

PUBLIC

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UA 189/03 Incommunicado detention / Fear of ill-treatment / Legal concern

26 June 2003

USA
Ibrahim Habaci (m), Turkish national
Arif Ulusam (m), Turkish national
Faha al Bahli (m), Saudi national
Mahmud Sardar Issa (m), Sudanese national
Khalifa Abdi Hassan (m), Kenyan national

On 24 June, the five men named above were secretly transferred out of Malawi in the custody of US government agents. It is not known where they are being held. They have had no access to lawyers since their arrest in Malawi on 22 June. Their transfer out of Malawi violated national law and circumvented any formal human rights protections.

The five were arrested in Blantyre, Malawi, on suspicion of being members of *al-Qa'ida*. According to information received by Amnesty International, the arrests were carried out by members of Malawi's National Intelligence Bureau together with US agents, reported to be members of the Central Intelligence Agency (CIA). The five men were initially held at an undisclosed location in Malawi. According to Malawi law, suspects should be brought to court within 48 hours of their arrest, or released on bail. After defence lawyers intervened on the five men's behalf, the High Court of Blantyre ordered the detainees to be brought before it within 48 hours. The 48 hours expired at 19.30 local time on 24 June, by which time the men had not appeared before the court.

It has transpired that earlier on 24 June, the five men had been flown out of Malawi on board a plane chartered by the USA. They are now being held at an undisclosed location in US custody for interrogation.

BACKGROUND INFORMATION

Since the attacks in the USA on 11 September 2001, more than 3,000 alleged members or associates of *al-Qa'ida* have been detained in over 100 countries, according to the US Government. It is not known how many remain in custody, or the whereabouts of all of them.

More than 650 foreign nationals are held without charge or trial in the custody of the US Department of Defence in Guantánamo Bay in Cuba. Held in the US Naval Base there, they have had no access to any court, to legal counsel, or to their relatives. Many have been so held for more than a year. Although many of the detainees were taken into custody in the context of the international armed conflict in Afghanistan, some were not. They include, for example, six Algerian nationals unlawfully seized by the USA in Bosnia-Herzegovina in January 2002. The USA is planning to bring selected detainees to trial before executive military commissions, in proceedings which would violate international fair trial standards, for example by not providing the right of appeal to any court. The commissions will have the power to hand down death sentences.

Other detainees are held in the US Air Base in Bagram in Afghanistan. Allegations of torture and ill-treatment at the hands of CIA interrogators have emerged from the Base. It is alleged that so-called "stress and duress" techniques have been used against detainees under interrogation – including forced prolonged standing or kneeling, hooding, blindfolding, being kept in painful or awkward positions, sleep deprivation, and 24-hour lighting. Other detainees have been held incommunicado by US agents at other undisclosed locations outside the USA.

It is also alleged that detainees have been transferred by the USA to third countries, including Morocco, Jordan and Egypt. The US Government has given assurances that "if the war on terrorists of global reach requires transfers of detained enemy combatants to other countries for continued detention on our behalf, US Government instructions are to seek and obtain appropriate assurances that such enemy combatants are not tortured." The *Washington Post*, however, has reported that, according to an official directly involved

in “rendering” detainees to other countries: “We don’t kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them.” Article 3 of the Convention against Torture prohibits the transfer of anyone to another state where “there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The practice of incommunicado detention has been consistently condemned by human rights bodies as facilitating conditions under which torture and other abuses may take place. The Human Rights Committee, the expert body established by the International Covenant on Civil and Political Rights to oversee implementation of that treaty, in its authoritative interpretation of Article 7 (“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”) has stated: “To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.”

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- acknowledging the duty of governments to protect public safety and to investigate crime, and recognizing that governments will need to cooperate to this end where the threats or crimes in question cross national boundaries;
- stressing, however, that human rights must be at the centre of the search for justice and security;
- expressing concern that the transfer of Ibrahim Habaci, Arif Ulusam, Faha al Bahli, Mahmud Sardar Issa and Khalifa Abdi Hassan out of Malawi violated Malawi law, in failing to comply with the Blantyre High Court’s order, and bypassed any formal human rights protections;
- urging that the whereabouts of the five men be made public and seeking assurances that they will be treated humanely in full accordance with international law and standards;
- urging that they be promptly brought before a court of law to be able to challenge the lawfulness of their detention;
- urging that they be charged with recognizably criminal offences, and brought to trial within a reasonable time in accordance with international fair trial norms, or else released;
- urging that they be given access to legal counsel;
- seeking assurances that none of the men will be transferred to countries where they would be at risk of torture or other human rights violations.

APPEALS TO:

George J. Tenet
Director of Central Intelligence
Office of Public Affairs
Washington, D.C. 20505, USA
Telegram: Director of Central Intelligence, Washington D.C. USA
Fax: +1 703 482 1739
Salutation: Dear Mr Tenet

Donald Rumsfeld
Secretary of Defence
The White House
Washington, DC 20301, USA
Telegram: Secretary of Defence, Washington D.C. USA
Fax: +1 703 697 9080
Salutation: Dear Secretary of Defence

COPIES TO:

Lorne Craner, Assistant Secretary of State,
Department of State, Bureau of Democracy,
Human Rights and Labor, 2201 C Street,
NW, Room 7802, Washington, DC 20520, USA
Fax: +1 202 647 5283

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PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 7 August 2003.