



## **Amnesty International recommendations to the EU**

EU-US Summit, June 2006

---

6 June 2006

Amnesty International  
EU Office  
Rue d'Arlon 39-41  
B-1000 Brussels

Tel.: +32 2 502 14 99

Fax: +32 2 502 56 86

Email: [amnesty-eu@aieu.be](mailto:amnesty-eu@aieu.be)

On the occasion of the EU-US summit in Vienna on 21 June 2006, Amnesty International calls on the European Union to take effective action against human rights violations linked to US-led 'war on terror' detention policies and practice worldwide. In particular Amnesty International asks the EU Presidency to use the opportunity of the summit to:

[1] Convey to the US authorities of the highest level and in the strongest possible terms the EU position that the detention centre at Guantánamo Bay, Cuba, should be closed as soon as possible. Those still held there must be released or, if enough admissible evidence is gathered, charged with recognisable criminal offences and prosecuted in a fair trial, without recourse to the death penalty or other cruel, inhuman or degrading punishment;

[2] Call for an end to the indefinite detention of those held in the context of the 'war on terror', in places such as Bagram air base in Afghanistan, and in Iraq. All detainees must be released or promptly brought before a judge or other officer authorised by law and be able to challenge the legality of their detention. Subsequently they should be charged with a recognisable criminal offence or released;

[3] Express concerns for the well-being of those still detained. In particular, the EU must call on the US authorities to give 'war on terror' detainees access to independent psychological and medical experts, adequate means to communicate with their families, and access to legal counsel;

[4] Call for an end to the practice of secret detention. In particular, the EU must demand that the USA reveal the locations of any secret detention facilities worldwide, publish a list of those being held, including those held by other countries at the request or with the knowledge or complicity of the USA, and allow these detainees access to families, lawyers, doctors, a judicial official and consular staff or a competent international organisation;

[5] Address US plans for the transfer of detainees currently held in Guantánamo to their home country or to third countries, including calling for full disclosure of details of transfer agreements which are being reached. Specifically, call on the USA to ensure that no detainee is transferred to where they may face further human rights violations including torture, ill-treatment, unfair trials or another form of indefinite detention; and oppose the procurement and reliance on diplomatic assurances against torture or other ill-treatment; and

[6] Convey that renditions and rendition flights through EU territory and airspace will not be permitted in the future.

## 1. Call for the closure of the detention centre at Guantánamo Bay

On 28 May 2006, EU foreign ministers announced that they had agreed the common position that US authorities should take steps to close Guantánamo as soon as possible. Amnesty International calls on the EU to use the opportunity of the forthcoming summit to formally convey this message to the US authorities.

Detention at Guantánamo Bay remains at the forefront of media and public opinion, with politicians, prominent lawyers and academics in the EU and beyond expressing deep concern that the facility remains open after nearly four and a half years. Around 460 men remain detained, facing the prospect of many more years of indefinite detention. Ten of them have been charged to face trial by military commission, executive bodies whose procedures do not safeguard fair trial rights. Many still have no legal representation and all have severely limited means of communication with their families.

US authorities are pressing ahead with the construction of an additional long-term detention facility at Guantánamo. Camp VI, currently under construction and due to open in August 2006, will be able to house more than 200 detainees. Detainees who are considered a 'high security risk' are held in Camp V which is modelled on the high security 'supermax' prisons on the US mainland, where they are held in solitary confinement, often for up to 23 hours a day.

Amnesty International has long-standing serious concerns regarding the conditions in US 'supermax' style prisons. These concerns are heightened for the detainees currently held in Guantánamo Bay, many of whom have suffered torture or other ill-treatment in US detention in Guantánamo or elsewhere. There have been numerous suicide attempts and Amnesty International remains concerned for the physical and mental welfare of many of the detainees.

