STS)’, p. 50-1.

⁹⁰ See Eurocontrol IFPS Users Manual, Section 54, on page 213, entitled ‘STS/AFTMEXEMPTAPPROVED Indicator’. In a cautionary paragraph printed in bold text, Eurocontrol states: “This exemption designator shall only be used with the proper authority. Any wrongful use of this designator to avoid flow restriction shall be regarded by the relevant states as a serious breach of procedure and shall be dealt with accordingly.”

⁹¹ According to Eurocontrol: “This exemption designator shall only be used with the proper authority. Any wrongful use of this designator to avoid flow restriction shall be regarded by the relevant states as a serious breach of procedure and shall be dealt with accordingly.” See Eurocontrol IFPS Users Manual, Ibidem, at Section 54, ‘STS/AFTMEXEMPTAPPROVED Indicator’, p. 54-1.

⁹² See Eurocontrol IFPS Users Manual, Section 50, on page 205, entitled ‘Special Status Flights (STS)’.

⁹³ For example, the Reprieve consultant found the following strict warning in materials he reviewed from one national aviation authority: ‘These abbreviations are only to be used in the cases described... Any fraudulent use could lead to an inquiry and punishment.’ See Belgocontrol, ‘Aeronautical Information Publication’, Section ENR 1.10 ‘Flight planning’, available at http://www.fed-ulm.be/gegevens/allerl/flpl/flp_belgocontrol.htm; at Sub-section 5.3.2.8, Item 18 – Other Information.

⁹⁴ Parliamentary Assembly Report (2007) at para. 78.

⁹⁵ Parliamentary Assembly Report (2007) at para. 91.

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from relatively burdensome procedure, merely requiring some form of notification rather than a request for permission. This could again possibly affect the nature of any records that may or may not have been created.

Finally, Jeppesen may also have filed false flight logs for N379P, in the course of Madni's rendition circuit. The Council of Europe has found that Jeppesen did so for the same plane in its numerous clandestine trips in and out of Poland: 'The aviation services provider customarily used by the CIA Jeppesen International Trip Planning, filed multiple "dummy" flight plans for many of these flights. The "dummy" plans filed by Jeppesen – specifically, for the N379P aircraft – often featured an airport of departure (ADEP) and / or an airport of destination (ADES) that the aircraft never actually intended to visit. If Poland was mentioned at all in these plans, it was usually only by mention of Warsaw as an alternate, or back-up airport, on a route involving Prague or Budapest, for example. Thus the eventual flight paths for N379P registered in Eurocontrol's records were inaccurate and often incoherent, bearing little relation to the actual routes flown and almost never mentioning the name of the Polish airport where the aircraft actually landed – Szymany.'⁹⁶ Again, this unconventional behaviour from N379P involved not only the private company Jeppesen trip-planning, but also a State party, in this case Poland, in the practical form of the Polish Aviation Authority (PANSAs). Given the almost total absence of available flight logs for suspicious flights through Diego Garcia as well as its obvious strategic significance for both the US and the UK, it is not beyond the realm of possibility that something similar has happened in the case of flights through Diego Garcia.

The UK Foreign and Commonwealth office must urgently reveal:

- *All internal UK government, military and other communications and records relating in any way to flights through or transfers of prisoners through Diego Garcia;*
- *All communications and records between the UK government or military, and any foreign government or military, relating in any way to flights through or transfers of prisoners through Diego Garcia*
- *How many flight logs were destroyed, and what was their content;*
- *What is the routine practise for destruction of such records;*
- *When were these particular records destroyed;*
- *Why were these particular logs destroyed;*
- *When were the first questions posed about the rendition flights;*
- *Had they been destroyed by the time that questions were regularly being asked about rendition flights;*
- *Who authorised the destruction of these logs, and who was aware of the decision either at the time or later.*

CONCLUSION

As Mr Madni's case unfolds, many more questions are raised than answered about Diego Garcia and Britain's role in US detentions. Against the backdrop of emerging evidence of UK knowledge and involvement in all corners of the global us secret prison system, UK claims to ignorance appear increasingly difficult to accept. It is time for the UK government to finally come clean about its role in

⁹⁶ Parliamentary Assembly Report (2007), at para. 185.



Mr Madni's detention, and to reveal precisely who else has been held on and rendered through Diego Garcia, what happened to them there, and where they are now.