

Amnesty International Briefing for EU-US Summit 2008

Ahead of the EU-US summit on 10 June 2008, Amnesty International calls on the EU presidency to ensure that human rights are a key element of the discussions with the US government and to urge the USA to place all counterterrorism measures clearly within the bounds of international human rights law. Amnesty International has consistently condemned the acts of terrorism in recent years that have left thousands of civilians dead or injured. However, real security from terrorist attacks can only be achieved through strengthening the human rights framework for all, not through undermining it by resorting to unlawful practices.

Noting the top level attendance at the forthcoming summit, Amnesty International calls on the Slovenian presidency to fulfil the EU's commitment to raising human rights concerns at all possible opportunities with third countries.

The EU should press for progress on the following areas:

- **Guantánamo Bay:** the presidency should call on the USA to identify concrete, immediate steps towards the closure of the detention centre and to bring about fair trials or release of detainees in the facility. EU member states should also favourably consider resettlement of persons in need of protection and unable to be returned to their home country;
- **Military commissions:** the presidency should express deep concern at the ongoing use of the military commission system for trial of selected detainees held as so-called 'enemy combatants' by the USA, and should urge the USA to abandon such trials immediately. All detainees who are to be promptly charged rather than released should be brought to trial in US federal courts and without recourse to the death penalty;
- **CIA torture and enforced disappearance** - the presidency should urge the USA to reject all forms of torture and other cruel, inhuman or degrading treatment, including the form of torture known as 'waterboarding', and the admission in any proceedings of any information obtained under torture or other ill-treatment. It should also seek clarification on the whereabouts of all persons who have been or are currently held in secret detention, and on all CIA planes carrying detainees that have transited through Europe. Amnesty International takes the opportunity of the EU-US summit to stress once again that the EU should show its commitment to human rights by addressing the issue of EU member states' complicity in unlawful practices carried out in the name of the US-led 'war on terror'. There is no assurance so far that the practice has stopped;
- **Death Penalty** – in line with the EU's strong support for the recent UN General Assembly resolution calling for a world-wide moratorium on the death penalty, the presidency should express great disappointment at the recent resumption in executions in the USA, and at the US government's intended pursuit of the death penalty at the forthcoming joint trial of five Guantánamo detainees previously held in secret US custody.

Guantánamo Bay

Amnesty International has long called on the US administration to close Guantánamo Bay detention facility, in a transparent manner which fully respects the human rights of those detained, bring to trial, in accordance with international standards of fairness, all those who are to be promptly charged with recognisable criminal offences, and to release any others. At the EU-US summit in 2006, the EU finally added its voice to this call for the facility to be closed. Senior officials in the US administration, including President George W. Bush himself, have now said that Guantánamo should be closed. To mark the sixth anniversary of the detention facility, in January 2008, Amnesty International presented over a thousand signatures from European parliamentarians at the White House, supporting closure of Guantánamo.

However, at the end of May 2008, approximately 270 detainees still remain in the detention facility. As well as denying those held at Guantánamo and elsewhere the right to challenge their detentions in an independent and impartial court, in line with the centuries old right to habeas corpus, the US authorities have subjected detainees to treatment and conditions that violate the absolute prohibition on torture or other cruel, inhuman or degrading treatment. Investigations into such human rights violations have been inadequate.

Amnesty International recently expressed particular concern about the case of Mohamed al-Qahtani. After six and a half years in US custody without trial, all but three months of it without charge, the dismissal on 9 May 2008 of the charges sworn against al-Qahtani in February 2008 has now returned him to indefinite detention. His physical and mental health have long been a cause for concern following his torture and other ill-treatment during interrogation at Guantánamo in 2002 and 2003, and his continuing detention. This concern is heightened by the news of his apparent suicide attempt in April 2008. Amnesty International calls for Mohamed al-Qahtani to be released from US custody and returned to Saudi Arabia if he is not to be promptly charged with recognisable criminal charges and tried, not by military commission, but before an independent and impartial court in full accordance with international fair trial standards. This includes the exclusion of any information extracted under torture or other cruel, inhuman or degrading treatment. For more information see recent AI report *'USA: Where is the accountability? Health concern as charges against Mohamed al-Qahtani dismissed'*.

