

IN THE SUPREME COURT OF
THE BRITISH INDIAN OCEAN TERRITORY

and

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

B e t w e e n :-

THE QUEEN

on the application of

MOHAMMED SAAD IQBAL MADNI

Claimant

-and-

THE COMMISSIONER OF THE BRITISH INDIAN OCEAN TERRITORY

Defendant

WITNESS STATEMENT OF CLARA GUTTERIDGE

I, Clara Gutteridge, Investigator, of Reprieve, PO Box 53742, London, EC4P 4WS , will say as follows:

1. I make this statement in support of the claimant's claims in the High Court of England & Wales and in the Supreme Court of the British Indian Ocean Territory. I am an Investigator in the Secret Prisons and Renditions team at legal charity *Reprieve*. My work focuses on finding victims of enforced disappearance around the world, and collating the evidence needed to enable them to pursue justice.
2. *Reprieve* is a legal charity established by Clive Stafford Smith OBE to use the law to secure the basic rights of prisoners, from death row to Guantánamo Bay.

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3. I have a BA and an MA in Philosophy from Sussex University, and am a graduate of Sussex University Law School. As a student I volunteered for Reprieve and worked on a project arranging hearings in the UK and European parliaments focusing on European Complicity in renditions. I worked for two years investigating European complicity in US renditions and secret detentions, working with lawyers, journalists, political committees, and national and supra-national investigations across Europe and the US. For the past year, I have focused on investigating the cases of victims of enforced disappearance involving the US, and locating secret prisons still operating beyond the rule of law.

Mohammed Saad Iqbal Madni

4. I have been working on Mr Madni's case since February 2008, when Foreign Secretary David Miliband first conceded that two individuals had been rendered through Diego Garcia. Over the following eighteen months, I conducted extensive research detailed below in an attempt to identify these individuals. In the course of this work, I believe I have been able to establish with some degree of likelihood that Mr Madni is one of the individuals in question. The identity of the second individual remains a mystery.

Diego Garcia

5. One of the focuses of my investigations in recent years has been the island of Diego Garcia, part of the British Indian Ocean Territory ("BIOT"). Over the past few years evidence has emerged that Diego Garcia has been used by the US in its rendition program and also for the unlawful detention of prisoners.
6. BIOT is a British Overseas Territory. From around 1964, the US and the UK in the context of the Cold War, had been negotiating the establishment of a US military facility on the island of Diego Garcia. BIOT was created by the BIOT Order of 1965. By the Order, the indigenous population was expelled to Mauritius and following an exchange of diplomatic notes in 1966, Diego Garcia was made available to the US for defence purposes. The US took occupation in 1967 and the physical eviction of the indigenous people followed between 1968-1973.
7. Diego Garcia has its own independent administration, run by a Commissioner based at 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.

8. The British Representative is also Commander of the Royal Navy detachment on Diego Garcia. I understand that approximately fifty British Royal Navy and Marines personnel work for the British Representative, carrying out policing and customs duties, and a detachment of Royal Marines carries out security for the entire BIOT.
9. A 1976 Exchange of Notes between the U.K and U.S Governments in relation to Diego Garcia 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 of the United Kingdom Service element shall inform each other of intended movements of ships and aircraft'.

10. Almost since the outset of the "war on terror", reports have been circulating that Diego Garcia was being used by the US for renditions and detention. The issue was publicly raised by Human Rights Watch in an open letter to Tony Blair on 28 December 2002:

'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

11. In a subsequent series of questions and answers in Parliament in 2003 the UK Government consistently denied that any detainees were on Diego Garcia and said that the US would have to ask for UK permission to bring any detainees to the island, it had not done so, and nobody was being held there.² In October

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 Time Magazine published a report citing interrogation records from the US prisoner Hambali that had reportedly been taken on the island.³ Over the following years further revelations have appeared in the international media citing various high-level sources in the US administration concerning detentions on the island. For example, US 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 stated:

*"We're probably holding around 3,000 people, you know, Bagram Air Field, Diego Garcia, Guantanamo, 16 camps throughout Iraq."*⁴

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'.*⁵

12. Concerns have also been re-iterated by the Council of Europe and the United Nations. The Council of Europe's June 2007 report, *Illegal Interstate Transfers involving Council of Europe Member States*, 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."*⁶

13. However, throughout this time and up until February 2008, the UK Government consistently denied that Diego Garcia had been used by the US for detention

2003, at pp. 16-17, available 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 MSNBC "Deborah Norville Tonight" for May 6, 2004, available at <http://www.msnbc.msn.com/id/4924989>

⁵ National Public Radio (NPR) "Army Generals on Gates, Troops, Part II", 5 December 2006, available at <http://www.npr.org/templates/story/story.php?storyId=6582948>

⁶ 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, 11 June 2007, available at <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf>

and/or rendition. For example, in June 2004 the then Foreign Secretary Jack 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."*⁷

14. And in its inquiry into UK involvement in renditions of July 2007, the UK Intelligence and Security Committee also relied on assurances by the US government, 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."*⁸

The Rendition Flights in 2002

15. 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. In his 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"

⁷ House of Commons Hansard text 21 June 2004 : Column 1221W.

