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USA: Where is the accountability?

Health concern as charges against Mohamed al-Qahtani dismissed

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“The threat of the death penalty and the shock of the charges against him had a devastating impact upon Mohamed al-Qahtani’s already badly compromised physical and mental condition.

I am concerned that he will not survive Guantánamo.”

Mohamed al-Qahtani’s US lawyer, 16 May 2008

On 13 May 2008, the US Department of Defense announced that capital charges sworn against Guantánamo detainee Mohamed al-Qahtani in February 2008 had been dismissed. The military commission authorities have refused to make their reasoning public; the Pentagon merely stated that because the charges had been dismissed without prejudice, the government retained the option of re-charging this Saudi Arabian national. In any event, Mohamed al-Qahtani would not, according to the Pentagon, be tried with the five other detainees whose capital charges were being referred for joint trial by military commission.¹

Mohamed al-Qahtani has been in US custody without trial for six and a half years, all but three months of it without charge. The dismissal of his charges returns him to indefinite detention. His physical and mental health have long been a cause for concern following his torture and other ill-treatment during interrogation in Guantánamo in late 2002 and early 2003, and his continuing detention. Heightening this health concern is the news from his lawyer that in April 2008 al-Qahtani apparently attempted suicide, and was treated in hospital in Guantánamo. The last time he is believed to have contemplated suicide was in December 2002 after four months in isolation and weeks of 20-hour-a-day torturous and humiliating interrogations. Raising the subject of suicide during an interrogation on 26 December 2002, Mohamed al-Qahtani was allowed to write out a will requesting, if he died at Guantánamo, that his body be quickly returned to Saudi Arabia and his mother notified of his death. The interrogator tore up the will in front of al-Qahtani after the detainee said that he was not a member of *al-Qa’ida*. Driven to thoughts of suicide by torture six years ago, it seems that the prospect of a death penalty trial or endless detention in Guantánamo once again pushed him to the edge of despair.

The USA should release Mohamed al-Qahtani unless it promptly recharges him and brings him to trial in accordance with international fair trial standards in an independent and impartial court – not a military commission. No information obtained under torture, cruel, inhuman or

¹ See USA: Way of life, way of death. Capital charges referred against five former secret detainees, AI Index: AMR 51/041/2008, 20 May 2008, <http://www.amnesty.org/en/library/info/AMR51/041/2008/en>.

degrading treatment or other unlawful methods should be admitted in any proceedings, except against the perpetrators of any such treatment as evidence that it occurred. The Saudi Arabian authorities should immediately call for Mohamed al-Qahtani's repatriation as long these conditions are not met, and do all they can to ensure that his rights are fully respected, whether in US custody or in Saudi Arabia.

The treatment of Mohamed al-Qahtani has come to symbolize US conduct against detainees in the "war on terror", particularly foreign nationals held outside the US mainland. The presumption of innocence and any meaningful due process trampled, such detainees have been treated as potential sources of information first and potential criminal defendants a distant second. The use of secret and incommunicado detention has been systematic. With detainees denied full and timely access to courts and legal counsel, and held indefinitely in harsh, isolating conditions, torture and other ill-treatment have been part and parcel of this detention regime. So, too, has impunity for such human rights violations.

In a White House press conference held in June 2004 following the revelations of torture by US personnel in Abu Ghraib prison in Iraq, the then White House Counsel Alberto Gonzales said that "the President has said we do not condone or commit torture. Anyone engaged in conduct that constitutes torture will be held accountable." He added that "I want to reaffirm yet again that the United States has very high values". His choice of words was ironic. For "high-value" is the label attached to detainees the USA believes have "actionable" intelligence in the "war on terror". Such detainees have been at particularly high risk of torture and other human rights violations.

"High-value" detainees in US custody in Iraq, for example, faced systematic ill-treatment, some of it "tantamount to torture", according to the International Committee of the Red Cross (ICRC) in 2004.² The USA also developed and continues to operate a global High Value Terrorist Detainee Program under the auspices of the Central Intelligence Agency (CIA), in which an unknown number of detainees purported to have high intelligence value have been subjected to torture and other cruel, inhuman or degrading treatment, and to enforced disappearance, their fate and whereabouts concealed for years.³ Many remain unaccounted for.

In military custody as an "enemy combatant" in Guantánamo, Mohamed al-Qahtani was also singled out for "special" interrogation because of the US government's belief that he had valuable intelligence. He had been taken into custody in December 2001 on the Afghanistan/Pakistan border. He was transferred to Guantánamo in January 2002, the month before President George W. Bush issued a memorandum spelling out that no detainee suspected of involvement with the Taliban or *al-Qa'ida* would qualify as a prisoner of war under the Geneva Conventions, and that Article 3 common to the four Geneva Conventions would not apply to them either.⁴ Common Article 3 prohibits, among other things, torture and other ill-treatment, as well as unfair trials.

² Report of the ICRC on the treatment by the Coalition Forces of prisoners of war and other protected persons by the Geneva Conventions in Iraq during arrest, internment and interrogation, February 2004.

³ See, USA: Law and executive disorder: President gives green light to secret detention program, August 2007, <http://www.amnesty.org/en/report/info/AMR51/135/2007>.

