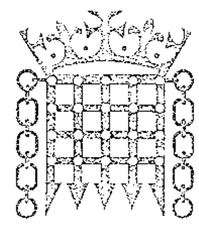
ANDREW TYRIE MP



HOUSE OF COMMONS

LONDON SW1A 0AA

Rt Hon Dr Liam Fox MP
Secretary of State for Defence
Ministry of Defence
Floor 5, Main Building
Whitehall
London SW1A 2HB

19 January 2011

Dear Liam,

Re: Rendition

I am grateful to you for your detailed response to my Parliamentary Question on rendition, 18 October 2010, *Official Report*, column 490W. There are a number of points that I would appreciate more details on in relation to this PQ and outstanding issues from correspondence with your predecessors. For the avoidance of doubt, the questions below are not FOIA requests. I have set them out numerically in an annex to this letter.

Your Written Answer of 18 October 2010

MOD's Strategic Detention Policy

I am glad that the Strategic Detention Policy specifically requires the MOD and the Armed Forces to prevent a detainee transfer from "*UK custody*" to any nation where there is a real risk of "*unlawful rendition*".[i] I would be grateful if you could explain what would constitute an "unlawful rendition" for the purposes of this policy. Would the transfer of the two detainees, handed over by the UK to the US and subsequently rendered to Bagram ('the 2004 renditions'), fall within this definition? At what point does a detainee fall within "UK custody"?

Iraq Historic Allegations Team (IHAT)

I understand that the IHAT started work in October 2010. Only limited information about its remit and processes appears to be available. I would be grateful for more information on this. Will its findings be placed in the public domain? Will it investigate specific allegations only, or will it be able to investigate more general allegations, for example, those made by Ben Griffin regarding UK Forces operating in joint task forces with US forces? Will it be able fully to investigate the circumstances of the 2004 renditions and to give

the public confidence that there have been no other examples of UK Forces being involved in renditions of any kind?

Army Inspectorate Review into Detainee Handling

While this review makes welcome findings as regards the treatment of detainees being held by the UK[ii] it does not appear to address detainee handovers and rendition.[iii] I should be grateful if you would confirm that its findings do not extend to detainee handovers, including those to the US, and rendition.

Detainee Handovers

As you know, I had highlighted the inadequacy of MOD policy on detainee handovers to your predecessors on many occasions before Rt Hon John Hutton MP was forced to confirm, on 26 February 2009, that two detainees had been handed over to the US and subsequently rendered to Bagram. Despite this confirmation, there are a number of points that remain outstanding on this and other related issues. I attach Rt Hon John Hutton's letter to the Defence Committee on this issue, dated 11 June 2009, which I refer to below.

Capture without detention

In this letter the then Secretary of State implied that, for reasons of practicality, a policy of capture without detention existed in areas outside the Multi-National Division (South-East) due to the lack of UK detention centres in other areas.[iv] The individuals would then be subsequently detained by US forces. I would be grateful if you could clarify that this was the case and explain how this worked in practice. For example, did UK Forces outside the MNE(SE) always have a US serviceman stationed with them?

US assurances

I remain concerned that the UK appears to be relying exclusively on US assurances regarding the treatment of the two rendered detainees. Given that in the past, memoranda of understanding have been published, I would be grateful if you could explain why the "*further [MOU] with the US*", referred to in the February 2009 Statement,[v] has not been published?

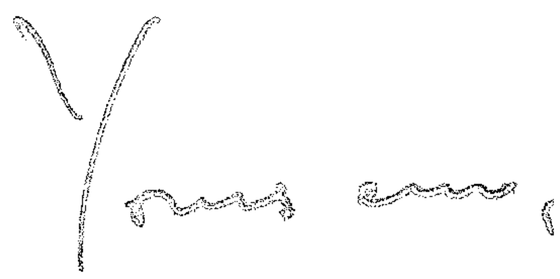
The two confirmed renditions

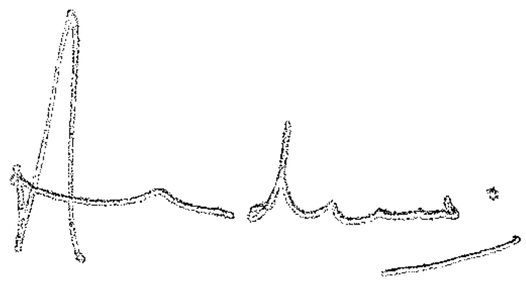
In the case of the two confirmed renditions, UK officials were aware of the intention to transfer the two detainees in March 2004 and knew in mid-June 2004 that the detainees had been transferred to Afghanistan.[vi] Have the procedures in place to prevent such renditions been reassessed in the light of the two renditions? What procedures are now in place to ensure that such a transfer will be objected to and properly reported to Ministers in the future? I am pleased that *"robust measures are now in place"* to prevent inaccuracies in detention record keeping but how do they differ from the record keeping arrangements at the time of the renditions?

