

Herman Van Rompuy
President of the European Council

Jerzy Buzek
President of the European Parliament

Catherine Ashton
High Representative for Foreign Affairs and Security Policy
Vice President of the European Commission

Brussels, 3 May 2010
Our Ref.: B961

Dear Presidents, dear High Representative,

Subject: Visit of US Vice-President Joe Biden to Brussels on 6 May 2010

In view of the up-coming visit of US Vice-President Joe Biden to Brussels, Amnesty International urges the EU to use this opportunity to engage in an open and frank discussion with the United States (US) on the human rights implications of its counter-terrorism policies. With the declared goal of Vice-President Biden's visit being to seek improved cooperation between the USA and the EU in the field of counter-terrorism, the EU must ensure that respect for human rights is central in on-going and future joint US-EU efforts to tackle security and terrorist threats. There can be no security without human rights.

The US administration has yet to implement President Barack Obama's executive order of 22 January 2009 to resolve the cases of detainees held at the US Naval Base in Guantánamo Bay. While the administration's stated commitment to close the facility was widely welcomed, any plan for closure must not come at the expense of full respect for human rights. The US authorities have determined that there are some 48 Guantánamo detainees whom the USA can neither release nor prosecute. The administration is currently seeking congressional support for its plan to continue to detain such individuals in Thompson Correctional Center in Illinois. We call on the EU to urge the USA not to replace detention without trial at Guantánamo with similar indefinite detention regimes, whether in Illinois, elsewhere on US soil, or in any other place.

More than 15 months after President Obama's executive order, some 180 men are still held at Guantánamo in violation of international human rights law without trial or prospect of imminent release. Compliance with human rights requires that any detainee not charged with a recognizable criminal offence should be immediately released, while ensuring that no one is forcibly returned to a country where he would face human rights violations. The EU must continue to press the USA to release Guantánamo detainees whom the US authorities do not intend to prosecute. While the USA should be encouraged to recognize its primary responsibility to accept released detainees who cannot return to their home countries, EU countries should also offer to continue to take such detainees as part of a commitment to bringing an end to these detentions and to allowing these men to begin rebuilding their lives.

Similarly, Amnesty International urges the EU to take a clear stand against the use of military commissions by the USA for the trial of Guantánamo detainees. While the Military Commissions Act was revised in 2009, procedures under it will still fall short of international fair trial standards, including in regard to the lack of institutional independence, the use of military tribunals to try civilians, and the requirement of equality before the law regardless of nationality. The USA should use civilian federal courts for any trials of Guantánamo detainees.

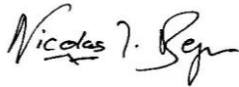
The current reconsideration of the US authorities decision to bring five Guantánamo detainees, accused of involvement in the attacks of 11 September 2001, to trial in a civilian federal court is of concern to Amnesty International. The five men remain in Guantánamo, and the US Attorney General has revealed that the administration is yet to make a final decision on whether trials should be in a federal court or military commission. A U-turn on this case would represent a serious setback for human rights. The EU should urge the US administration to adhere to its decision to try these men in civilian federal court, and furthermore not to seek the death penalty in these or any other cases.

Another case we would like to draw your urgent attention to is that of Omar Khadr, a Canadian national who was taken into US custody in Afghanistan when he was only 15 years old, and has been held in Guantánamo since 2002. Omar Khadr's trial by military commission is scheduled to begin on 12 July 2010, and pre-trial proceedings in his case resumed in late April. As long as the USA persists in trying his case by military commission rather than civilian courts, there is no prospect of him receiving a fair trial. Within your discussions with Vice-President Biden, we urge you to raise this case and call on the USA to abandon military commission proceedings in his case.

Within the wider context of counter-terrorism operations, the question of accountability and remedy for human rights violations committed must be raised. To date, no one has been brought to account for the crimes under international law of torture and enforced disappearance committed as part of the secret detention and interrogation program run by the CIA. Under international law, the USA is obliged to thoroughly investigate all credible allegations of human rights violations, bring those responsible to justice and provide effective remedies to the victims. Yet, the current administration has not met its obligations in this regard, and seems little inclined to do so. In order to continue building a constructive, mutually supportive relationship with the USA, the EU must deal with its own role in counter-terrorism operations, including allegations of Member State complicity in rendition and secret detention. The EU needs to respond swiftly to these allegations and encourage the USA to do the same.

We hope your discussions with Vice-President Biden prove fruitful, and we stand ready to provide any further information that would be useful to your discussions.

Yours sincerely,

A handwritten signature in black ink that reads "Nicolas Beger". The signature is written in a cursive, slightly slanted style.

Nicolas Beger
Director
Amnesty International EU Office