⁴ In *Hamdan v. Rumsfeld* in 2006, the US Supreme Court reversed this decision on common Article 3. See USA: Way of life, way of death, *op. cit.*

The February 2002 presidential memorandum said that “our values as a nation... call for us to treat detainees humanely, including those who are not legally entitled to such treatment.” There is no such detainee. The international prohibition against torture or other cruel, inhuman or degrading treatment is absolute. This is not a policy choice – it is a legal obligation. The presidential memorandum said that although the Geneva Conventions would not apply to the detainees, they would be treated “to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva”.

Other government documents which have come to light since then nevertheless show an administration seeking to limit the legal protections for foreign nationals in US custody labelled as “enemy combatants” and to eliminate criminal liability for interrogators. One such document, dated March 2003 and declassified five years later on 31 March 2008, is an 81-page memorandum to the Pentagon from the Office of Legal Counsel (OLC) of the Justice Department.⁵ This memorandum contains much of what has appeared in other “torture” documents written inside the US administration between 2002 and 2004, including before the “special” interrogation of Mohamed al-Qahtani. The details contained in such documents take on a particular resonance when considering what happened to al-Qahtani, subjected to an interrogation plan authorized at high-levels in the executive branch of government.

At the heart of the US administration’s position articulated in the March 2003 memorandum is that “information is perhaps the most critical weapon for defeating al Qaeda” and “to prevent direct attacks on the United States”; “Interrogation of captured al Qaeda operatives could provide that information; indeed, in many cases interrogation may be the only method to obtain it”. Against this backdrop, this memorandum on military interrogation argues that “under our Constitution, the sovereign right of the United States on the treatment of enemy combatants is reserved to the President as Commander-in-Chief”, and “it is well established that the sovereign retains the discretion to treat unlawful combatants as it sees fit”. General criminal laws, it continues, “must be construed as not applying to interrogations undertaken pursuant to his Commander-in-Chief authority”, and “any effort by Congress to regulate the interrogation of enemy combatants” would be unconstitutional. In addition, the memorandum asserts, the USA’s War Crimes Act – criminalizing as war crimes violations of the Geneva Conventions – does not apply to the interrogation of *al-Qa’ida* or Taliban detainees because they do not qualify for Geneva Convention protections. Similarly it argues that the anti-torture statute – criminalizing torture by US agents abroad – does not apply if the interrogations are conducted “on permanent military bases outside the territory of the United States”, including Guantánamo.

The administration has made repeated attempts to narrow the definition of torture and to classify certain techniques as “merely” cruel, inhuman and degrading treatment. This approach is apparent in the 2003 memorandum also. It asserts that “it is plain” that torture “encompasses only extreme acts”, also suggesting that such acts will most likely involve “physical torture”. Examples of such conduct, it indicated, might be limited to conduct such as severe beatings with iron bars, mock executions, threats of removing extremities (e.g.

⁵ Re: Military interrogations of alien unlawful enemy combatants held outside the United States. Memorandum for William J. Haynes II, General Counsel of the Department of Defense, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 14 March 2003. The OLC’s legal opinions are binding on all executive branch agencies.

fingers), burning, electric shocks to genitalia, or rape. Torture, the memorandum suggests, “is not the mere infliction of pain or suffering”, but rather “the victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.” Moreover, the “infliction of severe pain must be the [interrogator’s] precise objective” in order to constitute torture (if the interrogator acted “knowing that severe pain or suffering was reasonably likely to result from his actions, but no more, he would have acted only with general intent”). If the pain in question is psychological, the act resulting in it “must cause long-term mental harm” before it would amount to torture.⁶ In its conclusions in 2006 on the USA’s compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Committee Against Torture called on the USA to “ensure that acts of psychological torture, prohibited by the Convention, are not limited to ‘prolonged mental harm’ as set out in the [USA’s] understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe pain or suffering, irrespective of their prolongation or duration”. The USA has not withdrawn or amended its “understanding” on torture.

The OLC memorandum argues that international law puts no more restrictions on the USA than its domestic law. It says that the CAT, for example, “places no legal obligations under domestic law on the Executive Branch, nor can it create any cause of action in federal court”. In any event, “any presidential decision to order interrogation methods that are inconsistent with CAT would amount to a suspension or termination of those treaty provisions”. In other words, the President can simply override the USA’s international treaty obligations. In similar vein, the memorandum asserts that “customary international law lacks domestic legal effect, and in any event can be overridden by the President at his discretion”.

On the question of cruel, inhuman or degrading treatment, the memorandum emphasizes that while CAT requires states to criminalize all acts of torture (article 4), it only requires them to *prevent* cruel, inhuman or degrading treatment or punishment (article 16). With this in mind, the memorandum points to a number of techniques previously used by the UK and Israel that the OLC suggested would not constitute torture, including hooding, subjection to noise, sleep deprivation, stress positions, deprivation of food and drink, and excessive tightening of handcuffs. Amnesty International has previously pointed out that the OLC opinions misuse the Israel and UK examples in selective and self-serving fashion.⁷

The March 2003 memorandum further argues that even if interrogations were to violate the USA’s obligations under CAT, they would still be consistent with international law if justified by “necessity or self-defence”. It argues that Article 2 of CAT – which states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as a justification of torture – cannot eliminate the USA’s right “to use necessary measures for its self-defense”. The memorandum notes that Article 2 applies only to torture and does not preclude justification

⁶ In US law, these acts would have to be fall into one of four types of conduct (threat of imminent death; application or threatened administration of mind-altering substances; infliction or threat of severe physical pain or suffering, or threat that another person will be subjected to one of these).