In response to a questionnaire submitted to the UN Human Rights Committee, one lawyer described the conditions of detention in Camp V for his client, Jarallah al-Marri:

*"Mr. al-Marri is being held in solitary confinement in a tiny cell...[He] had no contact with other prisoners or with the outside world...The lights remain on in his cell 24 hours a day, 7 days a week, and he is unable to sleep for more than 2 hours a night...His access to medical and dental treatment has been significantly restricted. His prolonged isolation and other conditions of confinement have also severely harmed his mental health and well-being."*

Recently US officials have made a number of public statements regarding the future of the detention centre in Guantánamo Bay. On 4 May 2006, US Attorney General Alberto Gonzalez noted that, "Guantánamo exists because it is absolutely necessary. I hear some critics say we should close down Guantánamo and yet no one is willing to offer the United States an alternative." On the same day, John Bellinger, the Department of State Legal Advisor who led the US delegation to the Committee against Torture in Geneva in May, said that the USA would "welcome the assistance of the international community" in resolving the Guantánamo issue. President Bush and Secretary Rice have both stated that they would like to see Guantánamo closed, but officials have also dampened any hopes that this may happen in the near future.

It seems apparent that, without further pressure from bodies such as the EU, the detention centre at Guantánamo Bay could remain open for years to come. The EU should take the opportunity provided by this summit to emphasise to the US authorities their responsibility for finding a solution for the detainees held at Guantánamo and stress that as the authority responsible for transferring the detainees and holding them indefinitely outside the framework of international law, the USA needs to redress this situation in full compliance with international human rights law and standards.

The detention centre at Guantánamo Bay must be closed, all those held must be released unless sufficient admissible evidence is gathered and they are charged with recognisably criminal offences and given a fair trial. Those who are to be charged with recognisably criminal offences should face trial before a civil tribunal in the US or other criminal court.

## 2. Call for an end to all indefinite detention of those held in the context of the 'war on terror'

In its recent report on the USA, the UN Committee against Torture noted that "detaining persons indefinitely without charge constitutes per se a violation of the Convention [against Torture]". Amnesty International is

seriously concerned that the US authorities are routinely breaching their obligations under the Convention against Torture. In addition to those detainees at Guantánamo, the USA continues to hold thousands of detainees in Iraq, Afghanistan, and undisclosed locations in conditions which facilitate torture or ill-treatment. These include denial of access to courts, prolonged incommunicado detention, and detention in secret locations amounting to enforced 'disappearances'. Such conditions can in themselves amount to torture or ill-treatment. The EU should also take the opportunity of the upcoming summit to call for an end to such detentions.

Hundreds of detainees continue to be held in US custody in Afghanistan, with no recourse to due legal process or human rights protections. Some have been detained without charge or trial at Bagram US airbase for two or three years, yet have no access to lawyers, relatives or the courts. While Amnesty International has been told that the ICRC now visits detainees in Bagram every two weeks, detainees remain incommunicado during the initial period of detention as well as between visits. The ICRC still has no access to detainees held in an unknown number of US Forward Operating Bases, where detainees may reportedly be held for up to ten days, or possibly longer.

According to a recent report in the New York Times, based on interviews with current and former administration officials, the number of detainees held in the Bagram facility has been increasing since 2004 and holds about 40 non-Afghan prisoners, some of whom were previously held by the CIA in secret interrogation centres in Afghanistan and other countries. As of May 2006, the ICRC was visiting approximately 560 detainees in Bagram.

The US-led Multi-National Force (MNF) in Iraq has continued to detain people in connection with the ongoing insurgency, the vast majority of them in US military custody. Thousands of "security internees" have been held by the USA for months, many for more than two years, without charge and with no right to challenge the lawfulness of their detention before a court.

Security internees are not allowed access to legal counsel for the first 60 days of internment and, it appears that, in practice, visits by legal counsel to security detainees at any time are extremely rare, the main reason being the belief that it is futile to seek legal counsel when the detainee will not be brought before a court of law. Relatives of detainees have also reported difficulty in gaining access to internees.

Although the ICRC is in principle allowed to visit MNF-held detainees at locations throughout the country, AI has been told that access is limited to detainees in internment facilities, and the ICRC has no access to those held in US division or brigade holding facilities immediately after arrest. Detainees may be held for days or weeks in such facilities.

### **3. Express concern for the well-being of the Guantánamo detainees and those held by the USA elsewhere**

The EU must urgently address the situation of those who remain detained in Guantánamo and elsewhere and call on the USA to ensure that all the detainees are being humanely treated with access to independent medical care and afforded adequate contact with their families.

