

USA: Who are the Guant<namo detainees?

Case Sheet 4

Jamal Mar'i and at least 84 other Yemeni detainees

“If only we could hear his voice, learn that he is safe and well that would make our lives all so much better” Quote from Jamal’s brother

Full Name: Jamal Mar'i

Nationality: Yemeni

Age: 34

Family status: Married with four children

Occupation: Graduate in petroleum engineering

Information: Jamal Mar'i's family believe he is innocent but feel deprived of the opportunity to have this claim put before judicial scrutiny. The following is based on account given by his brother to lawyers at a conference organized by Amnesty International.

Jamal Mar'i travelled to Pakistan at the beginning of 2001 to further his studies and to find better paying work to support his own and his extended family. He did not take his wife and children with him at the time due to lack of finances, but intended to bring them over to Pakistan once he had established himself there.

Having set himself up in Karachi, he called and wrote to us regularly. Shortly after the 11 September 2001 attacks in New York, he called me asking if I could arrange for his wife and children to join him in Pakistan. He did not consider there would be any danger for them, as they would settle in Karachi, far from any potential US military action in Afghanistan. During that conversation he also discussed the possibility of establishing an export business in Karachi and asked me to investigate the viability of such a project. He believed his prospects in Pakistan were good and he planned to stay there for some time.

Shortly after this call, a family friend who was working in Karachi informed the family that he believed Jamal had been arrested in Karachi by US agents. All attempts to contact Jamal after that were unsuccessful. A few weeks later, Jamal's mother received a call from the ICRC in Jordan saying that he was detained there. The family later received a message from Jamal via the ICRC in Jordan stating that he was in good health, but had no idea why he was detained – he wrote that he believed he would be released soon. Around three similar letters arrived from Jamal, until April 2002 when they received another message from the ICRC in Yemen – this letter had been sent from Guant<namo Bay.

Jamal's family received regular messages from him until November 2003 when the letters stopped arriving. They have written to ask him why he is not writing, but have heard nothing. His brother states that they have “no way of finding out how he is; whether he is healthy, even whether he is alive”

The Mar'i family have tried everything they can to get more information regarding the circumstances of Jamal's arrest and detention, including trying to meet with the US ambassador in Yemen. They said they had requested to meet him five times and each request was refused. They have also met with officials from Yemen's Interior Ministry at least 20 times and written to the Minister of Interior three times – they say the response is always the same - they know nothing about Jamal's detention.

Jamal's young children don't understand what has happened to their father and constantly ask where he is, why he doesn't call and when he is coming back home. He has never seen his

youngest son, born after his detention.

Background

Jamal Mar'i is among a group of at least 85 Yemeni nationals captured during the international conflict in Afghanistan and currently detained as "enemy combatants" at Guantanamo Bay. Most have no access to lawyers and none have access to families. All are held in conditions which may amount to cruel, inhuman or degrading treatment.

One Yemeni national, Ali al-Bahlul, is one of three detainees to have been charged. He now faces trial by military commission, under procedures which are inherently unfair. There are six detainees, including another Yemeni national Salim Ahmed Hamdan, who have been named as eligible for such trials. They are all held in separate detention at Camp Echo where they are held for 23-24 hours a day in reportedly windowless cells with no possibility of communication with other detainees. Amnesty International is particularly concerned for the physical and psychological health of the detainees held in such conditions of reduced sensory stimulation.

The case of Salim Ahmed Hamdan is currently the subject of a lawsuit against the US government in which his lawyer argues that not only is he innocent, but that the proposed trial against him would be unconstitutional and would violate military law and the Geneva Conventions. AI is particularly concerned by a claim contained in that legal petition that the US authorities have told him that he "shall remain in custody until such time as he wishes to plead guilty to some unspecified crime against the United States".

Another Yemeni national, Walid Muhammad Shahir al-Qadasi was returned to Yemen without charge or trial at the beginning of April 2004. Decisions to transfer or release detainees are based on whether they are of any further intelligence value to the US or whether they are believed to pose a threat to the US. Upon arrival in Yemen he was detained in the Political Security in Sana'a where AI delegates visited him 11 days after his detention. At the time his family had not been informed of his detention, nor did he have access to a lawyer and was held without charge. He is believed to be still held under the same conditions.