⁷ See pages 175-176 of USA Human dignity denied: Torture and accountability in the ‘war on terror’, AI Index: AMR 51/145/2004, October 2004, <http://www.amnesty.org/en/library/info/AMR51/145/2004/en>.

under exigent circumstances of cruel, inhuman or degrading treatment. The OLC thereby ignores the fact that the International Covenant on Civil and Political Rights (ICCPR), which the USA has ratified, also prohibits torture and other cruel, inhuman or degrading treatment or punishment (article 7) and expressly states that there can be no derogation from this prohibition, even “in time of public emergency which threatens the life of the nation” (article 4).

The OLC memorandum points out that the USA conditioned its ratification of the CAT (and the ICCPR) with the “reservation” that the meaning of cruel, inhuman or degrading treatment or punishment was limited to the conduct already prohibited under existing US law.⁸ Under US law, the memorandum argues, various tests might be applied that would determine the legality of conduct during interrogations, all of which would allow scope for aggressive techniques in the context of the “war on terror”. In the end, the OLC asserts, the executive “must be given discretion in its decisions to respond to the grave threat to national security posed by the current conflict”, provided that interrogators do not, for example: act with “deliberate indifference” to the detainee’s health or safety (due diligence, the memorandum suggests, might be demonstrated by “an assessment of the prisoner’s psychological health”); or apply methods that are “unnecessary or wanton” (the memorandum argues that if “there was credible information that the enemy combatant had information that could avert a threat, deprivations that may be caused would not be wanton or unnecessary”) or; “shock the conscience” by acting without justification, such as with pure “malice or sadism”. Here the memorandum again emphasizes intelligence-gathering as justification for what might otherwise be prohibited conduct (“although enemy combatants may not pose a threat to others in the classic sense..., the detainees here may be able to prevent great physical injury to countless others through their knowledge of future attacks”).

03 December 2002

2040: Detainee hooded and taken to new primary interrogation booth that was decorated with photos of 9-11 victims, the US flag, flags of coalition forces in the global war on terrorism, and red lighting. Detainee was subjected to loud music for 20 minutes.

2100: Hood was removed and US national anthem was played...

2105: Detainee’s head and beard were shaved with electric clippers. Detainee started resistance when beard was shaved and [military police] had to restrain.

Extract from Mohamed al-Qahtani’s interrogation log

The memorandum essentially postulates that, as long as the interrogator or other official acts in good faith and in the belief that he or she is preventing an attack on the USA, the executive has unfettered executive power to authorize whatever interrogation technique, perhaps short of the most extreme, it deems necessary: “If an attack appears increasingly certain, but our intelligence services and armed forces cannot prevent it without the information from the interrogation of a specific individual, then the more likely it will appear that the conduct in question will be seen as necessary”. Even some scholars, the memorandum continues “believe that interrogation of such individuals using methods that might [amount to torture] would be justified under the doctrine of self-defence”, even in the case of “an enemy combatant in

⁸ Even with the passage of the Detainee Treatment Act in 2005, the USA still operates under its reservation to the cruel, inhuman or degrading treatment standard.

detention [who] does not himself present a threat of harm". Thus, if a government official "were to harm an enemy combatant during an interrogation in a manner that might arguably violate a criminal prohibition, he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network". Such criminal conduct could be justified under the "executive branch's constitutional authority to protect the nation from attack".

The OLC memorandum and other documents drive a steamroller through the absolute prohibition of torture and other cruel, inhuman or degrading treatment under international law. They suggest that if a government believes there are some detainees who "are not legally entitled to [humane] treatment" – perhaps those it labels as "bad people" or "terrorists" or "killers" – or if it refuses to apply legally binding international definitions to its understanding of humane treatment and if the President is anyway deemed able to override international and domestic law, or if it considers that in the quest for "actionable" intelligence "military necessity" or "self-defence" can justify interrogation techniques or detention conditions amounting to torture or other cruel, inhuman or degrading treatment, the result can be the sort of "special interrogation plan" devised by the US authorities for Mohamed al-Qahtani, and authorized by the then Secretary of Defense, Donald Rumsfeld, in late 2002.

In the June 2004 White House press conference mentioned above, the second most senior Pentagon lawyer recalled that in "in the fall of 2002, we have a spike in intelligence. We're coming on to the first anniversary of 9/11, and the intelligence is indicating we may very well be threatened with another attack". Mohamed al-Qahtani, who had been in detention for approaching a year by then, suspected of being the would-be "20th hijacker" in the 9/11 plot, become someone at this time in whom, according to Department of Defense Deputy General Counsel Daniel Dell'Orto, "we have considerable interest. He has resisted our techniques. And so it is concluded at Guantánamo that it may be time to inquire as to whether there may be more flexibility in the type of techniques we use on him".⁹ The "Special Interrogation Plan", he said, remained classified, but "it outlines the military necessity for doing this." A few days later, in a BBC interview, Secretary Rumsfeld emphasized that Mohamed al-Qahtani was "a very bad person".

On 2 December 2002, Secretary Rumsfeld had approved, "as a matter of policy", a number of techniques for use in interrogating detainees at Guantánamo, at the discretion of the Commander of US Southern Command. In his June 2004 BBC interview, he said that the techniques had been "checked with the lawyers, they were determined to be within the President's order that the treatment be humane". The techniques he authorized included stress positions, sensory deprivation, prolonged isolation, the use of 20-hour interrogations, hooding during transportation and interrogation, stripping, forcible shaving, and "using detainees individual phobias (such as fear of dogs) to induce stress". Mohamed al-Qahtani was allegedly subjected to all of these techniques, and more, over a period of months.

