



HOUSE OF COMMONS

LONDON SW1A 0AA

Rt. Hon. James Arbuthnot MP
Chairman
Defence Committee
House of Commons
London
SW1A 0AA

21 September 2009

Dear James,

Re: Extraordinary Rendition

Thank you for your letters of 30 April 2009 and 24 June 2009. I am grateful to you for raising this issue with the Defence Secretary. I set here out some responses to the points made by the Defence Secretary in his letter to you of 11 June 2009. For the sake of clarity I attach this letter here.

The Secretary of State's response to Issue 1 comes close to confirming that a policy of capture without detention exists in areas outside the Multi-National Division (South-East). He states that this was for reasons of practicality and necessity in areas where the UK did not have its own detention facility. If confirmed, this position would mirror that adopted by Australian forces, set out in documents released under the Australian Freedom of Information Act, attached. The Secretary of State refers to the coalition operating in Iraq. As you know, the US has very different standards of treatment for detainees to the UK, making the need for examination of UK policy on detainee handovers and transfers essential. It is important to obtain more information on this apparent policy, including its precise content, whether formal or informal, and how it has been implemented on the ground. Freedom of Information Act (FOIA) requests I have submitted to the MOD seeking this information have been refused. I hope that your Committee will continue to seek information from the MOD on this issue.

In relation to Issue 2, surrounding the accuracy of the detention review, the Defence Secretary confirmed that the review with the following inaccurate findings was relied upon: *"The picture is a positive one. The UK has met its obligations by a combination of assurances, operational judgement, and record keeping. The Department will always be open to baseless speculation that we*

have been complicit in rendition or ill treatment. To end all speculation would require us to prove a negative. We can say, however, that we have no evidence of unlawful rendition and we have looked". The tone of these conclusions appear to cast doubt on the extent to which the review was conducted with an open mind by the MOD. It is also relevant that the MOD withheld 96 percent of this review in response to a FOIA request I submitted last year. Your Committee may wish to seek access to the review in full in order to examine this issue further.

On Issues 3 and 4 the Defence Secretary failed to elaborate on the content of the most recent Memorandum of Understanding with the US, including whether or not it gives rights to the UK to demand access to or the return of the two detainees in question. Reliance on a secret Memorandum of Understanding cannot give the public confidence that the arrangements in place are adequate to ensure the proper treatment of detainees handed over to the US. He also failed to address the inaccuracy of US assurances in the past and the findings of the Foreign Affairs Committee that US assurances on detainee treatment cannot be relied upon. The clear implication is that, as before, the UK has taken no steps independently to verify the accuracy of US assurances on this issue. In response to a recent PQ (below) the Secretary of State confirmed to me that the two rendered individuals are being held at Bagram. There have been many claims of abuse at Bagram, including most recently a BBC report in June of this year. His response is deeply unsatisfactory and I hope that your Committee will revisit this issue.

Afghanistan: Detainees

Mr. Tyrie: To ask the Secretary of State for Defence pursuant to the statement of 26 February 2009, *Official Report*, columns 394-97W, on Records of detention (review conclusions), what the names of each of the two individuals transferred from Iraq to Afghanistan in 2004 are; at what US detention facilities they (a) have been and (b) are being held; what steps the Government has taken to verify US assurances on the treatment of the two individuals; whether the UK has the power to demand (i) access to and (ii) the return of the two individuals; on what date officials were first made aware of (A) the intention to transfer the two individuals and (B) the transfer itself; what international law applies to people held on behalf of other coalition forces; and if he will make a statement. [283335]

Mr. Bob Ainsworth [*holding answer 30 June 2009*]: It is not the practice of this Department to release personal information, such as the names of these two individuals. The individuals were initially held at a US detention facility in

Baghdad before they were transferred to US detention facilities at Bagram Air Base in Afghanistan. As my predecessor made clear in his statement, when this information came to light officials immediately engaged with their US counterparts and were assured that the individuals are held in a humane, safe and secure environment that meets international standards that are consistent with applicable cultural and religious norms. I am satisfied that these assurances are reliable; although there is no formal legal power for the UK to demand access to the individuals, close relationships with the US satisfy me that this is not required. After 31 December 2008 the UK has no power of detention in Iraq so demanding the return of these two individuals would not be practical nor possible.

The review examined the available historical records, which suggest that British officials became aware of an intention to transfer in March 2004, although this was some days after the initial capture had occurred. British officials had learned by mid-June 2004 that the individuals had been transferred to Afghanistan.

What particular international law provisions apply will depend on the operational theatre and the circumstances; I am not in a position to make general statements on what legal provisions may apply as each operational theatre is different.

The Defence Secretary failed to respond to Issue 5. It is still unclear what the UK's "*duties and obligations*" are towards individuals "*held on behalf of other coalition forces*". Are such individuals in UK detention while they are held by UK Forces? 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?

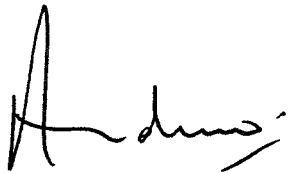
In relation to Issues 6 and 7 the Secretary of State set out that "*British officials became aware of an intention to transfer in March 2004*". In the PQ set out above the Defence Secretary confirmed to me that "*British officials had learned by mid-June 2004 that the individuals had been transferred to Afghanistan*". This is a greater degree of knowledge than has previously been acknowledged by the Government.

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, and what measures have been put in place to ensure that such renditions cannot happen again in the future? The Secretary of State does not address these inadequacies in his letter to you. It is now clear that British officials knew both of an intention to render the

individuals, before their rendition, and that a rendition had occurred after the individuals had been transferred, yet it was not questioned at either point. I have highlighted in the past that the arrangements described to me by the then Secretary of State in January 2008 appear to be inadequate. You may wish to pursue this important point further with the Secretary of State to determine how the public can have confidence that the UK will not be similarly involved in renditions to Bagram in the future.

I am putting this letter in the public domain.

Yours ever,

A handwritten signature in black ink, appearing to read 'Andrew'.

ANDREW TYRIE

Chairman, All-Party Parliamentary Group on Extraordinary Rendition