Other issues

I still do not understand how a detainee can be "*held on behalf of other coalition forces*" and I would be grateful for clarification on this point.[vii] Are such individuals in UK detention while they are held by UK Forces? How long are they typically held for? Do they fall within the terms of the MOUs between the UK, the US and Australia? Does the UK have continuing rights and/or duties towards these individuals? What protections are in place to ensure that they are properly treated when returned to other coalition forces?

I am placing a copy of this letter in the public domain and copying it to Rt Hon James Arbuthnot MP, Chairman of the Defence Select Committee, and to Rt Hon Sir Peter Gibson.





ANDREW TYRIE

Chairman, All Party Parliamentary Group on Extraordinary Rendition

[i] *Ministry of Defence Strategic Detention Policy*, March 2010, paragraph 3.1.f.

[ii] For example: "*5. Doctrine, procedures and training are in place that comply with legal and policy obligations, but which are nevertheless subject to regular review and continuous evolution. Soldiers clearly understand the basic procedures to follow and the proscribed techniques; they also understand that there are potential legal and strategic consequences of getting it wrong.*
6. There is positive assurance that the UK facilities in Afghanistan are run in compliance with applicable international law, UK regulations and Defence policy..."

[iii] The Review states at paragraph 3 that its aim "*is to examine and assess the implementation of policy, training and conduct of detainee handling on operations, and to make recommendations*". It does not refer to rendition and appears to be focused on the treatment of detainees who have been captured by the UK or are in UK detention.

[iv] Rt Hon John Hutton wrote: "*UK Forces have undertaken operations in areas outside Multi-National Division (South-East) where they have captured individuals who were subsequently detained by US Forces... The reason is in fact very simple: in MNE(SE) the UK had its own detention facility; in areas outside of MNE(SE) it did not...*"

[v] Rt Hon John Hutton MP, *Records of Detention (Review Conclusions)*, 26 February 2009, at Column 397.

[vi] Rt Hon Bob Ainsworth MP, *Afghanistan: Detainees*, Written Answer, 6 July 2009, Column 549W.

[vii] Referred to in *Records of Detention (Review Conclusions)*, 26 February 2009, at Column 395; and in Rt Hon John Hutton's letter of 11 June 2009, at Issue 5.

Annex: Questions on Rendition

1. What constitutes an "unlawful rendition" for the purposes of the MOD's *Strategic Detention Policy*?

2. Would the transfer of the two detainees, handed over by the UK to the US and subsequently rendered to Bagram ('the 2004 renditions'), fall within this definition?

3. At what point does a detainee fall within "UK custody" for the purposes of the *Strategic Detention Policy*?

4. Will the findings of the *Iraq Historical Allegations Team* be placed in the public domain?

5. Will it investigate specific allegations only, or will it be able to investigate more general allegations, for example, those made by Ben Griffin?

6. Will it be able fully to investigate the circumstances of the 2004 renditions and give the public confidence that there have been no other examples of UK Forces being involved in renditions of any kind?

7. To what extent, if at all, does the *Army Inspectorate Review into Detainee Handling* extend to rendition and detainee handovers, including those to the US?

8. Please confirm whether a policy of capture without detention existed in areas outside the Multi-National Division (South-East), due to the lack of UK detention centres in other areas?

9. If it did, how did this policy operate in practice?

10. Did UK Forces outside the MNE(SE) always have a US serviceman stationed with them?

11. Why has the "further MOU with the US" not been published?

12. Have the procedures in place to prevent UK involvement in renditions been reassessed in the light of the 2004 renditions?

13. What procedures are now in place to ensure that such renditions will be objected to and properly reported to Ministers in the future?

14. How do current "robust measures" in place to prevent inaccuracies in detention record keeping differ from the record keeping arrangements at the time of the 2004 renditions?

15. Please explain how a detainee can be "held on behalf of other coalition forces".

16. Are such individuals in UK detention while they are held by UK Forces?

17. How long are they typically held for?

18. Do they or did they fall within the terms of the MOU between the UK, the US and Australia?

19. Does the UK have continuing rights and/or duties towards these individuals?

20. What protections are in place to ensure that they are properly treated when returned to other coalition forces?