In fact, Mohamed al-Qahtani's ill-treatment preceded this authorization of the Special Interrogation Plan and continued subsequent to it. According to the military, on 8 August

⁹ In a leaked interview with the Department of the Army Inspector General (DAIG) on 7 October 2005, General James T. Hill, former Combatant Commander of the United States Southern Command, was asked whether al-Qahtani was one of the detainees "that were of special interest to the OSD [Office of the Secretary of Defense]". He replied: "Oh, absolutely! Oh, yeah! Absolutely".

2002 al-Qahtani (detainee number 063) was removed from Camp Delta where most of the detainees were held and taken to an isolation facility. He was held in isolation there until at least 15 January 2003, some 160 days later. A Federal Bureau of Investigation (FBI) memorandum dated 14 July 2004 recalled that “in November 2002, FBI agents observed Detainee #63 after he had been subject to intense isolation for over three months. During that time period, #63 was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a cell covered with a sheet for hours).”¹⁰ After such FBI observations and allegations came into the public realm, a military investigation was initiated. An unclassified portion of the resulting Schmidt/Furlow Report was released in mid-2005.

Mohamed al-Qahtani, the detainee described by the FBI agents as displaying serious mental health problems after three months in isolation, was then for the next eight weeks – 23 November 2002 to around 15 January 2003 – subjected to interrogation in Camp X-Ray under the Special Interrogation Plan. This apparently was put into operation under “some type of interim authority” about two weeks before the Secretary of Defense signed off on it.¹¹ In an interview he gave to the Department of Army Inspector General (DAIG) on 24 August 2005, the transcript of which was subsequently leaked, the chief investigator, Lieutenant General Randall M. Schmidt, put it thus: “[F]or 20 hours a day for at least 54 days, this guy was getting 20 hours a day interrogation in the white cell. In the white room for four hours and then back out.” He elaborated that for the four hours a day that Mohamed al-Qahtani was not under interrogation, “he was taken to a white room... with all the lights and stuff going on and everything...” Lt. Gen. Schmidt added that he himself had gone to Guantánamo and seen Mohamed al-Qahtani, just as he was “coming out of this thing” and said that “he looks like hell... He has got black coals for eyes”.

The Schmidt/Furlow investigation found that on two occasions – both prior to and after Secretary Rumsfeld’s authorization – dogs had been used to terrorize Mohamed al-Qahtani. On each occasion, a dog was “brought into the interrogation room and directed to growl, bark, and show his teeth” at the detainee. In his DAIG interview, Lt. Gen. Schmidt recalled it somewhat less dispassionately: “[H]ere’s this guy manacled, chained down, dogs brought in, put his face

¹⁰ For references and further information on the Mohamed al-Qahtani case and on a second “special interrogation plan” authorized for use against another detainee in Guantánamo considered to have valuable intelligence, see Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo, June 2006, <http://www.amnesty.org/en/library/info/AMR51/093/2006/en> (to which Amnesty International never received a response) and USA: Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi, September 2006, <http://www.amnesty.org/en/report/info/AMR51/149/2006>.

¹¹ On this interim authority, see 7 October 2005 DAIG interview of General Hill, *op. cit.* (“I racked my brain over this. I’ve had a discussion with Maples over this thing. I’ve had a discussion with everybody about it. I know that people asked the Chairman [of the Joint Chiefs of Staff, General Richard Myers] about it. There are some notes. Some cryptic notes the Chairman wrote during a combatant commanders conference. So maybe the Chairman and I discussed this issue.” General Hill added that “all of those things we did [in al-Qahtani’s interrogation], we already had the authority to do”. “Maples” is believed to refer to US Army Lt. Gen. Michael Maples. Now a Major General, he was appointed to the position of Director of the Defense Intelligence Agency in November 2005.

[sic], told to growl, show teeth, and that kind of stuff. And you can imagine the fear kind of thing. You know at what point... if you had a camera and snapped that picture, you'd been back to Abu Ghraib".

Also reminiscent of Abu Ghraib was the fact that Mohamed al-Qahtani – always in shackles during interrogation – was variously forced to wear a woman's bra and had a thong placed on his head; was tied by a leash and led around the room while being forced to perform a number of dog tricks; was forced to dance with a male interrogator while made to wear a towel on his head "like a burka"; was forced to wear a mask made from a box with a "smiley face" on it, dubbed the "happy Mohammed" mask by the interrogators; was subjected to forced standing, forcible shaving of his head and beard during interrogation (and photographing immediately after this), stripping and strip-searching in the presence of women, sexual humiliation, culturally inappropriate use of female interrogators, and to sexual insults about his female relatives; had water repeatedly poured over his head; had pictures of "swimsuit models" hung round his neck; was subjected to hooding, loud music for up to hours on end, white noise, sleep deprivation, and to extremes of heat and cold through manipulation of air conditioning.