Most of the families only learnt of their relatives' detention at Guantanamo through the media. Most of them have been able to receive messages and send letters to the detainees, however there have been long delays in receiving the letters and there are fears that some of the letters sent do not reach the detainees. Letters are censored by the US authorities. Many of the families have stopped receiving communications in the past five months without explanation.

Representatives of the Yemeni government have been permitted to visit Guantanamo only once and access to some of the prisoners was "very brief". Yemen's Minister for Human Rights has argued to Amnesty International that restrictions placed by the US government have put them in a difficult position: "We are unable to do anything for the families of the detainees...it is all confusion and no one seems to know where it starts or where it ends." As of January 2004, the Yemeni authorities had not received lists of its nationals detained in Guantanamo from the US authorities.

During a research visit to Yemen and other Gulf countries in January and February 2004, Amnesty International delegates met with members of some of the detainees' families and learnt of their emotional turmoil and other hardships stemming from the indefinite detention of their sons, fathers and brothers. Crucially, all felt powerless to obtain any information about their relatives or any help in their efforts to seek justice.

In order to begin to address this, Amnesty International and the Yemeni National Organization for the Defence of Rights and Freedoms (HOOD) organized a conference in Sana'a in April 2004, bringing together human rights activists, lawyers, former detainees, legal experts, government officials and families of the detainees. One of the outputs of the conference was the establishment of the Sana'a Committee, consisting of lawyers and human rights activists. Its primary objective is to facilitate cooperation and exchange of information and advice between lawyers and relatives of the detainees.

Guant<name> Bay – A Human Rights Scandal

Hundreds of people of around 40 different nationalities remain held without charge or trial at the US Naval Base in Guant<name> Bay in Cuba, without access to any court, legal counsel or family visits. Denied their rights under international law and held in conditions which may amount to cruel, inhuman or degrading treatment, the detainees face severe psychological distress. There have been numerous suicide attempts.

Many of those held were captured during the international conflict in Afghanistan, from where transfers to the Naval Base began in January 2002 under harsh conditions of transportation. Others were arrested elsewhere and handed over to the US authorities. Sporadic transfers to, and releases from, the base continue, but the precise numbers, identities and nationalities of those held has never been made public.

None of the detainees have been granted prisoner of war status or brought before a “competent tribunal” to determine his status, as required by Article 5 of the Third Geneva Convention. None has been granted access to any court to be able to challenge the legality of his detention.

The majority are held in maximum security blocks in small cells, sometimes for up to 24 hours a day and with very little out-of-cell exercise time. They are also subjected to repeated interrogations sometimes for hours at a time and without the presence of a lawyer, raising fears that statements may be extracted under coercion. The ICRC is the only international organization allowed access to the detainees.

With the prospect of indefinite detention without trial in such conditions, the potential psychological impact upon those held is a major concern. The ICRC delegation has stated that it has observed a “worrying deterioration” in the mental health of a large number of the detainees, and that their psychological condition has become a “major problem”.

In November 2001, President Bush signed a Military Order establishing trials by military commission which have the power to hand down death sentences and against whose decisions there will be no right of appeal to any court. In addition to the lack of right to appeal, the commissions will lack independence and will restrict the right of defendants to choose their own counsel and to an effective defence. The commissions will also accept a lower standard of evidence than in ordinary courts. This could include evidence extracted under torture or coercion.

On 28 June 2004 the US Supreme Court ruled that US courts have jurisdiction to consider challenges to the lawfulness of detentions at Guant<name> Bay.

AMNESTY INTERNATIONAL DEMANDS THAT

- **The US government end the legal limbo of all detainees**
- **All those held are charged and given fair trials or released**
- **The military order allowing for trial by military commission be revoked**
- **All those detained are granted full access to lawyers and families**
- **All are treated humanely and granted access to their rights**
- **Their families are kept informed of their legal status and well-being**
- **There be an immediate improvement in conditions of detention for those held at Camp Echo**

IF YOU WISH TO TAKE FURTHER ACTION ON BEHALF OF THE GUANTANAMO DETAINEES, PLEASE CONTACT THE AMNESTY INTERNATIONAL OFFICE IN YOUR COUNTRY. VISIT THE FOLLOWING WEB ADDRESS TO FIND OUT HOW:

<http://web.amnesty.org/contacts/engindex>