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UK: Government must act now on behalf of Guantánamo detainees

Amnesty International is concerned about the fate of Bisher Al-Rawi, an Iraqi national legally resident in the UK, and Jamil Al-Banna, a Jordanian national with refugee status in the UK, who are among the more than 650 individuals currently held without charge or trial, access to the courts, lawyers or their families in the United States (US) Naval Base in Guantánamo Bay.

The organization is extremely concerned at the refusal of the United Kingdom's authorities to make representations on behalf of Bisher Al-Rawi and Jamil Al-Banna to the US authorities urging them to uphold their human rights.

The UK authorities have refused to make representations on behalf of Bisher Al-Rawi notwithstanding the fact that he has been a resident in the UK for over two decades and that many of his family members are UK nationals. In addition, since assuming its responsibilities under international humanitarian law as an Occupying Power in Iraq, the UK currently is obliged under international law to make representations on behalf of Iraqi nationals. Similarly, the UK is obliged under international refugee law to make representations on behalf of Jamil Al-Banna, whom the UK authorities have recognized as a refugee in the UK.

Amnesty International has serious concerns about the fact that Bisher Al-Rawi and Jamil Al-Banna and other people held in US custody in Guantánamo Bay and elsewhere -- purportedly on suspicion of links with *al-Qa'ida* or the Taleban -- have been held in detention conditions that contravene international human rights standards. In addition, the organization has also been concerned that people who the US authorities assert to have links with either *al-Qa'ida* or the Taleban are being held in US custody effectively in a legal limbo, that is outside of any legal basis recognized under either international humanitarian or human rights law.

Since late November 2002, Amnesty International has been monitoring the cases of Bisher Al-Rawi, and Jamil Al-Banna. Both men were arrested and detained on arrival at Banjul airport in Banjul, Gambia, on 8 November 2002, purportedly on suspicion of alleged links with *al-Qa'ida*. They were arrested with another man, Abdullah El Janoudi, a UK national by members of the Gambian National Intelligence Agency (NIA). A fourth man, Wahab Al-Rawi, Bisher Al-Rawi's brother, also a UK national, who had arrived in Gambia some days earlier, and who had gone to the airport to meet them, was also arrested at the same time. The four men had reportedly travelled to Gambia in connection with a peanut processing company set up by Wahab Al-Rawi.

Bisher Al-Rawi, Jamil Al-Banna and Abdullah El Janoudi had all been previously arrested on 2 November 2002 at Gatwick airport, UK, the day they had originally planned to travel to Gambia. They were questioned for two days by UK authorities in London, purportedly on suspicion of alleged links with "terrorist" groups, before being released without charge. Upon release, at least one of them was told

that there would be no further action. In addition, Amnesty International understands that Bisher Al-Rawi and Jamil Al-Banna may have been questioned or otherwise contacted by the UK authorities, including during visits to their homes, on other occasions since 11 September 2001 but had never been charged with a criminal offence. In particular, Jamil Al-Banna was reportedly visited at home by members of the UK intelligence services shortly before 2 November 2002; these authorities were informed of his intention to travel to Gambia.

Amnesty International has sought clarification from the UK authorities as to whether they informed either the Gambian or US authorities of Bisher Al-Rawi's and Jamil Al-Banna's arrest and subsequent release in the UK and/or their departure for Gambia.

On 8 November, the three men left the UK for Banjul and, as stated above, were arrested together with Wahab Al-Rawi on arrival. According to information available to Amnesty International, after an initial period of questioning by the NIA at the NIA headquarters in Banjul, they were then questioned by US investigators. During this time, the men were held in several undisclosed locations in Banjul. At least one of the men was allegedly threatened by US investigators who told him that unless he cooperated he would be handed over to the Gambian police who would beat and rape him. The US investigators also reportedly "apologized" for injuries sustained by one of the suspects during what they termed a scuffle with Gambian guards.

Wahab Al-Rawi and Abdullah El Janoudi were released without charge on or around 5 December and were returned to the UK.

According to information available to Amnesty International, Bisher Al-Rawi and Jamil Al-Banna were held in *incommunicado* detention for a period of approximately two months in Banjul while they were reportedly questioned by US investigators on their alleged links with *al-Qa'ida*. Amnesty International received information indicating that both men were transferred to the US air force base at Bagram, Afghanistan, probably in early January 2003. Since then, they have been transferred to Guantánamo Bay where they are currently held. It has not been possible for Amnesty International to confirm the exact date of transfers as all Gambian and US officials contacted by Amnesty International have refused to confirm the whereabouts of the two men.