Other forms of humiliation included being forced to urinate in his clothing when interrogators refused to allow him to go to the toilet. His lawyer has reported that on at least one occasion during an interrogation, Mohamed al-Qahtani was stripped and forcibly given an enema while restrained by guards. According to the *New York Times*, "Pentagon spokesmen said the procedure was medically necessary because Mr. Kahtani was dehydrated after an especially difficult interrogation session. Another official, told of the use of the enema, said, however, 'I bet they said he was dehydrated,' adding that that was the justification whenever an enema was used as a coercive technique, as it had been on several detainees." ¹² Mohamed al-Qahtani has also reported being restrained with very tight handcuffs in painful positions for extended periods of time, both during the day and night, according to his lawyer.

On 15 January 2003, Secretary Rumsfeld rescinded his 2 December 2002 authorization, saying that any use of the techniques should be approved by him on a case-by-case basis. On 16 April 2003, he authorized for use at Guantánamo Bay 24 techniques recommended by a Pentagon Working Group he had set up. Additional techniques were not ruled out, but would have to be requested on a case by case basis.¹³ One of the techniques authorized was "false flag" (convincing the detainee that individuals from a country other than the United States are interrogating him), and one of the techniques that would have to be requested was "threat of transfer" (to a third country that detainee is likely to fear would subject him to torture or death). Was Mohamed al-Qahtani subjected to a "creative" version of such techniques? Military intelligence officials and interrogators told the *New York Times* that in mid-2003, Mohamed al-Qahtani "was given a tranquilizer, put in sensory deprivation garb with blackened goggles, and hustled aboard a plane that was supposedly taking him to the Middle East. After hours in the air, the plane landed back at the United States naval base at Guantánamo Bay, Cuba, where he was not returned to the regular prison compound but put in an isolation cell in the base's brig. There, he was subjected to harsh interrogation procedures that he was encouraged to believe were being conducted by Egyptian national security operatives...In order to carry on the charade that he was not at Guantánamo, the military arranged it so Mr. Kahtani

¹² Fresh details emerge on harsh methods at Guantánamo. *New York Times*, 1 January 2005.

¹³ See pages 62-68 of *Human dignity denied: Torture and accountability in the 'war on terror'*, *op. cit.*

was not visited by the Red Cross on a few of its regular visits, creating a window of several months, said a person who dealt with him at Guantánamo.”¹⁴ This allegation is not addressed in the Schmidt/Furlow report.¹⁵

In his DAIG interview in 2005, Lt. Gen. Schmidt said that interrogators had “felt like well we got a green light to do this to whatever level we want to as long as we don’t torture this individual”. The Schmidt/Furlow Report duly concluded that Mohamed al-Qahtani’s treatment, while cumulatively “degrading and abusive”, “did not rise to the level of prohibited inhumane treatment” or torture. Perhaps the report’s conclusion in this regard was predictable in light of Lt. Gen. Schmidt’s own subsequent comment – echoing the administration’s mantra – that Mohamed al-Qahtani “was a bad guy”. Lt. Gen. Schmidt continued in his DAIG interview: “This was a guy who had information that we needed” which justified coercive techniques that “dropped down to the line just above...torture” while still being “humane treatment”.

The Schmidt/Furlow investigators acknowledged that they had “relied heavily” on the interrogation log. While revealing considerable detail, the log was not written by an impartial observer, but by interrogators themselves, who chose what to include and how to phrase it. Thus there is no record in the version of the log leaked into the public domain that during interrogation on 6 December 2002, Mohamed al-Qahtani was forced to wear a bra and had a thong placed on his head. Instead, general references are made in the report of that day’s interrogation to the techniques of “Pride and Ego Down”, “Fear Up Harsh” and “Invasion of Space by a Female”. In any event, the Schmidt/Furlow report granted a great deal of latitude to the interrogators under the notion of “creativity”. Thus, the straddling of a prostrate Mohamed al-Qahtani by a female interrogator

14 December 2002

0001: Interrogation team was briefed on condition of the detainee’s mental and physical state. Detainee’s hands were cuffed at his sides to prevent him from conducting his prayer ritual.

0025: Lead [interrogator] begins berating detainee as coward and liar. Lead taped picture of 3-year-old victim over detainee’s heart. Detainee is told he will never leave Cuba... Control [other interrogator] orders detainee to sit up and pay attention. Control dripped a few drops of water on detainees head to keep him awake. Detainee struggles when water is dropped on his head. Detainee attempts to talk, but both control and lead scream over the detainee until he stops.

0120: Interrogators take a break and detainee listens to white noise. Detainee goes to bathroom and is exercised while hooded. Detainee returns to booth and continues to listen to white noise.

0140: Interrogators enter the booth and play cards while conducting a [pride/ego] down [interrogation strategy]. Detainee is told that we get paid to mess with him so we might as well play cards, a leisure he cannot participate in. Detainee is told to shut up and stay awake. At times detainee began to fall asleep and water was dripped on his head as he was ridiculed. White noise was playing in the background.

Extract from interrogation log

¹⁴ Fresh details emerge on harsh methods at Guantánamo. New York Times, 1 January 2005.

¹⁵ The subject of the second “Special Interrogation Plan” was taken off Guantánamo on a boat as part of an apparent ploy to make him believe that he would be killed or disappeared. See USA: Rendition – torture – trial?, *op. cit.* This detainee, Mohamedou Ould Slahi was denied access to the ICRC for more than a year.