⁸ Intelligence and Security Committee, "Rendition", para 197, July 2007, available at http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf.

16. In an email message relating to the same flights obtained by ABC News and the Associated Press, CIA Director-General Michael Hayden made a statement that use of Diego Garcia had been limited only to 'refuelling':

*"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."*⁹

17. 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."

18. 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 Guantánamo 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".¹⁰

19. Copies of the relevant extracts from Hansard and a copy of the letter to Clive Stafford Smith are attached as Exhibit CG1.

⁹ "The full text of CIA director Mike Hayden's statement to staff about the agency's past use of Diego Garcia", BBC News Online, 21 February 2008, available at http://news.bbc.co.uk/1/hi/uk_politics/7257524.stm

¹⁰ House of Commons Hansard Text, Column 253243, 11 February 2009.

Investigations & Analysis Identifying Mr Madni as a Victim

20. In identifying the two prisoners referred to, we have been given limited information by the British government. However, by analysing the available information it seems likely (albeit on incomplete and circumstantial evidence) that the prisoner rendered through Diego Garcia in January 2002 was Mohammed Saad Iqbal Madni.
21. We know from the two statements that one of the individuals referred to in David Miliband's original statement on 21 February 2008 left Guantánamo Bay between that date and February 12, 2009, the date of the second statement. I therefore analyzed the 37 prisoners released in this timeframe.
22. Information on the dates of capture of individuals can be found in the New York Times Guantánamo Docket database. The Guantánamo Docket is an interactive database of Pentagon documents and New York Times research regarding 779 men who have been detained at Guantánamo as enemy combatants since January 2002. This searchable database includes Pentagon documents related to the Combatant Status Review Tribunals, military hearings created in response to a 2004 decision by the United States Supreme Court to judge whether prisoners at Guantánamo were properly designated as enemy combatants and subject to indefinite detention. It also includes documents from the subsequent Administrative Review Boards, panels of military officers conducting annual hearings to determine whether the detainees remain a threat to the United States or its allies. Additional data on individual detainees has been included to provide a fuller understanding of the past and present population of the detention centre. The Times has reviewed thousands of pages of government documents released in recent years, as well as court records and news media reports from around the world. Information on date of arrival at Guantánamo is derived from Defense Department documents describing the processing of detainees and the dates of incoming detainee transport flights. In March 2006, the Defense Department began to release documents from military proceedings in response to a lawsuit brought under the Freedom of Information Act by the Associated Press. These documents and other records relating to Guantánamo are posted on the Defense Department web site. See <http://int-shared1.ec2.nytimes.com/quantanamo/about>.
23. Dates of transfers to Guantánamo can be found at the New York Times Guantánamo Docket Database and/or derived from the Guantánamo prisoner weight records which were released by the US Department of Defence in response to a FOIA request. The first recorded weight indicates the first time a

prisoner was weighed at Guantánamo, which is normally the same day, or at most the day after, they arrived at Guantánamo. Further information on detention history between these dates can be found from a variety of sources, including prisoner and other witness testimonies, and US government documents such as prisoner CSRT records.

24. Dates of release from Guantánamo can be found at the .New York Times Guantánamo Docket Database.
25. From this information, I compiled a table of all 37 prisoners released from Guantánamo Bay between February 2008 and 12 February 2009, including time and place of transfer, and time of transfer to Guantánamo Bay. The table is attached as Exhibit CG2. References in the table are to the New York Times Guantánamo Docket.
26. 29 of the 37 prisoners were captured during or before September 2002. The other 8 can be excluded. I also excluded all 7 prisoners who were captured after January 2002 and sent to Guantánamo Bay before September 2002, leaving 22. None of these could have been the relevant person as they could not have been rendered through Diego Garcia on either relevant date.
27. I then moved on to research the detention histories of these 22 men. The remaining 22 prisoners can, by reference to the information available, be allocated four separate categories:
 - i) Those who were captured in Afghanistan or on the Afghan/Pakistan border and transferred to Guantánamo within weeks or occasionally a few months of capture;
 - ii) Those who were captured in Pakistan and transferred almost immediately into Afghanistan, and then to Guantánamo within weeks or occasionally a few months of capture;
 - iii) Those who were captured outside of Afghanistan, and transferred almost immediately after apprehension, from the place of apprehension, directly to Guantánamo Bay; and
 - iv) Those who were captured outside of Afghanistan, and who were transferred to Guantánamo some months after capture.

