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As New Evidence Emerges that 'War on Terror' Prisoners were Held on Diego Garcia, Reprive Demands Immediate Action from the British Government

Reprive, the British legal action charity that represents 32 prisoners in Guantánamo Bay, today demands that the British government hold an open and transparent public inquiry into the use of the British Overseas Territory of Diego Garcia to house a secret prison.

Reprive's demand is based on two recent and shocking revelations: as reported yesterday evening on *BBC Newsnight*, a newly-published article in *TIME*, in which a senior American official (now retired), who was "a frequent participant in White House Situation Room meetings" after the 9/11 attacks, has explained that "a CIA counter-terrorism official twice said that a high-value prisoner or prisoners were being interrogated on the island" in 2002 and possibly 2003¹; and recent reports by *BBC Newsnight* and the leading Spanish newspaper *El País*, in which it was revealed that Mustafa Setmariam Nasar, a "ghost prisoner" whose current whereabouts are unknown, was held on the island on 2005 and possibly 2006.²

Clive Stafford Smith, *Reprive's* Director, said:

"Today's *TIME* story further demonstrates that the British government has allowed itself to be duped by the US on a colossal scale. While Ministers have spent years looking the other way, British territory has been used for kidnapping, 'extraordinary rendition', illegal imprisonment and possibly torture. However, ignorance is no excuse when it comes to crimes of this magnitude."

Clive Stafford Smith continued: "The United States must come clean about the existence of its secret prison on Diego Garcia – and the British government must ensure the US does so. In February 2008, Gen. Michael Hayden, the Director of the CIA, stated categorically that Diego Garcia had never housed a secret prison.³ It now seems that simply isn't true. It is time for these evasions to come to an end, and for the full details of the CIA's secret prison system to be revealed."

¹ Adam Zagorin, 'Source: British Territory Used for US Terror Investigation', *TIME*, 31 July 2008, available at <http://www.time.com/time/world/article/0,8599,1828469,00.html>

² José María Irujo, 'Un "yihadista" en el limbo', *El País*, 18 May 2008, available at http://www.elpais.com/articulo/reportajes/yihadista/limbo/elpepusocdmg/20080518elpdmngrep_1/Tes

³ See for example 'CIA says used waterboarding on three suspects', Reuters, 5 February 2008, available at <http://www.reuters.com/article/topNews/idUSN0517815120080206>

The UK government – relying on assurances from its US counterparts – has consistently denied that prisoners have been held on Diego Garcia. These denials are clearly no longer tenable, and *Reprive* is therefore obliged to remind the British government that holding prisoners in secret imprisonment is illegal under domestic UK and international law.

Reprive is also obliged to remind the British government that it has a duty to make representations for the fair treatment for any individuals rendered through or held on its territory by the United States. *Reprive* notes that the torture of “high-value” prisoners like those reported held on Diego Garcia is well-documented, and, while we are unable to ascertain at present if prisoners were tortured on Diego Garcia, this remains a distinct possibility. By allowing such acts to happen on British territory, the British government may have breached its obligations under the UN Convention Against Torture.

The background to the story

Between October 2003 and January 2008, the US government provided numerous assurances that no detentions or renditions had occurred within the jurisdiction of Diego Garcia. For almost five years the British government blindly accepted these assurances, and to *Reprive*’s knowledge did nothing to further inquire into these serious and persistent allegations.

These denials finally came to an end this February, when Foreign Secretary David Miliband announced that his US counterparts had checked their records and had discovered that two flights, each carrying one prisoner, had passed through Diego Garcia in 2002. Mr. Miliband maintained, however, that he had been assured that the planes had only landed for refuelling, and that no prisoner had ever set foot on Diego Garcia. Mr. Miliband repeated these claims just four weeks ago, after apparently receiving further confirmation from his US counterparts that no other rendition flights had passed through British territory, claims that now appear false.

Seven prisoners possibly held on Diego Garcia



Abu Zubaydah. A Saudi citizen born in March 1971, Abu Zubaydah (Zayn al-Abidin Muhammad Husayn) was seized in Faisalabad, Pakistan in a joint operation by Pakistani forces and the FBI on 28 March 2002. Held initially in Thailand, and later in Poland, *TIME* suggested in July 2002 that he was being held on Diego Garcia.⁴

Abu Zubaydah’s torture in secret prisons run by the CIA is well-documented. In February 2008, Gen. Michael Hayden, the Director of the CIA, admitted that Abu Zubaydah was one of three prisoners who had been subjected to waterboarding (an ancient torture technique that involves controlled drowning) in CIA custody. He was reportedly also 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

⁴ The original article is not available online, but is mentioned here:

<http://www.rediff.com/us/2002/jul/15war.htm>

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.⁵

One of 14 "high-value detainees" transferred to Guantánamo in September 2006, Abu Zubaydah has not yet been put forward for trial by military commission at Guantánamo, but it remains possible that he will be charged and will face the death penalty if convicted.