(there is no explanation of how al-Qahtani ended up “laid out on the floor”), was accepted as “authorized” under the interrogation technique of “Futility”.¹⁶

The Schmidt/Furlow report displays an utter failure to recognize the absolute prohibition in international law, under any circumstances, of any torture or other cruel, inhuman or degrading treatment. Instead it reveals a tendency, mirroring the US administration’s approach, to justify such treatment for the purpose of obtaining “valuable intelligence” and as a way “to establish complete control and create the perception of futility and reduce his resistance to interrogation”. For example, under this justification the report specifically cited “the use of strip searches, the control of prayer, the forced wearing of a woman’s bra, and other techniques”.

Despite the fact that the interrogation log makes it quite apparent that water was poured on Mohamed al-Qahtani’s head, among other things, to stop him from falling asleep, the Schmidt/Furlow report concludes that “this was done as a control measure only”. The report also concludes that “there is no evidence that [al-Qahtani] was subjected to humiliation intentionally directed at his religion”. The interrogation log is littered with such evidence.¹⁷ The report acknowledges that Mohamed al-Qahtani himself may have “interpreted many of the interrogation techniques employed to be religious humiliation”. He has indeed interpreted his treatment in this way. He told an Administrative Review Board hearing on 12 October 2006 that his torture and ill-treatment had included: “religious and sexual humiliation; denial of the right to practice my religion, including prohibiting me from praying for prolonged times and during Ramadan; threatening to desecrate the Koran in front of me”. Forced shaving of head and facial hair, nudity, sexual harassment by female interrogators, and the use of dogs, can also have discriminatory resonance.¹⁸

The Schmidt/Furlow report found that although several of the interrogation techniques – including the use of dogs, sleep disruption, use of extreme temperatures, and prolonged isolation – had been used *before* they were authorized, Secretary Rumsfeld’s “subsequent approval of each of the techniques clearly establishes the ultimate legitimacy of that technique and thus additional corrective action is not necessary”. In a subsequent leaked interview, Lt. Gen. Schmidt described the Secretary of Defense as having been “personally involved” in the interrogation of Mohamed al-Qahtani, and the former Commander of Southern Command, General James Hill, said that the interrogation had only been stopped in mid-January 2003 after Secretary Rumsfeld “told me to stop it”¹⁹ Yet no investigation has had the independence

¹⁶ During such an episode on 21 December 2002, the female interrogator related to Mohamed al-Qahtani how an alleged al-Qa’ida member, Qaed Salim Sinan al-Harethi, had been killed by the CIA in Yemen a month earlier. Amnesty International is concerned that al-Harethi and five others killed with him were extrajudicially executed (see page 39 of USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power, May 2005, <http://www.amnesty.org/en/library/info/AMR51/063/2005/en>).

¹⁷ For example, on 13 December 2002, the interrogation log states “upon entering the booth, lead [interrogator] played the call to prayer with a special alarm clock. Detainee was told, ‘this is no longer the call to prayer. You’re not allowed to pray. This is the call to interrogation. So pay attention”. On 2 January 2003, he was “shown the Bin Laden shrine and told that he could only pray to Bin Laden. Detainee was subject to loud music and yelling”.

¹⁸ See pages 30-36 of Human dignity denied: Torture and accountability in the ‘war on terror’, *op. cit.*

¹⁹ “He called me. He, the Secretary – it was on a weekend. Saturday or Sunday, and we discussed the interrogation”. General Hill also said that Major General Geoffrey Miller, who had assumed command of

or scope to reach to that level of office. For its part, the Pentagon has characterized Mohamed al-Qahtani's interrogation as falling under "the unequivocal standard of humane treatment" to which the Department is committed.

General Brantz Craddock, the Commander of US Southern Command, determined on the basis of the Schmidt/Furlow report that the interrogation of Mohamed al-Qahtani "did not result in any violation of US law or policy", even if it had been "creative, aggressive and persistent". In his 2005 DAIG interview, Lt. Gen. Schmidt suggested that the question of what was "lawful or unlawful" was "logic" that "you can't apply...to the status that was accorded to detainees at Guantánamo", so he "had to go back to the President's humane treatment line" in the February 2002 memorandum. Lt. Gen. Schmidt told a Senate committee in 2005 that in deciding that Mohamed al-Qahtani's treatment did not cross "the threshold of being inhumane":

"I considered the President's mandate to treat the detainees humanely and the requirement to ensure detainees had adequate food, drinking water, clothing, shelter and medical treatment. In this case, the treatment was not determined by me to be inhumane because the interrogators not only ensured that [Mohamed al-Qahtani] had adequate food, water, clothing and shelter, but also that his interrogation and the techniques used were done in a highly controlled interrogation environment with medical personnel continuously monitoring his health and well-being."

For periods of his interrogation, Mohamed al-Qahtani was refusing food and water, and he was forcibly hydrated intravenously from time to time (which he has described as feeling like "repetitive stabs"). An example of the medical treatment that he received – an illustration in the US military's terms of the "humane" way in which he was treated – is revealed in the leaked log of his interrogation. From 7 December 2002, Mohamed al-Qahtani was given a 24-hour "recuperation" period from interrogation. This was to involve being subjected the whole time

19 December 2002

1115: Detainee offered water – refused. Corpsman changed ankle bandages to prevent chafing [by shackles]. Interrogator began by reminding the detainee about the lessons in respect and how the detainee had disrespected the interrogators. Told detainee that a dog is held in higher esteem because dogs know right from wrong and know to protect innocent people from bad people. Began by teaching the detainee lessons such as stay, come, and bark to elevate his social status to that of a dog. Detainee became very agitated.

