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USA: AI calls on the USA to end legal limbo of Guantánamo prisoners

Amnesty International urged the United States to ensure respect for the human rights of all people who have been or may be transferred from Afghanistan to a US military base in Guantánamo Bay, Cuba.

“The US is placing these people in a legal limbo. They deny that they are Prisoners of War (POWs), while at the same time failing to provide them with the most basic protections of any person deprived of their liberty,” Amnesty International said. “The US has obligations under international law to ensure respect for the human rights of all persons in their custody -- including the duty to treat them humanely and ensure that they have recourse to fair proceedings, regardless of the nature of the crimes they are suspected of having committed.”

Amnesty International considers that those who are held in Guantánamo, who are said to have been captured during the war in Afghanistan, are presumed to be POWs. If there is any dispute about their status, the US must allow a "competent tribunal" to decide, as required by Article 5 of the Third Geneva Convention. This is also the position held by the International Committee of the Red Cross (ICRC), the most authoritative interpreter of the Geneva Conventions.

“It is not the prerogative of the Secretary of Defense or any other US administration official to determine whether those held in Guantánamo are POWs”, Amnesty International said. “An independent US court, following due process, is the appropriate organ to make this determination.”

POWs are afforded specific rights. For example, they should be held in conditions "as favourable" as those of US soldiers; they are not required to divulge information beyond their name, rank, serial number and date-of-birth; they cannot be tried merely for having taken up arms against enemy combatants in the context of the conflict and they should be granted access to delegates of the ICRC. POWs, unless they are to be tried for war crimes or other criminal offences, must be repatriated at the end of "active hostilities".

Any detainee who is suspected of a crime, whether or not they are POWs, must be charged with a criminal offense and tried fairly or released. Denying POWs or other people protected by the Geneva Conventions a fair trial is a war crime. Amnesty International is opposed to the death penalty in all circumstances.

The international safeguards governing the treatment of all detainees facing criminal charges include those of the International Covenant on Civil and Political Rights, to which the US is a party

since 1992, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These include the right to challenge the lawfulness of detention, to be brought before an independent tribunal, the right to silence, and access to legal counsel.

Amnesty International is also concerned about alleged ill-treatment of prisoners in transit and in Guantánamo, including reports that they were shackled, hooded and sedated during transfer, their beards were forcibly shaved, and that they are housed in small cages in Guantánamo that do not protect against the elements. "Degrading treatment of prisoners is a flagrant violation of international law which cannot be justified under any circumstances," the organization stated.

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