



HOUSE OF COMMONS

LONDON SW1A 0AA

Rt. Hon. David Miliband MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH

22 April 2008

Dear David,

Re: Extraordinary Rendition

Thank you for your letter of 18 March 2008. I am responding both to that letter, and some points about Diego Garcia made in your letter to Mike Gapes MP, Chairman of the Foreign Affairs Committee, also dated 18 March 2008.

Rendition 'circuits'

I am deeply concerned that the list of flights to be submitted to the US for specific assurances includes "instances where concerns have been raised that planes may have been on their way to or from a rendition operation", but that these flights are being submitted solely for the purpose of determining whether rendition of an individual through UK territory or airspace in fact occurred¹. This is not the allegation that has been made. The crucial question is whether or not these planes subsequently went on to conduct rendition operations that would be illegal under UK law, or were returning from such an operation. Involvement in these flights, in the form of refuelling or the granting of over-flight rights, could constitute a breach of domestic and international law².

What is the Government's view of the legality of the alleged transit through UK airspace by aircraft on the way to or from a rendition, but with no detainee on board? What legal advice has been sought on whether UK assistance, in the

¹ Letter to Mike Gapes, dated 18 March 2008, available at www.extraordinaryrendition.org.

² In its Third Report of 2006-07 the Foreign Affairs Committee stated: "it is arguable that refuelling an aircraft immediately before or after its use in a rendition amounts to facilitating rendition", para 78, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/269/26907.htm#a13>

form of refuelling or the granting of over-flight rights, could constitute complicity, were the detainee subsequently or previously rendered to suffer torture, or cruel, inhuman or degrading treatment at the hands of US or other authorities?

Renditions through Diego Garcia

You stated in your letter to Mike Gapes that the Government has no record of any request having been made by the US regarding the rendition of the two individuals through Diego Garcia. Further investigation is required to determine whether or not a request was made. If it was not, then the US appears to have breached its obligations as regards the agreement in place for the use of Diego Garcia³. Was there an obligation on the United States to request permission for rendition flights through Diego Garcia, in 2002?

The fact that neither detainee was held as part of the CIA's 'high value terrorist' interrogation programme does not preclude the possibility that they may have been tortured, or subjected to a real risk of torture, or of cruel, inhuman or degrading treatment inconsistent with UK legal obligations on this issue. Interrogation techniques authorised and used at Guantanamo Bay detention centre, where one of the individuals is still being held, are in breach of UK law. The US extraordinary rendition programme involves not only transfers to US secret detention facilities, but also to detention facilities in countries including Syria, Egypt, and Morocco where torture is known to be practiced.

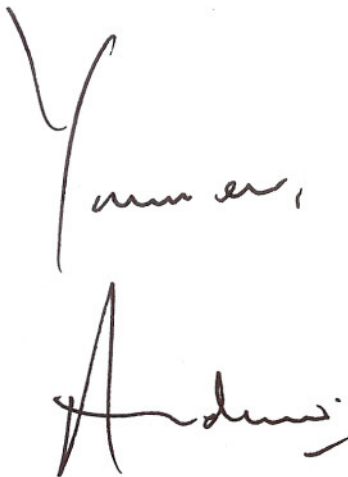
I note your statement that "[t]here is no question that where there are reasonable grounds to believe that an act of torture has been committed on UK territory we would ensure that a prompt and impartial investigation is held in accordance with the UN Convention Against Torture". This obligation exists in law, not only in relation to acts of torture committed on UK territory, but also to situations where there are reasonable grounds to believe that an act of torture has occurred in which UK authorities were complicit. I would be grateful if you would set out the Government's position on this issue.

I also note your disappointment and concern that the information about Diego Garcia has "only just come to light". Yet these allegations have been in

³ In your reply to Mike Gapes you wrote: "Any extraordinary use of the US base or facilities, such as combat operations or any other politically sensitive activity, requires prior approval from Her Majesty's Government and would attract a greater level of involvement by UK personnel both on Diego Garcia and in the UK".

circulation in various forms since 2002⁴. Is this not a further indication of the need for a more proactive approach on this issue by the UK Government, and that reliance on US assurances is inadequate?

I am putting this letter in the public domain.

A handwritten signature in black ink, appearing to read 'Andrew Tyrie', written in a cursive style.

ANDREW TYRIE

Chairman, All-Party Parliamentary Group on Extraordinary Rendition

⁴ In December 2002 Human Rights Watch wrote to the then Prime Minister Tony Blair about the use of Diego Garcia in the rendition programme, following a report by the Washington Post (<http://www.hrw.org/press/2002/12/uk1230ltr.htm>). In 2004 US Principal Deputy Assistant Secretary of Defense for Public Affairs Lawrence DiRita was asked if there were secret detention facilities on Diego Garcia. "I don't know. I simply don't know" he replied (<http://web.amnesty.org/library/index/engamr511772005>). In 2004 retired United States General Barry McCaffrey stated that the US Government was holding detainees at Diego Garcia (<http://www.msnbc.msn.com/id/4924989>). At retirement he was the most highly decorated serving General, and subsequently served as the Cabinet Officer for US Drugs Policy. He repeated these claims in December 2006 (<http://www.npr.org/templates/story/story.php?storyId=6582948>). In June 2007 the Parliamentary Assembly of the Council of Europe reported "concurring confirmations" that Diego Garcia had been used in the processing of high value detainees (Council of Europe Committee on Legal Affairs and Human Rights, '[Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report](http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf)', 7 June 2007, para 70, http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf). I wrote to you on 16 October 2007 requesting that you carry out an investigation into these allegations (Available at www.extraordinaryrendition.org).