1300: Detainee offered food and water – refused. Dog tricks continued and detainee stated he should be treated like a man. Detainee was told he would have to learn who to defend and who to attack. Interrogator showed photos of 9-11 victims and told detainee he should bark happy for these people. Interrogator also showed photos of al Qaida terrorists and told detainee he should growl at these people. A towel was placed on the detainee's head like a burka with his face exposed and the interrogators proceeded to give the detainee dance lessons...

2200: The detainee was stripped searched (sic). Initially he was attempting to resist the guards. After approximately five minutes of nudity the detainee ceased to resist... He stated that he did not like the females viewing his naked body while being searched...

Extract from interrogation log

the Guantánamo detainee operations on 4 November 2002, personally observed the interrogation of Mohamed al-Qahtani, although General Hill was not asked, and did not say, on how many occasions this had occurred. October 2005 DAIG interview, *op. cit.*

to loud music “to prevent detainee from sleeping”. Ten hours into this alleged recuperation period, he was found to be suffering from bradycardia (a heart rate that is too slow – the resulting lack of oxygen can cause dizziness, extreme tiredness, shortness of breath, or fainting). He was subsequently hospitalized for a CT scan and put under observation overnight. On 9 December 2002, he was medically cleared, hooded, shackled and “restrained in a litter” for transport back to interrogation. He was allegedly even interrogated during the transportation.

In a fact which seems to carry echoes of the advice in the March 2003 OLC memorandum outlined above – that officials must not act with “deliberate indifference” to the detainee’s health or safety – references to checks by medical personnel during the weeks of Mohamed al-Qahtani’s interrogation litter the leaked interrogation log. For example, during interrogation on 6 December 2002, a “medical representative” checked al-Qahtani’s blood pressure and weight and “cleared the detainee for further interrogation.” Similarly on 13 December 2002, at a quarter to midnight, a check of Mohamed al-Qahtani’s vital signs concluded that his blood pressure was high and his pulse low. A doctor was called and said “operations could continue”. The involvement of medical personnel in this “degrading and abusive” interrogation was accepted without question by the Schmidt/Furlow report which noted, for example, that in relation to the use of temperature manipulation as an interrogation technique, no action was needed because “there are no medical entries indicating [Mohamed al-Qahtani] ever experienced medical problems related to low body temperature.” In his October 2005 DAIG interview, General Hill recalled that “I didn’t feel any problems” with the al-Qahtani interrogation as it had been “watched very carefully and monitored very carefully” including by “a doctor standing there watching it”.

On 11 February 2008, after years of labelling Mohamed al-Qahtani as the “20th hijacker” without bringing him to trial, the Pentagon announced charges against him and five other detainees “alleged to be responsible for the planning and execution” of the 9/11 attacks in the USA. The charges against al-Qahtani centred on the allegation that he had attempted to enter the USA on 4 August 2001 at Orlando International Airport in Florida, but had been denied entry and had flown back to Dubai in the United Arab Emirates.

Mohamed al-Qahtani has recanted statements he made under interrogation. The dismissal of charges against him three months after they were sworn raises questions as to why this has occurred and whether there is any relationship to the torture and other ill-treatment he endured. The government is reported to have employed “clean teams” in Guantánamo to re-interrogate detainees in a bid to obtain incriminating information using supposedly “non-coercive” methods. This has reportedly been unsuccessful in Mohamed al-Qahtani’s case.²⁰ In any event, Amnesty International considers that applying interrogation techniques that may be considered non-coercive in other circumstances, to a detainee subjected to years of secret, incommunicado or indefinite detention and to torture or other ill-treatment, who remains without remedy, rehabilitation or redress for past abuses, provides no assurance that any self-incriminating statements they may make are truly voluntary.

In an interview on 14 June 2005, Secretary of Defense Rumsfeld said that “allegations of abuse at Guantánamo, as at any other US military facility, have been thoroughly investigated. Any wrongdoing is – wrongdoers are being held accountable.” Nevertheless,

²⁰ Charges against 9/11 suspect dropped. Washington Post, 14 May 2008.

accountability for the torture and other ill-treatment to which Mohamed al-Qahtani has been subjected, including any role that former Secretary Rumsfeld played in it, remains entirely absent.²¹ As a state party to the UN Convention against Torture, the USA “must ensure that its competent authorities proceed to a prompt and impartial investigation”, wherever there is a “reasonable ground to believe” that an act of torture or cruel, inhuman or degrading treatment has been committed “in any territory under its jurisdiction (articles 12 and 16). The torture victim has the right to redress and to “fair and adequate compensation, including the means for as full rehabilitation as possible” (article 14). The US authorities have failed to meet its obligations in Mohamed al-Qahtani’s case, as in others.

In September 2006, calling on Congress to authorize the Military Commissions Act – the legislation under which Mohamed al-Qahtani was charged and under which he is denied the possibility of seeking judicial remedy through *habeas corpus*, President Bush said that “I want to be absolutely clear with our people, and the world: The United States does not torture. It’s against our laws, and it’s against our values”. In a statement three years earlier, he had called on “all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.” Other governments must act if the USA refuses to. Even if a torturer believes they can escape justice at home, they should not presume such sanctuary exists for them abroad.