Clearly, it is the responsibility of the US administration to find a solution to the closure of Guantánamo that is in full compliance with international human rights law and standards. However, on a number of occasions, leading US officials have welcomed involvement of the international community in resolving the issue. The EU should offer the necessary support in bringing about fair trials or release of detainees and closure of the facility, and in ensuring the fair and transparent assessment of the cases of all detainees to be released, in collaboration with relevant international agencies such as UNHCR. Released detainees must not be forcibly sent to any country where they may face serious human rights abuses. Amnesty International calls on EU countries to favourably consider resettlement of persons cleared for release, but in need of protection and unable to be returned to their home country. We also call on the presidency to raise this issue at EU level as a concrete step to support its declared position in favour of the closure of Guantánamo.

Military commissions

One of the key elements of a strategy for the closure of the detention facility must be the complete end to the military commission system, as the procedures of these commissions do not conform with international fair trial standards. In spite of this, the Pentagon has stated that it expects as many as 80 Guantánamo detainees to face trial by military commission. By the end of May 2008, 14 detainees were facing charges under the Military Commissions Act, including two who were children when they were taken into custody (see *'In whose best interests? Omar Khadr, child 'enemy combatant' facing military commission'*).

Amnesty International is particularly concerned by the US government's decision on 13 May 2008 to refer capital charges against five Guantánamo detainees for joint trial by military commission. The five men were held in secret incommunicado custody by the CIA at unknown locations outside the USA for three to four years. At least one of the defendants was subjected to a form of torture known as 'waterboarding'. The recent AI report *'USA: Way of life, way of death - capital charges referred against five former detainees' provides further detail on this development'*.

The first system of military commissions was ruled unlawful under US law and the Geneva Conventions, by the US Supreme Court in 2006. The revised system, set up under the Military Commissions Act, has not corrected the substantial flaws of its predecessor, and should also be abolished and replaced with criminal trials before ordinary courts. Amnesty International's concerns regarding the commissions include:

- the fact that they facilitate convictions on lower standards of evidence than apply in ordinary courts, and indeed may rely on information coerced under cruel, inhuman or degrading treatment or punishment. Because of the USA's narrow definition of torture, and the rules on hearsay and classified evidence, information extracted under torture may also be admitted at trial before a military commission. The authorities, for example, have refused to rule out the admission into evidence of information obtained under so-called waterboarding;
- the fact that the commissions are not structurally independent of the same branch of government that has authorised and condoned abuses against detainees; and
- the fact that they form part of a system of detention and trial which operates outside of international legal protections, having been created specifically to deal with detainees labelled as 'enemy combatants', a label, as used by the USA, unknown in international law.

The defendants will be individuals who have been subjected to years of indefinite detention, whose right to the presumption of innocence has been systematically undermined by a pattern of official commentary on their presumed guilt. Among the defendants will be victims of enforced disappearance, secret detention, secret transfer, torture or other cruel, inhuman or degrading treatment. Their treatment has not only been arbitrary and unlawful, it has been highly and deliberately coercive in terms of the interrogation methods and detention conditions employed against them. This heightens the need for any trials to take place before courts independent of the executive and legislative branches which have authorised or condoned human rights violations.

CIA torture and enforced disappearances

As set out above, the detention policies and practices of the USA in the 'war on terror' since September 2001, have seriously undermined the framework of international human rights law. While supporting all governments' right and duty to pursue justice and security, Amnesty International has consistently called for all measures taken in this context to comply with international law, as the UN Security Council and UN General Assembly have themselves made clear is the obligation of all states.

Amnesty International has also consistently called for accountability for all human rights violations, including international crimes of torture and enforced disappearance, which have taken place as part of this 'war on terror'. The extraordinary rendition and secret detention programmes operated by the USA must be ended, and the USA must bring all detentions, everywhere, into full compliance with international law and standards, and there must be a full investigation into the abuses which have taken place.

One striking illustration of the human reality of the secret detention programme is set out in the recent Amnesty International report, *'A case to answer – From Abu Ghraib to secret CIA custody: the case of Khaled al-Maqtari'*. Khaled al-Maqtari was initially held as a 'ghost detainee' at Abu Ghraib, then transferred to CIA custody in Afghanistan, and further detained in an unknown third country, possibly in Eastern Europe, and in complete isolation for over two and a half years, without charge or trial or access to any form of due process. His testimony provides a detailed account of deliberate and persistent use of torture and other ill-treatment throughout his detention. Unfortunately, his experience is only one example among many.