Former Guantánamo detainees have told Amnesty International that the prospect of long-term indefinite detention at Guantánamo was, at times, worse than the physical abuse they had suffered. Nearly four and a half years since the first transfers to Guantánamo, the ongoing construction of long-term detention facilities at the base is a disturbing prospect for any outside observer. It is unimaginable how the prospect of continued detention must feel to the detainees themselves.

Amongst those who remain detained at Guantánamo with little prospect of imminent release is Bahraini national Jumah al-Dossari who is believed to have attempted suicide at least 12 times since his incarceration by US authorities. In January 2006, he was informed that the annual Administrative Review Board (ARB) had decided that he should continue to be detained for at least another year.

In a note written to his lawyer prior to one of his most recent suicide attempts, he asked the world to:

*"Remember that there are hundreds of detainees in Guantánamo...They were captured, tortured or detained with no offence or reason...remember that the world let us and let our case down..."*

Jumah al-Dossari had been held in Camp V in solitary confinement in conditions which led medical experts to warn there would "remain a great likelihood that he will again attempt to harm himself physically" . In December 2005, he was moved to a psychiatric block in another camp where he said that most detainees talked to themselves and yelled incoherently, preventing any meaningful interaction. Jumah al-Dossari's most recent suicide attempt took place on 11 March 2006 when he slashed his leg and throat with a razor, requiring emergency attention. Three days before that suicide attempt, he had written a further note to his lawyer stating:

*"Finally I have found a good chance. Finally I will get my freedom very, very soon. When you receive this letter I will be done. I will not going to suffer to any abuse from now on..."*

With no prospect of release or fair trial ahead, Amnesty International fears that the physical and psychological health of Jumah al-Dossari and others held at Guantánamo will continue to deteriorate. The EU must call on the US authorities to give independent psychological and medical experts full access to the detainees to assess their condition. All detainees should, in addition, have adequate means to communicate with their families.

The psychological health of Fawaz al-Mahdi, a Yemeni national who had been living in Saudi Arabia, is amongst those of particular concern to Amnesty International. A former detainee told Amnesty International in October 2005 that Fawaz Mahdi is suffering from severe psychological problems and was regularly subjected to punishment at Guantánamo without consideration being given to his mental state. Despite a Combatant Status Review Tribunal (CSRT) panel having recognised that 'the detainee suffers from a form of mental illness' and having noted that the detainee should be considered "highly unreliable", the panel determined that he should still be considered an 'enemy combatant' and to keep him at Guantánamo, because "...there may be nuggets of vitally useful information buried [beneath] the mountain of psychiatric nonsense."

Fawaz al-Mahdi's sister has told Amnesty International that he has suffered from neurological and psychiatric problems since he was 17 years old, at least two years before his detention by US forces. He reportedly suffered from blood clots, hallucinations and depression. His lawyer has confirmed to Amnesty International that she believes that Fawaz al-Mahdi still suffers from serious mental problems.

On 29 May 2006, US authorities at Guantánamo announced that a further 75 detainees had joined an ongoing hunger strike, though little is known as to their current situation or physical and psychological health. On 31 March 2006 Ahmed Errachidi, long term resident of the UK described the methods by which the detainees were being force-fed:

*"As the prisoner sits, strapped in the torture chair, the guard takes the bag and tugs it out, sometimes humming to himself. The prisoner invariably screams, and there is blood on the tube. In response, the guard growls – "Eat! Eat!" The prisoners invariably soil their pants, and the soldiers demonstrate their appreciation for the show, and laugh."*

The cases of Jumah al-Dossari and Ahmed Errachidi are just two examples of the desperate measures taken by detainees at Guantánamo as a result of their continued, indefinite detention. For Fawaz Mahdi and others who are known to be suffering from mental or physical ill-health, continued detention at Guantánamo without charge or trial can only exacerbate their condition.

