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USA: Detainees from Afghan conflict should be released or tried

All those detained in connection with the conflict in Afghanistan -- whether detained in Guantánamo Bay or elsewhere -- should be promptly released unless they are to be prosecuted for a recognizably criminal offence, Amnesty International said today.

The organization added that, should any of them be prosecuted, they should be given access to a lawyer and receive a fair trial.

"It is time to end the unacceptable legal limbo in which these prisoners are kept -- a condition in which they are denied 'prisoner of war' status while at the same time are not allowed to enjoy the rights recognised to criminal suspects under US law," Amnesty International said.

"In accordance with international humanitarian law, those among these detainees who were entitled to be considered prisoners of war should be repatriated if they can return to their countries of origin safely," the organization explained. "If safe return is not possible, they should be sent to countries where they will not face serious human rights abuses."

All other detainees should be released without delay unless they are also to be tried in accordance with international human rights standards. The military commissions proposed in an order signed by President Bush last November to try non-US nationals suspected of terrorism lack clear independence from the executive and allow no right of appeal to an independent and impartial court. Trial in these courts would not meet international fair trial standards.

Amnesty International also reiterated its concern about conditions in the Guantánamo Bay detention centre, where detainees are allegedly confined for 24 hours a day to small cells in sweltering heat. Some of the conditions reported -- including exercise limited to 15 minutes twice a week -- are in direct violation of international minimum standards for the treatment of prisoners.

The situation is made worse by detainees' limited contact with the outside world and the uncertainty of their futures. Amnesty International believes that such conditions may cause severe physical and psychological damage, particularly when imposed long-term or indefinitely. In recent months, a series of attempted suicides have been reported.

Amnesty International has called on the US government to respect the basic rights of all those in US custody. These include the right to humane treatment; the right to be informed of the reasons for the detention and to be able to challenge the lawfulness of the detention; the presumption of innocence; prompt access to and assistance of a lawyer and to be able to communicate with family and friends.

These rights should extend to more recently captured suspects held for interrogation at US bases in Afghanistan as well as to US citizens Yaser Esam Hamdi and Jose Padilla held without charge in *incommunicado* military detention in the USA. Yaser Hamdi was captured during the military conflict in Afghanistan and has been held since April in a naval brig in Virginia; Jose Padilla, was arrested at Chicago airport on a suspected terrorism charge and transferred to military custody in South Carolina last June. Both are denied access to their attorneys, although, unlike non-US nationals held in military custody outside the USA, their circumstances are currently under review by US courts.

Amnesty International is also concerned by reports that suspected members of al-Qa'ida arrested by US officials in Afghanistan or elsewhere have been transported for questioning to third countries where they might be at risk of human rights violations. These countries include Egypt, where suspected members of Islamic opposition groups are frequently tortured during *incommunicado* detention.

"No-one should be sent to another country to be interrogated if there are substantial grounds for believing that they would be at risk of torture or other cruel, inhuman or degrading treatment," Amnesty International said.

Background

More than 600 detainees from 42 countries are currently held in the US military base in Guantánamo Bay, Cuba. Most were captured during the armed conflict in Afghanistan and have been held for more than eight months. However, at least six detainees -- including four Algerians from Bosnia and possibly many others -- were arrested outside Afghanistan.

The four detainees released on 26 October were a Pakistani man and three Afghans, whom the US authorities said did not pose a security threat. One of the Afghan prisoners, Jan Muhammed, said he did not receive any letter from his family until three days before his release. Reports suggest that many of those held in Guantánamo Bay were low-level foot soldiers fighting for, or conscripted into, Taleban forces during the Afghanistan armed conflict. There are also indications that others may have been simply in the wrong place at the wrong time.

Another 30 detainees were transferred to Guantánamo Bay on 28 October 2002, bringing the population of the detention centre to around 625, according to US officials.

Amnesty International's requests for access to the detention facility have so far been ignored by the US government.

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