

PUBLIC

AI Index: AMR 51/040/2009

20 March 2009

Further information on UA 49/09 (AMR 51/026/2009, 19 February 2009) – Legal concern/III-treatment

USA Mohammed el Gharani (m), Chadian national, aged 22

More than two months after a US federal judge ordered that Chadian national Mohammed el Gharani be released from the US detention facility at Guantánamo Bay in Cuba, he is still held there. Taken into custody when he was a 14-year-old child, he has spent nearly a third of his life in US military custody.

On 3 March 2009, Mohammed el Gharani's lawyer filed a motion in the US District Court seeking to have the judge's order enforced. In a court filing two weeks later, the US Justice Department opposed the motion. It revealed that the US administration had decided not to appeal the release order to the US Court of Appeals. It said that Mohammed el Gharani had been moved from the harsh conditions of Camp 5 to the lower security Camp Iguana on 18 March 2009, and that the USA was engaging in diplomatic efforts to arrange for his "ultimate transfer" from the base. It said that "these efforts have included a face to face meeting between the United States Government officials and foreign government representatives as recently as March 17, 2009".

Judge Richard Leon on the US District Court for the District of Columbia (DC) ordered on 14 January that Mohammed el Gharani's detention was unlawful and that he should be immediately released. El Gharani, a Chadian national who was born and brought up in Saudi Arabia, has been held at Guantánamo as a so-called "enemy combatant" since February 2002. He was taken into custody by Pakistani forces in Pakistan in late 2001, at the age of 14, handed over to US authorities and taken to Kandahar air base in Afghanistan, before being transferred to Guantánamo.

Judge Leon ruled that the evidence against Mohammed el Gharani "consists principally of the statements made by two other detainees while incarcerated at Guantánamo Bay. Indeed, these statements are exclusively, or jointly, the only evidence offered by the Government to substantiate the majority of their allegations. In addition, unlike the other cases reviewed by this Court to date, the credibility and reliability of the detainees being relied upon by the Government has either been directly called into question by Government personnel or has been characterized by Government personnel as undetermined." "Simply stated," Judge Leon concluded, "a mosaic of tiles bearing images this murky reveals nothing about the petitioner with sufficient clarity, either individually or collectively, that can be relied upon by this Court." He ordered the government "to take all necessary and appropriate diplomatic steps to facilitate his release forthwith," (see USA: Judge orders release of detainee held in Guantánamo as child 'enemy combatant', 15 January 2009, <http://www.amnesty.org/en/library/info/AMR51/006/2009/en>).

Under international law and standards, detention and imprisonment of a child must be used only as a measure of last resort and for the shortest appropriate period of time. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. Under international law, states must adhere to the principle that the best interests of the child are to be a primary consideration in all actions concerning children who come into conflict with the law. However, the USA's treatment of children labelled as "enemy combatants" has been conducted in accordance with its own perceived national security interests rather than the best interests of the child. The USA has apparently never taken into account the fact that Mohammed el Gharani was taken into custody as a child.

BACKGROUND INFORMATION

On 22 January, President Obama signed three executive orders on detentions and interrogations (see: The promise of real change. President Obama's executive orders on detentions and interrogations, 30 January 2009, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en>). One of the orders required his administration to close the Guantánamo Bay detention facility "as soon as practicable" and to conduct a review of all the cases of detainees held there to decide what should happen to them.

The new administration has dropped the use, in litigation on the Guantánamo cases, of the term "enemy combatant", but appears to have largely adopted the previous administration's law of war framework to justify the detentions (see USA: Different label, same policy?, 16 March 2009, <http://www.amnesty.org/en/library/info/AMR51/038/2009/en>).

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

- expressing concern that Mohammed el Gharani is still detained in Guantánamo Bay, more than two months after District Court Judge Richard Leon ruled his detention unlawful and ordered his immediate release;
- calling for all due urgency to be applied to ensuring his prompt and safe release from Guantánamo.

APPEALS TO:

The Honorable Eric Holder, Attorney General, US Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, USA

Fax: +1 202 307 6777

Email: AskDOJ@usdoj.gov

Salutation: Dear Attorney General

The Honorable Robert Gates, US Secretary of Defense, 1000 Defense Pentagon, Washington DC 20301, USA

Fax: +1 703 571 8951

Salutation: Dear Secretary of Defense

Gregory Craig, Counsel to the President, The White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500, USA

Fax: +1 202 456 2461

Salutation: Dear Mr Craig

COPIES TO:

Matthew G. Olsen, Acting Assistant Attorney General for National Security, 950 Pennsylvania Avenue, Washington, DC 20530-0001, USA

and to diplomatic representatives of the USA accredited to your country

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 1 May 2009.