#### **4. Call for the end of secret and 'proxy' detentions**

In addition to calling for the closure of Guantánamo, the EU should demand that the USA reveal the locations of all secret detention facilities it operates worldwide. As the UN Committee against Torture said in its recent report on the USA, secret detention and "disappearance" per se violate the Convention against Torture. The EU should further ask that the USA makes public the names and whereabouts of those being held in secret detention by the USA, or by other countries at the request or with the knowledge or complicity of the USA, and allow these "disappeared" detainees access to families, lawyers, doctors, judicial officials and consular staff or a competent international organisation. This should include the dozens of so-called 'high value' detainees whose fate remains a mystery.

On 12 May 2006, Jakob Kellenberger, President of the International Committee of the Red Cross, publicly criticised the USA for refusing to let the ICRC visit detainees held in secret prisons in the context of the 'war on terror'. A State Department spokesperson, Sean McCormack, responded by stating that:

*"There is a certain subcategory of individuals who have forfeited their protections under the Geneva Conventions and there is not an obligation to allow access to these individuals"*

Some statements have emerged from those who were held in secret US-run prisons or in third country prisons apparently at the request or with the knowledge or complicity of the USA, before they were transferred to recognised US custody or returned to their home countries. Their stories underscore the need to address the totality of US 'war on terror' detentions rather than only Guantánamo. It is not known how many others continue to be held in similar circumstances or who have suffered similar ill-treatment.

Mohamedou Ould Slahi, a Mauritanian national, is now detained at Guantánamo, apparently considered to be an important al-Qa'ida figure by US authorities. Despite this, no charges have been filed against him to date. Little is known about his treatment before arriving in Guantánamo Bay, although he has said that he was held in Jordan for around eight months before being sent to Kandahar in Afghanistan and then on to Guantánamo in August 2002. Explaining why he had confessed to a plot to smuggle explosives from Canada into the USA in December 1999, he told a CSRT panel examining his case that "in Jordan they made me crazy to admit I had something to do with it. Because there was so much pressure and bad treatment, I admitted to this..."

Others who remain in Guantánamo whose stories of rendition and secret detention have only partially been disclosed include Hassan bin Attash, a Yemeni national arrested in Pakistan when he was 17 years' old and held in numerous places of detention including the now closed 'Prison of Darkness' in Afghanistan. He has also stated that he was rendered to Jordan where he was severely tortured.

Muhammad Saad Iqbal al-Madni also remains in Guantánamo where it is feared he is suffering mentally and physically. He was arrested in Indonesia on 12 January 2002 and subsequently transferred to detention in Egypt where he "disappeared" and was thought to have died until he resurfaced in Guantánamo in 2003. Former Australian Guantánamo detainee Mamdouh Habib who was held with Muhammad Saad al-Madni in Egypt has recalled how Muhammad al-Madni had pleaded for human interaction whilst at Guantánamo. Mamdouh Habib was held in a nearby cell and recalls overhearing him saying, 'Talk to me, please talk to me...I feel depressed...I want to talk to somebody...Nobody trusts me.' Mamdouh Habib has described Muhammad Saad al-Madni as having gone 'fully crazy...he doesn't know where he is anymore.'

## **5. Address plans for mass transfers from Guantánamo Bay**

The US authorities have plans to return to their country of origin or habitual residence released or transferred detainees. Done properly, this would be a development that Amnesty International welcomes. However, the organisation is concerned that such returns may involve further human rights violations. Assessment must be done on an individualised basis. No-one must be returned to a country where they are at risk of grave human rights violations (such as the death penalty, extrajudicial executions, enforced disappearances, torture or other ill-treatment, unfair trial or indefinite detention). Instead, released detainees should be offered the opportunity to seek asylum in the USA or a third country of their choice.

The USA should not seek or accept Diplomatic Assurances that a person will not be subject to torture or other ill-treatment; such assurances undermine the absolute prohibition of torture and other ill-treatment and circumvent the prohibition of *refoulement*; even when coupled with arrangements for post-return monitoring. Diplomatic Assurances in the context of a risk of torture or other ill-treatment must be opposed.

