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Fear of forcible return to torture or ill-treatment

17 March 2005

USA

An unknown number of Guantánamo detainees

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The US Department of Defense may be seeking to transfer scores of detainees from the US naval base in Guantánamo Bay in Cuba to custody in other countries. While Amnesty International has been calling for, and would welcome, releases of detainees from the base, it is concerned to ensure that no detainee is forcibly returned to a situation where he would face human rights abuses.

On 11 March 2005, the *New York Times* reported that, in a memorandum dated 5 February 2005, Secretary of Defense Donald Rumsfeld had called for cooperation from other government departments to facilitate transfers from the base. The plan is reportedly to more than halve the detainee population at Guantánamo, and includes a proposal to transfer scores of detainees to custody in Saudi Arabia, Yemen and Afghanistan. According to a “senior administration official” quoted in the UK *Financial Times* newspaper on 16 March, the USA may also be considering sending ethnic Uighurs held in Guantánamo to China, despite an assurance in August 2004 by the then US Secretary of State, Colin Powell, that no Uighurs would be returned to China (see UA 356/03, AMR 51/147/2003 and updates). According to the report, the USA has been unable to find a third country willing to take the Uighurs. The Pentagon has denied that the US government is considering changing its policy. Amnesty International believes that no ethnic Uighurs should be forcibly sent to China, as they could face torture or execution there.

Also on 11 March, a spokesperson said that the State Department conducts “the diplomatic discussions with foreign governments whose nationals are detained at Guantánamo. We’ve negotiated the terms and the arrangements for transfer [in past cases].” He said that the Department’s policy is “not to transfer a person to a country if we determine that it’s more likely than not the person might be tortured.” He said that “we’ve worked most of these agreements out with a number of governments and they seem to have worked fairly well.” On 17 March 2005, current and former intelligence officials were cited by the *Washington Post* as describing the system the Central Intelligence Agency relies upon of oral assurances from the receiving government that a detained transferred by the USA will not be tortured as “ineffective and virtually impossible to monitor”. Amnesty International is opposed to such assurances being used to circumvent states’ international legal obligations not to send anyone to a country where they are at risk of torture or ill-treatment.

The prohibition on torture and other cruel, inhuman or degrading treatment or punishment in international law is absolute, and encompasses also an absolute prohibition on sending a person to any state where there are substantial grounds for believing that they would be subjected to any such treatment. Indefinite detention without charge or trial, incommunicado detention, or harsh prison conditions can in themselves amount to torture or ill-treatment.

#### **BACKGROUND INFORMATION**

There are “approximately 540” detainees from about 40 countries held in Guantánamo, according to the Department of Defense. The Pentagon has also said that by 12 March 2005, 214 other detainees had “departed” the base – 146 for release, and 65 “transferred to the control of other governments” – 29 to Pakistan, five to Morocco, seven to France, seven to Russia, four to Saudi Arabia, one to Spain, one to Sweden, one to Kuwait, one to Australia and nine to the UK. Some of the 65 transferred have since been released, including those transferred to the UK, Russia, Sweden and Australia. A Yemeni sent back to Yemen for release in April 2004 on return was detained without charge or trial or access to legal counsel or relatives. Amnesty International does not know if he remains in custody.

In June 2004 the Supreme Court ruled in *Rasul v. Bush* that the federal courts have jurisdiction to hear appeals from the detainees held at the base. The administration has sought, with some success, to drain the

*Rasul* ruling of any real meaning, by arguing in the courts that the detainees can file petitions to challenge the lawfulness of their detentions, but only to have them necessarily rejected on the grounds that they have no rights to such review under US or international law. In January 2005, two federal judges issued the first interpretations of the *Rasul* ruling when they responded to *habeas corpus* petitions from Guantánamo detainees. Judge Leon ruled in favour of the government, while Judge Green ruled against. The administration is appealing to have the conflict resolved in its favour.

Following Judge Green's decision, lawyers who had been filing petitions for the detainees sought a judicial order preventing the government from transferring detainees out of the base without giving 30 days' notice. The lawyers were concerned that the government might seek to avoid further adverse court rulings by transferring out of Guantánamo the detainees whose cases were before the courts. There was due to be a hearing on the issue on 24 March. The *New York Times* article appeared in the interim, and lawyers have begun filing for temporary restraining orders preventing detainee transfers, concerned that they may face torture or ill-treatment in the country to which they are transferred. On 12 March, a judge issued such an order in the case of 11 Yemeni detainees. She found that were the detainees "to be transferred to the control of a foreign country, they would effectively lose their rights to pursue their *habeas* claims in this country... With or without the allegation of improper forms of interrogation in a foreign country, the Court concludes that a continuation of their detention without redress to assess its legality could constitute irreparable harm to the [detainees]." The judge noted that she did not know for certain how quickly detainees might be transferred, only that the Pentagon and State Department "are working together to arrange for some numbers of unspecified [Guantánamo] detainees to be transferred to foreign nations and detained for uncertain periods." The judge added that "The Government refuses to give any advance notice of such transfers".

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

- noting recent reports that the USA is intending to transfer large numbers of detainees from Guantánamo to custody in other countries, including Afghanistan, Yemen and Saudi Arabia;
- expressing concern at reports that the US government may be reconsidering its commitment not to send Uighur detainees to China, where they would be at serious risk of torture or execution;
- reminding the US authorities of their absolute obligation not to forcibly return anyone to a country or situation where there are substantial grounds for believing that they would be subjected to torture or other cruel, inhuman or degrading treatment, as defined by international law;
- reminding the US authorities that harsh prison conditions, indefinite detention without charge or trial, and incommunicado detention can amount to torture or cruel, inhuman or degrading treatment;
- stressing that diplomatic assurances have been shown to be inadequate in protecting transferred detainees, and must never be used to circumvent a state's international obligations.

**APPEALS TO:**

Donald Rumsfeld, Secretary of Defense  
Office of the Secretary of Defense, The Pentagon, Washington DC 20301, USA

**Fax:** + 1 703 697 8339

**Salutation:** Dear Secretary of Defense

Condoleezza Rice, Secretary of State,  
Department of State, 2201 C Street, NW, Washington DC 20520, USA

**Fax:** + 1 202 261 8577

**Salutation:** Dear Secretary of State

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.**