28. It is highly improbable that prisoners in categories (i) and (ii) would have transited through Diego Garcia as this would make no geographical sense as a stopover point between Pakistan/Afghanistan and Guantanamo. There are 18 prisoners in these categories. They were all either seized in Afghanistan or Pakistan and we know that they were transferred from Afghanistan to Guantánamo Bay within a matter of weeks or occasionally a few months of capture. The longest period between capture and transfer to Guantánamo is eight months.
29. While these prisoners cannot be categorically ruled out, the chances are slim that in their limited periods of detention in either Pakistan or Afghanistan prior to transfer to Guantánamo they were rendered to a third country and back again to Afghanistan, and that such a rendition might have been to a place which made Diego Garcia a viable transit point. I attach as Exhibit CG3, a map of the world showing the relative locations of Afghanistan and Diego Garcia.
30. There are three prisoners in category (iii), all of whom were transferred almost immediately from their place of apprehension to Guantánamo Bay. They are Mohammed Nechle, Mustafa Aid Idr, and Hadj Boudella, three of a group of citizens commonly referred to as "the Bosnian Six". These men were all transferred together, and can therefore be excluded from consideration. Furthermore, their US lawyers have obtained large amounts of US government documentation that proves that they were transferred together and directly from Bosnia and Herzegovina to Guantánamo in January 2002.
31. There are only two in the final category. They are Mohammed Saad Iqbal Madni and another prisoner named Soufian Abar Huwari (ISN 1016), who was captured in Georgia on 28 April 2002. Soufian was brought directly to Afghanistan and held in the Dark Prison in Kabul and Bagram before being transferred to Guantánamo on 9 May 2003. Again, it would make no logistical sense for a flight carrying him to have transited through Diego Garcia at any stage during the relevant time period.
32. By contrast, geographical consideration and supporting evidence relating to the rendition of Pakistani Mohammed Saad Iqbal Madni, all points towards the conclusion that he was the prisoner rendered on the plane conceded by Mr Miliband to have been rendering a prisoner through Diego Garcia in January 2002.

33. Mr Madni was detained in Jakarta on 9 January 2002. On the evening of 10 January 2002, Mr Madni says that he was bundled aboard a plane at an airport in Jakarta, which took off around 10.00 pm local time. 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.¹¹ Mr Madni reports a stop-over for refuelling roughly midway through the flight (with several hours flying time either side) before arriving in Cairo on the morning of 11 January 2002. Mr Madni was interrogated and tortured in the presence of US military personnel during the first few days of his detention in Cairo.
34. Meanwhile, Eurocontrol flight-logs (which were not released until many years after the first reports of Mr Madni's rendition) show the corresponding movements of a Gulfstream V with tail-number N379P. A copy of the relevant extracts from the Eurocontrol flight-logs is at Exhibit CG4. The Gulfstream V is a well known rendition plane which has been dubbed "the torture taxi" by journalists and plane spotters around the world.¹² 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. Taking into account the time difference of +4 hours and the time for a possible refuelling at Cairo, N379P could have reached Jakarta for 8.00 pm local time.
35. According to The Sunday Times, N379P collected some Egyptian security personnel and flew them to Cairo to assist with the rendition of Mr Madni.¹³ There is no onward log (meaning that N379P did not pass through European airspace again) until 13.31 on 15 January 2002, when it returned to Washington via Prestwick Airport in the UK.
36. If a refuelling stop was necessary on a flight from Jakarta to Cairo, such a stop could conveniently take place in Diego Garcia. I attach as Exhibit CG5 maps showing the course of a flight plan from Jakarta to Cairo via Diego Garcia. For comparison, I also attach an equally plausible flight plan route through central Asia where the US had access to other air bases, such as Bagram in Afghanistan. Such a route involves a total distance of around 5,950 nautical miles in legs of 3,750 nautical miles and 2,200 nautical miles as against 6,100 nautical

¹¹ Rajiv Chandrasekaran and Peter Finn, "U.S. Behind Secret Transfer of Terror Suspects", The Washington Post, 11 March 2002, available at <http://pqasb.pqarchiver.com/washingtonpost/access/110344462.html?dids=110344462:110344462&FMT=ABS&FMTS=ABS:FT&date=Mar+11%2C+2002&author=Rajiv+Chandrasekaran+and+Peter+Finn&pub=The+Washington+Post&edition=&startpage=A.01&desc=U.S.+Behind+Secret+Transfer+of+Terror+Suspects>

¹² See for example, Trevor Paglen and A.C. Thompson, "Torture Taxi: On the Trail of the CIA's Rendition Flights", Icon Books Limited, 5 July 2007.

¹³ Stephen Grey, 'US Accused of Torture Flights', The Sunday Times, 14 November 2004, available at <http://www.timesonline.co.uk/tol/news/world/article390989.ece>

miles in legs of around 2,400 nautical miles and 3,700 nautical miles for a route via Diego Garcia. It can be seen that both routes would be equally plausible with only a marginal difference in flight distance between them. Either route might be more appropriate depending on weather and wind factors. However, we know that one of the individuals listed in Exhibit CG2 was rendered through Diego Garcia.

37. Following his detention in Cairo for some three months, Mr Madni says he was transferred to Afghanistan in April 2002 where he suffered further ill-treatment, before being transferred to Guantánamo Bay in March 2003. Mr Madni was released from Guantánamo on 31 August 2008.
38. All of the available circumstantial evidence indicates that Mr Madni was rendered through Diego Garcia in January 2002, although this is by no means certain.

STATEMENT OF TRUTH

I, Clara Gutteridge, confirm that the facts in this witness statement are true:

Signed: Clara Gutteridge

Dated: 13. August 2009