“A human being needs four things in life that were taken from me at Guantánamo. First, to honour his religion and freedom to practice religion and respect it. Two, honouring his personal dignity by refraining from humiliating a human being through beating or cursing him and bad treatment in general. Three, respect for his honour, which means not dishonouring him through sexual humiliation or abuse. Four, respect for human rights by allowing a human being to sleep and be comfortable where he is; to be in a warm shelter; to have security for his life; to have sufficient food and beverage; to have means to relieve himself and clean his body; to have humane medical treatment; and to know that his family is safe from threats or harm. Again, all of these rights were taken from me”.

Mohamed al-Qahtani, statement to Administrative Review Board, 12 October 2006, Guantánamo

Under international law any state may exercise universal jurisdiction over anyone suspected of torture no matter when or where it occurred. Article 6 of the UN Convention against Torture places obligations on State Parties in the event that someone suspected of torture, attempted torture, complicity or participation in torture, is found to be on their territory. After examining available information, if the circumstances are deemed to warrant it, the authorities must take the alleged perpetrator into custody or otherwise prevent them from absconding, pending criminal or extradition proceedings.

Meanwhile, Mohamed al-Qahtani’s physical and psychological health remains a cause for serious concern, greatly heightened by the just-released report of his recent apparent suicide attempt. According to his lawyer, Gitanjali Gutierrez of the Center for Constitutional Rights in New York, al-Qahtani cut himself several times in April 2008 as he grew increasingly hopeless.

²¹ Secretary Rumsfeld would later authorize what appears to have been an enforced disappearance in Iraq when, at the request of the CIA Director, he ordered military officials to keep a detainee off any prison register. Seven months later, the detainee in question had still not been registered with the ICRC. See page 104, USA Human dignity denied: Torture and accountability in the ‘war on terror’, *op. cit.*

On his third attempt, he cut his arm deeply and had to be taken to the hospital.²² The military never notified his family or his lawyers. Ms Gutierrez has said that because of the involvement of medical personnel in his torture and other ill-treatment, al-Qahtani has been afraid to seek medical attention for years. During Ms Gutierrez's last meeting with him in early May 2008, she observed an alarming decline in his health and saw the scars from his recent suicide attempt. "The threat of the death penalty and the shock of the charges against him had a devastating impact upon Mohamed al-Qahtani's already badly compromised physical and mental condition", she told Amnesty International. "I am concerned that he will not survive Guantánamo and we have appealed to the Kingdom of Saudi Arabia to intervene immediately on Mohamed's behalf."

Take action for human rights

Please send an appeal to the US authorities:

- noting that charges against Mohamed al-Qahtani have been dropped, and that he has been returned to indefinite detention, after more than six years in US custody, all but three months of it without charge;
- asking to be provided with the reason for the dismissal of the charges;
- expressing deep concern about Mohamed al-Qahtani's health and well-being, particularly in view of his recent apparent suicide attempt, and calling for him to have immediate and continuing access to fully independent medical care;
- expressing deep concern that there has been no independent investigation conforming to international standards into, and no accountability for, the torture and other ill-treatment to which Mohamed al-Qahtani was subjected in late 2002 and early 2003, calling for anyone involved in these human rights violations to be brought to justice;
- pointing out that other governments will be called upon under their international obligations to act to bring to justice any US personnel present on their territory who are suspected of involvement in torture;
- calling for Mohamed al-Qahtani to be released from US custody and returned to Saudi Arabia if he is not to be promptly charged with recognizable criminal offences and brought to trial, not by military commission, but before an independent and impartial court in full accordance with international fair trial standards, including the exclusion of any information extracted under torture or other cruel, inhuman or degrading treatment. There should be no recourse to the death penalty;
- calling for Mohamed al-Qahtani to be provided full and effective access to remedy, rehabilitation and redress for the human rights violations to which he has been subjected.

²² There have been four reported suicides of detainees in Guantánamo. There are reported to have been many other suicide attempts.

Please send appeals to:

The Honorable Condoleezza Rice, Secretary of State, US Department of State, 2201 C Street, N.W., Washington DC 20520, USA
Fax: + 1 202 261 8577
E-mail: Secretary@state.gov
Salutation: Dear Secretary of State

The Honorable Robert M. Gates, Secretary of Defence, 1000 Defense Pentagon, Washington DC 20301, USA
Fax: + 1 703 697 8339
Salutation: Dear Secretary of Defense

The Honorable Michael Mukasey, US Attorney General, 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

Please send copies of your appeals to the US Embassy in your country.

Please also send appeals to the government of Saudi Arabia,

calling on them to seek Mohamed al-Qahtani's repatriation if the USA does not promptly recharge him for trial in an independent and impartial court, not a military commission. Please raise the question of his psychological health and well-being and his recent apparent attempted suicide, calling on the Saudi Arabian authorities to treat his case as a matter of urgency.

Appeals to:

His Royal Highness Prince Naif bin 'Abdel Aziz Al-Saud
Minister of the Interior, Ministry of the Interior
P.O. Box 2933, Airport Road, Riyadh 11134, Kingdom of Saudi Arabia
Fax: +966 1 401 1944/ + 966 1 401-1111 / +966 1 403 1185 / + 966 1 403-3614
Salutation: Your Royal Highness

His Royal Highness Prince Saud al-Faisal bin 'Abdul 'Aziz Al-Saud
Minister of Foreign Affairs, Ministry of Foreign Affairs
Nasseriya Street, Riyadh 11124 (or P.O.Box 55937, Riyadh 11544),
Kingdom of Saudi Arabia
Fax: + 966 1 412 2080 / +966 1 403 0645
Salutation: Your Royal Highness

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM
