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USA: Concern for mental health of Guantánamo detainee held since he was 17 years old

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Amnesty International is seriously concerned for the health and well-being of Guantánamo detainee Muhammed Khan Tumani. His lawyers have observed a marked deterioration in his mental health, which they attribute to his alleged ill-treatment since he was seized seven years ago in Pakistan, as well as the conditions of isolation in which he is currently held at the US Naval Base in Guantánamo Bay, Cuba. Muhammed Khan Tumani has been in US custody since he was 17 years old.

Muhammed Khan Tumani and his family left Syria in mid-2001. They stayed for a brief period in Afghanistan, but fled to Pakistan to escape the US-led military intervention in Afghanistan that began in October 2001. Shortly after, Muhammed Khan Tumani and his father were seized by local authorities in Pakistan.¹ After initially being held in an unknown Pakistani prison, they were handed over to US custody and transferred to the detention facility at the US airfield in Kandahar, Afghanistan. Muhammed Khan Tumani has said that he was subjected to torture in Pakistan and in Kandahar, including beatings, being shocked with electric wires, being threatened with a knife, being threatened with transfer to Egypt or Jordan, where he would be tortured, and being told that his family members would be killed, or were already dead.

In early 2002, Muhammed Khan Tumani was transferred to the Guantánamo detention facility, where he has described being subjected to further ill-treatment, including being forced to sleep in a completely bare cell, being deprived of sleep and food, being subjected to constant noise 24 hours a day, not being allowed to pray, being told that he should convert to Christianity, and being doused with cold water and ice.

Muhammed Khan Tumani has been detained for over two years in isolation in Camp 6 at Guantánamo. Detainees held at Camp 6 have been confined in conditions of isolation and sensory deprivation, typically for 20 to 22 hours a day, in individual steel cells with no windows to the outside. Muhammed Khan Tumani has told his lawyers that he continues to be subjected to coercive interrogations in an attempt to compel him to implicate his father, Abdul Nasser Khan Tumani, who is also held in Guantánamo, but from whom he has been separated for more than seven years.²

¹ Amnesty International notes that in the opposition to the lawyers' emergency motion, filed on 13 February 2009, the government disputes the fact that Muhammed Khan Tumani and Abdul Nasser Khan Tumani are father and son.

² In its opposition brief cited in footnote 1, the government said that there are "no records containing any evidence or information" indicating that Muhammed Khan Tumani "was subjected to coercive interrogation techniques, physical abuse, or emotional abuse". It added that during the past 12 months, he had been "interviewed by one interrogator

Muhammed Khan Tumani's US lawyers have witnessed his declining mental health over the three years that they have been representing him. In December 2007, he reportedly sent several letters through the legal mail system that he had apparently smeared with human faeces. In March 2008, his lawyers received reports from other detainees that Muhammed Khan Tumani was banging his head against the walls of his cell and that he was smearing his cell with excrement. By December 2008, his condition had deteriorated to the point that he slashed his wrist to protest "being in this place, having been arrested when I was 17 years old; the continuous psychological pressure and the torture that I currently endure; ...being apart from my father".

On 6 February 2009, Muhammed Khan Tumani's lawyers filed an emergency motion in the US District Court for the District of Columbia seeking to end his isolation in Camp 6, and for him to be allowed to see his father. The motion also sought access to his medical records and for his psychological and physical health to be independently evaluated. The government opposed the motion, arguing that it was a "conditions of confinement" claim that the court did not have jurisdiction to consider, thus maintaining the position argued by the previous administration.³ It added that, in any event, Muhammed Khan Tumani was "not suffering from a mental illness" and was only trying to "manipulate Guantánamo Bay personnel into transferring him to a less restrictive facility".

On 23 February, the judge ordered the release of the medical records, denying the other requests and concluding that "an independent medical examination is not necessary at this time". On 4 March, the government asked the judge to reconsider his order and to restrict it to "mental health records" only, and then only to those from December 2007 or later. Opposing this in a motion filed on 10 March, the lawyers for Muhammed Khan Tumani included a declaration from a psychologist who has reviewed the litigation materials and concluded that restricting release of records in this way would "interfere with the ability to make a reasonable judgment regarding Mr Khan Tumani's mental state and ability to cooperate with [his lawyers]."

On 20 March, Muhammed Khan Tumani's lawyers received his physical and mental health medical records, dating back to January 2007, which they are currently in the process of evaluating.

GUANTÁNAMO DETAINEE REVIEW

The executive order entitled "Review and Disposition of Individuals Detained at the Guantánamo Naval Base and Closure of Detention Facilities" signed by President Obama on

seven times" and had "the option of refusing to meet with the interrogator and ending interrogations at any time." Amnesty International is not in a position to add further detail to whether the detainee has been subjected to any specific coercive techniques during interrogation, but notes the UN Committee against Torture's finding in relation to the Guantánamo detentions in 2006 that indefinite detention without charge, *per se*, violates the UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment.

³ See Section 5 of USA: Detainees continue to bear costs of delay and lack of remedy, 9 April 2009 <http://www.amnesty.org/en/library/info/AMR51/050/2009/en>.

22 January 2009 directs closure of the Guantánamo detention centre “as soon as practicable” and no later than one year from the date of the order.

The order required the Attorney General to coordinate an interagency review to determine who from among the Guantánamo detainees could be released or transferred from US custody; who could be prosecuted by the USA, and in which jurisdiction; and what other lawful options there were for detainees the review determined could neither be released nor brought to trial. The executive order asserted that “new diplomatic efforts” could be fruitful in resolving a “substantial number” of cases and instructed the US Secretary of State to pursue such efforts.

The review has so far led to the release of only two detainees (one of whom had been ordered released by a federal judge nearly six months earlier) and no Guantánamo detainee has been charged by the new administration⁴. The Justice Department’s 100-day Progress Report reveals that by the end of April 2009 the Guantánamo task force had reviewed some 35 cases and made decisions on nine detainees, although it did not say what these decisions were. On 15 May, President Obama announced his decision to retain the military commissions as a forum for trying some of the Guantánamo detainees.

Muhammed Khan Tumani was only 17 years old when he was taken into custody in Pakistan. The USA never took account of his age in its treatment of him, as it was required to do under international law. 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.

Muhammed Khan Tumani and his father are originally from Syria, to which they cannot lawfully be forcibly returned. As Guantánamo Bay detainees they are at risk of arbitrary detention, torture or other ill-treatment, if they were forcibly returned to Syria. Torture and other ill-treatment are widespread in Syria’s detention and interrogation centres and people suspected of affiliation to unauthorized Islamist groups or of possessing information about terrorism are at particular risk of arbitrary arrest and imprisonment. Amnesty International has documented a number of such cases. Syrian national Basel Ghalyoun, who was forcibly returned to Syria by the Spanish authorities after the Spanish Supreme Court acquitted him of involvement in the 2004 bomb attacks on trains in Madrid, is still held incommunicado at Palestine Branch, a Military Intelligence interrogation and detention centre in Damascus, which is notorious for torture, since his arrest on arrival to Syria on 22 July 2008. Muhammad Zammar, a victim of suspected unlawful transfer to Syria by the US authorities, is serving a 12-year sentence imposed by the Supreme State Security Court, which falls far short of international standards for fair trial, despite the UN Working Group’s announcement in June

⁴ At the time of writing it was being reported that the US administration was considering Guantanamo detainee Ahmed Khalfan Ghailani for trial in federal court. See USA: Another CIA detainee facing death penalty trial by military commission, 2 April 2008, <http://www.amnesty.org/en/library/info/AMR51/027/2008/en>.

2007 that his detention was arbitrary. Two women, Usra al-Hussein and Bayan Saleh 'Ali, were arrested on 31 July and 4 August 2008 respectively in al-'Otayba, east of Damascus. The authorities gave no reason for their arrest but some sources suggested that it was related to their efforts to communicate with an international organization regarding the conditions of Usra al-Hussein's husband, Jihad Dhiab, detained in the US military base at Guantánamo Bay.

Amnesty International urges the US government to ensure that all necessary steps are taken to expedite resolution of Muhammed Khan Tumani's case in full compliance with international law, taking into account his age at the time of his original detention.

PLEASE TAKE ACTION

Please send appeals to one or more of the addressees listed below, using the following guide:

- expressing serious concern for the health and well-being of Muhammed Khan Tumani;
- calling on the authorities to end his isolation and allow him to see his father, Adbul Nasser Khan Tumani;
- calling on the authorities to allow him to be given immediate access to an independent medical expert, so that he can be properly diagnosed and provided with all necessary treatment;
- calling for him to be released if he is not to be brought to fair trial in a civilian court;
- appealing for urgent consideration to be given to release on remedial and humanitarian grounds in his case and in that of all detainees taken into custody when they were children, and for their inclusion in suitable programmes geared towards their successful reintegration into society;
- expressing further concern that Muhammed Khan Tumani would be at risk of torture or other ill-treatment, if he was returned to Syria; and
- urging the authorities to ensure that he will not be forcibly returned to Syria or any other country where he would be at risk of further human rights violations, including torture or other ill-treatment.

ADDRESSES

The Honorable Eric H. Holder
Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington DC 20530-001, USA
Fax: + 1 202 307 6777; + 1 202 616 8470
Email: AskDOJ@usdoj.gov
Salutation : Dear Attorney General

The Honorable Hillary R. Clinton
Secretary of State
U.S. 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

Field Code Ch

The Honorable Robert M. Gates
Secretary of Defense
US Department of Defense
1400 Defense Pentagon
Washington DC 20301, USA
Fax: + 1 703 571 8951
Email: Robert.gates@osd.mil
Salutation: Dear Secretary of Defense

Field Code Ch

Please copy your appeals to diplomatic representatives of the USA accredited to your country.

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