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Afghanistan/UK/USA: End Secrecy of Detainee Transfers

Amnesty International is calling on the Afghan, UK and US governments to make public a secret agreement governing transfer of detainees to Afghan custody. Detainees facing transfer to the Afghan authorities have been forced to choose between ongoing indefinite detention and transfer to unknown risks. This follows the lifting by the UK government of a moratorium previously imposed because of the risk of torture and other ill-treatment in Afghan custody. The secrecy surrounding the arrangements has made it impossible for detainees to make meaningful decisions about such transfers.

On 28 June 2013, the UK government resumed transfers to Afghan authorities of dozens of detainees being held by UK armed forces in Helmand Province, Afghanistan. Under new arrangements, the detainees will first be handed over to the control of US forces and then on to the Afghan authorities at the Afghan Detention Facility in Parwan (DFIP), located near to the US military base at Bagram. The transfer from US custody and subsequent detention by the Afghan authorities is subject to the provisions of a secret Memorandum of Understanding (MoU) between the USA and Afghanistan, dated 25 March 2013.

The UK government has argued that these new transfer arrangements will ensure that detainees are not at risk of mistreatment. These new arrangements, however, have not allayed all of Amnesty International's concerns.

In particular, there is a real concern that detainees could face onward transfer from DFIP to places where they would be at real risk of torture and other ill-treatment. The UK government maintains that such a risk does not exist. This assessment appears to be made in large part on the basis of the terms of the Afghan-US MoU. It has asserted that onward transfers "would run counter to the logic of [the DFIP], and more importantly, the basis of the agreement between the US and Afghanistan." However, it is impossible for the detainees or anyone else to assess the MoU, compliance with its terms, and the risk of onward transfer, without disclosure and public scrutiny of the MoU and other information relevant to the transfers.

Even with full disclosure of the MoU, it would need to be clear that any prohibition on onward transfers from DFIP was being fully adhered to. From information that is publicly available, concerns surrounding the possibility of onward transfer to other detention facilities, where detainees would face a real

risk of torture and other ill-treatment, appear very real, with the Afghan government refusing to agree such terms in negotiations with the UK and persistent reports of internal transfers in the Afghan system, including from DFIP.

Furthermore, detainees held by the UK forces are being asked to consent to transfer and, in some cases, to turn down the option of consulting an independent lawyer to advise them on the risks, despite the fact that the conditions of the transfer are being kept secret. However, the questions surrounding whether the UK-held detainees are in a position to give free and informed consent to their transfer are heightened by the situation in which they find themselves. After months in detention without charge they face continued indefinite detention if they refuse transfer. Their “choice” is not a real one: transfer to detention by the Afghan authorities and the unknown risk of potential onward transfer, or potential continuing indefinite detention at the hands of the UK.

This is a dangerous development that only serves to undermine the legal prohibition on transfers to torture and other ill-treatment and unfair trials. This kind of “choice” should not be forced on the detainees, and should not be presented to detainees in similar situations in the future.

The complications surrounding these cases arise because of fear that detainees would face a risk of unfair trial, torture and other ill-treatment upon transfer. But this is hardly a new issue. The United Nations and Amnesty International and other human rights groups and legal experts have for many years expressed concerns over the treatment of detainees, the criminal justice system and proceedings that fall below international standards of fairness in Afghanistan.

The Afghan authorities and the international community have had many years to implement the kind of institutional reforms necessary to allay these concerns. Indeed, the international effort to build Afghanistan’s judiciary and to reform the criminal justice system has been a notable failure of the past 12 years. Making up for this failure will take time, but these detainees should not be made to bear the burden of such failures. More broadly, the Afghan government and the international community must now deliver on their political commitments to judicial reform and inject the necessary resources for continued reform beyond 2014, when most combat troops will have withdrawn from Afghanistan.

The Afghan government must also reform the detention system to prevent torture and other ill-treatment. This includes putting in place human rights and due process safeguards for all detainees and suspects in criminal proceedings. They must also ensure that all complaints of torture and other ill-treatment are promptly, thoroughly, effectively, independently and impartially investigated and those responsible must be brought to justice, in fair proceedings, regardless of their official position and rank. The government

must also provide reparations to victims and take all other legal, administrative and practical measures to eradicate torture and other ill-treatment.

Victims of human rights abuses perpetrated by armed groups also have the right to justice, reparations and the truth. Allegations of crimes under international law, including any against those detainees at the DFIP or in the custody of the international forces in Afghanistan, should be investigated and those responsible brought to justice in fair trials, without recourse to the death penalty.

For further information:

[Afghanistan: Bagram prison transfer raises torture concerns](http://www.amnesty.org/en/library/info/ASA11/002/2013/en), AI Index ASA 11/002/2013, <http://www.amnesty.org/en/library/info/ASA11/002/2013/en>

UK holds off on detainee transfers to Afghan authorities, AI Index: PRE 01/585/2012, <http://www.amnesty.org/en/for-media/press-releases/uk-holds-detainee-transfers-afghan-authorities-2012-11-29>

UK ordered to continue moratorium on detainee transfers in Afghanistan, AI Index 11/020/2012, <http://www.amnesty.org/en/library/info/ASA11/020/2012/en>

Afghanistan: Torture fear over US transfer of detainees held at Bagram, AI Index ASA 11/016/2012, <http://www.amnesty.org/en/library/info/ASA11/016/2012/en>