The EU must take the opportunity of the upcoming summit in Vienna to scrutinise US plans for those detainees who are to be returned to their home countries. Amnesty International has already documented a number of cases of former Guantánamo detainees being returned to their home countries to face continued detention without trial and torture or other abuse. Even for those who have eventually been released in their home countries, the suffering is not over – many face long-term physical and psychological ill-effects, not to mention social stigma and financial hardship.

According to the US Department of Defense (DoD), there are around 460 detainees of 40 nationalities currently detained at Guantánamo. The DoD has also announced that approximately one third of these have been cleared for release or transfer. All remain held whilst US authorities negotiate conditions of return to their home or other countries. The US administration has not revealed names of those to be released, citing ongoing negotiations with other governments. Navy Lt Cmdr. Chito Pepler, a military spokesman stated, "We do not discuss detainee movements or details related to their movements until after the movement has been completed for operational security reasons" .

It appears not just for 'operational security reasons' that five ethnic Uighurs from China, determined no longer to be 'enemy combatants' were sent to Albania on 5 May 2006, without the prior knowledge of their lawyer and without any possibility of challenging the transfer, in violation of international law. Their transfer took place one working day before a court was scheduled to hear oral arguments challenging their detention.

US authorities had for some time been attempting to find a 'solution' for this group of Uighurs who could not be returned to China, their home country, for fear of serious human rights violations, including unfair trial, torture or other ill-treatment and possible execution. The agreement finally reached with Albania may have been convenient for US authorities, searching for ways to 'wash their hands' of problematic cases - but the five men now find themselves in yet another strange country far from any family or friends and with no certainty that they will not eventually be refoiled to China.

There is no Uighur community in Albania and with their lack of local language coupled with Albania's poverty and high unemployment, the men have very little prospect of local integration. All five men continue to live in fear of transfer to China, afraid to leave the UNHCR compound where they are temporarily housed and fed. Whilst the men are pleased to have finally been released from Guantánamo, their situation, according to their lawyers, is unsustainable in the long term.

In a recent interview with ABC news, one of the men, described their current situation in Albania:

*"We are having some problems ... there are no Uighurs in Albania, and we don't speak the Albanian language. It would have been much easier if we stayed closer to the Uighur community so that they can come and help us to forget our life, the time that we spent in Guantánamo and help us to heal the wounds that were created in the last four and a half years of incarceration...we don't see any future culturally and economically."*

The EU should seek information from US authorities as to the steps they have taken to ensure access to fair and effective asylum procedures and effective protection of the human rights of the five Uighurs. The EU should also invite the USA to provide information as to the measures they have put in place to monitor the implementation of this agreement in compliance with their obligations under national human rights and refugee law including the principle of *non-refoulement*. The EU should stress the need for the USA not to divest itself of its legal responsibility for their protection until such time as they have had access to a durable solution that effectively addresses their protection needs and take into account their specific situation on a case-by-case basis.

There are at least four, possibly five, other Guantánamo detainees known to Amnesty International who have been cleared by a CSRT or ARB but who cannot be returned to their home countries for fear of further human rights violations, These are: Zakirjan Hassam an Uzbek refugee from Russia; Ala Abu Kuduk Muhammad, an Egyptian national; Fethi Boucetta from Algeria; and Sadiq al-Turkestani, an ethnic Uighur from China who was born in Saudi Arabia. He has been stripped of his Saudi Arabian citizenship and cannot be returned to China.

The majority of those held at Guantánamo are from Yemen, Saudi Arabia and Afghanistan. The USA has already reached an agreement with the Afghan authorities as to mass returns of Afghan nationals. The Afghan detention facility of Pol-e-Charkhi is currently being constructed to prepare for the continued detention of some, if not all, the Afghan detainees. Construction is due to be complete in December 2006. Amnesty International is aware of talks between the USA and authorities in Saudi Arabia and Yemen regarding mass returns of their nationals, but is not aware of any agreement having been reached to date.

Amnesty International fears that some of those to be transferred to their own or third countries may face human rights violations on their return. US authorities should bear the ultimate responsibility to ensure that

no-one currently held at Guantánamo is returned to further abuse. The EU has a crucial role to play in ensuring that the USA adheres to its obligations to the Guantánamo detainees.