Khalid Sheikh Mohammed. A Kuwaiti, born in 1964 or 1965, Mohammed (commonly known as KSM) was seized in Rawalpindi, Pakistan on March 1, 2003. Like Abu Zubaydah, he was subjected to waterboarding and an array of other torture techniques. He is presumed to have been held initially in Thailand, and later in Poland. Transferred to Guantánamo in September 2006, he was put forward for trial by Military Commission in February, and will face the death penalty if convicted.

Rumours that KSM was held on Diego Garcia have surfaced sporadically over the years, one example being an article in the Toronto Star in 2005, in which John Pike, a US defence analyst, said that he believed that KSM had been held on Diego Garcia, and explained, "Diego Garcia is an obvious place for a secret facility. They want somewhere that's difficult to escape from, difficult to attack, not visible to prying eyes and where a lot of other activity is going on. Diego Garcia is ideal."⁶



Ramzi bin al-Shibh. A Yemeni, born in 1972, bin al-Shibh was seized in a raid in Karachi, Pakistan on September 11, 2002. His imprisonment on Diego Garcia has been suspected since flight logs revealed that a plane flew to the island from Pakistan immediately after his capture. Transferred to Guantánamo in September 2006, he was put forward for trial by Military Commission in February, and will face the death penalty if convicted.



Hambali. An Indonesian born in April 1966, Hambali (Riduan Isamuddin) was seized in Ayutthaya, Thailand in a joint operation by Thai forces and the CIA on 11 August 2003. In 2003, *TIME* reported that he was being held on Diego Garcia⁷, but the British government, citing US assurances, said that this was not the case.

Hambali is one of 14 "high-value detainees" transferred to Guantánamo in September 2006. No details of his treatment in US custody have emerged, although it is likely that he too was subjected to torture. Like Abu Zubaydah, he has not yet been put forward for trial by military commission at Guantánamo, but it remains possible that he will be charged and will face the death penalty if convicted.

⁵ 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>

⁶ Lynda Hurst, 'Island paradise or torture chamber?' Toronto Star, 2 July 2005, mirrored at <http://www.globalsecurity.org/org/news/2005/050702-island-torture.htm>

⁷ 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>

Lillie (Mohammed Nazir bin Lep) and **Zubair** (Mohd Farik bin Amin). Malaysians, seized with Hambali, little is known of these two men, beyond claims by the US administration that they worked closely with Hambali. They were transferred from CIA custody to Guantánamo in September 2006, and although no details of their treatment in US custody have emerged, it is likely that they too were subjected to torture. They have not yet been put forward for trial by military commission at Guantánamo, but it remains possible that they will be charged and will face the death penalty if convicted.



Mustafa Setmariam Nasar. A dual Spanish and Syrian national, born in 1958, Mustafa Setmariam Nasar was seized in Quetta, Pakistan in October 2005 and handed over to US forces approximately a month later. Since then he has completely disappeared. It is not known whether he is being held in a secret CIA prison or if he has been rendered to a third country.

It is clear, however, that the US authorities know of his whereabouts. In March 2006, the United States removed him from a list of terrorism suspects, and in July 2006 his name was included in the US government's list of "Terrorists No Longer a Threat."

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For further information, please contact **Andy Worthington** or **Clara Gutteridge** on 020 7353 4640 and 07973 687950, or email Clara@reprieve.org.uk or Andy@reprieve.org.uk.

Note for editors

Reprieve, a legal action charity, uses the law to enforce the human rights of prisoners, from death row to Guantánamo Bay. *Reprieve* investigates, litigates and educates, working on the frontline, to provide legal support to prisoners unable to pay for it themselves. *Reprieve* promotes the rule of law around the world, securing each person's right to a fair trial and saving lives.

Clive Stafford Smith is the founder of *Reprieve* and has spent 25 years working on behalf of people facing the death penalty in the USA. *Reprieve* lawyers currently represent 30 prisoners held in Guantánamo Bay.

For more details about *Reprieve*, visit: www.reprieve.org.uk.