The ongoing failure of the EU to respond adequately to the Council of Europe report, the European Parliament Temporary Committee report, or the consistent message from civil society, on EU member state involvement in the CIA unlawful rendition and detention programme, has been criticised by Amnesty International on a number of occasions. This lack of response should not be compounded by a failure to confront the US administration on its use and justification of torture within its 'war on terror'.

In line with its undertaking to promote and protect human rights in its relations with third countries, including the specific commitments on combating torture under the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment, Amnesty International urges the presidency to use the opportunity of the EU-US summit to raise concerns about the CIA programme of rendition and secret detention, and enforced disappearances.

The EU should seek assurances that the US administration will take adequate steps to prevent recurrence of human rights violations, to hold accountable those responsible, and to ensure that victims are provided with reparation. The US administration must disclose the names and whereabouts of all individuals held in the context of the "war on terror", and charge any of those still held with recognisable criminal offences and bring them to trial in independent courts, or release them. The presidency should particularly request further detail from the US government on all alleged CIA renditions flights that have transited through Europe. A first step could be for all member states to build on the UK example and submit all flight records available to the USA for clarification.

Death penalty

Since the USA resumed executions in 1977, 1,102 prisoners had been put to death nationwide by the end of May 2008. Amnesty International opposes the death penalty in all cases, unconditionally, and believes there is no such thing as a humane, fair, reliable or useful death penalty system.

Amnesty International emphasises that to end the death penalty is to abandon a destructive and divisive public policy that is not consistent with widely held values, even in the US. A recent indicator of the global abolitionist trend was the landmark UN General Assembly resolution in late 2007 calling for a worldwide moratorium on the death penalty. In the USA, the annual number of death sentences continues to drop from its peak in the mid-1990s. The Death Penalty Information Center in Washington, DC, estimates that approximately 110 death sentences were passed in 2007, just down from 115 in 2006. In contrast to this, in the five years from 1995 to 1999, more than 300 people, on average, were annually sentenced to death in the USA.

The death penalty not only runs the risk of irrevocable error, it is also costly – to the public purse, as well as in social and psychological terms. It has not been proved to have a special deterrent effect. It tends to be applied discriminatorily on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it.

In line with the EU's commitment to promote abolition of the death penalty worldwide, stated in the EU guidelines on the death penalty, the presidency should use the EU-US summit to discuss with the USA its response to the recent UN resolution on a worldwide moratorium on the death penalty, and to express disappointment at the resumption of executions in April 2008 following the US Supreme Court ruling in the *Baze v. Rees* case upholding Kentucky's procedures for lethal injection, the method used in the vast majority of US executions.

As a minimum the presidency should call on the US government to declare a moratorium on federal executions, and make clear not only the EU's opposition to trial by military commission, but also to emphasise that the pursuit of the death penalty at such trials would violate international standards. The 2007 UN General Assembly resolution called upon all states that still maintain the death penalty to respect international safeguards in capital cases, in particular the minimum standards set out in 1984 by the UN Economic and Social Council (ECOSOC). Safeguard 5 of the ECOSOC resolution states: "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights [ICCPR]". The military commissions do not comply with these standards.

Annex: recent relevant AI reports

AI Framework for ending illegal detentions

<http://www.amnesty.org/en/library/info/AMR51/167/2007>

"A case to answer – From Abu Ghraib to secret CIA custody: the case of Khaled al-Maqtari",

<http://www.amnesty.org/en/library/info/AMR51/017/2008/en>

"Impunity and Injustice in the 'war on terror'. From secret detention to execution after unfair trial?",

<http://www.amnesty.org/en/library/info/AMR51/012/2008/en>

'USA: where is the accountability? Health concern as charges against Mohamed al-Qahtani dismissed',

<http://www.amnesty.org/en/library/info/AMR51/042/2008/en>

'The pointless and needless extinction of life'

<http://www.amnesty.org/en/library/info/AMR51/031/2008/en>

'USA: In whose best interests? Omar Khadr, child 'enemy combatant' facing military commission.'

<http://www.amnesty.org/en/library/info/AMR51/028/2008/en>

'USA: Way of life, way of death - capital charges referred against five former detainees'

<http://www.amnesty.org/en/library/info/AMR51/041/2008/en>