Amnesty International urges the EU to demand that the US authorities intensify their efforts to find timely and durable solutions for those held in Guantánamo who make an informed decision not to seek asylum in the USA. Such a solution should effectively address their protection needs and take into account their specific situation on a case-by-case basis.

## 6. Take effective measures against rendition

“War on terror” detentions at Guantánamo and elsewhere cannot be tackled in isolation. The EU must also take all necessary action to contribute to end the USA’s programme of renditions - an unlawful practice that, in the context of the “war on terror”, has led to numerous men being secretly flown to countries where they have suffered torture or other ill-treatment, prolonged detention without charge and enforced “disappearance”.

Renditions are unlawful transfers that violate the right to recognition everywhere as a person before the law. They also involve multiple other human rights violations. Most rendition victims were arrested and detained unlawfully in the first place. Many of those unlawfully detained in one country and unlawfully transported to another subsequently “disappeared”. All the victims of rendition interviewed by Amnesty International say they were tortured or ill-treated.

Europe is often presented as a beacon for human rights and its governments have repeatedly denied their involvement in the US programme of renditions. The uncomfortable truth however is that many European states have allowed their airports and airspace to be used by US Central Intelligence Agency (CIA) planes that have repeatedly been linked to renditions. A few have allowed their agents to participate in the apprehension of people destined for rendition or to question such detainees once they have been transferred to countries where torture is known to be rife. Some may have allowed the USA to run secret detention facilities on their territory.

There are several cases of rendition that demonstrate that EU member states, including Germany, Italy, Sweden and the UK have failed in their duty to respect and protect human rights.

Muhammad Haydar Zammar, a German national, was detained in Morocco before being flown to Syria, where he apparently remains in custody. Germany is alleged to have provided information that may have been used in the arrest of Muhammad Zammar in Morocco and to have questioned him in Syria.

- Osama Mustafa Hassan Nasr, an Egyptian cleric known as Abu Omar, was abducted in Milan, Italy. He was then flown to Germany and from there to Egypt. He is believed to be in prison in Egypt without charge, and has allegedly been tortured. An Italian carabinieri officer reportedly participated in the abduction.
- Ahmed Agiza and Mohammed El Zari, both Egyptian nationals who had sought asylum in Sweden, were detained in Sweden on 18 December 2001, taken to Stockholm’s Bromma Airport, strapped inside a CIA-leased plane and flown to Egypt. Hours earlier the Swedish authorities had rejected the men’s asylum applications and decided to expel them immediately, without informing their lawyers and without allowing them to challenge the decisions before an independent body. The UN Committee against Torture determined that Sweden had breached its obligations by transferring the men when it knew or should have known that they were at high risk of torture in Egypt. Swedish police, who were on the plane to Egypt, were found to have acquiesced in the ill-treatment of the two men by US agents on Swedish territory and during the flight. Sweden was therefore complicit in the unlawful rendition of Ahmed Agiza and Mohammed El Zari.
- Bisher al-Rawi and Jamil el-Banna, both UK residents, flew from the UK to Gambia on 8 November 2002 to set up a business there. On arrival in Gambia, they were arrested by Gambian intelligence agents and, after questioning, handed to US custody. They were held incommunicado for over a month and questioned by US agents before being secretly transferred to the US airbase in Bagram, Afghanistan. After a month or so in Bagram they were transferred to Guantánamo Bay, where they are still held. The UK provided information about the men and their travel arrangements to the authorities of Gambia and



“another country” that Amnesty International believes was the USA. In light of this, it is clear that the UK was instrumental in the detention in Gambia of Bisher al-Rawi and Jamil el-Banna. The UK would also have been complicit in the rendition of the two men and the resulting human rights violations if the UK authorities were or should have been aware that the provision of information on the two would have led to their rendition.

In light of the growing evidence of the involvement of European states in the US programme of renditions, the EU must take effective measures to prevent renditions through its territory and airspace and state publicly that rendition will not be permitted in the future. Any state implicated in renditions should ensure that anyone reasonably suspected of being responsible for human rights violations in connection with renditions is brought to justice. All victims of rendition should obtain prompt and adequate reparation, including restitution, rehabilitation and fair and adequate financial compensation.