Their initial transfer to Bagram and subsequent one to Guantánamo Bay took place despite the fact that they had not been allowed to consult with lawyers, and despite the fact that a *habeas corpus* petition on their behalf was pending in the courts in Gambia.

Amnesty International has also been informed that the Gambian authorities, through the Gambian High Commission in London, hindered attempts by relatives of Bisher Al-Rawi and Jamil Al-Banna to ascertain the whereabouts of the two men by refusing to authorize power of attorney instructing a lawyer in Banjul to act on their behalf, thereby significantly delaying introduction of the *habeas corpus* petition.

Bisher Al-Rawi and Jamil Al-Banna were rendered to US custody in a manner which circumvented any judicial process, including extradition procedures, in further violation of their internationally recognized human rights.

From the information available to Amnesty International, it appears that both Bisher Al-Rawi and Jamil Al-Banna were under surveillance in the UK, possibly on account of intelligence received from US officials.

It is clear that Bisher Al-Rawi and Jamil Al-Banna have had no protection against violations of their fundamental rights since they were taken into custody in Gambia. In this connection, the organization is concerned that UK authorities may have played a role, directly or indirectly, in the initial arrest and subsequent detention of Bisher Al-Rawi and Jamil Al-Banna in Gambia, and their eventual unlawful rendering to US custody.

Amnesty International would be greatly concerned if the UK authorities had indeed had reason to believe that Bisher Al-Rawi, Jamil Al-Banna and Wahab Al-Rawi would be arrested upon arrival in Gambia, including for the eventual purpose of their being unlawfully rendered to US custody, particularly given that their arrests in Banjul took place so soon after Bisher Al-Rawi, Jamil Al-Banna and Abdullah El Janoudi were released without charge in the UK.

The organization has called on the US authorities to respect their human rights, and in particular for the men to be released if they are not to be promptly charged with a recognizably criminal offence on the basis of reasonable suspicion, for their right to legal counsel to be respected and for them to be granted access to a court to challenge the legality of their detention.

Background

Many of those detained at Guantánamo Bay have been held for well over a year in conditions the totality of which may amount to cruel, inhuman or degrading treatment in violation of international law. None has had access to a court, to legal counsel, or to relatives. Most are held in tiny cells for up to 24 hours a day with minimal opportunity for out-of-cell exercise.

In November 2002, the Court of Appeal, the second highest court in England and Wales, referred to Feroz Abbasi's detention in Guantánamo Bay as "in apparent contravention of fundamental principles recognized by both jurisdictions [US and UK] and by international law", remarking that he had been left in a "legal black hole" and that his detention was "objectionable". The Court of Appeal ruling came as a result of a judicial review -- initiated by the mother of Feroz Abbasi -- of a March 2002 decision of the High Court that had stated that UK courts had no jurisdiction to rule on her claim that the UK authorities had not been doing enough to ensure respect for the rights of UK nationals detained at Guantánamo Bay. In its November 2002 ruling the Court of Appeal dismissed his mother's claim for relief. Feroz Abbasi from Croydon, London, is one of nine confirmed UK nationals, including Moazzam Begg from Birmingham, England, Asif Iqbal and Shafiq Rasul from Tipton, England, who remained in US military custody at Guantánamo Bay without charge or trial or access to the courts, lawyers or relatives.

Following the Court of Appeal ruling, Amnesty International called on the UK authorities to urge the US authorities to repatriate the UK nationals immediately unless they were promptly charged with a recognizably criminal offence by the US authorities and brought to trial before an independent court in proceedings respectful of their rights to a fair trial and that excluded the possibility that the death penalty may be imposed.

Amnesty International is concerned that the UK authorities have failed to make vigorous representations to their US counterparts urging them to uphold the human rights of the UK nationals in US custody at Guantánamo Bay. In addition, UK officials, including from MI5 (i.e. the UK Security Services), have taken advantage of the circumstances of their nationals' detention in US custody by "visiting" them at least on two occasions and questioning them in relation to issues relevant to the UK's national security despite the limbo of their legal status. In this connection, Amnesty International has noted with concern that anyone arrested in the UK and questioned in connection with *al-Qa'ida* activities has the right to legal assistance, including having a lawyer present during questioning.

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